

CASE NO.

21CI05290

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JEFFERSON CIRCUIT COURT
DIVISION (HALL)

JOSHUA JAYNES

VS.

MEMORANDUM

CONSOLIDATED LOCAL GOVERNMENT POLICE FORCE
MERIT BOARD a/k/a LOUISVILLE METRO POLICE
MERIT BOARD

RESPONDENT/APPELLEE

* * * * *

INTRODUCTION

Petitioner Joshua Jaynes was formerly employed by the Louisville Metro Police Department (LMPD) as a detective assigned to the Place Based Investigation (PBI) Unit. As part of his duties, Det. Jaynes prepared a search warrant and affidavit for several locations which were the subjects of a PBI drug investigation, including 3003 Springfield Drive, Unit 4, the residence of Breonna Taylor. Paragraph 9 of the search warrant affidavit recited, "Affiant verified through a US Postal Inspector. . . ."

A Professional Standards Unit (PSU) investigation was initiated on July 24, 2020, by then LMPD Chief Robert J. Schroeder "to address Detective Josh Jaynes conduct with regard to obtaining a search warrant for 3003 Springfield Drive Apt. 4." (Ex. 2, Tab 1)

As a result of that investigation, then Chief Yvette Gentry sustained two (2) violations of LMPD's SOP against Detective Jaynes as follows:

1. An allegation of the of the failure to complete a Search Warrant Operations form (LMPD #05-0025) LMPD SOP 8.1.17 Preparation for Search Warrant Execution.
2. An allegation of untruthfulness in the preparation of the search warrant affidavit in violation of LMPD SOP 5.1.5 Truthfulness/Untruthfulness. (Ex. 2, Tab 5)

Detective Jaynes was terminated on January 5, 2021. (Ex.2, Tab 6)

Petitioner Jaynes then appealed his termination to the Louisville Metro Police Merit Board. A hearing was conducted on June 5, 29, and 30, 2021, before the Board. The Board upheld the termination of Petitioner Jaynes by a unanimous vote on June 30, 2021, and written order dated August 26, 2021. (Ex. 1)

STANDART OF REVIEW

This court's review of the Board's decision is whether the Board's action was arbitrary.

Additionally, the Cabinet also questions the court's review of its actions as an administrative agency. It is will-settled that: [t]he basic scope of judicial review of an administrative decision is limited to a determination of whether the agency's action was arbitrary. *Bobinchuck v. Levitch*, [380 S.W.2d 233 (Ky. 1964).] If an administrative agency's findings of fact are supported by substantial evidence of probative value, they must be accepted as binding and it must then be determined whether or not the agency has applied the correct rule of law to the facts so found. *Kentucky Unemployment Ins. Comm'n v. Landmark Community Newspapers of Kentucky, Inc.* [91 S.W.3d 575 (Ky. 2002).] The Court of Appeals is authorized to review issues of law involving an administrative agency decision on a *de novo* basis *Aubrey v. Office of the Attorney General*, [994 S.W.2d 516 (Ky.App.1998)]. In particular, an interpretation of a statue is a question of law and a reviewing court is not bound by the agency's interpretation of that statute. *Halls Harwood Floor Co. v. Stapleton*, [16 S.W.3d 327 (Ky.App.2000).] *Liquor Outlet, LLC v. Alcoholic Beverage Control Bd.*, 141 S.W.3d 378, 381 (Ky.App.2004)(emphasis added.)

Cabinet for Health and Family Services v. Appalachian Regional Healthcare, Inc.,
606 S.W.3d 623, 629 (Ky.App.2019)

Questions of law are reviewed by the Court de novo. *Bryant v. Louisville Metro*

Housing Authority, 568 S.W.3d 839 (Ky.2019)

"The issue of whether a defendant is entitled to the defense of sovereign or governmental immunity is a question of law." *University of Louisville v. Rothstein*, 532 S.W.3d 644, 647 (Ky. 2017)(citing *Rowan County v. Sloas*, 201 S.W.3d 469, 475 (Ky.2006)(citing *Jefferson County Fiscal Court v. Pearce*, 132 S.W.3d 824, 825 (Ky.2004))). This Court reviews questions of law

de novo. See *Rothstein*, 532 S.W.3d at 647 (citing *Cumberland Valley Contractors, Inc. v. Bell County Coal Corp.*, 238 S.W.3d 644, 647 (Ky.2007)). *Id.*, p.845.

The Board's findings of fact must support its legal conclusion. *Marshall County v. South Central Bell Telephone Co.*, 519 S.W.2d 616 (Ky.1975).

It is our opinion that in order to sustain the order of PSC it would be necessary that there be a finding of specific evidentiary facts establishing discrimination. There was no finding of any evidentiary fact, only the generalized finding that the extended area service "is in the public interest and * * * public convenience and necessity require the establishment thereof." That finding is nothing more than a conclusion of law or a recitation of an ultimate fact a mere parroting of the language of the statute. This court has held repeatedly that a finding of that type, with no findings of basic evidentiary facts, is fatal to an order of an administrative body the validity of which depends on a determination of fact. See *Simms v. Angel*, Ky., 513 S.W.2d 176; *Caller v. Ison*, Ky., 508 S.W.2d 776. *Pearl v. Marshall*, Ky., 491 S.W.2d 837., *Id.*, p. 619.

ISSUES RAISED

1. The Board's Findings and Order are contrary to the law regarding the Collective Knowledge Doctrine. (Exs. 3 & 4 are attached. They contain state and federal authority on the issues of Collective Knowledge Doctrine. These binders were made part of the record before the Board by avowal.)
2. The Board's Findings and Order included false facts and erroneous facts which resulted in an arbitrary decision not supported by true facts.
3. The Board erred by precluding preservation of evidence by avowal or proffer regarding Sgt. Andrew Meyer's fitness to conduct PSU investigations or to be a police officer. (Conduct Unbecoming).
4. The Board's Attorney improperly exceeded his role as legal advisor to the Board and, in fact, assumed the role of a judge ruling on objections unfairly and limiting counsel's

examination of witnesses.

QUOTED TESTIMONY

I. Det. Jaynes' history with LMPD and his assignment to the PBI unit.

II. Former Chief Yvette Gentry's testimony is quoted extensively to provide direct evidence of the following:

i. Her ignorance of the Collective Knowledge Doctrine.

ii. Her illogical and disingenuous logic in relying on after acquired knowledge by Detective Jaynes of information from Shively Police Officers. The time line established by Gentry's own testimony and Det. Kelly Goodlett is 1.) January 2020, Sgt. Jonathan Mattingly tells Det. Jaynes and Det. Goodlett that Jamarcus Glover is receiving packages at 3003 Springfield Drive, Unit 4, 2.) The search warrant is executed on Springfield Drive on March 13, 2020; 3) In April 2020, Det. Jaynes hears from a Shively officer that Jamarcus Glover is not receiving packages at this address.

Despite this timeline, Gentry relies on the April "no" in reaching her decision to terminate Det. Jaynes.

iii. This quoted testimony also illustrates the improper intrusion by Board counsel into the proceedings.

I. DETECTIVE JAYNES' TESTIMONY

Q. Tell the Board a little bit about your history with the Louisville Metro Police Department.

A. I started at LMPD in May of 2006 at the academy. Once I graduated from the academy, I went to basic patrol. I started on patrol. I was there for, roughly, three years. Then I went to a flex platoon, which deals with street-level narcotics. We help district detectives with work they need, any needs of the division that arise that we can tackle.

I was there, roughly, from 2010 to 2016 when we had a restructure on the Department. So I had to reapply for my job. At that point, flex platoons were being dismantled, and I went to the Narcotics Unit. I was on the street platoon from 2016 to 2019 where another restructure on the Department came where I had to reapply again, and then I went to the PBI Unit.

Q. Tell us about the creation of the PBI Unit.

A. So the PBI Unit was a fairly -- fairly new unit. It was, again -- the idea came from Cincinnati. They -- PBI was there because we had a -- we're not going to arrest our way into situations. For many years, we'd constantly cite, constantly arrest, recidivism, and people keep going back out. We're not getting anywhere. So with -- with the creation of PBI, what Cincinnati did, they had a park that had some issues.

And with narcotics, people loitering, all of the crime, robberies occurring there. And so they did certain things. They increased lighting. They made the environment less attractive for criminals.

And so when Cincinnati created this -- well, I think their name had been different than the PBI, but the same concept. So with that being said, Louisville took a -- actually took a shadow of the PBI, or Cincinnati, and then we started it.

So we went there and shadowed Cincinnati, and they showed us certain things that they did, and we came back. And then we -- our first official meeting we had was -- it was -- it was downtown. I was in the mayor's office. It was -- or city hall. It was -- but the mayor was there. And then Public Works, LG&E, LMPD, other government entities that were going to come up with a solution throughout the city to tackle, you know, microcells -- I'm sorry, hot spots there might be microcells.

And with that, there was each -- I don't know.

Again, I want to say the crime analysts were the ones that created that, these microcells in hot spots. So then it came to the point where what location do we -- what locations do we have? Elliott Avenue corridor, 26th and Broadway was a hot spot. There was a lot of crime going on there. They had hot spots in Portland, South End, I believe. And so there was a selection process.

I don't know what the selection process was.

I believe that mayor -- or I'm sorry, Chief Schroeder said that Kim Burbrink was in charge -- basically in charge of making the decision, which, to my knowledge, she did not make that decision for that -- that location. It was somebody above her head.

That was the conversation that I had with my sergeant, that he would get with the major and then at that point, it would go above her to figure out where we would go. And I don't know. Again, I'm -- I'm on the lowest end of the totem pole here. I don't make the decisions where we go.

I actually wanted to start out in the Portland neighborhood, off of Rowan Street, because it's a smaller location. It makes sense to start smaller and work your way up and you learn instead of starting at the largest area you're going to get into.

Q. So did Chief Schroeder make statements about his involvement in the creation of PBI?

A. Chief Schroeder was on some of the (Inaudible) means we had, and I know that -- I specifically -- I remember when we were at the original meeting with the mayor, that he shook my hand and was telling me that he was pretty excited for me to be here.

And then my experience, each person on our team had a -- had a -- a certain skill that they would -- they would contribute to the team. And everybody had a part in this.

But he -- like I said, every biweekly meeting, he would -- we -- we would give him updates about what was going on with PBI.

Q. Did you make the decision to pick the Elliott Avenue corridor?

A. No, sir.

Q. Was it above your pay rate?

A. Yes, sir.

Q. What was the skill that you brought to the PBI that made it attractive for the Department to place you there?

A. I had over ten -- roughly ten years of experience on street-level narcotics investigations.
And with any type of -- in this area, narcotics is a factor in it.

Q. So had you prepared search warrants before?

A. Yes, sir.

Q. Many?

A. Yes, sir.

Q. Do you have an estimate as to how many?

A. Sir, roughly between 50 to 70.

Q. Had you testified in court?

A. Yes, sir.

Q. So tell the Board how you got involved in beginning the investigation into 2424 Elliott Avenue.

A. Well, sir, actually when we started this area, I didn't know the people very well. Detective Barton, he was previously in the First Division as a patrol officer, and he knew the people very well. Jamarcus Glover, Adrian Walker. He knew the people associated with that corridor. I had no idea.

So originally, he was giving us information on these people and, like, how they operate and what they do. So at that point, he kind of took the reins on the situation right here, and then I gave input on how we -- on investigative means, how we can arrive at this.

Q. What was Detective Goodlett's specialty?

A. She -- Detective Goodlett is very articulate. She actually did more admin side, helped with surveillance. Again, anything that -- getting the search warrant/affidavit itself. She went through and I'm sure corrected my grammar mistakes or punctuation from time to time. She's very -- like I said, she's very good at paperwork.

She -- the PBI's process, she actually calls for the service that were in the area of the Elliott Avenue corridor, 26th and Broadway, at Dino's. She would go through contact with resources to get -- call for service and see what the calls were. She was very knowledgeable about that type of situation.

Q. So -- (sneezes.) Excuse me. When was it that 2424 Elliott Avenue first came up on the radar of LMPD, if you know?

A. For -- from PBI or the --

Q. From before PBI. Was it on the radar before PBI?

A. Yes, sir, it was.

Q. And tell us what you know about that.

A. What I know that -- I think before PBI was created, a search warrant was executed by the First Division, I believe, was executed on December 30th on the Elliott Avenue corridor. So it was already on the radar for quite a while.

Q. So there was a search warrant executed on 2424 Elliott Avenue on December 30, 2019?

A. Correct. Correct, to the best of my knowledge.

Q. What was recovered?

A. I believe some narcotics and guns.

Q. Money?

A. Sure. I - - I would - - I can't testify to that. I think there was, but I can't.

Det. Joshua Jaynes' testimony
Merit Board Hearing June 30, 2021
p.69, l.1 - p.75, l.4

It is also important to note that the PSU investigator, Sgt. Andrew Meyer, testified the only part of the affidavit which was the basis of the "untruthful" finding was Det. Jaynes' omission of "I verified through Sergeant J. Mattingly" Otherwise, Det. Jaynes "wouldn't have faced the allegation."

Q. Exhibit 16, that is Detective Jaynes' investigative report?

A. Yes, sir.

Q. And you refer to the paragraph there, "I verified through Sergeant J. Mattingly of LMPD who contacted a postal service that

Jamarcus Glover was receiving packages at 3003 Springfield Drive, Unit 4?

A. Yes, sir.

Q. I think as I understood your testimony you said if he put that in the search warrant affidavit, we wouldn't be here today?

A. The first part. Not the -- not the piece based on the intelligence. Just the piece based on the verification.

Q. Okay. But if he had put this sentence in there, "I verified through Sergeant J. Mattingly of LMPD," if he put that in there, we wouldn't be here today?

A. That would be -- that would not be untruthful? That is a truthful statement.

Q. Sir, would we be here today? That's what you said, wasn't it? We wouldn't be here today?

A. He wouldn't have faced the allegation.

Q. Okay. So that's a true statement. I verified through Sergeant J. Mattingly. That's a true statement?

A. Yes.

Q. What was false was he didn't put the J. Mattingly in there?

A. Correct.

Sgt. Andrew Meyer testimony
Merit Board Hearing, June 3, 2021,
p. 168, l.15 to p.169, l.18

It is clear that Sgt. Meyer was unaware that Sgt. Mattingly's knowledge was imputed to Det. Jaynes under the Collective Knowledge Doctrine

II. TESTIMONY OF YVETTE GENTRY

Q. Okay. In all of the papers that you reviewed here and all of the conversations that you had, did you ever hear the phrase

"collective knowledge doctrine"?

A. *I've heard of it. It's not typically relevant in criminal -- criminal situations like this. Civil cases, you hear it. I've not heard it used in a criminal case like this.*

Q. *Okay. You've never seen -- you've never seen that term used in any document related to this case. Would that be accurate?*

A. *No.*

Q. *It wouldn't be accurate or it would be --*

A. *Oh, no. In relating to this case?*

Q. *Yes, ma'am.*

A. *No. I've not seen it, no.*

Q. Okay. And you believe it applies primarily to civil cases?

A. Yeah. It's -- it kind of speaks to things that you should know. Like, if you -- if I recall correctly, it cites things -- like in civil cases where you're still responsible for the information being accurate, but say you do -- in real estate, you assume somebody actually owns a property, but you don't do a title search and you sell it, you're responsible for the outcomes, so

Former Chief Yvette Gentry testimony
Merit Board Hearing, June 29, 2021,
p. 77, l.3 to p. 78, l.2

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Former Chief Gentry is then questioned about what the Collective Knowledge Doctrine is really about.

CHAIR HARRAL: Okay.

BY MR. CLAY:

Q. Ma'am, are you familiar with the case United States versus Hensley, the United States Supreme Court case that was decided in 1985?

A. Not specifics of it.

Q. I'm sorry. You're going to have to speak up.

A. The not the specifics of that particular case. Is that under the collective knowledge? I have some knowledge of what collective knowledge is, but I don't have specifics of that case.

Q. Okay. Well, I asked you before what's your understanding of the collective knowledge doctrine is, and you testified to that. Do you want to amplify your answer?

A. I said I am familiar with collective knowledge.

Q. Okay. What it is?

A. It's basically presumed knowledge, in a nutshell.

Q. Is that it?

A. It's -- it's saying that it's information that you should have known or that you knew through presumption, basically.

Q. No. Actually, that's not the collective knowledge doctrine, ma'am. The collective knowledge doctrine refers to the knowledge that is possessed among individuals who are in law enforcement they share that knowledge, and the knowledge of one officer is imputed to the knowledge of another officer.

A. And it's still required to be truthful. It's still required to be truthful. You can presume other people's knowledge -- I understand --

Q. Ma'am, I'm going to get into cross-examination -- and just for the record, you're totally wrong about your interpretation of the collective knowledge doctrine --

MR. DAUGHERTY: Objection.

A. Wait a minute --

MR. DOBBINS: Wait a minute.

MR. DAUGHERTY: Objection to the argumentative and the testifying through counsel.

BY MR. CLAY:

Q. Are you familiar with --

MR. DOBBINS: Right. You may ask questions, answer questions, explain answers if you need to, okay?

THE WITNESS: Okay. All right.

MR. DOBBINS: But let's not offer our own legal interpretations of the cases. Just ask the questions and answer the questions.

BY MR. CLAY:

Q. Are you familiar with a Kentucky case decided by the Kentucky Court of Appeals called Darden versus Commonwealth?

A. No.

Q. What about -- are you familiar with the United States Court of Appeals for the Sixth Circuit?

A. Yes.

Q. What is it?

A. It's the court of appeals for this jurisdiction.

Q. Ma'am?

A. It -- it's a court of appeals. The Sixth Circuit?

Q. Yes, ma'am.

A. Yes. I'm -- I'm familiar with that.

Q. Okay. What is it?

A. It's the Court of Appeals for the Sixth -- Sixth Circuit.

CHAIR HARRAL: I can't hear, please.

Q. What --

THE WITNESS: It's the Court of Appeals --

A. State -- state your question again. Am I familiar with?

Q. Ma'am, I said are you familiar with the Sixth Circuit Court of Appeals? You said yes.

A. Yes.

Q. I said what is it. You said it's the court of appeals.

A. Yes.

Q. Okay. For what?

A. For the Sixth Circuit. I'm -- I'm not understanding exactly part of your question -- what the question is.

Q. Well -- okay.

A. I --

Q. Do you know what the Sixth Circuit Court of Appeals is?

A. Yes.

Q. What?

THE WITNESS: I'm not understanding the question.

MR. DOBBINS: Yeah, you can't look to counsel for --

THE WITNESS: I don't -- I don't understand where he's going with the question. I mean, so much comes out of that, I don't -- I -- I can't answer it.

MR. DOBBINS: If you can answer it, answer it. If you don't know, you --

A. I can't answer the question.

BY MR. CLAY:

Q. Okay. Is it a federal court of appeals for all of the federal courts within the Sixth Circuits, specifically Tennessee, Kentucky, Ohio, and Michigan?

A. That sounds right, yes.

Q. So Kentucky is in the Sixth Circuit?

A. Yes.

Q. So Sixth Circuit law applies to the Commonwealth of Kentucky?

A. Yes.

MR. DAUGHERTY: Objection. Calls for a legal opinion.

MR. DOBBINS: Yeah. To the extent you can establish that that's something she knows and understands, that's fine. I think more of a foundation is necessary than that.

BY MR. CLAY:

Q. Ma'am, if you impose discipline for a violation of SOP, does the law dealing with that particular issue supersede the SOP, or does the SOP supersede the law?

MR. DAUGHERTY: Objection. Calls for a legal opinion.

MR. DOBBINS: I'll need -- if you can establish that she has some understanding of that and knows the answer, go ahead and do that. It does call for a legal opinion. If that's something she's in the habit of -- if those things are something she's in the habit of knowing and applying as a chief of the LMPD, then that's fine. But why don't you lay a little bit more of a foundation?

MR. CLAY: Well, I don't know that it calls for a legal conclusion, but let me try another way.

BY MR. CLAY:

Q. If there's a conflict between an SOP and the law, which one takes precedence?

A. Professional standards are based on -- it's not based on -- it's based on our policies. Of course, you take into consideration a lot of things, but professional standards is not the decision of whether there was probable cause in a search warrant or anything. It's the officers' actions against the LMPD policy. That's what professional standards are. That's what I based my decision on. I wasn't making a criminal decision. I was making a decision of -- making an employment decision based on LMPD policies and procedures.

Q. Did you understand my question?

A. I did, and I answered it.

Q. What was my question, ma'am?

A. Your question was do you consider law in all these other things in your decision?

Q. No, ma'am. That wasn't my question.

A. Okay.

Q. I'm going to ask you the question again, and I'll ask you to answer my question. If there's a conflict between the SOP and the law, which one takes precedence?

MR. DAUGHERTY: Objection. Assumes facts not in evidence.

MR. DOBBINS: Well, I think the Board can take administrative notice that if an SOP is in violation of the law, the law supersedes it.

MR. CLAY: Well, I don't want the Board to take notice. I want to ask that question, and I want her to answer it because that goes to her credibility and her knowledge about what she did to this detective.

MR. DOBBINS: *Well, I think she -- I think it was asked and answered. Try one more time briefly, and let's move on.*

BY MR. CLAY:

Q. *If there's a conflict between an SOP and the law, which one takes precedence?*

A. *The law would supersede.*

Q. Okay. There's a case called U.S. versus Lyons out of the Sixth Circuit, and the Sixth Circuit applies to Kentucky, correct?

A. Yes.

Q. And it's held in that opinion, "It is well established that an officer may conduct a stop based on information obtained by fellow officers." Any disagreement with that?

A. A traffic stop, yes.

Q. "Variously called the 'collective knowledge' or 'fellow officer' rule, this doctrine recognizes the practical reality that 'effective law enforcement cannot be conducted unless police officers can act on directions and information transmitted by one officer to another.'"

A. All right.

Q. I'm quoting the U.S. Supreme Court case United States versus Hensley. Do you disagree with that statement?

MR. DAUGHERTY: I'm going to object to that. He's asking her to comment on a case which -- of an excerpt of a case that she hasn't read and that he's just picking pieces out of to ask her whether she agrees or disagrees with them.

MR. DOBBINS: I can think you can ask her whether -- you can ask her a question about a standard without her asking to agree whether or not a particular case espouses that standard or holds that that standard is the case. Does that make sense?

Do you understand my distinction?

MR. CLAY: No, sir. I don't. I don't understand.

MR. DOBBINS: I think he's right. She doesn't have enough time - - hasn't had enough time or may not have enough knowledge or background to interpret Supreme Court cases. I don't know the answer to that. I think you can ask her whether she agrees with a particular principle without asking her to agree whether a particular case holds one for the other.

MR. CLAY: Well, it's problematic to me that this interim chief terminated an employee without knowing what the law was that governed the application of the collective knowledge doctrine to this search warrant affidavit.

MR. DOBBINS: That's fine.

MR. CLAY: That's the problem.

MR. DOBBINS: That's closing argument material.

MR. CLAY: I've got to lay the foundation -- a factual foundation before I can argue it, though.

MR. DOBBINS: *You can ask her about the principles. Don't ask her to interpret a case that she hasn't had a chance to read or consult with counsel on.*

MR. CLAY: Then let's take a recess and give her a chance to read them.

MR. DOBBINS: You should have filed it ten days before the hearing started if you wanted her to read it.

MR. CLAY: Well, I --

MR. DOBBINS: And the objection is well taken.

MR. CLAY: I disagree, Mr. --

MR. DOBBINS: That's fine --

MR. CLAY: Okay.

MR. DOBBINS: That's fine. But the Board has already ruled on it. Does the Board stand by its previous ruling?

CHAIR HARRAL: The Board stands.

MR. CLAY: Well, Madam Chairman --

MR. DOBBINS: It stands in effect by avowal.

MR. CLAY: Madam Chairman, as you know and the other Board members know, Mr. Dobbins and I don't always agree. And I think Mr. Dobbins is making a mistake here, and I would request that the Board retire, whatever it needs to do to deliberate because these cases right here stand for the proposition that I represented to the Board, that Joshua Jaynes told the truth on the search warrant affidavit when he said he verified through a USPS Inspector. And I respectfully disagree with Mr. Dobbins. I've requested the Board to consider these cases and allow me to cross-examine this witness based on the law as I understand it. It will certainly supersede the SOP provision of the Louisville Metro Police Department.

MR. DOBBINS: May I comment?

CHAIRMAN HARRAL: Please.

MR. DOBBINS: Mr. Clay and I don't always agree. Mr. Daugherty and other LMPD counsel and I don't always agree. That's part of this gig. People don't always agree with my recommendations. I am making a recommendation to the Board if the Board stops every time there's a recommendation and goes into executive session, we're going to be here a long time. My recommendation to the Board stands. The Board is free to accept it or not. My recommendation is that, A, these are -- were not timely filed. B, it's not reasonable to ask this chief to take a ten-minute break to analyze all of the cases you have provided moments ago to see whether she agrees with them or doesn't. She's a retired LMPD interim chief. She has counsel. She had counsel at the time. I know you've called her counsel as a witness. We'll get to that later.

My recommendation is that the objection be sustained.

You can ask her questions about legal principles. If she knows the answers, she can answer them. But I've already recommended that these cases not be introduced as exhibits.

First of all, they're not just cases. They're your excerpts of the cases. They're your personal analyses or maybe your co-counsel's analysis. I don't think these are appropriate/admissible exhibits. That's my recommendation.

MR. CLAY: Well, I respectfully -- I disagree with the characterization that you placed on these quotes I put here. I put the quotes here because I thought they were the relevant portion of these opinions. The entire opinions are the included after the quotes. So the entire record is here for anybody who cares to review them.

MR. DOBBINS: My recommendation stands, Madam Chair.

CHAIR HARRAL: Chair supports the attorney's recommendation.

BY MR. CLAY:

Q. "Because officers must often act swiftly and cannot be expected to cross-examine their fellow officers about the foundation of transmitted information, we impute collective knowledge among multiple" --

MR. DAUGHERTY: Same objection.

MR. DOBBINS: Let him finish the --

MR. DAUGHERTY: Sorry.

MR. DOBBINS: Let him finish his --

MR. CLAY: Sir?

MR. DOBBINS: I asked him to let you finish the question if it's a question.

BY MR. CLAY:

Q. "Agencies, even when the evidence demonstrates that the responding officer was wholly unaware of the specific facts that established reasonable suspicion for the stop." Do you agree that knowledge of one officer can be imputed to the knowledge of another officer?

A. In certain circumstances, yes.

Q. Okay. And the circumstances we have here --

A. Right.

Q. -- where Sergeant Mattingly told Detective Jaynes that Sergeant Mattingly verified through a USPS Inspector that Jamarcus Glover was receiving packages at 3003 Springfield Drive, Unit 4, is that knowledge imputed from Sergeant Mattingly to Detective Jaynes?

A. It is, but the actual -- the fact is the message that came back through the third party was "no." So you're -- there's a -- there's some information floating out there as if Mattingly verified and told him that, and I've heard that time and time again. The evidence is in here that the response back from the Shively officers was an emphatic "no." There was no ambiguity.

The answer was "no." So the collective -- if we even go the collective knowledge route, the collective response was "no," which further supports the fact that it's untruthful to say that it was verified as a "yes" when the response, which is on the record, is "no." And that's the part where there seems to be -- continuing to go down this road of collective impact.

It's in Josh Jaynes own statement. He was like, "Darn. I wanted to do a reverse." He could have done a reverse. He had a good basis. He needed to do more work. You can't cheat. I understand he wanted to get the drug dealers. I don't deny that Jamarcus Glover was a drug dealer. But you can't cheat.

You can't go apply for a no-knock warrant for a girl who is not a suspect, based on information that is untrue, and go in there and apply for a no-knock warrant, leave her off of that, which would have put the matrix up higher. You don't go to people's house just to talk to them after midnight with a search warrant.

And you can't assume, like you did in '14 where you try to bring that through, that there was narcotics in there. He could have done a takedown and verified what was in the box. All those things could have happened. They did not happen.

I know this is blossoming into all kind of other stuff. I very seriously understand that I took Josh Jaynes' job. I very seriously understand that. That was not an easy decision. That was something that I prayed about. I took into very [sic.] consideration.

I have nothing personal against him.

But we have a woman in her house that she certainly picked bad guys. She's not the first woman that did that. She was failed by those men, and she was also failed by Detective Jaynes cheating the system with a desire to get in there, and he used false information to get it, and that to me was unacceptable. It was factually not true, and I made a decision to terminate him based on that. Period.

Q. Okay. Ma'am, you've just given us a whole bunch more information that you say you relied on in reaching this determination that he was untruthful when you started out saying the only thing you considered was "Affiant verified through a U.S. Postal Inspector."

That was it. Did you not testify to that earlier this morning?

A. Yes. And this --

Q. And that's all you relied on, wasn't it?

A. Is the untruthful statement by the Postal Inspector --

Q. So --

A. -- you brought in collective knowledge saying that he got this information that it was verified and through somebody else. But the information the record shows says "no." They came back with a "no." Not some long thing that had to be evaluated. It was a "no, he's not

receiving packages. " So to turn that into a "yes" through anybody is wrong.

And even in collective impact, if you talk about the other case law, the reality is if I have a presumed knowledge, when I raise my hand and I testify to it for an affidavit, I'm responsible for it being true. He was giving a "no." He wasn't giving a yes. He was imputed a "no."

So I'm responding to your questions of me of collective knowledge. If we want to go through collective knowledge, then the answer was "no." So to make it a yes is a lie. This is not some journey I'm taking him to and trying to uphold him to -- that is -- that is the basis of it. So when I came in here first and you asked me the basis, we weren't talking about collective knowledge. We weren't talking about Delaware case. Even in the Delaware case that you mentioned earlier that -- that I didn't think was going to come up, but I'm somewhat familiar with -- first of all, I'm not a defendant. It kind of speaks to what defendants does. I was actually the deputy - - the interim chief at the time. I'm really not a defendant here. It doesn't feel like it, but I spoke to the decision that I made. When you brought all these other things into it, even that case alone says if you have imputed knowledge, it has to be correct.

You're still responsible for it being correct. You're still liable for -- for what you do based on that information. So I didn't -- I absolutely came in here based my decision on what I have, but you brought in some different things that I'm speaking to here. It's not a contradiction of what I said. It's trying to be responsive to the -- the things that you have brought up.

Q. Actually, what you have done is amplified your answer substantially because you never mentioned any of that stuff when I asked you the specific question: What did you base your decision on that Joshua Jaynes was untruthful? And you said, "Affiant verified through a U.S. Postal Inspector."

Now, did Sergeant Mattingly tell Joshua Jaynes in the presence of Kelly Goodlett that Sergeant Mattingly had verified Jamarcus Glover was receiving packages at 3003 Springfield Drive? Yes or no?

A. The answer he got was a "no."

Q. No. Not what Sergeant Mattingly got, but what he told Sergeant --

A. The evidence is "no."

Q. Hold on.

A. I can't testify to what somebody else says.

MR. DOBBINS: Hold on. Let him finish the question.

THE WITNESS: Okay.

Q. Did Sergeant Mattingly have a conversation with Detective Jaynes and Kelly Goodlett?

A. Yes. It's --

Q. Did he tell Detective Jaynes and Kelly Goodlett that he, Sergeant Mattingly, had verified through a USPS Inspector that Jamarus Glover was receiving packages?

A. That is his interpretation of the conversation, Josh Jaynes' interpretation. The actual evidence in here says that the response was "no." There was some discussion over a deconfliction, which is required in narcotics case, and that conversation has to be put in context. The context that I took from that conversation was saying is it a Jason Glover or a Jamarus Glover? There was some issue of them thinking that they were even looking at two different people. So that conversation was more of a deconfliction, and there was some conversation about Amazon packages, and -- and U.S. Post Office wouldn't be verifying Amazon packages. We're not talking about Amazon packages here. But the response back from the third party -- you're saying collective knowledge -- that went down the hill was in a text message, and it said "no." And even Detective Jaynes outlines it in his own words in his own testimony, he says that the response that he got back was a "no," and he said, "Dang. I really want" -- he -- he wanted that information --

Q. Okay. I want --

A. -- he wanted it to be a yes.

Q. -- you to show me in Detective Jaynes' statement where he said the answer he got back was "no."

A. Okay.

Q. Show me that.

A. Okay. Okay.

Q. And where is it?

A. I'm going to pull -- I'm going to tell you exactly what line it's in. If you start with his interview on May 19th --

MR. DOBBINS: Can you hold on one second?

THE WITNESS: Okay. I'm referring to --

MR. DAUGHERTY: It's Department Exhibit 9.

MR. DOBBINS: Thank you. Let the Board get ready.

CHAIR HARRAL: What line?

THE WITNESS: If you look the 1a -- if you look 9 --

MR. CLAY: I don't see the exhibit. Hold on. Exhibit 9?

THE WITNESS: Exhibit 9. Line -- let's start at 1652.

MR. DOBBINS: Hold on one second. What lines?

THE WITNESS: Start at line 1652 and go through -- just 1652 and 53.

MR. DOBBINS: Hold on. It's going to be on page --

THE WITNESS: Page 37.

MR. DOBBINS: -- 37. Thank you, ma'am.

A. And it says, "If he received anything." Some other testimony. And then I made -- the response I got was no."

BY MR. CLAY:

Q. Okay. Hold on a second.

A. Okay.

Q. Okay. So what does it say?

A. It goes -- this is Jay -- this is Jaynes statement. He goes through. He said -- he talks about -- I can go up a little further and read it, but it -- okay. He said -- I'll start a little bit ahead of it just to kind of give a little more context.

Line 16 -- line 1650, "I believe I contacted Kuzma, too, as well. I said I kind of addressed it to say can you look and see the package associated with this guy on this address and if he received anything, and then -- then I made" -- and just kind of a blank there, and it says, "The response I got was a no." And then Sergeant Meyer -- I mean Sergeant Vance came back and said, "No. Because he can't do it?" He said, "No. He didn't. I'm assuming he didn't get anything there." That was -- that was Jaynes' response, and I -- and I --

Q. Okay. When in relation to the conversation with Mattingly did he talk to Kuzma?

A. According to this, this conversation was -- he referred to it being in April, which was after -- after the case.

Q. After the facts, right?

A. Right.

Q. So what statement was made prior to the search warrant affidavit by Sergeant Mattingly to Joshua Jaynes?

A. It was not a -- it was a "no."

Q. Oh, Sergeant Mattingly said it was a "no"?

A. No. I mean before -- say it again. Before -- I don't know what he got before that. Back up again. Let me make sure I understand. You're -- we're going back and forth here. On the collective knowledge where you're saying it came from Mattingly to Kuzma.

In Mattingly's testimony --

Q. No, ma'am. That's not what I'm saying whatsoever. No.

A. Okay. Okay. You're correct. Okay.

Q. This is about the third time I've tried to get this point to you.

A. Okay.

Q. There was a conversation between Sergeant Mattingly --

A. Uh-huh.

Q. -- Detective Goodlett, and Joshua Jaynes

A. Right.

Q. In that conversation, according to Kelly Goodlett, Sergeant Mattingly said, "I checked with the USPS Inspector, and he told me that Jamarus Glover was receiving packages at 3003 Springfield Drive, Unit 4" --

A. That is --

Q. -- is that --

A. That is false. That is not true. That is not in here. That is not in any -- that is not the resp --

Q. Kelly Goodlett didn't say that, ma'am?

A. That is not the response in here.

Q. Kelly Goodlett didn't say that?

A. That is not the response in here.

Q. Ma'am, have you read Kelly Goodlett's statement?

A. I read all of the statements, I believe. I don't -- I don't recall Kelly Goodlett's statement in here, but --

Q. Well, I'm asking you point-blank, ma'am: Did Kelly Goodlett not say that? That she heard that conversation that was exactly as Josh Jaynes related it?

A. Kelly Goodlett, I -- I'm not aware, but I can -- I have the testimony of your client Sergeant Jaynes and Mattingly that talk about the conversation they had in January, and the -- the answer was a "no."

Q. Oh. So Sergeant Mattingly told Detective Jaynes that he had checked with the USPS Inspector and the Inspector said "no"?

A. He didn't say he talked to a USPS Inspector. LMPD does not have --

Q. Sergeant Mattingly made -- my question was: Did Sergeant Mattingly tell Joshua Jaynes he talked to the USPS Inspector?

A. No. There's no evidence to suggest -- support that that happened.

Q. Really?

A. Right.

Q. Okay. Well, there's -- Joshua Jaynes' statement said it, didn't it?

A. Joshua Jaynes statement says -- talks about getting the information back, and it was a "no." There was no discussion --

Q. No, he -- ma'am, I was talking --

A. -- that -- there was no discussion --

Q. -- about the statement that Sergeant --

A. Right.

Q. -- Mattingly told Joshua Jaynes according to Joshua Jaynes' statement?

A. Where is that in here?

Q. You tell me, ma'am.

A. I'll -- I'll tell you what I have, and what is test -- Jonathan -- I have never seen anywhere where Sergeant Mattingly said he talked to a U.S. Postal Inspector and told -- that he talked to a U.S. Postal Inspector.

Q. Okay.

A. That is nowhere in this evidence. That is nowhere in the --

Q. Are you sure about that, ma'am?

A. I don't -- I -- I have not seen that.

Q. Well, are you sure it's not in there, ma'am?

MR. DAUGHERTY: Objection. Asked and answered.

MR. CLAY: No. It wasn't answered.

MR. DOBBINS: It was answered.

A. Sergeant Mattingly's testimony and Jaynes' testimony --

MR. DOBBINS: It was answered.

MR. CLAY: Okay. I want to take a recess because I want to Kelly Goodlett's statement out here and ready it to her.

THE WITNESS: He's talking about Sergeant Mattingly's conversation with him. To my understanding in -- in the evidence, it says Sergeant Mattingly was talking to Jaynes. Kelly Goodlett was listed as somebody who overheard the testimony for them --

MR. CLAY: No. It's -- she misunderstood. I want to -- I want to get Kelly Goodlett's statement and get her in here.

MR. DOBBINS: Why don't you -- why don't you see if Ms. Clay or Ms. Maze can find that, keep asking her questions, and then come back to it. We're too close to a break to take a break now and then come back. Can one of your co-counsel find that while you're asking other questions?

MR. CLAY: I want to ask that question now, Mr. Dobbins, and I want to find the transcript. And I have not asked for a recess throughout this whole proceeding.

MR. DOBBINS: I'm just trying to keep it flowing, Mr. Clay. *I'm not trying to pick on you.* You --

MR. CLAY: Really?

MR. DOBBINS: *Really. Really. And you know this not personal.* But you've got two really able co-counsel here. Is there nothing else I can --

MR. CLAY: You don't have to tell me about my co-counsel, Mr. Dobbins. I get it. I want to find --

MR. DOBBINS: This is --

MR. CLAY: -- the statement myself because I'm the one who found it.

MR. DOBBINS: Well, you don't have it in front of you right now.

I'm just trying to keep this moving. We are on a tight time frame. We want to keep it moving. How much time do you need to find this?

MR. CLAY: Ten minutes.

MR. DOBBINS: It's up to the Board.

MR. CLAY: Sir?

MR. DOBBINS: It's up to the Board.

CHAIR HARRAL: You want to take ten minutes in place.

MS. MAZE: We have a statement on the computer that we're trying to pull up and print, so I don't --

MR. CLAY: I've got a hard copy in one those boxes.

MR. DAUGHERTY: Which statement of Kelly Goodlett?

MR. CLAY: The one she gave to the Attorney General.

MR. DOBBINS: Is that in the record?

MR. DAUGHERTY: It's not.

MR. CLAY: Sir --

MR. DOBBINS: It hasn't been tendered as an exhibit. You know the rules. Don't --

MR. CLAY: Mr. Dobbins, I cannot anticipate all of this testimony that she's making up here that I'm going to have to cross-examine her on.

MR. DOBBINS: You can cross-examine on her. If she doesn't have support for it in the record, that's fine.

MR. CLAY: I've got the statement that --

THE WITNESS: I'm not making anything up.

MR. CLAY: -- directly contradicts her testimony, Mr. Dobbins. Are you telling me that I can't do that?

MR. DOBBINS: Rebuttal.

MR. CLAY: I don't know.

MR. DOBBINS: Let's come back to a rebuttal and do it. Is it not something that you anticipated could come up in this case?

MR. CLAY: She just made this up. She says one thing one minute, and something else the next minute.

MR. DAUGHERTY: Objection. This is argumentative.

MR. DOBBINS: It really is. *And I know you think I'm picking on you because your body language is screaming it.* But listen, we just need to get through this and abide by the rules and get this done. You had the chance to tender this as an exhibit in advance of the hearing, and you didn't do it. If you -- if it's rebuttal, it's rebuttal. If she says something that makes that fair game on rebuttal, that's fine.

MR. CLAY: Well, where I come from, cross-examination, by nature, is rebuttal.

MR. DOBBINS: Well, you get to stop a case to do it.

MR. CLAY: I'm trying to undermine -- can't question her credibility because she's making statements which are demonstratively false.

MR. DOBBINS: Well, if have you something ready to impeach her with, that's fine.

MR. CLAY: That's what I'm trying to do. That's what I'm trying to do with these cases here.

MR. DAUGHERTY: I'd also like to point out he's trying to impeach her with somebody else's statement. That's not really impeachment.

MR. DOBBINS: That's not really impeachment. Let's see what he comes up with. It's ten minutes in place is what the Board Chair said.

CHAIR HARRAL: Ten minutes in place.
(OFF THE RECORD)

CHAIR HARRAL: Everyone, we're back on. Thank you.

BY MR. CLAY:

Q. This is a statement that Detective Goodlett gave to the Attorney General's Office on August the 12th, 2020. This Detective Hall, Attorney General's Office.

"Today's date is August 11, 2020. The time is 14:20 hours.

Detective Goodlett: The 12th, isn't it?

Detective Hall: Oh, it's the 12th. I'm sorry. It is August the 12th, 2020. The time is 14:20 hours. My name is Herman Hall. I'm the detective with the Attorney General's Office, Department of Criminal Investigations, and we're at 600 West Main Street in Louisville, Kentucky, conducting an interview with Kelly Goodlett who is represented by her attorney, Josh Schneider. Present in the room is myself, Assistant Attorney General Barbara Whaley, Attorney Josh Schneider, and Kelly Goodlett. And before we get started, I'll try to go ahead and Mirandize you" --

MR. DAUGHERTY: Madam Chair, is Mr. Clay planning on reading this entire statement?

MR. DOBBINS: Have you -- do you have it?

MR. DAUGHERTY: I do not. This was not tendered as an exhibit. This is not --

MR. DOBBINS: Can you share it with --

MR. CLAY: I'm not going to read the entire statement.

MR. DOBBINS: Find the part that you want to read and would you share it with him first?

MR. CLAY: Sure.

MR. DOBBINS: Them first.

MR. CLAY: The pages that are dog-eared.

MR. DAUGHERTY: Before Mr. Clay asks a question, I'll note my objection to the use of somebody else's statement to try to impeach her testimony. To the extent that her testimony may conflict with Kelly Goodlett's statement to the Inspector General -- or the Office of the Attorney General, I believe that that's something for Mr. Clay to argue to the Merit Board in closing arguments. It is not -- I don't think -- it does not call into question her credibility as Mr. Clay has represented, and I just note my objection.

First of all, this has not been provided to us, and it has not been

provided to her. I think she told Mr. Clay on cross-examination that she had not seen or reviewed this statement. So that would be my objection to this entire line of questioning and the use of somebody else's statement to impeach her testimony.

MR. DOBBINS: Is she going to testify?

MR. CLAY: She sure is.

MR. DOBBINS: Okay. I think it's fair for you to ask her if she's familiar with the statement, but --

MR. CLAY: She wasn't going to testify, but now this change in the testimony, she certainly is going to testify.

MR. DOBBINS: That's fine. You can ask her whether she's familiar with the statement, if she agrees with it or not, but I think you need to establish it through Ms. Goodlett's testimony.

BY MR. CLAY:

Q. This is at page 19, starting at line 15. "Detective Goodlett: I don't know his exact vacation," referring to Detective Jaynes.

"Detective Hall: But he came back on Monday?

Detective Goodlett: Yeah. And Sergeant Mattingly in passing was like, sorry about the confusion. I misunderstood, but I verified he was getting packages there.

Who said that? Sergeant Mattingly. Told you that?

Detective Goodlett: Told Josh that, and I heard it, and he was like, oh, no big deal. See, you know, Kelly called Officer Kuzma like, you know, we got it all straightened out.

Detective Hall: And that would have been all?

Ms. Whaley: So what did Kuzma tell you I'm sorry.

Detective Goodlett: That it wasn't the same. We weren't looking at the same target.

Ms. Whaley: But did Kuzma tell you anything about Jamaricus Glover getting packages? Detective Goodlett: No. He just said because at that point in my phone call to him, we were stepping on your toes.

Are you looking up this guy, too? And I told him, you know his name, where he hangs out, where he's been seen, and he was, like, no, that's not my target."

So did Detective Goodlett, according to this statement, overhear Sergeant Mattingly tell Detective Jaynes and Jamarcus Glover was receiving packages at Springfield Drive?

MR. DAUGHERTY: Objection. Assumes facts not in evidence.

MR. DOBBINS: What are the facts not in evidence?

MR. DAUGHERTY: Well, I mean, he's asking her to -- I mean, he's asking her to comment on the veracity of Kelly Goodlett's statement to the Attorney General. I think that that's -- that needs to be established through Kelly Goodlett, not through Chief Gentry.

MR. DOBBINS: If you could ask her whether she was familiar with that statement, whether she'd heard that statement.

MR. CLAY: Well, first of all, I want to say I'm not attacking the veracity of anything. I'm asking her: Did Kelly Goodlett give a sworn statement where she said Sergeant Mattingly told Joshua Jaynes that Jamarcus Glover was receiving packages at Springfield Drive? That's what this statement says. That's what I'm asking her. Did she say that?

A. I haven't seen the statement. I'm taking you as what you read --

MR. CLAY: Show her the statement.

A. -- if that's what she said.

MR. DAUGHERTY: Objection. Again --

MR. DOBBINS: What -- you can show her the statement and ask her if she's seen the statement before and ask her if she's familiar with the statement. I don't think she can -- unless she knows of it, has seen it, has verified, I don't think she can testify about what it is and what it was.

MR. CLAY: I'm not asking -- all I'm saying is in that statement --

MR. DOBBINS: You asked her whether it was a sworn statement given by Kelly Goodlett, which --

MR. CLAY: And did Kelly Goodlett say --

MR. DOBBINS: Let me -- it either was or wasn't. And if she knows it, she knows it. If she doesn't know it, she doesn't know it.

MR. CLAY: My question was --

MR. DOBBINS: *She can answer the question.*

MR. CLAY: -- did Kelly Goodlett tell that -- in that statement that Sergeant Mattingly made the statement to her and Joshua Jaynes that Jamarcus Glover was receiving packages, according to a USPS Inspector?

MR. DAUGHERTY: And I don't think that she needs to be questioned or testify as to whether or not a transcript says what the transcript says or not. Kelly Goodlett, if she's going to testify, can testify as to what she did or did not tell the Attorney General. Chief Gentry does not need -- does not need to verify what is in contents of that statement. That is --

MR. DOBBINS: *I agree with that.*

MR. CLAY: Oh, I can --

MR. DOBBINS: You can ask her whether she has seen the statement, whether she knows of the statement, whether she believes it was true if she saw it, and I don't think she can verify that the statement was made. So --

MR. CLAY: She can verify that Kelly Goodlett said in the statement the statement was made.

MR. DOBBINS: She can read language from the statement that says whatever it says, but she wasn't there. It's not an LMPD document. It was not in her custody. I don't know see how she can be asked to testify as to what it was and who said it and when.

MR. CLAY: Well, actually, it's a sworn statement by an agent of a party opponent that's admissible into evidence under Rule 801(a)(D)(4) without any foundation.

MR. DOBBINS: Who's the party opponent? Kelly Goodlett?

MR. CLAY: LMPD. This case --

MR. DOBBINS: You can --

MR. CLAY: Joshua Jaynes versus LMPD. LMPD is a party opponent for the purpose of this rule of evidence.

MR. DOBBINS: Well, comment?

MR. DAUGHERTY: I mean, I guess my initial comment is that the party opponent is really the chief. She happens to be a member of the Department, but I would not say that she's the chief in Mr. Clay's opponent.

MR. DOBBINS: I'm not saying you can't use this. If you're going to call Kelly Goodlett, that's fine. I'm just saying this chief -- you've asked this chief to testify whether this is a statement that was given by Kelly Goodlett and whether it is -- whether it's true and what she said. I don't think she can do that.

MR. CLAY: That's not what I'm asking her, Mr. Dobbins. I'm asking her did Kelly Goodlett made a sworn statement that she overheard this conversation?

MR. DOBBINS: If she knows -- if she knows that, she can answer it.

MR. CLAY: Well, there it is right there.

MR. DOBBINS: She has something in her hands that you handed her. It's not something that was in LMPD custody. It wasn't taken by LMPD. If she's comfortable answering your question, she can answer it.

MR. DAUGHERTY: Note my objection.

MR. DOBBINS: So noted.

THE WITNESS: It's pretty lengthy. I --

MR. DOBBINS: Do you understand the question?

THE WITNESS: I do understand the question.

A. It's some almost, what, 75 pages here, and I saw what he said

there, and I'm seeing additional stuff, so I really can't speak to all of it. But right here when she's talking about that she also goes on to say, "Do you know the procedures that Mattingly or anyone else had to do with the contact with the Postal Inspector," and Detective Goodlett said, "No."

And she goes on to -- they start this whole line of questioning about LMPD having a bad relationship with the Post Office. That's why they have to go through kind of a third party. But she wasn't aware of until after the fact that she says that she is now aware. So I would have to read through all of this. However, you know, he -- neither Detective Jaynes or anybody in their investigation in their statements ever brought Detective Goodlett's information up as far as needing to verify the conversation that happened between himself and Mattingly. So I very extensively read those two, and I have not seen this. It was not in -- it was not submitted. I can't speak to what Kelly Goodlett knew or understood. In here, she -- she says that she doesn't -- she almost alludes to fact she doesn't -- I don't see anywhere in here, unless he can show me, where she says -- where she talks about the Postal Inspector giving that information to him. If you know what page it's on, I'll -- I want to look at it.

BY MR. CLAY:

Q. Ma'am, does she talk in there about Sergeant Mattingly giving Detective Jaynes that information?

A. She talks about --

MR. DAUGHERTY: Same objection.

MR. DOBBINS: Objection noted. Let's see if she can answer the question if knows. As she just said, it's 75 pages. So if she knows the answer.

A. I talked about it the earlier. The conversation, the initial conversation --

BY MR. CLAY:

Q. Ma'am, would you answer my question, and then you can explain it.

A. State your question again, please.

Q. No, ma'am. I'm not going to state it again. If you don't remember it --

MR. DOBBINS: If she doesn't remember it, please restate it to save time going back to the court reporter to ask her to do it.

BY MR. CLAY:

Q. Does Detective Goodlett say in that statement that Detective -- Sergeant Mattingly told Detective Jaynes that Sergeant Mattingly had checked with a USPS Inspector and that Jamaricus Glover was receiving packages there?

MR. DAUGHERTY: Same objection.

A. I don't see that in here, no.

Q. You don't?

A. I do not see that.

Q. Well, let me see if I can help you.

A. Yeah, help me. Because I see in here saying she does not know the procedures that Mattingly had to contact the Postal Inspector. That was -- that was what she said, and she said --

Q. Okay. Look at page 19, ma'am.

A. Okay.

Q. Start at line 17.

"Detective Hall: But he came back on Monday." And that's referring to the Detective Jaynes' vacation, right?

A. Okay.

Q. 19.

"Detective Goodlett: Yeah. And Sergeant Mattingly in passing was like, sorry about the confusion. I misunderstood, but I verified he was getting packages there.

Ms. Whaley: Who was that? Who said that?

"Sergeant Mattingly."

What does that mean, ma'am?

A. It doesn't say -- I don't know what it means. She will have to tell you what it means --

Q. Okay.

A. -- but it says -- it doesn't say in here that he verified through the Post Office --

Q. If you don't know what it means, that's fine.

A. Okay.

Q. *Okay. So getting back to the point where under the collective knowledge doctrine, the knowledge of one officer is imputed to another. Do you agree with that principle, ma'am?*

A. *In part, yes.*

Q. *Well, what part do you agree with and what part do you not agree with?*

A. *My answer is, yes, I agree with that.*

Q. *Okay. That's what the Sixth Circuit says here, right?*

A. *Right.*

MR. DAUGHERTY: Objection.

MR. DOBBINS: To the extent she knows whether that's what the Sixth Circuit says, she can answer the question. She doesn't know it, she shouldn't.

BY MR. CLAY:

Q. "By imputing the investigating officer's suspicions on the responding officer, without requiring a responding officer to independently weigh the reasonable suspension analysis, the collective knowledge doctrine 'reserves the proprietary of the stock' and avoids crippling restrictions on our law enforcement." Do you agree with that statement, ma'am?

MR. DAUGHERTY: Objection. Again, this is -- he's picking and choosing parts of a case to read to and asking whether she agrees with them legally.

MR. DOBBINS: *I think those are closing arguments.*

MR. CLAY: Again, Mr. Dobbins --

MR. DOBBINS: Legal arguments.

MR. CLAY: -- a closing argument has to be based on facts in the evidence, and unless --

MR. DOBBINS: And the law.

MR. CLAY: -- I can get facts in the evidence --

MR. DOBBINS: And the law.

MR. CLAY: -- to base my closing argument on, I can't make the argument --

MR. DOBBINS: Well --

MR. CLAY: -- because he's going to be objecting and saying there's no facts in the record to back up that argument.

MR. DOBBINS: You can make legal arguments. You've asked her the question anyway several times, collective knowledge --

MR. CLAY: Well --

MR. DOBBINS: -- the collective knowledge question.

MR. CLAY: Okay. I'm sorry?

MR. DOBBINS: I said you've asked her questions about the collective knowledge doctrine several times.

MR. CLAY: That's what I'm doing.

MR. DOBBINS: Now you're asking her to say whether a case says -- you're asking her -- you're quoting from a case and asking her whether the case says it.

MR. CLAY: Okay.

BY MR. CLAY:

Q. Do you agree that "imputing the knowledge of one officer to another preserves a proprietary of a stop if one officer makes a stop based on knowledge as conveyed to him by another officer"?

A. Traffic stop? Yes.

Q. Are "responding officers entitled to presume the accuracy of information furnished to them by other law enforcement personnel"?

A. Trusted and verified, yes.

Q. Ma'am?

A. It has to be verified, yes.

Q. *So if I get information -- if I'm an officer and I get information from another officer, I have to verify that information?*

A. *Before you put it in an affidavit.*

Q. *You do?*

A. *Yes.*

Q. I want to be sure I've got you on the record saying that. So if I get -- if for instance here, if Sergeant Mattingly gives Joshua Jaynes information, Joshua Jaynes has to verify that information before he puts it in the search warrant affidavit?

A. If you get information, you have to make sure it's accurate. You're responsible for the accuracy of the information when you swear to it in an affidavit.

Q. Okay. But that's not my question. My question is --

A. Okay.

Q. -- if Joshua Jaynes gets information from Sergeant Mattingly, Detective Jaynes has to verify that information before he puts it into an affidavit?

A. And swears to it -- it has to be correct. It has to be factual.

Q. That's not my question.

A. Okay.

Q. *Did you understand?*

A. *Well, the ans -- well, your -- your question -- no. Okay. Your -- my answer to your question would be no.*

Q. *So if Joshua Jaynes gets information from Sergeant Mattingly -*

A. *Right.*

Q. *-- Detective Jaynes does not have to verify that information before he puts it in the search warrant affidavit --*

A. *Right.*

Q. *-- is that right?*

A. *That's -- that's correct.*

Q. *Okay. So he doesn't have to cross-examine Sergeant Mattingly about, well, how do you know that or who did you talk to or how did you verify this? He doesn't have to do any of that, does he?*

A. *No.*

Q. *He can rely on the information that Sergeant Mattingly gives him without question?*

A. *Correct.*

Q. *Okay.*

A. *Citing a reliable source, yes.*

Q. *Ma'am?*

A. *He needed -- he would -- he would need to cite it as a reliable source or Sergeant Mattingly. It's not -- he can't put that information in as firsthand to the Postal Inspector if he went through Sergeant Mattingly. Then if he added it to an affidavit for a warrant, he would need to say that it came from a reliable source or something. You can't -- you can't say you talked to somebody you didn't talk to.*

Q. *He can't recite it as his own information?*

A. *Right.*

Q. *Well, that's exactly what the collective knowledge doctrine says he can do, ma'am.*

A. But the -- but the search warrant in the affidavit says that he did that, and that has to be factual.

Q. And according to the collective knowledge doctrine, that is exactly what he can do; isn't it, ma'am?

MR. DAUGHERTY: Objection. Legal opinion and argumentative.

MR. DOBBINS: *Sustain that.* Unless you know the answer to it.

BY MR. CLAY:

Q. Do you agree, ma'am, that "probable cause to conduct a search may arise through the collective knowledge of the officers involved in the operation"?

A. Probable cause, yes.

Q. Do you agree with that?

A. Yes.

Q. Okay. Do you agree that under the collective knowledge doctrine, "An officer initiating a stop or conducting a search need not have personal knowledge of the evidence that gave rise to the reasonable suspicion of probable cause, so long as he is acting at the request of those who have the necessary information"?

MR. DAUGHERTY: Objection. This is -- Mr. Clay is again just reading -- just reading these cases and portions of these cases and asking her whether she agrees with them or not.

A. In traffic stops and search -- I mean, I need to ask him --

MR. DOBBINS: I think he can ask questions about what she understands the state of the law to be. If she knows the answer to them, she can answer them.

BY MR. CLAY:

Q. Did you understand the question?

A. Yes.

Q. What's your answer?

A. You're talking about -- that case is talking about a traffic stop or

a Terry stop, correct?

Q. It's -- no. It's actually -- the Fourth Amendment covers --

A. No. I'm talking about the -- you -- you cited a case --

Q. I did.

A. -- a specific case.

Q. Yeah.

A. That was talking about a traffic stop you said.

Q. Or conducting the search.

A. As it relates to a traffic stop. Like, a person --

Q. It doesn't matter, ma'am. It's a search. All searches have to be conducted under the Fourth Amendment, don't they?

MR. DAUGHERTY: Objection. Argumentative.

MR. DOBBINS: If you can answer the question not make -- not offering your legal interpretation. Ask her a question.

BY MR. CLAY:

Q. Under the collective knowledge doctrine, "An officer initiating a stop or conducting the search need not have personal knowledge of the evidence that gave rise to the reasonable suspicion of probable cause, so long as he is acting at the request of those that have the necessary information." Do you agree with that, ma'am?

MR. DAUGHERTY: Same objection.

MR. DOBBINS: If you know the answer, you can answer it. If you don't know the answer.

THE WITNESS: I -- I can't -- it's -- it -- he's kind of citing of a case law that I'm not familiar with the particular case and the context of around it.

A. I kind of -- when you initially started, it sounded like you were asking -- that case was to a traffic stop and a search subsequent to a traffic stop, and, I mean, I would like to read it. I mean, I'm happy

to answer it --

BY MR. CLAY:

Q. I'm happy for you to read it if your counsel will let you. You want to read it?

A. I wish you would have submitted it.

Q. Well, I'd be -- you know, I wish you would have --

A. If you had submitted --

Q. -- followed the law when you fired Detective Jaynes --

MR. DOBBINS: You know what --

MR. DAUGHERTY: Objection.

MR. DOBBINS: Come on.

MR. CLAY: Well --

MR. DOBBINS: No. Uncalled for.

MR. CLAY: -- let's get into it. If she wants to go rock and roll, let's rock and roll.

MR. DOBBINS: *No. You know what? I would ask the Chair to ask Counsel to behave, frankly. You know that's not appropriate. You know that's not appropriate.*

CHAIR HARRAL: Let's all take a deep breath. Let's all breathe for a minute.

MR. DOBBINS: We don't need to have arguments between Counsel and the witness. The witness made a comment. We're -- the only rock and rolling we're going to do is in a reasonable sort of way right here. You can take the most vigorous position you want to, but address your objections to the Court and not within colloquy with the witness.

MR. CLAY: Mr. Dobbins, she is no novice witness, and she is -- she's --

MR. DOBBINS. Maybe she is and maybe she isn't.

MR. CLAY: -- causing these --

MR. DOBBINS: It doesn't matter.

MR. CLAY: -- problems with her non-responsive answers.

MR. DOBBINS: Well, you can object to the Board, as you have.

MR. CLAY: Then you can instruct the witness to quit volunteering all of this stuff that's non-responsive.

MR. DOBBINS: *I told the witness she needs to answer the questions "yes" or "no" and then she can explain her answers, and she's free to do that.* She -- and you shouldn't have said to him you should have supplied it in advance, even though that's true, frankly.

BY MR. CLAY:

Q. Do you agree with that statement, ma'am?

MR. DAUGHERTY: Same objection.

MR. DOBBINS: Would you just ask the question again please, sir?

MR. CLAY: Sure.

BY MR. CLAY:

Q. I'm asking you: Do you agree with this statement? "And although Officer Pruitt's testimony showed he only affected the stop at Sergeant Egart's (phonetic) instruction, his lack of personalized suspicion is 'immaterial,' because under the collective knowledge doctrine, Officer Pruitt did not need to form his own suspicion. The suspicions transferred by the law enforcement agents who observed (Inaudible) traffic violation suffices." So under the circumstances we have here, did Sergeant Mattingly's knowledge transfer to Detective Jaynes under the collective knowledge doctrine, ma'am?

A. In --

Q. That's a "yes" or "no."

A. I would say yes.

Q. Okay.

A. Yes. Under that -- under the way you described it, yes.

THE WITNESS: *Can I expand, Counsel?*

MR. DOBBINS: *If you want to explain your answer, sure. Not to offer argument, but to explain your answer.*

A. *Okay. So I still go back to the response, the evidence -- the response that even Detective Jaynes -- the evidence was a text message -- or it says "no." So if we're going on that, the response was "no." The written -- the evidentiary response was "no." I -- I hear you saying about conversations, but you didn't submit that. The evidence says that the response was "no."*

BY MR. CLAY:

Q. *The response -- when was that response given, ma'am?*

A. *Through Detective Jaynes' testimony.*

Q. *Yeah. And when did he learn about the "no," ma'am?*

A. *When he learned about it?*

Q. *Yeah.*

A. *In April.*

Q. *April. When was the search warrant executed?*

A. *In March.*

Q. *So when did he learn about the "no" after the search warrant was executed? Is that what you're telling us?*

A. *Yes.*

Q. *So what did he know at the time that he completed that search warrant affidavit?*

A. *Only he can testify to that. That was one of the problems that I had --*

Q. *Well --*

A. *-- why would you heed to verify --*

Q. *No. Others can testify about it, too, ma'am.*

A. Okay.

Q. -- because others have testified about the conversations between Sergeant Mattingly and Detective Jaynes and Detective Goodlett. They have testified about that, too, haven't they, ma'am?

A. Yes.

Q. And they testified -- have you read --

A. I don't know --

Q. -- have you read Sergeant Mattingly's statement?

A. I have.

Q. Did he acknowledge that he made that statement to Detective Jaynes in the presence of Detective Goodlett?

A. It has nothing to do with the U.S. Postal Service.

Q. Did he make that statement, ma'am, that he acknowledged making the statement about checking with the USPS Inspector to Detective Jaynes and Detective Goodlett?

A. I don't see a statement where he said the U.S. Postal Inspector. He talked about talking to Shively police.

Q. You didn't see anything in there where he might have mentioned in passing?

A. No. If you could tell me where it's at --

Q. We'll get to that.

A. -- I'm really familiar with it.

Q. Yeah. I'm sure you are. But you aren't familiar with that passage, are you?

A. Because he didn't say -- I never see anywhere in here where --

Q. Okay.

A. -- Mattingly said he talked to the U.S. Postal Inspector, and said he was getting packages there. If it's in this evidence, please tell me

where.

Q. Under the collective knowledge doctrine, "An arresting officer is entitled to act on the strength of the knowledge communicated from a fellow officer, and he may assume it's reliability provided he's not otherwise aware of circumstances sufficient to materially impeach the information he received."

Was there anything about the information communicated by Sergeant Mattingly that would cause Detective Jaynes to question this accuracy?

A. Detective Jaynes would have to answer that question.

I don't know what --

Q. Ma'am, you made the decision to fire him --

A. I made the decision to fire him --

(SIMULTANEOUS UNREPORTABLE CROSSTALK OCCURS)

MR. DOBBINS: One at a time. One at a time.

THE WITNESS: Okay. He's talking to when I'm supposed to be answering.

MR. DOBBINS: Yeah. Let one another finish.

BY MR. CLAY:

Q. Was there anything about the information communicated by Sergeant Mattingly to Detective Jaynes and Detective Goodlett that would cause Detective Jaynes to question the information Sergeant Mattingly gave?

A. It shouldn't have been.

Q. What was there? In your knowledge, was there anything -- I'm asking you, ma'am, in your evaluation of the evidence here, was there anything?

A. No. It should not have been, because the answer was no.

Q. So the answer is "no"?

A. The answer was "no."

Q. *Okay. Under the collective knowledge doctrine, "When law enforcement officers are in communication regarding the suspect, the knowledge of one officer can be imputed to the other officers." Could the knowledge of Detective Jaynes that he received from Sergeant Mattingly, could Sergeant Mattingly's knowledge be imputed to Detective Jaynes?*

A. *Yes. Under that.*

MR. DAUGHERTY: Before Mr. Clay asks his next question, I would just object to his continuing to read his -- to read his -- these legal principles into the record before asking what is otherwise an appropriate question, it doesn't really have anything to do with it. So I would object to the way that he's asking these questions.

MR. DOBBINS: I think it's okay for him to ask her whether she agrees with a particular principle, whether she's familiar with and as employed as chief or formally employed as chief.

BY MR. CLAY:

Q. "Under Franks and the collective knowledge doctrine, Deputy Green was able to rely on Hartfelder's information and the investigation conducted by another law enforcement official in making his affidavit." Was Detective Jaynes able to rely on information given to him by Sergeant Mattingly in making his affidavit?

A. Yes.

Q. Under the collective knowledge doctrine, may an officer conduct a stop based on information obtained by fellow officers rather than information the detaining officer himself possesses?

A. Yes.

Q. Does that doctrine apply whenever a responding officer executes a stop at the request of an officer who possesses the facts necessary to establish reasonable suspicion?

MR. DAUGHERTY: Objection. Irrelevant. This case doesn't involve a traffic stop.

MR. CLAY: Traffic stop and search are under the same Fourth Amendment, and the same factors apply to both of them.

MR. DOBBINS: The weight of the evidence --

A. Probable cause for a stop is very different than the threshold needed for --

BY MR. CLAY:

Q. Probable cause to the stop is not different. Reasonable suspicion may be different. But probable cause is still the same whether it's a stop or a search. Isn't that true, ma'am?

A. Yes, but we're not talking about probable cause here. I didn't challenge --

Q. We're talking about probable cause for the issuance of a search warrant, ma'am.

A. Okay.

Q. That's what this is about, whether it's probable cause and whether Detective Jaynes told the truth about that?

MR. DAUGHERTY: I would object to his characterization as to whether or not this is about probable cause. I think we've said repeatedly that that's not what the issue is about.

The issue is about whether or not the statement in the affiant search warrant was truthful or untruthful.

MR. DOBBINS: *I think he's right, T.*

BY MR. CLAY:

Q. "In determining whether reasonable suspicion exists, the collective knowledge of all law enforcement officers involved in the stop may be taken into consideration. Is that an accurate statement of the collective knowledge doctrine, ma'am?"

A. Taken into consideration, yes.

Q. "And probable cause can rest upon the collective knowledge of the police rather than solely on that of the officer who actually makes the arrest?"

A. Taken -- taken into consideration, yes.

Q. And is it also reasonable under the collective knowledge doctrine that a reasonable suspicion to stop a particular vehicle can be transferred to the officer who made the stop from the officer who had the knowledge?

A. Taken into consideration, yes.

Q. Okay. What do you mean "taken into consideration"?

A. *Because it also says in there, if I recall correctly, and you can tell me if you've seen it -- I know -- I'm sure you know that statute better than I do -- that you're still responsible for the information being accurate. So if you do constructive knowledge, I go back to saying the constructive knowledge in the evidence says that the response was a "no." If Goodlett is going to come in here and say something, that's different. But the response was a "no." And so if he took into consideration other things, it was still his responsibility to tell the truth. He did not talk to the U.S. Postal Inspector. If an officer told him that he did, the evidence says to the contrary, that the answer was "no".*

Q. Okay. The answer was "no" after the fact, though. We agree on that, right?

A. But he verified it after the fact, which is a problem.

Q. But the --

A. Why did he --

Q. -- "no" was after the fact, correct?

A. *That's when he went to verify it. That's in his statement when he went to verify it. He did not know -- according to his own statement, Josh Jaynes, he didn't know who he talked to. So he had sworn to the affidavit in March. The warrant was signed and executed in March, but in his own testimony, he says, "I needed to go back and ask Jon who he talked to," and I -- and that was what he said he had to do in April. If he had done it in March, he wouldn't have had to do it in April. That is why the testimony that you're going down this whole route as if there was this emphatic, confirmed thing from the U.S. Postal Inspector in March when the information that I have and through his own words, he verified that in April, which is problematic for me. It was one of the things that I looked at. If you know --*

Q. Will you answer my question, ma'am?

A. I'm answering your question, and I can expand.

Q. No, you're not.

A. Yes, I am.

Q. *You're not answering the question. My question is very simple: Was the "no" after the fact of the search warrant?*

A. *Yes. When he verified it, it was after the fact --*

Q. *Okay.*

A. *-- and the "no" was after the fact.*

Q. *Then my question is: Does Detective Jaynes have to verify the information he received from Sergeant Mattingly under the collective knowledge doctrine?*

A. *We're not talking about the collective knowledge doctrine. We're talking about the statement --*

Q. *That that's a "yes" or "no," ma'am.*

MR. DOBBINS: *Wait a minute. Wait a minute.*

MR. CLAY: *I'm asking her to answer my question.*

MR. DOBBINS: *You can answer "yes" or "no" and then explain.*

THE WITNESS: *Okay.*

BY MR. CLAY:

Q. *Under the collective knowledge doctrine --*

MR. DOBBINS: *If you can answer it.*

Q. *Under the collective knowledge doctrine, ma'am, did Detective Jaynes have to verify the information he got from Sergeant Mattingly?*

A. *Under the collective knowledge, no, but you can't -- can I expand now? You can't make a "no" a "yes." You can't make a "no" a "yes."*

Q. *That's nonsense, ma'am. What are you talking about?*

A. *The answer -- if you have -- you're -- you're -- you're giving evidence that I don't have. It was not submitted, and I was not given an opportunity to review. I reviewed everything I was given. The response in the evidence in here clearly says, and Jaynes even says, the response I got back was a "no."*

Q. *Okay. So at that point when he gets a "no" back, what's he supposed to do?*

A. *Well, if the --*

Q. *After the fact? After the search warrant's been executed, what's he supposed to do?*

A. *The point was he was supposed to have verified with the U.S. Postal Inspector in March like he swore he did, and he didn't.*

Q. *But you just got through saying, ma'am, if he got the information from Sergeant Mattingly, he did not have to verify that information --*

A. *But he --*

Q. *-- are you now changing your --*

A. *No --*

Q. *-- testimony?*

A. *No. I'm not changing, my testimony, because what he could have done and he should have done, if the information came through a third party or somebody else, he should have noted that in his affidavit. Because --*

Q. *But under the collective knowledge doctrine, ma'am, he doesn't have to do that --*

A. *It doesn't erase --*

Q. *Excuse me. Under the collective knowledge doctrine, ma'am, he doesn't have to verify that information from Sergeant Mattingly, does he?*

MR. DAUGHERTY: *Objection. That calls for a legal conclusion.*

A. *The --*

MR. DOBBINS: *It does. If you know the answer, if you feel qualified to answer it, answer it. If don't, then don't.*

BY MR. CLAY:

Q. *Under the collective knowledge doctrine, ma'am, Detective Jaynes does not have to verify the information he gets from Sergeant Mattingly, does he --*

MR. DAUGHERTY: *Same objection.*

Q. *-- yes or no?*

A. *The answer is no.*

Q. *Okay.*

A. *But can I just -- I do get a right -- I mean, he's trying to put me in a spot.*

Q. *Sure.*

A. *But the reality -- but the reality is we're not talking about him introducing information that he got through Sergeant Mattingly. He says very clearly, "I, the affiant, verified through the Postal Inspector." If he would have said, "I verified through Sergeant Mattingly," that would be very different evidence, and it's very different third party versus something that you did yourself --*

Q. *Well, we're going to get to that.*

A. *-- that statement is not true. Okay.*

Q. *We'll get to that.*

A. *Okay.*

Q. *"When more than one police officer is involved in reasonable suspicion analysis, Courts consider their collective knowledge." You don't have any problem with that, do you?*

MR. DAUGHERTY: *Objection. Same -- it's --*

Q. Collective knowledge doctrine "Permits an officer stop, search, or arrest a suspect at the direction of another officer, even if the officer himself does not have firsthand knowledge of the facts that amount to the necessary level of suspicion to permit the given action. The constitution permits officers to stop a person based on wanted bulletins issued by other law enforcement agencies, even if the officer making the stop lacks personal knowledge." Do you have any issue with the statement of the law, ma'am?

MR. DAUGHERTY: Objection. This line of questioning where he continues to read portions of cases that have already been -- that the Board has already ruled are not going to be admitted into evidence as exhibits is entirely inappropriate. I think it's gone on long enough.

MR. DOBBINS: I do think that these are the same -- essentially the same question each time. Unless there's a big distinction between the next one and the last one, I think --

MR. CLAY: I've got two more.

MR. DOBBINS: -- *this has gone on long enough.*

BY MR. CLAY:

Q. "If one officer does not have sufficient knowledge under the collective knowledge doctrine, the Court will attribute knowledge known to one officer to the others." Is that -- isn't that what happened here, ma'am? Under the collective knowledge doctrine, Sergeant Mattingly's knowledge is attributed to Detective Jaynes?

A. I disagree.

Q. Ma'am?

A. I disagree. That's not what happened here.

Q. Okay. Here's one from another case. And this basically says this is not that kind of case because the district court already recognized this detective already had reasonable suspicion under the constructive or collective knowledge doctrine. "We impute to Detective Newman knowledge of all the facts known to Agent Billings when he asked Newman to make a traffic stop with Jordan. Under the collective knowledge doctrine, we 'substitute the knowledge of the instructing officers or officers for the knowledge of the acting officer.'" So, ma'am, isn't that exactly what is happening here, that we are substituting the knowledge of Sergeant Mattingly for the knowledge of the acting officer, and that

knowledge is imputed to Detective Jaynes?

A. Substituting knowledge is not the same as changing the answer. He changed the answer from "no" to "yes."

Q. Well, he didn't change it before the fact, ma'am.

We've already established that. At the time he did the search warrant affidavit, the information he had was that Sergeant Mattingly told him that Sergeant Mattingly had verified with the USPS Inspector that Jamarcus Glover was receiving packages at Springfield. Isn't that the information that Detective Jaynes had at the time he executed that search warrant affidavit?

A. The evidence says he got --

Q. Yes or no?

A. No.

Q. It's not?

A. No. The evidence doesn't support --

Q. Okay. What information did he have --

A. The evidence doesn't support that.

Q. What information does Detective Jaynes have?

A. The evidence -- well, the evidence doesn't support that. His testimony -- and I'll go back to Jaynes' testimony, and I believe he testified here as well, that he did not verify --

Q. Wait a minute. You're saying as "he testified here as well"?

A. He was --

Q. What are you talking about, "as he testified here as well"?

A. He was asked if -- he was asked in his interview, he was asked if he talked to the U.S. Postal Inspector.

Q. He didn't. There's no issue about that.

A. Okay.

Q. He didn't talk to the U.S. Postal Inspector.

A. So that -- we agree that that's false.

Q. No. We do not agree that's false. We agree under the collective knowledge doctrine, it's a true statement because knowledge possessed by Sergeant Mattingly is imputed to the knowledge that Detective Jaynes had when he completed that search warrant affidavit.

A. I don't have --

Q. We don't agree on that.

A. Okay. I don't have any evidence in here unless you have it, that Sergeant Mattingly said to Detective Jaynes, "I talked to the U.S. Postal Inspector, and your guy is getting the packages there."

Q. Well, I just gave you Detective Goodlett's statement, and --

A. Detective Goodlett's -- it was not part of evidence. The evidence that I have says the answer was "no." If you have evidence that's different, I can't speak to that because you didn't think it was important -- well, never mind. That was inappropriate.

Q. Ma'am, you keep saying the evidence says "no," but the evidence at the time of the search warrant affidavit was executed was "yes."

A. No. The evidence doesn't say "yes."

Q. It doesn't?

A. No. The evidence doesn't say that answer was "yes." No.

Q. It doesn't say that Sergeant Mattingly told Detective Jaynes that Sergeant Mattingly had checked with the USPS Inspector and the Inspector said Jamaricus Glover was receiving packages there?

A. That the Postal Inspector said that? I don't -- that is nowhere in evidence --

Q. Okay.

A. -- that the Postal Inspector told Mattingly that. That is not in evidence. That is not in evidence.

Q. Okay. It's in Detective Jaynes' statement, isn't it?

A. He said -- in his own statement, he says he doesn't know who he went through. Detective Jaynes said he doesn't know who he went through. So to say you had implied knowledge, just -- just reference that.

Q. Okay. Okay.

A. I'm with -- I mean, reference that.

Q. No, I will. I'm going to. Trust me.

A. Okay.

Q. *I will. Was Kelly Goodlett interviewed in the PSU investigation?*

A. *No. Not at this --*

Q. She wasn't. What are you looking at them for? Don't you know?

A. I mean, because I don't have -- well, I -- it was not given to me. I -- I don't see anywhere she was interviewed. Because we expanded scope, other people came up, neither Jaynes or anybody brought up the fact that she needed to be interviewed. I didn't see her interview.

Q. Okay. Well, did you understand from your interview of the PSU file that Kelly Goodlett was present when this conversation occurred between Sergeant Mattingly and Detective Jaynes?

A. It talks about some -- her overhearing that she could -- that she was present --

Q. Ma'am?

A. -- in the area. It talks about -- and she's mentioned in here several times. She's mentioned throughout this case several times.

Q. *But she wasn't interviewed?*

A. *Not to my knowledge. I wasn't -- I didn't --*

Q. You would know if she were interviewed, wouldn't you?

A. I -- I assume I would, but you are presenting things that you haven't given me, so...

Q. Well, I didn't give you anything because you wouldn't return my communications, did you, ma'am?

A. That was the responsibility of our legal team.

Q. Well --

A. I corresponded with you --

Q. -- whoever's responsibility it was, I received no response to any effort I made to communicate with you or the Louisville Metro Police Department, did I?

A. You weren't --

MR. DAUGHERTY: I'll object to the argumentative and irrelevant nature of what happened between counsel.

MR. CLAY: She keeps bringing it up.

MR. DOBBINS: *Let's move on. It's not really relevant what you-all may or may not have talked about.*

THE WITNESS: Well, if I could -- if I could, Mr. Dobbins, I just want to set forth, Mr. Jaynes was represented by other attorneys at that time. He was represented by Chad Garner and Keith Kamenish at that time.

They came in the hearing with him at that time. I -- so to say, well, he all these other attorneys, that I had the responsibility to reach out to is kind of setting people up for something -- is saying to people something that I did deceitfully when that's not the case --

MR. DOBBINS: I --

THE WITNESS: -- he was not represented by Mr. Clay at that time.

MR. DOBBINS: I heard that testimony earlier, and thank you.

MR. CLAY: Well, she also was on notice as of December 2nd when I served the memo that I did represent Mr. Jaynes, so I don't --

MR. DOBBINS: You are free to draw whatever inferences you want to draw from that during arguments, but we've heard the testimony about it

A. Ignorance of the Collective Knowledge Doctrine

Contrary to Gentry's understanding that the Doctrine "kind of speaks to things you should know. Like, if you - - if I recall correctly, it cites things - - like in civil cases. . . .," it applies to communications between law enforcement officers who can rely on each others statements without reservation or verification, just as Detective Jaynes and Goodlett relied upon Sgt, Mattingly's statement that Jamarcus Glover was receiving packages at 3003 Springfield Drive, Unit 4.

This Doctrine is widely known and recognized in all federal and state jurisdictions, specifically the Sixth Circuit and Kentucky. (See authorities in Exhibits 2 and 3)

Once Gentry was apprised of the Doctrine and its applicability to searches under the Fourth Amendment, she made admissions which compromise her credibility and her decision to terminate Detective Jaynes for being untruthful.

Gentry never saw the Doctrine referenced in any of the voluminous investigative paperwork she reviewed.¹

Gentry acknowledged that the law takes precedence over any LMPD SOP provision. (June 30, 3031, p. 92, 1.22 to 1.24.)

She agreed that, under the Collective Knowledge Doctrine, the knowledge of one officer is imputed to another. (June 30, 2021, p. 127, 1.7 to 1.14.)

She agreed that Detective Jaynes did not have to verify the information he got from Sgt. Mattingly. (June 29, 2021, p.131, 1.6 to 1.22.)

¹ PSU investigator Andrew Mayer had never prepared a search warrant or affidavit – See Meyer testimony, June 3, 2021, p. 171, 1.16 to 1.243.

She agreed that Sgt. Mattingly's knowledge transferred to Det. Jaynes. (June 29, 2021, p. 137, l.19 to p. 138, l.13.)

After stating Det. Goodlett was not interviewed (June 29, 2021, p.157, l.16 to l.21), Det. Goodlett contradicted that testimony. (June 29, 2021, p. 240, l.17 to l.22)

**B. Illogical and Incomprehensible
Testimony about "Yes" v. "No" On Whether Jamarcus Glover
Was Receiving Packages at 3003 Springfield Drive, Unit 4.**

The conversation between Det. Jaynes and Sgt. Mattingly overheard by Det. Goodlett which led to the statement in the search warrant affidavit resulting in Det. Jaynes' termination for untruthfulness occurred in January, 2020. June 29, 2021, p. 238, l.17 to p.240, l.16.

The search warrant was served on 3003 Springfield Drive, Unit 4, on March 13, 2020. (Ex. 2, Tab 10)

After questions were raised about Sgt. Mattingly's information, Det. Jaynes followed-up with Shively Police Officers. This follow up was in April 2020, when a Shively officer told Det. Jaynes that Jamarcus Glover was not receiving purchases at this address (Gentry, June 29, 2020, p.107, l.5 to l.10) Gentry stated repeatedly that the "no" was after the fact when the warrant was executed. (Gentry, June 29, 2020, p.138, l.18 to p.139, l.15, p.147, l.16 to l.22).

Gentry then goes on with an incomprehensible statement that the "no" was one of the things she looked at in deciding to terminate Det. Jaynes. (Gentry, June 29, 2021, p.145, l.18 to p.147, l.22)

Findings of the Board that Were False and/or Arbitrary

Paragraph 51 of the Findings and Order falsely states that Jaynes "really only had information, via video provided by a 'pole cam' installed by LMPD, of Glover receiving, or at least departing with, only a single package." In fact, Mr. Glover was photographed by Jaynes'

partner Kelly Goodlett entering 3003 Springfield Drive, Unit 4, and departing a short time later carrying what appears to be a USPS package; Jaynes was physically present when the photograph was taken.

Paragraph 53 of the Board's Findings states, "He [Jaynes] testified that he relied solely upon Mr. Mattingly." Under the Collective knowledge Doctrine, Jaynes could rely on Sgt. Mattingly's statement without further inquiry.

Paragraph 54 is arbitrary in its statement that Jaynes remained unclear whether Mr. Mattingly actually had a source in the Postal Inspector's Office or one in the Shively Police Department. He conceded that direct knowledge from a source is better than second or third hand information.

First, Detective Jaynes relied upon what Sgt. Mattingly told him when Mattingly stated that he, Mattingly, had verified Glover was receiving packages at the address in question. Both Detective Jaynes and Detective Goodlett took Sgt. Mattingly's statement at face value and relied upon it as they were entitled to do under the Collective Knowledge Doctrine.

The Board's reference to the reliability of first-hand information versus second or third hand information is irrelevant and arbitrary. Detective Jaynes and Detective Goodlett had first-hand information from a police officer supervisor that he, Mattingly, had personally verified the information on Glover.

Paragraph 55 again relies on false facts to reach an arbitrary conclusion. "He [Jaynes] conceded as well that the Affidavit does not say that he 'verified' any information through a third party. Instead, it states that he verified it himself." The affidavit actually states "Affiant verified through a US Postal Inspector. . ." Det. Jaynes truthfully stated "Affiant verified" because Sgt. Mattingly's information is imputed to Det. Jaynes under the Collective Knowledge Doctrine.

Paragraph 59 falsely refers to the search warrant as a "No Knock Warrant." While it is true the warrant was signed by Judge Mary Shaw as a "no knock" warrant, the warrant was executed as a "knock and announce" warrant on March 13, 2020. (Ex. 2, Tab 7)

Paragraph 66 arbitrarily ignores former Chief Schroeder's testimony about Det. Jayne's reliance on Sgt. Mattingly's information.

Q. Okay. What is your understanding of, if any, of the information that Detective Jaynes relied on in putting that information in the ninth sentence of the search warrant affidavit?

A. Again, as I stated earlier, I heard a couple different verifications of it. One, that he got the information from task force officers with the Shively Police Department. I heard another version where he got the information from Sergeant Mattingly who got the information from task force --

Q. Okay.

A. -- officers with the Shively Police Department.

Q. So if Detective Jaynes had gotten that information about contact with USPS individual from Sergeant Mattingly, was he entitled to rely on that information?

A. The constructive knowledge doctrine.

Q. Sir?

A. The constructive knowledge doctrine, yes, sir.

Q. Okay. Did he have to question him about the source of the information?

A. You mean as far as specifically do you think the informations' credible? I'm not sure what you are asking.

Q. That's exactly what I'm talking about.

A. Okay. I think it would be prudent just to make sure that information is correct and making sure that it came from a task force officer not a police officer. I think you could safely assume it was credible.

Q. Well, let me ask it a different way: Was Detective Jaynes under any obligation to go behind what Sergeant Mattingly told him to verify what Sergeant Mattingly had told him?

A. Do you mean as in checking with the task force officers themselves?

Q. Or the USPS Inspector?

A. No. I think in that case if that were in fact to happen, he could rely on the information he obtained from another police officer.

Q. Without verifying it?

A. Well, I mean, as far as he heard that the information came from another police officer, I think he could rely on that. If it had come from maybe an informant or anonymous source, we might be having a different conversation.

Q. I agree.

A. But coming --

Q. But coming from a police officer?

A. But coming from a police officer, he could rely on that information.

Q. Not a police officer -- not even a police officer from another agency. This was a police officer who was in his police department. And he can rely on that information, can't he?

A. Through the constructive knowledge doctrine, yes, sir.

Robert Schroeder transcript
Merit Board Hearing, June 3, 2021
p. 106, l.12 to p.108, l.19

Paragraph 77 of the Findings discusses testimony of Sgt. Andrew Meyer, who had never prepared a search warrant and never mentioned the Collective Knowledge Doctrine in his testimony investigative file. Presumably, this investigator had no understanding that Sgt. Mattingly's information was imputed to Det. Jaynes.

Paragraph 93 again ignores the fundamental principle of the Collective Knowledge Doctrine that information from one officer is imputed to another. Of course, former Chief Gentry could not be expected to be familiar with this doctrine given her complete ignorance of its existence as applicable to searches. This paragraph is an arbitrary finding.

Paragraph 111 is yet another example of the Board's arbitrary Findings when it cites Gentry's testimony where she states "an officer swearing out an affidavit must verify any information he receives from a third party if he is going to rely on it as an affidavit and that he should cite the fact that the information in the search warrant is second-hand rather than something he personally verifies." This testimony and finding are clearly at odds with the holdings of Federal and Kentucky cases dealing with the Collective Knowledge Doctrine. The Board's citing this evidence in its Findings is arbitrary.

**The Board's Lawyer Was Prejudiced Against Det. Jaynes and his counsel
And Exceeded his Role as Advisor.**

The following quotes illustrate the bias of the Board's counsel and his improper assumption of the role of Judge ruling on objections:

June 29, 2021

MR. CLAY: Okay. I would like maybe five minutes to pass out these two binders here --

MR. DOBBINS: What are they?

MR. CLAY: -- to the Board members, to counsel, and to the witness.

MR. DOBBINS: What are they?

MR. CLAY: They are documents that deal with the collective knowledge doctrine.

MR. DOBBINS: Do you want to --

MR. DAUGHERTY: Object.

MR. DOBBINS: -- share it with Mr. Daugherty first?

MR. CLAY: Sure.

MR. DAUGHERTY: I mean, I'm going to object to this exhibit. This has not been anything that has been tendered as an exhibit. I haven't seen this. The timing of this is just way off. I would object to any introduction of these documents.

MR. CLAY: Well, it's not way off. We call this rebuttal.

MR. DAUGHERTY: This isn't rebuttal. This is direct -- this is direct examination --

MR. DOBBINS: This is cross-examination. If you want to share it with him first --

MR. CLAY: Sure.

MR. DOBBINS: -- do that. Then we'll hear -- take five minutes if you need it. Then we'll hear argument about it; is that okay?

CHAIR HARRAL: Yes.

MR. DAUGHERTY: Madam Chair, Mr. Dobbins, these are -- I mean, there are ten cases in here, and I will need more than five minutes to parse through this and be able to adequately articulate my objections to the Board.

MR. DOBBINS: Do you want to take a short break?

CHAIR HARRAL: We'll have a ten-minute break right now.
(OFF THE RECORD)

CHAIR HARRAL: We're back on the record now.

MR. DOBBINS: I think when we broke, Madam Chair, there was some discussion about exhibits that Mr. Clay was attempting to introduce. Are you still on the stand?

THE WITNESS: Yeah. You want me to go back?

MR. DOBBINS: Do you want to go back up. And the exhibits were passed to LMPD counsel. What's your position?

MR. DAUGHERTY: Well, Madam Chair, our position is, is that we object to the introduction of these exhibits certainly at this time. I'll note that they were not provided before today in violation of the Merit Board hearing procedures. And more importantly, these cases -- and this is a stack of 11 -- of 11 cases, most of which have to do with warrantless stops and seizures, but they are not relevant to the issues that are to be decided in this proceeding. The standards that are set out by Franks versus Delaware and were discussed in terms of the constructive knowledge doctrine in these cases are not the same standards that were applied by the chief as it relates to her determination that Joshua Jaynes' statement in paragraph 9 of his affidavit was untruthful. So I think to -- I think what's happening here is essentially an effort by Mr. Clay to sort of confuse the Merit Board as to what the applicable -- what the applicable standard is that you should judge -- that you should judge the statement by and the chief's finding based on. This is not challenging -- the chief did not challenge the validity of the search warrant. This isn't a legal proceeding where a criminal defendant is challenging the validity of the search warrant.

We looked -- Chief Gentry testified she looked at the warrant. She determined the statement. The statement that he verified through the Postal Inspector was not truthful and based on that, she terminated -- she terminated him from employment. So I object to the introduction of these at all as being irrelevant and certainly could confuse the issue before the Merit Board.

MR. DOBBINS: Do you have a reply?

MR. CLAY: I'm really disappointed in the statements made by Counsel, because in my own opening statement, I told the Board that I was going to prove a statement made by Joshua Jaynes about talking to that USPS Inspector was true. Under the collective knowledge doctrine, which applies to search warrants, it's a Fourth Amendment analysis, the statements that were made to him by Sergeant Mattingly, he can adopt as his own.

Sergeant Mattingly's knowledge is imputed to him. And I'm really disappointed that at this juncture, having read these cases, which to me establish beyond any doubt that Joshua Jaynes' termination was wrongful, and nobody, starting with Sergeant Meyer, up the chain of command, apparently has ever heard of this collective knowledge doctrine. If they had heard of it, they would have realized early on he can't be fired for anything he said in his search warrant about talking to a USPS Inspector.

First of all, he didn't say he personally talked to him. He said he verified. That's the exact statement, the exact wording that's in that sentence. He verified through a USPS Inspector.

And under the collective knowledge doctrine, the statements made by Sergeant Mattingly to him about Sergeant Mattingly verifying that Jamarus Glover was receiving those packages, that knowledge is imputed to Joshua Jaynes.

It's clear case after case. It started with a U.S. Supreme Court case called Hensley versus United States. It's been adopted throughout the federal courts in the United States. It's been adopted by Kentucky cases that are cited in this material.

Now, if we want to get technical, I think this is rebuttal. I didn't know what Ms. Gentry was going to say about the collective knowledge doctrine. I didn't know if she knew anything about it and just disregarded it or if she did know about it. It turns out she didn't know what was is.

THE WITNESS: I -- I did say I knew what it was.

MR. CLAY: Ma'am, I'm arguing the case. It's not your turn to testify yet.

THE WITNESS: Okay.

MR. DOBBINS: Okay. Cut down on talking to the witness. But I understand your point, and I agree with it. But you can make the objection to the Board, not to the witness.

MR. CLAY: Okay. So I say it's rebuttal. I say it's cross-examination. Now, whether I intend to introduce this or not, it's going to come in at some point or another. Because if we have to take this case to the circuit court, it's not going to be a question of fact, in my opinion. The facts are pretty much uncontroverted. It's going to be a question of law. And in all of the times I've been doing this, I've never had a situation whereas a matter of law, the Louisville Police Department -- the Louisville Metro Police Department made a mistake in the disciplinary action. This is a matter of law. So I'm wanting to cross-examine Chief Gentry about the holdings in these cases, which say that she is wrong. And I think it's fair game for cross-examination. And whether we can do it through the exhibits or I can read her the cases and ask her, do you agree with the holding in the Kentucky Supreme Court here that

adopts a collective knowledge theory, I can do it that way. I would hope the Board would want to know the truth and the Board would want to know that these cases indicate what LMPD has done to this detective here is despicable.

MR. DOBBINS: Quick follow-up.

MR. DAUGHERTY: Yeah. First of all, let me say that there is no possible way that Chief Gentry can be prepared to be cross-examined on 11 lengthy court cases involving the constructive knowledge doctrine and answer any questions about those right now. To the extent that Mr. Clay says that this is rebuttal, we're still in the Department's case-in-chief.

That's not -- this is not the appropriate time for rebuttal. So -- and, again, it's -- the timing of this is way out of bounds, in my opinion, based on the Merit Board hearings and procedures, and I would ask that it be denied.

MR. DOBBINS: Madam Chair, Members of the Board, Mr. Clay, Mr. Daugherty, I would recommend that the exhibits -- the objections to the exhibits be sustained. I think, Mr. Clay, you can ask her questions about what she knows about the collective knowledge doctrine. I think you can ask her whether it should be applicable in this case. To the extent she knows the answers to those questions, that's fine.

But as I review this, there are a lot of cases that you not only have includes but excerpted. I don't think it's fair or reasonable at this point in time, at this late date, to introduce these into the record. But you are free to make legal arguments in your close, and you're free to make -- or ask questions of Ms. Gentry regarding what she understands of the legal the underpinnings, if you will, of that doctrine.

MR. CLAY: Okay. Then I'll move to file those exhibits as avow exhibits.

MR. DOBBINS: That's okay with me, and I would recommend that that be avow. One copy will be kept with the other exhibits if that's all right with the Chair. Okay.

CHAIR HARRAL: Okay.

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p. 78, l.3 to p. 85, l.23

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Q. I'm going to ask you the question again, and I'll ask you to answer my question. If there's a conflict between the SOP and the law, which one takes precedence?

MR. DAUGHERTY: Objection. Assumes facts not in evidence.

MR. DOBBINS: Well, I think the Board can take administrative notice that if an SOP is in violation of the law, the law supersedes it.

MR. CLAY: Well, I don't want the Board to take notice. I want to ask that question, and I want her to answer it because that goes to her credibility and her knowledge about what she did to this detective.

MR. DOBBINS: Well, I think she -- I think it was asked and answered. Try one more time briefly, and let's move on.

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p. 92 1.4 to 1.20

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Q. I'm quoting the U.S. Supreme Court case United States versus Hensley. Do you disagree with that statement?

MR. DAUGHERTY: I'm going to object to that. He's asking her to comment on a case which -- of an excerpt of a case that she hasn't read and that he's just picking pieces out of to ask her whether she agrees or disagrees with them.

MR. DOBBINS: I can think you can ask her whether -- you can ask her a question about a standard without her asking to agree whether or not a particular case espouses that standard or holds that that standard is the case. Does that make sense? Do you understand my distinction?

MR. CLAY: No, sir. I don't. I don't understand.

MR. DOBBINS: I think he's right. She doesn't have enough time - - hasn't had enough time or may not have enough knowledge or background to interpret Supreme Court cases. I don't know the answer to that. I think you can ask her whether she agrees with a

particular principle without asking her to agree whether a particular case holds one for the other.

MR. CLAY: Well, it's problematic to me that this interim chief terminated an employee without knowing what the law was that governed the application of the collective knowledge doctrine to this search warrant affidavit.

MR. DOBBINS: That's fine.

MR. CLAY: That's the problem.

MR. DOBBINS: That's closing argument material.

MR. CLAY: I've got to lay the foundation -- a factual foundation before I can argue it, though.

MR. DOBBINS: You can ask her about the principles. Don't ask her to interpret a case that she hasn't had a chance to read or consult with counsel on.

MR. CLAY: Then let's take a recess and give her a chance to read them.

MR. DOBBINS: You should have filed it ten days before the hearing started if you wanted her to read it.

MR. CLAY: Well, I --

MR. DOBBINS: And the objection is well taken.

MR. CLAY: I disagree, Mr. --

MR. DOBBINS: That's fine --

MR. CLAY: Okay.

MR. DOBBINS: That's fine. But the Board has already ruled on it. Does the Board stand by its previous ruling?

CHAIR HARRAL: The Board stands.

MR. CLAY: Well, Madam Chairman --

MR. DOBBINS: It stands in effect by avowal.

MR. CLAY: Madam Chairman, as you know and the other Board members know, Mr. Dobbins and I don't always agree. And I think Mr. Dobbins is making a mistake here, and I would request that the Board retire, whatever it needs to do to deliberate because these cases right here stand for the proposition that I represented to the Board, that Joshua Jaynes told the truth on the search warrant affidavit when he said he verified through a USPS Inspector.

And I respectfully disagree with Mr. Dobbins. I've requested the Board to consider these cases and allow me to cross-examine this witness based on the law as I understand it.

It will certainly supersede the SOP provision of the Louisville Metro Police Department.

MR. DOBBINS: May I comment?

CHAIRMAN HARRAL: Please.

MR. DOBBINS: Mr. Clay and I don't always agree.

Mr. Daugherty and other LMPD counsel and I don't always agree. That's part of this gig. People don't always agree with my recommendations. I am making a recommendation to the Board if the Board stops every time there's a recommendation and goes into executive session, we're going to be here a long time. My recommendation to the Board stands. The Board is free to accept it or not.

My recommendation is that, A, these are – were not timely filed. B, it's not reasonable to ask this chief to take a ten-minute break to analyze all of the cases you have provided moments ago to see whether she agrees with them or doesn't. She's a retired LMPD interim chief. She has counsel. She had counsel at the time. I know you've called her counsel as a witness. We'll get to that later.

My recommendation is that the objection be sustained.

You can ask her questions about legal principles. If she knows the answers, she can answer them. But I've already recommended that these cases not be introduced as exhibits.

First of all, they're not just cases. They're your excerpts of the cases. They're your personal analyses or maybe your co-counsel's analysis. I don't think these are appropriate/admissible exhibits. That's my recommendation.

MR. CLAY: Well, I respectfully -- I disagree with the characterization that you placed on these quotes I put here. I put the quotes here because I thought they were the relevant portion of these opinions. The entire opinions are the included after the quotes. So the entire record is here for anybody who cares to to review them.

MR. DOBBINS: My recommendation stands, Madam Chair.

CHAIR HARRAL: Chair supports the attorney's recommendation.

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p. 93, 1.16 to p. 98, 1.6

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Q. Well, are you sure it's not in there, ma'am?

MR. DAUGHERTY: Objection. Asked and answered.

MR. CLAY: No. It wasn't answered.

MR. DOBBINS: It was answered.

A. Sergeant Mattingly's testimony and Jaynes' testimony --

MR. DOBBINS: It was answered.

MR. CLAY: Okay. I want to take a recess because I want to Kelly Goodlett's statement out here and ready it to her.

THE WITNESS: He's talking about Sergeant Mattingly's conversation with him. To my understanding in -- in the evidence, it says Sergeant Mattingly was talking to Jaynes. Kelly Goodlett was listed as somebody who overheard the testimony for them --

MR. CLAY: No. It's -- she misunderstood. I want to -- I want to get Kelly Goodlett's statement and get her in here.

MR. DOBBINS: Why don't you -- why don't you see if Ms. Clay or Ms. Maze can find that, keep asking her questions, and then come back to it. We're too close to a break to take a break now and then come back. Can one of your co-counsel find that while you're asking other questions?

MR. CLAY: I want to ask that question now, Mr. Dobbins, and I want to find the transcript. And I have not asked for a recess throughout this whole proceeding.

MR. DOBBINS: I'm just trying to keep it flowing, Mr. Clay. I'm not trying to pick on you. You --

MR. CLAY: Really?

MR. DOBBINS: Really. Really. And you know this not personal. But you've got two really able co-counsel here. Is there nothing else I can --

MR. CLAY: You don't have to tell me about my co-counsel, Mr. Dobbins. I get it. I want to find --

MR. DOBBINS: This is --

MR. CLAY: -- the statement myself because I'm the one who found it.

MR. DOBBINS: Well, you don't have it in front of you right now. I'm just trying to keep this moving. We are on a tight time frame. We want to keep it moving. How much time do you need to find this?

MR. CLAY: Ten minutes.

MR. DOBBINS: It's up to the Board.

MR. CLAY: Sir?

MR. DOBBINS: It's up to the Board.

CHAIR HARRAL: You want to take ten minutes in place.

MS. MAZE: We have a statement on the computer that we're trying to pull up and print, so I don't --

MR. CLAY: I've got a hard copy in one those boxes.

MR. DAUGHERTY: Which statement of Kelly Goodlett?

MR. CLAY: The one she gave to the Attorney General.

MR. DOBBINS: Is that in the record?

MR. DAUGHERTY: It's not.

MR. CLAY: Sir --

MR. DOBBINS: It hasn't been tendered as an exhibit. You know the rules. Don't --

MR. CLAY: Mr. Dobbins, I cannot anticipate all of this testimony that she's making up here that I'm going to have to cross-examine her on.

MR. DOBBINS: You can cross-examine on her. If she doesn't have support for it in the record, that's fine.

MR. CLAY: I've got the statement that --

THE WITNESS: I'm not making anything up.

MR. CLAY: -- directly contradicts her testimony, Mr. Dobbins. Are you telling me that I can't do that?

MR. DOBBINS: Rebuttal.

MR. CLAY: I don't know.

MR. DOBBINS: Let's come back to a rebuttal and do it. Is it not something that you anticipated could come up in this case?

MR. CLAY: She just made this up. She says one thing one minute, and something else the next minute.

MR. DAUGHERTY: Objection. This is argumentative.

MR. DOBBINS: It really is. And I know you think I'm picking on you because your body language is screaming it. But listen, we just need to get through this and abide by the rules and get this done. You had the chance to tender this as an exhibit in advance of the hearing, and you didn't do it. If you -- if it's rebuttal, it's rebuttal. If she says something that makes that fair game on rebuttal, that's fine.

MR. CLAY: Well, where I come from, cross-examination, by nature, is rebuttal.

MR. DOBBINS: Well, you get to stop a case to do it.

MR. CLAY: I'm trying to undermine -- can't question her credibility because she's making statements which are demonstratively false.

MR. DOBBINS: Well, if have you something ready to impeach her with, that's fine.

MR. CLAY: That's what I'm trying to do. That's what I'm trying to do with these cases here.

MR. DAUGHERTY: I'd also like to point out he's trying to impeach her with somebody else's statement. That's not really impeachment.

MR. DOBBINS: That's not really impeachment. Let's see what he comes up with. It's ten minutes in place is what the Board Chair said.

CHAIR HARRAL: Ten minutes in place.

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p. 110, l.19 to p.115, l.10

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Do you agree with that, ma'am?

MR. DAUGHERTY: Same objection.

MR. DOBBINS: If you know the answer, you can answer it. If you don't know the answer.

THE WITNESS: I -- I can't -- it's -- it -- he's kind of citing of a case law that I'm not familiar with the particular case and the context of around it.

A. I kind of -- when you initially started, it sounded like you were asking -- that case was to a traffic stop and a search subsequent to a traffic stop, and, I mean, I would like to read it. I mean, I'm happy to answer it --

BY MR. CLAY:

Q. I'm happy for you to read it if your counsel will let you. You want to read it?

A. I wish you would have submitted it.

Q. Well, I'd be -- you know, I wish you would have --

A. If you had submitted --

Q. -- followed the law when you fired Detective Jaynes --

MR. DOBBINS: You know what --

MR. DAUGHERTY: Objection.

MR. DOBBINS: Come on.

MR. CLAY: Well --

MR. DOBBINS: No. Uncalled for.

MR. CLAY: -- let's get into it. If she wants to go rock and roll, let's rock and roll.

MR. DOBBINS: No. You know what? I would ask the Chair to ask Counsel to behave, frankly. You know that's not appropriate. You know that's not appropriate.

CHAIR HARRAL: Let's all take a deep breath. Let's all breathe for a minute.

MR. DOBBINS: We don't need to have arguments between Counsel and the witness. The witness made a comment. We're -- the only rock and rolling we're going to do is in a reasonable sort of way right here. You can take the most vigorous position you want to, but address your objections to the Court and not within colloquy with the witness.

MR. CLAY: Mr. Dobbins, she is no novice witness, and she is -- she's --

MR. DOBBINS. Maybe she is and maybe she isn't.

MR. CLAY: -- causing these --

MR. DOBBINS: It doesn't matter.

MR. CLAY: -- problems with her non-responsive answers.

MR. DOBBINS: Well, you can object to the Board, as you have.

MR. CLAY: Then you can instruct the witness to quit volunteering all of this stuff that's non-responsive.

MR. DOBBINS: I told the witness she needs to answer the questions "yes" or "no" and then she can explain her answers, and she's free to do that. She -- and you shouldn't have said to him you should have supplied it in advance, even though that's true, frankly.

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Q. And, again, I want to go back and ask you this question. It's already been asked and answered. I get it. In that statement, in the search warrant affidavit, Detective Jaynes put in there that he verified through a USPS Inspector. Is that statement true?

MR. DAUGHERTY: Objection. Goes to the ultimate issue.

MR. CLAY: Well, now, if other witnesses for the police department have been able to testify that that statement was false, that goes to the ultimate issue, too. I'm entitled to rebut that testimony given by Sergeant Meyer and former Chief Gentry.

MR. DOBBINS: You've asked him enough questions for the Board to get an understanding of what his testimony is without asking him the ultimate question. But that is the decision the Board has to make. You can ask him the question, but the Board has to supply that answer ultimately. You can ask him what his interpretation of it was, not whether it was true.

MR. CLAY: Well, I would like to refer you to the testimony from Sergeant Meyer where he said the statement was false. I think I'm entitled to rebut that statement.

MR. DOBBINS: You can ask him what his interpretation of it was.

MR. CLAY: The question here wasn't what his interpretation was.

MR. DOBBINS: That was a month ago. I don't recall precisely.

MR. CLAY: Well, I've got the testimony right here if you want to look at it.

MR. DOBBINS: I don't. I don't. Go ahead and ask him the question. See if you can rephrase it.

MR. CLAY: What was the question I'm supposed to ask him?

MR. DOBBINS: I don't know. If you've forgotten, start over.

BY MR. CLAY:

Q. Was the statement that Detective Jaynes made in that search warrant affidavit that he verified through a USPS Inspector, was that

statement true?

A. In my opinion, yes.

MR. CLAY: That's all.

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p.214, l.23 to p.216, l.17

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June 30, 2021

MR. DAUGHERTY: I don't believe that that testimony is -- says exactly what Mr. Clay says it does as it relates to making PBI relevant.

MR. DOBBINS: I didn't hear anything in there about PBI. I don't think it's a relevant topic to explore. I recommend that the Board sustain the objection. The objection was sustained. The Rules of Evidence, as I understand it, don't specifically authorize an avowal. They authorize an offer of proof. So I'm going to -- I'm going to give you the option to -- I'm going to recommend to the Board that it give you the opportunity to tell the Board, as an offer of proof, what you think the testimony on that issue would be. And then if Mr. Daugherty has any response to that, he can offer it.

MR. CLAY: I can't possibly do that because I don't know what the mayor is going to say. That calls for me to speculate about what his answers are going to be, and I can't possibly do that. It's unfair. An avowal is an accepted method of preserving evidence to let any reviewing body take a look at what the Board refused to hear.

And I can't possibly make an offer of proof on a witness I haven't even talked to or have any idea what his testimony might be. So I think that's another indication. That is an indication that the decision that's being recommended to the Board is unfair. It denies Mr. Jaynes due process of law, and I think it's fundamentally wrong for me to be prohibited from making a record of the evidence I expect the mayor to testify to, whatever that might be.

MR. DOBBINS: I'm looking at the case of Henderson versus Kentucky, which says, among other things, that avowal -- an avowal is an historic way to preserve evidence, that the rules don't authorize it any longer, and there is nothing in the KRE that authorizes avowal

testimony. We've done it before, I will grant you. If you have no idea what he's going to say and you're walking down a path that I think has nothing to do with the charges in this case, how are we denying your client a fair hearing?

MR. CLAY: Because I think there's evidence that can be elicited from the mayor about his involvement in the creation of the PBI, the selection of this Elliott Avenue car as a target. The first target was the PBI Unit to investigate, and I don't have any idea what his testimony is going to be about that.

So it would be nothing more than an exercise in speculation for me to try to make an offer of proof as to what this evidence might be.

MR. DOBBINS: Have we heard any evidence at all in this case that this particular area was selected unfairly or inappropriately or that the apartment was, other than that search warrant issue?

MR. CLAY: Oh, I think there's certainly evidence out there that it could have been. But without being able to question the mayor about it, it's sheer speculation on my part, and I don't think speculation constitutes an offer of proof.

MR. DOBBINS: How long do you think it would take you to ask him the questions you want to ask him?

MR. CLAY: I don't know, Mr. Dobbins. I can't predict that, any more than I can predict how long it's going to take Mr. Daugherty to examine the witnesses he called.

MR. DOBBINS: You must have some idea what you want to ask and how long you think it might take.

MR. CLAY: Oh, I do have an idea of what I want to ask, but without knowing what the mayor's responses are going to be, I -- it's difficult for me to give a prediction. I would say no more than half an hour.

MR. DAUGHERTY: My objection on relevance stands.

MR. DOBBINS: I don't see how it's relevant. So I'm going to leave it up to the Board. I don't think it's relevant. The Board has sustained that objection. If the Board wants to allow it to come in by avowal, it has the authority to do that.

CHAIR HARRAL: Let's hear it by avowal.

MR. CLAY: Okay.

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MR. CLAY: Well, actually it was disclosed ten days prior to the hearing because I gave it to them ten days before yesterday. So I understand all of the objections, all of the procedures. I think everybody knows that. So I'm prepared to call him. If he can testify, fine. If not, again, then we'll have an avowal proceeding. That's my request.

MR. DOBBINS: So my recommendation to the Board is that the objection be sustained. He wasn't timely noticed to the Board. And the hearing started back in May. It didn't start yesterday. Mr. Daugherty and Ms. Hall put on their case based upon the witness lists that were provided previously.

So I recommend to the Board that the objection be sustained, he not be allowed to be called, and that he not be allowed to be put on by avowal.

CHAIR HARRAL: The objection to the witness is sustained.

MR. DOBBINS: This isn't about admissibility. This is just about whether the witness can be called. So that's the Board's ruling?

CHAIR HARRAL: That's the Board's ruling.

MR. CLAY: And I can't put him on by avowal?

MR. DOBBINS: My recommendation is that you not.

MR. CLAY: And the basis for that is?

MR. DOBBINS: Because he was not listed in your witness list. This is not about the admissibility, the relevance of his testimony. This is not a witness who comes on the stand and offers testimony about certain things that may or may not be relevant that you then put in by avowal. Whether the avowal is even appropriate, we just had with the mayor. This is a different situation. My recommendation is that this witness not be put on by avowal. If you think that's unfair, there is an avenue for redress in the circuit courts.

To the extent the Court allows you to put in additional evidence at that time, in the event of an appeal, you can do it then. That's my recommendation to the Board.

MR. CLAY: Well, I would like to address that recommendation because Mr. Dobbins quoted a case previously that said that avowals had been eliminated. They actually haven't been eliminated. There's a rule that says another method of preserving evidence is to make a proffer. But a review in court cannot determine whether the Board acted arbitrarily or improperly unless the proponent, that is me, is allowed to put evidence into the record. So without having that opportunity to put evidence into the record, I don't see how any reviewing Board can say, well, gosh, you-all were right. You shouldn't have heard that evidence without having some kind of record of what the evidence might be.

So, again, I respectfully disagree with Mr. Dobbins' recommendation to the Board, and I ask the Board to make an independent determination that is different than the recommendation Mr. Dobbins made to it.

MR. DOBBINS: Madam Chair, if I may. KRS 67C gives appellants the opportunity to ask the Court to hear additional evidence to the extent it has some bearing on the Board's arbitrariness, if there was any. He'll have that opportunity if this matter goes up on appeal. This isn't the end of the line. And the Court can make a decision, can make a determination, about whether the evidence he seeks to put on now is appropriate. My recommendation stands as is. I don't make the orders, but that's my recommendation.

CHAIR HARRAL: The Board will approve Counsel's recommendation.

MR. CLAY: I would like to make a proffer of what I expect Lieutenant Aubrey Gregory will testify to.

MR. DAUGHERTY: I would object to that because my understanding of the Board's ruling is not related to -- I think the Board's ruling was that this is not related to the admissibility of the evidence but rather based upon the procedural grounds and failure to identify Aubrey Gregory timely ten days prior to the hearing in conformance with the Merit Board's rules and procedures. So I don't think a proffer of his testimony is necessary based on the ruling that the Board -- that the Board has made.

MR. DOBBINS: That's my understanding. I don't think a proffer is

appropriate here. You'll have your opportunity if you need it.

MR. CLAY: So I don't get to make a proffer about why I think the evidence is relevant and why it should be admitted?

MR. DOBBINS: No.

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Q. So was former Chief Gentry mistaken?

A. Yes.

MR. DAUGHERTY: Objection. That's not his -- that's not his call to make. That goes -- he's already called into question her credibility with his cross-examination of her. It's not for Joshua Jaynes to offer his opinion on her credibility.

MR. CLAY: It's not an opinion. It's a fact.

MR. DAUGHERTY: It's not his fact. It's her fact.

MR. DOBBINS: He's right. Sustained. He can testify what he heard. He can't testify whether it was a mistake, whether -- how it -- what it was that she --

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MR. DAUGHERTY: Objection. I don't know that he can -- he can ask what happened to Mattingly. I don't know that he can say that compromised his ability to perform his duties.

MR. DOBBINS: That's probably true. You want to just rephrase it?

MR. CLAY: No.

MR. DOBBINS: Sustain the objection.

MR. CLAY: Okay. Then don't answer the question as to whether Sergeant Mattingly could do his job when he got shot in the femoral artery and his femoral artery was severed and he had to have medical

treatment.

MR. DAUGHERTY: Objection.

MR. DOBBINS: T, come on. Just ask him the question again in a way that --

MR. CLAY: That question was proper, Mr. Dobbins. I don't understand the nature of why you're sustaining the objection.

MR. DOBBINS: Just ask him --

MR. CLAY: He knows what happened. He was there. He was working --

MR. DOBBINS: Ask him what happened then. Ask him what happened. Don't testify. Ask him what happened. Put it in the record.

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p.100, l.24 to p.101, l.23

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Q. Based on your reading of those cases, are you able to rely on the word of another officer without questioning where his information comes from?

MR. DAUGHERTY: Objection. Calls for a legal conclusion.

MR. DOBBINS: He can talk about -- there's been plenty of testimony already about the doctrine. You're asking him to interpret the cases. I think the objection is well taken and sustained.

CHAIR HARRAL: Sustained.

MR. CLAY: Well, can I respond?

MR. DOBBINS: It's in the -- it's in the record. It's in the record like crazy.

MR. CLAY: Well, then why can't he testify to it? Because --

MR. DOBBINS: Because you're asking him to make a legal conclusion.

MR. CLAY: No --

MR. DOBBINS: He's not qualified --

MR. CLAY: -- I'm not.

MR. DOBBINS: You haven't qualified him to do it, number one.

MR. CLAY: I'm not asking him to make a legal conclusion.

MR. DOBBINS: You are. You're asking him to, based on the cases, draw a conclusion.

MR. CLAY: I'm base -- I asked him what his understanding is. Not a legal conclusion. Is this the law? I'm saying, "What is your understanding?" And seems to me like --

MR. DOBBINS: You can ask him what his understanding --

MR. CLAY: -- we're talking about this --

MR. DOBBINS: You can ask him what his understanding of the doctrine is as it applies to him.

MR. CLAY: That's what I did. That's exactly what I did.

MR. DOBBINS: Not exactly what you did. Sustain the objection. If you want to rephrase it, I'm okay with that.

MR. CLAY: Okay. Tell me how I can rephrase it.

MR. DOBBINS: I'm not going to tell you how to rephrase it. You can figure it out. You asked him to draw a conclusion, a legal conclusion, based upon his --

MR. CLAY: I said, "What is your understanding?" That's exactly what I asked.

MR. DOBBINS: Ask him the question again.

BY MR. CLAY:

Q. Sir, based on your reading of these cases here, what is your understanding of whether you have to verify or question the information you receive from Sergeant Mattingly?

A. I don't have to.

* * * * *

Q. Well, the one I'm talking about specifically is an occasion where the mayor expressed his belief that the individuals involved in this

MR. DAUGHERTY: Objection. Leading.

MR. DOBBINS: Yeah. Yeah. Before you get to the end of that question, that's leading.

MR. CLAY: I haven't asked the question yet. When he's asking a leading question, don't you let him get the question out?

MR. DOBBINS: I don't -- not -- I mean, he objected midway through the question. Boom, he objected. Sustained the objection. That's leading. That absolutely plants what you want her to say in her mind.

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And, again, even if you want to assume that this collective knowledge doctrine applies here, if you impute Mattingly's information to Jaynes, that still doesn't make the statement that he verified the intelligence with the Postal Inspector true because we know Mattingly didn't actually contact the Postal Inspector. Jaynes can't impute Mattingly's knowledge to himself when that actually wasn't Mattingly's knowledge. The fact is, the statement was written

MR. CLAY: I'm going to object to that. We don't know what Mattingly's knowledge was because there was no evidence as to what Mattingly knew or didn't know.

MR. DAUGHERTY: Mattingly's statement to PSU is in the record.

MR. DOBBINS: There was testimony about it. It was hearsay. There was a lot of hearsay. There was testimony about it. Go ahead. Overruled.

CHAIR HARRAL: Overruled. Overruled.

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A. I believe some narcotics and guns.

Q. Money?

A. Sure. I -- I would -- I can't testify to that. I think there was, but I can't

Q. Okay. So when did you begin your involvement with surveilling the areas that led us to March the 13th?

A. After the --- basically, the first of the year. When these -- these targets investigations, they know -- they know police vehicles. An average person down the street sees a Ford Edge, they think nothing of it. But usually the targets investigations drug dealers, they pick out a brand- new Ford sitting somewhere from -- you know, from miles away. So we couldn't sit on that location of the street.

And my -- I told them, I said, "What we should do is put a pole camera up." That was the first thing we need to do. I said, "We need to get a pole camera up," covert if we could, but it was an overt. And that way we can monitor the area and see exactly, you know -- they're at this -- their -- their -- their routines, how often they come and go, their operation. And that was -- that was the start of it, a small portion of it.

Q. So at the risk of being obvious, tell us more in detail what a pole camera is.

A. Obviously, covert is hidden. It looks like a -- it looks like an LG&E transmitter up there. Overt is very obvious. We have overt cameras all throughout the city. You can see them. It's like the big ball -- it's like a 360 ball that you see, and it's in a high location. We're able to zoom in. It's very good technology. We're able to zoom in. We can see, you know, faces from, you know, a city block away, license plates, and so forth.

Q. So that was one of the devices used to have surveillance on the corridor?

A. Yes, sir.

Q. And we've handed you our exhibits there. Could you go to Tab 10?

MR. DOBBINS: May I ask a question? Did you say this one in particular was covert or overt? I think you --

THE WITNESS: Oh, this was overt.

MR. DOBBINS: I didn't hear you.

THE WITNESS: Overt.

MR. DOBBINS: Okay. Thank you.

A. Sir?

BY MR. CLAY:

Q. Okay. So this is a search warrant for 3003 Springfield Drive, Unit 4, correct?

A. Yes, sir.

Q. That's Breonna Taylor's apartment?

A. Yes, sir.

Q. And an apartment where Jamaricus Glover had listed as his address, right?

A. Yes, sir.

Q. Numerous records that you-all had access to?

A. Yes, sir.

Q. Okay. Now, was this the only search warrant that was done in relation to this 2424 Elliott Avenue corridor?

A. No, sir.

Q. How many search warrants were actually done?

A. There was, roughly, five that were meant to be executed that night. The fifth one was actually not executed due to manpower, and then the critical incident occurred.

Q. Okay. Do you recall the addresses of those other search warrants?

A. 2424, 2526, and 3003, and 2605 West Ali.

Q. Was there another one that was prepared that wasn't executed?

A. Yes. There was one in -- on Cane Run Road, Cathe Dykstra. Mr. Glover had a -- a -- a child in common -- I'm sorry, a -- the mother of his child was actually there, and we noticed he was going there every so often. But over time, he was no longer going there. There wasn't a whole lot more to link him there.

And after I talked to my supervisor, I -- I told him I believe that the probable cause was stale enough to go in front of a judge, so we decided not to execute that warrant -- or I'm sorry, not to finish that affidavit and nix it off the plan.

Q. So you actually were having that property under surveillance, but as a result of the surveillance, you decided that it was not sufficiently accurate to justify executing a search warrant?

A. Yes, sir.

Q. Were there other search warrants that were prepared that weren't executed?

A. Not that I'm aware of, sir.

Q. There were four search warrants actually --

A. Correct.

Q. -- executed that night?

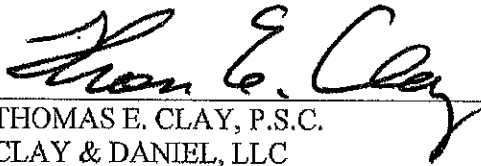
A. Yes. Correct.

Joshua Jaynes testimony
Merit Board Hearing, June 30, 2021,
Transcript, p.69 l.17 – p.78, l.20

CONCLUSION

Based upon the foregoing evidence and authority, the decision of the Louisville Police Merit Board was arbitrary and contrary to the well-established Collective Knowledge Doctrine. The Board's counsel improperly assumed the rule of judge, and the Board improperly precluded avowal and proffered testimony. The Petitioner asks the Court to order his reinstatement as an LMPD Detective.

Respectfully,

A handwritten signature in black ink, reading "Thomas E. Clay", is written over a horizontal line.

THOMAS E. CLAY, P.S.C.
CLAY & DANIEL, LLC
917 Lily Creek Road
Louisville, KY 40243
(502) 561-2005
tclay@tclaylaw.com