

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

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4 State of Minnesota,) Joint Contested Omnibus
 4 Plaintiff,) In-Person Hearing
 5 vs.)
 6 [REDACTED],) Court File Numbers
 6 Defendant,) [REDACTED]
 7 and) [REDACTED]
 8 J [REDACTED] Y [REDACTED],)
 9 Defendant.) August [REDACTED], 2020

11 The above-entitled matter came on for hearing before
12 the Honorable Suzanne M. Brown, District Court Judge, at
13 the Anoka County Government Center, City of Anoka,
14 Minnesota.

15 APPEARANCES:

16 [REDACTED], Assistant Anoka County Attorney,
17 appeared for and on behalf of the State of Minnesota.

18 [REDACTED], Attorney at Law, appeared for and
19 on behalf of the Defendant [REDACTED].

20 RYAN P. GARRY, Attorney at Law, appeared for and on
21 behalf of Defendant J [REDACTED] Y [REDACTED].

21 [REDACTED], Defendant, appeared in person.

22 J [REDACTED] Y [REDACTED], Defendant, appeared in person.

23 LAW CLERK: [REDACTED]

24 COURT CLERK: [REDACTED]

25 COURT REPORTER: [REDACTED]

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(WHEREUPON, the following proceedings were
duly had at 9:27 a.m.)

THE COURT: Calling the contested omnibus
hearing in District Court File [REDACTED], and
I will have attorneys on that matter note their
appearances.

MS. [REDACTED]: [REDACTED] for the State,
Your Honor.

MR. [REDACTED]: Good morning, [REDACTED],
appearing on behalf of Ms. [REDACTED] who is present
before the Court.

THE COURT: All right. Thank you.

And then, we will also call, State of
Minnesota versus J [REDACTED] Y [REDACTED]. It is a contested
omnibus in [REDACTED]. If I could have the
attorneys on that matter note their appearances.

MR. GARRY: Ryan Garry on behalf Mr. Y [REDACTED]
who is behind me, Your Honor.

THE COURT: All right.

And Ms. [REDACTED], that's also your matter,
correct?

MS. [REDACTED]: Correct.

THE COURT: All right.

It is my understanding, Mr. [REDACTED] and
Mr. Garry, that you would like to have your two

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cases heard together this morning; is that correct?

MR. [REDACTED]: That is correct, Your Honor.

MR. GARRY: It is correct, Your Honor.

THE COURT: All right. Thank you.

Then we will hear both matters.

So, with that, Ms. [REDACTED], are you ready to proceed?

MS. [REDACTED]: Yes, Your Honor.

As far as exhibits are concerned, I have a probable cause packet marked as Exhibits 1 and 2 prepared for the Court. And then, at the end of the hearing, I am going to bring up what's marked Exhibits 3 through 14. Those are pictures that were taken by the defense. I have shown them to my witnesses. So, I am going to stipulate for foundation.

THE COURT: Okay.

MS. [REDACTED]: And we are going to agree that, structurally speaking, at least, that was the layout of the residence.

THE COURT: Okay.

MR. [REDACTED]: Yes.

MR. GARRY: That is correct, Your Honor.

MS. [REDACTED]: And then, just one other -- if

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I could approach with the exhibit -- should I hand them to the clerk?

THE COURT: Yes. That would be great.

And so, the pictures, 3 through 14, that were taken by the defense, those are pictures of the property and the homestead?

MS. [REDACTED]: Correct.

MR. [REDACTED]: Correct.

MR. GARRY: It is, Your Honor.

THE COURT: Okay.

MS. [REDACTED]: And Your Honor, the last thing is I just to make a record that to resolve these cases, the State did extend offers of Misdemeanor Animal Neglect, and my understanding is that they are declining to take it. After the hearing, those offers are gone.

THE COURT: All right. Thank you.

So, for housekeeping, I understand the State is offering Exhibits 1 and 2 and is not objecting to 3 through 14.

But, are you offering them, Ms. [REDACTED]? Or are they going to be offered through Defense Counsel?

MS. [REDACTED]: You know, I think that we will stipulate to them if it makes it easier.

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THE COURT: All right.

Now, are you stipulating to Exhibits 1 and 2? Because if there is a stipulation for Exhibits 1 through 14, then I will just accept them all now.

So, are they offered and accepted?

MR. GARRY: There is a stipulation with Exhibits 1 through 14, Your Honor.

MR. [REDACTED]: Yes.

THE COURT: Perfect.

Then they are all offered and excepted, so you don't have to go through the foundation. (WHEREUPON, Exhibit Numbers 1 through 14 were received by the Court.)

MS. [REDACTED]: Okay.

THE COURT: As to the offer, I am going to ask you, Mr. [REDACTED], if you will just make a record with your client, Ms. [REDACTED], that you have had an opportunity to discuss that and she is, in fact, rejecting it.

MR. [REDACTED]: Yes, Your Honor.

Should I have her come to the witness stand?

THE COURT: No. She can probably stand there if she speaks loudly.

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MR. [REDACTED]: Thank you, Your Honor.

Ms. [REDACTED], you can stand.

So, what the Court is talking about is that the prosecutor has made a plea offer to resolve your case, and we want to understand that you -- that we talked about the offer and that you understand the offer.

So, we talked on the phone last night about this plea offer that the prosecutor is making, right?

DEFENDANT [REDACTED]: Yes, we did.

MR. [REDACTED]: And basically, what the offer was, was a plea to the misdemeanor, the animal neglect charges, and that if you plead guilty, then the case would be done with, right?

DEFENDANT [REDACTED]: Right.

MR. [REDACTED]: And do you understand that you have the right to take that offer or to not take that offer?

DEFENDANT [REDACTED]: Yes.

MR. [REDACTED]: If you take that offer, then we wouldn't a contested omnibus proceeding. We wouldn't have a trial. You would be accepting your guilt as to that charge, right?

DEFENDANT [REDACTED]: Yes.

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MR. [REDACTED]: And that there would be, in return for that, you wouldn't be prosecuted on the felony charge, correct?

DEFENDANT [REDACTED]: Yes.

MR. [REDACTED]: Have you had enough time to think about that offer?

DEFENDANT [REDACTED]: I have.

MR. [REDACTED]: And we have talked about the offer; you don't have any questions for me about that offer right now?

DEFENDANT [REDACTED]: No, not right now.

MR. [REDACTED]: Or do you have any questions for the Court at this time?

DEFENDANT [REDACTED]: Not right now.

MR. [REDACTED]: And -- but you understand -- you say, "not right now," and that was my word, too.

DEFENDANT [REDACTED]: Yeah.

MR. [REDACTED]: But you understand that if you don't take this offer right now, it won't be available in the future, right?

DEFENDANT [REDACTED]: Yes, I do understand that.

MR. [REDACTED]: And knowing all of that, it's your understanding that or your intention that

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you don't want to go forward with the plea offer right now?

DEFENDANT [REDACTED]: Yes.

MR. [REDACTED]: Thank you, Ms. [REDACTED].

Is that sufficient, Your Honor?

THE COURT: Yes, that is. Thank you, Mr. [REDACTED].

So, Mr. Garry, if you will do the same with your client?

MR. GARRY: Yes, Your Honor.

Mr. Y [REDACTED], did you and I have a conversation on the phone last night, as well as this morning?

DEFENDANT Y [REDACTED]: Yes, we did.

MR. GARRY: Do you understand that you're charged with two felonies in this case?

DEFENDANT Y [REDACTED]: Yes, sir.

MR. GARRY: As well as a misdemeanor?

DEFENDANT Y [REDACTED]: Yes.

MR. GARRY: And last night, in discussing the case with Ms. [REDACTED], whom I have had many cases with, she made an offer to dismiss the felonies and recharge you with Neglect of Animals or something of the nature; it was a misdemeanor level offense, right?

DEFENDANT Y [REDACTED]: Yeah.

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MR. GARRY: And I told you that she is not requiring any jail time and there would be a small fine. And I told you that in my opinion, as a lawyer who has been doing for a while, it's a pretty good offer, right?

DEFENDANT Y [REDACTED]: Yes.

MR. GARRY: I told you that many felonies don't go to misdemeanor convictions, right?

DEFENDANT Y [REDACTED]: Yes.

MR. GARRY: And I told you that while I feel confident in our issues today, that your house was illegally searched, your property was illegally searched, there is no certainty whatsoever about the outcome of today's hearing, right?

DEFENDANT Y [REDACTED]: Yes.

MR. GARRY: I told you that the Honorable Judge Brown may grant my motion to suppress and dismiss or may deny my motion to suppress and dismiss, correct?

DEFENDANT Y [REDACTED]: Yes.

MR. GARRY: And I told you that if Judge Brown denies my motion to suppress and dismiss, then the chances of actually winning on the facts at a jury trial would be very difficult, correct?

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DEFENDANT Y█████: Yes.

MR. GARRY: That the basis of the attack, on this case in your defense, is not that you were factually innocent, but that the officers searched your residence in a manner that violates the 4th Amendment, correct?

DEFENDANT Y█████: Yes.

MR. GARRY: And you know that by rejecting this offer, as a misdemeanor, if you reject it today, it's not going to be re-offered again, true?

DEFENDANT Y█████: Yes.

MR. GARRY: And have you had enough time to talk with me about this?

DEFENDANT Y█████: Yes.

MR. GARRY: And have I -- did I pressure you to go one way or the other?

DEFENDANT Y█████: No.

MR. GARRY: And did I, in fact, encourage you to highly consider the offer because of this offer that was made by Ms. ██████ after reviewing the evidence and careful preparations and discussions with me?

DEFENDANT Y█████: Yes.

MR. GARRY: Okay. And that's what you want

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to do? Reject this offer and proceed today with the hearing?

DEFENDANT Y█████: Yes.

MR. GARRY: Thank you, Mr. Y█████.

Is that sufficient, Your Honor?

THE COURT: It is, thank you. Okay.

Are there any administrative matters to place on the record before you call your first witness, Ms. ██████?

MS. ██████: I think we have covered everything.

THE COURT: Are you ready to proceed and call your first witness?

MS. ██████: Yes, Your Honor.

THE COURT: Okay.

MS. ██████: I am going to call Officer Katie McNally. She is a Community Service Officer with the ██████ Police Department.

THE COURT: Okay. Thank you.

Please take the stand and remain standing.

THE CLERK: Please raise your right hand.

KATIE McNALLY,
the Witness in the above-entitled matter after having been duly sworn testifies and says as follows:

DIRECT EXAMINATION - KATIE McNALLY

1 THE CLERK: You may lower your hand.

2 Please state and spell your full name for
3 the record.

4 THE WITNESS: Katie McNally; K-A-T-I-E,
5 M-C-N-A-L-L-Y.

6 THE CLERK: Thank you.

7 THE COURT: Thank you. All right.

8 Ms. [REDACTED], go ahead.

9 And before you begin, Ms. McNally, it's
10 your choice if you want to have your mask on or
11 off while you testify.

12 THE WITNESS: Okay.

13 MS. BEAMAN: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MS. [REDACTED]:

16 Q. Ms. McNally, where do you work?

17 A. [REDACTED] Police Department.

18 Q. And what do you there?

19 A. I am a Community Service Officer.

20 Q. What do Community Service Officers do?

21 A. We deal with a lot of ordinance complaints and animal
22 complaints.

23 Q. What kind of -- do you have any other job duties?

24 A. We will do a lot of helping the officers out and, you
25 know, patrol through the areas and the parks and

1 stuff like that, as well.

2 Q. Okay. What kind of training do you have to be a
3 Community Service Officer?

4 A. We have very little training in animals, besides like
5 with dogs and stuff like that, you know, how to
6 handle dogs, how to handle cats. We, kind of, learn
7 as we go with the abnormal animals.

8 Q. Okay. What about just like when you started? What
9 kind of job training overall did they give you?

10 A. On-the-job training, basically, whenever calls came
11 out, that type of thing.

12 Q. Were you work in your capacity as a Community Service
13 Officer back on June [REDACTED] of last year?

14 A. Yes.

15 Q. Okay. And you ended up going to a residence on [REDACTED]
16 [REDACTED], is that true?

17 A. Correct.

18 Q. Why were you called out there?

19 A. I was called out there for a noise complaint on
20 roosters being at the location.

21 Q. Okay. And why would a rooster being at the location
22 be a problem?

23 A. In the City of [REDACTED], per the city ordinance, we --
24 nobody is allowed to have roosters on their property.

25 Q. Okay. Do you remember what time of day it was when

DIRECT EXAMINATION - KATIE McNALLY

1 you got there?

2 A. It was, like, the afternoon, I think, but I don't
3 recall.

4 Q. Exactly?

5 A. Yeah.

6 Q. Okay. What happened when you got there?

7 A. So, when I arrived there, I could hear a lot of
8 roosters crowing and a lot of animals. I went to the
9 side door to make contact with the homeowner.

10 Q. Okay. Why did you go to the side door?

11 A. That looked like the most commonly used door. The
12 front door, kind of, had like bushes that we growing
13 over a little bit. So, I normally use doors and
14 stuff that have, like, shoes outside of it.

15 Q. Do you remember if there were shoes outside the door
16 at this house?

17 A. Yes. There were shoes and a cooler and it looked
18 like, you know, the door that they would normally
19 use.

20 Q. Okay. So, what happened when you went to the front
21 door -- or the side door? Sorry.

22 A. The side door, I knocked and nobody came to the door.
23 I waited a few seconds, still, nobody would come. I
24 didn't see anybody coming to the door, either.

25 Q. Okay. So, what happened after that while you were

1 standing up there?

2 A. So, I could hear roosters behind me. So, when I
3 turned around and looked behind me, there were three
4 dog kennels that appeared to have multiple birds of
5 some sort in them. I couldn't tell from the little
6 bit of the distance. So, I walked over there to
7 observe what was in the dog kennels.

8 Q. When you say, "behind you," what area was that?

9 A. So, it's right, like, behind the garage, but it would
10 have been directly across from where that service
11 door was that I was at.

12 Q. Okay. So, you walked over to those kennels?

13 A. Yes.

14 Q. What did you see inside there?

15 A. There were multiple, small, like, either chickens or
16 roosters. I didn't know a big difference between the
17 two, but they were some, sort of, chicken of some
18 sort.

19 Q. Okay. Is it fair to say that you're a little bit
20 nervous now?

21 A. Yes.

22 Q. And this is your first time testifying?

23 A. Yes.

24 Q. Okay. So, what happened after you walked over to the
25 kennels?

DIRECT EXAMINATION - KATIE McNALLY

1 A. After I went over to the kennels, and I was looking
2 at the birds, I could hear, it was like a little
3 fence that was probably from here to the wall away
4 from me. Behind the fence, I could hear what sounded
5 like a rake and shovel, kind of, combining together,
6 you know. So, I went over to the archway of the
7 fence to try to make contact with the owner that I
8 thought would be back there from the sounds that I
9 was hearing.

10 Q. Okay. And how far -- you said, is it was like "from
11 you to the wall"?

12 A. Yeah.

13 Q. How far do you think that is?

14 A. Maybe, 25 feet.

15 Q. Okay. Did you stop at the archway?

16 A. I announced myself twice while walking to the
17 archway, and then I proceeded through the archway.
18 Because sometimes, you know, people are hard of
19 hearing or, you know, so and I thought somebody was
20 back there gardening from the noises that I was
21 hearing.

22 Q. Okay. What did you see back there?

23 A. When I got back there, there was -- how I described
24 them, as like silos and wire silos. And they had
25 both a mixture of what appeared to be roosters and

1 chickens in them, along with there were like little
2 short and round black ones, as well, that had smaller
3 roosters and chickens in them, and then there were
4 four or five running around free-range back there.

5 Q. Okay.

6 MS. [REDACTED]: Your Honor, if I could have a
7 moment.

8 THE COURT: Yes.

9 (WHEREUPON, a brief discussion was held off
10 the record.)

11 MS. [REDACTED]: Your Honor, I guess, kind of a
12 housekeeping matter has come up regarding the
13 pictures. They are not exactly --

14 (WHEREUPON, a brief discussion was held off
15 the record.)

16 MS. [REDACTED]: I am just going to throw in a
17 picture because you can't see the arch. And so,
18 I am going to add a picture, because these
19 pictures were taken last week or within the past
20 week.

21 MR. GARRY: I stipulate, Your Honor.

22 THE COURT: Okay. Exhibit 15?

23 MS. [REDACTED]: Yes.

24 THE COURT: Okay. That will be received.

25 (WHEREUPON, Exhibit Number 15 was received by

1 the Court.)

2 BY MS. [REDACTED]:

3 Q. And now, Ms. McNally, you have had a chance to look
4 at some pictures that were supplied by the defense,
5 correct?

6 A. Yes.

7 Q. And structurally and layout speaking is that accurate
8 about how you remember the property?

9 A. Yes.

10 Q. Okay. Thank you.

11 MS. [REDACTED]: So, if I could approach the
12 witness, Your Honor.

13 THE COURT: You may.

14 MS. [REDACTED]: Okay. Since I am going to
15 have her identify things, how would you or your
16 clerk like to be able to see?

17 THE COURT: I think my preference is why
18 don't you just have her identify the exhibit
19 number and describe what's being depicted and I
20 will receive it.

21 MS. [REDACTED]: Okay.

22 BY MS. [REDACTED]

23 Q. Okay. I am going to show you Exhibit 7?

24 A. Okay.

25 Q. So, could you describe what this is?

1 A. So, this is the sidewalk between the garage and the
2 house with the two service doors.

3 Q. Okay. Can you point out which service door you were
4 at?

5 A. I went to this one, (indicating) the far one.

6 Q. Okay. Thank you.

7 THE COURT: Can you have you her mark that,
8 please, what she is indicating. We will get her
9 a pen.

10 MS. [REDACTED]: Okay. Thank you.

11 BY MS. [REDACTED]:

12 Q. Can you mark with a red 'X' where you went on that?

13 A. Yes. (Witness complies.)

14 (WHEREUPON, a brief discussion was held off
15 the record.)

16 BY MS. [REDACTED]:

17 Q. Okay. And then, I am going to show you what's marked
18 as Exhibit 15. Can you tell us what that is?

19 A. This is right behind the garage and the house, that
20 little archway thing that I was talking about.

21 Q. Okay.

22 A. That I walked over to.

23 Q. Okay. And that picture was taken in the winter,
24 correct?

25 A. Correct.

DIRECT EXAMINATION - KATIE McNALLY

1 Q. But this happened in the summer?

2 A. Yes.

3 Q. Okay. So, you testified before we looked at these
4 pictures that you went through the archways of those
5 silos?

6 A. Yes.

7 Q. Did you see anybody else back there?

8 A. No.

9 Q. Okay. What did you do as a result of what you saw?

10 A. So, when I was looking at the birds, both the
11 combination of roosters and chickens, I don't have a
12 whole of lot of experience with roosters and
13 chickens. So, I wanted to get more of an expert's
14 opinion. And we used the Animal Humane Society to
15 see, you know, if the animals, if that's normal or
16 not for the animals.

17 It looked like, you know, some of the feathers were
18 missing on the birds, along with like the containers
19 that had the food and water in it. It was almost
20 like a food-water combo, which, like I said, I'm not
21 quite sure if that's normal or not. So, I did take a
22 couple of pictures at that point in time.

23 Q. Okay. What did you do after you took the pictures?

24 A. I proceeded back to my squad car because nobody still
25 had come out and went back to the department.

DIRECT EXAMINATION - KATIE McNALLY

1 Q. Okay. What did you do with the pictures?

2 A. I e-mailed them to Ashley with the Animal Humane
3 Society and spoke to her over the phone.

4 Q. Okay. And what happened after you spoke to her on
5 the phone?

6 A. After speaking with her, she said that she would like
7 to go back out to the property with me.

8 Q. Okay.

9 A. To get more, to see how the setting and the layout
10 and how the animals were being cared for.

11 Q. Okay. Did you go back to the property with her?

12 A. Yes, I did.

13 Q. Was anybody else with you?

14 A. Um, that was the morning of the day that we served
15 the search warrant. So, she wasn't able to go out
16 there that day with me. So, it was two or three days
17 later then.

18 THE COURT: After the search warrant?

19 THE WITNESS: No. After the or the initial
20 time that I went out there.

21 BY MS. [REDACTED]:

22 Q. So, you went, when you went back with the Animal
23 Humane Society, it was on July 1st?

24 A. Yes.

25 Q. Okay. And the, I guess, the first time that day, the

- 1 second time overall --
- 2 A. Correct.
- 3 Q. -- you went back there --
- 4 A. Yes.
- 5 Q. -- who was with you?
- 6 A. At that point in time, it was Ashley with the Animal
7 Humane Society, myself, and Investigator Cheryl
8 Hassel.
- 9 Q. Okay. Did you have a warrant at that time?
- 10 A. No.
- 11 Q. Okay. What did you when you got there?
- 12 A. We attempted to make contact on the two side service
13 doors, again, just like I did the first time when
14 nobody came to the door.
- 15 Q. Okay. What happened after nobody answered the door?
- 16 A. So then, I proceeded to take Ashley and Cheryl over
17 to the three dog kennels that were there, the first
18 set of animals that I seen, so that she could take a
19 look at those ones.
- 20 Q. And again, those were, were those in the yard for the
21 archway? Or where were those located?
- 22 A. Those were between where the archway fence is and the
23 garage, so, like, halfway in between there.
- 24 Q. Okay.
- 25 A. They were on, like, a little retaining wall.

1 Q. Okay. What happened after that?

2 A. Then we proceeded to the backyard, so I could show
3 Ashley the other animals back there to see if they
4 were being taken care of or see if that is normal
5 living conditions for them.

6 Q. Okay. After you looked at all that, do you recall
7 what you did? After you guys had seen all of the
8 birds?

9 A. Yes. Ashley felt like there was abuse going on and
10 possible cockfighting at that point in time. Myself,
11 along with another officer, froze the location, and
12 Cheryl and Ashley went back to the station to get a
13 search warrant.

14 Q. Okay. Were you there -- and did they?

15 A. Yes. They left and myself and another officer stayed
16 at the property.

17 Q. Okay. Thank you.

18 MS. [REDACTED]: I don't have any additional
19 questions, Your Honor.

20 THE COURT: Okay. Thank you, Ms. [REDACTED].

21 Mr. Garry or Mr. [REDACTED], do you any
22 cross-examination and who will be questioning
23 first?

24 MR. GARRY: I will be going first, Your
25 Honor.

1 THE COURT: All right. Thank you. Go
2 ahead, Mr. Garry.

3 MR. GARRY: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. GARRY:

6 Q. Okay. Investigator -- or I guess, Community Service
7 Officer McNally, I am going to start off where
8 Ms. [REDACTED] started off. Are you a licensed peace
9 officer?

10 A. No, I'm not.

11 Q. Are you able to make arrests?

12 A. No.

13 Q. Have you ever applied for a search warrant?

14 A. No.

15 Q. Are you able to apply for a search warrant?

16 A. No.

17 Q. Have you had any law enforcement training whatsoever?

18 A. I have been -- I do have an Associate's Degree in
19 Criminal -- in Law Enforcement.

20 Q. Did you study anything about the 4th Amendment?

21 A. Yes.

22 Q. And did you learn anything about when you can step on
23 a homeowner's private property and when you cannot?

24 A. Yes.

25 Q. And what did you learn?

1 A. I learned that you need the consent to search a
2 person's property.

3 Q. Did you learn that you need their consent to step on
4 their property?

5 A. Yes.

6 Q. However, if you don't have their consent, then you
7 need a warrant, true?

8 A. Correct.

9 Q. And you didn't have a search warrant on either
10 June [REDACTED] or July [REDACTED], did you?

11 A. No, I did not.

12 Q. And you didn't have the property owner's permission,
13 correct?

14 A. Correct.

15 Q. All right. So, let's start on June [REDACTED], 2019 --

16 THE COURT: Counsel, say that date again, I
17 missed it.

18 MR. GARRY: June [REDACTED], 2019.

19 THE COURT: Okay.

20 BY MR. GARRY:

21 Q. That was the first date that you went to Mr. Y [REDACTED]'s
22 property, correct?

23 A. Correct.

24 Q. You testified on direct examination that you had a
25 complaint of multiple roosters on that property,

1 true?

2 A. Correct.

3 Q. However, the report that you wrote, the first line of

4 it, states that you had a "noise complaint about a

5 rooster"; is that true?

6 A. The noise complaint, it was a noise complaint due to

7 roosters being on the property.

8 Q. Would it refresh your recollection if you looked at

9 your report?

10 A. Sure.

11 MR. GARRY: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. GARRY:

14 Q. Please just read the first line of your report,

15 Ms. McNally, and let me know when you're done.

16 A. Okay.

17 Q. Did you have a chance to read your report, Officer?

18 A. Yes.

19 Q. And would you like to re-answer the question or would

20 you like me to re-ask the question?

21 A. Ah, yes, can you please re-ask the question.

22 Q. Did you have a noise complaint about a rooster or did

23 you have a noise complaint about multiple roosters?

24 A. The noise complaint about roosters.

25 Q. Okay. So, when you wrote your report; this is

1 incorrect?

2 A. Clerical error.

3 Q. Okay. And at this point in time, when you went out
4 to the property, you had no idea whether this was a
5 wild rooster or a domestic rooster; is that right?

6 A. Correct.

7 Q. And, in fact, you testified that you don't know much
8 about roosters or chickens?

9 A. Yes.

10 Q. And when you went to Mr. Y█████'s property you were
11 investigating this rooster complaint, correct?

12 A. Correct.

13 Q. And you were aware at that time that it's illegal to
14 have roosters on private property?

15 A. Yes.

16 Q. So, in other words, this was a criminal
17 investigation, true?

18 A. Yes.

19 Q. Okay. Now, when you approached the house, you walked
20 up on the driveway, correct?

21 A. Yes. I pulled into the driveway and walked up to the
22 house.

23 Q. Okay. You walked up to the side service door?

24 A. Correct.

25 Q. And you knocked on the side service door, correct?

1 A. Yes.

2 Q. Now, Exhibit 7 --

3 MR. GARRY: Your Honor, may I approach?

4 THE COURT: You may.

5 MR. GARRY: Your Honor, I am giving you
6 Exhibit 7.

7 THE COURT: Thank you.

8 BY MR. GARRY:

9 Q. Ms. McNally, I am showing you Exhibit 7, which you
10 previously marked.

11 A. Yes.

12 Q. Is that the door that you went to knock on to check
13 on the homeowners?

14 A. Yes.

15 Q. Did you knock on the door that was closest to the
16 picture there?

17 A. No. I went to the second door.

18 Q. So, at no time did you go to this first door?

19 A. No.

20 Q. Did you have a squad video in your car?

21 A. Yes.

22 Q. Did you have a chance to review that squad video?

23 A. No.

24 Q. If I told you that where you really went was this
25 first door to knock, would you be surprised?

- 1 A. I do not recall going to that first door to knock.
- 2 Q. I watched the squad video last night and that is
- 3 first where you went.
- 4 A. Okay.
- 5 Q. Did you ever go to the front door?
- 6 A. From my recollection, no.
- 7 Q. And so, when you testified that the side door looked
- 8 like the door that was more lived in, you're basing
- 9 that only on your observations of the side door,
- 10 correct?
- 11 A. Yes.
- 12 Q. You didn't go up to the front door at any point in
- 13 time?
- 14 A. No.
- 15 Q. You didn't observe the mailbox on the front, did you?
- 16 A. No.
- 17 Q. You didn't observe the welcome mat on the front
- 18 steps?
- 19 A. No.
- 20 Q. You didn't observe the doorbell on the front door,
- 21 correct?
- 22 A. No.
- 23 Q. And when you're looking at the house, there is
- 24 clearly a front door, true?
- 25 A. Yes.

1 Q. And the front door has a sidewalk going from the
2 driveway up to the front door; is that right?

3 A. Yes.

4 Q. All right. Okay. So, when you knocked on the side
5 door -- and I am telling you that it is that first
6 door because I watched it -- do you remember how hard
7 you knocked?

8 A. It was a decent amount that I normally do on all
9 doors.

10 Q. And then, when you knocked, you walked down the steps
11 and waited there, correct?

12 A. Correct.

13 Q. The squad video depicts that you waited there for
14 seven, maybe, eight seconds, correct?

15 A. Okay.

16 Q. And you didn't go -- after they didn't answer, you
17 didn't go knock again, did you?

18 A. Not from my recollection.

19 Q. And you didn't do go back to the front door to knock
20 on the front door to see if anyone was -- the front
21 area of the house, did you?

22 A. No.

23 Q. Rather, you waited that eight seconds and then you
24 walked onto Mr. Y█████'s property? In fact, his deck
25 and patio, correct?

1 A. Correct.

2 Q. And you walked into the backyard?

3 A. Yes.

4 Q. All right. Do you remember how long you were in the
5 backyard?

6 A. I could not tell you.

7 Q. If I told you about five minutes, would that sound
8 accurate to you?

9 A. No.

10 THE COURT: Mr. Garry, are you offering you
11 the squad video? Because you can't testify --

12 MR. GARRY: Oh, Your Honor, well, we
13 stipulated to the squad video, which was part of
14 Exhibit 1.

15 MS. [REDACTED]: Yes. It is in the State's PC
16 packet.

17 THE COURT: Okay. Thank you.

18 Please proceed, Mr. Garry.

19 MR. GARRY: Thank you.

20 BY MR. GARRY:

21 Q. All right. Now, in order to get into that archway,
22 would you agree with me that there is, sort of, two
23 backyards. There is the backyard immediately behind
24 Mr. Y [REDACTED]'s house and then there is a fence. And then
25 you go through the archway and then there is a, sort

1 of, another backyard where the roosters were at; is
2 that true?

3 A. Yes. I kind of classify it as like an extension to
4 the backyard.

5 Q. Okay.

6 A. Because it looked like something that a garden would
7 be behind.

8 Q. All right. So, I am just going to walk you through
9 this. So, when you knocked on the door, no one
10 answered and you walked onto the property, correct?

11 A. Yes.

12 Q. You walked through the patio and deck, correct?

13 A. Onto, yes.

14 Q. And then you walked into the first backyard, correct?

15 A. Yes.

16 Q. And then you observed a fence and in the middle of
17 the fence was an archway, true?

18 A. Yes.

19 Q. And then you walked through the archway, correct?

20 A. Yes.

21 Q. And at that point in time, before you walked through
22 the archway, you hadn't seen any roosters, correct?

23 A. Besides what was in the dog kennel.

24 Q. All right. Well, let's talk about that. You spoke
25 with Investigator Hassel on November [REDACTED], 2019; do

1 you remember that?

2 A. Yes.

3 Q. And she called you because she wanted to get some
4 additional information about this case, correct?

5 A. Yes.

6 Q. And you told, specifically, Dr. Hassel {SIC} that you
7 observed chickens; is that true?

8 A. Chickens, yes. Like I say, I know when they're
9 small, it could be either a rooster or a chicken.
10 So, I had no idea what I was looking at.

11 Q. Well, that's not what Officer -- Investigator
12 Hassel's report says. Officer Hassel stated that you
13 specifically, "identified chickens walking in and out
14 of a dog kennel." Is that what you told her?

15 A. Not from my recollection.

16 Q. She also testified or I am sorry, she also stated
17 that you said that, "The birds did not appear to be
18 roosters."

19 A. I had no idea what they were.

20 Q. So, did you tell Officer Hassel or Investigator
21 Hassel that the birds did not appear to be roosters?

22 A. Not from my recollection.

23 Q. So, Officer -- Investigator Hassel's report is false
24 is what you are saying?

25 MS. [REDACTED]: Your Honor, objection;

1 argumentive.

2 THE COURT: I am going to allow it.

3 MS. [REDACTED]: Okay.

4 THE COURT: All right. Go ahead.

5 THE WITNESS: It could be a clerical error.

6 I don't know.

7 BY MR. GARRY:

8 Q. You do understand that my client is facing felony
9 criminal charges, don't you?

10 A. Yes, I do.

11 Q. So, there is no room for clerical errors when his
12 liberty is at stake; do you understand that? As a
13 peace officer?

14 A. Yes, I do.

15 Q. You also put in your report that you "saw three
16 crates that you would transport animals in." Did you
17 write that?

18 A. No. I don't know. I don't recall.

19 MR. GARRY: May I approach the witness,
20 Your Honor?

21 THE COURT: You may.

22 MR. GARRY: If you could please read the
23 line and four lines down and let me know when
24 you're done.

25 THE WITNESS: Okay. Yes.

1 BY MR. GARRY:

2 Q. Does that refresh your recollection?

3 A. Yes.

4 Q. So, what did you write in your report almost
5 immediately after that date of the offense?

6 A. That I seen three crates.

7 Q. Yet, you told Officer Hassel that you saw a dog
8 kennel with chickens walking in it, which one is it?

9 A. It was animal crates or dog kennels. They are kind
10 of the same thing. It was the small crate ones that
11 people would use to transport dogs.

12 Q. You told Officer Hassel that there was one dog kennel
13 and you wrote in your report -- or excuse me -- you
14 told -- yes -- you told Officer Hassel there was one
15 dog kennel and you wrote in your report that there
16 were three crates; was there one or was there three?

17 A. There were three.

18 Q. Okay. Now, at this point in time, when you went
19 over, you now testified that you didn't know what
20 those birds were in the dog kennel, you went over to
21 inspect those birds, correct?

22 A. Correct.

23 Q. The reason that you wanted to inspect them is because
24 you wanted to see if they were roosters?

25 A. Correct.

1 Q. You were investigating a crime, true?

2 A. Yes.

3 Q. You're aware that it's not a crime to have chickens,
4 correct?

5 A. Correct.

6 Q. But you're aware that it is a crime to possess a
7 rooster, true?

8 A. Yes.

9 Q. So by peering into that crate on Mr. Y [REDACTED]'s private
10 property, you were looking to see if he had committed
11 a criminal violation, correct?

12 A. Yes.

13 Q. At any point in time, did you ever think about
14 getting a search warrant?

15 A. No, because in the -- when we -- it's not a criminal
16 case to start off with. It's an ordinance violation.
17 So, at that point in time, we would normally send out
18 a letter indicating, "Hey, you have roosters on your
19 property, and you have 14 days to comply, and we will
20 come out and do a re-inspection." And he can get rid
21 of them at that point in time.

22 Q. Officer McNally, an ordinance is a criminal
23 violation --

24 A. Correct.

25 Q. Okay. You just testified that it wasn't a criminal

1 investigation when five minutes ago you just
2 testified that you were investigating a criminal
3 case. So, which one is it?
4 A. It can lead into a criminal case.
5 Q. You were investigating an ordinance violation, true?
6 A. Correct.
7 Q. An ordinance violation is a crime, true?
8 A. Yes.
9 Q. So, you were conducting a criminal investigation on
10 Mr. Y█████'s private property, correct?
11 A. Yes.
12 Q. You didn't have his permission, true?
13 A. True.
14 Q. You didn't have a search warrant, correct?
15 A. Yes.
16 Q. You could have applied for a search warrant but you
17 didn't, true?
18 A. I could not, no.
19 Q. You could have called an officer, such as
20 Investigator Hassel to apply for a search warrant,
21 correct?
22 A. Yes.
23 Q. When you walked into the first backyard, before the
24 fence, you testified that you heard some sound; is
25 that right?

- 1 A. Yes.
- 2 Q. But you don't know what sound that was, correct?
- 3 A. It sounded, like I said, like a rake or a shovel or
4 something like that tinging together.
- 5 Q. You testified on direct that it sounded like
6 gardening, correct?
- 7 A. Correct.
- 8 Q. Did you put anything about gardening in the report
9 that you wrote?
- 10 A. No.
- 11 Q. Did you tell Investigator Hassel anything about
12 gardening when you spoke with her on November [REDACTED]?
- 13 A. I told her that I heard a noise behind there that
14 sounded like a shovel or a rake or something to that
15 extent.
- 16 Q. I will get to that with Investigator Hassel. You
17 didn't hear any human noises, did you?
- 18 A. No.
- 19 Q. When you yelled, did you hear a human response?
- 20 A. No.
- 21 Q. Despite no human response, you went in from the first
22 backyard, through the fence, and through the gate or
23 the archway into the second backyard, correct?
- 24 A. Yes.
- 25 Q. So, you walked through a fence, basically, right?

- 1 A. Through an archway, yes.
- 2 Q. Yes. Through -- I'm sorry, through an archway
3 connected to a fence, correct?
- 4 A. Correct.
- 5 Q. And you told Investigator Hassel that you saw
6 chickens, correct?
- 7 A. Yes.
- 8 Q. And you told Investigator Hassel that you walked
9 through an archway to get a closer look, correct?
- 10 A. Correct.
- 11 Q. And you wanted to get a closer look to rule out the
12 chickens from being roosters, true?
- 13 A. True.
- 14 Q. You wanted to rule out a crime, correct?
- 15 A. Yes.
- 16 Q. And you had a camera with you?
- 17 A. Yes.
- 18 Q. And so, you went up closely to these chickens and
19 roosters and you took pictures, correct?
- 20 A. Correct.
- 21 Q. And you took pictures on Mr. Y█████'s private property,
22 correct?
- 23 A. Yes.
- 24 Q. You were gathering evidence?
- 25 A. Yes.

1 Q. You were gathering evidence for a criminal case?

2 A. I was gathering evidence to educate myself on the
3 birds through the Animal Humane Society.

4 Q. You were gathering evidence for a criminal case;
5 isn't that true?

6 A. Sure.

7 Q. Did you have permission to take any of these
8 pictures?

9 A. No.

10 Q. Did you have a warrant allowing you to take these
11 pictures?

12 A. No.

13 Q. All right. Let's move to on to July [REDACTED], 2019,
14 six days later. After the first search under
15 Mr. Y [REDACTED]'s property, you at some point in time
16 contacted the Animal Humane Society Investigator,
17 correct?

18 A. Yes.

19 Q. You also contacted Investigator Hassel, true?

20 A. Correct.

21 Q. And you stated that you had wanted to set up a date
22 to go out there again to investigate a little bit
23 more; is that true?

24 A. Correct.

25 Q. And you went out there on July [REDACTED], six days later,

1 with both Investigator Hassel and Humane Society
2 Investigator?

3 A. Correct.

4 Q. And when you got to the house, did you pull up in the
5 driveway with your squad?

6 A. Yes.

7 Q. And you went to the side service door and knocked,
8 correct?

9 A. Correct.

10 Q. And did you go to the front door and knock?

11 A. No, not from my recollection. I don't remember us
12 going to the front door.

13 Q. All right. So, you went to the side door, again, and
14 knocked and there wasn't an answer, correct?

15 A. Correct.

16 Q. And it could have been that was, maybe, just a
17 mudroom with a door on the other end and the
18 homeowners just didn't hear you?

19 A. There was a sliding glass door there. You could tell
20 there was a kitchen and you could see a living room
21 and stuff. So, it was, like, the living area.

22 MR. GARRY: May I approach, Your Honor?

23 THE COURT: Sure. Yes.

24 BY MR. GARRY:

25 Q. I am showing you, again, Exhibit 7?

- 1 A. Yes.
- 2 Q. Did you watch the squad video of the July 1st date?
- 3 A. No, I did not.
- 4 Q. Are you aware that you and the other two officers are
5 knocking on this door and that this door isn't even
6 on camera? (Indicating.)
- 7 A. Okay.
- 8 Q. Are you aware of that or not? Are you just making up
9 these facts?
- 10 A. No.
- 11 Q. So, how are you incorrect about knocking on this
12 door?
- 13 A. I don't recall knocking on the first door. But, I
14 know that we went to the second door, and we were
15 knocking on the second door.
- 16 Q. Did you review any of the evidence in preparation for
17 your testimony today?
- 18 A. I reviewed the footage and my report, yes.
- 19 Q. You reviewed the video footage from your squad?
- 20 A. Not the video footage, no.
- 21 Q. You realize that you are testifying under oath,
22 correct?
- 23 A. Yes.
- 24 Q. And that one man's liberty is at stake here, correct?
- 25 A. Yes.

1 Q. All right. So, you planned a search for six days
2 later with a licensed peace officer and a humane
3 society investigator, correct?

4 A. Yes.

5 Q. And in those six days, did you or anyone else go to a
6 judge and fill out an application with the evidence
7 that you had gathered illegally and ask for a search
8 warrant?

9 A. No.

10 MS. [REDACTED]: Your Honor, objection; there's
11 been a legal conclusion here and it's
12 argumentative.

13 THE COURT: Sustained.

14 MR. GARRY: All right.

15 BY MR. GARRY:

16 Q. All right. In those six days, were you on vacation?

17 A. Yes.

18 Q. Where were you?

19 A. We went up to the cabin.

20 Q. Did you communicate your June 26th pictures and
21 information to anyone?

22 A. The Animal Humane Society, yes.

23 Q. When did you communicate to Investigator Hassel?

24 A. I asked my captain if I would be able to have an
25 investigator come out with me, and he said, "Yes,

1 when you get back, Hassel will come out with you."
2 But, beyond that, no.
3 Q. Did you have any discussion with any other law
4 enforcement officer about obtaining a search warrant
5 to search Mr. Y█████'s property?
6 A. No.
7 Q. And you had six days to do it, right?
8 A. Yeah, besides being off. But --
9 Q. Well, you could have picked up a phone and called
10 Investigator Hassel, and said, "I just went out to
11 Mr. Y█████'s property and there is a bunch of damaged
12 roosters out there." You could have done that,
13 right?
14 A. Yeah.
15 Q. You could have e-mailed those pictures to the police
16 department, right?
17 A. Yes.
18 Q. And could have said, "I think there is a crime being
19 committed; I think we should get a warrant," right?
20 A. Yes.
21 Q. But, you didn't do any of that?
22 A. No.
23 Q. So, when you went out there, the July ██████ time, you
24 went in the backyard again, correct?
25 A. Correct.

1 Q. And you had other two investigators walk with you in
2 the backyard again, true?

3 A. Correct.

4 Q. And you had to walk through the patio and through the
5 deck, correct?

6 A. Yes.

7 Q. And you, at that time, believed that Mr. Y [REDACTED] was
8 committing a criminal act with these roosters, right?

9 A. Yes.

10 Q. Did anyone give you permission to walk on the private
11 property?

12 A. No.

13 Q. Did you have any evidence that anyone was fleeing
14 you?

15 A. No.

16 Q. Were you in hot pursuit of anyone?

17 A. No.

18 Q. Was there a medical emergency that you were concerned
19 about?

20 A. No.

21 Q. Before going back to the rear of the house, did you
22 yell anything like you did the first time?

23 A. No.

24 Q. Did you go and talk to the neighbors about, maybe,
25 where Mr. and Ms. Y [REDACTED] were?

1 A. No.

2 Q. Ms. [REDACTED]. I'm sorry. You didn't do any of those
3 things, but what you did was walk back on Mr. Y [REDACTED]'s
4 without a warrant again, true?

5 A. Yes.

6 Q. And not only that, when you got back there, you
7 noticed a garage, correct?

8 A. Are you saying the shed?

9 Q. No, the garage with the open window.

10 A. Yes.

11 Q. And you noticed a crack in the window?

12 A. The window was open.

13 Q. Yeah. And what did you do?

14 A. We looked in the window because it sounded like
15 roosters or something or noises coming from there,
16 and we could see all of the roosters inside of there,
17 as well.

18 Q. And that garage was part of Mr. Y [REDACTED]'s property?

19 A. Yes.

20 Q. His private property?

21 A. Yes.

22 Q. And so, you were looking in his private property?

23 A. Yes.

24 Q. Through his window?

25 A. Yes.

1 Q. And you have a didn't warrant to do so?

2 A. Yes.

3 Q. And you didn't have permission to do so?

4 A. Yes.

5 Q. So, I am almost done. But, all of these reports that
6 have been offered as Exhibit 2, Officer McNally,
7 there are just a number of discrepancies throughout
8 these reports and what you told other people. Are
9 you saying these are clerical errors? Or you just
10 don't remember?

11 A. Like, the "a chicken" is a clerical error.

12 Q. Okay. What about telling Officer Hassel that the
13 birds in the dog kennel were chickens, not roosters?

14 A. I do not recall saying that.

15 MR. GARRY: I have no further questions,
16 Your Honor.

17 THE COURT: All right. Thank you.

18 Mr. ██████████, do you have any questions?

19 MR. ██████████: I do. I'll be brief.

20 Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. ██████████:

23 Q. I am very much a city person. Before this case, I
24 couldn't tell the difference between a rooster and a
25 chicken. Is the same true for you?

1 A. Yes.

2 Q. So, on this first time that you go onto the property,
3 you go there and you see birds. And they're either
4 roosters or chickens, and you're not sure which one
5 they are?

6 A. Correct.

7 Q. And it is not something that you would have had any
8 training on or anything like that?

9 A. No.

10 Q. But, you were trained that the ordinance allowed
11 chickens but not roosters, correct?

12 A. Correct.

13 Q. Okay. So, to make sure that we're on the same page
14 here, there were three times that you guys went onto
15 Ms. [REDACTED]'s and Mr. Y [REDACTED]'s property, right?

16 A. Two, but the second time we stayed to freeze the
17 property -- so, if that makes sense.

18 Q. Yes. So, you go there on June [REDACTED] of last year?

19 A. Correct.

20 Q. Without a warrant?

21 A. Yes.

22 Q. And then you go there on July [REDACTED] without a warrant?

23 A. Correct.

24 Q. And then you get a warrant?

25 A. Correct.

1 Q. And investigate the building itself, correct?

2 A. Correct.

3 Q. Okay. So, kind of, just going step by step, again,
4 on this first, the June [REDACTED] time that you were on
5 the property. So, you get there and you, when you're
6 on the street and you're looking at the property, you
7 don't see any birds or anything else that raises your
8 suspicions, right?

9 A. No.

10 Q. And then you go into the driveway and you park on the
11 driveway, right?

12 A. Correct.

13 Q. And from there, you don't see any birds or anything
14 like that?

15 A. I can hear roosters or crowing. I could hear
16 animals. But, beyond that, no.

17 Q. Okay. Is that reflected on the squad video? Do you
18 know?

19 A. I don't know.

20 Q. Because you haven't looked at that recently?

21 A. Exactly.

22 Q. So, you go up to the side door and you knock and ask
23 if anyone is there, right?

24 A. Yes.

25 Q. And you wait a few seconds and there is no answer,

1 right?

2 A. Yes.

3 Q. And for some context, the side door is in a, kind of,
4 an alleyway that is, maybe, 8 or 10 feet wide; is
5 that correct?

6 A. Yes.

7 Q. And the garage on the other side of the door?

8 A. Correct.

9 Q. So, if you are knocking on the door, the garage is
10 behind you and the street to your left, right?

11 A. Correct.

12 Q. Okay. So, you don't hear any answer, you see a dog
13 kennel, and you walk towards that dog kennel, right?

14 A. Correct.

15 Q. And I think you said that it is about 15 or 20 feet
16 away; isn't that right?

17 A. Yes.

18 Q. And it's away from the street, towards the backyard,
19 behind the garage, right?

20 A. So, when I was at the second door knocking, it was
21 directly behind me.

22 Q. So, behind the garage?

23 A. Yes.

24 Q. Okay. And it is not in an area that you can see from
25 the street, right?

1 A. Yes.

2 Q. And there was no other walkway, is there, besides the
3 alleyway or driveway portion?

4 A. Correct.

5 Q. Okay. So, you see some kind of birds and you don't
6 know if they're chickens or roosters or what. So,
7 you investigate more, right? To determine what's
8 happened? If anything illegal is going on?

9 A. Exactly.

10 Q. Okay. And there are chairs and, kind of, personal
11 effects in this area, right?

12 A. Yes. There is a patio set.

13 Q. Yeah. Lawn chairs, tables, things like that?

14 A. Yes.

15 Q. There was an area that looked like they were using it
16 as a backyard?

17 A. Yes.

18 Q. Okay. So, when you're at this kennel, you see some
19 more birds, right?

20 A. Yes.

21 Q. And they are behind the fence, right?

22 A. At that point in time, I could not see the birds
23 behind the fence, but I could hear animals behind the
24 fence, like the crowing.

25 Q. Okay.

1 A. The crowing was extremely loud. So, you couldn't
2 really tell if it was coming from right there or
3 behind the fence. But, I could hear, like, it
4 sounded like shovels, like metal combining together,
5 like hitting.

6 Q. Okay. So, you heard animal sounds and you didn't
7 know exactly where they were coming from?

8 A. Correct.

9 Q. And then you heard, kind of, shuffling that was
10 definitely coming from the backyard?

11 A. Yes.

12 Q. Okay. So, you go up to the fence to see -- well,
13 partially if anyone is there and partially to
14 continue your investigation, right?

15 A. It was mainly because I thought the homeowner was
16 behind the fence from what I could hear.

17 Q. Okay. And you called out, "Is anyone there?" and no
18 one answered, right?

19 A. Correct.

20 Q. So, you go up to the fence, right?

21 A. Correct.

22 Q. And the fence is set up to act as a barrier between
23 the backyard and the driveway area, right?

24 A. Yes.

25 Q. And you're going there, because you don't know what's

1 going on and you want to figure it out, basically?

2 A. Yes.

3 Q. And you go through the fence into the second backyard
4 area that we were talking about?

5 A. Yes.

6 Q. And from the kennel area to the second backyard
7 area -- Do you understand what terms I am using when
8 I say that?

9 A. Yes.

10 Q. That distance is about 25 feet you said?

11 A. I would say, yeah.

12 Q. Roughly?

13 A. Yes.

14 Q. Okay. And there, when you're through the fence in
15 the backyard, the second backyard area, you see more
16 birds?

17 A. Yes.

18 Q. And you still don't know if they are roosters or
19 chickens or -- well, you probably know that they are
20 roosters or chickens, but you don't know which one is
21 which?

22 A. Right. The big ones, you know, you could obviously
23 tell those ones were roosters. But, beyond that, I
24 can't tell you.

25 Q. And that's one of the reasons that you take the

1 pictures, to ask someone at the Humane Society, "Are
2 those roosters or chickens"?

3 A. Yes.

4 Q. And the other is just to conduct an investigation
5 into if the birds are being mistreated, right?

6 A. Correct.

7 Q. Which is a separate crime of some sort?

8 A. Right.

9 Q. Okay. So, you leave the property without seizing
10 anything, just taking those pictures, right?

11 A. Correct.

12 Q. And then you talk to the Humane Society Investigator?

13 A. Yes.

14 Q. If that's the right term. You show her the pictures
15 and ask her and Investigator Hassel to come out to
16 the property with you again, right?

17 A. Correct.

18 Q. So, that's what you do on July [REDACTED], right?

19 A. Yes.

20 Q. So based on what you learned on June [REDACTED], you come
21 back on July [REDACTED]?

22 A. Yes.

23 Q. And first, you don't get a warrant, right, like we
24 talked about?

25 A. Yes.

1 Q. And the three of you go knock on the door? The same
2 side door?

3 A. Yes.

4 Q. And you, basically, do it again? You go back there
5 again in the same route, making the same general
6 observations?

7 A. Yes.

8 Q. And you see the same birds or the same kind of birds,
9 right?

10 A. Yes.

11 Q. And you talk with the Humane Society person or
12 investigator about what to do?

13 A. Correct.

14 Q. And the investigator makes the decision to get a
15 warrant, right?

16 A. The Animal Humane Society person said that we should,
17 that we needed to get a warrant, yes.

18 Q. So, that wasn't Investigator Hassel that said that?
19 It was the Humane Society person that advised you to
20 get a warrant?

21 A. She advised that there was, like, neglect being done,
22 that, you know, that this is a criminal case, you
23 know, and then, Officer Hassel said at that point in
24 time to get a warrant.

25 Q. So, Investigator Hassel is the person that ultimately

1 makes the decision to apply for the warrant, right?

2 A. Yes.

3 Q. And she makes the decision to apply for a warrant
4 based on what you observed in the June [REDACTED] and
5 July [REDACTED] visits, right?

6 A. Yes.

7 Q. Okay. And specifically, you went to the property on
8 July [REDACTED] to see what kind of birds they were, right?

9 A. Yes.

10 Q. And were they being mistreated, right?

11 A. Correct.

12 Q. So, you were conducting an investigation at that
13 time?

14 A. Yes.

15 Q. Okay. So, just, kind of, going over this one more
16 time, because, the progression, I want to make sure
17 is clear. You start at the street and go to the side
18 door and attempt to make contact with the homeowners,
19 right?

20 A. Correct.

21 Q. And from the side door, you go to the kennel area,
22 which is behind their garage further away from the
23 street?

24 A. Correct.

25 Q. And you do that because you see birds and you don't

1 know what kind of birds they are and you want to
2 check that out?

3 A. Correct.

4 Q. From the kennel area, you go up to the fence and then
5 through the fence, right?

6 A. Correct.

7 Q. Okay. And you do that for the same reason, you see
8 birds, you don't know what's going on, and you want
9 to investigate it more?

10 A. Again, I went to the back fence area because I was
11 trying to make contact with the homeowners and it
12 sounded like somebody was back there.

13 Q. All right. That makes sense. But, when you called
14 out, you didn't get an answer and you went through
15 anyway, right?

16 A. Correct.

17 Q. Okay.

18 MR. [REDACTED]: May I have a moment,
19 Your Honor.

20 THE COURT: You may.

21 MR. [REDACTED]: I have nothing further, Your
22 Honor.

23 THE COURT: Okay. Thank you.

24 Ms. [REDACTED], are you going to have any
25 redirect-examination examination?

DIRECT EXAMINATION - OFFICER CHERYL HASSEL

1 MS. [REDACTED]: No, Your Honor.

2 THE COURT: Okay. Thank you.

3 You can step down, Ms. McNally, thank you.

4 MS. [REDACTED]: Your Honor, Investigator
5 Hassel will be my next witness.

6 THE COURT: Okay. Thank you, Ms. [REDACTED].
7 You may go get her from the hallway.

8 Officer Hassel, please take the stand and
9 remain standing.

10 THE CLERK: Please raise your right hand.

11 OFFICER CHERYL HASSEL,
12 the Witness in the above-entitled
13 matter after having been duly sworn
14 testifies and says as follows:

15 THE CLERK: You may lower your hand.

16 Please state and spell your full name for
17 the record.

18 THE WITNESS: Cheryl Hassel; C-H-E-R-Y-L,
19 H-A-S-S-E-L.

20 THE COURT: Thank you, Officer.

21 Go ahead, Ms. [REDACTED].

22 MS. [REDACTED]: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. [REDACTED]:

25 Q. Investigator Hassel, what do you do for a living?

DIRECT EXAMINATION - OFFICER CHERYL HASSEL

1 A. I am a Peace Officer with the City of [REDACTED].

2 Q. Are you a Licensed Peace Officer?

3 A. I am.

4 Q. How long have you been a Licensed Peace Officer?

5 A. 23 years.

6 Q. How long have you been with the City of [REDACTED] Police
7 Department?

8 A. 23 years.

9 Q. Okay. And what's your education for being a police
10 officer?

11 A. I have a four-year Criminology Degree from the
12 University of Minnesota-Duluth. I have Law
13 Enforcement Certification from Metro State, as well
14 as Fond du Lac Community, which I am not sure if it
15 is called that anymore. It was quite a while ago.
16 I went to SKILLS in Alexandria, Minnesota for my
17 Police Officer SKILLS and training. I have had
18 ongoing training for the last 23 years, continually,
19 education, use of force, et cetera.

20 Q. Okay. And what are your job duties for the City of
21 [REDACTED] Police Department? What exactly do you do?

22 A. I am a patrol officer. So, I am a call car. I will
23 answer calls that are dispatched to me by Anoka
24 County and respond to those calls as needed, whether
25 it is emergency or nonemergency, write the reports,

1 investigate the crimes. At the time of this case, I
2 was an investigator with the City of [REDACTED]. We have
3 three investigators, two are rotating every three
4 years. So, I had bid for that position, and I was an
5 investigator from 2017 to 2020.

6 Q. Okay. Now, you just said at the time of this case --
7 you know why we're here today, correct?

8 A. Correct.

9 Q. Okay. How did you become involved with the case?

10 A. I was working as an investigator and our Community
11 Service Officer, Katie McNally, came into my office
12 and asked me about a case she was working on. She
13 briefed me on the ordinance complaint and why she was
14 there and asked if would I be interested in meeting
15 with her and a, I think, she is an investigator with
16 the Animal Humane Society, at some point in regard to
17 this case.

18 Q. Okay. And what did you do in response to her
19 request?

20 A. I said I would be available to do that.

21 Q. Okay. So what did you do?

22 A. At some point, Community Service Officer McNally had
23 made arrangements with Investigator Ashley Pudas and
24 made an appointment to have her come out to base. I
25 believe that date was July [REDACTED] of 2019. So, I was

DIRECT EXAMINATION - OFFICER CHERYL HASSEL

1 asked if I could meet with Investigator Pudas, as
2 well as Katie to go over, I guess, some of the facts
3 of the case.

4 Q. Okay. Did you do that?

5 A. I did.

6 Q. Okay. So, what happened when the three of you met?

7 A. It was decided that the investigator with the Animal
8 Humane Society would like to definitely take a look
9 at the birds and the situation and how they're housed
10 and how they are fed. At that time, it was more
11 likely just to educate and speak to the homeowners
12 and, you know, talk to them about their birds.

13 Officer McNally had been out there previously, and we
14 already had acknowledged that there were crowing
15 chickens or roosters that are not allowed on the
16 property.

17 And at that time, there was also signs of possible
18 neglect and abuse. And so, that was the reason for
19 going up to the house to speak to the homeowners and
20 for the Animal Humane Society Investigator to take a
21 closer look at the animals to go take a closer look.

22 Q. Okay. So, did you go out to the property?

23 A. We did.

24 Q. Did you have a warrant?

25 A. No. I did not have a warrant at that time.

DIRECT EXAMINATION - OFFICER CHERYL HASSEL

1 Q. Okay. Why did you not have a warrant at that time?

2 A. At that time, it was consent to speak with the
3 homeowners. And due to what, you know, basically,
4 what could be heard on the other side and what we
5 could see from the property, the investigator was not
6 sure until she got a closer look of whether or not
7 there was going to be neglect. And due to the
8 exigent of circumstances, you know, if these birds
9 are being neglected and abused as the pictures
10 showed, then it deemed us to go back there to make
11 sure these animals were not going to be harmed any
12 further.

13 Q. What happened when you got to the property?

14 A. I believe it was the three of us -- myself, Officer
15 McNally, and then the investigator with the Animal
16 Humane Society -- arrived at the property, attempted
17 to make contact at the front door or the side door.
18 I guess, I call the front door, the west door, which
19 it was obvious that, that was the door that the home
20 occupants were using.
21 There were signs that people left their shoes at that
22 door. It was directly across from a detached garage.
23 But, I don't remember if I knocked on the north door,
24 which was the actual front door. But, I do recall
25 going to the west door and knocking, and there was no

DIRECT EXAMINATION - OFFICER CHERYL HASSEL

1 contact made, nobody answered.

2 Q. Now, when you say the west door, you had a chance to
3 look at some pictures today of the property, correct?

4 A. Yes.

5 Q. And to your memory, those are structurally how the
6 property looked?

7 A. Correct.

8 Q. So, and do you recall from that picture there were
9 two side doors?

10 A. I recall just steps going up to the door that I
11 knocked on, on the west side.

12 Q. Okay. Was it like a patio or anything there?

13 A. It was just a concrete small stoop leading up to that
14 west door.

15 Q. And when you got there, could you hear anything?

16 A. You definitely could hear chickens. I'm not a
17 bird -- knowledgeable of birds at all. I could hear
18 crowing, I guess, is what you would call it and
19 definitely noise and disturbances anyway, shuffling
20 noises from a kennel nearby. I am not sure what was
21 inside. You could hear that from where I was
22 standing.

23 Q. What could you see from where you were standing?

24 A. From where I was standing, on that west side of the
25 house with a detached garage directly west of the

1 door, there was another small shed about 50 feet
2 away, detached shed. Next to that area was a, it
3 looked like a dog kennel and some birds' movement
4 around that kennel and in that kennel. There was a,
5 I guess, you call could it a partial fence or a
6 structure of some sort that was about five feet tall,
7 maybe, ran the length of the house, which I'm bad
8 with feet, but 100 yards, you know, two -- it's hard
9 to say.

10 There is a separation in that structure and that
11 fence. There is a large archway. And where we were
12 standing, if you are in the backyard next to that dog
13 kennel, you could actually see in and actually from
14 that stoop, you could see into that archway, and you
15 could see what appeared to be like an open area, open
16 field. There was some noise back there.

17 Q. Okay --

18 A. That was about all.

19 Q. Okay. What did you do as a result of that?

20 A. As a result of that, the three of us walked back to
21 that archway area. I believe, I acknowledged myself
22 or announced myself anyway, "██████████ Police. Anybody
23 back there?" I just, kind of, peaked around and was
24 looking just for anybody. There were quite a few
25 makeshift housing cages filled with birds and some

1 barrels and shrubbery and whatnot.

2 So, I walked back there just to make sure nobody else
3 was back there. Or if was the homeowner, if she was
4 feeding the birds or if she was. I am not quite
5 sure. At that time, Investigator Pudas was back
6 behind that fenced-in area with me. And in that
7 short time, she could see that things were not
8 looking well for those birds, that they didn't appear
9 sick, feathers were missing, some had open wounds.

10 Q. Okay.

11 A. Immediately, when that was said, where it was more
12 than just "we need to educate the homeowners on
13 ordinance violations and what the birds need" and
14 that sort, it appeared that now we're looking at more
15 serious offenses of animal neglect and abuse. So,
16 the scene was frozen and I left and obtained a search
17 warrant at that time.

18 Q. Okay.

19 MS. [REDACTED]: Thank you, Officer.

20 I don't have any further questions, Your
21 Honor.

22 THE COURT: Okay. Thank you, Ms. [REDACTED].

23 Mr. Garry, you can proceed.

24 MR. GARRY: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. GARRY:

2 Q. Officer Hassel, but you knew about these birds and
3 abuse and neglect and wounds before you were at the
4 property, right?

5 A. Somewhat.

6 Q. Because you wrote a report, right?

7 A. Yes.

8 Q. And in that report, you stated that you met with this
9 CSO McNally and Ashley Pudas and looked at pictures,
10 right?

11 A. Correct.

12 Q. Pudas stated that the birds were not being cared for
13 correctly, some of the roosters showed signs that
14 they had been involved in fights; is that true?

15 A. That is true.

16 Q. And you put, "There were feathers gone, wounds,"
17 true?

18 A. I'd have to look at my report. I don't recall that.

19 MR. GARRY: May I approach, Your Honor.

20 THE COURT: Yes.

21 MR. GARRY: Investigator, if you could just

22 look at the end of this second paragraph.

23 (WHEREUPON, a brief discussion was held off
24 the record.)

25 THE WITNESS: I am going to read, "After

1 reviewing the --

2 MR. GARRY: Well, hang on, hang on.

3 Does that refresh your recollection? I
4 don't want you to read it. I am going to ask you
5 a question about it.

6 THE WITNESS: But, I am saying that these
7 are the words that Investigator Pudas had said,
8 the "after reviewing the pictures." She is the
9 one that relayed it to me, which then, I put --

10 BY MR. GARRY:

11 Q. The point I am making, Investigator, is that you knew
12 that there were roosters on the property before you
13 walked on the property, correct?

14 A. Correct.

15 Q. You reviewed pictures of the injured birds before you
16 walked on the property, correct?

17 A. Correct.

18 Q. And you have been an officer for 23 years, you
19 testified, right?

20 A. Correct.

21 Q. And you've probably applied for plenty of search
22 warrants over those years?

23 A. I have.

24 Q. And you have a degree in Criminal Justice?

25 A. Yes.

1 Q. And when Ms. [REDACTED] was asking you why you went on
2 the property without a warrant, you stated that you
3 wanted to get the consent to speak with the
4 homeowners, right?

5 A. That was our first task, yes.

6 Q. Okay. But, you didn't get the consent, did you?

7 A. No contact, no.

8 Q. All right. Then you said something -- I was talking
9 to my co-counsel here, about exigent circumstances
10 justified the warrantless search of the property; did
11 you say that?

12 A. I did.

13 Q. And what exigent circumstances are you referring to?
14 Because those are pretty limited.

15 A. Yeah. They are pretty limited. I felt truly that if
16 these animals were in such dire conditions, very
17 sick, possibly more, I'm not sure what was going on,
18 that at that point, it would give me the right to go
19 back there and look at the animals.

20 Q. So, in your opinion, as a peace officer and under the
21 United States and Minnesota Constitutions, that's a
22 valid exigent circumstance justifying a warrantless
23 search of a private U.S. citizen's property? That's
24 your opinion?

25 A. I see it -- can I answer it further?

1 Q. Well, I am just asking; yes or no. If it's not your
2 opinion, say no --

3 A. No, it's not.

4 Q. -- if it is your opinion, say yes.

5 A. Well, yes, it's my opinion.

6 Q. Okay. Thank you. Okay. So, you went -- and by the
7 way, when did you look at these pictures and talk
8 with Ashley Pudas and CSO McNally?

9 A. I know for sure it was July 1st of 2019.

10 Q. When did you first learn about this rooster case?

11 A. It was sometime after Officer McNally was at the
12 property on an ordinance complaint. I'm not exactly
13 sure of the date. It was sometime after she was on
14 that property and before July [REDACTED].

15 Q. All right. Well, that was June [REDACTED]. So, that was
16 six days earlier. Can you and be more specific about
17 when you learned of this investigation?

18 A. I can't recall, no.

19 Q. But, it was -- certainly, you had evidence that there
20 was possibly criminal activity occurring on the
21 property, true?

22 A. Well, I'm not 100-percent --

23 Q. Well, did you know that --

24 A. -- sure at that time.

25 Q. You saw pictures of roosters, right?

1 A. Actually, I didn't know what kind of birds they were.
2 That's why we had Investigator Pudas come out because
3 I had no idea of what kind of birds I was looking at.

4 Q. Investigator Hassel, I am just going to ask you some
5 really simple questions, okay? And I just want you
6 to answer those questions. Did you write a report in
7 this case?

8 A. Yes.

9 Q. In that report, did you state that you met with CSO
10 McNally and Ashley Pudas?

11 A. Yes.

12 Q. And in that report, did you state that you reviewed
13 pictures and that you learned from Pudas that there
14 were roosters on the property?

15 A. Correct.

16 Q. And did you learn from Pudas that these roosters were
17 injured?

18 A. Possibly injured; yes.

19 Q. Is that a yes or a no?

20 A. Yes.

21 Q. Did you learn from Pudas that these roosters were
22 injured?

23 A. Yes.

24 Q. Did you learn from Pudas that the feathers were gone
25 and that there were fresh wounds?

1 A. Yes.

2 Q. Are you aware that it is illegal to have a rooster on
3 your property in the City of [REDACTED]?

4 A. Yes.

5 THE COURT: Can I just ask for clarity? I
6 am sure I will read it in police reports. But,
7 when did you review the pictures with Dr. Pudas?
8 Before you went to the property?

9 THE WITNESS: Yes.

10 THE COURT: Okay. Thank you.

11 Go ahead, Mr. Garry.

12 MR. GARRY: Thank you.

13 BY MR. GARRY:

14 Q. Okay. So, when you went there on July [REDACTED], you
15 attempted to locate the homeowners by knocking on the
16 door?

17 A. Yes.

18 Q. And you knocked on the side door, correct?

19 A. West door, correct.

20 Q. Not the front door?

21 A. Possibly, the front door. I don't recall if we went
22 to the front door. I took a --

23 Q. It appears to me from the squad video that I reviewed
24 last night, that it was Ashley Pudas that went to the
25 front door; is that true?

1 A. I don't recall.

2 Q. So, you have no recollection of going to the front
3 door of the property to ring the doorbell to see if
4 the homeowners were there?

5 A. I do recall -- no, I don't.

6 Q. Okay. So, after they did not answer the door, you
7 just simply walked onto Mr. Y [REDACTED]'s private property,
8 correct?

9 A. Correct. You could hear the roosters or birds
10 crowing. And at that time, Pudas had briefed me that
11 chickens can crow, as well as male roosters, and that
12 was one of the -- I needed to find out what kind of
13 birds we're even looking at, you know, to make sure.

14 Q. Investigator Hassel, just answer the question that I
15 ask. Okay? Because you have already testified that
16 you were aware that there were roosters on the
17 property, so you don't need to justify it by thinking
18 there may have been chickens or roosters, okay?

19 A. Okay.

20 Q. Did you walk onto Mr. Y [REDACTED]'s private property?

21 A. Yes.

22 Q. Okay. And you walked through the rear patio and the
23 deck to get to his backyard; is that correct?

24 A. Yes.

25 Q. And at that particular time, you made the conscious

1 decision in your mind to walk onto that rear patio
2 and rear backyard without a search warrant?

3 A. Yes.

4 Q. And you were with the two other investors, correct?

5 A. Well, McNally is not an investigator.

6 Q. Okay. CSO McNally and Investigator Pudas from the
7 Humane Society?

8 A. Correct.

9 Q. Now, in walking on that property, you didn't even
10 attempt to get a search warrant, correct?

11 A. Correct.

12 Q. So, after reviewing the evidence provided by
13 Ashley Pudas, you choose to make the conscious
14 decision not to fill out an application for a search
15 warrant, not to go see a judge, not to call a judge,
16 not even to attempt to get a search warrant, correct?

17 A. Correct.

18 Q. And no one, at any point in time, not any homeowner,
19 either Ms. [REDACTED] or Ms. Y [REDACTED], gave you permission,
20 right?

21 A. Correct.

22 Q. And you're not claiming that you were chasing someone
23 or someone was fleeing you, correct?

24 A. Correct.

25 Q. You weren't in hot pursuit?

1 A. No.

2 Q. You weren't investigating a medical emergency to a
3 human?

4 A. Correct.

5 Q. Okay. You didn't go talk to any of the neighbors,
6 correct?

7 A. Correct.

8 Q. And -- okay -- on November [REDACTED], 2019, did you get an
9 e-mail from Ms. [REDACTED] asking you to follow up with
10 an investigation on CSO McNally?

11 A. I received a couple of e-mails; I would say, yes.

12 Q. Okay. And did you call CSO McNally to get her
13 version of what happened?

14 A. I either called her or I e-mailed her. I did
15 communicate with her to ask for further instruction
16 and detail on that.

17 Q. If your report says, "I spoke to CSO McNally," would
18 you take me at my word?

19 A. Yes.

20 Q. All right. Thank you. And CSO McNally told you that
21 she was very familiar with this case?

22 A. Yes.

23 Q. And she told you that she had no problem recalling
24 what she observed?

25 A. Correct.

1 Q. And she told you that she tried to make contact on
2 the side door because she thought that was actually
3 the front door, correct?

4 A. Correct.

5 Q. And your report states: "CSO McNally observed in,
6 quote, "plain view," unquote, about 15 feet from
7 where she was standing, "she observed a dog kennel
8 with chickens walking in and out of it"; is that
9 correct?

10 A. Correct.

11 Q. Is that what McNally told you?

12 A. Yes.

13 Q. Okay. And you quote, "plain view" in this report;
14 why do you quote, "plain view"?

15 A. Just so that I can say that there is actually an
16 ordinance violation taking place.

17 Q. But, what does "plain view" have to do with an
18 ordinance violation taking place?

19 A. Well, because I have -- then we can see it. I mean,
20 there is, a lot of times there are complaints of a
21 lot of things going on, and if you don't see it, you
22 don't know it's happening.

23 Q. All right. Did you quote the "plain view" because
24 you are trying to justify a search without a warrant?

25 A. No. It was just right there in plain view.

1 Q. Okay. And then, you state, that "McNally said she
2 walked through the archway or make-shift fence,"
3 correct?

4 A. Correct.

5 Q. And "she observed wire cages and kennels"?

6 A. Correct.

7 Q. And "she went inside the archway to get a closer look
8 of the birds to rule out them being roosters,"
9 correct?

10 A. Correct.

11 Q. That's what she told you?

12 A. That's what she wrote.

13 Q. Well, that's what she told you --

14 A. Okay.

15 Q. Is that true?

16 A. True.

17 Q. Okay. And then, finally -- and I am almost done --
18 you wrote an e-mail to Ms. [REDACTED] on November [REDACTED],
19 2019, correct?

20 A. Could you show it to me --

21 Q. Yes.

22 A. -- I don't recall it.

23 MR. GARRY: May I approach, Your Honor?

24 THE COURT: You may.

25 MS. BEAMAN: Can you show me, please?

1 MR. GARRY: Yes.

2 (WHEREUPON, a brief discussion was held off
3 the record.)

4 MS. [REDACTED]: Thank you.

5 THE WITNESS: Yes.

6 BY MR. GARRY:

7 Q. And in this e-mail, we have another issue with this
8 "plain view." You stated that, in all caps, "In
9 plain view, about 15 feet from the side of the house
10 door," I'm just curious why you're concentrating on
11 this "plain view"?

12 A. I don't know. I don't have an answer for you.

13 Q. After you got done with the search -- well, after you
14 went on the property, did you have any concerns that
15 you had searched someone's property without a search
16 warrant?

17 A. No.

18 Q. It didn't even pop up in your mind after 23 years of
19 law enforcement experience?

20 A. No.

21 Q. Why not?

22 A. I don't have any answer for you.

23 Q. Well, you know after 23 years of executing warrants,
24 you can't just walk on someone's property, right?

25 A. Right.

1 MS. [REDACTED]: Objection; he is being
2 argumentive.

3 THE COURT: It was a fair question;
4 overruled.

5 I mean, do you know?

6 THE WITNESS: I continued along with the
7 search. I felt that it wasn't private at that
8 point. It's further out. There is an open area.
9 This is a make-shift fence. Whose property is
10 this, you know?

11 MR. GARRY: May I approach, Your Honor?

12 THE COURT: You may.

13 What exhibit do you have?

14 MR. GARRY: It is Exhibit 7, Your Honor.

15 It is a copy. I will just leave it up
16 here.

17 THE COURT: Sure.

18 BY MR. GARRY:

19 Q. Is that the pathway that you took to the backyard?

20 A. Correct.

21 Q. And through that pathway, you have to cross the
22 patio?

23 A. Yes.

24 Q. And you have to walk across one first door?

25 A. Yes.

1 Q. And a second sliding glass door?

2 A. Yes.

3 Q. And a patio, right?

4 A. Yes, correct.

5 Q. And a garage?

6 A. Yes.

7 Q. And there are things out there like lawn chairs and
8 tables that made it look like someone would --

9 A. Well, it was not quite that way when I was there.
10 There was some snow and --

11 Q. Okay.

12 A. -- and not lawn furniture and --

13 Q. So, but you had to walk through this property to get
14 to the backyard, right?

15 A. Correct.

16 Q. And then, you went through a backyard, and then there
17 was a fence with an archway, right?

18 A. Correct.

19 Q. And then, you went through the archway to sort of a
20 second backyard, correct?

21 A. Correct.

22 Q. And that's where the roosters were at?

23 A. Correct.

24 Q. And you're not claiming that this was a public park,
25 right?

- 1 A. Correct.
- 2 Q. You were aware that this was Mr. Y [REDACTED]'s property?
- 3 A. I didn't know whose property it was at first.
- 4 Q. You're not claiming that this was public property --
- 5 A. Correct.
- 6 Q. -- are you?
- 7 A. No response.
- 8 Q. Are you telling this judge that this was public
- 9 property?
- 10 A. I just told you no.
- 11 Q. So, you know that this was private property?
- 12 A. Correct.
- 13 Q. In fact, when you walked back, you saw the garage,
- 14 right?
- 15 A. Back where?
- 16 Q. When you walked back towards the street, you saw
- 17 Mr. Y [REDACTED]'s detached garage?
- 18 A. As you pull into the driveway, you can see a detached
- 19 garage.
- 20 Q. Did you see a detached garage with a window open?
- 21 A. Correct.
- 22 Q. And did you walk over to that window?
- 23 A. I did.
- 24 Q. And did you looked in the window?
- 25 A. I did.

1 Q. And so, you looked into Mr. Y[REDACTED]'s private property,
2 right?

3 A. I did, yes.

4 Q. And you didn't have permission to do that?

5 A. Correct.

6 Q. And you didn't have a search warrant to do that?

7 A. Correct; not at that time.

8 Q. And the reason that you didn't is because you just
9 simply failed to go to a judge to get a search
10 warrant, right?

11 A. I didn't feel it was needed at that point.

12 Q. Okay. Have you conducted other searches like this
13 without search warrants? I mean, is this your
14 regular --

15 A. You can pull my history up if you would like.

16 Q. Is this your regular mode of conducting law
17 enforcement --

18 MS. [REDACTED]: Judge --

19 MR. GARRY: That by going onto other
20 people's property --

21 MS. [REDACTED]: -- argumentative --

22 THE COURT: Yeah. I'm going to sustain
23 that, Mr. Garry.

24 MR. GARRY: One more second, Your Honor.
25 (WHEREUPON, a brief discussion was held off

1 the record.)

2 MR. GARRY: I have no further questions.

3 THE COURT: Thank you.

4 All right, Mr. [REDACTED]?

5 MR. BIRRELL: Thank you.

6 CROSS-EXAMINATION

7 BY MR. [REDACTED]:

8 Q. Is it your testimony that you didn't know whose
9 property that you were searching when you were in the
10 backyard?

11 A. No.

12 Q. You knew it was the property associated with 7842, et
13 cetera?

14 A. Correct.

15 Q. Okay. So, sometime before July [REDACTED], you meet with
16 the Animal Humane Society Investigator and
17 CSO McNally, correct?

18 A. I met her for the first time on July [REDACTED].

19 Q. Okay. So, you meet on July [REDACTED] in the morning,
20 right?

21 A. Correct.

22 Q. And you decided to go to the house to conduct further
23 investigation, right?

24 A. Correct.

25 Q. The three of you -- do you meet at the station?

1 A. Yes, at [REDACTED] Police Department.

2 Q. First thing in the morning?

3 A. Correct.

4 Q. And you make a plan together as to what you're going
5 to do?

6 A. Correct.

7 Q. And the plan is to go there and see the birds, right?

8 A. Correct.

9 Q. And you're going to go knock on the door and if no
10 one is there, you're going to go in the backyard,
11 right?

12 A. Correct.

13 Q. You don't go into a rush, right?

14 A. Correct.

15 Q. No lights and sirens?

16 A. Negative.

17 Q. When you get to the property, you park in the
18 driveway?

19 A. Correct.

20 Q. And you, the three of you casually try to make
21 contact at the front entrance and the side entrance,
22 correct?

23 A. Correct.

24 Q. And you're not running or walking briskly? You're
25 just walking like normal, correct?

1 A. Correct.

2 Q. And you walk around the property after they don't
3 answer to conduct your investigation, right?

4 A. Correct.

5 Q. There is an alleyway with the side door on one side
6 and then the garage behind it, correct? Does that
7 make sense?

8 A. You're talking about the alleyway? Is that the
9 patio, would you say?

10 Q. So, when you park in the driveway --

11 A. Yes.

12 Q. The side door is on your left?

13 A. Yes. Correct.

14 Q. And the garage is on your right?

15 A. Correct.

16 Q. And in between, there is a patio-alleyway?

17 A. Yes. Correct.

18 Q. Maybe, 8 or 10 feet wide?

19 A. Correct.

20 Q. And you decide to walk through that patio-alleyway to
21 get closer to the backyard, right?

22 A. Correct.

23 Q. And you went behind the garage, correct?

24 A. Correct.

25 Q. Into the backyard area, right?

- 1 A. Correct.
- 2 Q. Through a fence?
- 3 A. Correct.
- 4 Q. Into the second backyard area?
- 5 A. Correct.
- 6 Q. And you did all of this to gather evidence to see if
- 7 a crime had been committed, right?
- 8 A. Correct.
- 9 Q. Did you tell -- you applied for a search warrant and
- 10 a search warrant was issued by Judge Sullivan after
- 11 you got there, right?
- 12 A. Correct.
- 13 Q. The search warrant took a few minutes, less than an
- 14 hour, to get signed and bring back to begin
- 15 executing, correct?
- 16 A. Correct.
- 17 Q. In the search warrant, you tell Judge Sullivan that,
- 18 "In plain view in the backyard were about 17
- 19 roosters," right?
- 20 A. Correct.
- 21 Q. You used the phrase, again, "in plain view in the
- 22 backyard," again there, right? And it's only in
- 23 plain view when you are already well into their
- 24 property, correct?
- 25 A. Correct.

REDIRECT-EXAMINATION - OFFICER CHERYL HASSEL

1 Q. Okay. And their property -- so, when you walk back
2 there, you walk past lawn chairs, right?

3 A. Not that at that time, but --

4 Q. Not at that time --

5 A. -- yeah, I understand. Yes, correct.

6 Q. Okay. But, it's someone's backyard? It is personal
7 property, right?

8 A. Correct.

9 Q. And this whole thing took a matter of minutes? This
10 whole search?

11 A. The first time?

12 Q. The first -- well --

13 A. Like, when I was out there the first time?

14 Q. Well, strike that. That's unclear.

15 MR. [REDACTED]: I have nothing further,
16 Your Honor.

17 THE COURT: All right.

18 Ms. [REDACTED], do you have any
19 redirect-examination?

20 MS. [REDACTED]: Yes, Your Honor.

21 I do just a couple of questions.

22 REDIRECT-EXAMINATION

23 BY MS. [REDACTED]:

24 Q. Officer Hassel, you testified earlier about some
25 snow, remembering some snow. Is it -- do you recall

1 if you have seen pictures from this in the winter?

2 A. I feel like I do recall that.

3 Q. So, but this definitely happened in June and July,
4 right?

5 A. Correct.

6 MS. [REDACTED]: I have don't have any
7 additional questions.

8 THE COURT: Okay. With that limited
9 question, do either of you have recross?

10 MR. [REDACTED]: No, Your Honor.

11 MR. GARRY: No, Your Honor.

12 THE COURT: All right. Thank you. You can
13 step down.

14 Do you have any additional witnesses,

15 Ms. [REDACTED].

16 MS. [REDACTED]: I do not.

17 THE COURT: Do either of you have any
18 witnesses, Mr. Garry or Mr. [REDACTED]?

19 MR. GARRY: No, Your Honor.

20 MR. [REDACTED]: No, Your Honor.

21 THE COURT: All right.

22 So, then, that will conclude the hearing.

23 I guess it's my preference to have you
24 brief the matter. And obviously, you're free to
25 brief and use whichever cases you want. But, I

1 am going to ask each party specifically to
2 address *State of Minnesota versus Chute,*
3 C-H-U-T-E. It is a Minnesota Supreme Court case;
4 908 N.W.2d 578 from 2018.

5 MR. GARRY: We have that case right here,
6 Your Honor.

7 MR. [REDACTED]: Yes.

8 THE COURT: When you do your briefing, I'd
9 like to you address whether or not this is a
10 curtilage requiring a warrant and also plain view
11 is not an exception to search, just seizure. So,
12 if you could please address that, as well. And
13 that's my reading of the case, but those are the
14 areas that I'd like you to address and any other
15 cases that you find relevant, of course.

16 So, are you briefing simultaneously? Or
17 how do you want to handle that?

18 MS. [REDACTED]: I would like to respond,
19 Your Honor.

20 THE COURT: Okay. So, two weeks for
21 defense?

22 MR. GARRY: Sure, Your Honor. Can you give
23 me just a couple seconds.

24 THE COURT: Yes.

25 (WHEREUPON, a brief discussion was held off

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the record.)

THE COURT: Okay. What would be a date five weeks out for defense?

THE CLERK: That would be September [REDACTED].

THE COURT: All right. September [REDACTED], I will have defense briefs due.

And then, the State due two weeks after, Ms. [REDACTED]?

MS. [REDACTED]: Your Honor, I'd like three if that is possible.

THE COURT: Sure.

THE CLERK: That would be October 9th.

THE COURT: All right.

So, September [REDACTED] by 4:30 p.m. for the defense and October [REDACTED] by 4:30 p.m. for the State.

And then, at this time, do you want pretrial and jury trial dates?

MR. GARRY: I guess, pre-trial, Your Honor.

THE COURT: Well, they go together.

MR. GARRY: Oh, okay.

THE COURT: So, you can either just get one today or if you need one, I will pick it or I can just put it in my order and --

MR. GARRY: Yeah. That would be great,

1 Your Honor.

2 THE COURT: So, you just want me to pick
3 it?

4 MR. GARRY: Yes.

5 THE COURT: Okay.

6 MR. GARRY: And Your Honor, to save time,
7 do you want us to submit a joint brief? Or do
8 you want --

9 THE COURT: Yeah, that's your decision.
10 I'm happy to receive a joint brief.

11 MR. GARRY: It is the same issue.

12 THE COURT: Yes.

13 MR. [REDACTED]: I think we will plan on doing
14 that, Your Honor.

15 THE COURT: Okay.

16 THE CLERK: And the timeframe for the under
17 advisement?

18 THE COURT: All right. For the State and
19 Defense, do you waive timelines or do you want me
20 to decide within the next 30 --

21 MR. GARRY: No, Your Honor. We waive all
22 timelines.

23 MS. [REDACTED]: So, does the State,
24 Your Honor.

25 MR. [REDACTED]: Yes, Your Honor.

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THE COURT: All right. Thank you.

And Mr. Garry and Mr. [REDACTED], just for clarity when you file your joint brief, in your header, will you just make it clear that it's a joint brief?

MR. GARRY: Yes, Your Honor.

MR. [REDACTED]: Yes.

THE COURT: Thank you, everyone.

We're adjourned.

MS. [REDACTED]: Thank you, Your Honor.

MR. GARRY: Thank you, Your Honor.

MR. [REDACTED]: Thank you, Your Honor.

(WHEREUPON, the proceedings were concluded at 11:08 a.m.)

* * * *

