

No. 26-_____

In the Supreme Court of the United States

FREDRICK EUGENE CARNEY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit

**APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI**

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APPENDIX TABLE OF CONTENTS

Appendix A —

Opinion of the United States Court of Appeals for the Sixth Circuit, United States v. Carney, Nos. 24-6051/25-5097 (Mar. 24, 2026)	1a
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Appendix B —

Order of the United States Court of Appeals for the Sixth Circuit Denying Petition for Rehearing, No. 24-6051 (Apr. 21, 2026)	25a
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Appendix C —

Transcript of Suppression Hearing Proceedings, United States v. Carney, No. 3:22-cr-00174 (M.D. Tenn. Apr. 25, 2023)	27a
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APPENDIX A

Opinion of the United States Court of Appeals
for the Sixth Circuit
United States v. Carney, Nos. 24-6051/25-5097
Filed March 24, 2026

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Nos. 24-6051, 25-5097

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Mar 24, 2026

KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

FREDRICK EUGENE CARNEY (24-6051);
WILLIAM JOHN EWING (25-5097),

Defendants-Appellants.

ON APPEAL FROM THE
UNITED STATES DISTRICT
COURT FOR THE MIDDLE
DISTRICT OF TENNESSEE

OPINION

Before: CLAY, GIBBONS, and HERMANDORFER, Circuit Judges.

CLAY, Circuit Judge. Following a joint trial, the jury convicted Defendants William John Ewing (“Ewing”) and Fredrick Eugene Carney (“Carney”) of various crimes relating to a series of armed robberies. This consolidated appeal followed, wherein: (1) Ewing challenges the district court’s failure to sever defendants and charges for trial under Federal Rule of Criminal Procedure 8; (2) Carney challenges the district court’s denial of his motion to suppress; (3) both Defendants challenge the district court’s admission of evidence under Federal Rule of Evidence 404(b); and (4) Ewing challenges the sufficiency of the evidence supporting his conviction under 18 U.S.C. § 924(c). For the reasons below, we **AFFIRM** the rulings of the district court.

I. BACKGROUND

A. Factual History

On March 24, 2022, an armed robbery occurred at a loan business, Cash Express, in Moulton, Alabama. At approximately 2:45 PM, only one employee was working at the Cash

No. 24-6051/25-5097, *United States v. Carney, et al.*

Express. After two people drove up in a black Honda Civic and parked outside the Cash Express, Defendant Fredrick Eugene Carney (“Carney”) exited the car and entered the store. Carney asked the employee about obtaining a loan, and as the employee began discussing the topic, an accomplice entered the store, pulled out a gun, and jumped the counter. The accomplice was alleged by the government to be Defendant William John Ewing (“Ewing”). Upon directing the employee to open the safe, Carney and the accomplice stole money from the safe and then exited the store saying, “Let’s go get the next one.” Trial Tr. Vol. 2-B, R. 202, Page ID #1283-85. Carney and his accomplice returned to the black Honda Civic and drove north. Surveillance footage recorded the black Honda Civic driving away from the Cash Express with a non-functioning left reverse light and distinctive weatherstripping.

At approximately 4:30 PM on the same day, Carney and his accomplice drove up in the black Honda Civic to another Cash Express in Ardmore, Tennessee, which is about 45 minutes away from Moulton. Carney and his accomplice were still wearing the same clothes. Carney’s accomplice entered the Cash Express and asked the only employee working there at the time about obtaining a loan. As the employee began discussing the topic, Carney entered the store and pulled out a gun, and the two men conducted another armed robbery by walking around the counter and directing the employee to open the money drawer.

On the morning of April 4, 2022, surveillance footage from Ewing’s apartment complex recorded the same black Honda Civic, with a non-functioning left reverse light and distinctive weatherstripping, parked outside Ewing’s apartment. Carney and Ewing exited the black Honda Civic outside Ewing’s apartment in the surveillance footage. The car was also later confirmed to be registered under Ewing’s name. On that morning, Ewing texted his sister, Latika Poole (“Poole”): “I’m trying to get rich.” Trial Tr. Vol. 5, R. 205, Page ID #2072-73.

No. 24-6051/25-5097, *United States v. Carney, et al.*

At around 2 PM that day, Carney and Ewing entered Regions Bank in Smyrna, Tennessee, stood for a while, then came around the employees' desks, pulled out guns, and proclaimed, "This is a robbery." Trial Tr. Vol. 2-B, R. 202, Page ID #1228. One of them pointed his gun at an employee and stated that if the employee pushed the alarm button, he would shoot the employee. Carney and Ewing directed employees to unlock the money drawer and vault, and they then stole money from those places. They also said that they were going to "take somebody out" if they did not get money from the vault. *Id.* at 1229. Afterward, Carney and Ewing drove off in a red Chevy Impala that Carney owned. Carney later exchanged the red Chevy Impala for a black Dodge Charger at a used car lot.

On April 20, 2022, Carney robbed another Cash Express in Greenbrier, Tennessee. Carney. Carney escaped from the scene in his black Dodge Charger and evaded the police pursuing him. On April 23, 2022, Carney told his girlfriend at the time, Shyanne McCullough ("McCullough"), that he robbed the Regions Bank in Smyrna and multiple other Cash Express locations, and she reported his confession to the police.

On May 1, 2022, while McCullough, Carney, and Ewing were at Ewing's apartment, Carney stated, "We're going to hit a bigger bank." Trial Tr. Vol. 3, R. 203, Page ID #1606-07. During that conversation, McCullough also saw guns under Ewing's couch and a gun on Carney's person. The next day, Carney and an accomplice alleged by the government to be Ewing robbed First Horizon Bank in Whites Creek, Tennessee. During the robbery, Carney warned an employee that he would get shot if he did not open the vault and then fired a gunshot into a nearby door.

Following reports of a robbery, law enforcement visited various addresses associated with the suspected perpetrators, Carney and Ewing. One of those locations was Poole's residence, and during law enforcement's visit there on May 2, 2022, law enforcement saw Carney, who attempted

No. 24-6051/25-5097, *United States v. Carney, et al.*

to flee, but eventually arrested him pursuant to a warrant. While Carney initially fled from law enforcement, officers spoke with Poole outside her residence, and she signed a consent form that authorized a complete search of her address. As officers took photographs inside and outside of her residence, interviewed her in the driveway, and searched the entire premises, Poole never attempted to withdraw or limit her consent. Poole told officers that the black Dodge Charger parked in the nearby carport belonged to Carney and that Carney “sometimes sleeps” at her residence. Suppression Hr’g Tr., R. 144, Page ID #682, 693-94. Law enforcement towed the black Dodge Charger, and after obtaining a search warrant, gathered incriminating evidence from the vehicle.

B. Procedural History

On May 22, 2023, the grand jury returned the Third Superseding Indictment, which is the operative indictment in this case. The Third Superseding Indictment charged Ewing and Carney with: two counts of Hobbs Act robbery in violation of 18 U.S.C. § 1951 (regarding the Cash Express robberies in Ardmore and another location); two counts of armed bank robbery in violation of 18 U.S.C. § 2113(a) and (d) (regarding the robberies at the Regions Bank in Smyrna and the First Horizon Bank in Whites Creek); two counts of brandishing a firearm during a crime of violence in violation of 18 U.S.C. § 924(c); and one count of discharging a firearm during a crime of violence in violation of 18 U.S.C. § 924(c). The Third Superseding Indictment also charged Carney with: two additional counts of Hobbs Act robbery in violation of 18 U.S.C. § 1951 (regarding the Cash Express robberies in Greenbrier and another location); one additional count of brandishing a firearm during a crime of violence in violation of 18 U.S.C. § 924(c); and one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and 924.

No. 24-6051/25-5097, *United States v. Carney, et al.*

Neither Carney nor Ewing were charged with any crimes relating to the Cash Express robbery in Moulton.

Prior to the Third Superseding Indictment, Ewing had moved to sever his trial from Carney's trial after the grand jury returned the Superseding Indictment. Ewing had also filed a motion objecting to misjoinder and requesting to sever his trial after the Second Superseding Indictment. The district court denied all of these motions.

Ewing did not, however, raise any objection to misjoinder or move for severance after the grand jury returned the Third Superseding Indictment. Instead, Ewing's counsel indicated that Ewing did not want the district court to sever his trial. At a pretrial conference, the district court requested Carney's and Ewing's counsel's thoughts regarding "how the trial [will] go forward [since] there's a new indictment," referring to the Third Superseding Indictment. Pretrial Conference Tr., R. 273, Page ID #3067-68. Carney's counsel stated that Carney "wishes to proceed [to trial] on the entire indictment" and "does not wish to have it severed." *Id.* at 3076. After some back and forth, the district court asked Ewing's counsel for his views, and Ewing's counsel stated that he "second[s] everything [his] colleague has said," and "Ewing . . . is very adamant that he wants to go [to trial] on all charges in the third superseding indictment." *Id.* at 3089. Ewing's counsel further confirmed, "I won't go over all of the responses my colleague has given, but I agree with them." *Id.*

Carney also filed a motion to suppress evidence that resulted from the seizure of the black Dodge Charger, which he alleged was an unreasonable seizure in violation of his Fourth Amendment rights. Following a suppression hearing, where the government presented testimony from five witnesses and introduced twelve exhibits and Carney did not present any evidence, the district court denied Carney's motion to suppress.

No. 24-6051/25-5097, *United States v. Carney, et al.*

In preparation for trial, the government filed a notice of intent to introduce evidence regarding the uncharged robbery of the Cash Express that occurred in Moulton, Alabama on March 24, 2022. The district court admitted such evidence pursuant to Federal Rule of Evidence 404(b), finding that the government offered it for the legitimate purposes of establishing the identity and *modus operandi* of the perpetrators of other charged robberies at issue in the case, including the robbery of the Cash Express in Ardmore that occurred on the same day. The district court assured the parties that the evidence would be accompanied by a limiting instruction for the jury. At trial, the district court provided the limiting instruction once when the jury first heard the evidence of the Moulton robbery and again at closing instructions.

Following trial, the jury convicted Ewing of one count of armed bank robbery in violation of 18 U.S.C. § 2113(a) and (d) and one count of brandishing a firearm during a crime of violence in violation of 18 U.S.C. § 924(c) (both regarding the Regions Bank robbery in Smyrna). The jury convicted Carney of two counts of Hobbs Act robbery in violation of 18 U.S.C. § 1951 (regarding the Cash Express robberies in Ardmore and another location); two counts of armed bank robbery in violation of 18 U.S.C. § 2113(a) and (d) (regarding the robberies at the Regions Bank in Smyrna and the First Horizon Bank in Whites Creek); three counts of brandishing a firearm during a crime of violence in violation of 18 U.S.C. § 924(c); one count of discharging a firearm during a crime of violence in violation of 18 U.S.C. § 924(c); and one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and 924. The district court sentenced Ewing and Carney to 147 and 384 months of imprisonment respectively.

This appeal followed. Ewing challenges the district court's failure to sever the defendants and charges for trial. Carney challenges the district court's denial of his motion to suppress evidence resulting from the seizure of his black Dodge Charger. Both Ewing and Carney challenge

No. 24-6051/25-5097, *United States v. Carney, et al.*

the district court's admission of evidence regarding the uncharged robbery of the Cash Express in Moulton. And Ewing challenges the sufficiency of the evidence for his conviction of brandishing a firearm during a crime of violence in violation of 18 U.S.C. § 924(c).

II. DISCUSSION

A. Severance of Defendants and Charges

Ewing argues that his convictions must be vacated because severance was mandatory due to misjoinder of defendants and charges in the Third Superseding Indictment.

After the grand jury returned the Second Superseding Indictment, Ewing moved for severance based on misjoinder under Federal Rule of Criminal Procedure 8 and, alternatively, moved for severance based on prejudicial joinder under Rule 14. The district court denied Ewing's motion. The grand jury later issued a Third Superseding Indictment, which became the operative indictment in this case and served as the basis for the charges against Ewing at trial. Ewing did not file any motion for severance or raise any objection to misjoinder regarding the Third Superseding Indictment.

On appeal, Ewing presents argument only on his motion for severance based on misjoinder under Rule 8 and does not discuss his motion for severance based on prejudicial joinder under Rule 14. This is likely so because we “have long held that a defendant waives an argument for severance under Rule 14 if he does not renew his Rule 14 motion ‘following the close of the evidence at trial.’” *United States v. Abbott*, No. 24-5602, 2025 WL 2237656, at *4 (6th Cir. Aug. 6, 2025) (quoting *United States v. Sherrill*, 972 F.3d 752, 762 (6th Cir. 2020)). Because Ewing did not renew his motion at the end of the trial, Ewing waived any argument for severance under Rule 14.

No. 24-6051/25-5097, *United States v. Carney, et al.*

And, as the government correctly contends, Ewing also waived his argument for severance under Rule 8. At a pretrial conference, the district court requested Carney’s and Ewing’s counsel’s thoughts regarding “how the trial [will] go forward [since] there’s a new indictment,” referring to the Third Superseding Indictment. Pretrial Conference Tr., R. 273, Page ID #3067-68. In response, Carney’s counsel stated that Carney “wishes to proceed to trial on the entire indictment, the third superseding indictment,” and “does not wish to have it severed.” *Id.* at 3076. Ewing’s counsel then stated that he “second[s] everything [his] colleague has said,” and “Ewing . . . is very adamant that he wants to go [to trial] on all charges in the third superseding indictment.” *Id.* at 3089. Ewing’s counsel further confirmed, “I won’t go over all of the responses my colleague has given, but I agree with them.” *Id.* He then agreed with the district court’s proposed timeline for a joint trial on all charges.

Through these statements at the pretrial conference, Ewing’s counsel agreed that Ewing did not wish to have the Third Superseding Indictment severed and instead wished to proceed jointly with Carney on the entire indictment. By agreeing with Carney’s counsel’s statement that he did not wish to have the indictment severed for trial, Ewing’s counsel waived any argument on appeal that the district court should have severed the defendants or charges in the Third Superseding Indictment. Such an “intentional relinquishment or abandonment of a known right” is not reviewable by this Court. *United States v. Carter*, 89 F.4th 565, 568 (6th Cir. 2023) (quoting *United States v. Olano*, 507 U.S. 725, 733 (1993)). For we have held that an “attorney cannot agree in open court with a judge’s proposed course of conduct and then charge the court with error in following that course,” and when an attorney does so, his client “waive[s] his claim on the issue.” *United States v. Aparco-Centeno*, 280 F.3d 1084, 1088 (6th Cir. 2002); accord *United States v. Sloman*, 909 F.2d 176, 182 (6th Cir. 1990).

No. 24-6051/25-5097, *United States v. Carney, et al.*

Ewing argues that waiver should not apply to this argument because he filed the motion for severance regarding the Second Superseding Indictment, and a “new motion to sever or claiming misjoinder would not have brought anything new to the trial court.” Ewing Appellant’s Reply at 6. But that is incorrect. Ewing’s motion for severance contemplates only the counts in the Second Superseding Indictment. But the Third Superseding Indictment replaced the Second Superseding Indictment as the operative indictment for trial, and all of the counts except for one in the Third Superseding Indictment are different from the counts in the Second Superseding Indictment. Moreover, the Third Superseding Indictment alleged two new robberies and added four new counts, including one new alleged crime. A defendant must raise a “defect in the indictment” prior to trial, Fed. R. Crim. P. 12(b)(3)(B), and Ewing did not raise any defect in the Third Superseding Indictment prior to his trial. But, in any event, Ewing relinquished any argument regarding severance when his counsel provided that Ewing did not wish to have the Third Superseding Indictment severed for trial.

Ewing next argues that his “counsel’s statement about the desire to proceed to trial can only be considered a waiver if taken grossly out of context.” Ewing Appellant’s Reply at 7. But we reasonably view Ewing’s counsel’s statements in the context established by the district court when it invited counsel’s thoughts on “how the trial [will] go forward [since] there’s a new indictment.” Pretrial Conference Tr., R. 273, Page ID #3067-68. Ewing contends that his counsel’s indication that he did not want the Third Superseding Indictment to be severed was limited solely to the context of severance as “an option to address concerns over speedy trial issues” and “did not include severance of charges at all under Rule 8(a).” Ewing Appellant’s Reply at 10. But that suggested limitation exists nowhere in the record. Ewing’s counsel stated that he “second[s] everything [his] colleague has said,” including that he did not want the indictment to

No. 24-6051/25-5097, *United States v. Carney, et al.*

be severed (without any exception or limitation), and that he “is very adamant that he wants to go [to trial] on all charges in the third superseding indictment.” Pretrial Conference Tr., R. 273, Page ID #3089. A “party cannot tell the district court one thing and then tell us the opposite.” *United States v. Artrip*, 364 F. App’x 204, 205 (6th Cir. 2010). And Ewing’s counsel told the district court that he did not wish to have the indictment severed and now tells us that he did wish to have the indictment severed.

Because Ewing did not make any objection to the Third Superseding Indictment regarding severance or misjoinder and instead provided that he did not wish for the Third Superseding Indictment to be severed for trial, we find that Ewing did not preserve the issue of severance for appellate review.

B. Carney’s Motion to Suppress

Carney challenges the district court’s denial of his motion to suppress evidence resulting from the seizure of his black Dodge Charger from Poole’s residence, arguing that the seizure violated his Fourth Amendment rights.

In reviewing the denial of a motion to suppress, we apply a “mixed standard of review.” *United States v. Simmons*, 129 F.4th 382, 386 (6th Cir. 2025). “We review the district court’s factual findings for clear error and legal conclusions *de novo*.” *Id.* (emphasis added). In doing so, we “consider the evidence in the light most favorable to the government.” *United States v. Taylor*, 121 F.4th 590, 594 (6th Cir. 2024). The denial of a motion to suppress “will be affirmed if it ‘can be justified for any reason.’” *United States v. Burrell*, 114 F.4th 537, 550 (6th Cir. 2024) (quoting *United States v. Whitley*, 34 F.4th 522, 528 (6th Cir. 2022)).

The Fourth Amendment prohibits “unreasonable searches and seizures.” U.S. Const. amend. IV. Fourth Amendment rights are “personal,” so “a defendant must show that his own

No. 24-6051/25-5097, *United States v. Carney, et al.*

rights were infringed.” *United States v. Russell*, 26 F.4th 371, 374 (6th Cir. 2022) (citations and quotations omitted). A defendant thus bears “the burden of establishing his standing to assert a Fourth Amendment violation.” *United States v. Smith*, 263 F.3d 571, 582 (6th Cir. 2001). To establish standing, “the defendant must show (1) that he had a subjective expectation of privacy, and (2) that his expectation was objectively reasonable.” *United States v. Washington*, 573 F.3d 279, 282 (6th Cir. 2009).

The government argued at the district court and now argues on appeal that Carney lacks standing to challenge the seizure of his vehicle from Poole’s residence. In denying Carney’s motion to suppress, the district court did not make any finding regarding whether Carney had standing to contest the seizure and, instead, concluded that the seizure was lawful regardless. But Carney failed to carry his burden of “establishing his standing to assert a Fourth Amendment violation.” *Smith*, 263 F.3d at 582.

“It is well-settled that a person has no reasonable expectation of privacy where he is neither a resident nor an overnight guest in a residence.” *United States v. Plavcak*, 411 F.3d 655, 665 (6th Cir. 2005). “The Supreme Court has recognized an overnight guest’s ‘legitimate expectation of privacy in his host’s home.’” *United States v. Knowledge*, 418 F. App’x 405, 407 (6th Cir. 2011) (quoting *Minnesota v. Olson*, 495 U.S. 91, 98 (1990)). To otherwise have a reasonable expectation of privacy as a guest at another person’s residence, a defendant must “establish that he has a meaningful connection to the residence.” *United States v. Haynes*, 108 F. App’x 372, 374 (6th Cir. 2004) (quotation omitted). For example, in *United States v. Pollard*, we held that a defendant had standing to contest a search of another person’s residence where he provided evidence that he “had been staying at the home earlier in the week,” “occasionally spent the night at the residence,” “kept some personal belongings in a closet,” “sometimes ate meals with the family during his

No. 24-6051/25-5097, *United States v. Carney, et al.*

visits,” and “was allowed to stay in the home even if the residents were not present.” 215 F.3d 643, 647-48 (6th Cir. 2000). But we have also held that “a casual, transient visitor” lacks Fourth Amendment standing to challenge a search or seizure at another person’s residence. *United States v. McNeal*, 955 F.2d 1067, 1070 (6th Cir. 1992); *see also United States v. Anderson*, 166 F.3d 1215, 1998 WL 833701, at * 7 (6th Cir. 1998) (“A casual visitor, unlike an overnight visitor, does not have standing to contest a warrantless search.”).

The only argument that Carney offers as to why he had a reasonable expectation of privacy at Poole’s residence is that he “was a frequent overnight guest” at Poole’s residence and “was permitted to keep his car at the residence.” Carney Appellant’s Br. at 13, 15. But Carney does not cite to any evidence in the record that substantiates these assertions. Carney does not confirm that he was in fact an overnight guest at the time of the seizure of his vehicle or elaborate on the frequency of his overnight stays at Poole’s residence. Carney does not indicate what belongings, if any, that he kept at Poole’s residence or whether he had any other privileges there besides parking his car outside the residence while visiting. *Cf. United States v. Waller*, 426 F.3d 838, 844-45 (6th Cir. 2005) (holding that a defendant had a reasonable expectation of privacy at another person’s apartment that he used “primarily for showering, changing clothes, and storing his personal belongings,” including in a bedroom closet); *United States v. Heath*, 259 F.3d 522, 533 (6th Cir. 2001) (holding that a defendant had a reasonable expectation of privacy at his cousin’s apartment where he “slept on the couch . . . once a week for approximately two years” and “possessed a key which . . . allowed [him] unfettered access to the apartment and the ability to admit and exclude others” (quotations omitted)). And although Carney was Poole’s brother, “merely having a relationship with the homeowner does not by itself establish a reasonable expectation of privacy.” *United States v. Johnson*, 171 F. App’x 499, 501-02 (6th Cir. 2006)

No. 24-6051/25-5097, *United States v. Carney, et al.*

(citing *United States v. Buckner*, 717 F.2d 297, 300 (6th Cir. 1983) (holding that a defendant does not have a reasonable expectation of privacy at his mother’s apartment)). The only evidence in the record regarding Carney’s connection to Poole’s residence that is apparent to the Court, as highlighted by the government, is Poole’s statement that Carney “sometimes sleeps” at her residence. Suppression Hr’g Tr., R. 144, Page ID #682. That statement alone does not establish that Carney had a reasonable expectation of privacy at Poole’s residence during the seizure. Given the dearth of evidence, we may liken Carney to only a casual visitor, who lacks Fourth Amendment standing to challenge a search or seizure at Poole’s residence. *See McNeal*, 955 F.2d at 1070; *see also Anderson*, 1998 WL 833701, at *7.

Since Carney does not have standing to contest the seizure, the district court’s denial of Carney’s motion to suppress “can be justified for any reason.”¹ *Burrell*, 114 F.4th at 550 (quoting *Whitley*, 34 F.4th at 528). We therefore affirm the district court’s denial of the motion.

C. Rule 404(b) Evidence of the Uncharged Moulton Robbery

Both Ewing and Carney argue that the district court erred in admitting evidence regarding the uncharged robbery at Cash Express in Moulton on March 24, 2022. The district court admitted this evidence under Federal Rule of Evidence 404(b) for the purposes of establishing identity and *modus operandi*, and Ewing and Carney preserved their objections.

Rule 404(b) prohibits district courts “from permitting evidence of other crimes or wrongs (‘bad acts’) to be used to prove character or propensity to violate the law.” *United States v. Fairley*, 137 F.4th 503, 517 (6th Cir. 2025). “However, such evidence may be admitted for other purposes, such as to show ‘motive, opportunity, intent, preparation, plan, knowledge, identity, absence of

¹ The district court indicated that the plain view and automobile exceptions justify law enforcement’s seizure of the vehicle, but because the district court’s denial of Carney’s motion to suppress “can be justified for any reason,” we need not review the merits of the other bases for the district court’s conclusion. *Burrell*, 114 F.4th at 550 (quoting *Whitley*, 34 F.4th at 528).

No. 24-6051/25-5097, *United States v. Carney, et al.*

mistake, or lack of accident.” *Id.* (quoting Fed. R. Evid. 404(b)). And that list is “not exhaustive”—another “proper purpose” is “*modus operandi*.” *United States v. Perry*, 438 F.3d 642, 648 (6th Cir. 2006) (emphasis added). “District courts possess broad discretion in admitting evidence under Rule 404(b).” *United States v. Will*, 612 F. App’x 265, 267 (6th Cir. 2015). We use a three-part test to review their exercise of that discretion: “First, we review for clear error the factual determination that other acts occurred. Second, we review *de novo* the legal determination that the acts were admissible for a permissible 404(b) purpose. Third, we review for abuse of discretion the determination that the probative value of the evidence is not substantially outweighed by unfair prejudicial impact.”² *Fairley*, 137 F.4th at 517 (quoting *United States v. Adams*, 722 F.3d 788, 810-11 (6th Cir. 2013)).

1. Step One

At the first step, there is no dispute that the robbery in Moulton occurred, so the district court did not clearly err in so finding. But in *United States v. Clay*, we also held that, at the first step, we “must review for clear error the district court’s determination that there is ‘sufficient evidence to support a finding by the jury that the defendant committed’” the other act. 667 F.3d 689, 694 (6th Cir. 2012) (quoting *Huddleston v. United States*, 485 U.S. 681, 685 (1988)). To that end, the district court stated that it would follow the “sufficient evidence approach used by the Court in the *Clay* opinion” and found that there was “sufficient evidence that the perpetrators of the Moulton robbery of the Cash Express were also the perpetrators of the Ardmore, Tennessee, Cash Express [robbery] 90 minutes later on March 24, 2022.” Trial Tr. Vol. 2-B, R. 202, Page ID #1251-52 (citation modified). The district court highlighted the “testimony and evidence about

² As the government points out, this Court’s caselaw is unsettled as to whether *de novo* or abuse of discretion review governs the district court’s determination that prior bad acts were admissible for a proper purpose under Rule 404(b). *E.g.*, *United States v. Mandoka*, 869 F.3d 448, 457 (6th Cir. 2017). Because the government does not object to applying *de novo* review in this case, we take that route.

No. 24-6051/25-5097, *United States v. Carney, et al.*

the same or similar car, similar clothing, general description of the perpetrators, and then the method of the robbery that's depicted on video and still shots of the two facilities.” *Id.*

Ewing and Carney argue that the district court clearly erred at the first step because it found that sufficient evidence shows that the perpetrators of the Moulton robbery were the same perpetrators of the Ardmore robbery, instead of finding that sufficient evidence shows that Ewing and Carney committed the Moulton robbery. To the extent that the district court did not use the exact words articulated by this Court in *Clay*, under clear error review, we “look to the entire record and determine whether we are ‘left with the definite and firm conviction that a mistake has been committed.’” *United States v. Ibarra*, Nos. 24-5174/5176/5248/5361, 2025 WL 1542319, at *8 (6th Cir. May 30, 2025) (quoting *Mathis*, 738 F.3d at 739). We “may affirm on any grounds supported by the record, even if different from the reasons of the district court.” *United States v. Gilbert*, 952 F.3d 759, 762 (6th Cir. 2020).

The record provides ample evidence to support a finding that Carney and Ewing committed the Moulton robbery. McCullough, who personally knew Ewing and Carney, identified both of them as the perpetrators of the Moulton robbery based on the surveillance footage. Surveillance footage also recorded the perpetrators of the Moulton robbery driving away from the Cash Express in a black Honda Civic with a non-functioning left reverse light and distinctive weatherstripping. That same black Honda Civic was confirmed to be registered under Ewing's name. And surveillance footage also showed Carney and Ewing together exiting that same black Honda Civic outside Ewing's apartment. The perpetrators of the Moulton robbery were also wearing the same clothes as the perpetrators of the Ardmore robbery only 90 minutes later, and cell phone records placed Carney in Ardmore at the time of the Ardmore robbery. In light of this evidence, the district court did not clearly err in finding that there was sufficient evidence at the first step.

No. 24-6051/25-5097, *United States v. Carney, et al.*

2. Step Two

At the second step, the district court found that the government offered evidence of the Moulton robbery for two proper purposes: identity and *modus operandi*.

The district court properly admitted evidence of the Moulton robbery to establish the identity of Ewing and Carney as the perpetrators of other charged robberies, including the robbery of the Cash Express in Ardmore on the same day of the Moulton robbery and the robbery of the Regions Bank in Smyrna on April 4, 2022. As already indicated, the perpetrators of the Moulton and Ardmore robberies, which occurred within 90 minutes of each other, were wearing the same clothes and driving the same car—a car registered under Ewing’s name and a car that Ewing and Carney were later seen exiting outside Ewing’s apartment. While leaving the site of the Moulton robbery, the perpetrators said, “Let’s go get the next one,” and then drove the car north in the direction of Ardmore. Trial Tr. Vol. 2-B, R. 202, Page ID #1283-85, 1287, 1312. Because McCullough identified Ewing and Carney as the perpetrators of the Moulton robbery, and that robbery was connected to the Ardmore robbery, evidence of the Moulton robbery would indicate that Ewing and Carney were also the perpetrators of the Ardmore robbery. Moreover, when exiting the car used in the Moulton and Ardmore robberies while outside of Ewing’s apartment, Ewing and Carney were wearing the same clothes as the perpetrators who later that day committed the Smyrna robbery. In light of these links to other charged robberies, the district court properly admitted evidence of the Moulton robbery to establish identity. To be sure, the identity of the perpetrators of the charged robberies was a major, if not the most important, issue at trial, and “when the issue is one related solely to identity, this Court has overwhelmingly approved of the admission of ‘other acts’ evidence.” *Perry*, 438 F.3d at 648 (quoting *United States v. Fountain*, 2 F.3d 656, 668 (6th Cir. 1993)).

No. 24-6051/25-5097, *United States v. Carney, et al.*

The district court also properly admitted evidence of the Moulton robbery to show *modus operandi*. “To qualify as *modus operandi* evidence, the similarity between the prior crime and the charged offense must be striking, and the method must amount to a ‘signature.’” *United States v. Joseph*, 270 F. App’x 399, 406 (6th Cir. 2008) (quoting *Perry*, 438 F.3d at 648). But “it is not necessary . . . that the crimes be identical in every detail.” *Id.* (quoting *Perry*, 438 F.3d at 648). So “two crimes of sufficient distinctive similarity can create . . . *modus operandi*.” *Perry*, 438 F.3d at 648 (emphasis added). For example, in *Perry*, we found that the district court admitted evidence of the other bank robbery for the proper purpose of establishing *modus operandi* where the defendant followed a similar pattern in both the other bank robbery and the charged bank robbery: the defendant entered the business carrying a gun, then made requests for change and money orders, and then pulled out his gun to commit the robbery. *Id.*

Similarly, the Moulton robbery has sufficient distinctive similarity to at least one of the charged crimes, the Ardmore robbery. Both of these robberies occurred at a Cash Express on the same day within 90 minutes of each other. During these robberies, one of the perpetrators entered the business and made a monetary request, and then the other perpetrator entered the business with a firearm and initiated the robbery, in which they threatened the employee with their gun and directed the employee to unlock the location where the money was stored. These “two crimes of sufficient distinctive similarity” can establish “*modus operandi*.” *Id.* (emphasis added). Further, other charged robberies also featured a similar method. To the extent that there were any slight differences in the methods of the various charged robberies, “it is not necessary . . . that the crimes

No. 24-6051/25-5097, *United States v. Carney, et al.*

be identical in every detail” to establish *modus operandi*.³ *Joseph*, 270 F. App’x at 406 (quoting *Perry*, 438 F.3d at 648).

3. Step Three

At the third step, the district court recognized that it would “do[] a Rule 403 analysis” and found that the court would “alleviate any issues with 403 by giving a limiting instruction” that the jury “may not consider [the evidence of the Moulton robbery] for any other purpose” apart from identity and *modus operandi*. Trial Tr. Vol. 2-B, R. 202, Page ID #1251-5.

“In the case of a Rule 403 analysis, we grant the district court ‘very broad’ discretion in making its determinations.” *United States v. Libbey-Tipton*, 948 F.3d 694, 701 (6th Cir. 2020) (quoting *United States v. Newsom*, 452 F.3d 593, 603 (6th Cir. 2006)). We take “a maximal view of the probative effect of the evidence and a minimal view of its unfairly prejudicial effect, and will hold that the district court erred only if the latter outweighs the former.” *Id.* (quoting *United States v. Sassanelli*, 118 F.3d 495, 498 (6th Cir. 1997)).

Ewing and Carney argue that the district court abused its discretion at this step because it did not explicitly state on the record that the probative value of the evidence was not substantially outweighed by unfair prejudice. But the district court acknowledged that it would “do[] a Rule 403 analysis,” which precisely involves evaluating whether the probative value of the evidence was substantially outweighed by unfair prejudice. Trial Tr. Vol. 2-B, R. 202, Page ID #1251; Fed. R. Evid. 403 (“The court may exclude relevant evidence if its probative value is substantially

³ It is worth noting that we need not even consider whether the evidence was properly admitted to show *modus operandi* because the district court properly admitted the evidence of the Moulton robbery to show identity. The district court’s admission of the evidence for any other reason besides identity “does not affect the ultimate admissibility of the evidence,” because if the district court “admitted evidence for a single legitimate reason, the court’s articulation of additional erroneous reasons is of no consequence.” *United States v. Ray*, 549 F. App’x 428, 433 (6th Cir. 2013); *see also United States v. Higgins*, No. 22-3538, 2023 WL 6536752, at *7 n.5 (6th Cir. Oct. 6, 2023) (“Because the recordings served the proper purpose of pro[v]ing [the defendant’s] intent, the court need not address his alternative argument that they fail as *modus operandi* evidence.”).

No. 24-6051/25-5097, *United States v. Carney, et al.*

outweighed by a danger of . . . unfair prejudice.”). And by finding that the court would “alleviate any issues with 403 by giving a limiting instruction,” the district court indicated that the limiting instruction would prevent the probative value of the evidence from being substantially outweighed by the unfair prejudice. *Id.* at 1252. In doing so, the district court did not “rel[y] on erroneous findings of fact, appl[y] the wrong legal standard, misapply[y] the correct legal standard when reaching a conclusion, or ma[ke] a clear error of judgment,” as Ewing argues. Ewing Appellant’s Br. at 40 (quoting *Schlaud v. Snyder*, 717 F.3d 451, 457 (6th Cir. 2013)); *see also Randleman v. Fid. Nat’l Title Ins. Co.*, 646 F.3d 347, 351-52 (6th Cir. 2011). Although the district court could have stated its finding more clearly, the district court did not abuse its discretion where it recognized that it would undertake the proper analysis at this step and then concluded that a limiting instruction would alleviate any concern that the defendants would be unfairly prejudiced by the evidence.

And to be clear, the probative value of the evidence was not substantially outweighed by unfair prejudice to Ewing and Carney. The evidence of the Moulton robbery had significant probative value because it linked Ewing and Carney to other charged robberies, including one that occurred on the same day, and demonstrated their method of carrying out those robberies. Although Ewing and Carney may have been prejudiced by this evidence, such prejudice was not “unfair.” *See Fairley*, 137 F.4th at 518. “Unfair prejudice does not mean the damage to a defendant’s case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis.” *United States v. Choate*, 208 F.3d 215, 2000 WL 263348, at *6 (6th Cir. 2000) (quoting *United States v. Talley*, 164 F.3d 989, 1000 (6th Cir. 1994)). Through the limiting instruction, the district court ensured that the jury would not use the evidence to render a decision based on an improper basis. *See United States*

No. 24-6051/25-5097, *United States v. Carney, et al.*

v. Townsend, 796 F.2d 158, 162 (6th Cir. 1986) (“[T]he district court, by giving a strong cautionary instruction, insured [sic] that defendant would not be unfairly prejudiced by the testimony.”). The district court provided the limiting instruction that the jury “must not consider [the evidence] for any other purpose” to the jury once when they first heard the evidence of the Moulton robbery and again at closing instructions. Trial Tr. Vol. 2-B, R. 202, Page ID #1262; Trial Tr. Vol. 7, R. 207, Page ID #2369; *see United States v. Cordero*, 973 F.3d 603, 621 (6th Cir. 2020) (“[A]ny prejudice resulting from [the] testimony was diminished by the court’s legally correct cautionary instructions, which were delivered both at the time the testimony was given and again at the conclusion of trial. The trial court’s delivery of consistent, frequent, and accurate limiting instructions weighs against a finding of unfair prejudice.”). Although Ewing argues that the jury may have used the evidence to show character or propensity, that argument fails to consider “the almost invariable assumption of the law that jurors follow their instructions.” *Richardson v. Marsh*, 481 U.S. 200, 206-07 (1987) (collecting cases); *see also Samia v. United States*, 599 U.S. 635, 646 (2023) (“[O]ur legal system presumes that jurors will attend closely the particular language of such instructions in a criminal case and strive to understand, make sense of, and follow them.” (citation modified)).

The district court thus did not err in exercising its discretion and admitting evidence of the Moulton robbery under Rule 404(b).

D. Sufficiency of the Evidence for Ewing’s Conviction under 18 U.S.C. § 924(c)

Ewing argues that his conviction for brandishing a firearm during a crime of violence in violation of 18 U.S.C. § 924(c) (regarding the Regions Bank robbery in Smyrna) should be vacated because insufficient evidence supports the jury’s finding that Ewing used a real gun during the

No. 24-6051/25-5097, *United States v. Carney, et al.*

bank robbery. Ewing raised this argument at the district court by moving for a judgment of acquittal under Federal Rule of Criminal Procedure 29, and the district court denied the motion.

“We review the district court’s denial of [a] motion for judgment of acquittal *de novo*.” *United States v. Howard*, 947 F.3d 936, 947 (6th Cir. 2020) (emphasis added). “Our task is to determine whether, ‘viewing the evidence in the light most favorable to the government, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt.’” *United States v. Robinson*, 99 F.4th 344, 353 (6th Cir. 2024) (quoting *United States v. Baggett*, 251 F.3d 1087, 1095 (6th Cir. 2001)). “In doing so, we do not ‘weigh the evidence presented, consider the credibility of witnesses, or substitute our judgment for that of the jury.’” *Id.* (quoting *United States v. Jackson*, 470 F.3d 299, 309 (6th Cir. 2006)). We simply ask whether the “jury behaved irrationally in concluding beyond a reasonable doubt” that the defendant committed the charged crime. *United States v. Miller*, 982 F.3d 412, 440 (6th Cir. 2020).

18 U.S.C. § 924(c)(1)(A) criminalizes brandishing a firearm “during and in relation to any crime of violence[.]” The only element of this crime that Ewing contests is whether he used a real firearm, as opposed to a fake firearm, during the bank robbery in Smyrna. It is true that a weapon qualifies as a firearm under the statute if it is capable of “expel[ing] a projectile by the action of an explosive” or is a “destructive device.” 18 U.S.C. § 921(a)(3); see *United States v. Sherer*, 770 F.3d 407, 412 (6th Cir. 2014).

But sufficient evidence supported the jury’s finding that Ewing used such a firearm during the bank robbery in Smyrna. Multiple witnesses at trial supported such a finding. Daniel Krouse (“Krouse”), the assistant manager for Regions Bank in Smyrna, indicated that based on his experience with guns and his observations of the bank robbery on April 4, 2022, Ewing “had a gun” during the bank robbery and the “gun was real.” Trial Tr. Vol. 2-B, R. 202, Page ID

No. 24-6051/25-5097, *United States v. Carney, et al.*

#1227-28, 1238-39. Krouse stated that one of the robbers said that “they were going to take somebody out” if they did not get money from the vault at the bank. *Id.* at 1229. Krouse also stated that, after the bank robbery, he “questioned if it’s worth going to work to lose [his] life.” *Id.* at 1244. Derrick Wallace (“Wallace”), another employee at Regions Bank who witnessed the bank robbery, indicated that Ewing was holding a “real gun” and it did not “look to be a toy gun” because he noticed that the gun was like a “semi-automatic pistol type of gun.” *Id.* at 1334, 1338-39. Wallace stated that he felt his “life was in jeopardy that day.” *Id.* at 1343. Additionally, McCullough also testified that she observed guns under Ewing’s couch in his apartment. Given this evidence, and especially “viewing the evidence in the light most favorable to the government,” *Robinson*, 99 F.4th at 353 (quoting *Baggett*, 251 F.3d at 1095), the jury did not “behave[] irrationally” in finding that Ewing brandished a real firearm within the meaning of the statute during the bank robbery in Smyrna. *See Miller*, 982 F.3d at 440.

Ewing challenges the testimony of these witnesses because “Krouse claimed experience but that experience was not provided to the jury to properly weigh his conclusion” and “Wallace’s belief is standing alone with no foundation at all.” Ewing Appellant’s Br. at 47. But we do not “consider the credibility of witnesses” in reviewing the sufficiency of evidence supporting a conviction. *Robinson*, 99 F.4th at 353 (quoting *Jackson*, 470 F.3d at 309). Ewing also highlights *United States v. Farrad*, 895 F.3d 859 (6th Cir. 2018) and *United States v. Crowe*, 291 F.3d 884 (6th Cir. 2002), wherein this Court sustained convictions involving a firearm after the government presented as proof different types of evidence than that used in this case. But we do not “weigh the evidence presented,” *Robinson*, 99 F.4th at 353 (quoting *Jackson*, 470 F.3d at 309), and instead we merely ask whether the jury in this case “behaved irrationally in concluding beyond a

No. 24-6051/25-5097, *United States v. Carney, et al.*

reasonable doubt” that Ewing used a firearm within the meaning of the statute during the bank robbery. *See Miller*, 982 F.3d at 440. And the jury did not do so.

We thus affirm the district court’s denial of Ewing’s motion for judgment of acquittal.

III. CONCLUSION

For the reasons set forth above, this Court **AFFIRMS** the rulings of the district court.

APPENDIX B

Order of the United States Court of Appeals
for the Sixth Circuit Denying Petition for Rehearing
United States v. Carney, No. 24-6051
Issued April 21, 2026

Case No. 24-6051

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

ORDER

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

FREDRICK EUGENE CARNEY

Defendants - Appellant

BEFORE: CLAY, Circuit Judge; GIBBONS, Circuit Judge; HERMANDORFER, Circuit Judge

Upon consideration of the petition for rehearing filed by the appellant,

It is **ORDERED** that the petition for rehearing be, and it hereby is, **DENIED**.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

A handwritten signature in cursive script, reading "Kelly L. Stephens", is written over a horizontal line.

Issued: April 21, 2026

APPENDIX C

Transcript of Suppression Hearing Proceedings
United States District Court, Middle District of Tennessee
United States v. Carney, No. 3:22-cr-00174
April 25, 2023

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

4 UNITED STATES OF AMERICA }

5 vs }

Case No. 3:22-cr-00174

6 FREDRICK EUGENE CARNEY (1) }

WILLIAM JOHN EWING (2) }

7 - - - - -
8
9 BEFORE THE HONORABLE

10 WILLIAM L. CAMPBELL, JR., DISTRICT JUDGE

11 TRANSCRIPT OF PROCEEDINGS

12 April 25, 2023
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23 Patricia A. Jennings, RMR, CRR
24 Official Court Reporter
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I N D E X

GOVERNMENT'S PROOF**SCARLETT COLLINS**

Direct Examination by Mr. Montminy.....	7
Cross-Examination by Mr. Evans.....	19
Redirect Examination by Mr. Montminy.....	26
Recross-Examination by Mr. Evans.....	32

ROBERT LABOY

Direct Examination by Mr. Montminy.....	33
Cross-Examination by Mr. Evans.....	41

KAITLYN POWELL

Direct Examination by Mr. Montminy.....	42
Cross-Examination by Mr. Evans.....	57

CRISTINA ALAMO

Direct Examination by Mr. Montminy.....	63
Cross-Examination by Mr. Evans.....	83

STEVEN HUNTER

Direct Examination by Mr. Montminy.....	91
Cross-Examination by Mr. Evans.....	112

1	<u>GOVERNMENT'S EXHIBITS</u>		
2	NUMBER	DESCRIPTION	PAGE
3	1	Photo of house	10
4	2	Photo of house	10
5	3	Aerial Map	12
6	4	Aerial Map	12
7	5	Body Cam Video	14
8	6	Body Cam Video	35
9	7	Body Cam Video	44
10	8	Body Cam Video (Searching a bag)	45
11	9	FBI Consent to Search	76
12	10	Photo	77
13	11	FBI Record of Interview	80
14			
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1 The above-styled cause came to be heard on
2 April 25, 2023, at 10:30 a.m., before the Honorable William
3 L. Campbell, Jr., District Judge, when the following
4 proceedings were had, to-wit:

5
6 THE COURT: All right, good morning. We're here
7 on Case 3:22-cr-174 on a motion to dismiss filed by defendant,
8 Fredrick Eugene Carney.

9 If counsel will introduce yourselves for the
10 record, please.

11 MR. MONTMINY: Good morning, Your Honor. Joe
12 Montminy on behalf of the government. Seated to my right is
13 Victoria Andrews. And seated to her right is FBI Task Force
14 Officer Keith Sutherland.

15 MR. EVANS: Good morning, Judge. Luke Evans on
16 behalf of Fred Carney.

17 MR. CARTWRIGHT: Good morning, Your Honor. Kevin
18 Cartwright on behalf of William Ewing.

19 THE COURT: All right, welcome. All right. As I
20 understand it, the motion we're going to deal with today is
21 simply Mr. Evans's motion to suppress, and that's what we're
22 here about.

23 Is that everybody's understanding?

24 MR. MONTMINY: That's my understanding.

25 THE COURT: Okay. Because there's been various

1 filings, but I want to make sure that nobody showed up
2 expecting to deal with something else that I had not had a
3 chance to be prepared for. So I asked out of the abundance
4 of caution.

5 All right. So the motion challenges the seizure
6 and subsequent search of the black Dodge Charger. And I've
7 read the filings of the parties and the attachments thereto.

8 Mr. Montminy, are you ready to proceed today?

9 MR. MONTMINY: I am ready to proceed, but I did
10 want, as a preliminary matter, to make sure that I was
11 addressing the issue presented by Mr. Evans's filing. It's
12 my understanding that Mr. Evans is not challenging the search
13 warrant itself, not attacking the probable cause or the
14 search warrant itself; alternatively, Mr. Evans is attacking
15 the seizure based on an argument of reasonable expectation of
16 privacy, curtilage, scope of consent, that area, as opposed
17 to attacking the four corners of the search warrant
18 affidavit. I just want to make sure that I was understanding
19 that.

20 THE COURT: Just the seizure, not the subsequent
21 search that followed a warrant?

22 MR. MONTMINY: Correct.

23 THE COURT: Mr. Evans, is that a fair summary of
24 where you are?

25 MR. EVANS: Judge, I mean, obviously, we're asking

1 to suppress anything that was the fruit of that search, but
2 I'm not attacking the four corners of the warrant itself.

3 THE COURT: Okay. All right. Well, with that
4 clarification, Mr. Montminy.

5 MR. MONTMINY: Yes, Your Honor. The government
6 would respectfully call Metro Nashville Police Department
7 Officer Scarlett Collins.

8 And the government would respectfully invoke the
9 rule, if there are any witnesses in the courtroom.

10 THE COURT: Okay.

11 COURTROOM DEPUTY: Raise your right hand, please.

12 SCARLETT COLLINS,
13 called as a witness, having been duly sworn, was examined and
14 testified as follows:

15 THE WITNESS: I do.

16 COURTROOM DEPUTY: State your full name for the
17 record, please, and spell your last.

18 THE WITNESS: Scarlett Marie Collins, C-O-L-L-I-N-S.

19 DIRECT EXAMINATION

20 BY MR. MONTMINY:

21 Q. Good morning. Make yourself comfortable. You might
22 want to tilt your chair to face Judge Campbell. And just
23 take your time. And if you could kindly introduce yourself
24 to Judge Campbell and describe where you're currently
25 employed.

1 A. Detective Scarlett Collins, employed with the
2 Metropolitan Nashville Police Department.

3 Q. And then if you could maybe move the mic a little bit
4 and talk in a big booming voice with the tall ceilings in
5 here. Great.

6 And how long have you been with the Metro
7 Nashville Police Department for?

8 A. Just shy of three years.

9 Q. Are you in any specialized unit at all?

10 A. Currently assigned to the robbery investigations unit.

11 Q. I'd like to direct your attention to the late afternoon
12 of May the 2nd, 2022. Were you working that day?

13 A. I was.

14 Q. Did you respond to a residence located at 721 Flint
15 Ridge Drive?

16 A. Yes.

17 Q. What was the reason why you responded to 721 Flint Ridge
18 Drive on the late afternoon of May the 2nd, 2022?

19 A. Earlier in the afternoon, there was a bank robbery, I
20 believe, on Whites Creek Pike, and that address was
21 identified as being connected to that. So we went out there
22 and blocked traffic for a while before we moved closer to the
23 house.

24 Q. And is everything that you're going to mention to
25 Judge Campbell -- did all this take place in what we call the

1 Middle District of Tennessee, the Nashville area?

2 A. Yes.

3 Q. I'd like to hand you what has been provided to defense
4 counsel as Government's Exhibits 1 and 2 for identification.

5 Do you recognize 1 and 2?

6 A. I do.

7 Q. And what are they?

8 A. That's the residence we responded to.

9 Q. Is that what you saw with your own eyes the house
10 looking like that day?

11 A. Yes.

12 MR. MONTMINY: The government would respectfully
13 move Government's 1 and 2 into evidence and permission to
14 publish.

15 MR. EVANS: No objection.

16 THE COURT: All right. Without objection, then --
17 I mean, I guess we have two lawyers here.

18 Mr. Cartwright, I'll --

19 MR. CARTWRIGHT: I obviously do not object.

20 THE COURT: I assume you'll speak up if you've got
21 something to say; otherwise, it's Mr. Evans's motion. I'll
22 primarily just be looking to him.

23 MR. CARTWRIGHT: That sounds fair, sir.

24 THE COURT: But if there's something you think is
25 important for your client you need to be heard on, please, by

1 all means, speak up.

2 But without objection, Exhibits 1 and 2 are
3 admitted.

4 (Government's Exhibits 1 and 2 received in
5 evidence.)

6 MR. MONTMINY: Just so that I'm clear, I'd rather
7 ask this question now, but, of course, Mr. Evans, on behalf
8 of Mr. Carney, filed the motion. Mr. Cartwright has not
9 filed a motion to suppress.

10 THE COURT: Right.

11 MR. MONTMINY: I did advise Mr. Cartwright and
12 Mr. Evans via email that there was one item that was
13 collected from the vehicle that has a DNA match with
14 Mr. Ewing. So I just want to make sure that I'm only
15 proceeding based on Mr. Evans's motion, and that
16 Mr. Cartwright is not planning on filing a subsequent motion
17 to suppress the evidence from the car.

18 THE COURT: Okay. Well --

19 MR. MONTMINY: All right.

20 MR. CARTWRIGHT: Your Honor, I don't know what
21 I'll subsequently file based off what I hear today.

22 THE COURT: Right. We'll just get through this
23 hearing and kill the alligator closest to the boat, and then
24 we'll deal with whatever comes later.

25 MR. MONTMINY: All right, no problem.

1 BY MR. MONTMINY:

2 Q. All right. So looking at Government's Exhibit No. 1,
3 what do we see here?

4 A. It's the front of the residence.

5 Q. Okay.

6 MR. MONTMINY: And if you could put Government's
7 Exhibit 2 on the screen, please.

8 BY MR. MONTMINY:

9 Q. What do we see there?

10 A. It's the front door.

11 Q. Okay. All right. I'm going to hand you what has been
12 marked as Government's Exhibits 3 and 4 for identification.

13 MR. MONTMINY: Permission to move freely through
14 the courtroom, Your Honor?

15 THE COURT: Yes.

16 BY MR. MONTMINY:

17 Q. Do you recognize those exhibits?

18 A. I do.

19 Q. And what are they?

20 A. They are map photos of the residence from above.

21 Q. Okay. Is it like an aerial --

22 A. Yes.

23 MR. MONTMINY: At this time, the government would
24 respectfully move Government's Exhibits 3 and 4 for ID into
25 evidence for purposes of this hearing.

1 MR. EVANS: No objection.

2 MR. CARTWRIGHT: No objection.

3 THE COURT: Without objection, Government's
4 Exhibits 3 and 4 are admitted.

5 (Government's Exhibits 3 and 4 received in
6 evidence.)

7 MR. MONTMINY: Permission to publish Exhibit 3?

8 THE COURT: Yes.

9 BY MR. MONTMINY:

10 Q. All right. We're looking at Exhibit No. 3. And if you
11 could describe this exhibit to Judge Campbell, with the
12 realization that Judge Campbell may be learning this
13 information for the first time today and try to be as
14 descriptive as you can.

15 A. So it's an aerial view of the residence showing the road
16 into it and then the actual street that the residence is on.
17 It's right there at the corner of those two streets, Flint
18 Ridge and Shady Side.

19 Q. There's a red marking on the screen. What does that
20 indicate?

21 A. The location of the residence.

22 MR. MONTMINY: And Exhibit No. 4, if you could
23 kindly publish.

24 BY MR. MONTMINY:

25 Q. And what do we see from Exhibit No. 4?

1 A. So a similar aerial view just from further out showing
2 the red marking on the residence.

3 Q. Is that a general map of the neighborhood?

4 A. Yes.

5 Q. Did you have body cam footage on you that day when you
6 arrived at the residence?

7 A. Yes.

8 Q. I'm going to hand you what has been premarked as
9 Government's Exhibit 5 for identification.

10 Do you recognize that?

11 A. I do.

12 Q. What is it?

13 A. It's some of the body cam footage from my incident, and
14 we watched this yesterday.

15 Q. Is that a clip from your body cam?

16 A. It is.

17 Q. Did you have the opportunity, as you just alluded to, to
18 look at that disk in my office?

19 A. I did.

20 Q. How do you know that it is what it purports to be? Did
21 you sign on it?

22 A. I did.

23 MR. MONTMINY: The government would move
24 Government's Exhibit No. 5 for ID into evidence.

25 MR. EVANS: No objection.

1 THE COURT: Without objection, Government's
2 Exhibit 5 is admitted.

3 (Government's Exhibit 5 received in evidence.)

4 MR. MONTMINY: Permission to play certain
5 portions, Your Honor?

6 THE COURT: Okay.

7 MR. MONTMINY: Ms. Andrews, if you could kindly go
8 to 9 minutes and 45 seconds, please.

9 (Video played.)

10 MR. MONTMINY: If you could pause it.

11 BY MR. MONTMINY:

12 Q. Give the Judge a little bit of a background of what's
13 happening here and what we're seeing.

14 A. So several of us drove up to the residence, and this is
15 my arrival. I'm at the residence.

16 Q. This is obviously the video from your body camera?

17 A. Yes.

18 MR. MONTMINY: Play, please.

19 (Video played.)

20 MR. MONTMINY: Pause.

21 BY MR. MONTMINY:

22 Q. What are we looking at on the screen? I see a vehicle
23 on the screen. Can you describe that to the Court?

24 A. It's a black Dodge Charger.

25 Q. Okay. All right. Now, at a later point that day, do

1 you know whether or not that black Dodge Charger was towed?

2 A. It was.

3 Q. Okay. What I'd like you to do is describe what you --
4 of course, we can see the screen, but for purposes of the
5 record, could you describe what your observations are of the
6 area immediately around the Dodge Charger, like shrubbery and
7 so forth?

8 A. There's a fence to the right, a wood fence to the right,
9 looks like a chain-link fence further on at the next
10 residence, a carport.

11 Q. Is the carport sides open to air?

12 A. They are.

13 Q. All four sides?

14 A. Yes.

15 Q. As you're approaching the residence on foot, were you
16 able to visibly -- was the carport visible from the street?

17 A. Yes.

18 Q. Was there anything obstructing the carport?

19 A. No.

20 Q. Is there a fence that immediately surrounds the carport?

21 A. There's the one to the right, but not completely
22 surrounding it. It's open to foot traffic.

23 Q. And how would you describe bushes and shrubbery around
24 the carport?

25 A. I don't see any.

1 MR. MONTMINY: Continue playing.

2 (Video played.)

3 MR. MONTMINY: If you could pause it. And then if
4 you could kindly -- let's start up at time stamp 22 minutes,
5 and I'd like to see if we can go to 22:50, if possible, 22 to
6 22:50.

7 (Video played.)

8 MR. MONTMINY: And if you could pause it.

9 BY MR. MONTMINY:

10 Q. Could you describe to Judge Campbell who you're with and
11 what you're doing at this point?

12 A. Immediately to my front right, that's Officer Jackson
13 Sanders. Immediately to the side of him is Officer Hendrik
14 Kruger. The female in the black pants and gray shirt, I
15 don't know who she is. And then immediately to my left is
16 Lieutenant Michelle Hammond. And the gentleman immediately
17 kind of behind her, I believe that's Commander McClain.

18 MR. MONTMINY: And if you could continue to play,
19 but see if we can get a time stamp on this, where we are
20 right now, if you can. If you could go up to 22 minutes.

21 (Video played.)

22 MR. MONTMINY: And if you could pause it right now
23 and see if you can give us a time stamp, if possible. Okay,
24 we're at 22 minutes and 32 seconds for the record.

25 ///

1 BY MR. MONTMINY:

2 Q. Officer, do you see the individuals kind of in the
3 distance close to the roadway?

4 A. I do.

5 Q. Do you know who those folks are?

6 A. I don't off the top of my head.

7 Q. Okay.

8 MR. MONTMINY: All right. Continue playing.

9 (Video played.)

10 MR. MONTMINY: And pause.

11 BY MR. MONTMINY:

12 Q. We just saw three individuals walk from the left of the
13 screen to the right of the screen. Do you know who they are?

14 A. I do not.

15 Q. Okay.

16 MR. MONTMINY: Ms. Andrews, if you'd kindly go to
17 25 minutes and 40 seconds. That's fine. 25:34.

18 (Video played.)

19 MR. MONTMINY: If you could pause it.

20 BY MR. MONTMINY:

21 Q. Do you see a red car in the image?

22 A. I do.

23 Q. Is there anyone to the left of the red car in the
24 distance?

25 A. Not that I can see.

1 Q. Okay.

2 MR. MONTMINY: Continue playing.

3 (Video played.)

4 MR. MONTMINY: And pause. And see if you can get
5 a time stop, Ms. Andrews, if possible. So we're at 25:58 for
6 the record.

7 BY MR. MONTMINY:

8 Q. Are you able to make out any individuals in the distance
9 by any of the parked cars?

10 A. I can see two people. I can't tell who they are.

11 MR. MONTMINY: Play, please.

12 (Video played.)

13 MR. MONTMINY: And if you could pause it.

14 BY MR. MONTMINY:

15 Q. And you indicated that at a later point in time, the
16 black car that we see earlier on in the video was towed;
17 correct?

18 A. Yes.

19 Q. Okay.

20 MR. MONTMINY: Can I have a moment, Your Honor?

21 THE COURT: Uh-huh.

22 MR. MONTMINY: No further questions for this
23 witness, Your Honor.

24 ///

25 ///

1 CROSS-EXAMINATION

2 BY MR. EVANS:

3 Q. Good morning, Detective Collins.

4 A. Good morning.

5 Q. My name is Luke Evans. I'm going to be asking you a
6 couple questions. Okay?7 So about what time of day is it that you're at
8 that Flint Ridge address?

9 A. This is probably around 6:00 at night.

10 Q. Okay. And you said earlier that afternoon you had
11 gotten reports that there had been a bank robbery?

12 A. Yes.

13 Q. Were you involved in any kind of pursuit of the
14 individuals from the bank to any particular location?

15 A. No.

16 Q. What led you to Flint Ridge Drive, that address you were
17 at?18 A. I don't recall. Somebody had identified that as an
19 address associated with the incident.20 Q. Okay. Now, you identified a number of, I guess, Metro
21 Nashville police officers on camera; correct?

22 A. Yes.

23 Q. Was there another law enforcement agency present on that
24 scene?

25 A. Yes.

1 Q. Who was that?

2 A. The FBI.

3 Q. Okay. Did you personally take part in any searching of
4 any of the vehicles that were on scene?

5 A. No.

6 Q. You walked up to that black Charger that you identified;
7 correct?

8 A. Yes.

9 Q. And did you do any further observation of that black
10 Charger, other than what you just walked up and did?

11 A. Initially, we were making sure nobody was in the
12 vehicle, and that was the extent of my looking in the vehicle
13 or about it.

14 Q. Okay. Now, you testified earlier that there wasn't --
15 your words, there wasn't anything obstructing the carport?

16 A. Correct.

17 Q. Right? And it was open to foot traffic. You remember
18 saying that?

19 A. Yes.

20 Q. Now, when you first walked -- let's kind of lay out this
21 property. That carport is in the backyard of that Flint
22 Ridge address; correct?

23 A. Behind the driveway, yes.

24 Q. Behind the house?

25 A. Well, it's like attached to the driveway. It wasn't

1 physically behind the house. It was -- so the driveway is
2 immediately next to the house, and that carport is an
3 extension of the driveway.

4 Q. The physical structure of that carport was set up, maybe
5 not directly behind the house, but further off the road from
6 where the house sat; correct?

7 A. Correct.

8 Q. Because you can actually -- from where you're standing,
9 and you're not even in the carport, you can actually see the
10 back door of the house in your body cam footage at times;
11 correct?

12 A. Yes.

13 Q. And also there's a chain-link fence that goes around the
14 front of the house; right?

15 A. I don't believe it went all the way around the front. I
16 could be wrong.

17 Q. And I can ask the government if they can bring back up
18 Exhibit 6.

19 MR. MONTMINY: Anything I can do to help.

20 BY MR. EVANS:

21 Q. You know, at the onset of the video, right when you
22 first walk on the property, you walk up the driveway between
23 an opening in a chain-link fence; correct?

24 A. I believe that was more to the side. I don't recall
25 exactly.

1 Q. Okay.

2 MR. MONTMINY: Do you want her body cam footage
3 up?

4 MR. EVANS: Sure.

5 MR. MONTMINY: That would be Exhibit 5.

6 MR. EVANS: 5, Exhibit 5. Sorry.

7 MR. MONTMINY: You want to get a time stamp, Luke,
8 or -- Mr. Evans?

9 MR. EVANS: There wasn't really a time stamp.
10 Just if you can take it to right when she's walking on --
11 before she walked up the driveway.

12 MR. MONTMINY: So that would be --

13 MR. EVANS: 22:10 maybe.

14 MR. MONTMINY: Maybe 9:45 is when she arrives.

15 (Video played.)

16 MR. EVANS: Stop right there for a second.

17 BY MR. EVANS:

18 Q. That's your body cam footage looking at the backyard to
19 Flint Ridge; is that correct?

20 A. Yes.

21 Q. On the left side of the house?

22 A. Yes.

23 Q. And there's a chain-link fence back there; correct?

24 A. Yes.

25 Q. All right.

1 MR. EVANS: Go ahead. Thank you.

2 (Video played.)

3 MR. EVANS: Stop right there.

4 BY MR. EVANS:

5 Q. So at 10:23 on this video, Exhibit 5, on the right side
6 of that house, going down the sidewalk, right there, is that
7 a chain-link fence that connects to the house?

8 A. It is.

9 Q. All right. And we can let it play if we need to, but
10 that chain-link fence goes right before the driveway starts;
11 correct?

12 A. Yes, it appears to.

13 (Video played.)

14 MR. EVANS: And stop right there.

15 BY MR. EVANS:

16 Q. At 10:29 on that same exhibit, there's a chain-link
17 fence that runs down the entire right-hand side property
18 line; correct?

19 A. Yes.

20 Q. And that's the same fence that connects back to behind
21 the house back where the carport is; correct?

22 A. To the best of my knowledge, yes.

23 Q. And right before you -- you'd agree with me, in this
24 footage, right before you get to the carport, there's a
25 wooden privacy fence that begins at that point?

1 A. There is, yes.

2 Q. Okay. Now, that yard was -- the backyard was obstructed
3 from foot traffic, wouldn't you say?

4 A. At that moment in time, no, because there's no -- so
5 that fence, either it ends or the gate is open. I didn't
6 notice a gate, but the fence ends, and it's -- it's wide
7 open.

8 Q. So it's wide open in the driveway?

9 A. Yes, the driveway.

10 Q. But the carport is behind the fence?

11 A. The carport is extended off the driveway.

12 Q. Behind a fence. That backyard, that entire yard back
13 there from the front of the property to the back of the
14 property is closed in by either a chain-link or a privacy
15 fence; correct?

16 A. That carport is not blocked by a fence.

17 Q. I didn't say the carport.

18 MR. MONTMINY: Objection. Asked and answered.

19 THE COURT: Clarify that you're talking about the
20 yard and not the carport, and maybe you can talk about the
21 same thing.

22 BY MR. EVANS:

23 Q. The yard, that entire yard is closed in by a fence,
24 except for the opening on the driveway; correct?

25 A. Correct.

1 Q. You got a fence at your place?

2 A. No.

3 Q. Would you feel cool with just anybody walking through
4 into your backyard?

5 MR. MONTMINY: Objection. Relevance.

6 Speculation.

7 THE COURT: What's the relevance, Mr. Evans?

8 MR. EVANS: She's saying it's unobstructed to foot
9 traffic.

10 THE COURT: Well, I think she said the driveway
11 was, but -- go ahead. You've made your point, but if you
12 want to ask her additional questions on this topic, go ahead.

13 MR. EVANS: No, I can move on.

14 THE COURT: Okay.

15 BY MR. EVANS:

16 Q. When you walked up to the vehicle, do you remember
17 anything distinct about the outside of the vehicle?

18 A. I do not.

19 Q. And you noted that the vehicle didn't have tint from
20 what you could tell; correct?

21 A. Yes.

22 MR. EVANS: Those are my questions.

23 MR. MONTMINY: Very briefly.

24 Since Mr. Evans stopped at 10:29, Ms. Andrews, if
25 you can continue playing starting at 10:29.

1 (Video played.)

2 MR. MONTMINY: Pause. We're looking at time stamp
3 10 minutes and 52 seconds.

4 REDIRECT EXAMINATION

5 BY MR. MONTMINY:

6 Q. Do you see a fence -- is there a way that you could show
7 the Court where you see a fence line by touching the screen?

8 A. Just along what is the left side, it looks like, and
9 then on the other property, or attached to the other
10 property, I should say.

11 Q. Are you able to determine from your observations that
12 the backyard of the property that you're on right now is
13 completely fenced in from your observations?

14 A. Not from here, you can't see that.

15 Q. All right. Do you see in the middle of the screen a car
16 parked on the other property? It looks like maybe a bluish
17 type of tint. It's in the middle of the screen. Do you see
18 what I'm looking at? It's parked by the side of the other
19 residence.

20 A. The silver sedan?

21 Q. Do you see where I'm pointing right here?

22 A. Yes.

23 Q. Okay. All right. See that car? And I'm using -- I'm
24 marking the screen. Is there a bush that is in the middle of
25 that blue circle?

1 A. There's something. I wouldn't say it's a bush.

2 Q. All right.

3 A. Could be a large weed.

4 Q. Okay. Could you make a determination from your
5 observations that -- let me ask the question this way: We
6 see one fence right here; correct?

7 A. Yes.

8 Q. All right.

9 MR. MONTMINY: And just for the record, I'm almost
10 going left to right with my finger in the middle of the
11 screen, towards that parked vehicle by the side of the house.

12 BY MR. MONTMINY:

13 Q. Does that appear from your observations to be a fence
14 that is associated with the yard that you're currently
15 standing on or alternatively the yard of the next door where
16 the car is parked?

17 A. It looks like it's associated with next door, closer to
18 that vehicle.

19 Q. All right. I'm also going to draw on here a line left
20 to right. Is this a fence line that goes close to the house
21 that you're on, that you're standing by, to the other
22 residence from left to right on the screen? Does that appear
23 to be a fence line to you?

24 A. Yes.

25 Q. Okay. Are you able to make a final determination that

1 those two fence lines actually connect with each other? Are
2 you able to make that determination one hundred percent?

3 A. Not a hundred percent.

4 Q. Okay. Is it possible from your observations that the
5 fence line from the neighbor's yard and the fence line coming
6 close to the property that you're on right now do not
7 connect?

8 A. It's possible.

9 Q. Okay. And just so we're clear, if you're standing by
10 the black car, immediately in front of the black car, is
11 there any fence that is associated with the residence
12 property that you're standing on?

13 A. Not to my knowledge.

14 Q. Looking at time stamp 10:52 for the record, could you
15 describe to the Court the visibility of the black car more
16 specifically from the various roadways? This is a corner
17 lot; correct?

18 A. It is.

19 Q. Okay. From your time on scene, can you recall if you're
20 able to observe the black car from various sides on the
21 corner lot of the different streets, of the two separate
22 streets?

23 A. Certainly from -- I believe that would be Flint Ridge,
24 you would be able to see it, but possibly not from Shady
25 Side.

1 Q. Okay. From your vantage point at time stamp 10:52, from
2 your observations being there on scene, do you believe that
3 the neighbors that have the house with the blue car parked
4 that I've got circled can see the black car?

5 MR. EVANS: Objection. Relevance.

6 THE COURT: Relevance?

7 MR. MONTMINY: The relevance is that the defendant
8 is arguing in his motion to suppress the defendant has an
9 expectation of privacy in the area where the vehicle was
10 seized.

11 THE COURT: I'll allow it.

12 MR. EVANS: Speculation.

13 MR. MONTMINY: I'll rephrase the question.

14 BY MR. MONTMINY:

15 Q. From your vantage point where you're standing right now
16 in the driveway -- and you're facing the other residence, the
17 neighbor's residence; correct?

18 A. Yes.

19 Q. From what you can see in your observations, is there
20 anything obstructing the view from the neighbor's house to
21 the black car?

22 A. No.

23 Q. Right by the fence line that is close to the residence
24 that you're standing by, the fence line that I've already
25 marked, there's another vehicle that is parked, that really

1 the fence line kind of cuts that vehicle off, so to speak,
2 intersects with that vehicle.

3 Is that vehicle on a roadway or on a driveway?

4 A. It appears to be on a roadway.

5 Q. From your observations standing where you are at
6 10 minutes and 52 seconds on this still image -- from your
7 observations, is there anything blocking the view from the
8 roadway, where this vehicle is parked on the roadway, to the
9 black car?

10 A. No.

11 Q. Any large trees?

12 A. No.

13 MR. MONTMINY: Can I just have a brief moment,
14 Your Honor?

15 Ms. Andrews, I'm going to wrap this up, but if you
16 could kindly go to -- start at 9:45 again, if you don't mind.

17 (Video played.)

18 MR. MONTMINY: Pause.

19 BY MR. MONTMINY:

20 Q. All right. We're at 10 minutes and 11 seconds. And
21 you're on the -- if you're facing the house, you're on the
22 left side of the house; correct?

23 A. Yes.

24 Q. Okay.

25 MR. MONTMINY: And continue playing, please, just

1 briefly.

2 (Video played.)

3 MR. MONTMINY: And pause.

4 BY MR. MONTMINY:

5 Q. And at 10:26, we see various individuals speaking to
6 each other on the sidewalk. Where the various individuals
7 are speaking, does the fence line cover that area where
8 they're speaking that connects to the driveway, or does it
9 end before -- before the area where they're speaking at
10 10:26?

11 A. It ends before where they're speaking.

12 Q. Okay.

13 MR. MONTMINY: And if you can continue playing.

14 (Video played.)

15 MR. MONTMINY: And pause. And we're looking at
16 10:29.

17 BY MR. MONTMINY:

18 Q. Was there anything obstructing your view of the carport
19 at the bottom of the driveway?

20 A. No.

21 Q. Okay.

22 MR. MONTMINY: No further questions for the
23 witness.

24 THE COURT: Anything else, Mr. Evans?

25 MR. EVANS: Yes, Your Honor.

1 RECROSS-EXAMINATION

2 BY MR. EVANS:

3 Q. So -- and I hate to keep harping on this, but regardless
4 of whether or not there was an obstructed view of the
5 carport, of the car in the carport in the backyard, there was
6 definitely obstructed access from the rear points of that
7 yard; correct?

8 A. Yes.

9 Q. And I'm glad that the prosecutor played this again, but
10 at 10:06, in that video, when you walk up to the left side of
11 the house -- and we talked about this before -- you can
12 clearly see the fence starts at the back of the Flint Ridge
13 property and extends out to the -- out towards the end of
14 their property line purportedly; right?

15 A. Yes.

16 Q. And you can see even that car that you can see from the
17 other angle that's sitting on the road; right? And then you
18 can see the fence go from that point, the road, all the way
19 across where you were pointing to that house with the car
20 with the little shrub or whatever, all the way across the
21 back of that property; correct?

22 A. Yes.

23 Q. So as you sit here now, having seen that again, that
24 entire backyard was fenced in; correct?

25 A. Yes.

1 MR. EVANS: All right. Thank you.

2 THE COURT: All right. You can step down, ma'am.

3 (Witness excused.)

4 MR. MONTMINY: The government would call
5 Officer Robert Laboy from Metro Nashville Police Department.

6 THE COURT: Is he going to need any of those same
7 exhibits? Maybe?

8 MR. MONTMINY: Maybe, yes.

9 COURTROOM DEPUTY: Raise your right hand, please.

10 ROBERT LABOY,
11 called as a witness, having been duly sworn, was examined and
12 testified as follows:

13 THE WITNESS: I do.

14 COURTROOM DEPUTY: State your full name for the
15 record, please, and spell your last.

16 THE WITNESS: Robert Ian Laboy. Last name is
17 L-A-B-O-Y.

18 DIRECT EXAMINATION

19 BY MR. MONTMINY:

20 Q. All right, good morning. Make yourself comfortable.
21 Maybe tilt your chair, so you can face Judge Campbell. If
22 you could kindly introduce yourself to the Court and describe
23 what you do for a living.

24 A. I'm Robert Laboy. I'm an officer with the Metropolitan
25 Nashville Police Department.

1 Q. And how long have you been in law enforcement for?

2 A. Since about August of 2021, I've been a sworn officer.

3 Q. Are you in any specialized unit?

4 A. No, I'm on patrol.

5 Q. I'd like to direct your attention to the late afternoon
6 of May the 2nd of 2022. Were you working that day?

7 A. I was.

8 Q. On that day, did you respond to a residence at 721 Flint
9 Ridge Drive?

10 A. I did.

11 Q. And why did you respond to that location?

12 A. So I responded there to supplement a perimeter at first
13 after a bank robbery had occurred, and then I went to that
14 residence to assist FBI agents in holding the scene there and
15 searching.

16 Q. Did you have body camera on that day?

17 A. I did.

18 Q. I'm going to hand you what has been premarked as
19 Government's Exhibit 6 for identification.

20 Do you recognize that?

21 A. I do.

22 Q. And how do you recognize that?

23 A. I came in yesterday to review my body cam footage, and
24 this is what I signed, being my body cam footage.

25 Q. And you know that because are your initials on that

1 disk?

2 A. Yes, my initials are on the disk and the date.

3 MR. MONTMINY: At this time, the government would
4 move Government's Exhibit 6 for ID into evidence.

5 MR. EVANS: No objection.

6 THE COURT: Without objection, Government's
7 Exhibit 6 is admitted.

8 (Government's Exhibit 6 received in evidence.)

9 MR. MONTMINY: Permission to play clips,
10 Your Honor?

11 THE COURT: Yes.

12 MR. MONTMINY: Ms. Andrews, if you could kindly go
13 to 21 minutes and 40 seconds.

14 (Video played.)

15 MR. MONTMINY: And pause.

16 BY MR. MONTMINY:

17 Q. All right. We're looking at 21 minutes and 56 seconds.
18 We're looking at fence lines. Do you see where my hand is
19 marked, or my finger marked the screen?

20 A. Yes.

21 Q. Okay. From your observations that day, are you able to
22 make a determination -- well, do you also see a fence line
23 from left to right kind of this way also?

24 A. Yes.

25 Q. Okay. Were you able to make an observation or

1 determination as to whether or not those two fence lines
2 intersect with each other or alternatively there's any space
3 between the corners of the fence lines?

4 A. No, I was not able to make a definite determination on
5 that.

6 Q. Okay. All right.

7 MR. MONTMINY: If you can continue to play,
8 please.

9 (Video played.)

10 MR. MONTMINY: And pause.

11 BY MR. MONTMINY:

12 Q. Can you just give the Court a brief understanding of
13 what we just watched here, what we just observed?

14 A. So initially we were arriving on scene. Again, we
15 arrived there to supplement the FBI in their investigation,
16 but right there we were doing a quick protective sweep making
17 sure none of the people out standing were in vehicles.

18 MR. MONTMINY: Ms. Andrews, if you could pop up to
19 25:40. For the record, we're going to go from 25:40 to
20 approximately 30:30.

21 (Video played.)

22 MR. MONTMINY: If you could pause it at 26:20.

23 BY MR. MONTMINY:

24 Q. Officer Laboy, can you explain to the Court where we are
25 chronologically, so the Judge has an idea of where we are at

1 26:20?

2 A. So now at this point, the FBI is leading the charge on
3 this, and they've advised us they need us to help assist
4 clearing the building.

5 Q. Do you know any of the individuals on the screen --
6 depicted on the screen at 26:20?

7 A. Personally, no.

8 MR. MONTMINY: And hit play, please.

9 (Video played.)

10 MR. MONTMINY: And pause at 30:30. And if you
11 could jump ahead to 32 minutes and 10 seconds.

12 BY MR. MONTMINY:

13 Q. What did we just observe that ended at 30:30?

14 A. So we just observed the clearing of the residence
15 searching for persons involved in said incident.

16 MR. MONTMINY: We're going to jump ahead to
17 32 minutes and 9 seconds. Hit play.

18 (Video played.)

19 MR. MONTMINY: And if you could pause at 32:25.

20 BY MR. MONTMINY:

21 Q. Do you know who the individual is that I'm circling
22 right there?

23 A. I do not.

24 Q. Do you know whether or not -- you may not know her name,
25 but do you know if she was the homeowner?

1 A. I do not.

2 Q. Okay. All right. And I've got a triangle around
3 another face more towards the right. Do you know who that
4 individual is?

5 A. An FBI agent. He seemed to be, you know, knowing a lot
6 about what was going on.

7 Q. Okay. And a square --

8 A. Another FBI agent.

9 Q. -- on the bottom right? Okay.

10 MR. MONTMINY: Play, please.

11 (Video played.)

12 MR. MONTMINY: And pause. We're at 33:26.

13 BY MR. MONTMINY:

14 Q. Do you see two individuals walking to a parked SUV?

15 A. Yes.

16 Q. Can you give the Judge any sort of background as to what
17 was happening there?

18 A. The FBI agent just requested that this woman come and
19 talk to him over by the vehicle. That's the extent of my --

20 Q. From your observations of the woman, was she at any
21 point around this time saying, "Hey, get off my property"?

22 A. No.

23 Q. Did you ever hear her say "I'm not consenting to you
24 being on my grass right now"?

25 A. No.

1 Q. During any of the time that you're there on scene, did
2 you hear the woman say "I'm stopping my consent"?

3 A. No.

4 MR. MONTMINY: And if you could play, please.

5 (Video played.)

6 MR. MONTMINY: And pause. We're at 34:11.

7 BY MR. MONTMINY:

8 Q. We see two individuals walking from left to right on the
9 screen, and we see in the foreground the same woman that you
10 made reference to. Is there anything else that you can give
11 the Judge background on where we are right now?

12 A. Not really.

13 Q. Do you know why they were walking across the grass at
14 that point?

15 A. I do not, other than for him to talk to her.

16 Q. All right.

17 MR. MONTMINY: And continue to play just for
18 another four seconds.

19 (Video played.)

20 MR. MONTMINY: And pause at 34:15. A couple more
21 quick clips. Ms. Andrews, if you could kindly go to 40:45,
22 please. We'll start at 40:44.

23 (Video played.)

24 MR. MONTMINY: And pause.

25 ///

1 BY MR. MONTMINY:

2 Q. From your vantage point from the street looking up to
3 the driveway, were you able to see the carport?

4 A. Yes.

5 Q. Okay.

6 MR. MONTMINY: And if you could jump ahead to
7 42 minutes and 35 seconds. That's good. 42:29.

8 (Video played.)

9 MR. MONTMINY: And pause. If you could continue
10 to play. I apologize.

11 (Video played.)

12 MR. MONTMINY: Pause. We're at 43:14.

13 BY MR. MONTMINY:

14 Q. Do you see a couple of folks in the distance -- on the
15 time stamp at 43:14, do you see a dark-colored car to the
16 left and a red-colored car to the right?

17 A. Yes.

18 Q. All right. And you see the circle I've marked on the
19 screen?

20 A. Yes.

21 Q. Do you see individuals that are standing in the grass?

22 A. Yes.

23 Q. Okay. How far away were those individuals from the
24 black car that was under the carport, would you say?

25 A. I'd say pretty close, within a few feet.

1 Q. Do you know who those folks were that are depicted in
2 that circle?

3 A. I believe they're FBI agents, but I don't know who they
4 are.

5 Q. You don't know who they are? Okay.

6 MR. MONTMINY: And continue to play, please.

7 (Video played.)

8 MR. MONTMINY: And we'll stop at 43:37.

9 BY MR. MONTMINY:

10 Q. Do you still see those two individuals between the
11 dark-colored car to the left and the red car to the right?

12 A. Yes, I do.

13 Q. All right. And what were you doing at this point? You
14 were just seeing if you needed to assist in any way?

15 A. We were just standing by to wait if there was any other
16 way we could help.

17 MR. MONTMINY: Okay. No further questions of the
18 witness, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. EVANS:

21 Q. Good morning, Officer Laboy.

22 A. Good morning.

23 Q. Just one question. You were asked earlier about whether
24 or not you heard the lady on the camera ever say whether or
25 not she ordered people off the property or gave her consent

1 or revoked her consent. Did you ever hear her give consent?

2 A. No.

3 MR. EVANS: Thank you.

4 THE COURT: All right. You can step down, sir.

5 THE WITNESS: Thank you, sir.

6 (Witness excused.)

7 MR. MONTMINY: And the United States would
8 respectfully call Metro Nashville Police Department Officer
9 Kaitlyn Powell.

10 COURTROOM DEPUTY: Raise your right hand, please.

11 KAITLYN POWELL,

12 called as a witness, having been duly sworn, was examined and
13 testified as follows:

14 THE WITNESS: I do.

15 COURTROOM DEPUTY: State your full name for the
16 record, please, and spell your last.

17 THE WITNESS: Kaitlyn Powell, P-O-W-E-L-L.

18 DIRECT EXAMINATION

19 BY MR. MONTMINY:

20 Q. Good morning. Make yourself comfortable. You may want
21 to tilt your chair, so you can face Judge Campbell. If you
22 could kindly introduce yourself to him and describe what you
23 do for a living.

24 A. I'm Officer Kaitlyn Powell. I'm a patrol officer with
25 Metro Nashville Police Department.

1 Q. And how long have you been with MNPd for?

2 A. About a year.

3 Q. I'd like to direct your attention to the late afternoon
4 of May the 2nd of 2022. Were you working that day?

5 A. Yes.

6 Q. Did you respond to a residence at 721 Flint Ridge Drive?

7 A. Yes.

8 Q. And why did you respond there?

9 A. A call was put on the radio for more units to respond to
10 the address to help detain individuals.

11 Q. Do you have body cam on you that day?

12 A. Yes.

13 Q. Did you also have the occasion to search for evidence as
14 it relates to a suspect?

15 A. Yes.

16 Q. And do you have body cam footage on you during that time
17 as well?

18 A. Yes.

19 Q. I'd like to hand you what has been premarked as
20 Government's Exhibit No. 7 for identification.

21 Do you recognize that?

22 A. Yes.

23 Q. And what is it?

24 A. It would be my body cam footage from responding to the
25 Flint Ridge address.

1 Q. Okay. And how do you know that it purports to be what
2 you say it is?

3 A. Because I wrote the "R" for residence on the CD.

4 Q. Are your initials on there?

5 A. Yes.

6 Q. Did you have occasion to review that disk of your body
7 cam footage in my office with me?

8 A. Yes.

9 MR. MONTMINY: At this time, the government would
10 respectfully move Government's Exhibit No. 7 for ID into
11 evidence.

12 MR. EVANS: No objection.

13 THE COURT: Without objection, Government's
14 Exhibit 7 is admitted.

15 (Government's Exhibit 7 received in evidence.)

16 BY MR. MONTMINY:

17 Q. I'm also handing you what has been premarked as
18 Government's Exhibit No. 8 for identification.

19 Do you recognize that exhibit?

20 A. Yes.

21 Q. And how do you recognize that exhibit?

22 A. It's my initials on the CD, and I marked it with a "B"
23 for searching the bag at a later time that day.

24 Q. Say that a little bit clearer. I'm sorry.

25 A. I marked it with a "B" as for searching the bag, and

1 it's my initials on the CD.

2 Q. You said "search a bag"?

3 A. Yes.

4 Q. Okay. Was that also on May the 2nd of 2022?

5 A. Yes.

6 Q. And you know what it purports to be because your
7 initials are on there, and you reviewed the disk in my
8 office?

9 A. Yes.

10 MR. MONTMINY: At this time, the government would
11 respectfully move Government's Exhibit No. 8 for ID into
12 evidence for purposes of this hearing.

13 MR. EVANS: No objection.

14 THE COURT: Without objection, Government's
15 Exhibit 8 is admitted.

16 (Government's Exhibit 8 received in evidence.)

17 MR. MONTMINY: Permission to publish just a couple
18 clips, Your Honor?

19 THE COURT: Yes.

20 MR. MONTMINY: Ms. Andrews, if you could kindly
21 open up Exhibit No. 7.

22 BY MR. MONTMINY:

23 Q. And Exhibit No. 7, Officer, is what you advised us was
24 body cam footage from you at the residence of 721 Flint Ridge
25 Drive; correct?

1 A. Yes.

2 MR. MONTMINY: And, Ms. Andrews, if you could
3 kindly go to 12:25, please. For the record, we're going to
4 start at 12:25 on Exhibit No. 7.

5 (Video played.)

6 MR. MONTMINY: And pause. We're at 13 minutes
7 here on the screen.

8 BY MR. MONTMINY:

9 Q. I'm going to mark in the center of the screen a
10 triangle. Do you know who that woman is?

11 A. I do not.

12 Q. Okay. And I'm going to mark a square around another
13 individual to the right of the female on the screen. Do you
14 know who that individual is?

15 A. Not by name.

16 Q. Okay. Do you know what he does for a living?

17 A. He's an FBI agent.

18 Q. Okay. Could you describe to the Judge really what's
19 happening here at 13 minutes, just to give an overview to the
20 Court?

21 A. I responded to the residence because we needed more
22 units to help detain people coming out of the house because
23 the FBI was trying to, I believe, gain consent to search the
24 residence, and they wanted everybody out of the residence.

25 MR. MONTMINY: And if you could hit play, please.

1 (Video played.)

2 MR. MONTMINY: Pause.

3 BY MR. MONTMINY:

4 Q. Did you hear what this woman just said?

5 A. Yes.

6 Q. What did she say?

7 A. "No man was here."

8 Q. Okay. And that's at approximately 14:02 to 14:03?

9 A. Yes.

10 Q. Okay.

11 MR. MONTMINY: Play.

12 (Video played.)

13 MR. MONTMINY: Pause. We're at 14:10.

14 BY MR. MONTMINY:

15 Q. Did you hear what she just said about vehicles?

16 A. Yes.

17 Q. What did she say?

18 A. They are her cars.

19 MR. MONTMINY: Play.

20 (Video played.)

21 MR. MONTMINY: Pause.

22 BY MR. MONTMINY:

23 Q. At 14:21, did you hear what she just said?

24 A. Yes.

25 Q. What did she say?

1 A. "There's no man living here."

2 Q. Okay. At this point on the video chronologically at
3 14:22, did you have reason to believe that this woman was the
4 homeowner?

5 A. Yes.

6 Q. Why is that?

7 A. The way that she was acting, going into the house,
8 getting all the people out of the house and saying that those
9 are her vehicles in the driveway.

10 Q. Okay. You indicated that the circle that I'm circling,
11 the man standing directly to her right is an FBI agent. In a
12 square to the far right is a female with an FBI -- I believe
13 it says FBI -- yes, FBI on her vest. Do you know that
14 person?

15 A. Not by name.

16 Q. Okay.

17 MR. MONTMINY: And play.

18 (Video played.)

19 MR. MONTMINY: All right, pause it. We're at
20 15:01.

21 BY MR. MONTMINY:

22 Q. Describe to Judge Campbell where we are chronologically
23 here. What's happening at 15:01?

24 A. I believe I was going to help any other officers with
25 the vehicles if they needed it, just trying to find something

1 to be of use to be out there.

2 Q. At 15:01, is this, to your knowledge, before the search
3 of the residence?

4 A. Yes.

5 Q. At 15:01, from you being on scene and seeing the
6 interaction between FBI and the person that you believed may
7 have been the homeowner, did you, with your own ears, hear
8 who you believed to be the homeowner say, "Hey, guys, get off
9 my property"?

10 A. Not that I heard.

11 Q. Okay.

12 MR. MONTMINY: If you could play.

13 (Video played.)

14 MR. MONTMINY: And pause. We're going to pause it
15 at 15:11.

16 BY MR. MONTMINY:

17 Q. From the street, were you able to see the carport in the
18 back?

19 A. I believe so.

20 Q. Okay. All right.

21 MR. MONTMINY: And, Ms. Andrews, if you could
22 kindly go to Exhibit No. 8 now. And if you could go to time
23 stamp 7:35 on Exhibit No. 8 for the record.

24 (Video played.)

25 MR. MONTMINY: All right. Now, let's pause it.

1 We're pausing it at 7:34.

2 BY MR. MONTMINY:

3 Q. This looks like a whole different location?

4 A. Yes.

5 Q. Okay. Describe to the Judge where you are, where we are
6 chronologically, and why you were at this specific location?

7 A. I believe that address is 1718 Simpkins Street, and I
8 responded out to that location because a couple detectives in
9 an unmarked unit had picked up the vehicle that we had
10 believed the suspect to be in after speaking to a couple
11 people from the original perimeter over off 721 Flint Ridge
12 Drive, and our helicopter, Air One, had picked that vehicle
13 up and had seen an individual bailing from that vehicle, and
14 there was a foot pursuit that ensued, and Air One said that
15 there was possibly a backpack in the backyard of
16 1718 Simpkins Street. So that's why I was there, to retrieve
17 the backpack.

18 Q. You made reference to a term "Air One." What's that?

19 A. It is our helicopters.

20 Q. Okay. So were there helicopters flying around?

21 A. Yes.

22 Q. As we're looking here at time stamp 7:34 in Exhibit 8,
23 is this body cam clip occurring chronologically before or
24 after the prior clip we just watched with you walking up to
25 the residence, the residence with the woman and the FBI

1 agents?

2 A. This is after.

3 Q. After. How far after would you estimate this would be,
4 estimate?

5 A. Five minutes, no more than ten.

6 Q. Okay.

7 MR. MONTMINY: If you could hit play, please.

8 (Video played.)

9 MR. MONTMINY: And pause for 8:02.

10 BY MR. MONTMINY:

11 Q. Just so we're clear, what are you doing here?

12 A. Our helicopter spotted a backpack in the backyard of
13 this residence, which was 1716 Simpkins, and it was believed
14 to be in the flight path of the suspect when he ran from
15 detectives. So I'm going through his house to get to his
16 backyard.

17 Q. His being this gentleman in the blue shirt?

18 A. Yes. Yes.

19 Q. Okay. And this is this gentleman in the blue shirt's
20 house?

21 A. Yes.

22 Q. Okay.

23 MR. MONTMINY: All right, continue playing.

24 (Video played.)

25 MR. MONTMINY: All right, pause at 8:38.

1 BY MR. MONTMINY:

2 Q. Just to give the Judge a little bit more clarity, what's
3 happening here and what's the interaction you're having with
4 the man in the blue shirt?

5 A. So we found the backpack in his backyard, and I was
6 asking him if the backpack belonged to him, and if it didn't
7 belong to him, why would it be in his backyard, and he said
8 it did not belong to him.

9 MR. MONTMINY: Play.

10 (Video played.)

11 MR. MONTMINY: And pause.

12 BY MR. MONTMINY:

13 Q. All right. Officer, what are you picking up at 9:58?

14 A. I believe that is body wash and toothpaste and a
15 toothbrush holder.

16 Q. Now, how far of a distance was it from what you believed
17 to be the body wash, the toothbrush holder -- and what was
18 the other item? --

19 A. Toothpaste.

20 Q. -- toothpaste from the backpack? I mean, estimate.

21 A. Less than a yard.

22 Q. Okay. And did you receive any information about those
23 three items, the body wash, the toothpaste and the
24 toothbrush, from the man in the blue shirt, the homeowner?

25 A. They were not his.

1 MR. MONTMINY: And play, please.

2 (Video played.)

3 MR. MONTMINY: And pause.

4 BY MR. MONTMINY:

5 Q. All right. So in your hand, what are you carrying at
6 time stamp 10:11?

7 A. The backpack in one hand and a toothbrush holder,
8 toothpaste and body wash in the other.

9 Q. Okay. From holding the toothbrush holder, were you able
10 to make any audio observations as to what was contained
11 inside the toothbrush holder?

12 A. I wasn't really paying attention to the sound of it.

13 Q. All right. Was there any observations that you made
14 either by touch or any other observations that led you to
15 believe what was contained in -- and that was the blue
16 object; correct?

17 A. Yes.

18 Q. Were you able to make any determination as to what was
19 in that object?

20 A. Later in the body cam footage that I reviewed yesterday,
21 you can see the light shining through and looks like a
22 toothbrush inside the toothbrush container.

23 MR. MONTMINY: And if you could go to time stamp
24 14:45, please. We'll start at 14:44.

25 (Video played.)

1 BY MR. MONTMINY:

2 Q. Who's the female in the left of the screen at 15:18 that
3 you're walking with?

4 A. That is Detective Mary Hall.

5 Q. She's a colleague of yours?

6 A. Yes.

7 Q. Okay.

8 MR. MONTMINY: Play.

9 (Video played.)

10 MR. MONTMINY: And pause. Could you scoot back
11 one second or two seconds, if possible? If not, no big deal.

12 (Video played.)

13 MR. MONTMINY: And pause.

14 BY MR. MONTMINY:

15 Q. All right. What do we see at time stamp 15:27?

16 A. Razor heads.

17 Q. Like for shaving?

18 A. Yes.

19 Q. What do we see at 15:31?

20 A. I believe that's deodorant.

21 Q. Okay.

22 (Video played.)

23 BY MR. MONTMINY:

24 Q. 15:34?

25 A. Car keys.

1 (Video played.)

2 BY MR. MONTMINY:

3 Q. 15:42?

4 A. Looks like a money clip.

5 (Video played.)

6 BY MR. MONTMINY:

7 Q. What was that?

8 A. A Yu-Gi-Oh card.

9 Q. Which is what?

10 A. It's like a -- it's a card game like Pokémon.

11 Q. All right.

12 MR. MONTMINY: Keep playing, please.

13 (Video played.)

14 MR. MONTMINY: Pause.

15 BY MR. MONTMINY:

16 Q. You just read a name of an individual. What's the name

17 of the individual that you just said on audio?

18 A. Fredrick E. Carney.

19 Q. We got 16:43 on the time stamp. Do we see that name in

20 the circle?

21 A. Yes.

22 Q. Is it right there?

23 A. Yes.

24 Q. Okay.

25 MR. MONTMINY: Keep that up on the screen,

1 Ms. Andrews.

2 BY MR. MONTMINY:

3 Q. We also see an address associated with a Fredrick E.
4 Carney. Do you know what that address is, or at least the
5 town?

6 A. Murfreesboro.

7 Q. And this document was found within the backpack?

8 A. Yes.

9 MR. MONTMINY: Play.

10 (Video played.)

11 MR. MONTMINY: And pause. Pausing at 18:10.

12 BY MR. MONTMINY:

13 Q. The woman on the left of the screen with the triangle?

14 A. Detective Mary Hall.

15 Q. Okay. The gentleman with the blue shirt and the FBI
16 vest in the square?

17 A. I can only recall his first name is Steven.

18 Q. Okay. And the circle of the man to the right of Steven?

19 A. Agent Keith Sutherland.

20 Q. Okay.

21 MR. MONTMINY: Can I have a moment, Your Honor?

22 THE COURT: Uh-huh.

23 BY MR. MONTMINY:

24 Q. The residence location that you went to assist the
25 officers on, going back to that location, was that in the

1 Nashville-Metropolitan area?

2 A. Yes.

3 Q. And that residence that you're referring to that you
4 approached, that brick residence that you were at prior to
5 what we see here on the screen at 18:10, could you give the
6 Judge a little bit, if you can, an estimation of the distance
7 between those two locations, if you can?

8 A. Eight, maybe ten miles. It's fairly easy to hop -- from
9 Flint Ridge area to hop on I-65 South and get over to this
10 area of North Nashville.

11 Q. And the document with Fred Carney's name on it that you
12 found in the bag, the address listed on that document was not
13 Nashville; correct?

14 A. Correct.

15 Q. Did it list the address of that brick house?

16 A. No.

17 Q. A specific address in Murfreesboro?

18 A. Correct.

19 Q. Okay.

20 MR. MONTMINY: No further questions, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. EVANS:

23 Q. Good afternoon, Officer Powell.

24 A. Good afternoon.

25 Q. Got you by one minute here. All right. I just got a

1 few questions for you. So going back to these two addresses
2 from the two videos, just to be clear, you said it was about
3 ten miles from Flint Ridge to the location where you
4 recovered the backpack?

5 A. Probably.

6 Q. And at very minimum, I think you said you had to get on
7 I-65?

8 A. South, yes.

9 Q. South? From Flint Ridge to get over to that location;
10 correct?

11 A. Yes.

12 Q. All right. Now, kind of sticking with that video where
13 you recover the backpack from, when you first were testifying
14 about it, you made some statements about you got information
15 from Air One about a vehicle, and someone getting out of a
16 vehicle somewhere in that area where the backpack was
17 recovered from; correct?

18 A. Correct.

19 Q. What kind of vehicle?

20 A. I believe it was a Chevy HHR.

21 Q. Okay. Did you know the color?

22 A. Black.

23 Q. A black Chevy HHR?

24 A. I believe so.

25 Q. What is an HHR? What kind of vehicle is it?

1 A. I'm not great with vehicle types. It's a four-door -- I
2 don't know if it would be a hatchback. It sort of looks like
3 a PT Cruiser, but boxier.

4 Q. Not a sedan?

5 A. No.

6 Q. Okay. And this was after -- when you're at the scene of
7 the backpack, it's after you've been to Flint Ridge, about
8 five to seven minutes later; correct?

9 A. Correct.

10 Q. How close in time do you arrive at the location where
11 the backpack is recovered from to when it was supposedly
12 dropped at that location?

13 A. Less than five minutes.

14 Q. Okay. And you recovered some keys from the backpack?

15 A. Yes.

16 Q. And from your recollection or your review of the video,
17 did you know what make or model car those keys belonged to?

18 A. I believe I said it goes to a General Motors car.

19 Q. General Motors car. Now, I want to go back to Flint
20 Ridge, when you were at that location. You were asked some
21 questions about a lady in the video that you said appeared to
22 live there?

23 A. Yes.

24 Q. And I believe there were two statements that you
25 testified about her making on the video. One was "No man --

1 no man is living here"?

2 A. Correct.

3 Q. Do you know whether or not that statement was true?

4 A. At the time I did not know.

5 Q. Okay. And she said, "Those are my cars." And do you
6 know whether or not that statement was, in fact, true?

7 A. At the time I didn't -- I don't know.

8 Q. Okay. And you were asked whether or not she was -- you
9 know, about whether she gave consent to search or whether she
10 was asking -- demanding people not search. You remember
11 those questions?

12 A. Yes.

13 Q. She was clearly upset that law enforcement was at her
14 house; right?

15 A. Yes.

16 Q. And, you know, at least I believe two different FBI
17 agents that had an assault rifle brandished while they were
18 at the house; correct?

19 A. Yes.

20 Q. And she was concerned at one point because she was
21 outside, and her children were inside the house; correct?

22 MR. MONTMINY: Objection to the term "concerned."

23 MR. EVANS: I can rephrase.

24 THE COURT: Yeah, rephrase.

25 ///

1 BY MR. EVANS:

2 Q. She was visibly upset that she was outside, and her
3 children were inside?

4 A. I believe so.

5 Q. And during part of that video you were asked about,
6 she's asked several times whether she gives consent for the
7 FBI -- or law enforcement to go in and search her house;
8 right?

9 A. I believe it was once or twice.

10 Q. Okay. And of the two times that you heard on that
11 video, at least, her being asked, did she say yes?

12 A. Not while I was standing there.

13 Q. Okay. Did you search any of the vehicles that were at
14 Flint Ridge?

15 A. No.

16 Q. Were there any other items in the backpack, other than
17 what you noted in your testimony today and what was shown on
18 your body cam footage?

19 A. Not that I'm aware of.

20 MR. EVANS: Thank you. Those are my questions.

21 MR. MONTMINY: No further questions, Your Honor.

22 THE COURT: All right. Ma'am, you may step down.

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 MR. MONTMINY: The government would respectfully

1 call FBI Agent Cristina Alamo to the witness stand.

2 THE COURT: Before we do that, we're going to take
3 a break.

4 MR. MONTMINY: Okay.

5 THE COURT: How many more witnesses do you expect
6 to call?

7 MR. MONTMINY: Right now, Your Honor, I anticipate
8 likely -- including with the witness that is going to testify
9 next, likely one additional witness.

10 THE COURT: Okay. And the expected duration of
11 their direct?

12 MR. MONTMINY: Pardon me?

13 THE COURT: How long you think their direct is
14 going to take? I'm just trying to figure out if we should
15 take a longer break to let everybody eat some lunch, or
16 whether we should take -- which I'm inclined to do, but if
17 it's going to be two more witnesses -- and I don't know how
18 long it will -- what the arrangements are for the defendants
19 to be able to eat as well.

20 MR. MONTMINY: Sure. The best I could estimate,
21 Your Honor, is that I believe that their testimony would
22 likely be the same length, give or take, as the witness who
23 just testified.

24 THE COURT: Okay.

25 MR. MONTMINY: Give or take.

1 THE COURT: So 15, 20 minutes. All right. Then
2 let's go ahead and break, take a longer break, and let
3 everybody hopefully maybe grab a bite. We'll come back at,
4 say, 12:45, and then we'll hear the rest of these witnesses
5 and go from there.

6 (Recess taken from 12:08 p.m. to 1:00 p.m.)

7 THE COURT: All right. Your next witness?

8 MR. MONTMINY: FBI Agent Cristina Alamo.

9 THE COURT: All right.

10 COURTROOM DEPUTY: Raise your right hand, please.

11 CRISTINA ALAMO,
12 called as a witness, having been duly sworn, was examined and
13 testified as follows:

14 THE WITNESS: I do.

15 COURTROOM DEPUTY: State your full name for the
16 record, please, and spell your last.

17 THE WITNESS: Cristina Alamo. Last name
18 A-L-A-M-O.

19 DIRECT EXAMINATION

20 BY MR. MONTMINY:

21 Q. Good afternoon. Make yourself comfortable. You may
22 want to tilt your chair, so you can see Judge Campbell. And
23 if you could kindly introduce yourself to him and where you
24 work, that would be great.

25 A. Good afternoon, Judge Campbell. I am Special Agent

1 Cristina Alamo with the FBI. I'm currently employed with the
2 FBI since September of 2021; however, I started exercising my
3 duties as a special agent for the violent crime squad in
4 March of '22 with the Nashville RA.

5 Q. I'd like to direct your attention to the late afternoon
6 of May the 2nd of 2022. At that period of time, on
7 May 2, 2022, how long would you have been with the FBI for?

8 A. For approximately three months.

9 Q. Were you working in that capacity on May the 2nd, 2022?

10 A. I was a special agent with the violent crimes squad in
11 the Nashville RA.

12 Q. On that day, did you work on an investigation involving
13 a Fred Carney on that date, May 2, 2022?

14 A. Yes.

15 Q. Do you see Mr. Carney in court today?

16 A. I do.

17 Q. If you could kindly point to him and describe an article
18 of clothing that he's wearing.

19 A. Mr. Carney is to the far left, and he is wearing a
20 dark-in-color green button-up shirt it looks like from my
21 view.

22 Q. Okay. Is there more than one person wearing a green
23 shirt?

24 A. Yes.

25 Q. Try to be a little bit more specific with who you're

1 identifying.

2 A. Mr. Carney is in the far left next to the gentleman with
3 a gray-patterned suit. He has no -- he has no hair, as
4 opposed to the gentleman to his right.

5 Q. Okay.

6 MR. EVANS: Objection.

7 THE COURT: I thought she was going to say the
8 gray-patterned beard for a minute, Mr. Evans.

9 MR. MONTMINY: If the record could reflect the
10 witness has identified the defendant, Mr. Carney.

11 THE COURT: It will so reflect.

12 BY MR. MONTMINY:

13 Q. And is everything you're going to testify to
14 Judge Campbell today -- did all this take place in the Middle
15 District of Tennessee -- in the Nashville area, the federal
16 Middle District of Tennessee?

17 A. Yes.

18 Q. So you indicated that you were working with the FBI
19 during that afternoon. How did this commence, your
20 involvement with Carney on the date of May the 2nd, 2022?

21 A. Prior to May 2nd, there was a series of bank robberies
22 occurring in the Middle District of Tennessee. Mr. Carney
23 happened to be one of the suspects in those bank robberies.
24 During that time, a complaint federal warrant was placed on
25 Mr. Carney on a Hobbs Act, and linked to that warrant, we had

1 affiliated addresses that were linked to Mr. Carney.

2 On May 2nd, we got notification that there was
3 another bank robbery, where there were two male black
4 suspects, and a weapon was discharged during the bank
5 robbery. At that time, we believed that one of the suspects
6 was Mr. Carney, which we already had knowledge that there was
7 a federal warrant out for him. So we went back to those
8 locations and addresses that were linked to Mr. Carney.

9 Q. Do you recall the name of the bank and around the time
10 when this bank was robbed on May 2, 2022, if you recall?

11 A. Yes. It was approximately around 3:30 p.m. at the First
12 Horizon Bank in Whites Creek, Tennessee.

13 Q. You indicated that several potential suspect addresses
14 were provided to you. What did you do next?

15 A. At that point, myself and my partner, Special Agent
16 Robert Barrett, proceeded to do a spot check at 721 Flint
17 Ridge Drive, which was an affiliated address that we had
18 already discovered prior to that day, to see if we could see
19 the suspect or if we could see a vehicle linked to the
20 suspect, which at that time was a black Dodge Charger.

21 Q. And you were generally aware of what Mr. Carney looked
22 like?

23 A. Yes.

24 Q. Did you also indicate to the Court that at the time that
25 you were provided the addresses on May 2, 2022, that Carney

1 had at least one felony warrant?

2 A. Yes.

3 Q. So with the information that was provided to you, what,
4 if anything, did you and your colleague, Agent Rob Barrett,
5 do at that point?

6 A. At that point, we drove to 721 Flint Ridge Drive. Going
7 up -- driving into Flint Ridge Drive, the 721 residence would
8 be to our left, and as we're driving past the residence, we
9 noticed and we saw a black Dodge Charger that was parked
10 under a carport behind the residence, and there was a
11 red-in-color sedan parked significantly behind the black
12 Dodge Charger. Identifying the vehicle, we decided to stop
13 and do some surveillance to see if we can see Mr. Carney
14 around the area.

15 So we parked, I would say, a couple of houses
16 above 721 Flint Ridge Drive, and our vehicle was parked
17 facing the house. So at this point, Special Agent Rob
18 Barrett was the driver, and I was the passenger, and I had a
19 clear view from the street that that black Dodge was parked
20 in the 721 Flint Ridge Drive residence.

21 Q. So is it my understanding that you and Agent Barrett did
22 an initial drive-by of the residence? Is that my
23 understanding?

24 A. Yes.

25 Q. Were you in a marked or an unmarked law enforcement

1 vehicle?

2 A. We were in an unmarked vehicle.

3 Q. And you indicated that you were the passenger?

4 A. Yes.

5 Q. Could you describe in any more detail how the black
6 Dodge Charger was visible from your location?

7 A. It was clearly visible from the street. The red sedan
8 that was parked behind it wouldn't cover it completely, so
9 you could see the model of the vehicle from the street.

10 MR. MONTMINY: And if you could, Ms. Andrews, put
11 up Exhibit No. 3, please.

12 BY MR. MONTMINY:

13 Q. As Exhibit No. 3 is loading up, what, if anything, were
14 your observations as you were parked down the street from the
15 residence?

16 A. At the end of that street, there is a cul-de-sac. So
17 it's a no-exit street. And we had plain view of the
18 residence, which was a corner residence, with a carport that
19 had -- there was no fencing in front of that or the back of
20 the house, so you have plain view of the backside of that
21 residence.

22 Q. And what happened next?

23 A. Approximately about 30 minutes as we're parked there
24 conducting surveillance, I see coming from Flint Ridge Drive
25 Court, so from behind our vehicle, a black male,

1 approximately 6-feet tall, approximately 180 pounds, walking
2 towards 721 Flint Ridge Drive.

3 Q. Okay. What happened next?

4 A. At that point, I identified that that was Mr. Carney,
5 and I saw Mr. Carney walk towards 721 Flint Ridge Drive. And
6 before he arrived at the house, there was a female on the
7 phone outside of the residence. And as Mr. Carney was
8 walking into the house, they made an exchange of words, or
9 they saw each other as he's coming into the house.

10 Mr. Carney proceeded to enter the house through the back
11 door. In, I want to say, approximately a minute, I see
12 Mr. Carney walking out the same door with a bag in his hand.

13 Q. As far as the woman that you saw on the property at that
14 time in the chronology, at a later point were you able to
15 identify who that woman was?

16 A. Yes.

17 Q. And who was that woman?

18 A. It was Ms. Latika Poole.

19 Q. From your understanding, was she the homeowner of the
20 residence?

21 A. Yes.

22 Q. I'm showing you -- on the screen, do you see a map?

23 A. Yes, but it's now flickering black and white. The
24 screen has turned off.

25 Q. Is it not coming through for you? No?

1 A. No. I can't see anything right now.

2 Q. Okay. So you indicate you saw this woman and who you
3 believe to be Mr. Carney. What happened next?

4 A. At that time --

5 THE COURT: We're rebooting the whole thing. Just
6 project, so everybody can hear you.

7 THE WITNESS: At that point, Mr. Carney was
8 walking out of the back door with a bag in his hand towards
9 the area where the black Dodge was parked, and then he
10 disappeared. I was unable to see the rest. So at that point
11 I was waiting to see where he was going to continue walking.
12 And approximately a minute passes by, and I see Mr. Carney
13 from my right peripheral walking out of the woodline from
14 three houses down from 721 Flint Ridge Drive and then
15 starting to proceed to walk up Flint Ridge Drive Court
16 towards a cul-de-sac.

17 At that point, we waited. We knew that Mr. Carney
18 was known to be armed and dangerous, and therefore my partner
19 and I made the decision to not proceed and apprehend
20 Mr. Carney and wait for force multiplier. Once we got
21 confirmation that we had backup coming into the road of
22 721 Flint Ridge Drive, we proceeded to start driving towards
23 the direction that Mr. Carney was walking. And when he
24 noticed that we were following with the car, he started and
25 proceeded to run against the direction that we were at. At

1 that point, we decided to chase on foot, and Mr. Carney fled
2 into the woodline, and we were unable to further see where
3 his direction was.

4 BY MR. MONTMINY:

5 Q. Is the map on your screen now, or are you still having
6 difficulty?

7 A. No, it's not on the screen.

8 Q. Okay.

9 THE COURT: Mr. Evans, do you have it on your
10 screen?

11 MR. EVANS: I do.

12 BY MR. MONTMINY:

13 Q. Can you see that on the Court's screen?

14 A. I can, yes.

15 Q. Okay. We're looking at Government's Exhibit No. 3. Do
16 you see in the center of the screen there's like a red mark?

17 A. Yes.

18 Q. What does that indicate?

19 A. That indicates the residence of who we know now to be
20 Latika Poole and where the Dodge Charger was located.

21 Q. Okay.

22 MR. MONTMINY: And if you could go to
23 Exhibit No. 4, Ms. Andrews, please.

24 BY MR. MONTMINY:

25 Q. Using Exhibit No. 4 -- do you see Exhibit No. 4 on the

1 Court's monitor?

2 A. Yes, I do.

3 Q. Using Exhibit No. 4, can you describe where your
4 unmarked vehicle was initially positioned when you believe
5 that you saw Mr. Carney walking?

6 A. Yes. It would be right here in this area on the street
7 facing the residence.

8 Q. Okay. You can be seated. Thank you very much.

9 If you can describe a little bit more to the
10 Court. You indicated that Mr. Carney entered the residence
11 and then exited shortly thereafter. Is that my
12 understanding?

13 A. Yes.

14 Q. Could you describe to the Court specifically as you can
15 what you saw with your own eyes as to -- as Mr. Carney left
16 the residence, how close to this black Charger was he and
17 where was he in relation to the black Charger during the
18 entirety of your visual on it?

19 A. When Mr. Carney walked into the back part of the house,
20 as he was walking out in the direction in which he was headed
21 to, he was approximately hands -- like arm's length from the
22 vehicle.

23 Q. Where in the chronology at all did you lose sight of
24 him?

25 A. Once he ran towards the direction of the vehicle is when

1 I no longer saw where he was headed to.

2 Q. Okay. The last moment in time that you remember seeing
3 him, how far away was he from the black Dodge Charger did you
4 say?

5 A. Arm's length.

6 Q. All right. You indicated that your unmarked vehicle
7 started to follow Mr. Carney?

8 A. Yes.

9 Q. Okay. What happened thereafter? What happened next?

10 A. As we're following Mr. Carney in the direction that
11 Mr. Carney is running up into Flint Ridge Court, he notices
12 that we're following him, and behind us are also patrols
13 starting to drive into Flint Ridge Drive and is when he
14 notices that we're following him, and he starts running into
15 the woodline behind the houses that are in that cul-de-sac.
16 And at that point, I lose sight of where Mr. Carney's
17 direction is. Backup arrives, and we start doing an on-foot
18 chase and seeking for Mr. Carney outside of the woodline, and
19 we had no luck at that point finding Mr. Carney.

20 Q. What happened next?

21 A. At that point, we retreat and went back to the 721 Flint
22 Ridge Drive residence to further assist with locating
23 Mr. Carney.

24 MR. MONTMINY: Ms. Andrews, if you could kindly
25 put up Exhibit No. 1. For the record, we're looking at

1 Exhibit No. 1. Actually, your screen is not working still.

2 I'm sorry, Your Honor. Thank you, Judge.

3 THE WITNESS: Thank you.

4 BY MR. MONTMINY:

5 Q. Do you recognize that?

6 A. Yes.

7 Q. Is that the residence that you approached?

8 A. That is 721 Flint Ridge Drive, yes.

9 Q. All right, thank you.

10 MR. MONTMINY: Thank you, Your Honor.

11 THE COURT: Are you going to show her any more, or
12 can I move the monitor?

13 MR. MONTMINY: I think we're done. Thank you.

14 THE WITNESS: Thank you.

15 MR. MONTMINY: Well, actually, strike that. I've
16 got a couple exhibits I'm going to show her, but I can just
17 do it the old fashion way, Your Honor, if that's okay with
18 you.

19 THE COURT: Yeah, let's just have her turn to them
20 in the book. I'm liable to break this thing if I move it --

21 MR. MONTMINY: Yeah, understood.

22 BY MR. MONTMINY:

23 Q. Okay. So you go to the residence. And describe to the
24 judge what happens when you arrive at the residence.

25 A. Once we arrive to the residence, we make contact -- and

1 when I say "we," my squad makes contact with Latika Poole and
2 other residents in the home.

3 Q. Who was with your squad at the time when you're on-site
4 there?

5 A. Special Agent Rob Barrett and Special Agent Steve
6 Hunter.

7 Q. Was there any local law enforcement on scene?

8 A. Yes. MNPd was there to assist.

9 Q. Were you present where Ms. Poole -- you saw Ms. Poole
10 on-site; correct?

11 A. Yes.

12 Q. Do you know whether or not she gave consent to search
13 her residence?

14 A. Yes, she did.

15 Q. I'm handing you what has been premarked and shown to
16 defense counsel as Government's Exhibit 9 for identification.

17 Do you recognize that?

18 A. Yes, I do.

19 Q. And how do you recognize that?

20 A. This is a federal FBI form that authorizes us by an
21 individual to consent to search a specific location or item,
22 and then the person giving us consent signs it, as well as
23 the FBI agent and witnesses to it.

24 Q. Is your signature on that form?

25 A. Yes, that is my signature below.

1 MR. MONTMINY: At this time, the government would
2 respectfully move Government's Exhibit 9 for ID into
3 evidence.

4 MR. EVANS: No objection.

5 THE COURT: Without objection, Government's
6 Exhibit 9 is admitted.

7 (Government's Exhibit 9 received in evidence.)

8 BY MR. MONTMINY:

9 Q. Throughout the time that you're on-site and any
10 interaction you had with Ms. Poole on-site, did Ms. Poole
11 indicate any involuntariness to consent to search the
12 residence?

13 A. No.

14 Q. At any point in time that you were physically on-site,
15 did she say, "You know, you guys with the FBI, get off my
16 driveway"?

17 A. No, she did not.

18 Q. Was Ms. Poole apprised or aware that photographs were
19 being taken both inside, as well as outside, of her
20 residence?

21 A. Yes.

22 Q. Did she make any objection to particularly the outside
23 photographs?

24 A. No.

25 Q. I'm going to hand you what has been premarked as

1 Government's Exhibit 10 for identification.

2 Do you recognize that?

3 A. Yes.

4 Q. And what is it?

5 A. That is a photograph of the exterior perimeter of the
6 721 Flint Ridge Drive residence.

7 Q. Was that a photograph taken on-site on the late
8 afternoon of May the 2nd, 2022?

9 A. Yes.

10 MR. MONTMINY: At this time, the government would
11 respectfully move Government's Exhibit No. 10 for ID into
12 evidence.

13 MR. EVANS: No objection.

14 THE COURT: Without objection, Government's
15 Exhibit 10 is admitted.

16 (Government's Exhibit 10 received in evidence.)

17 BY MR. MONTMINY:

18 Q. While you're on-site at the residence, were you advised
19 that Mr. Carney was arrested?

20 A. Yes.

21 Q. Were you advised, while you're on-site, that a gray
22 backpack or a backpack was recovered in the apparent path of
23 flight?

24 A. Yes.

25 Q. Did you witness the black Dodge Charger being towed?

1 A. I was, yes.

2 Q. Did your investigation that day conclude at the
3 residence, or alternatively did your investigation take you
4 to somewhere else?

5 A. The investigation took us to another location.

6 Q. And what was that other location?

7 A. The next location was another affiliated address with
8 Mr. Carney. It was the residence of Ms. Kelsey Stringfield,
9 who at that time we had learned that she had a sexual
10 relationship with Mr. Carney.

11 Q. And you interviewed Ms. Stringfield?

12 A. Yes.

13 Q. Based on that interview, did she provide you -- did
14 Kelsey Stringfield provide you information as to the
15 whereabouts of Mr. Carney after the bank robbery occurred on
16 May 2, 2022?

17 A. Yes.

18 Q. What information did Ms. Stringfield provide to you?

19 MR. EVANS: Objection. Hearsay.

20 MR. MONTMINY: Evidentiary.

21 THE COURT: The rules of evidence don't strictly
22 apply, although they're a good guide. I'll allow it and give
23 it what weight I believe it deserves.

24 BY MR. MONTMINY:

25 Q. You can respond.

1 A. Ms. Stringfield related that hours after the bank
2 robbery she received a text message from Mr. Carney stating
3 if Ms. Kelsey can pick up Mr. Carney. In that text message
4 thread, Mr. Carney provided his location at the time, and
5 Mr. Carney related that he was at -- in the text message
6 states "Will crib." Ms. Stringfield then related that she
7 headed in the direction of "Will crib." And approximately in
8 the time where Mr. Carney was running through the woodline,
9 Ms. Stringfield picked up Carney near the residence of
10 721 Flint Ridge Drive.

11 Q. Okay. Did she specifically provide you any text
12 communications between herself and Mr. Carney?

13 A. Yes.

14 Q. Did you have the opportunity to collect that evidence?

15 A. Yes.

16 Q. Did you prepare a report as it relates to the interview
17 you had with Ms. Stringfield?

18 A. Yes.

19 Q. And did you attach a text message to the interview
20 report?

21 A. Yes.

22 Q. I'm going to hand you what has been premarked as
23 Government's Exhibit 11 for identification. Just take a
24 moment and look through that.

25 Do you recognize that?

1 A. Yes.

2 Q. How do you recognize that?

3 A. This was an -- as practice for the FBI, we do a report
4 after we've either done an interview or surveillance, and
5 this was a record showing the interview for Ms. Stringfield
6 between Special Agent Steve McEnany and I.

7 Q. And is the text message attached to that as well?

8 A. Yes, there is a picture of the text messages.

9 Q. The interview that you conducted of Ms. Stringfield was
10 the same day of the bank robbery on May 2, 2022?

11 A. Yes.

12 MR. MONTMINY: At this time, the government would
13 respectfully move Government's Exhibit No. 11 for ID into
14 evidence for purposes of this hearing.

15 MR. EVANS: No objection.

16 THE COURT: Without objection, Government's
17 Exhibit 11 is admitted.

18 (Government's Exhibit 11 received in evidence.)

19 BY MR. MONTMINY:

20 Q. From your interview of Ms. Stringfield, from either
21 obtaining the text message or from the words of
22 Ms. Stringfield, what time was the text of Mr. Carney asking
23 Ms. Stringfield to pick him up?

24 A. At approximately 4:10 p.m., the same day of the bank
25 robbery.

1 Q. You indicated that the bank robbery occurred at around
2 3:30 that afternoon?

3 A. Yes.

4 Q. And what information -- again, what information did
5 Carney -- what location did Carney wish Ms. Stringfield to
6 pick him up at?

7 A. According to the text messages and Ms. Stringfield, it
8 was at "Will crib."

9 Q. Did your investigation reveal a potential location for
10 Will's crib?

11 A. Yes. Public records show that Mr. Will Ewing is
12 affiliated and linked to the 721 Flint Ridge Drive address.

13 Q. Describe to Judge Campbell anything else that
14 Ms. Stringfield may have said about the circumstances
15 surrounding her picking up Mr. Carney on May 2, 2022.

16 A. Ms. Stringfield related that she picked up Mr. Carney
17 near the 721 Flint Ridge Drive address. As Carney got into
18 the vehicle, they got into a verbal altercation to where a
19 couple blocks before Ms. Stringfield returning to her home
20 address, Mr. Carney left the vehicle and got out of the
21 vehicle, and that was the last time that Ms. Stringfield saw
22 Mr. Carney.

23 She also related that with Mr. Carney was a gray
24 backpack, and it is a gray backpack that typically, when
25 Mr. Carney stays at Ms. Stringfield's home, has all of his

1 personal items with him, and that she never -- he never
2 leaves -- Mr. Carney never leaves these items at her home.
3 He just travels with those items in that backpack.

4 Q. Okay. Now, during this interview you had with
5 Ms. Stringfield on the day -- the day of the bank robbery,
6 did Ms. Stringfield specifically state to you that she
7 observed with her own eyes Mr. Carney getting into her
8 vehicle with the gray backpack?

9 A. Yes.

10 Q. Did she advise you during the interview that subsequent
11 to their argument in the car that Mr. Carney subsequently
12 exited the vehicle with that same gray backpack?

13 A. Yes.

14 Q. Anything else about the contents of that backpack that
15 Ms. Stringfield was apprised and advised you, if anything
16 else?

17 A. No. There's just personal items in the backpack.

18 Q. Did Ms. Stringfield advise whether Mr. Carney left his
19 personal items at Ms. Stringfield's residence?

20 A. She related that he would travel with that backpack, and
21 those items that he would use to stay overnight, but that he
22 would never leave those items at her residence. He would
23 take those items with him whenever he left.

24 MR. MONTMINY: Can I have a moment, Your Honor?

25 ///

1 BY MR. MONTMINY:

2 Q. From your time on scene at the residence with the brick
3 house that you went with your colleagues, the FBI agents, at
4 any point in time was there any indication to you that
5 Ms. Poole withdrew her consent to search the residence or
6 anywhere on that property?

7 A. No.

8 MR. MONTMINY: All right. No further questions,
9 Your Honor.

10 CROSS-EXAMINATION

11 BY MR. EVANS:

12 Q. Good afternoon, Agent Alamo.

13 A. Good afternoon, sir.

14 Q. I've just got a few questions for you. My name is Luke
15 Evans, by the way. I represent Mr. Carney. So I want to --
16 first, I'll kind of talk about -- I want to ask you about
17 Ms. Poole. So you were asked right before I got up here
18 whether or not she ever kind of wavered or revoked her
19 consent to search, and specifically I think you said the
20 residence -- Flint Ridge residence or anywhere else on the
21 property; right? Something to that effect? Do you remember
22 what you said exactly?

23 A. Correct.

24 Q. All right. But specifically Ms. Poole gave you
25 permission to search the residence; right? That's what she

1 gave permission to search. She didn't give you permission to
2 search beyond the residence, did she?

3 A. She gave us authorization and consent to search the
4 residence.

5 Q. Okay. Nothing beyond that?

6 A. The residence, yes.

7 Q. All right. Okay. And you searched the residence?

8 A. Yes.

9 Q. All right. And you were asked some questions about
10 whether she knew you were taking photographs. You said she
11 did know you were taking photographs?

12 A. Yes.

13 Q. And you-all took photographs inside the residence;
14 correct?

15 A. Yes.

16 Q. Outside the residence?

17 A. Yes.

18 Q. And did you take pictures of the vehicles as they were
19 situated outside?

20 A. I am not the case agent to this case, so I am unaware if
21 there were pictures of the vehicle.

22 Q. And did you ever ask or any agent that you heard ever
23 ask her if they could search either vehicle?

24 A. I am unaware what was asked to Latika Poole.

25 Q. Well, you're aware she gave consent --

1 A. Yes.

2 Q. -- right?

3 A. Yes.

4 Q. So were you present for that conversation?

5 A. I was present for her signing the consent form.

6 Q. Okay. But were you able to hear the discussion she had
7 with other agents or with you during the process when she
8 signed that?

9 A. No.

10 Q. Okay. Where was she when she signed the consent form?

11 A. Somewhere in the perimeter of the house. At this point,
12 I can't recall exactly where in the house we were.

13 Q. Okay. But you're not aware, number one, of her ever
14 being asked whether or not you can search either the -- any
15 of the three vehicles that were on-site?

16 A. I am unaware what was asked in regards to the vehicles.

17 Q. So what about the Charger being towed? What do you know
18 about that?

19 A. I am unaware. I was just present for when the vehicle
20 was towed.

21 Q. So you didn't hear any discussions from any agent that
22 was on scene or other law enforcement personnel about their
23 intent to tow the black Charger?

24 A. No, I was aware that the black Charger was being towed
25 because I can visually see that the vehicle was being towed

1 at the time, but I was not present during those conversations.

2 Q. Okay. Have you reviewed any reports in preparation for
3 your testimony today?

4 A. I have reviewed both my reports that included the
5 surveillance and Ms. Kelsey Stringfield's interview.

6 MR. EVANS: And, Your Honor, I'd move for
7 production of witness statements for this witness as well.

8 MR. MONTMINY: I provided what the government has
9 regarding reports that this witness has generated.

10 BY MR. EVANS:

11 Q. Have you testified previously about this case?

12 A. I have not.

13 Q. Were you involved in investigating these bank robberies
14 prior to May 2, 2022?

15 A. I have not -- I was not a part of the bank robberies
16 prior to this one, or to that date.

17 Q. Now, you talked about being aware of -- on that day, you
18 said there was a series of bank robberies for which
19 Mr. Carney was a suspect. How did you know that?

20 A. It is practice for FBI squad work that a case agent
21 relates certain information that is pertinent to any events
22 of that day. Because of that, the case agent was able to
23 relay and notify the rest of the squad of the findings of
24 prior bank robberies and the bank robbery of May 2, 2022.

25 Q. And you said that there was a vehicle matching the

1 description of, I think you said, one of the other robberies
2 as being the Charger; is that correct?

3 A. Yes.

4 Q. How did you know that? Like, how did you know that it
5 matched the description? Had you reviewed anything?

6 A. The case agent was able to notify the squad of the
7 descriptions, NCIC reports, background reports for
8 Mr. Carney.

9 Q. Were you provided any pictures, prior pictures of the
10 vehicle to see if it matched?

11 A. There was a suspect picture that one of the witnesses
12 had taken on one of the prior robberies.

13 Q. And how would you describe the vehicle that was in that
14 picture?

15 MR. MONTMINY: Your Honor, most respectfully, I'm
16 going to object to this line of questioning as being outside
17 the scope of direct, outside of the scope of the motion to
18 suppress as to whether or not the defendant had an
19 expectation of privacy in the area immediately where this
20 vehicle was parked. This is possibly questioning at trial,
21 but for purposes of the suppression hearing filed by defense
22 counsel, the government would respectfully object to being
23 beyond the scope.

24 THE COURT: Mr. Evans, how does this relate to
25 what we're here about today?

1 MR. EVANS: Well, I mean, he should have thought
2 of that before he asked her if that vehicle matched the
3 description of one used in prior robberies. He went into
4 this line of questioning. If we were limited to that, he
5 wouldn't have went into it. And the indication is that this
6 vehicle somehow matched --

7 THE COURT: Okay. I'll allow it.

8 MR. EVANS: -- the vehicle from the prior
9 robberies.

10 THE WITNESS: Can you repeat the question, sir?

11 BY MR. EVANS:

12 Q. So the picture that you were shown to see if this
13 matched, can you describe what the vehicle looked like?

14 A. Yes. It was at the time a black Dodge Charger with four
15 wheels, four windows. It looked like a black Dodge Charger.

16 Q. All right. Tinted windows; right? Dark tinted windows?

17 A. I can't recall right now if it had tinted windows or
18 not.

19 Q. Did you observe the black Charger on the day that --
20 May 2nd, when you were at the residence?

21 A. Did I observe the --

22 Q. Yes. Were you able to see it?

23 A. Yes, I was able to see it.

24 Q. And you were able to note on that day that the Charger
25 that was towed did not have tinted windows; correct?

1 A. I do not recall that right now.

2 Q. Did you note there being any damage, whatsoever, to the
3 black Charger?

4 MR. MONTMINY: Your Honor, again, I'm going to
5 renew my objection. I think we're going deep into potential
6 trial cross-examination, as opposed to the confines of the
7 motion to suppress.

8 THE COURT: Your response, Mr. Evans?

9 MR. EVANS: Judge, I mean, I'm trying to see to
10 what extent she has knowledge that this was the car that
11 they're saying was involved in these other robberies as their
12 basis for towing it.

13 THE COURT: Well, all right. I mean, she was
14 asked about the prior robberies generally, so I'll allow you
15 to explore this.

16 BY MR. EVANS:

17 Q. Did it have any damage to it that you recalled?

18 A. I cannot recall if there was any damages to the car.

19 Q. Were you present -- let me ask you this: Where's the
20 Charger now?

21 A. I am unaware of the location of the Charger at this
22 time.

23 Q. And it was towed to the impound lot; correct?

24 A. I am unaware of the location because I'm not the lead
25 case agent to this case.

1 Q. Now, I just want to be clear on something. We're going
2 back to the residence. You talked about where that vehicle
3 was positioned in the backyard of Flint Ridge; correct? And
4 I think you testified -- when it was in the carport. I think
5 you testified there was no fencing in the back of the house,
6 so it was in plain view. You recall saying that?

7 A. Yes.

8 Q. But there was, in fact, a chain-link fence that went
9 around the entire backyard of that residence, correct, you
10 can just see through?

11 A. I don't know at this time. I cannot recollect the
12 fencing on the farther back of the house, but the curved area
13 of the house that includes both the front and the back where
14 you would drive into the carport did not have a fence.

15 MR. EVANS: Those are my questions.

16 MR. MONTMINY: Can I have a brief moment,
17 Your Honor?

18 THE COURT: Yes.

19 MR. MONTMINY: Thank you, Your Honor. No further
20 questions.

21 THE COURT: All right. You may step down, ma'am.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness excused.)

24 MR. MONTMINY: May I proceed?

25 THE COURT: Yes.

1 MR. MONTMINY: The government would respectfully
2 call FBI Agent Steve Hunter to the witness stand.

3 COURTROOM DEPUTY: Raise your right hand, please.

4 STEVEN HUNTER,
5 called as a witness, having been duly sworn, was examined and
6 testified as follows:

7 THE WITNESS: Yes, I do.

8 COURTROOM DEPUTY: State your full name for the
9 record, please, and spell your last.

10 THE WITNESS: It's Steven Hunter, H-U-N-T-E-R.

11 DIRECT EXAMINATION

12 BY MR. MONTMINY:

13 Q. Good afternoon. If you could kindly introduce yourself
14 to Judge Campbell -- it may be easier if you tilted your
15 chair, so you can look at the Court -- and advise the judge
16 where you're currently working.

17 A. Yes. My name is Steven Hunter, special agent with the
18 FBI. I work in the Nashville resident agency of the Memphis
19 division. I've been here four years. I've been in the FBI
20 approximately 14 years.

21 Q. I'd like to direct your attention to the late afternoon
22 of May the 2nd, 2022. Were you working that day in that
23 capacity as an FBI agent?

24 A. Yes, I was.

25 Q. Were you involved in an investigation of a suspect by

1 the name of Fred Carney on an incident -- on a date of
2 May the 2nd, 2022?

3 A. Yes, I was.

4 Q. Did you respond to a residence at 721 Flint Ridge Drive?

5 A. I did.

6 Q. What prompted your arrival at 721 Flint Ridge Drive?

7 A. There had been information that a bank robbery had
8 occurred earlier in the day. The information that I received
9 was that it was possibly two subjects that had committed
10 other Hobbs Act or bank robberies in the previous month or
11 two. So we had several known addresses associated with the
12 subjects. Our squad was contacted or a message went out to
13 our squad to go drive by the addresses, and one of my
14 colleagues who drove by that particular address then found a
15 car there associated with the subject. And that's when I
16 started -- headed towards the direction of the Flint Ridge
17 address.

18 Q. Okay. Did you arrive at the location?

19 A. I did.

20 Q. Describe to the Court the first thing that you did when
21 you pulled in near the location.

22 A. So my colleague and another agent were in a car close to
23 the house where they could see that house at 721.

24 Q. Who are those colleagues, to your knowledge?

25 A. Rob Barrett and Cristina Alamo.

1 Q. Okay.

2 A. And they were in the same vehicle.

3 Q. What happened next?

4 A. So they had visual of the house and the vehicles and had
5 seen one of the subjects either in and out of that house or
6 around that house. So when I arrived to the entrance of the
7 neighborhood, which was one way in, one way out of that
8 neighborhood, I didn't drive all the way to the house because
9 they had visual of the house, and myself and other law
10 enforcement officers were at that entrance of the
11 neighborhood to prevent vehicles coming in and out and
12 identify, you know, who those people may be, et cetera.

13 Q. What happened next?

14 A. At some point while we were there, I was on the phone
15 and radio with Agent Barrett and Agent Alamo, and
16 Agent Barrett notified me that Mr. Carney had come out of the
17 house and was walking by his car. We were discussing options
18 of what to do.

19 Q. When you say "his car," who was walking past whose car?

20 A. So Mr. Carney was walking past the vehicle that
21 Agent Barrett and Agent Alamo were sitting in.

22 Q. Okay. What happened next?

23 A. So at that point, I notified the other law enforcement
24 officers that were there. There were multiple Nashville
25 Metro police officers there and some other FBI agents. And I

1 immediately went straight towards where Agent Barrett and
2 Agent Alamo were located.

3 Q. Like straight towards in a vehicle you were in or on
4 foot?

5 A. Yeah. So I drove -- I got in my car and drove, along
6 with other officers in their vehicles following, and we drove
7 approximately four blocks or so to where they were. And then
8 I drove up to -- well, past that residence. And what I saw
9 when I -- the street kind of went downhill, then slightly
10 uphill. I could see a male in a wife -- or wife beater or a
11 white tank top on the side of the street. And as I was
12 coming up in that direction, that male went into the --
13 between houses and into a woodline there.

14 Q. Okay. What happened next?

15 A. So Agent Barrett and Agent Alamo, in that vehicle, they
16 were -- because of the direction their vehicle was pointed,
17 they were reversing up the street as I was driving up the
18 street. Our vehicles and Metro Police vehicles got into the
19 general area where we thought that the subject had gone into
20 the woodline.

21 MR. EVANS: Objection. How is this relevant to
22 the issue?

23 MR. MONTMINY: I'll move ahead. I mean, I'm just
24 trying to get him to . . .

25 ///

1 BY MR. MONTMINY:

2 Q. At some point did you arrive on scene at the residence?

3 A. Yes. So after that, where we thought we saw the subject
4 there, Metro officers -- because we had seen the subject
5 leave that house, or information was that he had left that
6 house, Metro officers secured that house. We, being we,
7 myself, Agent Barrett, Agent Alamo, returned back to that
8 house, which was several blocks away.

9 Q. Okay. What happened next?

10 A. So when we arrived at the house, you know, I parked my
11 vehicle, got out, and a female was standing in front of the
12 house talking to several police officers, and I began
13 speaking with her.

14 Q. At a later point, did you determine what her name was?

15 A. Yes, Latika Poole.

16 MR. MONTMINY: Ms. Andrews, if you could kindly
17 get Exhibit No. 7. And if you could start at time stamp
18 13 minutes. Thank you.

19 (Video played.)

20 MR. MONTMINY: All right. Let's pause it here at
21 13:02.

22 BY MR. MONTMINY:

23 Q. Are you on the screen here?

24 A. Yes, I am.

25 Q. Okay. And where are you on the monitor itself? Are you

1 on the left? Right? Middle?

2 A. I'm in the middle of the screen with the green
3 short-sleeved shirt on.

4 Q. Okay. So am I circling you there?

5 A. Yes.

6 Q. Okay.

7 MR. MONTMINY: And if you could hit play, please.
8 (Video played.)

9 MR. MONTMINY: Pause. All right, we're at 13:13.

10 BY MR. MONTMINY:

11 Q. You're standing how many feet away from the woman in the
12 center of the screen?

13 A. Approximately 5 feet.

14 Q. And what's her name?

15 A. Latika Poole.

16 Q. And just so we're clear, am I circling the correct
17 person?

18 A. Yes.

19 Q. All right. There's a woman over her -- what would that
20 be? -- her left shoulder wearing, it looks like, a Wendy's
21 shirt. I'll make a triangle around that person. Who's that
22 person? Do you know?

23 A. She also lived there, and both their names are on the
24 lease according to them.

25 Q. I see. Okay. Now, thus far, did Ms. Poole indicate who

1 lived in the residence?

2 A. Not at this point.

3 MR. MONTMINY: Let's back up to 13 minutes again.

4 That's fine. Starting at 13:01 for the record.

5 (Video played.)

6 MR. MONTMINY: And pause it.

7 BY MR. MONTMINY:

8 Q. Did Ms. Poole indicate who lived at the house thus far
9 at 13:12?

10 A. Yeah, there she said that no one lived there but she and
11 the other lady and children.

12 Q. Okay.

13 MR. MONTMINY: And hit play, please.

14 (Video played.)

15 MR. MONTMINY: Pause it. We're at 14:03.

16 BY MR. MONTMINY:

17 Q. What did Ms. Poole just say?

18 A. "No man was here."

19 MR. MONTMINY: Play.

20 (Video played.)

21 MR. MONTMINY: Pause. We're at 14:11 on the time
22 stamp.

23 BY MR. MONTMINY:

24 Q. Is Ms. Poole talking about the vehicles parked in the
25 driveway?

1 A. Yes. I asked her whose cars are those, and she said
2 they were hers.

3 Q. All of them?

4 A. Yeah. She said the two cars were hers, yeah.

5 MR. MONTMINY: And press play, please.

6 (Video played.)

7 MR. MONTMINY: Pause. 14:23.

8 BY MR. MONTMINY:

9 Q. Does Ms. Poole make any other statements to you?

10 A. She said, "No man is living here."

11 Q. And on the right side of the screen, in the circle -- do
12 you see the circle on the screen?

13 A. I do.

14 Q. Who is that at 14:23 on the right side of the monitor?

15 A. That's Agent Alamo.

16 Q. Okay.

17 MR. MONTMINY: And play.

18 (Video played.)

19 MR. MONTMINY: And pause. We're at 14:49.

20 BY MR. MONTMINY:

21 Q. A few seconds before 14:49, did Agent Alamo have a small
22 conversation with Ms. Poole --

23 A. Yes.

24 Q. -- about a telephone? Do you recall what that was
25 about?

1 A. I didn't hear that part. I was trying to pay attention
2 to myself, but . . .

3 MR. MONTMINY: Let's go back to 14 -- say 14:40.
4 Ms. Andrews, thank you very much. I appreciate your help.

5 (Video played.)

6 MR. MONTMINY: Go back to -- let's go back to
7 14:10, please. That's fine, too. 14:13.

8 (Video played.)

9 MR. MONTMINY: Pause. 14:28.

10 BY MR. MONTMINY:

11 Q. Did you hear Agent Alamo say anything to Ms. Poole?

12 A. Yeah, she said, "When you were coming outside talking on
13 your phone."

14 Q. Okay. All right. Now, you're asking Ms. Poole if you
15 can search the residence; correct?

16 A. Correct.

17 Q. I mean, we can see what we see on the monitor here, but
18 for purposes of the record for maybe a potential later date
19 up in Ohio, were you touching Ms. Poole when you asked her
20 for consent to search?

21 A. No.

22 Q. Did you brandish your gun at Ms. Poole for consent to
23 search?

24 A. No.

25 Q. Did you threaten her for consent to search?

1 A. No.

2 Q. Did you promise her anything in order to get her to
3 consent to search?

4 A. No.

5 Q. Did you tell her she has to consent to search?

6 A. No.

7 Q. How would you describe the tone of voice that you used
8 on Ms. Poole when you were having this interaction with her?
9 How would you, yourself, describe how your tone of voice was?

10 A. Well, I was trying to be calm. She was upset a little
11 bit at first, and she was calming down some. Also, there's
12 children there, so I'm very conscious of that as well. I
13 don't want their mother to be upset around the children,
14 which would cause the children to be upset.

15 MR. MONTMINY: And if you'd hit play, please.

16 (Video played.)

17 MR. MONTMINY: And if you could pause it, please.

18 BY MR. MONTMINY:

19 Q. All right. On the screen on the right, in between
20 yourself and Agent Alamo, there's another individual that I'm
21 circling with, looks to be, blue jeans on. And who's that?

22 A. That's Agent Barrett.

23 Q. Okay. Now, is it my understanding that the woman on
24 scene who had the Wendy's shirt on was also a resident of the
25 house?

1 A. Yes.

2 Q. And she lived there?

3 A. Yes.

4 Q. Okay. During your period of time on-site, did the woman
5 with the Wendy's shirt on ever state to you "I want you guys
6 off my property"?

7 A. No.

8 Q. Did the woman with the Wendy's shirt on ever say "I'm
9 not consenting to you searching my house"?

10 A. She did not.

11 Q. Similarly to the questions that I asked you about
12 Ms. Poole, when you were asking for consent to search, did
13 you touch the woman with the Wendy's shirt?

14 A. No.

15 Q. Did you brandish a gun at the Wendy's shirt woman?

16 A. No.

17 Q. Did you threaten the woman with the Wendy's shirt?

18 A. No.

19 Q. Did you promise anything to the woman in the Wendy's
20 shirt?

21 A. No.

22 Q. Did you tell the woman in the Wendy's shirt, "Hey,
23 listen, you have got to consent to search"?

24 A. No.

25 MR. MONTMINY: Play 14:54 going forward.

1 (Video played.)

2 MR. MONTMINY: And stop, please. So we're stopped
3 at 15:12. Ms. Andrews, if you could go to Exhibit No. 6,
4 please, when you can, Exhibit No. 6, and if you could kindly
5 load up time stamp 26 minutes and 15 seconds.

6 (Video played.)

7 MR. MONTMINY: And pause. We're looking at 26:19.

8 BY MR. MONTMINY:

9 Q. And for the record, there's a woman seated on the steps
10 leading up to the front door. Who's that?

11 A. That's Ms. Poole.

12 Q. Okay. And to the left on the screen is the man with the
13 jeans. Who's that?

14 A. Agent Barrett.

15 Q. Okay. And then there's a gentleman with a back turned
16 with a green shirt and FBI.

17 A. Yeah, that's me.

18 Q. Okay. All right. And where chronologically is this?
19 Can you let the Court know where in the day's events where we
20 are right now?

21 A. So we -- it's after I had arrived and the previous video
22 that I was speaking with Ms. Poole at the front, and now we
23 are about to enter the home to clear it looking for a person.

24 MR. MONTMINY: Hit play, please.

25 (Video played.)

1 MR. MONTMINY: And pause it at 26:42.

2 BY MR. MONTMINY:

3 Q. Prior to 26:42, had you made entry into the home?

4 A. No.

5 Q. At any point up to 26:42, has Ms. Poole withdrawn her
6 consent to search the residence?

7 A. She had not.

8 Q. At any point up to 26:42, has Ms. Poole said "I want all
9 you guys off my grass, off my property"?

10 A. She has not.

11 MR. MONTMINY: Play it.

12 (Video played.)

13 MR. MONTMINY: Pause.

14 MR. EVANS: Judge, I'm going to object. This
15 is --

16 MR. MONTMINY: I'm done with this.

17 THE COURT: We're not going to show the whole
18 thing again, are we?

19 MR. MONTMINY: No, I'm not. I'm done with this.
20 So we're ending at 27:17. And then, Ms. Andrews, if you
21 could go to 33:10, please.

22 THE COURT: Did you say 33:10?

23 MR. MONTMINY: Yeah, 33:10. Thank you.

24 (Video played.)

25 MR. MONTMINY: If you could pause it, Ms. Andrews.

1 We're at 33:23.

2 BY MR. MONTMINY:

3 Q. Are we after the search of the residence?

4 A. Yes.

5 Q. And describe to Judge Campbell -- is that you and
6 Ms. Poole --

7 A. Yes.

8 Q. -- in the middle of the screen? And what's happening
9 here? What are you doing?

10 A. Just prior to this, I said, "I'm going to go put this
11 thing away," because she's referenced my -- the large gun a
12 couple times. So I said, "I'm going to go put this thing
13 away," and I'm walking to the vehicle to do that.

14 Q. And did she walk with you voluntarily?

15 A. Yes.

16 Q. Okay.

17 MR. MONTMINY: And hit play, please.

18 (Video played.)

19 BY MR. MONTMINY:

20 Q. And where are you walking to with Ms. Poole?

21 MR. MONTMINY: If you could just play maybe ten
22 more seconds of this.

23 (Video played.)

24 MR. MONTMINY: All right. And pause it. We're
25 ending at 34:20.

1 BY MR. MONTMINY:

2 Q. Where were you walking with Ms. Poole after you dropped
3 off your firearm in your SUV?

4 A. So we came back around the front of the house, and then
5 Agent Barrett and I walked with her around to the rear of the
6 house.

7 Q. For what reason?

8 A. To speak with her.

9 Q. Okay.

10 A. To interview her.

11 Q. Why did you decide to go to the rear of the residence to
12 speak with her more?

13 A. Well, we wanted to step away from all the other
14 officers, you know, the children, where she would have no
15 distractions, and we could just talk for a few minutes and do
16 an interview.

17 Q. When she was literally walking with you, as we see on
18 the screen here in the front, and she was walking with you --
19 I guess you guys went around the house to the back, back of
20 the residence?

21 A. Yes.

22 Q. Did she at any point say, "I don't want you guys in my
23 driveway, get off my property"?

24 A. No.

25 MR. MONTMINY: And then, Ms. Andrews, if you can

1 go to Exhibit No. 5.

2 Judge, I just have about two more minutes left of
3 body cam footage, and then I'll be done.

4 If you could go to Exhibit No. 5 and play starting
5 at 22:25.

6 (Video played.)

7 MR. MONTMINY: And pause. We're at 22:43.

8 BY MR. MONTMINY:

9 Q. Is this you and Ms. Poole walking around the house to
10 get to the back for you to speak with her?

11 A. Yes.

12 Q. Okay. Am I circling you, Agent Barrett and Ms. Poole?

13 A. That's correct.

14 Q. Okay. And at this point you're on her driveway;
15 correct?

16 A. Yes.

17 Q. About how far away are you guys from the black Dodge
18 Charger at this point would you estimate?

19 A. 15 yards.

20 Q. At this point did she say "Get off my driveway"?

21 A. No.

22 MR. MONTMINY: And then, Ms. Andrews, lastly, if
23 you could kindly go to Exhibit No. 6 and time stamp
24 42 minutes and 35 seconds. That's fine.

25 (Video played.)

1 MR. MONTMINY: And pause. Okay. We're looking at
2 43:25.

3 BY MR. MONTMINY:

4 Q. I see a dark-colored vehicle on the left of the screen
5 and then a red-colored vehicle to more the middle of the
6 screen.

7 Do you see people in between those two vehicles?

8 A. Yes.

9 Q. And who are those two people?

10 A. The left is me, on the right is Ms. Poole.

11 Q. Okay. Let me do this. I'm circling this. Is that what
12 you're talking about?

13 A. Yes.

14 Q. All right. Describe for me what's happening there for
15 the Judge.

16 A. I'm interviewing Ms. Poole.

17 Q. Okay. And how far away is Ms. Poole from -- where is
18 she in relation to the Dodge Charger?

19 A. She's only a foot or two away from it. It's right
20 behind her.

21 Q. Okay. And how long would you say you spoke with her
22 back in this area would you estimate?

23 A. 10 or 15 minutes.

24 Q. Okay. Did she at any point in time during that
25 conversation -- let me ask the question this way: At this

1 point in time, at 43:25, had the black Dodge Charger been
2 towed yet?

3 A. No.

4 Q. Okay. At any point in time up to 43:25, did Ms. Poole
5 say, "Listen, I don't want you standing here. I don't want
6 to be here. Let's go back to the street or the front of the
7 house"?

8 A. No.

9 Q. From your vantage point, from your perspective, was
10 there any reason that led you to believe you did not have a
11 lawful right to be standing where you were right there?

12 A. No.

13 Q. Why?

14 A. Well, she had given consent for us to clear the house.
15 She had never -- well, if you back up a step, you know, the
16 person that we believe had a warrant for a federal crime had
17 walked out of that house, had left that house, and then we
18 had pursued that person. The house was secure. We came
19 back. And when I spoke to her and the other young lady, they
20 gave us consent to look in the house for person, and then,
21 you know, she signed -- she read -- was read to and signed a
22 consent to search form of the home. And she never -- you
23 know, never revoked that in any way and never said anything
24 different. So, you know -- she and I had actually built a
25 good rapport at that point.

1 Q. At what point? At 43:25?

2 A. Well, prior to that, when she walked with me to the car,
3 you can see her smiling. I mean, we had been kind of joking
4 a little bit, and she and I -- she and I got along pretty
5 well. So we were continuing that conversation. So when we
6 walked back there, you know, it was a calm and cordial
7 conversation.

8 Q. During this conversation I've got circled here at 43:25,
9 at any point in time when you had that interview with her by
10 the black Dodge Charger, did you touch her at all?

11 A. No.

12 Q. Any threats or promises towards her?

13 A. No.

14 Q. Any use of any guns at all?

15 A. No.

16 Q. Okay.

17 MR. MONTMINY: If you could continue to play,
18 Ms. Andrews, just for maybe another minute, just so we can --
19 and that will be it.

20 (Video played.)

21 MR. MONTMINY: That's it then.

22 BY MR. MONTMINY:

23 Q. You continue to speak with Ms. Poole during that period
24 of time then; correct?

25 A. Yes.

1 Q. Okay. All right. Describe to Judge Campbell more
2 specifically the interview you had with Ms. Poole. Describe
3 what you and her were speaking about.

4 A. Yeah, we were -- you know, when we first got there, you
5 know, I felt like she was not being truthful. So as we
6 talked some more, she was calm. We had built a good rapport.
7 We began speaking some more about whose vehicles they were,
8 the Dodge Charger and the red Impala were, you know, who had
9 been at the house that day, you know, trying to flesh out
10 those details to get them to make sense.

11 Q. Okay. Did Ms. Poole indicate to you that a Mr. Fred
12 Carney was an overnight guest?

13 A. No, she just said he stayed there sometimes.

14 Q. And you prepared a report on this case based on your
15 time on scene and your interaction with Ms. Poole?

16 A. Yes. Agent Barrett and I co-authored a report.

17 Q. I'm going to hand you what has been premarked as
18 Government's Exhibit 12 for identification.

19 Do you recognize that?

20 A. Yes.

21 Q. And what is it?

22 A. That's the report that Agent Barrett and I co-authored.

23 MR. MONTMINY: At this time, the government would
24 respectfully move Government's Exhibit 12 for ID into
25 evidence for purposes of this hearing.

1 MR. EVANS: No objection.

2 THE COURT: Without objection, Government's
3 Exhibit 12 is admitted.

4 MR. MONTMINY: Okay. Brief moment, Your Honor?

5 THE COURT: Uh-huh.

6 BY MR. MONTMINY:

7 Q. Did Ms. Poole use the name "Carney" during your
8 conversations, if you recall?

9 A. I can't remember.

10 Q. Okay. All right. Did Ms. Poole indicate that she was
11 expecting a man to come over that day? Did she give any
12 indication to you that there was a man on the property or
13 that there was a man coming over that day?

14 A. Coming over or had been there?

15 Q. Well, both.

16 A. Yes, that -- that a man had been there. And looking at
17 my report, she must have used Carney's name because, you
18 know, one of the things we were talking about was the two
19 vehicles, and she, you know, changed her story and said that,
20 well, the red Impala is mine, but the black Charger is
21 Mr. Carney's. So she must have used his name that day. I
22 don't specifically remember, but if I put it in my report,
23 then she did.

24 Q. Okay. All right.

25 MR. MONTMINY: No further questions, Your Honor.

1 Thank you.

2 CROSS-EXAMINATION

3 BY MR. EVANS:

4 Q. Good afternoon, Agent Hunter.

5 A. Good afternoon.

6 Q. I'm Luke Evans. I'm just going to have a few questions
7 for you. Okay?

8 A. All right.

9 Q. So first thing, I want to -- couple things I want to
10 address that you've testified to. Number one, you said just
11 now that Ms. Poole never said that Mr. Carney was an
12 overnight guest during your interview with her; right?

13 A. She said he sometimes stays there.

14 Q. Well, I want you -- your report is accurate. You've
15 already said that. So I want you to read your report,
16 specifically -- specifically on the bottom of page -- let's
17 see. I guess it's second -- first page, first page of your
18 report regarding -- the last exhibit entered, second to last
19 paragraph. Doesn't it say "Carney sometimes sleeps at
20 Poole's residence"?

21 A. Yes.

22 Q. Okay. So that's specifically what she said; correct?

23 A. Yes.

24 Q. Okay. And she made it clear during that interview, at
25 least once you got back by the cars, that that black Charger

1 was Carney's?

2 A. Yes.

3 Q. Okay. Now, you've been asked a lot of questions about
4 your firearm during this interaction. And just to be clear,
5 you were asked, you know, prior to Ms. Poole signing this
6 consent waiver for you to search, whether or not you were
7 standing touching her, standing close to her, whether you --
8 at some point you were asked whether you were brandishing a
9 firearm. And you said no.

10 But isn't it a point in fact that you brandished
11 an assault rifle up until the point where it is specifically
12 that you walk with Ms. Poole back over to your vehicle;
13 right?

14 A. So, yes, I have one around my shoulder, but it's not --
15 I think the question I was asked was if I, you know,
16 brandished it towards her in any way or any threatening
17 motion. So it's off to my side, slung around my shoulder,
18 but I did not intimidate her directly in any way with that.
19 I had it as a tool because I knew it was a possibility we may
20 clear that house.

21 Q. Well, and just to be clear, you say you didn't
22 intimidate her in any way. She was very intimidated by it,
23 and you knew it; right?

24 A. Well, I didn't know she was intimidated by it, but she
25 referenced the gun, you know, a couple of times, once

1 jokingly, kind of like, you know, if you're going to go in
2 that house, you're good, you got that big gun kind of thing.
3 So -- but, you know, I can't speak for what she felt, but she
4 did mention the gun a couple times.

5 Q. Well, I mean, and you said earlier in your testimony
6 that she had noted to you that she felt uncomfortable because
7 of the big guns; right?

8 A. Yeah, I think when we first arrived, she mentioned
9 something about that gun, that big gun.

10 Q. And that's the whole reason you said you went over and
11 took the gun off, because she was not comfortable with you
12 having it; right?

13 A. Well, yeah. I mean, I do that always, you know, because
14 if we're going to talk to people and things like that, I
15 don't need that anymore, and especially when children are
16 around, I don't want to have something like that. But, you
17 know, I knew that she had mentioned it a couple of times, and
18 so, you know, when I was done clearing the house, you know, I
19 put that away.

20 Q. And you're still armed. Again, you were asked again,
21 once you're back by the -- you're back talking to Ms. Poole
22 by the Charger, at the end, you were asked any guns, and you
23 said no, but you still had a sidearm. You still had your
24 pistol on your waist; right?

25 A. Yes.

1 Q. Okay. And just to be clear, you know, you were asked
2 multiple times about Ms. Poole, did she ever revoke her
3 consent, did she ever say "Get off my property," and you were
4 shown video of you-all walking up the driveway into her
5 backyard towards where the Charger was.

6 About how many law enforcement officers were
7 standing in that driveway in her backyard at that time,
8 besides you?

9 A. The Metro officers, probably four or five.

10 Q. And at least one of them, if you recall from the video,
11 has an assault rifle in both hands standing there in her
12 driveway; right?

13 A. Yes.

14 Q. Okay. And the rest of them all have their service
15 pistols on their waistband; correct?

16 A. Correct, from what I can see.

17 Q. And they maintained that presence there until well after
18 you search the house; correct?

19 A. I don't know how long they were there after.

20 Q. Okay. Now, you were asked multiple times again whether
21 she ever said "Get off my property." Did you ever tell her
22 that -- did you ever say "Now, look, you have every right to
23 tell us to leave and to go get a warrant, and we will, or you
24 can just let us do this"? Did you ever tell her she had the
25 right to make you all leave?

1 A. I wasn't a part of the consent form that was read and
2 completed with Ms. Poole, but in that, it is stated that it's
3 voluntary, and she can revoke. But I did not say -- I did
4 not -- to answer your question, I did not say, "Hey, you can
5 tell us to leave at any time."

6 Q. Okay. So even though she didn't say it, you can't say
7 whether or not she even knew she could, correct, based on
8 what you told her?

9 Now, you talked about the consent form --

10 A. That I knew she could tell me that?

11 Q. Yeah. She never told you -- she never told you that you
12 had to leave, but you don't know whether or not she ever knew
13 she could?

14 A. Well, I never -- I never asked her, but she never told
15 me.

16 Q. All right. And you said on the consent form it says
17 that she's informed that she doesn't have to do it?

18 A. To my recollection.

19 Q. Now, the consent form, I believe the government's
20 entered it as Exhibit 9, you were present when she executed
21 that; correct?

22 A. I wasn't present when she signed that form. That's not
23 my signature on there.

24 Q. Okay. You weren't there when she signed it?

25 A. I wasn't standing with them. Two other agents did that.

1 Q. Let's talk about -- I mean, the consent -- just so we're
2 clear, the consent was 721 Flint Ridge Drive, Nashville,
3 Tennessee; correct?

4 A. Correct.

5 Q. She didn't give consent to search any vehicles on here,
6 right, Exhibit 9?

7 A. Correct.

8 Q. And you guys at one point were standing within a foot --
9 a foot, rather, of the vehicles, the Charger at least?

10 A. Ms. Poole was. I was probably 5 feet away or so.

11 Q. And you were asked at the time that you were back
12 there -- I think the question was something along the lines
13 of whether you -- give me just a minute. Let me look at my
14 notes -- whether you had any reason to believe you didn't
15 have a lawful right to be where you were; right?

16 A. Correct.

17 Q. So when you get on the property, right, there's a
18 period -- a significant period of time where you don't have
19 consent to be there. You're just there to do what?

20 A. When I arrived on the property, it was a very short time
21 before Ms. Poole and the other young lady were standing
22 there, and at some point, as you can see in the video, I was
23 asking about consent to search the home for a person. And
24 that's between the two of them. And I couldn't quite hear
25 it, but between the two of them, they said, "Yeah, you can

1 take a look. There's nobody in there," something to the
2 effect of that.

3 Q. Well, you had asked several times; correct?

4 A. Yeah. I asked at least, yeah, twice.

5 Q. And at one point you had to -- she's not free to go in
6 her house because you tell her -- clearly, her kids are
7 inside, she wants to get her kids, and you go "You can't go
8 in the house, but you can go, I guess, call them out"?

9 A. Right. That's just for general safety, officer safety,
10 her own safety.

11 Q. And you knew Mr. Carney wasn't there; right?

12 A. Right.

13 Q. Who did you believe was in the house?

14 A. Well, possibly Mr. Ewing or sometimes, you know, other
15 people that we don't know or people that may have warrants
16 that think we're there for them or something like that. So
17 we just do it for safety.

18 Q. Okay. When you do a protective sweep, though -- and
19 until you're back -- you would agree with me, you didn't have
20 consent to search from Ms. Poole until you're back standing
21 next to the Dodge Charger; correct?

22 A. I don't know when exactly that form was signed, but I
23 know that she had given consent and her roommate at some
24 point prior to us entering that home.

25 Q. Well, and I'm not talking about the protective sweep

1 anymore. You said they said okay to the protective sweep.
2 You went in, you came out, but then you -- but then I think
3 your testimony was you go back and interview her next to the
4 Charger and then get consent to search the house?

5 A. I never testified to that. At some point -- I wasn't
6 present for the consent, when that form was completed for the
7 consent of 721, but prior to us searching the home, that form
8 was completed.

9 Q. Okay. But you would agree with me that prior to getting
10 that consent, officers were strewn throughout that property?
11 They were in the front yard, backyard, around the carport,
12 all kinds of areas after you had cleared it, you know, done
13 the protective sweep; correct?

14 A. Yeah, I think there were four or five officers in the
15 driveway area.

16 Q. And just to be clear, not driveway in front of the
17 house. Those guys were driveway towards the back door of the
18 house; fair enough?

19 A. Yeah. The house is angled. So they're kind of like on
20 the side driveway. I would say side of the house. But we
21 did walk around behind the house as well, too.

22 Q. And when you told her to go back by the cars even, when
23 you're shown on the video, did you have consent at that point
24 in time? Did you have consent to be beyond the protective
25 sweep at that point in time?

1 A. The written consent form completed?

2 Q. Uh-huh.

3 A. I don't know if that form had been completed at that
4 time. Agent Alamo and Agent Barrett did that at some point.
5 I can't -- I didn't see it, and I can't remember when it was,
6 but she and I were -- Agent Barrett also spoke with her as
7 well. He kind of came back and forth from the interview. We
8 spoke back there, but I can't remember if that form had been
9 signed yet or not.

10 Q. Okay. And you would agree with me that when you do a
11 protective sweep, it doesn't allow you to just stay on the
12 property or in the house and just hang out until you either
13 get consent or a warrant; right?

14 A. Well, we do a protective sweep, you know, for a person,
15 you know, not searching the home in any way, but we do the
16 sweep for the person, where a person could reasonably be, and
17 then, you know, we leave, walk out of the residence, and
18 then, you know, it's either consent or warrant before you go
19 back into the residence to search it, yeah.

20 Q. And it's not just in the house. I mean, within
21 someone's backyard even. You don't have a right to be there,
22 unless you have consent or a warrant; right?

23 MR. MONTMINY: Objection. Calls for a legal
24 conclusion.

25 MR. EVANS: I'll rephrase it.

1 THE COURT: Yeah, rephrase that.

2 BY MR. EVANS:

3 Q. I mean, when you're on the scene, you would agree with
4 me that you have to have some exception to the warrant
5 requirement to be back in someone's backyard; right? That
6 could be one reason; right?

7 A. Well, I think when the resident or both residents of the
8 home who the lease are in, and I'm speaking, interviewing
9 them, and we're talking, and I never -- as we are trying
10 to -- you know, we're getting consent, we're working through
11 the process of everything, an interview was occurring, and
12 then they are not, you know, telling me to get off the
13 property, then I think we are -- I felt comfortable to be
14 there to talk with her and her roommate, to do interviews and
15 try to further the investigation the best we could.

16 Q. Who was in charge of the scene? Was it you or Metro
17 Nashville or someone else in the FBI?

18 A. I mean, it wasn't my -- I'm not a supervisor. So my
19 supervisor wasn't present, but we all work together. The
20 consent form was a federal form. You know, a federal warrant
21 had -- was in place. So, I guess, technically you would say,
22 you know, the FBI was -- was in charge or there to conduct
23 that search or look for Mr. Carney or Mr. Ewing.

24 Q. Let me ask it this way: Prior to her signing that
25 consent form, to the degree that you're in the backyard, the

1 officers, law enforcement is in the backyard of that
2 property, what legal basis would you have had to be there,
3 absent consent?

4 A. Legal basis?

5 Q. What lawful right? That was your question that the
6 prosecutor asked you, and you said you had every reason to
7 believe you had a lawful right to be there. So what lawful
8 right did you have to be in the backyard of that home prior
9 to consent being given by Ms. Latika Poole?

10 A. Well, she gave verbal consent up front. At some point,
11 she signed and, you know, agreed to the consent form, along
12 with her roommate. And then at no time did she ever revoke
13 it or ask us to leave. And we were doing a consensual
14 interview. So I feel that I had the right from her and her
15 roommate to be there to speak with her, unless she told me to
16 step off, you know, and then we would -- we would still hold
17 and secure the house, you know, until a search warrant. You
18 know, that's what we usually do as well. We would prevent
19 people from going in and out of the house at that point as
20 well, even if we were standing in the street.

21 Q. Sure. But you wouldn't be in the premises of the house
22 until you had a warrant; right?

23 A. If she told me to leave.

24 Q. And, again, that initial consent that you had was to do
25 a protective sweep. You asked for consent not to go in the

1 backyard, you asked for consent to go in the house and see if
2 anybody was in there?

3 MR. MONTMINY: Judge, asked and answered.

4 THE COURT: I think we've beat this horse to
5 death. Can we go to a new line of topics, or do you feel
6 like you really need to button this up, Mr. Evans?

7 MR. EVANS: No, Your Honor, I'll move on.

8 THE COURT: Okay.

9 BY MR. EVANS:

10 Q. Latika Poole never gave you consent to search or take a
11 vehicle, period; correct?

12 A. I never asked for consent to search or move a vehicle.

13 Q. All right. So were you there when, lo and behold, this
14 Dodge Charger starts getting towed off?

15 A. No, I mean, I was trying to remember that. I think I
16 may have seen the tow truck pull up, but I never -- I wasn't
17 there when it got raised and taken away, to my recollection.

18 Q. But you know from all the interactions that you had with
19 Ms. Poole -- you've seen her consent form. She gave verbal
20 consent, according to you -- she at no time gave you consent
21 to take any vehicle off that property; right?

22 A. Yeah, I never asked for consent to remove a vehicle.

23 Q. Okay. And regardless of that fact, you knew before that
24 vehicle was ever moved that it didn't belong to Latika Poole,
25 right, because she had told you it belongs to Fred Carney?

1 A. Yes, she said that.

2 Q. Okay.

3 A. The black Charger.

4 Q. Did you have any discussions with anyone that day about
5 whether or not to search that Charger on scene?

6 A. I did not.

7 Q. Did you have any discussions with anyone about getting a
8 warrant to search the black Charger while you were on the
9 scene?

10 A. No. I didn't really do much with the vehicles.

11 MR. EVANS: Thank you. Those are my questions.

12 MR. MONTMINY: Brief moment. One more second,
13 Your Honor. No further questions of this witness, Your Honor.

14 THE COURT: You can step down, sir.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 MR. MONTMINY: And nothing further from the
18 government right now.

19 THE COURT: Anything from the defendant,
20 Mr. Evans?

21 MR. EVANS: Your Honor, I don't have any
22 witnesses.

23 THE COURT: Okay. Just a couple of questions, and
24 then I'm going to take this under advisement. I'm going to
25 try to keep it brief because we've already kept our 2:00

1 hearing waiting for half an hour, so out of respect for their
2 time.

3 The car keys in the backpack, is that -- I mean,
4 is that an important thing or not? I mean, are they the
5 Charger? It leads one to ask that question when you see the
6 backpack, assuming it was Mr. Carney's and all that. Do you
7 know the answer to that question?

8 MR. MONTMINY: Judge, it's the understanding of
9 the government that -- it's my understanding that the keys
10 that are collected from the backpack were not connected to
11 the black Charger that was on the scene.

12 THE COURT: Okay. Thank you.

13 MR. MONTMINY: Sure.

14 THE COURT: Mr. Evans, quick question on your
15 argument. During the protective sweep -- there's consent to
16 go into the house. During the protective sweep, if law
17 enforcement had seen something that related to what they
18 believe was related to a bank robbery -- for example, let's
19 say that a bank employee had said it was a bright red bag
20 that they ran out with and that, you know, had yellow trim,
21 something distinctive about it. And they go through and do
22 the protective sweep, and they see a bright red bag with
23 yellow trim, for example. Would they be allowed in your
24 mind, given the consent to search the house, to seize that
25 item?

1 MR. EVANS: So, Judge, I think -- I think
2 potentially, just based on the facts Your Honor gave me -- so
3 the answer I think to that under those limited facts is
4 probably yes.

5 THE COURT: Okay.

6 MR. EVANS: Under the plain view doctrine.

7 THE COURT: Right.

8 MR. EVANS: But -- and I would direct the Court in
9 relation to our -- in furtherance of my argument, to *Coolidge*
10 *versus New Hampshire*. It's a US Supreme Court case. It's
11 403 US 443, 1971. And I believe that case is on point in
12 this instance because what it talks about is how plain view
13 is not the answer for everything. And if it's -- in your
14 analogy, Judge, you've essentially got a situation where they
15 go in to search a house. They're not anticipating -- they
16 don't have any information to think necessarily that the
17 backpack is in there, right, and they go in and lo and behold
18 it's there. It's unanticipated. It's unexpected. That's
19 different from this situation.

20 And here's the difference: What brought them to
21 that location partially was the car. Like, they had -- they
22 knew about the car well in advance, and that car being there
23 changes it. And I think the *Coolidge* case takes it -- does a
24 pretty good treatment of this in going, look, that doesn't
25 mean if you know it's coming, you know that piece of

1 evidence -- potential evidence is going to be there, that you
2 get to just go, yep, and you're doing some other consent
3 search, and then just go it's in plain view. I believe
4 *Coolidge* stands to say, no, plain view does not apply in that
5 instance. Doesn't apply in that instance. And that's the
6 situation where it should have -- they had to have gotten
7 some sort of authority to seize the item prior to moving in.

8 THE COURT: But your argument is that the car was
9 within the curtilage of the home?

10 MR. EVANS: Absolutely.

11 THE COURT: Okay. And so that makes it -- I know
12 there's tests for determining what curtilage is and all that,
13 and that's all in the briefs. But if it's within that, then
14 that's -- is that from your view within the consent area, if
15 it's within the curtilage?

16 MR. EVANS: So, no, Your Honor.

17 THE COURT: Okay.

18 MR. EVANS: Because, I mean, I think at that point
19 that's when you get into almost like the common area analysis
20 versus this is some -- you know, you get multiple roommates,
21 and one roommate says "Come on in," and it's clearly this
22 other person's area of the house, and they go "I didn't give
23 consent." So I think that consent was limited. It was
24 limited to the house. It was limited to -- and that was the
25 testimony. And it clearly did not include the cars. And

1 that was -- there was no testimony that she gave consent on
2 the cars. And, in fact, you know, Agent Hunter says no.
3 Like, they're within a foot of the cars, and there's no
4 consent for these cars. We have no indication she ever
5 consented to that.

6 THE COURT: To search them?

7 MR. EVANS: To search them. To take them. To do
8 anything with them.

9 THE COURT: Because we're dealing with a seizure,
10 then a search post-warrant.

11 MR. EVANS: Right.

12 THE COURT: So it's a little bit different
13 sequence of events than we normally see, where it's the
14 search, and then the question is should there have been a
15 warrant. The warrant preceded the search, the seizure
16 didn't; right?

17 MR. EVANS: Exactly.

18 THE COURT: Okay.

19 MR. EVANS: And, Your Honor, I think *Coolidge*
20 speaks to this in a significant way, and I think it results
21 in the suppression of the car.

22 THE COURT: Results in you winning.

23 MR. EVANS: Hope so.

24 THE COURT: Hence, you pointing that case out to
25 me. I get it. It's what good lawyers do; right? I'm sure

1 Mr. Montminy has provided us with authority in the brief,
2 which I have actually read, to go the other way. So that's
3 the adversarial system at work.

4 All right. I'm going to take this under -- I'll
5 give you the last word, Mr. Montminy.

6 MR. MONTMINY: Just grand scheme here, Your Honor,
7 again, defense counsel's, you know, major argument is that
8 Mr. Carney had an expectation of privacy in that area where
9 the car was seized. Here really the entirety of the facts
10 supporting that is the statement that Ms. Poole gave to the
11 FBI that, you know, he sleeps here sometimes, but there's
12 been no additional evidence that the defendant, Mr. Carney,
13 was definitely an overnight guest either, you know, May 1
14 into May 2 or May 2 into May 3 beyond what was testified to.

15 Furthermore, even if the Court finds that there's
16 enough evidence to support that he was an overnight guest,
17 the position of the government is that when Mr. Carney exited
18 the back door of that residence, after the time that the bank
19 robbery was committed, and he walked away with that bag, and
20 he ran away, and in the path of him running was his backpack,
21 where it had his document in there with a residential address
22 that is different than the location where he exited from, his
23 personal hygiene items -- Judge, we're talking about what was
24 deodorant, body wash, toothpaste and a toothbrush.

25 You know, he flees the brick house, drops his

1 backpack with all of his personal items. Then he gets
2 into -- Ms. Stringfield stated to law enforcement on the same
3 day of the bank robbery that, well, you know, Mr. Carney
4 texted me "Come pick me up," and notably, when the defendant
5 got into that vehicle driven by Ms. Stringfield,
6 Ms. Stringfield told FBI -- what did he have? He had that --
7 he had the gray backpack. He was going to go to
8 Ms. Stringfield's house, but then they had an argument in the
9 car. And what does he do? He gets out. He leaves with the
10 gray backpack, gets out of the car with the gray backpack.

11 So the position of the government, Your Honor, on
12 the reasonable expectation of privacy argument is that
13 there's not evidence sufficient to establish that the
14 defendant was, in fact, an overnight guest. And even if you
15 find that there is enough evidence to support that, when he
16 left that residence with that bag, he abandoned any
17 expectation of privacy in that residence.

18 THE COURT: You mean when he left with the bag and
19 without the car?

20 MR. MONTMINY: What's that?

21 THE COURT: With the bag, but without the car.

22 MR. MONTMINY: With the bag and without the car,
23 correct. And that additionally there are exceptions to the
24 warrant requirement, which gave the officers the right of
25 access to seize the vehicle, namely consent of Ms. Poole.

1 Ms. Poole is standing just feet away from this black Dodge
2 Charger having a conversation with FBI Agent Steve Hunter,
3 right by the vehicle, just within arm's reach of the vehicle.
4 And at no point in time does Ms. Poole say, "Hey, guys, I
5 want you out of here." The officers had a lawful right,
6 based on consent, to be where they were and to be by that and
7 seize that black Dodge Charger.

8 Additionally, there is the exigency of the fact
9 that the FBI agent advised that she witnessed Mr. Carney exit
10 the back door of the residence, the brick residence. And
11 where did he go? He went right past that black Dodge
12 Charger. And he had a warrant at the time, and officers were
13 looking for him, and he was fleeing. So there was a
14 legitimate basis for law enforcement to look in that path of
15 that direction, which was right by the black Dodge Charger,
16 to follow the defendant and to locate anything that may have
17 been related to the offense.

18 And it's not as though -- defense counsel cites a
19 case dealing with plain view, where I believe in that case
20 the motorcycle or the car was under like a tarp, and the
21 officer approached the vehicle and had to pull up the tarp.
22 This is not this case, these set of facts. Here we have a
23 case where officers are lawfully present by the black Dodge
24 Charger, and they had -- in plain view they saw the car right
25 there. So that's just another reason. And the automobile

1 exception. They could have searched the car there if they
2 desired. But the case law is clear that the officers could
3 lawfully seize the vehicle and tow it to a secure location to
4 conduct a search of the car.

5 So there are multiple avenues that the Court could
6 deny the motion to suppress. Thank you very much.

7 THE COURT: Okay. All right. I'm going to take
8 it under advisement, and we'll get a ruling out as soon as we
9 can.

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11 (Proceedings concluded at 2:45 p.m.)

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REPORTER'S CERTIFICATE

I, Patricia A. Jennings, Official Court Reporter
for the United States District Court for the Middle District
of Tennessee, with offices at Nashville, do hereby certify:

That I reported on the Stenograph machine the
proceedings held in open court on April 25, 2023, in the
matter of UNITED STATES OF AMERICA vs. FREDRICK EUGENE CARNEY
and WILLIAM JOHN EWING, Case No. 3:22-cr-00174; that said
proceedings in connection with the hearing were reduced to
typewritten form by me; and that the foregoing transcript
(pages 1 through 132) is a true and accurate record of said
proceedings.

This the 11th day of May, 2023.

/s/ Patricia A. Jennings
Patricia A. Jennings, RMR, CRR
Official Court Reporter