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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION AT COVINGTON
CIVIL ACTION NO. 08-CV-00104-WOB

MICHAEL MARTIN PLAINIFF
VS.
JOSEPH SCHUTZMAN, ET AL DEFENDANTS

DATE: MARCH 12, 2009

DEPONENT: JOSEPH SCHUTZMAN

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The deposition of JOSEPH SCHUTZMAN, taken on discovery, pursuant to notice, heretofore filed, in the offices of Adams, Stepner, Woltermann & Dusing, 40 West Pike Street, Covington, Kentucky, on March 12, 2009, at 10:00 a.m., upon oral examination and to be used in accordance with the Kentucky Rules of Civil Procedure.

A P P E A R A N C E S

FOR THE PLAINTIFF: ROBERT L. ABELL, ESQ.
FOR THE DEFENDANTS: JEFFREY C. MANDO, ESQ.
ALSO PRESENT: MICHAEL MARTIN
 DAN GOODENOUGH

JOSEPH SCHUTZMAN, after having been first duly sworn, was examined and deposed as follows:

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CROSS-EXAMINATION

BY MR. ABELL:

Q. Would you please state your name?

A. Joe Schutzman.

Q. Mr. Schutzman, you're a detective employed by the Villa Hills Police Department, correct?

A. Yes, sir.

Q. And on December 17, 2007, you filed a complaint in the Kenton District Court charging my client, Mike Martin, with a felony second degree forgery, right?

A. Yes, sir.

MR. ABELL: I'm going to mark that as Exhibit 1.

(A 1-PAGE COMPLAINT AND AFFIDAVIT WAS MARKED PLAINTIFF'S EXHIBIT 1 FOR PURPOSES OF IDENTIFICATION.)

Q. As a result of the criminal complaint that you filed against Mr. Martin there was conducted in Kenton District Court before Judge Grothaus a preliminary hearing, correct?

A. Yes, sir.

Q. And you testified that preliminary hearing took place at a total of, there were four

1 separate appearances, do you recall that?

2 A. No, sir. I mean, I was only at
3 one.

4 Q. In any event you testified at one?

5 A. Uh-huh.

6 Q. And the result of the preliminary
7 hearing was that the Kenton District Court found that
8 there was not probable cause supporting the felony
9 charge against Mr. Martin, correct?

10 A. I don't know what the findings
11 were, sir, I wasn't there for the result.

12 Q. Do you understand that the result
13 of the Kenton District Court preliminary hearing
14 regarding the criminal complaint you filed against
15 Mr. Martin was a finding that no probable cause
16 supported the charge?

17 A. I hear that, sir, but I never did
18 get to see the findings.

19 Q. Are you aware of any evidence or
20 facts or information that you believe could or should
21 have been presented to the Kenton District Court during
22 the course of the preliminary hearing but which was
23 not?

24 A. I don't think I understand your

1 question?

2 Q. You testified during the course of
3 the preliminary hearing, right?

4 A. Yes, sir.

5 Q. Okay. And you testified as to the
6 basis for the criminal complaint you filed against
7 Mr. Martin, correct?

8 A. Yes, sir.

9 Q. Are you aware of any facts, any
10 information, any evidence that you think could or
11 should have been presented during the course of the
12 preliminary hearing regarding the charge against
13 Mr. Martin which was not?

14 A. Not that I'm aware of.

15 Q. Have you become aware since
16 February 27, 2008, which was the final part of the
17 preliminary hearing, of any facts or evidence or
18 information that you think would support the charge of
19 second degree forgery as set forth in the criminal
20 complaint you filed against Mr. Martin?

21 A. Do I think there's something -- I
22 still think that the case is what it was. I still
23 think it was a forgery. Is that what you're asking me?

24 Q. Well, since February 2000 -- And

1 I'll represent to you that the final court proceedings
2 regarding the preliminary hearing took place
3 February 27, 2008?

4 A. Right, okay.

5 Q. Have you learned of any facts,
6 evidence or information since that date that you think
7 would support the charge as set forth in the criminal
8 complaint you filed against Mr. Martin?

9 MR. MANDO: Objection. Relevancy.
10 You can answer.

11 A. I'm still, I'm not trying to be
12 evasive, I just don't understand what you're actually
13 asking. I think the charge was supported by what we
14 submitted. You're saying, do I know something from
15 afterwards?

16 Q. Have you learned anything since
17 the conclusion of the preliminary hearing that you
18 think could or should have been presented during the
19 course of the preliminary hearing?

20 A. No, sir.

21 Q. So can we conclude that all the
22 evidence, all the facts, all the information that
23 you're aware of that could have been presented in
24 support of your criminal charge against Mr. Martin was,

1 in fact, presented to the Kenton District Court?

2 MR. MANDO: Objection. You can
3 answer.

4 A. All the information I had was
5 presented.

6 Q. Okay. How long have you been
7 employed as a detective at the Villa Hills Police
8 Department?

9 A. I've been there since '95.

10 Q. Were you previously employed as a
11 police officer or law enforcement officer before
12 joining the Villa Hills Police Department in 1995?

13 A. Yes, sir.

14 Q. Where was that?

15 A. Previous to that was the Dixie
16 Police Authority, and previous to that was Fort Thomas
17 Police.

18 Q. The Dixie Police Authority, where
19 is that located?

20 A. They no longer exist. But it was
21 Crescent Springs Police, Crescent Springs and Crescent
22 Park.

23 Q. In Kenton County, Kentucky?

24 A. Yes, sir.

1 Q. How long did you work for the Dixie
2 Police Authority?

3 A. I believe I started in '86, late
4 '86.

5 Q. So from roughly 1986 to 1995 when
6 you joined Villa Hills you were employed by the Dixie
7 Police Authority?

8 A. Yes, sir.

9 Q. Why did you believe the Dixie
10 Police Authority?

11 A. A position available in Villa
12 Hills.

13 Q. Better pay?

14 A. Better pay and better working
15 conditions.

16 Q. Do you recall who your last
17 supervisor was with the Dixie Police Authority?

18 A. It would have been the chief, and
19 at that time it was, I don't know if it was Mike Ward
20 or if it was George Ripberger at the time. It was one
21 or the other.

22 Q. Prior to 1996 then you were
23 employed by the Fort Thomas Police Department?

24 A. Yes, sir.

1 Q. That's Fort Thomas, Kentucky?

2 A. Yes, sir.

3 Q. How long did you work for the Fort
4 Thomas Police Department?

5 A. I started in, I believe in March of
6 '83. I believe it was March.

7 Q. And you worked at the Fort Thomas
8 Police Department about three years from 1983 to 1986?

9 A. Yes, sir.

10 Q. Why did you leave Fort Thomas?

11 A. An individual there was becoming
12 the chief of the Dixie Police Authority and myself and
13 three other officers went with him to start that police
14 department or further that police department.

15 Q. In terms of employment what did you
16 do prior to March 1983 when you joined the Fort Thomas
17 Police Department?

18 A. I was in school and I was working
19 full time.

20 Q. What type of school were you in?

21 A. College.

22 Q. Where did you go?

23 A. Northern Kentucky University.

24 Q. Did you get a bachelors degree?

1 A. Yes, sir.

2 Q. In what?

3 A. '83, and it was in psychology.

4 Q. Other than attending NKU have you
5 received any other post secondary education?

6 A. I've had other education but not
7 college level, through the police academy.

8 Q. Well, that leads me to my next
9 question. You are a certified police officer?

10 A. Yes, sir.

11 Q. And I know as a certified police
12 officer you're required, I think, to attend at least 40
13 hours of training that's pertinent to maintaining that
14 certification each year; is that correct?

15 A. That's correct, sir.

16 Q. Other than the training that you go
17 through each year to maintain your certification, have
18 you received any other particularized training relevant
19 to your police work such as, for instance, I know some
20 police officers have an opportunity to attend a program
21 put on, I believe, by the Southern Police Institute, I
22 believe there's a Law Enforcement Institute at
23 Northwestern University in Chicago, I know there's an
24 FBI program over at Quantico, those are some examples

1 of the type of training that I'm referring to as being
2 other than your annual certification training. So with
3 that explanation, have you received any other type of
4 training other than your annual certification training?

5 A. Yes, sir.

6 Q. And what is that?

7 A. I couldn't recall it all. But I've
8 been to specialized FBI training. I've been to other
9 training in Ohio. I've been to training in North
10 Carolina. I mean, over 25 years I don't recall it all
11 but that would be part of my training record.

12 Q. Let me ask you this then to narrow
13 things down. I know it is a long time. Of that other
14 type of training beyond your certification training,
15 which do you consider the most significant?

16 A. Well, every bit of training, I
17 mean, it's specific to what I'm doing so every bit of
18 training would be significant to my job.

19 Q. All right. Have you ever served in
20 the Armed Forces?

21 A. No, sir.

22 Q. Have you ever filed for bankruptcy?

23 A. No, sir.

24 Q. Has any company that you've been a

1 principal in ever filed for bankruptcy?

2 A. No, sir.

3 Q. Have you ever filed for divorce?

4 A. No, sir.

5 Q. Of course, you're named as a
6 defendant party in this lawsuit. Have you ever been
7 named as a defendant party in any other lawsuit?

8 A. Yes, sir.

9 Q. How many?

10 A. Two, I believe.

11 Q. I think one came up in Ludlow, had
12 something to do with work you'd done there as a
13 building inspector; is that correct?

14 A. Yes, sir.

15 Q. And what was the other case?

16 A. By a Mr. Kennedy.

17 Q. And what was that case about?

18 A. It's got a variety of issues but
19 over a building issue.

20 Q. In addition to your police work you
21 operate a company, I think, called Schutzman Inspection
22 Services; is that correct?

23 A. Yes, sir.

24 Q. And how long have you operated and

1 run Schutzman Inspection Services?

2 A. Going back just specifically
3 Schutzman Inspection Services, 2002.

4 Q. Could you briefly describe what
5 type of work Schutzman Inspection Services does?

6 A. Building and zoning services.

7 Q. For who?

8 A. The City of Villa Hills, the City
9 of Bromley, the City of Ludlow.

10 Q. Has that been true the entire time
11 since 2002?

12 A. Yes, sir.

13 Q. Prior to 2002 did you do any work
14 in the building inspection field?

15 A. Yes, sir.

16 Q. Under what company name?

17 A. As myself, as Joe Schutzman.

18 Q. An individual proprietorship?

19 A. Yes, sir.

20 Q. How long then have you done
21 building inspection work?

22 A. Since 1992.

23 Q. Do you have any type of
24 certification or license to do that work?

1 A. Yes, sir, I do.

2 Q. And who is that issued by?

3 A. The state of Kentucky and the
4 federal government.

5 Q. How long have you had a license or
6 certification to do building inspection work?

7 A. Since '92.

8 Q. Has Schutzman Inspection Services
9 ever filed any lawsuits related to its work?

10 A. No, sir.

11 Q. Prior to you operating as Schutzman
12 Inspection Services did you, while working as an
13 individual proprietor, file any litigation related to
14 your building inspection work?

15 A. No, sir.

16 Q. Exhibit 1 I marked there, you
17 recognize that as a true and accurate copy of the
18 criminal complaint that you filed regarding Mr. Martin,
19 correct?

20 A. Yes, sir, it appears so.

21 Q. How did, Mr. Schutzman, you come to
22 be involved in the matter that led to your filing of
23 the criminal complaint that we've marked as Exhibit 1
24 against Mr. Martin?

1 A. The Hamilton County Department of,
2 I apologize, I think it's Jobs and Family Services sent
3 that inquiry to the City, or the Villa Hills Police
4 Department.

5 Q. And after receipt of that inquiry
6 by villa Villa Hills Police Department how did it come
7 to your responsibility?

8 A. I'm the detective. It's a criminal
9 investigation.

10 Q. So then as a matter of routine
11 procedure in the Villa Hills police department it was
12 assigned to you to look into?

13 A. Yes, sir.

14 Q. Do you recall what information you
15 first received from the Hamilton County agency that you
16 referred to?

17 A. It was a thick packet of
18 information which was produced.

19 Q. I'm sure that you reviewed that
20 packet of material, correct?

21 A. Yes, sir.

22 Q. Did you make any notes, handwritten
23 notes regarding your review of those papers?

24 A. I'm sure I did.

1 Q. What did you do with those?

2 A. I think everything I had was
3 copied.

4 Q. Is it the case then that any
5 handwritten notes you made pertaining to your
6 investigation that led to your filing of the criminal
7 complaint against Mr. Martin you maintained and you
8 understand has been produced to me?

9 A. Yes, sir, I believe so.

10 Q. You interviewed Mr. Martin on
11 November 2, 2007?

12 A. I believe that's the date.

13 Q. Are you aware -- And you made a
14 tape of that interview?

15 A. Yes, sir.

16 Q. You're aware that a copy of the
17 tape of your interview with Mr. Martin has been made
18 available to me?

19 A. I'd assume so.

20 Q. Have you since making that tape
21 listened to it?

22 A. No, sir.

23 Q. Is there, do you know of any reason
24 for me to doubt whether or not the tape that's been

1 produced to me is a full, true and complete recording
2 of your interview with Mr. Martin?

3 MR. MANDO: I can tell you we made
4 a copy of the tape and sent it to you, that's
5 all I can tell you. He wasn't involved in
6 that process.

7 MR. ABELL: I understand that.

8 A. The answer is, I don't know.

9 Q. Do you know then if there's
10 anything that you and Mr. Martin discussed on
11 November 2 that you consider important or significant
12 to your investigation that's not on the tape?

13 A. No. We've had phone conversations.

14 Q. Okay. And then in those phone,
15 you're talking about, you're referring to phone
16 conversations between you and Mr. Martin?

17 A. Yes, sir.

18 Q. Is there anything in those phone
19 conversations that you considered important to your
20 investigation and contributed to the decision to file
21 this criminal complaint against Mr. Martin?

22 A. Yes, sir.

23 Q. What was that?

24 A. Not contacting us back and not

1 providing information to clarify items in the
2 investigation.

3 Q. What materials or items in the
4 investigation was Mr. Martin asked to provide?

5 A. We didn't get to that point. I
6 couldn't get a response back from Mr. Martin.

7 Q. So you never actually made a
8 request to Mr. Martin to produce any further items; is
9 that the case?

10 A. Well, actually that's what the
11 intention was through e-mail and phone conversation, I
12 was told to direct my questions to his attorneys.

13 Q. What information or additional
14 items were you looking for?

15 A. Trying to clarify anything that was
16 in the interview that didn't make sense to me.

17 Q. Such as, for instance, what?

18 A. Well, he admitted to forging his
19 mother's name to the checks, about the situation with
20 the family members having a dysfunctional family,
21 wanted to clarify why checks were cashed, were
22 deposited into his account because I couldn't account
23 for them all.

24 Q. Let me back up just a little. You

1 received the materials from the Hamilton County agency
2 sometime prior to your interview with Mr. Martin on
3 November 2, 2007, correct?

4 A. Yes, sir.

5 Q. Okay. And you've already told us
6 that you reviewed the materials that were sent over by
7 Hamilton County. Other than doing that review, and I
8 know that there was some e-mail and some telephone
9 calls with Mr. Martin for the purpose of setting up the
10 interview or scheduling the interview, correct?

11 A. Yes, sir.

12 Q. So you had some communication with
13 Mr. Martin. Other than that communication with
14 Mr. Martin for purposes of scheduling the interview and
15 your review of the materials sent you by the Hamilton
16 County agency, what else, if anything, did you do prior
17 to November 2, 2007, pertinent to your investigation?

18 A. I'd have to, as far as the time
19 line is hard without reviewing for specifics whether it
20 was before November 2 or after November 2. So I don't
21 know how to answer your question.

22 Q. As best you can recollect, it
23 sounds to me like the most substantive thing you did
24 prior to interviewing Mr. Martin on November 2, was you

1 reviewed the materials sent to you by Hamilton County.
2 Let me ask the question in this way. Other than
3 reviewing the materials, did you talk with anybody
4 about the materials?

5 A. No, sir.

6 Q. You didn't discuss the materials
7 with anybody else in the Villa Hills Police Department?

8 A. If anybody it would have been the
9 chief just because I see him everyday, but nothing that
10 I'm aware of. I mean, it's hard to go back that far
11 and try to remember if I've talked to somebody but not
12 that I'm aware of.

13 Q. Well, tell me if this is fair. To
14 the best of your recollection today, prior to
15 interviewing Mr. Martin on November 2, 2007, you don't
16 recall any substantive discussions regarding the
17 investigation with the chief or anybody else in the
18 Villa Hills Police Department; is that fair?

19 A. That's fair.

20 Q. And also prior to the interviewing
21 Mr. Martin on November 2, 2007, you don't recall any
22 substantive discussions regarding the investigation
23 with anybody else, including, for instance, persons
24 from the Hamilton County agency that sent the

1 materials; is that fair?

2 A. Again, I would assume that's fair
3 but I contacted Hamilton County, or the person that
4 sent the information by phone. I don't know whether it
5 was directly before that or directly after that.

6 Q. The person with the Hamilton County
7 agency that you spoke with name was, I believe,
8 Startzman, last name was Startzman?

9 A. That's correct.

10 Q. Do you recall how many times you
11 spoke with Mr. Startzman prior to filing the criminal
12 complaint on December 17, 2007?

13 A. Several, a specific number I can't
14 give you. It was more than one.

15 Q. Do you recall if Mr. Martin
16 informed you during your interview with him on
17 November 2, 2007, that there had been probate
18 proceedings in Ohio related to his mother, Marilyn
19 Kuhl, following her death?

20 A. That was the reason for the
21 follow-up, was because he first said, no, there wasn't
22 any probate because there wasn't anything to probate.
23 And then after that said there must have been because
24 he had to divvy up stuff.

1 Q. And Mr. Martin told you that he was
2 executor of her estate during the interview on
3 November 2, 2007?

4 A. That was another reason for the
5 clarification, because he was unsure but he said he
6 thought he had to be.

7 Q. And Mr. Martin in the November 2,
8 2007, interview with you told you that it was his
9 understanding that the child support had been reduced
10 to a judgment sometime in the past; is that correct?

11 A. I believe that's a fair statement.

12 Q. And, in fact, that is true, you
13 understand that to be true, a judgment for a specific
14 amount of money owed had been entered by Hamilton
15 County Court prior to November 2, 2007?

16 A. There were --

17 MR. MANDO: Objection. We just
18 need to clarify when he knew that. Are you
19 asking about if he knew it then or if he
20 knows it now? Go ahead.

21 A. Oh, I'm sorry. I know it now.

22 Q. Do you recall when you first got in
23 contact with the Kenton County Commonwealth Attorney's
24 Office pertaining to the investigation you were

1 conducting that led to the filing of the criminal
2 complaint that's Exhibit 1?

3 A. It was after the interview.

4 Q. Who did you speak with when you
5 first contacted the Kenton County Commonwealth
6 Attorney's office?

7 A. It was either Wayne Wallace or Rob
8 Sanders on the first time.

9 Q. You say either Rob Sanders or Wayne
10 Wallace. I believe from reviewing the file that you
11 discussed the matter with both of them, and I'm
12 inferring from your answer that you can't recall today
13 which of them you spoke with first; is that fair?

14 A. No, the question was ambiguous.
15 First contact I wrote down who I talked to but without
16 looking at the specific date, I can verify that from my
17 case report.

18 Q. Let me ask you then about your,
19 whether you spoke first with Mr. Wallace or
20 Mr. Sanders, let me ask you about what you recall about
21 your first discussion with Mr. Wallace, okay. That
22 would have been after November 2, 2007, I take it from
23 your testimony; is that correct?

24 A. Yes, sir.

1 Q. What do you recall about the first
2 discussion you had with Mr. Wallace regarding this
3 investigation pertaining to Mr. Martin?

4 A. Brief on the information that I had
5 received, what I had done from the interview, and
6 questions on power of attorney and what constituted a
7 fraud, what constituted theft, what constituted forgery
8 because of what was told to me.

9 Q. Was this first discussion with
10 Mr. Wallace by telephone or in person?

11 A. The first time, I believe, was
12 telephone.

13 Q. And as specific as you can recall,
14 what information did you convey to him about what
15 you've learned so far in your investigation?

16 A. The case that was sent by Hamilton
17 County and the interview that I had conducted.

18 Q. Well, in terms of specifics, I
19 understand that you interviewed Mr. Martin and had
20 received some materials from Hamilton County, but you
21 surely conveyed to Mr. Wallace what you had concluded
22 was most significant about both your review and the
23 interview; is that fair?

24 A. That's fair.

1 Q. What then do you recall conveying
2 to Mr. Wallace in this first telephone discussion you
3 had with him pertaining to Mr. Martin?

4 A. I think that's what I answered. I
5 conveyed the information from the packet from Hamilton
6 County and my interview.

7 Q. Okay. The information from
8 Hamilton County that you considered significant and you
9 conveyed with what?

10 A. The packet of information
11 containing checks that had signatures of Mr. Martin and
12 signatures of a Marilyn Kuhl after her death. Also the
13 fact that the cover letter from Mr. Startzman stated
14 they were investigating a fraud or conversion case.

15 Q. Tell me if this is fair. You
16 informed Mr. Wallace that you had been sent materials
17 by the Hamilton County agency that included copies of
18 checks, correct?

19 A. Uh-huh.

20 Q. Some had been signed by Mr. Martin,
21 some had been signed or bore the signatures of a
22 Marilyn Kuhl and Mr. Martin, correct?

23 A. Correct.

24 Q. And you told Mr. Wallace that the

1 matter had been referred to Villa Hills Police
2 Department by the Hamilton County agency relative to
3 some thoughts of fraud going on; is that fair?

4 A. That is correct.

5 Q. Other than those two points, do you
6 recall if in this first discussion with Mr. Wallace you
7 told him anything else about the materials you received
8 from Hamilton County?

9 A. Not that I can recall.

10 Q. During this first discussion you
11 had with Mr. Wallace you told him something about your
12 interview with Mr. Martin that took place on
13 November 2, 2007, correct?

14 A. That's correct.

15 Q. What specifically do you recall
16 telling Mr. Wallace in this first discussion you had
17 with him concerning the interview you had with
18 Mr. Martin on November 2, 2007?

19 A. When you say, specifics, that's
20 hard to, specifically we went over the interview, the
21 fact that he admitted to forging his mom's name to the
22 checks after her death, the fact that he was depositing
23 them into his personal account. I'm sure there was a
24 lot more, I just, I can't recall right at the moment.

1 Q. Well, Mr. Martin informed you
2 during the course of the interview on November 2, 2007,
3 that personnel at the bank had insisted that his
4 mother's name be written on the back of the check at
5 times; is that correct?

6 A. He relayed that.

7 Q. Do you recall in this first
8 discussion with Mr. Wallace telling him that there had
9 been probate proceedings in Ohio related to Marilyn
10 Kuhl following her death?

11 A. Can you restate that?

12 Q. In this first discussion you had
13 with Mr. Wallace, do you recall telling him that there
14 had been probate proceedings in Ohio regarding Marilyn
15 Kuhl following her death?

16 A. On the first interview, I can't
17 recall. Like I said, specifics are, I've had several
18 conversations with him, so.

19 Q. Okay. So tell me if this is fair
20 then. Today you can't say whether or not you informed
21 Mr. Wallace during this first telephone discussion that
22 there had been in Ohio probate proceedings for Marilyn
23 Kuhl following her death; is that fair?

24 A. You're asking for specifics. I

1 went over what was in the case file and what we
2 interviewed but I can't give you specifics. It was
3 discussed at some point. I don't know whether it was
4 the first or the second without reviewing the case file
5 specifically for that time when it was conducted.

6 Q. Do you recall if you disclosed to
7 Mr. Wallace during this first telephone discussion you
8 had with him regarding this matter that Mr. Martin was,
9 had been appointed as executor of Marilyn Kuhl's
10 estate?

11 A. Again, same as the answer that I
12 gave before, it was discussed but I don't know whether
13 it was the first conversation, second conversation.

14 Q. Did you, do you recall if you
15 disclosed to Mr. Wallace during this first conversation
16 pertaining to Mr. Martin that there had been a judgment
17 entered for child support owed?

18 A. I guess you can -- Same thing,
19 specifics for what was discussed. All of these items
20 are significant, however, I don't know when the time
21 frame is without reviewing my notes.

22 Q. What notes is it that you need?

23 A. My case file. When I say, notes, I
24 mean my case file.

1 Q. What do you recall was the, for
2 lack of a better term, the end of your discussion with
3 Mr. Wallace in terms of your understanding about what
4 you were going to do or next steps you were going to
5 take?

6 A. Well, my understanding was that I
7 needed to clarify anything that I had a question on
8 with Mr. Martin. And that power of attorney did end
9 when a person died. I had, that was my impression,
10 however, I needed to clarify that.

11 Q. Well, Mr. Martin had said in the
12 interview you had with him on November 2, 2007, that he
13 had learned that power of attorney terminated on the
14 death of the person assigning the power of attorney,
15 correct?

16 A. I believe that was referenced in
17 there.

18 Q. So is it the case then that one of
19 the things you decided you had to look into and
20 determine for sure after this first discussion with
21 Mr. Wallace was whether a power of attorney did, in
22 fact, terminate upon the death of the person that had
23 assigned the power; is that fair?

24 A. That is fair.

1 Q. In addition to making that
2 determination, was there anything else that you recall
3 you intended or needed to look into pertaining to
4 Mr. Martin following this first discussion you had with
5 Mr. Wallace?

6 A. There were a number of questions.

7 Q. And what were those?

8 A. The fact that the bank personnel
9 would have told him to sign something for somebody that
10 was deceased. Whether it be right or wrong, he signed
11 it forging someone's name to it and he admitted to the
12 forgery in the interview, so I needed to clarify that.

13 There was questions on the whole
14 packet of information that was sent to me. My
15 expertise is not in probate or estates or anything so I
16 need clarification for that. I needed to verify, like
17 I said, in his interview he stated that he didn't
18 probate anything because there wasn't anything to
19 probate, then he said there was because he had to divvy
20 stuff up. That brought questions that I needed to
21 clarify on the fact that he said he divvied stuff up
22 and I needed to find out how that was divvied up if it
23 wasn't probated or what the procedure was for divvying
24 it up since the documents I read referred to five other

1 people that were not Mr. Martin, the fact that the
2 checks were being cashed and/or deposited into a
3 personal account and how that relates to, if that's
4 technically legal or if there's co-mingling of funds, I
5 don't know about the legality of that. The whole
6 interview led to questions that I needed to clarify
7 from Mr. Martin.

8 Q. Did you, you mentioned one of the
9 things that you intended to follow up on was speaking
10 with bank personnel?

11 A. Yes, sir.

12 Q. Did you ever, in fact, speak with
13 any bank personnel?

14 A. Yes, sir.

15 Q. Who was that?

16 A. I called someone from the bank to
17 verify whether it was policy to make deposits into
18 someone's account where they would sign someone else's
19 name.

20 Q. Do you recall who it was you spoke
21 with?

22 A. No, sir, I just asked to speak to
23 the manager.

24 Q. Did you make any recording of that

1 discussion in your case file?

2 A. When you say, recording, I don't
3 record phone conversation.

4 Q. Did you make any notes or include
5 that as part of your case file, this discussion that
6 you had with a manager at a bank?

7 A. I would have to go back and read my
8 case file but I would assume there would be notation.

9 Q. But you spoke with a manager at a
10 bank. What bank?

11 A. Fifth Third.

12 Q. Fifth Third Branch?

13 A. In Crescent Springs.

14 Q. And what did this manager tell you
15 about the policy you had asked about?

16 A. They would never tell someone to
17 sign someone else's name to a check.

18 Q. Now the manager at the bank
19 couldn't say whether or not, in fact, one of his
20 employees had given the customer that instruction,
21 could he?

22 A. I didn't ask that question, sir.

23 Q. You said you had questions about
24 the packet of information that you had received from

1 Hamilton County. What questions were those?

2 A. Off the top of my head, like I
3 said, a question of a subpoena was issued for those
4 records. Are those records valid since it wasn't my
5 subpoena, that it was from Ohio, whether a custodian
6 would need to be present to validate the information
7 that was sent to us.

8 Q. Were there any other questions you
9 had about the, at least at that point about the packet
10 of information you received from Hamilton County?

11 A. There was actually questions on the
12 family job services what the circumstances are. I'm
13 not as familiar with domestic relations, family
14 relations and the, how that information came to us, how
15 the system works over in Ohio.

16 Q. Then I take it you were unsure and
17 uncertain to some degree about how child support
18 matters were handled in Ohio; is that correct?

19 A. No, I wasn't curious on the child
20 support. I meant as far as the legal system worked in
21 Ohio as far as we have Commonwealth and County
22 Attorney, how their system is set up. I needed to find
23 that out.

24 Q. Did the Hamilton County agency

1 inform you that the checks should have been terminated
2 upon the death of Marilyn Kuhl?

3 A. That's correct.

4 Q. Did Mr. Startzman tell you that?

5 A. I'd have to review my information
6 whether it was Mr. Startzman or Mr. Cade.

7 Q. Mr. Cade is with the Hamilton
8 County Prosecutor's Office?

9 A. Yes, sir.

10 Q. The Hamilton County Prosecutor's
11 Office is a different office than the agency that
12 Mr. Startzman works for; is that your understanding?

13 A. That is my understanding.

14 Q. Did you ask either Mr. Cade or
15 Mr. Startzman if checks toward abating a judgment
16 should stop when the person that holds the judgment
17 passes away?

18 A. Yes, sir.

19 Q. And what did they tell you?

20 A. That it would stop on the death of
21 the person.

22 Q. That an unpaid judgment did not
23 become an asset of the estate of a deceased person,
24 they told you that?

1 MR. MANDO: Objection, form.

2 A. I don't think I said that. I think
3 I said that the payments would stop upon the death of
4 that person.

5 Q. And what was your understanding why
6 that was the case?

7 A. I don't think I went into detail
8 about it. That was something that was taken up with
9 him.

10 Q. The fourth thing that you mentioned
11 regarding commingling and depositing in a personal
12 checking account, that was the fourth issue you felt
13 like you had to look into?

14 A. Uh-huh.

15 Q. Let me go back over these. You
16 said there were four things, one, speak with bank
17 personnel, you've told us you spoke with a manager who
18 told you what the, his policy was at his bank, correct?

19 A. Yes, sir, and I believe it was a
20 female. You said, he, just to clarify that.

21 Q. So the Fifth Third manager told you
22 what the policy of the bank was. But she wasn't asked,
23 and of course couldn't say, whether any employee had
24 given instructions to Mr. Martin as he had related them

1 to you in your interview with him?

2 A. That's correct.

3 Q. Regarding your packet of
4 information, you probed into whether or not there were
5 any chain of custody issues regarding the evidence that
6 you viewed the checks to be; is that fair?

7 A. No, sir.

8 Q. Anything else about the packet of
9 information that you recall looking into at that time,
10 which is after this first discussion you had with
11 Mr. Wallace?

12 A. Not at that time.

13 Q. Did you ever make any effort to
14 determine if in probate court in Ohio any proceedings
15 had been initiated regarding Marilyn Kuhl?

16 A. Yes, sir.

17 Q. And what did you find?

18 A. Mr. Startzman said that they could
19 not locate any but he was sending me a packet of
20 information for whatever the case file, I don't recall
21 a number, but it was A and it had a number after it,
22 because the issue was, and this is where, it was from
23 19, I if I'm not mistaken, it was from 1961. There was
24 also a record of 1998 of it being re-opened. 1999

1 another judgment.

2 And I say judgment. Let me
3 clarify. There was another record of 1999, another
4 hearing. There was a record from 2003 that, Ohio found
5 out she had died in 2005 and then there was no, the
6 abeyance or arrears or whatever was stopped and it was
7 to be zero. And I also think I asked where to find a
8 copy of a will or any other pertinent information to
9 that specific case number.

10 Q. Well, Mr. Startzman sent you, it
11 sounds like, orders or a case filing in a child support
12 case in family court in Ohio; is that fair?

13 A. Well, I don't know about family
14 court, but domestic, it might be domestic relations.
15 The court system had changed, that's what part of the
16 issue was with, I don't know whether it was Jobs and
17 Family Services or I don't think I got anything that
18 said family court, I think it said, domestic relations.

19 Q. Okay. Well, that's a fair point.
20 Let me try to clarify for the record. You've got, of
21 course, here in Kentucky we have, at least in many
22 counties, family court in addition to circuit court.
23 And you're aware that in Kentucky family court handles
24 cases involving issue of child support, correct?

1 A. Yes, sir.

2 Q. Is it the case then that you got
3 from Mr. Startzman copies of records, court orders from
4 an Ohio court that would be analogous to what are
5 family courts here in Kentucky?

6 A. I would believe so. I don't know
7 how that system is set up. That was what was relayed
8 to me. I'm not trying to be evasive but they said the
9 system had changed in Ohio. So I don't know whether
10 that's, if there's another family court like has
11 Kentucky or if domestic relations was the family court
12 at the time.

13 Q. All right. But in any event,
14 you've got, whether it's domestic relations court or
15 family court or whatever it may otherwise have been
16 called, you got from Mr. Startzman a series of
17 documents pertaining to efforts to collect child
18 support in an Ohio court, correct?

19 A. Yes, sir.

20 Q. And more specifically, efforts to
21 collect child support by Marilyn Kuhl from her former
22 husband, Charles Martin?

23 A. Yes, sir.

24 Q. Did you receive from Mr. Startzman

1 any documents that reflected entry of a judgment for an
2 amount money?

3 A. Yes, sir.

4 Q. Other than what we've referred to
5 and described as family court documents, did you
6 receive from Mr. Startzman anything that related to
7 probate proceedings for Marilyn Kuhl that would have
8 started after her death, which as you know was in 2003?

9 A. I received documents but I don't
10 believe, I'm not as clear with the probate, but I don't
11 believe those documents were with that.

12 Q. Did you ask Mr. Startzman any
13 questions along the lines of, you know, Mr. Martin's
14 told me that he was appointed executor of Marilyn
15 Kuhl's estate, would there be a court record reflecting
16 that?

17 A. I just need to clarify because we
18 were talking about first events and stuff, you're
19 talking first event general terms so that I'm not --

20 Q. You're asking for clarification as
21 to time frame?

22 A. Yes, sir.

23 Q. Well, let's make it at any time
24 during this investigation. Did you ask Mr. Startzman

1 about, you know, where could we locate, you know,
2 Martin was still, I mean, he was executor of her
3 estate. And you're probably familiar that to be an
4 executor of an estate in Kentucky a district court has
5 to enter and hold your appointment as executor,
6 correct?

7 A. That is correct.

8 Q. And did you ask Mr. Startzman, you
9 know, would there be a court order somewhere, a case
10 file in a probate court or in some court in Ohio that
11 would show probate proceedings, including the
12 appointment of Mr. Martin as the executor of Ms. Kuhl's
13 estate?

14 A. Yes, sir.

15 Q. And what did he tell you?

16 A. He referred me to the Hamilton
17 County Prosecutor's Office and gave me a number to
18 call.

19 Q. So in essence then it was the
20 response to your question to Mr. Startzman about, how
21 can I locate any probate court proceedings related to
22 Marilyn Kuhl, Mr. Startzman directed you to contact the
23 Hamilton County Prosecutor's Office?

24 A. I believe it to be the Hamilton

1 County Prosecutor's Office. That was the number that I
2 called, that he gave me.

3 Q. And at the Hamilton County
4 Prosecutor's Office you spoke with Mr. Cade?

5 A. I spoke with several individuals,
6 one of them being Mr. Cade.

7 Q. The Hamilton County Prosecutor's
8 Office is principally responsible for prosecuting
9 criminal activity?

10 A. I have no knowledge of --

11 Q. Okay. You're not sure what the
12 scope or duties and responsibilities are of the
13 Hamilton County Prosecutor's Office?

14 A. No, I didn't, I'm assuming the
15 person that I'm dealing with originally was the person
16 to deal with. I mean, he directed me to this
17 department.

18 Q. Okay.

19 A. And like I said, I'm not sure of
20 Hamilton County Prosecutor's Office or the divisions
21 because I was told how this system was divided out and
22 how they, there are separate, there's separate
23 divisions that prosecute or take care of matters. Like
24 I said, I don't know anything about Kentucky, or Ohio's

1 divisions. So that's the reason he forwarded me to
2 this person.

3 Q. All right. So in any event
4 Mr. Startzman referred you regarding any probate
5 matters pertaining to Marilyn Kuhl to the Hamilton
6 County Prosecutor's Office and you spoke with a number
7 of people in that office; is that fair?

8 A. I just want to clarify, you said
9 the Hamilton County Prosecutor's Office. I'm assuming
10 that's who I was talking to. When I asked for that,
11 that's the number I was given. And the attorney that
12 was going to return my call, I assume that was who he
13 worked for, I don't want to say that that was the
14 Hamilton County Prosecutor's. Because there was a
15 division of the Family, or the Jobs and Family Services
16 which is covered, apparently, separately.

17 Q. Okay. Whether or not this person
18 was with the Hamilton County Prosecutor's Office, do
19 you recall what the name of the person was that called
20 you back?

21 A. Yeah, I actually spoke to him and I
22 spoke to an Amy Emerson.

23 Q. Amy Emerson?

24 A. Yes, sir.

1 Q. And Mr. Cade?

2 A. Yes, sir.

3 Q. And did you discuss with
4 Ms. Emerson how a court record that might include
5 appointment of Michael Martin as executor of
6 Ms. Martin's estate might be located?

7 A. I just asked for any records that
8 would be pertinent to that, yes, sir.

9 Q. And was it your intention it would
10 be the responsibility of the Hamilton County
11 Prosecutor's Office to locate any probate court
12 proceedings that may or may not have included an order
13 appointing Mr. Martin as executor of Marilyn Kuhl's
14 estate?

15 A. Any information regarding that,
16 yes, sir.

17 Q. What information, if any, did you
18 get from Hamilton County Prosecutor's Office about
19 probate proceedings pertaining to Marilyn Kuhl?

20 A. The only information I got was what
21 was in the packet which you received. It was, again,
22 copies of the records that stated the case number,
23 whatever that was, Al-something.

24 Q. Do you recall seeing anything that

1 appointed Mr. Martin as executor?

2 A. No, sir.

3 MR. MANDO: Why don't we take a
4 break. He needs to use the rest room.

5 (THERE WAS A BRIEF RECESS.)

6 Q. Mr. Schutzman, to pick up, I think,
7 where we left off, you testified it's your recollection
8 that from the Hamilton County Prosecutor's Office you
9 got some legal papers that included a case number that
10 began with A?

11 A. Yes, sir.

12 Q. Is that correct?

13 A. Yes, sir.

14 Q. Could it have been the case that
15 they may have, in fact, the legal pleadings beginning
16 with the case number A have been sent you by the
17 Hamilton County Job and Family Services Agency?

18 A. Yes, sir.

19 Q. Okay. Let me, for the record, what
20 I'm showing you, Mr. Schutzman, has been produced to me
21 by your attorney, Mr. Mando, and it has down in the
22 lower right-hand corner, I believe that's Page 44 and
23 45, but in any event it appears to be a pleading from a
24 family court or whatever its equivalent may be in Ohio

1 regarding Marilyn Martin and Charles Martin, and bears
2 the Case No. A-181425. Do you see that?

3 A. Yes, sir.

4 Q. Is that the case number regarding
5 the Court filings and stuff that you recall receiving?

6 A. I believe that is the case number,
7 sir.

8 Q. And I'll tell you if it helps you
9 recall that Mr. Mando produced that, and he'll correct
10 me, I'm sure, if I misspeak, as among the materials
11 that were provided by the Hamilton County Job and
12 Family Services Agency which he has disclosed on behalf
13 of the defendants earlier in this case, okay?

14 A. (NODDING HEAD.)

15 Q. Do you recall -- And this, for the
16 record, is stamped 154 down in the lower right-hand
17 corner, it's headed Probate Court of Hamilton County,
18 Ohio James Cissell, Judge, regarding the Estate of
19 Marilyn Kuhl, it's Case No. 2003-004829. Do you recall
20 receiving from anybody in Ohio, whether it be Job and
21 Family Services, the Prosecutor's Office or anyone else
22 any documents bearing the case number that I just
23 stated headed probate court of Hamilton County, Ohio?

24 A. That specific document, sir?

1 Q. Not necessarily that specific
2 document but any other order, court pleadings
3 pertaining to this case number in Ms. Kuhl's estate?

4 A. Whatever is in the case file that I
5 gave to you.

6 Q. Okay. There's a case file
7 produced, what was marked as Joe Schutzman's
8 investigation file, didn't include anything regarding
9 the child custody case or the child support case, the
10 case beginning with A, or the estate of Marilyn Kuhl?

11 A. Whatever we gave to him is the case
12 file.

13 Q. Well, I'll certainly be willing to
14 give you the opportunity, I mean, what was produced to
15 me and represented to be your case file is documents 1
16 through 40.

17 MR. MANDO: Let's go off the record
18 for a second.

19 (THERE WAS AN OFF-THE-RECORD DISCUSSION.)

20 Q. We'll go back on and ask the
21 question.

22 A. Okay.

23 Q. Did you, prior to December 17,
24 2007, the date you filed the criminal complaint against

1 Mr. Martin, have anything in your possession pertaining
2 to the Probate Court of Hamilton County, Ohio, the
3 Estate of Marilyn Kuhl, its Case No. 2003-004829?

4 A. Specifically that document?

5 Q. Not specifically that document but
6 anything from that court, Probate Court in Hamilton
7 County, Ohio?

8 A. I'd have to review the case, I
9 mean, I'd have to go to the case file because --

10 Q. Okay.

11 A. This is what I sent you?

12 MR. MANDO: Uh-huh. Let's go off a
13 second.

14 (THERE WAS AN OFF-THE-RECORD DISCUSSION.)

15 A. It appears to be all the same
16 number.

17 MR. MANDO: For the record, too,
18 Robert, when I produced these, I did put in a
19 header or a page here that said, Joe
20 Schutzman's investigation file, I did that
21 for my purposes and as clarity for you. But
22 it goes on, there's no, it doesn't separate,
23 it doesn't stop at 40, okay, it keeps going.
24 There's no separate header. So all of this

1 from 1 through --

2 MR. ABELL: 187, I believe it is.

3 MR. MANDO: 187 or whatever it is
4 here.

5 MR. ABELL: Or 147, it should be.

6 MR. MANDO: Yeah. Through 147
7 would be his case file.

8 MR. ABELL: Okay.

9 MR. MANDO: Then I put in a
10 separate header, I think, starting at 148 to
11 clarify what was Rob Sanders' file, right?

12 MR. ABELL: Yeah, 148 through 185
13 then is the Commonwealth, the materials you
14 obtained from the Commonwealth Attorneys
15 Office, Rob Sanders' office and produced as
16 Defendant's, or part of Defendant's Rule 26.

17 MR. MANDO: I've got it as 148
18 through 163. What do you have it as?

19 MR. ABELL: 185.

20 MR. MANDO: Mine stops at 163, I'm
21 not sure why, 162, 163. What do you have as
22 164? One of the checks.

23 MR. ABELL: Yeah. 165 looks like or
24 I presume is the back of it.

1 MR. MANDO: I am not sure why mine
2 stops, what my staff did with that. But I
3 want to make sure, did we produce, and I
4 listed the initial disclosures, I listed
5 stuff that may be used, I also listed the
6 probate file that I secured. Did I produce
7 that to you or not, or did you already have
8 that?

9 MR. ABELL: No, I don't think you
10 produced the probate file.

11 MR. MANDO: Okay. I listed it,
12 which tells me that I must have secured
13 something but I don't have it listed here.
14 Did you call me afterwards and say, would you
15 produce the documents you have, because
16 sometimes I'll just list what I have and then
17 the attorneys will call me and say, send me
18 what you've got, or sometimes they'll say,
19 oh, I've already got that so there's no
20 production, do you recall?

21 MR. ABELL: My best recollection is
22 I think I copied some of what I had and you
23 did the same.

24 MR. MANDO: That's my recollection,

1 too.

2 MR. ABELL: We probably agreed to
3 do that because it wasn't, you know, 88,000
4 pages.

5 MR. MANDO: Right. I agree. I
6 think we probably need to clarify that all of
7 this is part of his file.

8 MR. ABELL: All right. Well, I
9 understand that now, that's good.

10 Q. Now I think we figured out the
11 answer to my question as well?

12 A. Good, because I'm --

13 Q. While we've kind of fumbled around
14 here, mostly my fault, we've determined that what
15 you've described today as your case file is what has
16 been produced as documents page stamped, Bates stamped
17 1 through 147, fair?

18 A. Is that?

19 MR. MANDO: Yes.

20 A. Okay, yes, sir.

21 Q. All right. And I believe that
22 we've determined that not included in your case file is
23 any document that includes a reference or any document
24 generated by the probate court of Hamilton County

1 pertaining to the estate of Marilyn Kuhl, Case No.
2 2003-004829; is that also correct?

3 A. Yes, sir.

4 Q. So then the follow-up question is,
5 prior to December 17, 2007, the date you filed the
6 criminal complaint against Mr. Martin, you did not have
7 in your possession any documents pertaining to the
8 filing in probate court regarding the Estate of Marilyn
9 Kuhl; is that fair?

10 A. That's correct, it's nothing that I
11 had in my file.

12 Q. Okay.

13 A. That's not something that was in my
14 file, that's correct.

15 Q. All right. Other than, what did
16 you do to determine whether or not any proceedings had
17 been initiated in Probate Court in Hamilton County
18 regarding Marilyn Kuhl prior to December 17, 2007?

19 A. My conversations with Mr. Startzman
20 to find any records that pertain to this case.

21 Q. And Mr. Startzman told you what in
22 that regard?

23 A. He directed me the items that were
24 sent to Officer Wright and myself, then directed me to

1 the other department, whatever, Hamilton County
2 Prosecutor's Office or whatever the office is that
3 Mr. Cade works at.

4 Q. And did you ask Mr. Cade or other
5 personnel in his office, Amy Emerson or maybe even
6 somebody else whether they knew or knew how to locate
7 any records for any probate court proceedings in Ohio
8 pertaining to Marilyn Kuhl?

9 A. Yes, sir.

10 Q. What did they tell you?

11 A. That was their description of how
12 the system works, and that any records they would
13 forward to Mr. Startzman because this was his case that
14 he had generated.

15 Q. So was it then your understanding
16 that Mr. Cade's office, Ms. Emerson's office, which you
17 believe to be the Hamilton County Prosecutor's Office,
18 was going to try to locate what we know exists, which
19 is a case in Hamilton County Probate Court pertaining
20 to Marilyn Kuhl?

21 A. That is correct.

22 Q. And was it your understanding that
23 if the Hamilton County Prosecutor's Office located such
24 a file they would forward a copy of it or portions of

1 it to Mr. Startzman?

2 A. Correct.

3 Q. And Mr. Startzman would then in
4 turn forward a copy of those probate court documents to
5 you, is that what you were expecting to happen?

6 A. Well, any records that pertain to
7 the -- I don't think I was specific to just probate, I
8 was looking for any records.

9 Q. But if the Prosecutor's Office had
10 gotten any probate court records, they would send them
11 to Mr. Startzman and you expected those along with
12 anything else he'd turned up to be sent on to you; is
13 that correct?

14 A. Yeah, that's correct.

15 Q. Did you ever have any conversation
16 with personnel in the Hamilton County Prosecutor's
17 Office after you formed that understanding regarding
18 what had been done, if anything, to try and locate a
19 probate court case for Marilyn Kuhl?

20 A. I would have to review my records
21 but I know I made notations because, if my recollect is
22 right, but I just don't know the time frame. It would
23 be on the note. But it was to a follow up to Amy
24 Emerson for, we'll check the case file, but there

1 should be some notation for records, I think it says,
2 records or something. That's one of my handwritten
3 notes.

4 Q. I'll show you, these are what we've
5 determined is part of your case file, Pages 29, 30 and
6 31.

7 A. This is what I'm referring to.

8 Q. What page number is that?

9 A. 00030.

10 Q. And --

11 A. So the date would have been 12/4.
12 So no, sir, not after 12/17.

13 Q. Okay. What, Page 00030 looks like
14 a phone message form. What did you learn from it?

15 A. That -- Actually I contacted her
16 back and contacted Jeffrey Startzman and that there was
17 nothing located. So that was, I just didn't know what
18 the time frame was.

19 Q. So you recall on or about
20 December 4, 2007, having a conversation with Amy
21 Emerson in which she told you that she had not located
22 any probate court proceedings regarding Marilyn Kuhl?

23 A. Well, I don't think it was specific
24 to probate. That all the records that Jeffrey

1 Startzman had sent me was what they had. Because I
2 wanted to be specific, I wasn't just specifically
3 asking for probate, I was asking for any records that I
4 didn't have on the case. Because as I explained
5 before, I got the information that had several
6 different years on there and one of the clarifications
7 from Rob Sanders' office was, find out if there's any
8 records or anything that pertain to this case.

9 Q. Did you specifically ask Amy
10 Emerson or some other person at Hamilton County
11 Prosecutor's Office or even Mr. Startzman to look and
12 try and determine if there is a probate court case for
13 Marilyn Kuhl that was ever opened?

14 A. Just specifically to probate?

15 Q. Yes, sir.

16 A. It was together, for any of those
17 records.

18 Q. Do you recall specifically
19 mentioning, saying, look, something to the effect,
20 look, you know, we need to determine any other records,
21 whether they be family court, probate court or
22 whatever, I need all the records I can get.

23 So my question is, did you, if you
24 didn't limit it just to probate court did you

1 specifically mention probate court records pertaining
2 to Marilyn Kuhl as included in those that you were
3 interested in locating and reviewing?

4 A. Yes, sir.

5 Q. Was a representation ever made to
6 you that somebody had looked into and had not been able
7 to locate any probate court proceedings regarding
8 Marilyn Kuhl?

9 A. Yes, sir.

10 Q. And who told you that?

11 A. Specifically, I believe, it was
12 Mr. Startzman not Amy, because I believe they couldn't
13 locate anything and I was to call Mr. Startzman back.

14 Q. Did you ask Mr. Startzman what had
15 been done to look into whether or not there was any
16 probate court case for Marilyn Kuhl?

17 A. After that?

18 Q. At any time.

19 A. Yeah, I think that's why I got
20 directed to Dan Cade, to that specific office, that's
21 why I was directed there.

22 Q. Did you ever ask anyone, whether it
23 be Mr. Startzman, Mr. Cade, Ms. Emerson or somebody
24 else, have you looked, have you reviewed the records of

1 the Probate Court in Hamilton County and determined
2 whether or not a probate case was ever opened for
3 Marilyn Kuhl?

4 A. The specifics, I believe, were not
5 whether specifically probate, it was that no records
6 could be located because of the time frame. And I
7 believe Mr. Startzman's, and I believe it was
8 Mr. Startzman, not Ms. Emerson, was because of time
9 frame. And those offices have, those offices, they're
10 different now, they're set up differently. And there
11 may be a reflection in my notes in one of my narratives
12 as to my recollection of that.

13 Q. I don't understand how the time
14 frame influenced whether or not somebody could locate
15 the records of the Hamilton County Probate Court, which
16 I think we all know clearly exist and was opened in
17 2003. And I don't mean to be obtuse and I'm not trying
18 to be antagonistic, but I don't understand how
19 different formulations of the Job and Family Services
20 and the agencies that may handle child support matters
21 has anything to do with whether or not somebody could
22 find a probate court record. What was your
23 understanding as to how the time frame factored into
24 whether or not these probate court records could be

1 found?

2 A. I don't have an understanding.
3 You'll have to ask them, that's not my, I don't work in
4 Hamilton County, I don't work in Ohio, I don't --

5 Q. So is it the case that you relied
6 upon the representation from Mr. Startzman that no
7 probate case had ever been opened or had existed for
8 the Estate of Marilyn Kuhl?

9 A. I don't think that was my direction
10 and where I was going with this at that time. I had an
11 interview with Mr. Martin that said he forged the name
12 of a dead person, the information was all presented to
13 the Commonwealth, the Commonwealth reviewed all that
14 information that I gave them. I mean, I've done the
15 best I could to get the information that I felt was
16 necessary to produce the affidavit for the warrant.
17 And I let the Commonwealth review that, not, it's not
18 whether I can find it or anything. He said he signed a
19 dead person's name to the check and the Commonwealth
20 felt that that was illegal. That's not my decision.

21 Q. But to answer -- My question,
22 though, is, and it sounds like from your answer, is, we
23 know Mr. Martin had told you in a November 2, 2007,
24 interview that he was executor of his mother's estate,

1 correct?

2 A. I had conflicting statements.
3 That's what I was saying, I was trying to clarify that.
4 That's why I spent all this effort contacting, trying
5 to contact Mr. Martin, trying to contact his attorneys
6 that he said were representing him to get this
7 clarification. I could not produce any records.

8 So I took all the information that
9 I had available to the Commonwealth attorney on their
10 advice, getting everything that I could, they reviewed
11 it, said it was a clear case of forgery in the second
12 degree because a dead person signed the check. And
13 Mr. Martin had already in the interview said he did it.
14 I mean, that was the basis for my, the complaint. It
15 wasn't with me, it was the Commonwealth's decision.

16 And I assume the Judge Grothaus,
17 since he originally signed it, had reviewed the same
18 thing. I'm not sure where you're, I've given you
19 everything that I can with the records that I did
20 collect.

21 Q. Well, it sounds like then, and tell
22 me if this is fair, that you determined the, whether or
23 not Mr. Martin had been appointed executor of his
24 mother's estate, whether or not there was a probate

1 case open for the estate of Marilyn Kuhl in Hamilton
2 County was immaterial to your investigation and the
3 conclusion that it reached, the criminal charge being
4 filed against him; is that fair?

5 A. No. Like I said, let me reiterate,
6 I'm collecting the information to see if there's any
7 criminal activity that has taken place. I've got what
8 I believe to be a forgery. I don't know about the
9 other items as far as probate. I've got documents that
10 say, you know, she's dead, that the money may or may
11 not have been, I don't know about probate and I stated
12 that again in district court, probate's not my
13 specialty. That's why I presented to the Commonwealth.
14 I assume that they have knowledge that I don't and that
15 was discussed with them. They made that determination.
16 I just gave them the information to make that
17 determination.

18 Q. All right. We started down this
19 particular road with a conversation that you had on the
20 telephone with Wayne Wallace. Did Mr. Wallace indicate
21 during this first telephone discussion you had with him
22 pertaining to Mr. Martin that he felt the evidence or
23 materials that had been compiled to that point were
24 insufficient to support a charge?

1 A. I can't recall whether it was that
2 conversation or subsequent conversations. But he felt
3 that it was a clear case of fraud or forgery since I
4 already had an admission, that I think Mr. Martin's
5 exact words were, I know it's forgery, but that's in
6 the taped interview.

7 Q. But my question is, during this
8 first conversation you had with Mr. Wallace, did he
9 indicate to you he believed that the evidence compiled
10 by you to that point was insufficient to support a
11 charge against Mr. Martin?

12 A. No, he didn't say it was
13 insufficient. You're asking for a specific to one
14 question, that's why I'm trying to clarify because
15 there's more than one conversation. Can I recall the
16 first one, the specifics of the first conversation, no.
17 The totality of the conversations with Mr. Wallace, I
18 can, I can't give you a specific, if you're asking for
19 a specific, no, not for the first conversation. But he
20 never said there was anything sufficient, that's not
21 how that works. You know, I'm asking for information
22 what else I need.

23 Q. We've talked about Mr. Wallace but
24 I don't think we've, and you and I both know who he is,

1 but for the record would you tell us what his job was
2 at the time and why you were contacting him?

3 A. Wayne Wallace is the Commonwealth
4 Detective. And it wasn't specific to contacting Wayne
5 Wallace, it was the Commonwealth's Office. It's not
6 luck of the draw, but whoever answers the phone,
7 whether it be Rob Sanders. I call for Rob Sanders, I
8 may get Wayne Wallace. Rob Sanders, if he's there,
9 will take the call himself, if not, it's directed to
10 Wayne.

11 Q. All right. Well you've told us
12 about the first discussion you had with Mr. Wallace and
13 you've indicated you had others. Do you recall how
14 many others approximately?

15 A. It's several, sir. It was more
16 than one but I don't know how specific. I've noted
17 some but I don't know how many.

18 Q. You filed the criminal complaint
19 December 17, 2007. Was your last conversation with
20 Mr. Wallace pertaining to this investigation of
21 Mr. Martin on December 17 or maybe December 16?

22 A. No, it was prior to that because my
23 last conversation, I believe, was with Mr. Sanders, the
24 Commonwealth Attorney's Office.

1 Q. Well, I'm asking about Mr. Wallace?

2 A. It was before December 17 but I
3 don't recall exactly. There's notation in the case
4 file.

5 Q. All right. In your last
6 conversation with Mr. Wallace prior to the filing of
7 the criminal complaint, did Ms. Wallace indicate to you
8 he believed that there was insufficient evidence to
9 support a charge against Mr. Martin?

10 A. No, he felt that's the reason to
11 set up a meeting from then.

12 Q. All right. So your testimony and
13 your last conversation with Mr. Wallace prior to filing
14 the criminal complaint, he told you --

15 A. Gather all your stuff and come
16 down.

17 Q. Okay. And you went down, meaning
18 down to the Commonwealth Attorney's Office?

19 A. That's correct, sir.

20 Q. Was that on December 17?

21 A. I believe it was actually the same
22 day. And just for clarification, when you go down,
23 normally you drop off the case file, it's reviewed and
24 then they contact you back when it's ready for

1 signature. When I went down, that's why I said I
2 believe it was the same day because the Commonwealth
3 Attorney, Rob Sanders, was there when I walked in, he
4 was already familiar with it and he told me that he'd
5 just take care of it himself, that I didn't need to see
6 Wayne, and wrote out the complaint himself.

7 Q. So when you went down to the
8 Commonwealth Attorney's Office, which you believe was,
9 in fact, on December 17, 2007, you did not meet that
10 day with Mr. Wallace, you met with Mr. Sanders?

11 A. That's correct, sir.

12 Q. Did you discuss that day or on a
13 prior occasion with Mr. Sanders anything pertaining to
14 a probate court case for the estate of Marilyn Kuhl?

15 A. I think I've discussed the entire
16 case, which that would have been included.

17 Q. What, as best you can recall, did
18 you disclose to Mr. Sanders about any probate case
19 involving Marilyn Kuhl?

20 A. I can't say specifically with
21 Mr. Sanders. With Mr. Wallace we went over the entire
22 case file. And that's, you know, when, you said, when
23 did you take it down there, in that conversation is
24 when it's a clear case of forgery, you've already got

1 him admitting to it, we discussed jurisdiction and
2 stuff and that's why I went down to see him.

3 Q. What all did you provide to the
4 Commonwealth Attorney?

5 A. The case file that you have.
6 That's the one not marked, in this case the whole
7 thing, all of the documents.

8 Q. Okay. Well, part of what has been
9 identified to me as your case file includes documents
10 called narrative supplements?

11 A. Correct, sir.

12 Q. Did you provide the narrative
13 supplements to the Commonwealth Attorney's Office?

14 A. Yeah, there's no difference in the
15 case files that you have, Jeff Mando has and the
16 Commonwealth has. I made copies of everything, of the
17 stuff that I gave to Jeff Mando, they have all of that.
18 That was taken just as is.

19 Q. So in your case file there's a
20 number of narrative supplements, most of which you
21 prepared, but you provided all of those to the
22 Commonwealth Attorney's Office, I guess, on
23 December 17, 2007?

24 A. Yes, sir, I believe that there's

1 actually probably two separate ones because one was
2 given to, prior when I had a meeting with them to
3 review what we had. So there should be a notation in
4 there when I went down to the Commonwealth's Office.
5 At that time they had that information. And then the
6 final time is when we, December 17 is when we took the
7 entire case file back down.

8 Q. Okay, let me make sure I'm
9 following you. At some point prior to December 17,
10 2007, you met with the people at the Commonwealth
11 Attorney's Office. I guess, first of all, was that
12 Mr. Wallace and Mr. Sanders, or if not both of them one
13 of them, and if so, which one?

14 A. Actually I went down to meet with
15 Mr. Wallace. Both of them were there. Mr. Wallace was
16 the one who got the information.

17 Q. Okay. So prior --

18 A. There's a notation in the case file
19 for it.

20 Q. So prior to December 17, 2007, you
21 delivered part of your case file to the Commonwealth
22 Attorney's Office and included in part of that, or
23 included in that delivery was some of the narrative
24 supplements that you had created up to that date; is

1 that correct?

2 A. No, it's not. It includes all of
3 them. When I do a case file, it's everything up until
4 that date, it's not some of them, it's all of them.

5 Q. Okay. All right. So all of the
6 narrative supplements that had been created up to the
7 date of that meeting prior to December 17, 2007, you
8 presented to the Commonwealth Attorney's Office?

9 A. For review, yes, sir.

10 Q. And you did that so they could
11 review the materials and the information that you had
12 gathered and as you had set forth in the narrative
13 supplements and other documents that you were
14 providing; is that fair?

15 A. Yes, sir.

16 MR. ABELL: Let's make that

17 No. 2.

18 (A 3-PAGE NARRATIVE SUPPLEMENT WAS MARKED
19 PLAINTIFF'S EXHIBIT 2 FOR PURPOSES OF
20 IDENTIFICATION.)

21 Q. Mr. Schutzman, I've marked as
22 Exhibit No. 2 a two-page document, Bates stamped
23 Pages 2, 3?

24 A. I have three pages.

1 Q. Okay, excuse me, Pages 2, 3 and 4,
2 which I understand to be part of your case file. First
3 of all, do you agree that Exhibit 2 is part of your
4 case file?

5 A. Yes, sir.

6 Q. You were responsible for creating
7 this narrative supplement?

8 A. Yes, sir.

9 Q. I want you to turn to Page 3. In
10 the first non-numbered paragraph that begins,
11 Mr. Martin advised that he was power of attorney; do
12 you see that?

13 A. Yes, sir.

14 Q. Is that information that you
15 summarized based on your interview with Mr. Martin on
16 November 2, 2007?

17 A. Yes, sir.

18 Q. I mean, didn't he tell you in the
19 interview on November 2, 2007, that there were probate
20 proceedings regarding his mother and that he was
21 appointed executor of her estate?

22 A. Actually he said it wasn't probated
23 and then he said it was probated. So that was part of
24 the trying to clarify. This is one of the matters that

1 was for clarification.

2 Q. Okay. But in your narrative
3 supplement you simply state, "Mr. Martin stated the
4 will was never probated because of his mother's assets
5 were in his name, including her home in Ohio." That's
6 what you wrote, correct?

7 A. Yes, sir.

8 Q. That's not quite accurate, to say
9 the least, wouldn't you agree?

10 A. No, I think it's accurate.

11 Q. Even though Mr. Martin told you
12 that and you asked him about the probate proceedings
13 regarding his mother's will in your all's interview on
14 November 2, 2007?

15 A. I'm not following your question.
16 You asked if that was accurate and I said that is
17 accurate, he stated both things, so.

18 Q. I don't see any, well, he stated
19 both things then. Where is it in here where you've
20 recorded that Mr. Martin told you that her will was
21 probated?

22 A. I had no evidence that it was.

23 Q. My question is --

24 A. This is a summary of my, it's a

1 summary of my interview with him.

2 Q. Okay. But --

3 A. It's not a verbatim, sir.

4 Q. But you don't report in here that
5 Mr. Martin told that you the will was probated, do you?

6 A. No, sir.

7 Q. And you didn't disclose that
8 information at the time you signed the criminal
9 complaint, did you?

10 A. No, sir, I had no evidence that it
11 was.

12 Q. The source of your statement,
13 "Mr. Martin stated the will was never probated because
14 all of his mother's assets were in his name, including
15 her home in Ohio." That source is Mr. Martin himself?

16 A. When you say, quote, this is just a
17 summary of information, sir, it's not quoting him
18 verbatim, sir.

19 Q. Well, he is the source of the
20 summary, Mr. Martin is the source of the summary?

21 A. Yes, sir. I just want to make sure
22 that, you know, when you say, quote, this is what's in
23 the narrative. That's what I wrote in the narrative,
24 sir.

1 Q. You never disclosed to Mr. Sanders
2 on December 17, 2007, or prior to that that Mr. Martin
3 had, in fact, told you in the interview that his
4 mother's will had been probated?

5 A. Yes, sir, we discussed the fact
6 that the interview itself had a lot of inconsistencies.
7 That was part of the reason for trying to clarify the
8 interview, the information that I found in the
9 interview.

10 Q. Is your answer then, yes, you did
11 prior to December 17, 2007, tell Rob Sanders that
12 Mr. Martin had informed you that his mother's will had
13 been probated?

14 A. We discussed the interview, sir.

15 Q. Okay. I know you discussed the
16 interview. But my question is --

17 A. That was, I know, I understood.

18 Q. My question is very specific. Did
19 you, on December 17, 2007, or prior to that tell Rob
20 Sanders, the Commonwealth Attorney, that Mr. Martin had
21 told you that his mother's will had been probated?

22 A. My answer would be yes, sir.

23 Q. Did you make that disclosure on
24 December 17, 2007, or some other date if you recall?

1 A. It would have been, the 17th was,
2 the entire case file was given to him.

3 Q. So then is it on December 17, 2007,
4 you told Mr. Sanders that Mr. Martin had told you his
5 mother's will had been probated?

6 A. Sometime before the 17th or not
7 specifically on the 17th, I can't recall specifics on
8 dates, sir.

9 Q. Okay. Down at the bottom of Page 3
10 you have a paragraph where you refer to, I contacted
11 the Commonwealth Attorney's Office on November 30,
12 2007, and you conclude that paragraph, "I advised that
13 a will could not be located nor any evidence the estate
14 was probated." Do you see that?

15 A. Yes, sir.

16 Q. I think I understand why you
17 reported that in this narrative supplement but I want
18 to make sure I understand. So what was your basis for
19 making that statement in this report?

20 A. We still had not received anything
21 from Hamilton County. And as a matter of fact, that's
22 the reason for the follow up, one of the notes for Amy
23 Emerson, whatever the date was, because I wanted to
24 clarify that because we had not received anything.

1 Q. And you were waiting on who to, I
2 mean, were you waiting on some information regarding
3 evidence of a will or evidence that the estate was
4 probated?

5 A. Well, I mean, that would have been
6 sent to us. I want to be sure I answer your question
7 correctly. But at the time we were still waiting to
8 see if there was any information on will, probate or
9 anything dealing with the case.

10 Q. Why is that important?

11 A. I wanted to make sure I had all the
12 information before I did my final report. And I think
13 that was the follow up for December 4, the phone call
14 to Hamilton County.

15 Q. And Amy Emerson told you on
16 December 4 that there was no probate case for Marilyn
17 Kuhl filed in Ohio?

18 MR. MANDO: Objection. Asked and
19 answered several times. I'll allow him to
20 answer again.

21 A. I was directed back to
22 Mr. Startzman, that they could not locate anything, but
23 contacted Mr. Startzman.

24 Q. All right.

1 A. Because I was sent from there to
2 him.

3 Q. You testified in court at a
4 preliminary hearing following your criminal complaint
5 against Mr. Martin on, I believe, January 15, 2008; do
6 you recall that?

7 A. I believe that's the date, sir.

8 Q. After your testimony that day do
9 you recall discussing the hearing with Mr. Sanders or
10 any other representative of the Commonwealth Attorney's
11 Office?

12 A. I discussed it with Mr. Sanders, I
13 believe.

14 Q. What do you recall about that
15 discussion?

16 A. It was just the circumstances of
17 the court.

18 Q. Meaning what?

19 A. Mr. Sanders and Mr. Grothaus were
20 engaged in a lively discussion.

21 Q. Engaged in a lively discussion
22 regarding what, if you recall?

23 A. You'd have to check the record.
24 They were arguing back and forth.

1 Q. Did you witness this lively
2 discussion?

3 A. Yes, sir.

4 Q. What do you recall it being about?

5 A. They were arguing over points of
6 law.

7 Q. Pertaining to what, if you recall?

8 A. I don't know specifically. They
9 were, it was, they were just, I mean, arguing back and
10 forth. Specifically, I mean, it went on for quite some
11 time.

12 Q. Okay. You had a discussion after
13 the conclusion of the court hearing on January 15,
14 2008, with Mr. Sanders, correct?

15 A. Yes, sir.

16 Q. What specifically do you recall him
17 saying to you during that discussion?

18 A. Specific about the demeanor of the
19 court with the Judge.

20 Q. But you --

21 A. Specifically say back and forth it
22 was just that they were having an argument and that it
23 was seemed to be more, it wasn't, I think he felt upset
24 with the Judge and the Judge was upset with him. I

1 don't know over what, it was clear they were arguing
2 over the case. It seemed to be highly --

3 Q. What did Mr. Sanders say to you
4 that led you to conclude he was upset with the Judge
5 and the way the hearing was going?

6 A. It wasn't, it was just the demeanor
7 in the court, sir, not what was being said, it was how
8 it was being said.

9 Q. After the hearing on January 15,
10 2008, did you and Mr. Sanders discuss any additional
11 investigation that might be appropriate?

12 A. No, actually that was the last
13 conversation we had on this whole thing. He just said
14 I didn't need to attend any more of the hearings.

15 Q. Did you ask him what he thought was
16 going to happen to the charge?

17 A. No, we didn't, actually we didn't,
18 like I said, it was more on the demeanor between the
19 court and he.

20 Q. Did you ask Mr. Sanders if he
21 thought the criminal complaint you had filed would
22 stand up?

23 A. No. Again, we weren't discussing
24 merits of the case, it was just the demeanor between

1 the Court and he.

2 Q. Did you ever again after
3 January 15, 2008, discuss with Rob Sanders the criminal
4 charge that you filed against Mr. Martin as set forth
5 in the criminal complaint you filed?

6 A. I deal with Rob on a lot of, or
7 Mr. Sanders on a lot of items specifically to this
8 case. I'm sure we had some discussion but I don't
9 recall anything directly.

10 Q. Is it fair for me to conclude then
11 that any discussions you had with Commonwealth Attorney
12 Rob Sanders pertaining to Mike Martin after January 15,
13 2008, were nonsubstantive?

14 A. Yes, sir.

15 Q. Did you ever testify before a Grand
16 Jury pertaining to any charge against Mr. Martin?

17 A. No, sir.

18 Q. Did you ever discuss with
19 Commonwealth Attorney Rob Sanders presenting to the
20 Grand Jury any charges against Mr. Martin?

21 A. I don't think afterwards, sir.

22 Q. Afterwards meaning?

23 A. After the court hearing, I don't
24 recall, I don't recall any.

1 Q. So tell me if this is fair. After
2 January 15, 2008, as best you can recall you never
3 discussed with Commonwealth Attorney Rob Sanders
4 presenting to a Grand Jury any information relating to
5 a charge against my client, Michael Martin?

6 A. Not that I can recall but I don't,
7 not that we didn't have any discussion. The reason, I
8 don't recall anything. I'm trying to think a moment.
9 Not with Mr. Sanders.

10 Q. Did you have, again after
11 January 15, 2008, a discussion with any representative
12 of the Kenton Commonwealth Attorney's Office pertaining
13 to the presentation to a Grand Jury of information
14 toward a charge against my client, Michael Martin?

15 A. Yes, sir.

16 Q. Who was that?

17 A. I think it was Mr. Wallace. There
18 was some discussion but I don't believe it was Rob
19 Sanders.

20 Q. And what do you recall about that
21 discussion with Mr. Wallace?

22 A. I just recalled that coming up
23 because of re-filing charges because of the Court's
24 action. That's why I said I'm not sure whether it was

1 Mr. Sanders or Mr. Wallace. I believe it was
2 Mr. Wallace to the best of my recollection.

3 Q. To the best of your recollection,
4 after January 15, 2008, you discussed with Wayne
5 Wallace the possibility of presenting to the Grand Jury
6 information pertaining to the charge as set forth in
7 your criminal complaint against Mr. Martin; is that
8 correct?

9 A. That's correct. The reason I
10 wanted to clear it is because I don't know which
11 specifically person it was but I don't think it was
12 Mr. Sanders, I think it was Mr. Wallace.

13 Q. What do you recall about, you've
14 told us what the topic of the conversation was about
15 going to the Grand Jury. Did Mr. Wallace make
16 indications to you that he thought it was appropriate
17 or something they were going to consider or what?

18 A. I don't recall anything like that.
19 This all had to do with the demeanor of the Court, not
20 Mr. Martin.

21 Q. Did you ever ask Mr. Wallace if the
22 Commonwealth's Attorney was going to present, I'm
23 sorry, after January 15, 2008, did you ever ask
24 Mr. Wallace if the Commonwealth Attorney was going to

1 present a case to the Grand Jury toward charging my
2 client, Mike Martin, with any criminal activity?

3 A. No, sir.

4 Q. After January 15, 2008, did
5 Mr. Wallace indicate to you, even if you didn't ask,
6 that the Commonwealth Attorney's Office was considering
7 presenting to a Grand Jury information toward charging
8 my client, Mike Martin?

9 A. No, sir.

10 Q. After January 15, 2008, did you
11 have any further discussion with members of
12 Commonwealth Attorney's office, be it Mr. Sanders or
13 Mr. Wallace, regarding that office's intentions to
14 pursue any charge against Mr. Martin?

15 A. We may have but not that I recall,
16 sir.

17 Q. So is it fair then for me to
18 conclude that after January 15, 2008, any discussion
19 you had with any representative or member of the
20 Commonwealth Attorney's Office regarding their pursuit
21 of any charge against Mr. Martin were at best
22 nonsubstantive; is that fair?

23 A. That's fair.

24 MR. ABELL: Let's take a few

1 minutes break.

2 (THERE WAS A BRIEF RECESS.)

3 Q. Did you, Mr. Schutzman, during the
4 course of the preliminary hearing learn any information
5 that surprised you?

6 A. Specifically? I mean, nothing, I
7 mean, you do this long enough nothing's like a
8 surprise. What specifically do you mean?

9 Q. I just -- Let me restate the
10 question then. You testified during the course of a
11 preliminary hearing in Kenton District Court pertaining
12 to the criminal complaint you filed against Mr. Martin,
13 correct?

14 A. Yes, sir.

15 Q. Did you, during the course of your
16 testimony or while you were present in the courtroom
17 learn or hear any information that surprised you?

18 A. No, sir.

19 Q. Did you, while testifying during
20 the preliminary hearing, learn any information that you
21 wish you had known before you filed the criminal
22 complaint?

23 A. No, sir.

24 Q. Have you since the conclusion of

1 the proceedings in Kenton District Court regarding the
2 charge against Mr. Martin learned any information that
3 you wish you had known before you filed your criminal
4 complaint?

5 MR. MANDO: Objection, relevancy.

6 You can answer.

7 A. No, sir.

8 Q. An arrest warrant was signed for
9 Mr. Martin based on the criminal complaint that you
10 filed, correct?

11 A. Yes, sir.

12 Q. Was there any disclosure to the
13 Judge that signed the arrest warrant concerning the
14 probate case for Marilyn Kuhl in probate court in Ohio?

15 A. I don't know, sir. I'm not part of
16 that.

17 Q. You're not part of it, what do you
18 mean?

19 A. When the Judge signs that.

20 Q. You didn't appear in front of the
21 Judge?

22 A. No, sir, that was done by the
23 Commonwealth.

24 Q. Did you discuss your investigation

1 pertaining to Mike Martin with Dan Goodenough?

2 A. Yes, sir.

3 Q. And in terms of your discussions
4 with Dan Goodenough, what are they?

5 A. I kept him apprised of the
6 investigation the entire way, sir. He's the chief of
7 police.

8 Q. Did you solicit or get his opinion
9 regarding whether or not the information gathered
10 supported the charge against Mr. Martin?

11 A. Yes, sir.

12 Q. And what was his opinion?

13 A. That we had enough evidence to
14 charge him with the forgery.

15 Q. And when did you get that opinion
16 from him?

17 A. It was actually the day that we
18 went down to file the complaint, sir.

19 Q. Would that have been December 17,
20 2007?

21 A. Yes, sir.

22 Q. If chief Goodenough had been of a
23 different opinion, that he believed that the evidence
24 was not sufficient to support a charge, would you

1 nonetheless have gone to the Commonwealth Attorney's
2 Office and signed the criminal complaint?

3 MR. MANDO: Objection, relevancy.

4 Go ahead.

5 A. No. I mean, this would have been,
6 I wouldn't have done that. I mean, if I didn't have
7 enough evidence for a complaint, it wouldn't have been
8 signed.

9 Q. Is it fair to conclude that on
10 behalf of Villa Hills Police Department you and Dan
11 Goodenough decided that there was probable cause to
12 file a criminal complaint charging Mike Martin with
13 felony second degree?

14 A. Yes, sir.

15 Q. What evidence did you believe you
16 were in possession of as of December 17, 2007, that you
17 believe supported the conclusion that Mr. Martin had
18 acted with an intent to defraud, deceive or injure
19 another person?

20 A. Actually the entire case file, sir,
21 statements that he made, the fact that he would sign
22 that person's name to a check, the fact that he was
23 putting it into a personal account, the statement that
24 he had a dysfunctional family and the way to take care

1 of his mom's business was to keep it away from the rest
2 of the family because she would help them out, the
3 whole totality of the entire case file.

4 Q. Did you ever contact any of
5 Mr. Martin's siblings?

6 A. No, sir.

7 Q. Did you know their names prior to
8 December 17, 2007?

9 A. No, sir. Can you clarify the last
10 question that you asked or read it back to me, just
11 make sure I answered it correctly.

12 Q. Well, if we look at Exhibit No. 2,
13 I think we'll see that you did, in fact, have the names
14 of the other siblings prior to December 17, 2007.

15 MR. MANDO: I think he confused the
16 date. I think he got confused on the date of
17 your question. He's asking you whether or
18 not you knew the names of the children before
19 December 7, the other siblings, before
20 December 17?

21 A. I apologize, we may need to take a
22 break, I need to eat something.

23 Q. All right, that's fair.

24 A. And I apologize, I need to get

1 something.

2 Q. That's all right. I want you to,
3 that's fine.

4 A. I'm feeling worse as we're going
5 along.

6 MR. ABELL: Okay. Let's break for
7 lunch now and come back.

8 THE WITNESS: I apologize.

9 MR. MANDO: No, that's all right,
10 no.

11 MR. ABELL: That's fine.

12 (THERE WAS A LUNCH RECESS.)

13 Q. Mr. Schutzman, I have not too
14 many more questions for you. Before we broke you were
15 struggling a little bit?

16 A. And I do want to apologize for
17 that.

18 Q. There's no need to apologize. But
19 I do want to feel confident that you don't feel like
20 any of the answers you've given today were impaired by
21 any physical condition you're suffering from?

22 A. No, sir, that was immediate after
23 our last break, I knew I was feeling bad and it was due
24 to my low sugar. I didn't realize how late it was and

1 I had not had something to eat, my blood sugar was a
2 problem. But all the rest of my, I do want to clarify
3 that last one if I could have it repeated because I
4 really don't recall what --

5 Q. Okay, we'll pick up there.

6 A. Okay. Thank you, sir.

7 Q. I think I had asked you whether
8 prior to December 17, 2007, if you knew the names of
9 any of Mr. Martin's siblings?

10 A. Yes, sir, I know all five of them.

11 Q. And they are, in fact, set forth in
12 your narrative supplement?

13 A. Yes, sir.

14 Q. That's marked as Exhibit 2 to your
15 deposition, correct?

16 A. Yes, sir.

17 Q. Did you contact any of those
18 individuals, Cindy Martin, Debbie Martin, Charles
19 Martin, Jr., or Ronnie Martin or Jimmy Martin?

20 A. No, sir.

21 Q. Did you attempt to contact any of
22 them?

23 A. No, sir.

24 Q. Did, to your knowledge, anyone from

1 Mr. Startzman's office attempt to contact any of them?

2 A. I wouldn't know, sir.

3 Q. To your knowledge did anybody,
4 including persons within the Villa Hills Police
5 Department or any other agency attempt to contact any
6 of these five persons pertaining to this matter?

7 A. No, sir.

8 Q. You've indicated that you had
9 provided your case file to the Commonwealth Attorney's
10 Office, correct?

11 A. That's correct, sir.

12 Q. And included in your case file were
13 copies of narrative supplements, one of which is marked
14 as Exhibit 2, correct?

15 A. That's correct, sir.

16 Q. Did you provide those materials
17 with the expectation and understanding that the
18 Commonwealth Attorney's Office would rely on the
19 information in your case file, including that in the
20 narrative supplements, as being accurate and reliable?

21 A. Yes, sir, I would.

22 MR. ABELL: I'm going, Jeff, to
23 adjourn Mr. Shutzman's deposition pending it
24 taking up at a later time, similar to what we

1 did with Mr. Martin, for today.

2 MR. MANDO: That's fine. I
3 expected that.

4 MR. ABELL: For today we're
5 complete with matters the Court has directed
6 us to focus on at this stage of our
7 discovery.

8 MR. MANDO: I just have one
9 question to clarify something, a question at
10 the beginning of the deposition.

11 EXAMINATION

12 BY MR. MANDO:

13 Q. Joe, when you answered Mr. Abell's
14 question about presenting evidence to, that all
15 evidence was presented, who did you reference all that
16 evidence being presented to?

17 A. All the items that I had collected
18 in my case file to the Commonwealth Attorney.

19 Q. And whose responsibility is it to
20 present that evidence to the Court?

21 A. The Commonwealth of Kentucky.

22 MR. MANDO: Thank you. I don't
23 have anything else.

24 RECROSS-EXAMINATION

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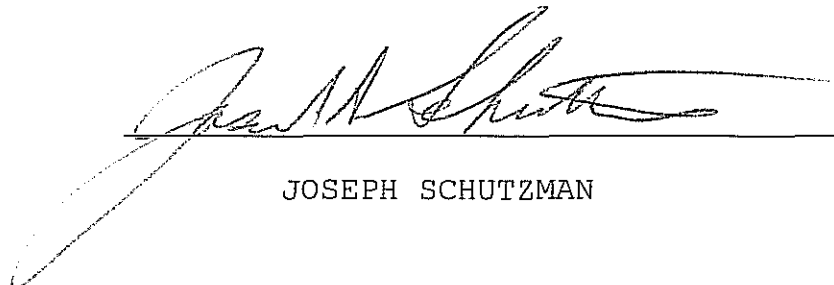
BY MR. ABELL:

Q. Is there, just a point of clarification. Was there information in your case file that you believe could or should have been presented during the course of the preliminary hearing but which was not?

A. No, sir, I believe the elements that we were presenting was my case file.

MR. ABELL: Thank you.

(DEPOSITION CONCLUDED.)



JOSEPH SCHUTZMAN

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COMMONWEALTH OF KENTUCKY:

STATE AT LARGE:

I, DONNA IMFELD, a Notary Public, within and for the Commonwealth of Kentucky, do hereby certify that the foregoing deposition of:

JOSEPH SCHUTZMAN

was taken before me at the time and place and for the purpose in the caption stated; that the witness was first duly sworn to tell the truth, the whole truth and nothing but the truth; that the deposition was reduced to shorthand writing by me in the presence of the witness; that the foregoing is a full, true and correct transcript of the said deposition so given; that there was a request that the witness read and sign the deposition; that the appearances were as stated in the caption.

WITNESS MY SIGNATURE THIS 24th day of April, 2009.

My Commission Expires: August 16, 2012.

Donna Imfeld

Notary Public
COMMONWEALTH OF KENTUCKY

ERRATA SHEET

TO THE REPORTER: I have read the entire transcript of my deposition taken on the 17th day of March, 2009, or the same has been read to me. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the signature page and authorize you to attach the following changes to the original transcript:

PLEASE DO NOT WRITE IN THE TRANSCRIPT

PAGE LINE CORRECTION (reason)

N/A [Signature]

Lined area for corrections

PLAINTIFF'S EXHIBIT

DJI 3-12-09

FILED
KENTON CIRCUIT DISTRICT COURT

COMPLAINT AND AFFIDAVIT

DEC 17 2007

JOHN C. MIDDLETON

BY [Signature] D.C.

THE COMMONWEALTH OF KENTUCKY
VS.
Michael A. Martin
2630 Brookview Dr.
Villa Hills, KY 41017

Described as: M/Caucasian SOC: [REDACTED]-1532 DOB: [REDACTED]/62
Hgt: ' " Wt: Hair: Eyes:

Comes the Affiant Detective Joseph Schutzman dated December 17, 2007, and states he has reasonable grounds to believe that between August 17, 2003 and October 5, 2006 in Kenton County, Kentucky, the Defendant committed the offense of Second Degree Forgery, a Class D Felony, and a criminal offense in violation of K.R.S. 514.040, and AGAINST THE PEACE AND DIGNITY OF THE COMMONWEALTH OF KENTUCKY.

AFFIANT STATES THAT: Hamilton County (Ohio) Job & Family Services contacted the Villa Hills Police to report child support checks sent to Marilyn Martin being cashed up until October 5, 2006, despite the fact that Marilyn Martin died on August 17, 2003. The checks were mailed to Marilyn Martin at 2630 Brookview Drive in Villa Hills which is the home of her son, Michael Martin. Many of the checks contained a forged signature of Marilyn Martin and some contained Michael Martin's signature as well. All of the checks were deposited into Michael Martin's checking account at 5/3 Bank in Crescent Springs. Affiant interviewed Michael Martin about the checks. Martin admitted to signing his mother's name to the checks after she was deceased and depositing the checks into his account. Total amount of the checks cashed after Marilyn Martin's death is \$4,731.00. It is the belief of the affiant that the defendant did engage in the described actions that are against the PEACE AND DIGNITY OF THE COMMONWEALTH OF KENTUCKY.

[Signature]
AFFIANT

Described and Sworn to before me on the day first written above.

[Signature]

Judge, Kenton Court
Division _____

Notary Public
My Commission Expires: 5-14-12

ARRATIVE SUPPLEMENT

INCIDENT NUMBER 07VHU051
INCIDENT DATE / TIME 11/21/2007 0636

Narrative Type: Officers Disposition**Topic:**

Michael A. Martin
2630 Brookview Drive
Villa Hills, Kentucky 41017

Dob: ████████-62
Soc: ████████1532

Case Report:

Hamilton County Job & Family Services forwarded a theft and fraud case to this office reference to a Michael A. Martin. The case involves payments to a Marilyn Martin (nka Kuhl) from a support case many years ago. The payments were going to her at the address listed as 2630 Brookview Drive.

State of Ohio:
Case Number: A 181425
SETS No. 7011878324

Marilynn Martin died on August 17, 2003. No notification was made to the courts of her death. The support payments continued to be sent to the Villa Hills, Kentucky address after her death. The checks continued to be cashed. The Hamilton County Job & Family Services Department advised a Mike Martin and the deceased Marilyn Martin signed the checks after death.

The Hamilton County Child Support Enforcement Agency issued a subpoena for bank records from Fifth Third Bank for the account number 56241436 on October 10, 2007. The account number was listed on several of the checks cashed. Fifth Third Bank responded on October 16, 2007 through Joanna Davis who is the Records Custodian Clerk for Fifth Third Bank. The original account number was for Michael A. Martin and Janet L. Martin of 2817 Paddock Lane Villa Hills, Kentucky 41017. The checks were all cashed at the Martin's Fifth Third Kentucky Bank account.

The Hamilton County Child Support Enforcement Agency contacted the Villa Hills Police Department to investigate a theft case. A copy of the case file was sent to the Villa Hills Police for investigation. The Assistant Director for Hamilton County Job & Family Services, Jeffrey P. Startzman, advised that the support payments could have stopped being paid by the State of Ohio upon Marilyn Martin's death. The illegal payments totaled \$731.00 dollars.

Mike Martin was contacted several times for an interview. Mike Martin responded by saying he would prefer that I contact his attorney, Dan Mistler. I contacted his attorney, Dan Mistler of Deters, Benzinger and Lavelle. I explained the circumstances of wanting to talk to Mike Martin to clarify the circumstances. Mr. Mistler advised that Mike Martin had not made Mr. Mistler aware of the implications that this was a criminal investigation. Mr. Mistler advised that his firm would not represent Mike Martin, but refer him to a criminal attorney.

Mike Martin contacted me later that day to set up a meeting. Mike Martin advised that he had spoken to Mr. Mistler before contacting me. Mike Martin came to the city building for an interview. I explained to him the circumstances of the complaint. Mike Martin advised that Marilyn Martin was his mother. Mike Martin further stated:

Mike Martin was the son of Marilyn Kuhl.
Marilyn Kuhl had died three years ago.

**PLAINTIFF'S
EXHIBIT**

DJI² 3-1209

Reporting Officer: Schutzman, Detective Joseph
Investigating Officer: Schutzman, Detective Joseph
Reporting Date/Time: 11/21/2007 0638

00002

RRATIVE SUPPLEMENT

INCIDENT NUMBER	07VH0051
INCIDENT DATE / TIME	11/21/2007 0636

3. Marilyn Kuhl had never lived at the address 2630 Brookview Drive, Villa Hills, Kentucky 41017.
4. Mike Martin and his wife live at 2630 Brookview Drive, Villa Hills, Kentucky 41017.
5. Mike Martin had cashed all the checks issued to his mother.
6. Mike Martin endorsed the checks, forging his mother's name to the checks after her death.

Mr. Martin advised that he was power of attorney for his mother. I asked if he was aware that ended upon her death. He stated the payments were for five siblings from his mother. These were payments in arrears for child support. He stated that his family was dysfunctional and he made all his mother's payments to protect the assets from the rest of the family. His mother had never lived in Kentucky. Upon her death, he made no notification to the State of Ohio. Mr. Martin stated the will was never probated because all of his mother's assets were in his name, including her home in Ohio. I asked if the family knew of his arraignments. He advised he was not sure. I asked why he signed her name after death. He stated the bank wanted it that way. I asked if he knew that was forgery and he stated yes.

I contacted Mike Martin on November 2007 to verify information he gave to me. He advised that he would no longer talk to me and that I should direct all questions to his new attorney, Dominic Mastruserio. I contacted attorney Dominic Mastruserio on November 21, 2007 to ask if I could get information from Mike Martin. I reviewed the case with him and he advised that Mike Martin had not advised him of the details. Dominic Mastruserio said he could not represent Mike Martin because he does not have a license to practice in Kentucky.

I contacted the Jeffrey P. Startzman, HCJFS Assistant Director to verify the payments. He stated the court records show the support was for five children.

Cindy Martin
Debbie Martin
Charles Martin Jr.
Ronnie Martin
Jimmy Martin

The record showed a Ronald Martin. The subject was 49 years of age at this time. I requested a copy of all the court records. The records further showed the Ohio Court of Common Pleas entered judgment to terminate the payments due to the death of Marilyn Martin. Case file: A181425 File: 210061

I contacted the Commonwealth Attorney's office on November 14, 2007. I met with Detective Wayne Wallace to verify the statutes. He advised the continued receipt of monies and signing the checks was theft and forgery in the State of Kentucky. He asked that I check with Hamilton County prosecutors on their case law first.

I contacted the Commonwealth Attorney's office on November 30, 2007. I discussed the Hamilton County Attorney's review of the materials with Detective Wayne Wallace. He advised that it was theft and forgery in Kentucky. He agreed the power of attorney ceased upon death. I advised that a will could not be located nor any evidence the estate was probated.

I met with Rob Sanders on December 4, 2007 to go over the preliminary case report. The final report will be sent next week upon receipt of court records from Ohio.

Reporting Officer: Schutzman, Detective Joseph
Writing Officer: Schutzman, Detective Joseph
Date/Time: 11/21/2007 0638

00003

LEMENTARY NOTES (Narrative)

(BEFORE USING THIS SIDE SEPARATE SHEETS)

records.

I contacted Commonwealth Detective Wayne Wallace to verify the statutes. He advised the continued receipt of monies and signing the checks was theft and forgery in the State of Kentucky.

Preliminary report only.