

FILED
DISTRICT COURT

STATE OF MINNESOTA

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT
February 15, 2024

**OFFICE OF
APPELLATE COURTS**

State of Minnesota,

File No.70-CR-22-14898

Plaintiff,

vs.

CONTESTED OMNIBUS HEARING

Michael Tien Huynh,

Defendant.

The above-entitled matter came on for hearing

before the Honorable Caroline H. Lennon, Judge of the

above-named Court, on October 6, 2023 at the Scott County

Government Center, in the City of Shakopee, County of Scott,

State of Minnesota.

APPEARANCES

Steven Kelm, Assistant Scott County Attorney,

appeared for and on behalf of the State of Minnesota.

Eric Anunobi, Attorney at Law, appeared for and on

behalf of the Defendant.

The Defendant was personally present.

ADDENDUM 1

I N D E XWITNESSES**Detective Michael McLain**

Direct Examination by Mr. Kelm	5
Cross-Examination by Mr. Anunobi	21
Redirect Examination by Mr. Kelm	46

Dr. Randy Ward

Direct Examination by Mr. Anunobi	48
Cross-Examination by Mr. Kelm	59
Redirect Examination by Mr. Anunobi	63
Recross-Examination by Mr. Kelm	65

Dr. Ian Heath

Direct Examination by Mr. Anunobi	67
Cross-Examination by Mr. Kelm	79
Redirect Examination by Mr. Anunobi	82

Thao Kay Harvey

Direct Examination by Mr. Anunobi	86
Cross-Examination by Mr. Kelm	90
Redirect Examination by Mr. Anunobi	91

EXHIBITS

<u>Exhibit</u>	<u>Marked</u>	<u>Offered</u>	<u>Received</u>
8A	--	30	30
8	--	45	46
6	--	51	51
2	--	54	55
3	--	--	70

1 THE COURT: This is State of Minnesota versus
2 Michael Tien Huynh. Counsel, for the record.

3 MR. KELM: Steve Kelm for the State.

4 MR. ANUNOBI: Yes, Eric Anunobi, for the
5 Defendant. Anunobi is A as in apple, N-U-N as in Nancy
6 again, O-B-I.

7 THE COURT: We also have an interpreter present
8 for the benefit of the Defendant.

9 THE INTERPRETER: Yes, Your Honor. Lana Nguyen,
10 certified Vietnamese interpreter.

11 THE COURT: Have you been sworn today, Ms. Nguyen?

12 THE INTERPRETER: No, Your Honor.

13 (Interpreter sworn in.)

14 THE INTERPRETER: Yes, I do, Your Honor.

15 THE COURT: Thank you. All right. We're here
16 today set for contested omnibus hearing. I understand that
17 the State has a witness to present as to the statement taken
18 from the Defendant. We'll start with that evidence. You
19 may call your witness --

20 MR. ANUNOBI: Your Honor, before we go on can I
21 please discuss some housekeeping issues just before we go
22 on?

23 THE COURT: I just would like to get the officer
24 who's been waiting out of here. Is it relevant to his
25 testimony?

ADDENDUM 3

1 MR. ANUNOBI: It is -- well, it is relevant, Your
2 Honor. Yes, it is relevant, Your Honor.

3 THE COURT: Go ahead.

4 MR. ANUNOBI: Your Honor, I was going to ask that
5 in -- during the course of testimony that is going to be
6 given that the Defendant be restricted, if at all, to
7 talking about what happened during the time the statement
8 was taken and not to discuss anything about the main case.

9 THE COURT: Your client?

10 MR. ANUNOBI: Yes, Your Honor. I want -- he's
11 going to testify, but I wanted it to be narrowed down to
12 what's happened during the time he was interviewed and not
13 anything about -- the substantive case itself.

14 THE COURT: Okay. We'll address that when it's
15 time for him to testify.

16 MR. ANUNOBI: All right, Your Honor.

17 THE COURT: Mr. Kelm, why don't you call your
18 witness.

19 MR. KELM: Thank you, Your Honor. The State would
20 call Detective McLain. He's outside if I can go get him.

21 THE COURT: Sure. Come on up, officer.

22 THE WITNESS: Hello, Your Honor.

23 THE COURT: Can I have you raise your right hand.

24 Michael Leroy McLain,

25 the Witness in the above-entitled

ADDENDUM 4

1 matter, after having been duly sworn,
2 testifies and says as follows:

3 THE WITNESS: Yes.

4 THE COURT: Thanks. Have a seat. Once you are
5 settled there, give me your full name, spelling of your
6 last, please.

7 THE WITNESS: Full name is Michael Leroy McLain.
8 My last name is spelt M-C capital L-A-I-N.

9 THE COURT: Very good. And go ahead, Mr. Kelm.

10 MR. KELM: Thank you, Your Honor.

11 **DIRECT EXAMINATION**

12 BY MR. KELM:

13 Q Detective McLain, can you tell the Court where you're
14 currently employed?

15 A Shakopee Police Department.

16 Q And are you a licensed peace officer?

17 A Yes, I am.

18 Q How long have you been a peace officer?

19 A I've been licensed since 2011.

20 Q And can you briefly go over your training and experience?

21 A Well, I have a two-year degree from -- two-year associate's
22 degree in law enforcement, I have my four-year degree from
23 Concordia in criminal justice. I have been a community
24 service officer, a patrol officer in Hutchinson, a narcotics
25 agent for southwest metro drug task force, I was a school

ADDENDUM 5

1 resource officer for Shakopee, and I am currently a
2 detective and have been a detective since January of 2022.

3 Q And as part of your training to be a peace officer did you
4 have training on interviewing subjects of an investigation?

5 A Yes.

6 Q And have you had training on mental health and mental health
7 disorders?

8 A Yes.

9 Q Have you also had training on dealing with people
10 intoxicated, whether it's through alcohol or other
11 substances?

12 A Yes.

13 Q And in the time that you've been a peace officer working on
14 drug task force, school resource, patrol, detective, have
15 you had incidents where you've come in contact with people
16 that are in mental health crises?

17 A Yes.

18 Q And the same, have you had contact with people that have
19 been high on controlled substances?

20 A Yes.

21 Q And have you had contact with people under the influence of
22 alcohol?

23 A Yes.

24 Q And would you say that's something that's occurred quite
25 frequently in the years that you've been a peace officer?

ADDENDUM 6

DIRECT - MCLAIN

1 A Yes.

2 Q And were you working as a detective for Shakopee on
3 March 30th, 2022?

4 A Yes.

5 Q And at that time do you remember interviewing a Michael
6 Huynh?

7 A Yes.

8 Q And do you recall where that interview took place?

9 A Hennepin County Medical Center.

10 Q And what were you there for that day?

11 A I was there to interview an individual -- or Michael --
12 about a sexual assault that had been reported to me.

13 Q And do you recall why he was in the hospital at that time?

14 A Yes. He had -- he had been reported to me that he had
15 intentionally drove his vehicle into another vehicle trying
16 to harm himself.

17 Q And did you actually have contact with him that day?

18 A I did.

19 Q And if you saw him again would you be able to recognize him?

20 A Yes.

21 Q Is he in the courtroom today?

22 A Yes.

23 Q Can you briefly describe what he's wearing and point him out
24 to the court?

25 A I believe it looks like a yellow shirt, he's got short hair,

ADDENDUM 7

1 interpreter speaking with him.

2 THE COURT: The record will reflect the witness
3 has identified the Defendant.

4 BY MR. KELM:

5 Q And how were you able to come in contact with him that day?
6 For example, did you talk to nurses, doctors, or how did you
7 locate him?

8 A Yes, I had checked on his status when I found out that he
9 was in an accident. I'd been told that he went to St.
10 Francis and then was transferred to Hennepin County and then
11 was intubated. So I was told on the 29th, I believe that
12 was the day that the accident occurred and that was the day
13 I was going to interview him, he was suppose to come down to
14 the police department. And so I contacted them on the 30th
15 and asked if -- what his status was and they had said that
16 he'd been extubated and I asked if it was okay if I had come
17 to speak with him. I did that specifically because I didn't
18 want to drive down to Hennepin County Medical Center and not
19 be able to talk to him --

20 Q So --

21 A -- or not be able to get access to him.

22 Q So initially you were set up to interview him on the 29th?

23 A If memory recollects, yes.

24 Q And then that's the day you found out he was in a car
25 accident?

ADDENDUM 8

1 A Correct.

2 Q And so then you referenced they and them talking about
3 getting ahold of him. Are you talking about hospital staff?

4 A Yeah. Medical staff.

5 Q And so the hospital staff told you you would be able to
6 interview him?

7 A Well, they said I would have access to him, that's all I
8 wanted to know. Whether or not he was going to speak to me
9 that was up to him. So --

10 Q And so then on the 30th you did go to HCMC, correct?

11 A Correct.

12 Q And what did you do when you got to hospital?

13 A I spoke to a nurse at the front desk asking if I could --
14 letting him know I had called ahead and they knew who I was
15 and why I was there and who -- or who I was there to see and
16 they escorted me to his room.

17 Q And they said you were allowed to talk to him at that time?

18 A Yes.

19 Q And what did you see when you got to his room?

20 A Saw him in the hospital bed, eyes were open.

21 Q So he was awake at the time?

22 A Yes. I mean -- yes.

23 Q Did you see any type of equipment or anything hooked up to
24 him?

25 A I guess I wasn't paying much attention, but yeah I'm

1 guessing there was stuff hooked up to him.

2 Q Do you recall if there was anything in his mouth or nose?

3 A I don't. But I know that they had told me that he had been
4 extubated so there was nothing obstructing his mouth.

5 Q And was there anybody else in the room at that time?

6 A In the beginning I believe there was an individual that was
7 watching him. He was on a one-on-one care due to concerns
8 for self-harm.

9 Q And do you know who that person was?

10 A I do not.

11 Q Do you know if that person was a law enforcement agent?

12 A No.

13 Q And they --

14 THE COURT: No you don't know or no he wasn't law
15 enforcement?

16 THE WITNESS: Sorry. I don't believe he was law
17 enforcement.

18 THE COURT: Thank you.

19 BY MR. KELM:

20 Q And that person was not there under your direction, correct?

21 A No.

22 Q In fact you said you don't even know who that person was?

23 A Correct.

24 Q But your understanding was that that person was there to
25 make sure that he didn't harm himself; is that correct?

ADDENDUM 10

1 A Correct.

2 Q And do you believe -- when you spoke to him was he under a
3 72-hour hold at that time?

4 A I can't remember if I knew at that time that he was, but yes
5 he was. And I looked that up earlier and it was the state
6 patrol that handled that -- that accident. So --

7 Q So when you first made contact with the Defendant what did
8 you tell him?

9 A I told him that -- I identified myself, who I was, and I
10 told him that he didn't need to speak with me and since he
11 was in a hospital room and under the care of -- under
12 medical care since he couldn't leave, he could just tell me
13 to leave and I would go.

14 Q And do you recall what you were wearing that day?

15 A I do not.

16 Q Do you think you wearing a uniform or would you have been in
17 plain clothes?

18 A I would have been in plain clothes.

19 Q And did you have body camera on you at the time?

20 A I did not.

21 Q So would you say you're probably wearing something similar
22 to what you're wearing today?

23 A It's a little bit dressed down. I'm dressed up for court.

24 Q Okay. But similar in that your badge is probably on your
25 belt like that?

1 A Yes. My badge is always on my belt unless I'm wearing a
2 longer shirt which would cover my badge, then I put it on a
3 chain and hang it around my neck.

4 Q And you would have been carrying your sidearm, correct?

5 A Yes.

6 Q And it would have been similar to what it is today?

7 A Yes.

8 Q So you wouldn't have been wearing like a duty belt or
9 anything else?

10 A No.

11 Q And so the first thing --

12 THE COURT: Excuse me. Are you gentlemen
13 witnesses?

14 UNIDENTIFIED SPEAKER: Yes.

15 THE COURT: I'm gonna have to ask that you wait in
16 the hallway. Thank you. Go ahead.

17 BY MR. KELM:

18 Q And so you stated the first thing you told him was that he
19 didn't have to talk to you, correct?

20 A Correct.

21 Q Did you read him his Miranda rights?

22 A I did not.

23 Q Why not?

24 A He wasn't in custody.

25 Q And was there any possibility while you were there that you

ADDENDUM 12

- 1 would take him into custody?
- 2 A No.
- 3 Q And is that because he was in a hospital receiving care?
- 4 A Yes. And I was going to formally put that -- in an earlier
5 report that what I notified him was that I am going to write
6 a report and formally submit it to the Scott County
7 Attorney's Office so they can review it to determine whether
8 or not they wanted to pursue -- or move forward with
9 charges.
- 10 Q And you had explained that to him?
- 11 A Not that part to him. That was said earlier to somebody
12 else, but I noted it in my report.
- 13 Q Okay. And do you recall where you were in the room?
- 14 A I was standing at the foot of the bed I believe.
- 15 Q Do you remember if you were blocking the doorway at all?
- 16 A No, the doorway would have been off to my right.
- 17 Q And you didn't disable any of the communication devices in
18 the room did you?
- 19 A No.
- 20 Q And at any time did you ever have your firearm out of its
21 holster or out of your waist area?
- 22 A No.
- 23 Q What was your -- what was the demeanor of your questioning
24 with the Defendant?
- 25 A I mean, like my tone of voice with him?

1 Q Yes.

2 A I don't know. Probably kind of like what I am right now.
3 When I interview people I'm not going to -- I don't know if
4 I'm different or not. I'm not judging the guy, I'm simply
5 trying to figure out what's happening with the story. So
6 I'm not mad at him, he didn't hurt me. I'm just trying to
7 figure it out so -- I'm not --

8 Q And so --

9 A I don't know how to describe that, but --

10 Q That's fine. Maybe to back up here, we talked about the
11 body cam video. Did you record this interview though?

12 A I did a tape recorder.

13 Q And have you had a chance to listen to that?

14 A I have not listened to it, no.

15 Q Okay. Did you have any problems with your recorder at the
16 time?

17 A I know that I noted in my report that when they brought in
18 food for him that I asked if they would shut the door
19 because there was noise coming from the hallway and I didn't
20 want it to distort the recording.

21 Q But otherwise generally it worked pretty well?

22 A I believe so.

23 Q And so during that questioning with the Defendant, did you
24 ever raise your voice or become upset with him?

25 A I don't recall. I don't think I did though. I was actually

ADDENDUM 14

1 sympathetic.

2 Q And do you remember -- did you ever threaten him about
3 anything whether it was an arrest or any other type of
4 threat at all?

5 A No.

6 Q You also said that you told him he did not have to talk to
7 you, correct?

8 A Yes. In the beginning and twice throughout the conversation
9 -- the statement.

10 Q Okay. Maybe I should back up again. When we're talking
11 about you talking to the Defendant you were actually using
12 your telephone through the language line, correct?

13 A Yes. Correct.

14 Q So you had your telephone out in front of you; is that
15 correct?

16 A Yes. I mean, if we're going to get specific I'm not sure
17 exactly, but yes it was out there.

18 Q And then you had it on speaker phone; is that correct?

19 A Correct.

20 Q And that way the interpreter could hear you and the
21 Defendant?

22 A Yes.

23 Q And so you would ask questions and she would interpret those
24 in Vietnamese?

25 A Correct.

ADDENDUM 15

1 Q And then he would answer in Vietnamese and explain to you
2 what he said?

3 A Correct. He did over that course though say some words
4 himself in English.

5 Q Okay. And so during that time you had -- what I'm saying
6 you told him that he didn't have to -- you had the
7 interpreter tell him these things, correct?

8 A Yes.

9 Q And do you recall how many times you had the interpreter
10 tell him that he did not have to speak to you?

11 A Well, there's three. One in the beginning, there was a
12 second time in there where I was telling the interpreter to
13 tell him again, like just verifying. Make sure you know
14 because -- the way I was reading him was he appeared to be
15 very ashamed. And so I -- I don't know, I felt -- kind of
16 felt sorry for the guy just, you know, to say that again
17 just remind him, make sure he knows he doesn't need to talk
18 to me. But he had -- he had then started telling me
19 something, I can't remember exactly what it was. So I don't
20 believe the interpreter had told him the second time, but
21 then there was a third time and that was a confirmation
22 where he had to respond and he responded with a yes.

23 Q And you also told him that he wasn't free to leave because
24 he was in the hospital, but you would leave; is that
25 correct?

1 A Yes. And it wasn't because I had him in custody, he was
2 there for his mental health issue, his hold. So yes I told
3 him I would leave. That was in the beginning.

4 Q And so while you were speaking to the Defendant how would
5 you describe his demeanor?

6 A Like I said, ashamed. I can't -- how I felt, like, he
7 didn't really want to make eye contact. I don't know, it
8 was just a feeling I guess. I've talked with so many people
9 in my career and my life I just kind of end up just kind of
10 reading the room, right. Reading the situation, reading
11 their responses. I understand that there is some lost there
12 with translations not being able to speak the same language,
13 but I know that's what I felt. So --

14 Q Did you during that time believe that he understood at least
15 through the interpreter what you were asking him?

16 A I did.

17 Q And did he seem to comprehend your questions?

18 A He did. He even would answer me before the interpreter
19 could interpret.

20 Q And were his answers appropriate to the questions you were
21 asking?

22 A Yes.

23 Q And in that I mean if you would ask him about "X" he would
24 respond about "X"?

25 A Yep. I asked him his name, he gave his name. I asked him

ADDENDUM 17

1 where he lived, he gave me his address. I asked him, you
2 know, who he lives with, he told me the people he lives
3 with.

4 Q And it went that way throughout your questioning with him?

5 A Yes.

6 Q Was there at any time while you were asking him questions
7 that his answers didn't make sense or did not fit the
8 questions you were asking?

9 A Not that I can recall, no.

10 Q Do you remember him saying anything strange or out of the
11 ordinary that would catch you off guard or didn't pertain to
12 what you were talking about?

13 A No.

14 Q Did he seem coherent while he was laying there in his
15 hospital bed?

16 A Yes.

17 Q And so he seemed alert and knew what was going on around
18 him?

19 A Yes.

20 Q And again, based on your training and experience you have
21 dealt with people that have been either intoxicated or under
22 the influence of different substances, correct?

23 A Yes.

24 Q And so have you had conversations with people like that in
25 the past and been able to determine they did not know what

ADDENDUM 18

1 was going on around them?

2 A Yes.

3 Q And did you see any of those signs that day?

4 A No.

5 Q Was there anything at all during your entire -- actually let
6 me back up. Do you -- do you have a ballpark idea of how
7 long you were with him?

8 A I'm sorry. I do not.

9 Q If I told you 40, 45 minutes long, would that seem about
10 right?

11 A Yes.

12 Q And so during that 40, 45-minute period, was there ever any
13 point at all that he made you believe he didn't understand
14 what was going on around him?

15 A No. Not that I can recall.

16 Q And again not only have you been trained to deal with people
17 like that and you've dealt with people like that during your
18 time, but have you also been trained to recognize signs of
19 mental impairment or disfunction?

20 A Yes. I went to a CIT class, which is specifically related
21 to mental health and I've been through other trainings, but
22 that one was the longest one. That was a week long.

23 Q And did you recognize any of those signs that you were
24 taught while you were speaking to the Defendant?

25 A No. Like I said, the only thing I thought I saw was shame

ADDENDUM 19

1 and remorse.

2 Q And so the bulk of your conversation was about the crim
3 [sic] sex charge that you were there investigating, correct?

4 A Correct.

5 Q And so when you say shame and remorse, you're talking about
6 that type of crime?

7 A Right. Any sexual assault is -- it's difficult to talk with
8 victims and suspects. You're touching on difficult things
9 to talk about.

10 Q And so when you were talking to him were his eyes open the
11 entire time?

12 A I couldn't recall. I mean, he wasn't sleeping.

13 Q Yeah. So maybe put it another way, was he dozing off when
14 you were talking to him?

15 A Not that I recall, no.

16 Q And do you recall him losing focus, drifting away when you
17 were talking to him?

18 A Again, not that I recall.

19 Q Now what if while you were discussing this he started saying
20 things that were kind of off the wall or seemed to be dozing
21 off or falling asleep. What would you have done?

22 A What would I have done? If he fell asleep I would probably
23 end the conversation, I would take that as there's no reason
24 to move forward, I guess. I wasn't trying to force the guy
25 to talk to me that's why I said it three different times. I

ADDENDUM 20

1 mean, if he was like -- if he appeared like he was in pain
2 or anything like that I would have -- I would have notified
3 a nurse and discontinued and talked to him at a later time.
4 Q But none of that happened because you didn't notice any of
5 those signs?

6 A Correct.

7 MR. KELM: I have nothing further at this time,
8 Your Honor.

9 THE COURT: Cross-Examination, Mr. Anunobi?

10 MR. ANUNOBI: Yes, Your Honor. Thank you.

11 THE COURT: Go ahead.

12 CROSS-EXAMINATION

13 BY MR. ANUNOBI:

14 Q Officer McLain.

15 A Yes.

16 Q You just indicated that you had a C and T [sic] training,
17 right?

18 A CIT. Yeah.

19 Q You call it CIT?

20 A Charlie, Ida, Tom. CIT.

21 Q Okay. That was part of your training as an officer?

22 A It was -- it was one I requested to go to. It wasn't
23 mandatory.

24 Q Okay. And how long did you have this training, Mr. McLain?

25 A I wouldn't be able to tell you when I had it. I know it was

1 a 40-hour class.

2 Q It was a 40-hour class?

3 A Correct.

4 Q Over what period of time?

5 A Are you talking about -- I just said I don't know when I
6 took it. I don't remember, but I had training records if we
7 need that.

8 Q No, I guess my question is just simple. Did you have this
9 40-hour training over a one-week period or from day-to-day?
10 How did you have this training?

11 A It was one week, yeah.

12 Q It was in one week?

13 A Yeah.

14 Q That means that you probably spent about eight hours a day,
15 is that fair to say --

16 A Yes.

17 Q -- on this training? What does this CIT training deal with?

18 A Well, it's -- it's how to talk to people or recognize signs
19 of impairment, mental health primarily, and how to
20 deescalate the situation so that you don't have to use
21 force.

22 Q What kind of mental health?

23 A Well, I mean, you know, bipolar, schizophrenia, host of
24 different -- anything that would probably alter the mood.
25 It's to try to help us to get to understand and recognize

ADDENDUM 22

1 the difference between someone that is under the influence
2 of a substance versus someone who is struggling with mental
3 health. Like hearing voices or -- or, you know, dementia,
4 not understanding.

5 Q So essentially your training had to do more with people
6 under the influence of substances? What are you trying to
7 say?

8 A No because every one of the scenes that I role played were
9 mental health related.

10 Q No, I'm asking there are different kinds of mental health.
11 I'm asking specifically about people under the influence of
12 substances like drugs, like alcohol, were they the kind of
13 people -- were they the kind of training that was covered by
14 this?

15 A Alcohol, drugs, and mental health.

16 Q So essentially you did not do any training about people that
17 were psychotic or people that had very serious mental health
18 issues?

19 A Oh, no. There was definitely mental -- very serious mental
20 health issues, yes.

21 Q Okay.

22 A Yep.

23 Q Are you able to identify -- are you able to identify by an
24 outward appearance when somebody has a mental health issue
25 from your training?

ADDENDUM 23

1 A If I talk to them long enough I can tell whether or not
2 there -- there's something wrong, yes.

3 Q In this case --

4 A Can I diagnose it? No.

5 Q Okay. You cannot diagnose it?

6 A Nope.

7 Q In this case you spoke to Mr. Huynh from your statement for
8 about 40 minutes. Were you able to -- to -- I mean, 40
9 minutes was that period of time enough for you determine
10 whether somebody was mentally impaired?

11 A Yeah, I mean, if it's -- if they're having an episode or
12 something. If it's something that's being controlled by
13 medications and it's not rearing its head so to speak, then
14 maybe not. But I have to assess situations very quickly in
15 my job. I don't have hours, days at a time to assess an
16 individual. I have short periods of time to assess an
17 individual and figure it out and that can be very, very
18 short. I'm talking minutes.

19 Q And so it is quite possible that in this case the Defendant
20 could have had some mental health situations that you could
21 not determine in your position --

22 A Yep.

23 Q -- with the interview, correct? You see that, right?

24 A I said yes. Yep.

25 Q Okay. Now, Officer, I'm going to go into some of the things

ADDENDUM 24

1 you have just said. First of all -- but before I go there
2 I'm going to ask you about your training. Officer, how long
3 have you been a detective?

4 A I've been a detective since January of 2022.

5 Q And what do -- and would this be in Shakopee?

6 A Yes.

7 Q And -- okay. As a detective what does your training entail?

8 A Well, that's -- that's not just trainings that I've taken
9 since I've been a detective. I also knew I wanted to be a
10 detective so I took trainings prior to that. There's
11 interview and interrogation, there's search warrant writing,
12 there's crime scene processing, a host. I have a training
13 folder. I've been to a lot of different trainings.

14 Q Okay.

15 A Even when I was a narcotics agent that's considered a
16 detective or investigations position so some of those
17 courses relate to being a detective.

18 Q As a detective have you ever, ever interviewed anybody
19 that's had a mental health problem -- I mean outside of
20 drugs and alcohol -- have you ever interviewed anybody who
21 was undergoing psychiatric treatment in a hospital?

22 THE COURT: I think that was about three different
23 questions.

24 MR. ANUNOBI: Okay.

25 THE COURT: So have you ever interviewed somebody

ADDENDUM 25

1 who you think had mental health issues?

2 THE WITNESS: Yes.

3 THE COURT: Have you ever treated someone who was
4 being actively treated in a mental health crisis in a
5 hospital?

6 THE WITNESS: I don't believe so, but I'm not sure
7 either.

8 THE COURT: Okay.

9 MR. ANUNOBI: Okay. Thank you, Your Honor. I
10 really appreciate it.

11 THE WITNESS: I've talked to a lot of people in
12 12 years.

13 BY MR. ANUNOBI:

14 Q Okay. Now, Officer McLain, you are not a psychiatrist?

15 A You're correct.

16 Q And you don't have any kind of psychiatric training?

17 A What -- what are you -- what are you entailing there? I
18 mean --

19 Q The way --

20 A -- I'm not -- like I said, I can't diagnose things. I can
21 visually see signs.

22 Q Okay. You are not a nurse?

23 A I am not a nurse, you're correct.

24 Q You have not received any kind of training -- well, you've
25 just said you're not able to diagnose when people have

ADDENDUM 26

1 psychiatric problems.

2 A Yes, I can. I mean, like I said I can't diagnose it.

3 Q Okay. And you're not a EMT specialist, for example?

4 A An EMT specialist?

5 Q Yes.

6 A I am not an EMT --

7 Q What I mean is that you didn't do EMT training?

8 A I did actually do EMT training, but I am not EMT. I am an
9 EMR, emergency responder.

10 Q Okay.

11 A But my original schooling when I went to school to be a
12 firemen it was an EMT class that I took.

13 Q Okay. And as -- well, when you did your EMT classes --

14 A Mm-hmm.

15 Q -- you did not deal with anything involving someone who had
16 psychiatric problems?

17 A That was back in 2004 or '5. I don't remember --

18 Q Okay.

19 A -- that far.

20 Q Okay. Okay. Now you indicated while you were testifying
21 that you told Defendant he did not need to speak to you.

22 A Yes.

23 Q And you said you told him that because he was not free to
24 leave, correct? Okay. Sorry. Let me rephrase the question.
25 I'm sorry. I'll rephrase it.

ADDENDUM 27

1 A Okay.

2 Q You told Defendant from the statement you said -- you told
3 him that nobody would have allowed him to leave, but that he
4 was under hold by the hospital?

5 A I said since he can't leave the hospital because he's under
6 medical training that he could just tell me to leave since
7 he wasn't able to leave the hospital.

8 Q Officer, do you realize that from your statement you never
9 told him he was not free -- you never told him that he was
10 not free to leave because of the hospital?

11 A Can I refer --

12 THE COURT: I'm sorry. That was a double negative
13 in there. Are you saying the officer told the Defendant he
14 was not free to leave?

15 MR. ANUNOBI: The officer told the Defendant he
16 was -- the officer did not tell the Defendant he was not
17 free to leave.

18 THE COURT: You did not tell him that he was not
19 free to leave?

20 THE WITNESS: I'm -- I guess I'm struggling.

21 THE COURT: Did you ever tell him he wasn't free
22 to leave?

23 THE WITNESS: Hold on -- can I read from my
24 report, Your Honor? I want -- because I want to --

25 THE COURT: Refresh your memory and then you can

1 testify from it. You can't read to me from it.

2 THE WITNESS: Okay. Okay. I had explained to him
3 that typically I would tell people in that manner, you know,
4 you don't to have to talk to me and you are free to leave,
5 but since he had to stay in the hospital for safety concerns
6 if he didn't want me in his room he could ask me to leave.

7 BY MR. ANUNOBI:

8 Q Okay. That was your -- that was what you summarized in your
9 reports?

10 A Correct.

11 Q Okay. Officer, would it surprise you to know that in your
12 actual interview you never told him any of these things? In
13 your actual interview which is an exhibit here which is
14 already -- which we've already submitted, you said to him,
15 "first and foremost I want to tell you that you don't have
16 to talk to me." You never told him anything about his
17 leaving. Would that surprise you?

18 A It would because I have a pretty routine way of doing things
19 and when I do my statements, the reason this -- my reports
20 are 23 pages long for this case is because I relisten to my
21 statements and type not word-for-word you're correct, but I
22 listen to statements as I read my reports.

23 Q Okay.

24 MR. ANUNOBI: And, Your Honor --

25 BY MR. ANUNOBI:

ADDENDUM 29

1 Q Well, Officer, I'm going draw your attention to the
2 transcript of your statement.

3 A Okay.

4 Q I'm going to ask you to look at it.

5 A Yeah.

6 Q And tell what I just --

7 THE COURT: Counsel, you're going to need to mark
8 that first and refer to it by its exhibit number, please.

9 MR. ANUNOBI: Yes, Your Honor. At this stage I
10 want to show to the officer what has been premarked for
11 identification purposes Exhibit 8A.

12 THE COURT: I am sorry exhibit what?

13 MR. ANUNOBI: 8A. "A" as in apple, Your Honor.

14 THE COURT: Eight. Got it. Exhibit 8, as in the
15 number 8, not the letter.

16 MR. ANUNOBI: Yes.

17 THE COURT: Exhibit 8 is the transcription of the
18 statement with Defendant on December -- March 30th of 2022,
19 correct?

20 MR. ANUNOBI: Yes, Your Honor.

21 THE COURT: And you've agreed to that, Mr. Kelm?

22 MR. KELM: Yes, Your Honor.

23 THE COURT: 8 is received.

24 MR. ANUNOBI: Your Honor, may I approach the
25 witness?

ADDENDUM 30

1 THE COURT: You may.

2 BY MR. ANUNOBI:

3 Q I'll give you time to look at it and then I'll ask you.

4 A Okay.

5 Q On page two of that document on the top paragraph.

6 A Mm-hmm. Yes.

7 Q You said, "And typically I would say you are free to leave,
8 but obviously you're in a hospital bed. So if you don't
9 want me here you can tell me and I will leave if you don't
10 want me here."

11 A Okay.

12 Q Would that be correct?

13 A Yeah, if --

14 Q So you never told the Defendant he was on a hold by the
15 hospital. You never told him that he was on a hold.

16 A Because I didn't put him on a hold.

17 Q I'm sorry.

18 A Because I didn't put him on a hold.

19 Q I know, but you never told him that he was being detained by
20 the hospital?

21 A No.

22 Q That's what I'm just trying to ask.

23 A Yeah.

24 Q Okay.

25 A Yeah.

ADDENDUM 31

1 Q Now -- okay. Officer, I'm going to ask you in addition at
2 the time that you -- before you interviewed the Defendant
3 you contacted -- you were -- well, you were advised that
4 Defendant was involved in an accident, correct?

5 A Right.

6 Q And that was on March 29th, correct?

7 A I believe so, yes.

8 Q Okay. And when you understood this, about what time did you
9 get to know that he had an accident? Do you have an idea
10 about when you heard about this?

11 A I believe it was shortly after I got out of interviewing his
12 girlfriend.

13 Q Would that be in the morning hours?

14 A Yes.

15 Q Okay. And when you got that information was it from your
16 department?

17 A Yes. An officer in my department.

18 Q Okay. And then you contacted Hennepin -- by the time you
19 got the information you contacted Hennepin County Medical
20 Center; is that correct?

21 A I don't remember exactly how I found out, but I figured out
22 that he was at Hennepin County, yep, and then I contacted
23 them.

24 Q Well, your report says that you contacted them. So I assume
25 that you contacted them.

ADDENDUM 32

1 A Yeah. I don't know if you're trying to get, like, the route
2 that I got to that point, but yes --

3 Q Okay.

4 A -- I eventually called them yes.

5 Q And would it be correct to say you called them in the
6 morning hours?

7 A I don't -- I don't know. I have no idea what time.

8 Q And then when you called Hennepin County they told you that
9 he was unconscious; is that fair to say?

10 A I don't know.

11 Q They also told you that he -- you don't know? I'm going to
12 refer to your report if you want me to.

13 A That's fine.

14 Q Okay. Okay. Could you --

15 A I believe they told me he was intubated.

16 Q Yes.

17 A And that's why I didn't go see him that day.

18 Q Okay. So they told you he was intubated?

19 A Yes.

20 Q Okay. And that's what I'm asking. And they -- okay.
21 That's fine. And they told you they were transferring him
22 to the surgical intensive unit?

23 A Right.

24 Q Okay. And they told you he was unconscious?

25 A If you want to refer to my report and I said that he was

ADDENDUM 33

1 unconscious.

2 Q Yes.

3 A I don't recall that, but --

4 Q Okay. I want you to look at the reports you made on
5 March 30th. It's dated March 30th, those are the reports
6 that you made on March 30th.

7 A You're talking about when I got the statement from him?

8 Q No. No. No. Before you got the statement from him.

9 A I'm allowed to refer to my report then? March 30th.

10 THE COURT: You may.

11 THE WITNESS: Thank you. Okay. Where am I going?
12 It's 23 pages long.

13 BY MR. ANUNOBI:

14 Q Yes. I'm going to look at pages 20 of 26.

15 A Mine's not in that order. So --

16 Q I'll give you a copy of mine, if you'd like.

17 THE COURT: Counsel. If you just approach the
18 witness and show him where you're referring to we don't have
19 to be overly formal this is a --

20 MR. ANUNOBI: Okay, Your Honor. Thank you.

21 BY MR. ANUNOBI:

22 Q So on that page, Officer, it was -- you indicated that --
23 okay. I am looking at -- in a way you said, after the
24 interview was over that's page 26 it's said, "After the
25 interview was over, I advised -- I was advised Michael had

ADDENDUM 34

1 been involved in a car accident on Highway 169 and Marshall
2 Road."

3 THE COURT: Mr. Anunobi, we can't understand you.
4 You can't read so fast and with your face down. So rather
5 than read from the report could you just please ask the
6 witness a question?

7 MR. ANUNOBI: Okay. Yes, Your Honor, I will do
8 that.

9 BY MR. ANUNOBI:

10 Q Officer McLain, looking at this report do you agree that you
11 were told that he was unconscious?

12 A It says, "he is believed to have lost consciousness."

13 Q Okay.

14 A "And then struck another vehicle."

15 Q Okay. And so --

16 A He was conscious it sounded like after the accident because
17 he was trying to strangle himself with a cord.

18 Q Okay. But you went to Hennepin County, that's in here in
19 this information. You proceeded straight to Hennepin
20 County, is that fair to say?

21 A It looks like I did, yes.

22 Q Okay. And when you went to Hennepin County, when you got
23 there you asked to see Mr. -- you asked to see the
24 Defendant, right?

25 A Looks like I did, yeah.

ADDENDUM 35

1 Q And when you asked to see him, you knew he was not conscious
2 at the time?

3 A Well, I don't -- not conscious or sleeping I don't know. I
4 mean, I don't know what --

5 Q He wasn't awake when you saw him?

6 A Okay. Correct.

7 Q Okay. So when you went to see him when he was not awake,
8 you actually went and took a photograph of the mark on his
9 neck?

10 A Yes, I did.

11 Q While he was sleeping?

12 A Yes.

13 Q And to do that you had to probably remove clothing from him
14 to be able to --

15 A No. I did not touch him.

16 Q And you uploaded a photograph to your file?

17 A Say what?

18 THE COURT: And you what?

19 BY MR. ANUNOBI:

20 Q You uploaded that photograph to your file?

21 A Correct. I would assume I did, yes.

22 Q You didn't need consent to take that photograph?

23 A I'm not sure if I did.

24 Q Did you?

25 A I don't -- I said I'm not sure if I did.

ADDENDUM 36

1 Q Okay. At the time you went to see the Defendant, that was
2 the day before you interviewed him?

3 A Right.

4 Q Immediately after the accident while he was still intubated.
5 At that time did you know there was a 72-hour hold on him?

6 A Yes, I didn't put it on him, but there had been a 72-hour
7 hold. I knew that, yeah.

8 Q And you knew that that hold was on him because he was not
9 mentally competent?

10 A I can't speak to that.

11 THE COURT: That's a legal conclusion, Counsel.

12 MR. ANUNOBI: All right.

13 THE COURT: A 72-hour hold is merely that; just a
14 hold. It's not a judgment.

15 MR. ANUNOBI: Yes, Your Honor.

16 THE COURT: Okay.

17 BY MR. ANUNOBI:

18 Q Okay. And so the next morning you proceeded back to
19 Hennepin County to go to interview the Defendant?

20 A Yes.

21 Q And at the time you went to interview the Defendant you had
22 called in and were told that they had just removed the tubes
23 from the Defendant?

24 A Is that exactly what I said?

25 Q I'm just asking you.

1 A And I'm asking you, is that exactly what I said?

2 Q No, I'm cross-examining you, that's why I want to -- I'm
3 testing the accuracy of your statement.

4 A You're going to say "just" like they literally just pulled
5 it out of his throat. I don't know.

6 Q Okay. I'll rephrase the question. Before you go -- before
7 you go to Hennepin County, how long before you go there had
8 they removed the tubes from him?

9 A I don't know.

10 Q You don't know? What time did you get to Hennepin County on
11 March 30th?

12 A I do not remember and I know I don't note times. So -- just
13 days.

14 Q Okay. Would it be correct to say that you went there in the
15 morning of March 30th?

16 A I can't speak to that. I don't know. I don't remember.

17 Q Okay. And when you got to the nurses station of course you
18 activated your tape recorder?

19 A Yes.

20 Q That was before you got into his room?

21 A Yep.

22 Q Okay. When you got into his room you saw a man guarding the
23 Defendant?

24 A I don't know if I would have called it guarding. Someone
25 there to monitor somebody so they don't hurt themselves. I

ADDENDUM 38

1 don't know -- you use that word. I see a guy that's
2 monitoring someone for health and safety.

3 Q When you got into the room there was a man in the
4 Defendant's room?

5 A Yes.

6 Q And the man was watching the Defendant?

7 A He was sitting in a chair, yep.

8 Q Was he reading a newspaper?

9 A What's that?

10 THE COURT: I'm sorry.

11 BY MR. ANUNOBI:

12 Q Was he reading the newspaper?

13 A A newspaper? I don't remember that.

14 Q He was watching the Defendant is my question? Is it correct
15 to say --

16 A I don't remember that. I wasn't paying attention to that.

17 Q You asked the man to leave?

18 A I don't know if I did. If I did it's probably because it's
19 a personal matter and I didn't feel like his laundry should
20 be aired to someone that's not related to the case. But I
21 don't remember if I asked him to leave or if he just left
22 because there was a police detective in there.

23 Q Okay. Officer, I am going to ask you to refer to your
24 report of March 31st. Could you look at it, please, for a
25 minute?

1 A We're going back to that same thing. Which page?

2 Q I'm sorry. That's page 22 of 26. And I can give you --
3 well, I think I gave you that document. Page 22 of 26. It
4 was on the document. I gave you that document.

5 A It's on the transcript is what you're saying?

6 Q It's not -- it's your own report, it's not the transcript.

7 THE COURT: Counsel, his numbering is different
8 than yours is.

9 MR. ANUNOBI: Oh.

10 THE COURT: So you'll need -- as we just reviewed
11 -- you need to just show him where you are in the report to
12 make this easier.

13 MR. ANUNOBI: Okay. Yes, Your Honor. I will do
14 that. May I approach the witness, Your Honor?

15 THE COURT: You may assume -- yes.

16 THE WITNESS: Is there a specific sentence you
17 want? Do you want me to read this whole --

18 MR. ANUNOBI: No -- well, okay. That's fine.

19 BY MR. ANUNOBI:

20 Q Okay. That's fine. From, "when I arrived at the nursing
21 station."

22 A Okay.

23 Q Okay. So back to my question, you asked the man to leave.

24 A I don't state that in my report, but if it's on the
25 recording then I did. Like I said, I don't remember if I