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IN THE THIRD JUDICIAL DISTRICT COURT - SALT LAKE

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

_____	)	
STATE OF UTAH ATTORNEY	)	Case No. 221906445
GENERAL,	)	
	)	
Plaintiff,	)	
	)	TRANSCRIPT OF:
v.	)	MOTION TO SUPPRESS HEARING
	)	
JASON CHRISTOPHER HALL,	)	
	)	
Defendant.	)	
_____	)	

BEFORE THE HONORABLE PAUL B. PARKER

THIRD DISTRICT COURT
450 SOUTH STATE STREET
SALT LAKE CITY, UT 84114

OCTOBER 27, 2023

A P P E A R A N C E S

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1 October 27, 2023

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

3 THE COURT: This is the matter of State vs. Jason
4 Christopher Hall, Case 221906445.

5 Counsel, state your appearances.

6 MS. WAITE-GROVER: Heather Waite-Grover for the
7 state.

8 MR. JORDAN: Trinity Jordan and Aaron Clark for
9 Mr. Hall.

10 THE COURT: Welcome. Mr. Hall is here with us; is
11 that right?

12 MR. JORDAN: Correct, your Honor.

13 THE COURT: These are your motions, are they not?

14 MR. JORDAN: Correct, your Honor.

15 THE COURT: And my understanding of what we're
16 considering today is just the motion concerning the cell phone
17 and the interview; is that right?

18 MR. JORDAN: That is correct, your Honor.

19 THE COURT: All right. Go ahead, then.

20 MR. JORDAN: Your Honor, before we begin, we would
21 just like to invoke the rule that the witnesses that are going
22 to be testifying would not be here while others are testifying.

23 THE COURT: How many witnesses are present?

24 MS. WAITE-GROVER: We have three witnesses, your
25 Honor. One is our agent, Mr. Russell, and then two other --

1 there's another agent and then our -- our administrative
2 assistant. So we could have those two go out in the hallway.

3 THE COURT: Is there an objection to the order?

4 MS. WAITE-GROVER: No.

5 THE COURT: What I'll ask is all the witnesses except
6 the designated case manager need to step outside. Don't talk
7 about the case with each other or anybody else during the
8 pendency of your testimony or anyone else. You can talk to the
9 attorneys from each side. So you'll be excused.

10 Do you have any witnesses that they need to invoke on
11 your side?

12 MR. JORDAN: The witnesses we're calling are on their
13 side as well.

14 THE COURT: Are all on the same side?

15 MR. JORDAN: Yes.

16 THE COURT: All right.

17 MS. WAITE-GROVER: And then, your Honor, I do have
18 one thing that I think can save us a little time today. The
19 state's reviewed the motion to suppress the evidence --

20 THE COURT: Before we get to that, I see somebody
21 still stayed, right?

22 MS. WAITE-GROVER: Oh, this is our paralegal, Jackie
23 Milton.

24 THE COURT: Okay. Okay. Okay.

25 MS. WAITE-GROVER: Yeah, yeah.

1 THE COURT: I apologize.

2 MS. WAITE-GROVER: With respect to the motion to
3 suppress the evidence gained from the cell phone search, the
4 state has realized that we do not intend to introduce any of
5 that evidence at trial. So for the sake of brevity today,
6 we'll just stipulate to the exclusion --

7 THE COURT: Stipulate to the motion?

8 MS. WAITE-GROVER: -- to that motion and then just
9 proceed on the --

10 THE COURT: And is that to the -- I assume you don't
11 want any findings on it. You're just going to stipulate that
12 you're not going to be using any evidence found on the phone?

13 MS. WAITE-GROVER: Yes.

14 THE COURT: Defense willing to take that?

15 MR. JORDAN: One moment, your Honor. I apologize.

16 THE COURT: Okay. Go ahead.

17 MR. JORDAN: Your Honor, the only thing is in
18 preparing for this hearing today, we realized that one of the
19 issues that we had brought up in our motion to suppress as it
20 relates to the cell phone had to do with the pass code of the
21 phone. In that interview, they also elicited a password of the
22 computer in kind of the same form and fashion. And so we were
23 going to elicit testimony as it relates to that today, for --

24 THE COURT: Although you don't have your motion on
25 that.

1 MR. JORDAN: It would save time with the court
2 because we're -- either if they're going to stipulate that
3 they're not going to use anything from the computer, then that
4 would save us time. If not, we would like to elicit at least
5 that testimony so that we can file another motion as it relates
6 to the computer.

7 MS. WAITE-GROVER: I need a little clarification
8 about the computer and what -- well, first of all, how it
9 relates to the motion, because that's what we prepared for
10 today. Frankly --

11 THE COURT: I think he's just asking for leave to
12 address through the witnesses some facts that may lead to
13 another motion.

14 MR. JORDAN: Correct, your Honor. As it relates to
15 the computer.

16 THE COURT: Yeah.

17 MS. WAITE-GROVER: Well, I would object to that. I'm
18 fine coming back on another time after I've seen the motion,
19 but I'll leave it to the Court's discretion.

20 THE COURT: Why don't we do this? Let's proceed on
21 this. Let's see where we are both in time and everything else.
22 And if we have an opportunity to do it, then let's proceed to
23 give you some chance to get some facts.

24 MR. JORDAN: Okay.

25 THE COURT: Okay? But let's address these motions

1 first and then we'll go to the other.

2 MR. JORDAN: The other thing, your Honor, is there
3 are ten different exhibits. I think there's six from the state
4 and four from the defense. We've stipulated to all of them
5 already ahead of time, and we've prepared a binder for the
6 Court.

7 THE COURT: Okay.

8 MR. JORDAN: And one for the witness.

9 THE COURT: We'll then stipulate that -- 1 through
10 10?

11 MR. JORDAN: I think we've labeled 1 through 6 are
12 the state's exhibits and A through D are the defendant's
13 exhibits.

14 THE COURT: And that's the stipulation on both sides?

15 MS. WAITE-GROVER: It is, your Honor.

16 THE COURT: All right. They'll be received, then.

17 Thank you. All right. Go ahead, then.

18 MR. JORDAN: And, your Honor, we have this binder for
19 the witness as well.

20 THE COURT: Okay.

21 MR. JORDAN: That we can put at the witness stand.

22 THE COURT: Yeah. Hand that to the bailiff. He'll
23 take care of that.

24 MR. JORDAN: Your Honor, we would then proceed by
25 calling special agent Tom Russell.

1 THE COURT: All right.

2 Raise your right hand, if you would.

3 (Witness sworn.)

4 THE COURT: Take the witness seat if you will. Once
5 you get there, state your full name, spell your last name.

6 THE WITNESS: Name is Thomas John Russell,
7 R-U-S-S-E-L-L.

8 THE COURT: Go ahead.

9 MR. JORDAN: Thank you, your Honor.

10 THOMAS JOHN RUSSELL

11 called as a witness herein, having been first duly sworn by the
12 Clerk to tell the truth, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. JORDAN:

15 Q. Agent Russell, I think I remember from the
16 preliminary hearing you started your career with the DEA; is
17 that correct?

18 A. That was kind of the middle.

19 Q. Oh, that was the middle. I apologize.

20 A. Yes. Close enough.

21 Q. How long were you with the DEA?

22 A. 21 years.

23 Q. And then you immediately came to the AG's office?

24 A. Mm-hmm.

25 Q. And how long have you been at the AG's office?

1 **A.** Oh, seven years, six years, somewhere in there.

2 **Q.** What have you done to prepare for this suppression
3 hearing?

4 **A.** Reviewed my reports.

5 **Q.** Did you review any other reports besides yours?

6 **A.** No.

7 **Q.** Did you review the motions to suppress that were
8 filed?

9 **A.** I did.

10 **Q.** Did you meet with the prosecutors in this case?

11 **A.** Yes.

12 **Q.** Did you review the exhibits that have been presented
13 by the --

14 **A.** I'm not sure what the exhibits are.

15 **Q.** Fair enough. Anything else you did?

16 **A.** Nope.

17 **Q.** Is it fair to say that most, if not all, of the facts
18 and information regarding this case are contained in your
19 reports?

20 **A.** Yes.

21 **Q.** Is there anything not recorded?

22 **A.** Not to the best of my knowledge.

23 **Q.** And you didn't start the investigation for this case,
24 correct?

25 **A.** Correct.

1 **Q.** And that was Sergeant Nick Stidham?

2 **A.** No. It was the sergeant before Nick Stidham.

3 **Q.** Do you remember his name?

4 **A.** I don't.

5 **Q.** And then Nick Stidham then got the case, correct?

6 **A.** Right.

7 **Q.** And what department is he with?

8 **A.** Currently he's with I'm guessing Saratoga Springs, I

9 think.

10 **Q.** Okay.

11 THE COURT: How do you spell his last name?

12 THE WITNESS: Stidham.

13 MR. JORDAN: S-T-I-D-H-A-M.

14 THE WITNESS: Correct. I think.

15 MR. JORDAN: I might be saying it wrong, your Honor.

16 I apologize.

17 THE COURT: Okay.

18 MR. JORDAN: No offense to him.

19 **Q.** (BY MR. JORDAN) Had you worked with him in the past?

20 **A.** No.

21 **Q.** Are you aware of who took the original complaint from

22 the victim in this case?

23 **A.** I believe it was the prior sergeant.

24 **Q.** But Sergeant Stidham had constant contact with the

25 victim in this case?

1 **A.** No. The first sergeant I believe did it for a few
2 months, and then he got transferred, and then Stidham came in.

3 **Q.** And he was in contact with the victim after that?

4 **A.** Yes.

5 **Q.** How did this case end up in your hands at the AG's
6 office?

7 **A.** That's a good question. I'm not sure how it got to
8 the AG's office. I really don't. I just know it was assigned
9 to me.

10 **Q.** Did you continue to work with sergeant Stidham
11 throughout the course of your investigation?

12 **A.** I didn't really work with him on any part of it. I
13 was in contact with him, but he didn't assist me (inaudible).

14 **Q.** Agent, there's a binder in front of you that has all
15 of the exhibits.

16 **A.** Okay.

17 **Q.** These have been stipulated to. But Government's
18 Exhibit-4, so Tab 4 on there. Do you mind turning to that?

19 **A.** You bet.

20 **Q.** I think there's some highlighted areas on this
21 exhibit that was done by the state. Do you recognize this
22 report?

23 **A.** I do.

24 **Q.** And did you draft this report?

25 **A.** I did.

1 **Q.** And this was drafted on February 23rd?

2 **A.** I did.

3 **Q.** And it was drafted on February 23rd?

4 **A.** I believe so.

5 **Q.** And you drafted it the same day the events took place
6 that are in this report, correct?

7 **A.** Yes. Correct.

8 **Q.** Is it an accurate report?

9 **A.** Yes.

10 **Q.** Did you leave anything out?

11 **A.** Sure. Tons of stuff.

12 **Q.** What did you leave out?

13 **A.** Oh, conversations with the attorney, conversations
14 with my supervisor. I don't know. Tons of stuff. I put in
15 the important things.

16 **Q.** So everything that you left out was not important?

17 **A.** I don't know. That's a big statement. I don't know
18 what I left out.

19 **Q.** Fair enough. On February 23rd, Sergeant Stidham
20 calls you, correct?

21 **A.** Correct.

22 **Q.** Agent, I notice you're referring to stuff that's not
23 the exhibit.

24 **A.** It's the same thing. It's just my little notes of
25 the same reports that we're looking at.

1 MR. JORDAN: Your Honor, I'd prefer if he would just
2 testify to memory or the exhibit than anything --

3 THE COURT: Well, he can certainly use anything to
4 refresh his recollection, but let's not have him read from
5 anything. If he needs to refresh his recollection, if you'll
6 let someone know, we'll lead you through the process.

7 THE WITNESS: Got it. Okay. This is just a -- notes
8 of the dates. That's it.

9 UNKNOWN SPEAKER: (Inaudible.)

10 THE WITNESS: Okay.

11 Q. (BY MR. JORDAN) I think the exhibit might have all
12 that information on there.

13 A. Okay.

14 Q. Sergeant Stidham calls you on February 23rd?

15 A. Correct.

16 Q. You didn't initiate this phone call, right?

17 A. Correct.

18 Q. And he wanted to make you aware of a few things,
19 correct?

20 A. Correct.

21 Q. One of which was that Jason Hall had retained an
22 attorney named Tyler Ayers, right?

23 A. Not really.

24 Q. What did -- what did he tell you about this attorney,
25 Tyler Ayers?

1 **A.** He told me -- to summarize, somebody told somebody
2 told somebody that told him that Tyler Ayers might have
3 retained an attorney. And I don't know the somebody's names,
4 whoever it was that told him that. Does that clarify it?

5 **Q.** A little bit. We'll just walk through that. It's a
6 game of telephone. So Sergeant Stidham says that he hears from
7 the victim, Jeff Gaston. That's the first line, right?

8 **A.** Correct.

9 **Q.** And that Jeff Gaston heard from a mayor of a city
10 that's unnamed.

11 **A.** Okay.

12 **Q.** And that unnamed mayor is also an attorney, correct?

13 **A.** I believe so. According to Sergeant Stidham.

14 **Q.** Right.

15 **A.** Okay.

16 **Q.** I'm not trying to trip you up. I'm just trying to
17 make sure it's clear. That's all.

18 **A.** Okay. Cool.

19 **Q.** And that this game of from mayor to Jeff to Stidham
20 to now you is Tyler Ayers has been retained as --

21 **A.** Might have. I believe that's the --

22 **Q.** That's fine. Let's look at paragraph 2 there.

23 **A.** Okay.

24 **Q.** You wrote this.

25 **A.** Okay.

1 **Q.** Right?

2 **A.** Correct.

3 **Q.** Look at the --

4 **A.** How many lines down are we looking?

5 **Q.** We'll look at the very last sentence in paragraph 2.

6 **A.** Okay.

7 **Q.** I'm going to -- I'll read it. It says -- and you

8 tell me if I've read it incorrectly. "Gaston informed Sergeant

9 Stidham that his friend told him that Hall had since retained

10 Ayers as his criminal attorney specifically for this

11 investigation and whatever charges might arise out of this."

12 **A.** Okay.

13 **Q.** Is that accurate?

14 **A.** Sure.

15 **Q.** Okay. So it's not a maybe, right?

16 **A.** No. It was a maybe.

17 **Q.** That's a maybe?

18 **A.** I might have wrote that, but in my mind at the time

19 of writing that -- I mean, getting information fourth hand,

20 it's a maybe. So maybe I wrote that there, but in my mind, it

21 was who knows?

22 **Q.** Fair enough. We'll get to that in a second.

23 **A.** Okay.

24 **Q.** And you -- after this phone call, you then call

25 assistant AG (no audio - technical glitch). I apologize. His

1 office is right down the hall from yours, right?

2 A. Close enough. One floor off.

3 Q. And you go and talk to him and you tell him about
4 this interaction, right?

5 A. Yes.

6 Q. And you were given instructions by him after that
7 that you record in this -- in this report, right?

8 A. I got his opinion.

9 Q. Okay. Let's -- let's read what you wrote at this
10 time on February 23rd. It's highlighted there for you. It
11 says "Secondly, Mr. Wuthrich informed Special Agent Russell
12 that if and when he executed the search warrant on Hall and his
13 workplace in an attempt to seize the suspected phones and
14 computers, that he was not to try to interview Hall since he
15 has retained an attorney."

16 A. Okay.

17 Q. Was that accurate?

18 A. Yep.

19 Q. And then he further gave you instructions that "and
20 that review of the seized computers or phones after today would
21 probably need to be evaluated by a taint team." Right?

22 A. Correct.

23 Q. And he does say "probably," right?

24 A. Yep. And that's just their opinion, right? We're
25 just in his office for all of two minutes as he's rambling

1 through these opinions. So...

2 So I'm going to apologize right up front. I'm
3 getting a migraine. I'm sorry. And I get these sparkles. I
4 cannot -- I get it twice a year and I'm getting one right now.
5 I'll do the best I can, but I'm having a hard time already
6 reading. So I apologize. But continue on.

7 THE COURT: Does that give you a headache as well?

8 THE WITNESS: Oh, it's coming in about an hour. Once
9 I get the sparkles and I start to go blind, and then the
10 headache comes two, three hours down -- I'm just -- I walked in
11 and I was just like, "No, you got to be kidding me."

12 So I'm sorry, dudes. I'll do the best I can do.

13 THE COURT: Are you able to continue?

14 THE WITNESS: Oh, yeah. Absolutely.

15 THE COURT: Will you let us know if it gets to be a
16 point that you need either a break or to stop testifying?

17 THE WITNESS: Thank you, sir. And I --

18 THE COURT: I get them as well. The only thing that
19 works for me is Extra Strength Excedrin. I might have some if
20 you have --

21 THE WITNESS: If you got some, dude, it will save me.
22 I've got some out in my car.

23 THE COURT: Do the lights affect you?

24 MS. WAITE-GROVER: Can we go get you, like, a Diet
25 Coke or something?

1 THE WITNESS: Yeah, no. Well, Coke would help. I'm
2 sorry, guys.

3 MS. WAITE-GROVER: No, no. It's fine.

4 THE WITNESS: (Inaudible.) I started to get scared
5 because I lose all my left side vision.

6 THE COURT: Do the lights affect you here? Do we
7 need to turn them down?

8 THE WITNESS: If you don't mind. And if I could run
9 to my car quick, I know I've got Excedrin migraine in my car, I
10 think.

11 THE COURT: Why don't we take a break and allow you
12 to do just that. Let's give him his Coke and --

13 THE WITNESS: I'll come back in two seconds.

14 THE COURT: -- get him some pills.

15 THE WITNESS: You got them?

16 MS. WAITE-GROVER: You got it?

17 (Indistinguishable speaking.)

18 THE WITNESS: But is it for migraines?

19 UNKNOWN SPEAKER: Do you want four or two? Yes.

20 THE COURT: You can step off. Yeah.

21 UNKNOWN SPEAKER: Do you want four or two? You're a
22 big guy.

23 THE COURT: Yeah, get the medicine.

24 UNKNOWN SPEAKER: I don't mean that in a bad way. I
25 just mean --

1 THE WITNESS: Two Excedrin migraine, I'll be good.
2 I'll be good.

3 UNKNOWN SPEAKER: They're just the extra strength --
4 yeah. They don't say migraine, but they're --

5 THE COURT: Let's go off -- let's go off the record.

6 THE WITNESS: Can I run to my car?

7 THE COURT: Yes. Do what you need to do.

8 THE WITNESS: Thanks.

9 THE COURT: Let's go off the record.

10 (A recess was taken.)

11 THE COURT: All right. We're here.

12 MR. JORDAN: Your Honor, I think the -- the state
13 will correct me if I'm wrong. We've agreed that most, if not
14 all, the facts that the Court needs are contained in those
15 exhibits and that anything outside of those exhibits, which we
16 think is very, very minimal, would be testified to. And so
17 what we've agreed to do with permission of the Court is the
18 state will take over doing direct examination as it relates to
19 Russell to elicit some of those things. Then we would cross
20 him on anything that needed to be crossed. And then as well as
21 the other agent that is in the hall. And we think that it will
22 be very minimal because we've kind of eliminated a lot of the
23 stuff that's already in the exhibits.

24 THE COURT: Okay.

25 MS. WAITE-GROVER: Yeah.

1 MR. JORDAN: Is that an accurate description?

2 MS. WAITE-GROVER: That is accurate.

3 THE COURT: Okay. Go ahead.

4 MS. WAITE-GROVER: Your Honor, I'd like to resume
5 questioning Agent Russell.

6 THE COURT: All right. Call him back.

7 You got your Coke. You got your pill. You're set.

8 THE WITNESS: Thanks. Appreciate it.

9 DIRECT EXAMINATION

10 BY MS. WAITE-GROVER:

11 Q. So Agent Russell, we're going to move on to just a
12 couple topics that aren't covered by those exhibits. You
13 started talking with Mr. Jordan about your initial conversation
14 with Mr. Wuthrich about the rumor you had heard about Mr. Hall
15 being represented.

16 You also mentioned that you talked with some other
17 people in your office. Can you tell us a little bit more about
18 who else you may have talked to about that rumor about
19 representation?

20 A. Yeah. Well, I know I discussed it with my
21 supervisor.

22 Q. And who is your supervisor?

23 A. Tyson Downey.

24 Q. Okay.

25 A. As I was speaking with you about -- with DEA, you're

1 allowed a lot of leeway to run your case the way you want.
2 That doesn't happen at the attorney (no audio - technical
3 glitch). Everybody's got to be on board, right?

4 Q. Mm-hmm.

5 A. So, yes. We discussed it. Was that the question?

6 Q. Yes. Was there any other supervisors or agents that
7 you -- you informed of the rumor and got opinions about?

8 A. I don't believe so.

9 Q. Okay. Did you talk to Mr. Lucy [phonetic], your --

10 A. No. I didn't.

11 Q. Okay. You didn't.

12 A. But if you said it went to him, I wouldn't be shocked
13 at all.

14 Q. Okay. And then after you discussed that rumor about
15 representation with your supervisor Mr. Downey, did you reach
16 any conclusions together?

17 A. Yes.

18 Q. What were those conclusions?

19 A. That we were going to interview Hall.

20 Q. And why was that?

21 A. Well, he was still just a suspect like any other
22 suspect, and it came to mind that, my gosh, of all the people
23 I've investigated, interviewed, the majority had attorneys.
24 It's like you just continue on with your investigation and read
25 them their Miranda warnings. If they invoke, you're done.

1 **Q.** Okay. And did you have anything after the time you
2 talked with Mr. Stidham and then eventually Mr. Gaston that
3 confirmed that rumor for you, that Mr. Hall was, in fact,
4 represented?

5 **A.** Yes.

6 **Q.** When was that?

7 **A.** That was the 3rd.

8 **Q.** 3rd of?

9 **A.** March 3rd. Excuse me. So the day after the search
10 warrant.

11 **Q.** Okay.

12 **A.** I believe.

13 **Q.** And -- and what happened the day after the search
14 warrant that confirmed the rumor?

15 **A.** I received a telephone call from Tyler Ayers.

16 **Q.** Had you received any phone calls from Tyler Ayers
17 before March 3rd?

18 **A.** No, I had not.

19 **Q.** Any e-mails from him?

20 **A.** No.

21 **Q.** Text messages?

22 **A.** No.

23 **Q.** Verbal contact?

24 **A.** Nothing.

25 **Q.** Okay. Now, you mentioned that March 3rd was the day

1 of you executed the search warrant. So March 2nd was the day
2 you executed the search warrant?

3 **A.** Yes.

4 **Q.** Okay. Now, when you executed the search warrant, did
5 Mr. Wuthrich, the assistant attorney general, did he give you
6 any direction about how to execute that search warrant?

7 **A.** No.

8 **Q.** Did he give you any questions to ask Mr. Hall during
9 the --

10 **A.** Absolutely not.

11 **Q.** Okay. Did he even, like, hint or suggest at
12 questions you ought to ask?

13 **A.** No.

14 **Q.** Did he choose which agent would interview Mr. Hall?

15 **A.** He did not.

16 **Q.** Did he come to the scene --

17 **A.** No.

18 **Q.** -- during the execution?

19 **A.** I don't even think he knew the day we hit it.

20 **Q.** Okay. Now, when you spoke with Mr. Ayers on the 3rd,
21 you said that that was the first time you spoke with him.

22 **A.** Correct.

23 **Q.** Were you aware that at some point, Mr. Hall said that
24 you had had a conversation with Mr. Ayers?

25 **A.** Yes. On the day of the search warrant.

1 **Q.** That was the day Mr. Hall's indicated you had spoken
2 with his attorney?

3 **A.** So on the day of the search warrant, I received a
4 telephone call from my boss Tyson Downey, who was interviewing
5 Mr. Hall, and he told me the story that Mr. Hall had told him,
6 that Tyler Ayers had told him he'd tried to contact me numerous
7 times, that I -- he'd finally gotten ahold of me and that I had
8 told him I didn't have time for him or something to that
9 effect, which was all made up.

10 **Q.** Inaccurate?

11 **A.** Inaccurate, yes.

12 **Q.** Okay. And then after -- after your supervisor told
13 you that you'd essentially been accused of having contact with
14 this attorney, did you do anything after that?

15 **A.** Yes. I went back and, like, basically did an
16 investigation. I went and talked to the front desk, had them
17 review their logs, make sure it didn't get lost somewhere, they
18 hadn't relayed the message to me. I then took my phone to my
19 supervisor. We reviewed that. There was no calls on there,
20 messages. So, yeah. And then I wrote it all up in a report.

21 **Q.** Okay.

22 MS. WAITE-GROVER: No further questions.

23 CROSS-EXAMINATION

24 BY MR. JORDAN:

25 **Q.** Agent Russell, I think I have like two questions. I

1 just want to make sure. The conversation you had with your
2 supervisor, you don't have a report about that conversation as
3 it relates to Tyler Ayers, correct?

4 **A.** I do not.

5 **Q.** And on March 3rd, day after the search warrant, when
6 Tyler Ayers does call you on the phone, that conversation with
7 Tyler where he says he represents Mr. Hall --

8 **A.** Correct.

9 **Q.** -- that happens before you search his cell phone and
10 his computer, correct?

11 **A.** That'd be my guess, yeah.

12 **Q.** Right. Because you wouldn't have had the computer
13 ready or the Cellebrite data the day after, right?

14 **A.** Correct.

15 **Q.** So you knew at the time that you're searching the
16 computer and the cell phone that he had retained an attorney?

17 **A.** Correct.

18 MR. JORDAN: No further questions, your Honor.

19 MS. WAITE-GROVER: No redirect, your Honor.

20 THE COURT: You may step down.

21 MS. WAITE-GROVER: Your Honor, we'd like to next call
22 Agent Tyson Downey.

23 MR. RUSSELL: Do you guys want me to leave this here?

24 MR. JORDAN: Yes, please. Thank you.

25 THE COURT: Yeah. Leave the -- leave the folder but

1 take the rest. It's yours.

2 MS. WAITE-GROVER: We won't need you for anything
3 else, I don't --

4 He's free to go, right?

5 MR. JORDAN: Yeah. No questions.

6 THE COURT: Raise your right hand if you would,
7 please.

8 (Witness sworn.)

9 THE COURT: Yeah. Take the witness stand. When you
10 get there, tell me your full name, spell your last name.

11 THE WITNESS: Tyson Downey, D-O-W-N-E-Y.

12 TYSON DOWNEY

13 called as a witness herein, having been first duly sworn by the
14 Clerk to tell the truth, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. WAITE-GROVER:

17 Q. So, Mr. Downey, can you tell us what your position
18 is?

19 A. I'm the supervisor of our special investigations unit
20 at the Attorney General's Office.

21 Q. Were you involved at all with the Hall investigation?

22 A. Yes.

23 Q. Before you executed the search warrant or help
24 execute the search warrant on March 2nd of 2022, were you aware
25 that there was a rumor that Mr. Hall was represented by

1 counsel?

2 **A.** No.

3 **Q.** Before executing it?

4 **A.** Correct. I was not aware.

5 **Q.** Did you ever have a conversation with Tom Russell

6 about whether or not Mr. Hall was represented?

7 **A.** No.

8 **Q.** So did he come to you and say, "What should I do

9 about this rumor?"

10 **A.** No.

11 **Q.** Not that you recall?

12 **A.** Not that I recall, no.

13 **Q.** Okay.

14 **A.** That didn't happen.

15 **Q.** Can you tell us what is generally office procedures

16 when you go to interview someone while you're executing a

17 search warrant?

18 **A.** Procedures just as we begin to execute and what we

19 do?

20 **Q.** Yeah.

21 **A.** So we -- so we -- we brief the warrant. We go over

22 the operation plan and assignments, what everybody's assignment

23 is. And then we -- we go to the scene of where we're going to

24 execute the warrant. When we get there, we make contact with

25 the individuals at the location and secure them in an area so

1 that we can have officer safety. And then we just begin --
2 begin the process of the warrant, the searching, the
3 interviewing, processing the evidence.

4 **Q.** And on the day that you executed the search warrant,
5 you took the responsibility of interviewing the suspect?

6 **A.** Yes.

7 **Q.** Now, while you were interviewing the suspect, did he
8 ever invoke his right to counsel?

9 **A.** No.

10 **Q.** Did he mention counsel?

11 **A.** He mentioned counsel, yes.

12 **Q.** Okay. And do you remember what he mentioned about
13 counsel?

14 **A.** In the beginning of the interview -- or early in the
15 interview, he said that his attorney had attempted to make
16 contact with Agent Russell at least five times and then at some
17 point Agent Russell had called back and -- so the attorney had
18 made contact in an attempt to conduct an interview with us.
19 And at some point, Agent Russell had called back and told the
20 attorney that there was nothing going on, and basically that
21 was it. So...

22 **Q.** And when he said that, what were your thoughts?

23 **A.** Well, my thoughts were that that wasn't true.
24 Whether the attorney had misrepresented to the defendant or the
25 defendant was misrepresenting to me that if that had happened,

1 I wouldn't have -- I would have known about it. So...

2 Q. And why would you have known about it?

3 A. Because we would have -- we would have engaged the
4 attorney and conducted an interview. It's common practice.

5 Q. Through the attorney?

6 A. Yes.

7 Q. Okay. Now, did you ever follow up on whether or not
8 it was true, that statement that Hall's attorney had contacted
9 an agent?

10 A. I did, yeah. At some point in the interview, I
11 stepped out and called Agent Russell who was off-scene and
12 asked him if that had taken place.

13 Q. Okay. And what response did he give you?

14 A. That it hadn't, that he had not received any contact
15 from an attorney.

16 Q. Okay. Then did you continue with the interview at
17 that point?

18 A. Yes.

19 Q. Okay. Let me make sure I haven't missed anything. I
20 think that's all. So I'll go ahead and let defense cross.

21 CROSS-EXAMINATION

22 BY MR. CLARK:

23 Q. Good afternoon, Agent Downey.

24 A. Good afternoon.

25 Q. I think I've just got a couple questions for you.

1 You had just mentioned that -- I think I heard you
2 mention that it was only during the interview with Mr. Hall
3 that you first heard that Mr. Hall -- you first heard that he
4 might have an attorney. Is that right?

5 **A.** My recollection is that that's correct, yes.

6 **Q.** And it's also your recollection that the first time
7 you spoke with Agent -- Special Agent Russell about Mr. Hall
8 having an attorney was when you stopped out during that
9 interview with Mr. Hall?

10 **A.** That's the way I remember it, yes.

11 MR. CLARK: I think that's it. Thank you.

12 THE COURT: Redirect?

13 MS. WAITE-GROVER: It may not be redirect. I just
14 want to ask him about whether Wuthrich instructed him. Are you
15 guys okay if ask a few questions?

16 UNKNOWN SPEAKER: Sure.

17 MS. WAITE-GROVER: Okay.

18 REDIRECT EXAMINATION

19 BY MS. WAITE-GROVER:

20 **Q.** When you executed the search warrant and conducted
21 the interview, did Assistant Attorney General Steve Wuthrich
22 direct you with how to execute the warrant?

23 **A.** No.

24 **Q.** Did he give you any questions to ask during the
25 interview?

1 **A.** No, he didn't.

2 **Q.** Did he -- was he present on the scene?

3 **A.** No.

4 **Q.** Did he choose who interviewed Hall, Mr. Hall?

5 **A.** No.

6 **Q.** Okay.

7 MS. WAITE-GROVER: No further questions.

8 THE COURT: Follow-up?

9 All right. You may step down.

10 (Indistinguishable speaking between attorneys.)

11 MR. JORDAN: Your Honor, I don't believe there's

12 anymore witnesses to call.

13 THE COURT: How about those that you wanted to

14 explore this other motion? Remember we started off with that?

15 We'd kind of reserve that and see where we were?

16 MR. CLARK: Right, your Honor. And I think as

17 Mr. Jordan and I were talking, what we want out of that motion

18 is already in the transcript that the Court -- that we've

19 stipulated to as an exhibit.

20 THE COURT: That we now have?

21 MR. CLARK: So I don't think we need to ask about

22 that.

23 THE COURT: Okay. All right. Fair enough.

24 MR. JORDAN: Your Honor, the only -- the only thing I

25 think that we would like to address is just we did have the

1 transcript. I think there's an order from the Court that it be
2 a protected document right now.

3 THE COURT: Right.

4 MR. JORDAN: We would ask that until the Court has at
5 least made a decision on this.

6 THE COURT: And I don't see there's any -- I mean,
7 I've already signed the order, so I'm going to have to have it
8 listed for it to change.

9 MS. WAITE-GROVER: Yeah. We don't have any objection
10 to that. We understand there's some phone numbers and e-mails
11 and that sort of thing.

12 THE COURT: Yeah, yeah.

13 MR. JORDAN: Okay. I just wanted to make sure.

14 THE COURT: Unless somebody specifically asks, it's
15 going to stay the status that it is.

16 MR. JORDAN: Okay. Thank you, your Honor.

17 THE COURT: Okay.

18 MS. WAITE-GROVER: And then perhaps one logistical
19 thing. We do have the audio recording of the interview that we
20 had planned to play part of today. We can give the thumb drive
21 to the clerk. I believe that was --

22 THE COURT: This was the same interview I have the
23 transcript of?

24 MS. WAITE-GROVER: Yes. The -- I think what we'll
25 point out is there one -- there's a time where Agent Downey and

1 Mr. Hall kind of talked over each other, and so we wanted to
2 play a slower version of that audio clip just to clarify one
3 other word that was added in there.

4 THE COURT: Do you want to do that now?

5 MS. WAITE-GROVER: We can if you'd like.

6 THE COURT: I assume we're going from here and doing
7 briefing, so if there's an issue, let's bring it out.

8 MS. WAITE-GROVER: Okay.

9 Martina, could you pull up that part of it?

10 And I can point -- so we can look at the record as
11 well, the written portion, because that will help us. This
12 would be State's Exhibit-1 on page 4. And it's the -- what we
13 anticipate that you'll hear in this is a word that's placed
14 around line 14 of page 4.

15 As it's written, Mr. Downey says on line 12, "Okay.
16 Like I said, you can decide at any point to not -- "

17 And then on line 14, it says Mr. Hall says "Okay."

18 We believe that if you listen closely to the
19 recording, it's actually Mr. Downey that says, "Okay ." And at
20 that same time, Mr. Hall says "Sure," the word "sure." It's
21 kind of a minor thing, but that's what we anticipate will be
22 heard with the (inaudible).

23 THE COURT: Is there a stipulation to that?

24 MR. JORDAN: We don't stipulate that it says that,
25 but we stipulate that they have an audio.

1 THE COURT: All right. Well, let's hear the audio
2 then.

3 MS. WAITE-GROVER: I think the audio will start
4 around page 3, line 20.

5 (Audio played.)

6 MS. WAITE-GROVER: So was that -- right at the end of
7 Mr. Downey --

8 THE COURT: Back it up. I'm not sure I heard what
9 you said, so back it up just a moment.

10 MS. WAITE-GROVER: Yeah. Right as Mr. Downey is
11 speaking on line 10, "With those right [sic] in mind, do you
12 want to talk?"

13 Mr. Hall says, "Sure," and is speaking over
14 Mr. Downey at that point.

15 THE COURT: Yeah. Let's go back on that. That's
16 what I didn't hear.

17 MS. WAITE-GROVER: Okay.

18 (Audio played.)

19 THE COURT: Back up again. I'm not sure I'm hearing
20 what he's saying. I could hear him saying something.

21 MS. WAITE-GROVER: Yeah. It would be Mr. -- I
22 guess -- but it would be Mr. Downey's testimony that he said,
23 "Sure."

24 THE COURT: Okay. Let's hear it again.

25 UNKNOWN SPEAKER: Okay. Do you want it at regular

1 speed? Or do you want me to slow it down further?

2 THE COURT: Was that regular speed? Or --

3 UNKNOWN SPEAKER: That was slow.

4 MS. WAITE-GROVER: That was half speed.

5 THE COURT: That was half speed?

6 MS. WAITE-GROVER: Yeah.

7 THE COURT: One more time.

8 (Audio played.)

9 THE COURT: All right. Let me hear it at regular

10 speed again. He's kind of in the background.

11 (Audio played.)

12 THE COURT: Okay.

13 MS. WAITE-GROVER: The audio recording kind of is

14 what it is. I get that.

15 THE COURT: Okay. Anybody else want to say anything

16 about that?

17 UNKNOWN SPEAKER: Nothing from the defense, your

18 Honor.

19 THE COURT: And you're going to leave us the digital

20 drive?

21 MS. WAITE-GROVER: Yes.

22 THE COURT: Okay. Any problem with that?

23 UNKNOWN SPEAKER: No, your Honor. We've stipulated

24 to that being in.

25 THE COURT: All right. So that's stipulated as far

1 as the -- an exhibit, as part of the -- okay. All right.

2 Sounds good.

3 UNKNOWN SPEAKER: Do we just need a briefing schedule
4 as far as the response and reply?

5 THE COURT: Well, that's why I'm going to go through
6 that. That's what you'd like me to do?

7 UNKNOWN SPEAKER: Oh, I apologize, your Honor.

8 THE COURT: Anything else we need to put on?

9 MS. WAITE-GROVER: I don't believe so, your Honor.

10 THE COURT: So it's your initial motion. It sounds
11 like you want to do more briefing. You've already filed
12 something, right? You want to stay on that and let them
13 respond?

14 UNKNOWN SPEAKER: We would -- we would like for them
15 to respond and then us to reply to that response.

16 THE COURT: Okay. When can the state file a
17 response?

18 MS. WAITE-GROVER: I think two weeks is the 10th,
19 which is a holiday for us, so let's just put us at the 9th. We
20 can get it in by then. And then we can schedule their reply
21 after that. November 9th, I should say.

22 THE COURT: Well, let me be a little more liberal
23 than that, because this is the way my schedule is, is I'm not
24 going to be able to fit this in within a couple weeks.

25 MS. WAITE-GROVER: Okay.

1 THE COURT: So why don't you take till the -- well,
2 why don't we go from today's date and take till the 17th?

3 MS. WAITE-GROVER: Okay.

4 THE COURT: How much time do you need to reply? A
5 couple weeks would be December the 1st if you wanted to go
6 there or even a little longer.

7 UNKNOWN SPEAKER: Two weeks is fine, your Honor.

8 THE COURT: All right. So the 1st of December?

9 UNKNOWN SPEAKER: Yes, your Honor.

10 THE COURT: Just going from Friday to Friday.

11 So the first one is the 17th of November. And the
12 second one, the reply, is the 1st of December.

13 And, well, I keep offering the week between Christmas
14 and New Year's. No one's taking it.

15 MS. WAITE-GROVER: We do have a pretrial conference
16 set for Tuesday, the 26th.

17 UNKNOWN SPEAKER: (Inaudible.)

18 MS. WAITE-GROVER: I have no vacation time as of yet,
19 so I'll be here.

20 THE COURT: Well, but we won't be able to do it on
21 the 26th. That's just law and motion. I can do it the 27th,
22 28th, or 29th, or the next time will be the week of the 8th. I
23 have the 10th in the morning that I could do or sometime during
24 the 12th. Actually 10:00, I can do it on the 12th. This is of
25 January.

1 MS. WAITE-GROVER: I'm unavailable on December 29th,
2 but I'm available any of the other days.

3 UNKNOWN SPEAKER: The only date that works is the
4 12th that you've mentioned for myself.

5 THE COURT: The 12th of January?

6 UNKNOWN SPEAKER: Yes, your Honor.

7 THE COURT: Let's do that at 10:00.

8 Given that, do you want to move your status
9 conference on the 26th?

10 MS. WAITE-GROVER: I can't imagine --

11 THE COURT: Since nothing else is going to happen on
12 that, right?

13 UNKNOWN SPEAKER: I think we should move it, your
14 Honor. It would just be a waste.

15 THE CLERK: (Inaudible.)

16 THE COURT: Is there a trial set?

17 THE CLERK: Yes. Final pretrial conference is the
18 26th. The second final pretrial conference on the 8th. Jury
19 selection, 17th of January. And trial 18th, 19th of January.

20 THE COURT: Are we going to get this done with this?
21 Or -- if we wanted to do the trial, we'd need to move up the
22 hearing date. I need to do it sometime in December, don't I?

23 UNKNOWN SPEAKER: I mean, your Honor, that doesn't
24 even take into account some of the Motions *in Limine* that we'd
25 be filing and stuff that would also be based on what's --

1 what's happening in this motion.

2 THE COURT: So it sounds like we're willing to say
3 the trial is not going to go?

4 UNKNOWN SPEAKER: For us, yes.

5 MS. WAITE-GROVER: Not on those dates.

6 UNKNOWN SPEAKER: Yeah, not on those dates.

7 MS. WAITE-GROVER: I mean, like, we -- I think we're
8 still working through the issues about the expert --

9 THE COURT: Why don't we do this? And I want to give
10 you time to work through the issues.

11 MS. WAITE-GROVER: Yeah.

12 THE COURT: I was slow in getting my ruling out
13 before, so why don't we strike the trial date, do the 17th as
14 the -- not the 17th -- the 12th as the -- not only the hearing,
15 but we'll do as kind of a scheduling conference/pretrial as
16 well.

17 UNKNOWN SPEAKER: That works, your Honor.

18 THE COURT: And then we can set other things. It
19 will give you a little opportunity to decide what other motions
20 you're going to file. And we'll go from motion to motion, and
21 then we'll set it for trial once we feel like we've got most of
22 that out of the way.

23 UNKNOWN SPEAKER: That works, your Honor.

24 THE COURT: Is that okay?

25 MS. WAITE-GROVER: And then just for my benefit,

1 because I'm not -- I'm new to this court, on the motion hearing
2 on January 12th, do you anticipate an oral ruling? Or is that
3 something you usually take under advisement and then we'd wait
4 for a written ruling? Obviously either way is fine. I just
5 want to know what to expect.

6 THE COURT: I usually rule from the bench if it's not
7 an issue. I'll have it researched then. I -- I took the time
8 on the other one for some exceptional reasons.

9 MS. WAITE-GROVER: Yeah.

10 THE COURT: But I usually try to rule quicker than
11 that.

12 THE CLERK: (Inaudible.)

13 THE COURT: Yes. Yeah. So the 26th and the 8th,
14 we'll just do our pretrial conference on the 12th with the
15 motion hearings.

16 UNKNOWN SPEAKER: We would prefer you to be at home
17 on the 26th, your Honor, of December. Just vacation.

18 THE COURT: Oh, I'm going to be here. There's -- I
19 have no life at all. So...

20 All right?

21 MS. WAITE-GROVER: That works. Thank you, your
22 Honor.

23 THE COURT: Anything else?

24 UNKNOWN SPEAKER: No, your Honor.

25 THE COURT: Okay. We'll see you guys. Thank you.

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UNKNOWN SPEAKER: Thank you.
THE COURT: We'll be in recess.
(Proceedings concluded.)

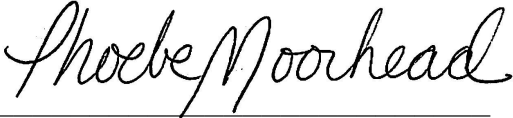
1 STATE OF UTAH)
2)
3 COUNTY OF SALT LAKE)

4 I, PHOEBE S. MOORHEAD, Certified Shorthand
5 Reporter for the State of Utah, certify:

6 That I received the audio recording and
7 transcribed it to the best of my ability into typewriting; that
8 a full, true, and correct transcription of said audio recording
9 so recorded and transcribed is set forth in the foregoing
10 pages.

11 I FURTHER CERTIFY that I am neither counsel
12 for nor related to any party to said action nor in anywise
13 interested in the outcome thereof.

14 Certified and dated this 30th day of October,
15 2023.

16 
17 _____
18 PHOEBE S. MOORHEAD, RPR, CRR
19 Certified Shorthand Reporter
20 for the State of Utah
21
22
23
24
25

1	absolutely [2] - 18:14, 24:10 according [1] - 15:13 account [1] - 39:24 accurate [5] - 13:8, 16:13, 17:17, 21:1, 21:2 accused [1] - 25:13 added [1] - 34:3 address [3] - 7:12, 7:25, 32:25 administrative [1] - 5:1 advisement [1] - 41:3 affect [2] - 18:23, 19:6 afternoon [2] - 30:23, 30:24 AG [1] - 16:25 AG's [4] - 9:23, 9:25, 12:5, 12:8 Agent [7] - 17:11, 29:16, 29:17, 29:19, 30:11, 31:7, 33:25 agent [15] - 4:25, 5:1, 8:25, 9:15, 12:14, 13:22, 20:21, 21:5, 21:11, 24:14, 25:25, 26:22, 30:9, 30:23, 31:7 agents [1] - 22:6 agreed [2] - 20:13, 20:17 ahead [7] - 4:19, 6:16, 8:5, 8:17, 9:8, 21:3, 30:20 ahold [1] - 25:7 allow [1] - 19:11 allowed [1] - 22:1 anticipate [3] - 34:13, 34:21, 41:2 apologize [8] - 6:1, 6:15, 9:19, 11:16, 16:25, 18:2, 18:6, 37:7 appearances [1] - 4:5 appreciate [1] - 21:8 area [1] - 28:25 areas [1] - 12:20 arise [1] - 16:11 assigned [1] - 12:8 assignment [1] - 28:22 assignments [1] - 28:22 assist [1] - 12:13 assistant [3] - 5:2, 16:25, 24:5 Assistant [1] - 31:21 assume [2] - 6:10, 34:6 attempt [2] - 17:13, 29:18 attempted [1] - 29:15 attorney [22] - 13:13, 14:22, 14:24, 15:3, 15:12, 16:10, 17:15, 22:2, 24:5, 25:2, 25:14, 26:16, 29:15, 29:17, 29:20, 29:24, 30:4, 30:5, 30:8, 30:15, 31:4, 31:8 Attorney [2] - 27:20, 31:21 attorneys [3] - 5:9, 22:23, 32:10	audio [12] - 16:25, 22:2, 33:19, 34:2, 34:25, 35:1, 35:3, 35:5, 35:18, 36:8, 36:11, 36:13 available [1] - 39:2 aware [5] - 11:21, 14:18, 24:23, 27:24, 28:4 Ayers [12] - 14:22, 14:25, 15:2, 15:20, 16:10, 23:15, 23:16, 24:20, 24:24, 25:6, 26:3, 26:6	Christopher [1] - 4:4 city [1] - 15:9 clarification [1] - 7:7 clarify [2] - 15:4, 34:2 CLARK [4] - 30:22, 31:11, 32:16, 32:21 Clark [1] - 4:8 clear [1] - 15:17 clerk [1] - 33:21 Clerk [2] - 9:12, 27:14 CLERK [3] - 39:15, 39:17, 41:12 clip [1] - 34:2 close [2] - 9:20, 17:2 closely [1] - 34:18 code [1] - 6:20 Coke [1] - 18:25 coke [3] - 19:1, 19:12, 21:7 coming [2] - 7:18, 18:8 common [1] - 30:4 complaint [1] - 11:21 computer [8] - 6:22, 7:3, 7:6, 7:8, 7:15, 26:10, 26:12, 26:16 computers [2] - 17:14, 17:20 concerning [1] - 4:16 concluded [1] - 42:3 conclusions [2] - 22:16, 22:18 conduct [1] - 29:18 conducted [2] - 30:4, 31:20 conference [5] - 38:15, 39:9, 39:17, 39:18, 41:14 conference/pretrial [1] - 40:15 confirmed [2] - 23:3, 23:14 considering [1] - 4:16 constant [1] - 11:24 contact [10] - 11:24, 12:3, 12:13, 23:23, 25:6, 25:13, 28:24, 29:16, 29:18, 30:14 contacted [1] - 30:8 contained [2] - 10:18, 20:14 continue [5] - 12:10, 18:6, 18:13, 22:24, 30:16 conversation [6] - 21:13, 24:24, 26:1, 26:2, 26:6, 28:5 conversations [2] - 13:13 cool [1] - 15:18 correct [30] - 4:12, 4:14, 4:18, 7:14, 9:17, 10:24, 10:25, 11:5, 11:14, 13:6, 13:7, 13:20, 13:21, 14:15, 14:17, 14:19, 14:20, 15:8, 15:12, 16:2, 17:22, 20:13, 24:22, 26:3, 26:8, 26:10, 26:14, 26:17, 28:4, 31:5 counsel [6] - 4:5, 28:1,
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