

Michael McCabe
January 28, 2002

2022

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

DAVID BUSACCA and

LAUREN SCHIPANI,

Plaintiffs,

vs.

Case No. 20-012180-NI

Hon. Sheila A. Gibson

OAKLAND COUNTY, UNDERSHERIFF

MICHAEL MCCABE, and OAKLAND

COUNTY DEPUTIES JOHN DOES

1-4, in their personal and

official capacities,

Defendants.

/

The Deposition of MICHAEL McCABE,

Taken at 2701 Cambridge Court, Suite 223,

Auburn Hills, Michigan,

Commencing at 10:01 a.m.,

Friday, January 28, 2002,

Before Alan Stalburg, CER-9106.

1 APPEARANCES:

2

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20 ALSO PRESENT:

21 David Busacca

22 Lauren Schipani

23

24

25

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1 Auburn Hills, Michigan

2 Friday, January 28, 2022

3 10:01 a.m.

4

5 MICHAEL McCABE,

6 was thereupon called as a witness herein, and after
7 having first been duly sworn to testify to the truth,
8 the whole truth and nothing but the truth, was
9 examined and testified as follows:

10 MS. PUZZUOLI: The record should reflect
11 that this is the deposition of Defendant Michael
12 McCabe being taken pursuant to notice and agreement of
13 counsel. It is also being taken pursuant to the
14 Michigan Court Rules. It is intended to be used for
15 any and all purposes thereunder.

16 Undersheriff McCabe, I know you retired.
17 Do you prefer that I call you undersheriff or mister
18 at this point?

19 THE WITNESS: You can call me mister.

20 MS. PUZZUOLI: Okay. Mr. McCabe, today is
21 the date and time scheduled for your deposition. It
22 is being taken pursuant to the Michigan Court Rules.
23 I'm sure you've been through your deposition before
24 but just some preliminary ground rules for you.

25 Please wait until I finish my entire

1 question before you start answering the question. If
2 I by chance interrupt your answer please let me know
3 that because I want to give you a full and fair
4 opportunity to respond to my question, okay?

5 THE WITNESS: Okay.

6 MS. PUZZUOLI: All right. Also, please
7 answer with a loud verbal response for the court
8 reporter rather than a nod of the head or an uh-uh,
9 uh-huh. I'm sure you understand that, as well,
10 correct?

11 THE WITNESS: Yes.

12 MS. PUZZUOLI: Most importantly, if you do
13 not understand a question of mine will you please let
14 me know that?

15 THE WITNESS: Yes.

16 MS. PUZZUOLI: If you do answer my question
17 I am going to assume that you are answering to the
18 best of your knowledge, ability and, most importantly,
19 again, truthfully. Do you understand that, as well,
20 sir?

21 THE WITNESS: That's correct.

22 EXAMINATION

23 BY MS. PUZZUOLI:

24 Q. All right. Please state your full name for the
25 record.

1 A. Michael McCabe.

2 Q. Do you understand why you're here today, sir?

3 A. Yes.

4 Q. Why are you here?

5 A. You're suing me, or these two people are suing.

6 Q. Is that your complete understanding?

7 A. Yes.

8 Q. All right. And what is your address?

9 A. My business address is 1201 North Telegraph, Pontiac,

10 Michigan.

11 Q. And what about your home address?

12 A. Do I have to give that?

13 MR. CLARK: No.

14 A. I'm not giving it to you.

15 MR. CLARK: You can contact him through my

16 office.

17 MS. PUZZUOLI: Okay. He is retired now and

18 I assume since you are not giving his address my

19 clients will not be giving their address either as

20 officers. Do you agree with that, Counselor?

21 MR. CLARK: Yes.

22 MS. PUZZUOLI: All right, thank you.

23 BY MS. PUZZUOLI:

24 Q. Can you please tell us what you reviewed in this case?

25 A. What I reviewed?

1 Q. Yes.

2 A. I went over some files with Robby here.

3 Q. Okay. What files did you go over?

4 A. I don't know, he had various e-mails, CPS reports,

5 partial police reports, things of that nature.

6 Q. Did you review anything else in preparation for your

7 deposition?

8 A. No.

9 Q. Who have you talked to concerning your deposition

10 today other than your attorney?

11 A. That's it. Robert Smith, retired Major Smith.

12 Q. And when did you talk to him?

13 A. It was -- he was here Monday.

14 MR. CLARK: She's just asking for

15 conversations that I was not a part of.

16 A. Nobody.

17 BY MS. PUZZUOLI:

18 Q. Have you talked to the sheriff?

19 A. No.

20 Q. Are you taking any medications that would affect your

21 ability to testify here today truthfully?

22 A. No.

23 Q. Or that would affect your recall?

24 A. No.

25 Q. And I understand that you've been working with Oakland

1 County since 2000 and -- or 1977, correct?

2 A. That's correct.

3 Q. And you were undersheriff from 2003 to 2021, end of

4 2021, correct?

5 A. I think that's correct, yes. About 18 and a half

6 years if I recall correctly.

7 Q. All right. Can you tell us what positions you've held

8 at the sheriff's department from beginning to --

9 A. Sheriff's Office.

10 Q. -- the end of your employment?

11 Yes, okay, Sheriff's Office, can you tell

12 us what positions you've worked at?

13 A. I started as a road patrol deputy in 1977 and then I

14 went into -- about ten years later into the detective

15 bureau. Then I was promoted to sergeant. Then I was

16 promoted to lieutenant. Then I was promoted to

17 captain. Then I was promoted to deputy chief of

18 staff. I was promoted to chief of staff and then I

19 was promoted to undersheriff.

20 Q. How long were you in the detective bureau for?

21 A. I did investigations for about a total of seven years

22 between as a patrol investigator, a sergeant and as a

23 lieutenant.

24 Q. And in your capacity as a detective did you perform

25 any CSC investigations?

1 A. Yes.

2 Q. How many?

3 A. I couldn't tell you.

4 MR. CLARK: Foundation.

5 BY MS. PUZZUOLI:

6 Q. Approximately?

7 A. Many.

8 Q. Were you in charge of those investigations?

9 A. Yes.

10 Q. Do you know how many people actually were convicted in
11 those cases that you investigated?

12 A. I don't recall.

13 Q. Do you know how many cases you closed and did not
14 arrest an individual in those cases?

15 A. I don't have a number.

16 Q. When is the last time you investigated a CSC
17 complaint?

18 A. Back when I was a detective, you know, in the '80s.

19 Q. All right. And did any of those CSE investigations
20 involve children?

21 A. Yes.

22 Q. And would the last case -- do you know how many?

23 A. How many victims there were?

24 Q. How many investigations you did involving children?

25 A. I don't recall.

1 Q. When would you have conducted your last investigation
2 regarding a child?

3 A. Probably when I was a lieutenant in charge of the
4 Orion Township substation.

5 Q. And that would have been when, in the '80s?

6 A. '90s.

7 Q. Okay. So at least 20 years?

8 A. Yes.

9 Q. Or more, 20, 30 years?

10 A. Yes.

11 Q. All right. Do you have any duties outside the
12 jurisdiction of Oakland County?

13 A. No.

14 Q. And I should say did you have any duties outside the
15 jurisdiction of Oakland County as undersheriff?

16 A. What do you mean, duties?

17 Q. Any duties as part of your position as undersheriff
18 outside the jurisdiction of Oakland County?

19 A. I was on the DSEMIIC, I was on the HIDA (phonetic), I
20 was on the legislative committee for the Michigan
21 Sheriff's Association. That's three that I can think
22 of right now.

23 Q. Any other duties?

24 A. Not that I can think of right now. Detroit Crime
25 Commission.

1 Q. And when were you on these commissions, boards, units?

2 A. The entire time I was an undersheriff.

3 Q. So you would have left those positions in 2021?

4 A. 12/31/21.

5 Q. Were you ever not reappointed to any of those boards?

6 A. Auto theft prevention authority but I had served I

7 think eight years and they told me that it was time

8 for somebody else to serve in my place. That was the

9 governor's appointment.

10 Q. And how did you feel about that when you weren't

11 reappointed?

12 A. Oh, I wasn't happy.

13 Q. Did you blame anyone in particular?

14 A. Yeah, I did.

15 Q. Who did you blame?

16 A. Kristie Etue.

17 Q. And who is Kristy Etue?

18 A. She was a colonel at the State Police at the time.

19 Q. Any other times you blamed any officers at the

20 Michigan State Police for anything that happened in

21 your career?

22 A. Not that I can think of.

23 Q. What are the responsibilities of the special

24 investigations unit that you had?

25 A. They do internal affairs and major cases.

1 Q. Do they do criminal sexual assault cases?

2 A. Yes.

3 Q. How is it determined when they will get a case?

4 A. It depends on the case, the individual case.

5 Q. Who determines when they get a case?

6 A. It could be the captain. It could be the major. It
7 could be me.

8 Q. Are they assigned to all criminal sexual conduct cases
9 or not?

10 A. No.

11 Q. So how is that determination made whether SIU will
12 come in?

13 A. Again, it's on an individual basis depending upon the
14 severity of the case or the circumstances surrounding
15 the case.

16 Q. Can you tell me the last case you were aware of that
17 was assigned to the SIU unit involving a CSC?

18 A. I couldn't tell you.

19 Q. Who is on the SIU unit when you were there?

20 A. There's a lieutenant and six sergeants, detective
21 sergeants.

22 Q. Could you name them, please?

23 A. Well, the lieutenant -- it depends, you know, people
24 get promoted, they move on. When, when are you
25 referring to?

1 Q. I'm talking about 2019?

2 A. 2019? It would have been Lieutenant Wilson would have
3 been in charge of the unit. Let's see. Sergeant Joe
4 Brian, Detective Sergeant Giolitti, probably Detective
5 Sergeant Zdravkovski.

6 Q. Could you spell that for the record, please?

7 A. I couldn't spell that. Detective Sergeant Miller.
8 There's three others I can't think of off the top of
9 my head.

10 Q. Did you work closely with the SIU unit?

11 A. What do you mean, closely?

12 Q. I mean did you monitor or supervise, oversee what they
13 were doing?

14 A. No. That was the lieutenant's job.

15 Q. Did you have any responsibilities over the SIU unit?

16 A. Well, through the chain of command they ultimately
17 reported to the front office.

18 Q. So would you delegate any tasks or any crimes to the
19 SIU unit?

20 A. Would I?

21 Q. Yes.

22 A. Well, it depends, again, on the case. If there's an
23 internal investigation and it's delegated to them it
24 would either be by myself or by the major.

25 Q. Was this case involving McMaster and Orr ever

1 delegated to the SIU unit?

2 A. Once the State Police investigated it, yes.

3 Q. Once the State Police investigated what?

4 A. The McMaster case.

5 Q. You're talking about the criminal charges against

6 McMaster and Orr?

7 A. When the search warrant was executed at the house in

8 Oxford Township is when I became aware of it.

9 Q. Why was the SIU unit assigned to the McMaster case

10 once there was a search warrant?

11 A. It wasn't specifically when the search warrant was

12 executed. It was some time after that as more facts

13 were gathered.

14 Q. Why was the SIU unit assigned to the case at that

15 point?

16 A. We were alarmed as to what was occurring.

17 Q. When you say we who are you referring to?

18 A. Myself, the major, the captain, the sheriff.

19 Q. And how did you find out about this search warrant?

20 A. Received a phone call from the command sergeant in

21 dispatch.

22 Q. And who would that have been at that time working --

23 A. I'm not sure.

24 Q. -- in that position?

25 A. I don't recall.

1 Q. Were you made aware through an e-mail, were you made
2 aware through a telephone?

3 A. I think it was a phone call.

4 Q. Do you know who took that phone call?

5 A. I took the phone call.

6 Q. Okay. And do you know who you spoke to?

7 A. It might have been Sergeant Rami Abiadal, but I'm not
8 positive.

9 Q. Can you spell that for the record?

10 A. A-B-I-A-D-A-L, I believe.

11 Q. And what did you -- what was the conversation with
12 Rami Abiadal?

13 A. As I recall, he said that a deputy's wife drove by the
14 Salvation Army parking lot on M-24 in Oxford Township
15 and observed multiple State Police vehicles, including
16 a SWAT vehicle, in the parking lot.

17 Q. Okay. Do you know which deputy's wife drove by the
18 Salvation Army and saw this?

19 A. No, I don't.

20 Q. All right. So --

21 A. I may have known at the time but I can't recall now.

22 Q. And so what did that mean, that a deputy's wife drove
23 by the --

24 A. Well, it --

25 Q. -- Salvation Army and saw Mrs. --

1 A. It would be --

2 Q. -- (inaudible)?

3 A. -- unusual for the Michigan State Police to be in an

4 area that we patrol with a large contingent of

5 troopers, so inquiries were made.

6 Q. And what inquiries were made at that time?

7 A. I don't recall. Somebody called the State Police or

8 somebody -- I don't recall but inquiries were made as

9 to what they were doing there.

10 Q. Did you make any of these inquiries?

11 A. I didn't personally, no.

12 Q. Did you direct anyone to make these inquiries?

13 A. I may have.

14 Q. Do you know or do you not?

15 A. I don't recall.

16 Q. All right. And we'll get into that more later. In

17 any event, the SIU unit was not assigned to the

18 criminal sexual conduct complaint made by Johanna

19 McMaster and [REDACTED] McMaster, correct?

20 A. The original investigation?

21 Q. Yes.

22 A. That's correct.

23 Q. All right. Just to back up, have you been involved in

24 any other lawsuits?

25 A. Oh, I'm sure I've been sued many times in my career.

1 Q. Okay. When's the last time?

2 MR. CLARK: Foundation.

3 If you know.

4 A. I can't recall.

5 BY MS. PUZZUOLI:

6 Q. When you say many times what are you referring to, how
7 many times?

8 A. In my career I don't know. I'm going to guess. Do
9 you want me to guess?

10 Q. I don't want you to guess but --

11 A. I don't know.

12 Q. -- can you tell us over ten times?

13 MR. CLARK: Foundation.

14 A. I don't know.

15 BY MS. PUZZUOLI:

16 Q. What did these lawsuits allege that were filed against
17 you?

18 MR. CLARK: Object to form and foundation.

19 A. Do you want me to answer?

20 BY MS. PUZZUOLI:

21 Q. Yes.

22 MR. CLARK: You can answer.

23 A. One was an officer fatal involved shooting in the
24 '80s. One was an ex-employee that sued us. Those are
25 the two that stick out the most.

1 BY MS. PUZZUOLI:

2 Q. And what was the name of the individual who was
3 involved in the officer fatal shooting?

4 A. That would have been myself and Doug Molinar,
5 M-O-L-I-N-A-R.

6 Q. And what was the name of the individual that you shot?

7 A. I didn't shoot her. Doug Molinar did and I was there.

8 Q. Okay. What was the name of that individual?

9 A. Mrs. Gentry, G-E-N-T-R-Y.

10 Q. And then who is the ex-employee that you recall suing
11 you?

12 A. Jane Boudreau, B-O-U-D-R-E-A-U, I believe.

13 Q. And what were the allegations in that complaint?

14 A. In which one?

15 Q. In the Bordeaux complaint.

16 A. Boudreau?

17 Q. Is it Boudreau?

18 A. Boudreau.

19 Q. Yes. Okay. What were the allegations in that?

20 A. I don't remember. She sued the department for -- she
21 was fired and she sued us. I don't remember what the
22 allegations were.

23 Q. Have you ever been sued for violating an individual's
24 civil rights?

25 MR. CLARK: Foundation.

1 If you know.

2 A. I don't recall.

3 BY MS. PUZZUOLI:

4 Q. Have you ever been sued in Federal Court?

5 A. Yes, Boudreau.

6 Q. Any other cases?

7 MR. CLARK: Foundation.

8 A. I probably have but I don't recall.

9 BY MS. PUZZUOLI:

10 Q. All right. What about State Court?

11 A. I'm sure I was sued there too but I don't recall
12 specifics.

13 Q. Okay. I just did a quick Court Explorer search and
14 found Michael McCabe, and this may not be you, vs.
15 Students International.

16 A. Not me.

17 Q. Is that one?

18 Okay. Michael McCabe as a defendant sued
19 by John Dennison?

20 A. Doesn't ring a bell.

21 Q. Michael McCabe as plaintiff, Priority Investments,
22 Incorporation?

23 A. Not me.

24 Q. Michael McCabe, defendant, Harrison Curtis or Curtis
25 Harrison?

1 A. Yes, former employee, or current -- he may still be a
2 current employee.

3 Q. And is the last name Harrison?

4 A. Yes.

5 Q. And what did Mr. Harrison sue you for?

6 A. I don't recall.

7 Q. Was it something involving his employment?

8 MR. CLARK: Foundation.

9 A. I'm not sure.

10 BY MS. PUZZUOLI:

11 Q. Have you --

12 A. I'm sure it was, how's that? I don't recall the
13 specifics.

14 Q. Have you given depositions in these cases that we've
15 talked about just now, the lawsuits that you've been
16 involved in?

17 MR. CLARK: Foundation.

18 A. I'm sure I gave some depositions. I can't tell you
19 which ones.

20 BY MS. PUZZUOLI:

21 Q. Do you know how many depositions you've given?

22 A. Over my career?

23 Q. Yes.

24 A. Many. I can't give you a specific number.

25 Q. All right. What about Dan Flynn, I have a Michael

1 McCabe as a defendant, Dan Flynn as the plaintiff?

2 A. Yep.

3 Q. And who is Dan Flynn?

4 A. Ex-employee.

5 Q. What happened in the Curtis Harrison case, how was

6 that resolved?

7 A. I think it was dismissed.

8 Q. What about the Dan Flynn case?

9 A. Dismissed.

10 Q. Were those results of settlements or results of

11 motions?

12 A. I don't recall.

13 Q. All right. What about Michael McCabe, plaintiff,

14 against Fremont Insurance Company?

15 A. I haven't got a clue.

16 Q. Michael McCabe, defendant, the plaintiff is Fremont

17 Insurance Mutual Company?

18 A. It's not me.

19 Q. Michael McCabe, plaintiff, against Burger King Corp.?

20 A. Not me.

21 Q. Michael McCabe, defendant, the plaintiff is Peter G.

22 Pitchford, P-I-T-C-H-F-O-R-D?

23 A. No idea.

24 Q. Any other lawsuits you can recall being involved in?

25 A. No.

1 Q. Have any of these lawsuits involved allegations that
2 you did something improper in your employment at
3 Oakland County?

4 MR. CLARK: Form and foundation.

5 A. Improper, what do you mean by that?

6 BY MS. PUZZUOLI:

7 Q. Anything improper, abused --

8 A. That I was --

9 Q. -- your authority --

10 A. -- accused of it?

11 Q. Yes.

12 A. I'm sure I was. I couldn't tell you what I was
13 accused of.

14 Q. Okay. So you can't tell me in any of the cases what
15 you've been accused of in terms of what the
16 accusations are in terms of what you did wrong as
17 undersheriff or an officer?

18 A. Not off the top of my head, no.

19 Q. Have you ever been subject to an internal affairs
20 investigation at Oakland County?

21 A. No.

22 Q. Have you ever been disciplined by Oakland County --

23 A. No.

24 Q. -- in your career?

25 What about Detective Freiberg, has he ever

1 been disciplined?

2 A. I don't believe so.

3 Q. Ever subject to an IA investigation?

4 A. I don't believe so.

5 Q. Do you know how many criminal sexual conduct cases he

6 had investigated prior to investigating the Avery

7 McMaster case?

8 A. I don't know.

9 Q. Were you ever asked that, to check into that?

10 A. I don't recall.

11 Q. So sitting here today can you tell us at all how many

12 investigations Detective Freiberg has been involved in

13 regarding criminal sexual conduct allegations?

14 A. As I recall he was a fairly new detective at the time

15 and he was being mentored by I believe Deputy

16 Louweart, who was the previous detective in his place.

17 Q. Can you spell the last name of the deputy that was

18 monitoring him, please?

19 A. He wasn't monitoring him, he was assisting him.

20 L-O-U-W-E-A-R-T, something like that.

21 Q. And when you say --

22 A. He's the school resource deputy in Oxford right now.

23 Q. Okay. And when you say he was a fairly new detective,

24 referring to Detective Freiberg, what do you mean, how

25 long had he been performing his role as a detective?

1 A. I don't know. I just recall being told that he was a
2 new -- a fairly new detective.

3 Q. Do you know if it was less than a year he had been on
4 the job?

5 A. Probably, yes.

6 Q. Do you know if he had ever investigated any criminal
7 sexual conduct complaints prior to investigating the
8 McMaster complaint?

9 MR. CLARK: Form and foundation.

10 A. I don't know.

11 BY MS. PUZZUOLI:

12 Q. Do you know of or do you know Larry Orr?

13 A. No. I know who he is. I don't know him.

14 Q. And how do you know who he is?

15 A. He was involved in this case.

16 Q. Other than knowing he was involved in this case do you
17 know anything else about him?

18 A. Just that he was charged criminally.

19 Q. Do you know anything else about him?

20 MR. CLARK: Object to form.

21 A. I'm not sure what you mean by that.

22 BY MS. PUZZUOLI:

23 Q. I'm just wondering do you know anything else about him
24 other than he was charged criminally in the McMaster
25 case?

1 A. Only what I was informed -- what I read in the papers
2 and I was informed of, that he's a prior convicted
3 sexual offender.

4 Q. So you're saying you read that in the papers that he
5 was a convicted criminal sexual offender?

6 A. Yeah, yes, and I was probably informed of that prior
7 to reading it in the paper also.

8 Q. What about Sean McMaster, did you know him prior to
9 the date of -- or at the time of the investigation
10 into the McMaster allegations?

11 A. No.

12 Q. Had you ever had any contact with him?

13 A. No.

14 Q. Had you ever worked with him or known anyone to have
15 worked with him?

16 A. No.

17 Q. Did you know anyone in his family or any of his
18 friends or anybody who did work with him?

19 A. No.

20 Q. Did you ever conduct an investigation in terms of his
21 past employment?

22 A. Did I conduct an investigation --

23 Q. Yes.

24 A. -- no.

25 Q. Did you direct anyone to conduct an investigation into

1 his prior employment?

2 A. Not that I recall.

3 Q. Are you aware of anyone at the County that ever
4 conducted an investigation of his employment?

5 A. SIU may have.

6 Q. But you're guessing again at that?

7 A. I don't recall.

8 Q. Do you know Kathy Barbour?

9 A. No.

10 Q. Do you know Heather Catallo?

11 A. Yes.

12 Q. How long have you known Heather Catallo for?

13 A. 20 plus years.

14 Q. And what is your relationship with her, can you
15 describe that?

16 A. She is a reporter that I know because I've been the
17 PIO of the department for many years.

18 Q. And is she a reporter you work exclusively with?

19 A. No.

20 Q. So how many times have you worked with her in the
21 past?

22 MR. CLARK: Foundation.

23 A. I've never worked with her.

24 BY MS. PUZZUOLI:

25 Q. Okay. Well, how many times have you in your capacity

1 had contact with her?

2 MR. CLARK: Foundation.

3 If you know.

4 A. Many times over 20 years.

5 BY MS. PUZZUOLI:

6 Q. Have you ever socialized with her?

7 A. No.

8 Q. Did you ever talk to Larry Orr?

9 A. No.

10 Q. Did you ever communicate by way of e-mail or text
11 message or phone with Larry Orr?

12 A. No.

13 Q. Did you know Barbara Orr?

14 A. No.

15 Q. Did you ever communicate with her via e-mail, text,
16 phone --

17 A. No.

18 Q. -- in person?

19 A. No.

20 Q. The same with Sean McMaster?

21 A. Correct. Yes, that is correct.

22 Q. Yes. Did you ever have any personal contact with him?

23 A. No.

24 Q. Ever communicate with him via the phone, e-mail or
25 text messages?

1 A. No.

2 Q. The same with Kathy Barbeau, the same question?

3 A. I don't know who she is.

4 Q. Alona Sharon, what's your relationship with her?

5 A. She was the defense attorney for McMaster.

6 Q. Did you know her before she was the defense attorney

7 for McMaster?

8 A. No.

9 Q. Did you ever have personal contact with her, physical?

10 A. Never met her.

11 Q. Okay. Did you ever have phone contact with her?

12 A. Yes.

13 Q. How many times?

14 A. A couple, maybe three, four. I couldn't give you an

15 exact number.

16 Q. And what were the circumstances that you would have

17 contact with a defense attorney for Sean McMaster?

18 A. It was after the case was dismissed I had some

19 conversations with her.

20 Q. And did you contact her, did she contact you?

21 A. She originally reached out to Major Smith, not me.

22 Q. And so the question is after that did you reach out to

23 her or did she reach out to you?

24 A. I don't recall.

25 Q. When did these conversations take place?

1 A. I can't give you exact dates, I don't know.

2 Q. Can you give me approximate dates?

3 A. During the investigation of Sean McMaster after she
4 was retained. I don't know if I -- I don't believe I
5 talked to her pending the criminal. It was probably
6 mostly after the criminal investigation.

7 Q. So when you say you don't believe you talked to her
8 during the criminal, are you sure about that or not
9 sure about that?

10 A. I'm not sure.

11 Q. So what was the first conversation you had with Alona
12 Sharon?

13 A. I don't recall.

14 Q. What was the conversation about?

15 A. The McMaster case --

16 Q. Okay.

17 A. -- concerns that we had about it.

18 Q. All right. So what was discussed with her?

19 A. I can't tell you specifically. I just know that there
20 were major concerns about the case.

21 Q. Okay. And so tell me what was discussed generally
22 then other than concerns and major concerns?

23 A. I can't tell you specifically, I didn't record the
24 conversations. It was in general about concerns we
25 had about the investigation that occurred by State

1 Police and the Attorney General's Office.

2 Q. Can you tell me anything specifically you discussed

3 with Alona Sharon?

4 A. I'd have to guess and I don't want to guess.

5 Q. You said you didn't record these conversations,

6 correct?

7 A. That's correct.

8 Q. How do you determine whether you're going to record a

9 conversation or not?

10 A. I can't recall the last time I recorded a

11 conversation. Maybe as a detective while I was

12 investigating a case would have been it.

13 Q. So you're telling us today you have not recorded a

14 conversation since maybe you were a detective in the

15 '80s?

16 A. '90s.

17 Q. In the '90s?

18 A. Uh-huh, yes.

19 Q. All right. Did you communicate with Alona Sharon in

20 any other manner other than the phone, did you send

21 e-mails, did you use text messages?

22 A. There were a couple e-mails.

23 Q. Anything else?

24 A. No.

25 Q. And when you say a couple of e-mails, how many?

1 MR. CLARK: Foundation.

2 A. I don't recall.

3 BY MS. PUZZUOLI:

4 Q. And what was the purpose of communicating with a
5 criminal defense attorney?

6 A. The concerns about the case, an innocent man was being
7 railroaded.

8 Q. You're aware that the criminal charges were dismissed
9 without prejudice, correct?

10 A. Yes.

11 Q. Why are you laughing, is that funny?

12 A. No.

13 Q. The charges can be brought again, is that your
14 understanding, when --

15 A. They sure can.

16 Q. -- they're dismissed without prejudice?

17 A. That's correct.

18 Q. Okay. Any reason you laughed at that?

19 A. No.

20 Q. All right. When is the last time before talking to
21 Alona Sharon that you discussed with a criminal
22 defense attorney concerns you had relating to what you
23 call an innocent man?

24 A. I don't -- I don't recall, I don't know.

25 Q. Had you ever had a conversation with a criminal

1 defense attorney regarding what you're saying is
2 concerns about a case regarding an individual -- or an
3 innocent person?

4 A. Oh, I've had conversations with criminal defense
5 attorneys many times.

6 Q. Okay. But the case had been dismissed, I think you
7 said, right, when you had these conversations with
8 Alona Sharon?

9 A. That's my recollection. I may have talked to her
10 before it was dismissed.

11 Q. So what you're referring to as an innocent man, those
12 charges had already been dismissed, right, when you
13 talked to the criminal defense attorney?

14 A. I said I may have talked to her before they were
15 dismissed, I don't recall.

16 Q. Okay. But if you didn't, and you can't tell us you
17 did today, then you were talking to her after the
18 charges had already been dismissed against what you
19 call an innocent man, correct?

20 A. I talked to her after the case was dismissed, yes.

21 Q. And had you ever talked to any other criminal defense
22 attorney regarding concerns or doing something after
23 charges had been dismissed against the criminal
24 defendant?

25 A. I don't recall.

1 Q. Sitting here today can you recall one time you've done
2 that?

3 A. I've talked to many defense attorneys over my career.

4 Q. I understand that but I'm asking once --

5 A. Again, I don't recall.

6 Q. -- the charges were dismissed had you ever talked to a
7 criminal defense attorney about concerns you had?

8 A. I don't recall.

9 Q. And I'd like to just talk about the fact that you
10 characterized it as an innocent man. You're not a
11 jury, right --

12 A. That's my opinion.

13 Q. -- you're not a judge?

14 A. That is correct, you're correct.

15 Q. And in your position as undersheriff is it your
16 responsibility to determine who's innocent and who's
17 guilty?

18 A. No.

19 Q. And you would agree with me that's either a judge or
20 jury's decision, correct?

21 A. Yes.

22 Q. Tom Cremonte, C-R-E-M-O-N-T-E, from MMRMA, I noticed
23 there was an e-mail to him in your file regarding this
24 case. How do you know Tom Cremonte?

25 A. I've known him for many years. He's a retired State

1 Police lieutenant.

2 Q. Did he work on the Oakland County narcotics team?

3 A. Yes, he did.

4 Q. So why would you contact Tom Cremonte regarding this
5 case?

6 A. I don't recall.

7 Q. Did you ask him --

8 A. I think -- let me restate that. I remember seeing an
9 e-mail with something about a Federal grant, I think I
10 asked him about a Federal grant timeline, if I recall
11 correctly.

12 Q. Did you ask him or reach out to him concerning the
13 McMaster case?

14 A. I'm sure I talked to him about it.

15 Q. Do you socialize with him?

16 A. No.

17 Q. And why are you sure you talked to Tom Cremonte about
18 the McMaster case?

19 A. Because I saw that e-mail asking about a wrap grant,
20 as I recall.

21 Q. Why would you be talking to Tom Cremonte regarding the
22 McMaster case?

23 A. I don't recall.

24 Q. Did you ever ask Tom Cremonte to find out any
25 information concerning my clients, David Busacca or

1 Lauren Schipani?

2 A. I may have.

3 Q. And is that because he was a former Michigan State
4 Police officer?

5 A. Yes.

6 Q. And did he ever provide you with any information
7 concerning my clients, David Busacca and Lauren
8 Schipani?

9 A. I don't recall.

10 Q. Did you have any conversation --

11 A. I would not have asked him about it, I'm sure.

12 Q. All right. Did you have any phone conversations with
13 him concerning the McMaster case? You saw the e-mail.

14 A. I probably did.

15 Q. And what were those phone conversations regarding?

16 A. I don't recall.

17 Q. And do you recall anything about any of those phone
18 conversations you had with Tom Cremonte concerning
19 this case?

20 A. Not specifically.

21 Q. Generally what do you recall?

22 A. I don't recall.

23 Q. How many conversations did you have with him
24 concerning the McMaster case?

25 A. One, two maybe.

1 Q. Johanna McMaster, have you ever talked to her?

2 A. No.

3 Q. Jean Marie Miller, have you ever talked to her --

4 A. Yes.

5 Q. -- about this case?

6 A. Not about this case, about Lauren Schipani.

7 Q. Okay. And why did you talk to Jean Marie Miller about
8 Lauren Schipani?

9 A. She reached out to me about the arbitration.

10 Q. And what did she reach out to you about the
11 arbitration?

12 A. She wanted me to be a witness in the case.

13 Q. And what did she want you to be a witness to?

14 A. She wanted me to testify about something that I had no
15 knowledge of so I gave her somebody else that could
16 testify that had that knowledge.

17 Q. And concerning your knowledge in this case, let's talk
18 about your personal knowledge. Did you ever witness
19 anything take place in this case?

20 A. Did I witness it?

21 Q. Yes.

22 MR. CLARK: Object to form, vague.

23 BY MS. PUZZUOLI:

24 Q. Or did all the information from this case come from
25 other people to you?

1 A. I was briefed, that's correct.

2 Q. Okay. So you never sat in and watched any testimony,
3 correct?

4 A. Correct.

5 Q. You never appeared at a search warrant or did anything
6 personal involving the information you have concerning
7 Lauren and David --

8 A. That's correct.

9 Q. -- correct?

10 So you told her you didn't witness
11 anything, is that correct, Jean Marie Miller?

12 A. That's correct.

13 Q. Any other conversations with Jean Marie Miller
14 regarding this case?

15 A. A couple.

16 Q. What were they concerning?

17 A. Status of the arbitration, status of the appeal.

18 Q. Why were you being briefed on the status of an
19 arbitration involving Lauren Schipani?

20 A. She reached out to me, I didn't reach out to her.

21 Q. So at no time then were you inquiring as to the status
22 of the arbitration of Lauren Schipani?

23 A. Oh, yes, I asked her about the status of the case.

24 Q. Why were you asking her about the status of the
25 arbitration occurring with Lauren Schipani?

1 A. Because it was of interest to me because of this
2 lawsuit.

3 Q. Any other reason other than it was, as you say, of
4 interest to you because of this lawsuit?

5 A. No.

6 Q. And what else did you discuss with Jean Marie Miller?

7 A. That was it.

8 Q. So just the status of the arbitration you asked her
9 about?

10 A. I remember a discussion because my brother's a judge
11 in Genesee County and she said she had appeared in
12 front of my judge -- or in front of my brother before,
13 that's what I remember, small talk.

14 Q. All right. Any other conversation concerning Lauren
15 Schipani other than asking about the status of the
16 arbitration?

17 A. Not that I --

18 MR. CLARK: Foundation.

19 A. Not that I recall.

20 BY MS. PUZZUOLI:

21 Q. And what did she tell you when you asked about the
22 status of the arbitration?

23 A. That ultimately the arbitrator reinstated her with a
24 suspension.

25 Q. And did you make any comment to Jean Marie Miller

1 regarding that?

2 A. I don't recall.

3 Q. Any other conversations with Jean Marie Miller?

4 A. No.

5 Q. Did you ever have any conversations with Judge Kristin

6 Kostin, K-O-S-T-I-N, concerning the McMaster case?

7 A. Kelley Kostin?

8 Q. Oh, I have Kristin. Yeah, Kelley Kostin.

9 A. Her name is Kelley Kostin.

10 Q. I apologize, Kelley Kostin. Did you ever have any

11 conversations with her?

12 A. Yes, one.

13 Q. When was that?

14 A. It was after she and her husband got off a plane from

15 Africa. I had sent her an e-mail, it was in 2019, I

16 believe, I'm not sure of the exact date, and she

17 called me on my cellphone.

18 Q. And what did you send her an e-mail about?

19 A. About the search warrant that was executed at the

20 house in Oxford Township that she signed.

21 Q. So why did you contact Judge Kostin about a warrant

22 she had signed?

23 A. Because I had concerns, there were many things in the

24 affidavit that were excluded.

25 Q. And is that a policy or are you able in your position

1 as undersheriff to contact a judge ex-parte and talk
2 about a search warrant in a criminal case?

3 MR. CLARK: Object to form.

4 A. I talked to many judges in my career.

5 BY MS. PUZZUOLI:

6 Q. Without the knowledge of any attorneys?

7 A. I'm just telling you in this particular case I called
8 her because I wanted to ask her some questions.

9 Q. And she spoke to you?

10 A. Yes.

11 Q. About a criminal case?

12 A. Yes.

13 Q. And about a warrant, which she signed?

14 A. Affidavit and search warrant, yes.

15 Q. And what did she tell you?

16 A. I informed her that we had previously investigated
17 this case and it had been denied by the prosecutor's
18 office in both instances, and I asked her if she was
19 aware of that. She said she wasn't and she ultimately
20 told me she would have never signed the search warrant
21 if she was aware of that.

22 Q. And did you know Judge Kostin prior to contacting her?

23 A. I know her, yes.

24 Q. And how do you know her?

25 A. I've known her husband for many years, he's a defense

1 attorney, and I guess I met her through him over the
2 course of the years.

3 Q. Did you ever socialize with her husband?

4 A. No.

5 Q. Or her?

6 A. No.

7 Q. Had you ever contacted her before regarding warrants
8 she had signed?

9 A. No.

10 Q. Have you ever contacted any judge concerning warrants
11 they have signed to talk about the warrants?

12 A. No.

13 Q. And when you contacted her about the warrants she
14 signed, was that before or after the criminal case was
15 dismissed?

16 A. I'm not sure.

17 Q. Did you keep a file on Sean McMaster?

18 A. Yes.

19 Q. What kind of file was that?

20 A. E-mails, correspondence, things like that.

21 Q. Why did you keep a file on Sean McMaster?

22 A. Because I was concerned about this case, it was very
23 unusual what occurred. I've never seen anything like
24 it in my career.

25 Q. When did you start this file on Sean McMaster?

1 A. I'm sure I started saving e-mails shortly after the
2 search warrant was executed.

3 Q. And this file, is it a computer file, a hard copy
4 file?

5 A. Well, I've printed out things so a computer and things
6 I've printed out and notes I kept, which I believe you
7 have all of them, if I'm not mistaken.

8 Q. Had you ever kept a file on any other criminal
9 defendant?

10 A. Sure. I've investigated many cases and kept many
11 files.

12 Q. Well, this file that you kept on Sean McMaster, was
13 that a file that all of the deputies at Oakland County
14 would have access to?

15 A. No, it's my file.

16 Q. Okay. How many files have you kept on criminal
17 defendants as undersheriff that were just your files?

18 A. I don't know, probably the only one.

19 Q. So Sean McMaster would have been the only file you
20 kept on an inmate as undersheriff as a private file,
21 correct?

22 A. It probably is.

23 MR. CLARK: Object to form --

24 A. Sorry.

25 MR. CLARK: -- as an inmate.

1 BY MS. PUZZUOLI:

2 Q. Did you start keeping this file before his arrest or
3 after his arrest?

4 A. I don't recall. I'm sure I kept e-mails prior to his
5 arrest. When the search warrant was executed I
6 probably started something on my computer.

7 Q. Did you take this file home with you or is that at
8 Oakland County still?

9 A. No, I still have it. I took it home with me when I
10 retired.

11 Q. Have you taken any other files home with you from
12 Oakland County regarding any arrestees or criminal
13 suspects?

14 A. No.

15 Q. So it would just, again, be the Sean McMaster one?

16 A. Yes.

17 Q. Now, when you say you took it home with you, did you
18 then take the printouts as well as the computer file
19 with you?

20 A. I did not take the computer file with me, no.

21 Q. So Oakland County would still have that file?

22 A. It would still be on my computer there at work, I
23 assume, yes.

24 Q. What was contained in the file other than e-mails?

25 A. That's probably it, just e-mails.

1 Q. Nothing else?

2 A. Maybe any attachments to the e-mails, if there were

3 any attachments.

4 Q. Any transcripts?

5 A. I probably have the transcript of the bond hearing.

6 Q. Anything else?

7 A. Not off the top of my head, no.

8 Q. Any transcripts from the McMaster custody hearing?

9 A. I don't have any of those, no.

10 Q. Any arbitration transcripts?

11 A. No, I don't have any of those.

12 Q. Any deposition transcripts?

13 A. I have none of those.

14 Q. Approximately how many pages is the file that you have

15 on Sean McMaster?

16 A. I don't know. It's about maybe this thick --

17 Q. Okay.

18 A. -- two, three inches.

19 Q. For the record, it's about two to three inches thick?

20 A. That's my best guess.

21 Q. And that is just e-mails, correct, and maybe

22 attachments, if any?

23 A. E-mails, notes, probably the -- maybe the transcript

24 of the bond hearing.

25 Q. Anything else?

1 A. Not that I can think of.

2 Q. And did you have to ask permission from the County to

3 take the Sean McMaster file home with you?

4 A. No. I was being sued so I kept it for myself.

5 Q. So is that no, you did not have to ask the County

6 permission to take a file?

7 A. That is correct.

8 Q. Did you leave any of the hard copies at Oakland County

9 that you took, did you make copies of the file and

10 take them home or you just took the hard copies with

11 you?

12 A. I started a file and I may have given copies to Major

13 Smith, I'm sure I probably did.

14 Q. Is there a complete file at Oakland County then or you

15 have parts of it and Oakland County would have parts

16 of it, that's what I'm trying to figure out, where

17 this file is at?

18 A. There is no official file. These are my personal

19 notes and my personal e-mails that I kept regarding

20 this case.

21 Q. Okay. But you kept them as undersheriff, in your

22 position as undersheriff, correct?

23 A. Correct.

24 Q. Okay. So what I'm trying to figure out is did you

25 leave anything -- of the stuff you took, did you leave

1 copies of that with Oakland County as well or not?

2 A. Whatever Major Smith might have and whatever's on my

3 computer is still at the County.

4 Q. Okay.

5 A. Probably everything that's on the computer is in the

6 file because I would have printed it out.

7 Q. Did you know Lauren Schipani before this case?

8 A. No.

9 Q. Anything about her?

10 A. No.

11 Q. Did you know David Busacca before this case?

12 A. No.

13 Q. Anything about him?

14 A. No.

15 Q. Just going back a little bit to the McMaster case, did

16 you ever talk to a Jeff Fricker, F-R-I-C-K-E-R, who

17 worked with Sean McMaster in Florida at a police

18 department?

19 A. No clue who he is, no.

20 Q. Okay. Did you ever get the Craig's List ads that Sean

21 and his wife put out advertising for sexual partners?

22 A. No.

23 Q. Were you aware of that?

24 A. No.

25 Q. No one ever told you about the Craig's List ads that

1 Sean McMaster and his wife published to get sexual
2 partners?

3 A. Not that I can recall.

4 Q. Did you ever get the polygraph examination results
5 from the 2003 pre-employment polygraph examination
6 that Sean McMaster took in which he failed due to
7 distortions of cardio and breathing?

8 A. No.

9 Q. Were you aware of that?

10 A. No.

11 Q. Did you direct or are you aware of anyone who talked
12 to Sean McMaster's son that he now has no contact
13 with?

14 A. No. I didn't know he had a son.

15 Q. Were you aware or did you direct anyone or talk to the
16 mother of that child?

17 A. No. I didn't know he had a son, I just told you.

18 Q. Did you have any role at all in the CSC investigation
19 that took place in this case in 2016 by your
20 department?

21 A. At that time?

22 Q. Yes.

23 A. No.

24 Q. So in 2016 had you heard of Johanna McMaster, Sean
25 McMaster?

1 A. No.

2 Q. So when's the first time you heard about Sean
3 McMaster?

4 A. When that search warrant was executed in Oxford
5 Township.

6 Q. Did you ever investigate the investigation that took
7 place in 2016 in the CSC allegations?

8 A. Did I --

9 MR. CLARK: Object to form.

10 You can answer.

11 A. Did I investigate the investigation?

12 BY MS. PUZZUOLI:

13 Q. Yeah.

14 A. No.

15 Q. And what took place in the investigation?

16 A. I was briefed on it by people below me.

17 Q. So you had no clue in 2016 before this search
18 warrant -- up until the time of this search warrant
19 that Sean McMaster had made a recording of a
20 conversation he had with Johanna McMaster; is that
21 correct?

22 A. I knew nothing about that.

23 Q. Did you ever find that out?

24 A. Ultimately, yes.

25 Q. All right. And what do you know about that recording?

1 A. I just know that he recorded a conversation between
2 him and Johanna McMaster down in Florida.

3 Q. Did you ever listen to that conversation?

4 A. I may have.

5 Q. Do you know if that recording was legal that he took
6 in Florida?

7 A. I have no clue.

8 Q. So you don't know if he committed a felony when he
9 recorded Johanna McMaster and this conversation by not
10 having two-party consent?

11 A. I have no idea.

12 Q. On one of the reports, and I'll pull them out in a
13 minute, in the 2016 case, have you seen those reports?

14 A. The police reports?

15 Q. The investigation by Detective Freiberg, did you ever
16 look at his investigative reports?

17 A. I don't know, I don't recall.

18 Q. My question, and we'll look at those in a little bit
19 relating to that, is I see there's something called
20 exceptional circumstances in the report on the front
21 page, and it says exceptional circumstances date and
22 then exceptional circumstances warrant denied. What
23 does exceptional circumstances mean?

24 A. I don't know.

25 Q. Do you know when a department can use exceptional

1 circumstances as the reason?

2 A. Are you talking about clearance?

3 Q. I'm talking about what's noted in the report, so --

4 A. I don't know what --

5 MR. CLARK: Objection, vague.

6 A. I don't know what you're talking about.

7 BY MS. PUZZUOLI:

8 Q. Okay. And we'll take a look at that later once I
9 bring up the reports, but to your knowledge you never
10 reviewed those reports, correct?

11 A. I don't believe I did.

12 Q. Okay. Additionally, I notice in that report there's a
13 section where you can X or check arrest warrant,
14 search warrant, review and some etc., some other
15 things, when you turn it over to the prosecutor. Do
16 you know why the check on Freiberg's report was merely
17 review?

18 A. Do I know why?

19 Q. Yes.

20 A. No, I don't.

21 Q. Ever inquire as to why?

22 A. No.

23 Q. How is a decision made as to what to ask the
24 prosecutor to do, whether to issue an arrest warrant,
25 issue a search warrant, issue -- or do a review, do