ll right, we are back on the record in. State v. Coburger defendant is present, counsel are all present, uh. I heard that there are no more witnesses to present by either party. Is that accurate? Yes, Yes, Your Honor. All right, we'll move to argument then. The defense may proceed. Judge, I'm gonna cover, um. Several of the warrants and then Mr. Logson's gonna cover for. So I'll just wrap all of my argument up instead of getting up and down for, for each one. My oral argument is not meant to rehash every point briefed or every argument briefed. I'm giving you big picture comments based on the testimony, but I want to make it clear that we're not waiving any written arguments. Well, I questioned Corporal Payne and Detective Maury about some exhibits, but not all, it was not an indication that others are not important. I want, I wanted to make important points but not belabor. With IGG and Frank's having been addressed yesterday and the fact that the primary issues that I'm addressing have to do with general warrants. I'm not going to rehash those arguments and I'm going to focus on the legal issues, um, beginning with, uh, the AT&T warrant one pen trap and trace, also known as AT&T 2, and the cell phone slash USB drive. The Fourth Amendment requires particularity sufficient to prevent the exercise of discretion by an executing officer. The particularities require particularity requirements objective is that necessary searches should be as limited as possible. A search warrant must be particular enough so that as to what is taken, nothing nothing is left to the discretion of the officer executing the warrant. The government cannot seize the haystack to look for a needle. And there is an undisputed privacy interest in cell phone data, including cellular site data pursuant to Carpenter. All three of these warrants were issued in December 23rd and early January 2023. The two AT&T warrants were issued on December 23, 2022, within an hour of each other. The first did have a temporal narrowing. AT&T1 had November 12th, 12 a.m. to November 14th, 12 a.m. The warrant itself was extremely broad and did not incorporate the affidavit. In support of this actual um failure to incorporate of the officers admitted that they did not in in incorporate in the search, but to the extent that the state is going to argue that when the warrant says upon offer and proof that that is the same as hereby incorporates an affidavit. I pointed out the language in certain search warrant affidavits to show you that they do know what it means to actually use the language herein is incorporated exhibit A, and that same language is not used. In a single search warrant affidavit, so the incorporation that would be um a remedy for this issue potentially of particularity doesn't exist when the warrant the search warrant affidavit is not included. Even if for some reason you were to determine that there was um English language meaning upon proof, um, an oath is, is the same as hereby incorporated. The language in the search warrant affidavits themselves is extremely broad. The affidavit of return signed by um Detective Paynes, this is on a AT&T one says that the warrant was served by email and as he indicated, it did not include the search warrant and support. The description of the property in exhibit A to AT&T described the property as just a phone number with no other description of the property, which

indicates a lack of knowledge of what was actually seized and going to be searched. The second AT&T warrant and install Pin trace was requested within 1 hour of the first warrant return at 3:50. The data from Warrant one was analyzed such that by uh Special Agent Balance such that Detective Payne was relying on balance in his affidavit to support it by saying that the data that had been in their hands for less than an hour supported that the phone was possibly off going south on Pullman at 2:42 a.m. And there is just got to be a question for everybody of how does this massive amount of data get analyzed in an hour to create a second broader warrant. The warrant language in AT&T2 Pin trap trace is extremely broad, and the time frame goes from June 23 to 2020, June 23, 2022 to present. The crime of homicide was stated, but the date of the crime was not stated. There was no other specificity in the actual warrant. The warrant asked for extensive data, location data, timing reports, cell tower information. And installation of a pin trap and trace among other many things. And when the warrant was served, I check the box form was included as a cover sheet to AT&T. Turning to the cell phone, the cell phone is first seized when Brian is arrested. It's copied by Special Agent Tanzola without a warrant, and then that USB drive is makes its way to Idaho in an unclear fashion. It, it sounds to me like it came back with Corporal Payne, who was there for the arrest. And when that warrant is obtained for that USB drive, it's put in a safe with just a copy of the warrant. That has no date of the crime and there's nothing particularized about what is to be searched. This creates a general warrant with 100% total discretion and nothing to limit the search. And if you believe that access within a database. By somebody unidentified other than Maui who's gonna evaluate that um warrant that they're gonna look and pull that finalized search warrant from the database that everybody supposedly has access to looking at that search warrant affidavit, there's full discretion to search the USB drive. There's no limitations and no efforts taken to address that. Turning now to Google and Apple. A very instructive case on Google and Apple is the Idaho Piling case, which is 721 FU 3D 1113 2024. It's, it's almost totally on point um with this case. It is a federal case out of the district of Idaho, but it, it really couldn't be more instructive in terms of looking at these issues with Google and Apple. There's without a doubt, um, a recognized protected interest of private information and Google and Apple uh records. Google contained private emails, school work, research among things, and Apple was essentially a copy of a phone and iPad that went all the way back to 2016. 2018 was an indication of when an iPad was purchased, but 2016, according to the documents that were prepared, or when it was identified that an Apple account was first created. Carpenter applies and to the extent that there may be third party materials like search history not related or documented, nothing was done to do any sort of segregation with regard to Apple or Google. For the Google warrant by January 3rd, 202 by January 3, 2023, law enforcement knew many details that they could have used to narrow those, those warrants. They knew that Brian hadn't been in Pullman until June of 2022. They

knew the names of the deceased, which were not included as language in the Google warrant. They knew the fraternities and sororities. They knew the students' names who had also been at the house on the, the morning of November 13, 2022. They knew the date of the crime, of course they knew emails they knew social media accounts and names. They knew where students worked, they knew their friends, they knew their phone numbers, none of that was included in the Google warrant to help limit and make that something other than a general warrant. There's no language incorporating these search warrant affidavits, making these broad sweeping categories, making the productions bigger and bigger. In Google, it went from 2 gigabytes to 13 gigabytes by the 3rd production. And it and it Appears that it's really unclear to these detectives that have taken a huge role in this case who's evaluating what data and to what extent and what is being produced by it and what is within the scope of what is in an already broad warrant. For Apple, we are making sort of legal process that the state just hasn't filled the gap on, and these witnesses don't fill the gap on. We don't know what the legal process is that is referenced uh between the first request for a preservation in December, December 21st all the way until August when there is a production on a warrant. Steps that have been taken in between to get the information to put into the warrant are completely unclear and to the extent that these officers who swore to the contents of affidavits now have no memory of what that is, that's invalidating of those warrants. As for uh the arrest and the car and the apartment, what I will um close by saying on those because it's not an issue of general warrant um or a discussion of particularity, those are more reliant on the issues associated with IGG and Franks. And with that, I'd ask that you find that the warrants that I've just discussed are general warrants, not particular warrants, and they should be suppressed. Do you want to respond to that or do you wanna have the defense argue the additional warrant uh issues and then address them all? Um, I'll take your lead, but I'm happy to just address to piecemeal this, and I can address just this. I can make this pretty simple for the court. We don't have to go down um the rabbit trail that the defendant would like you to go down. Um, the search warrants. Um, regarding the particularity requirement. Um, and this group that we're talking about is Apple, AT&T. There was a first and a second. Coberger's phone and then Google. All of these warrants were not general warrants, they were all sufficiently particular. They were specific to the each one of them listed that they were specific to the type of crime, the location, and all but one of them had temporal limitations and for the one that didn't, um, that would be the cell phone warrant that warrant was more particularized in the types of data that were that officers were allowed to search for. It's the state's positions. These were not general warrants and your court can determine that just by looking at the face of the warrant. If you have any questions, otherwise, state submits, you should deny their motions to suppress for these issues. Your Honor, I was, uh, asked to argue the motion regarding the raid on my client's parents' home, uh, search of his person here in Idaho, as well as in Pennsylvania as

well as in the Amazon, uh, warrant. I, I think for the most part I'll just rely on the briefing. Um, I just want to clear up a couple of things. One of the areas that was covered in the Pennsylvania home, uh, raid was that the state had to have a valid warrant in order to enter the home. I think in the briefing it gets a little confusing, um, but the point was not that Mr. Koberger couldn't have been arrested as he was walking down the street, uh, via the usual channels in which that could have occurred. The point was that they had to have a valid warrant in order to get into the home. The only warrant that they have, uh, is the one that we're challenging and via the Franks motion. And so that, that was the purpose of that argument. Uh, the other, um. Issue in terms of choice of law, it sounds like. The states kind of accepting that. Idaho constitution should apply. Uh, we set out a few different reasons why that should be the case. It doesn't seem like there's a big argument going on there, so, unless the Court has questions about it, I'll leave that alone. And then, um, The other issue that I wanted to touch on is the right of privacy in the information that we have uh in our Amazon. Goings about why should the state have to have a warrant for that. Um, I thought we set it up pretty well in the briefing, um, but I think, you know, the big concept and takeaway here is. In Carpenter and Riley, the United States Supreme Court. Starts doing something different and I think. What the court is starting to recognize is that. To a great extent, the United States has become a a sort of panopticon, that is. Uh, the concept of the panopticon is you have a, a prison in which you only need a small number of guards because you have a very, uh, heavy duty surveillance system. In the United States, we have via our phones, via the internet, much of what we do is now surveilled and uh very easily accessible. And so the fact that we have the third party doctrine uh made sense when it was being adopted back in the 70s and the 60s. It stops making sense once all of this information is easily accessible in the way that it is. And so, our point is that the judiciary has to have a, a role in this. There has to be a judge between us and the executive, otherwise. We are, we're essentially allowing the executive to know everything about us all the time. And so the, the state makes the point that. Uh, similar to, uh, the one that Professor Kerr made about, uh, going in Miller, going and getting bank materials. Once those were things that could be done simply and efficiently, uh, via these records. A person didn't have to go out and get the cash. The state argues in this case, because of Amazon, Mr. Coberger didn't have to go someplace to purchase items. All of that would have been out in public, but he's doing it on his computer and so why should that make it private? And the reason why that has to become private, Your Honor, is because of the vast amount of information that is now so easily accessible to the government. If we don't require a warrant, we essentially put all of ourselves at hazard of being snooped on at at any time. And so, um, I also just want to just briefly, uh, bring up, I think yesterday, the court had talked about privacy rights uh with the IGG databases. And I certainly want to make sure that we we are preserving that argument we included it in the briefing. uh we do believe that

Americans have privacy interest in the genetics they share with other people and that other people then place within these databases so that is not something that we intended to abandon in any way yesterday. Um, if the court has no other questions for me, I would rely on the briefing. Thank you. Thank you. Your Honor, um, I'd like to address just the third party doctrine, and then I'd like to turn it over, uh, to Mr. Thompson to address, uh, the other motions to suppress. Um, and that. The case that we're talking about is the Amazon records, and that's what has to do with the third party doctrine. And the US Supreme Court case, State v. Miller is the controlling case here. Um, and Idaho courts, as explored in my briefing, apply Miller. And there's no reason for this Court to diverge from that Fourth Amendment analysis. The documents are Amazon's business records. Um, they detail transaction history. Um, business records are most akin to bank records, um, which is allowed, applying the court's reasoning from Miller, um, again, these documents are business records of Amazon. They're not the defendant's private papers. Um, Amazon is a party to those transactions. Um, they have a substantial stake, um, in these records, and the defendant took the risk when he revealed his affairs to that this information would be conveyed by Amazon to third parties, including the government. It's the state's position. And it should be the position of this court, the defendant does not have 1/4 Amendment privacy interest in Amazon's business records. Thank you, Your Honor. Good morning, Judge. Um, I'm going to address, I, I guess the, the, the remaining, uh, warrants or the questions raised by the defense about the remaining warrants. I'd like to start first with the warrants, uh, for the residents in Pennsylvania, um, that expands into Mr. K Coberger's person under the Pennsylvania search warrants for his person for his car, which was in Pennsylvania, and then the defense also raises questions about statements, uh, made by Mr. Coberger, uh, to law enforcement. First, as to uh 119 Lambston itself, um, one of the first things the defendant offers to the court, uh, is claims that there was no local warrant valid local warrant, and that simply isn't true, as the record clearly demonstrates there were three valid local warrants, Pennsylvania warrants, uh, for the residents, for the defendant's person for his car. The defendant then asserts, and I appreciate Mr. Logsdon's um clarifications, but essentially the defendant asserts there needs to be a a separate special warrant in order for Pennsylvania to take the defendant into custody uh as a fugitive from Idaho on our charges. And as we cited in our in our briefing on this, the statutes in Pennsylvania and Idaho are virtually the same, and they clearly contemplate uh that uh a felony fugitive can be taken into custody without a fugitive warrant, um, under the circumstances that are that exist in this particular case. Now if the issue is the law enforcement presence or access to the defendant inside his parents' residence, we would submit that's already addressed because the Pennsylvania State Police had a valley search warrant for the premises for the defendant's person and for his car, so they had lawful process to be where they were, where they found the defendant and took him into custody,

uh, as a fugitive. The knock and announce, um, there was discussion earlier today and um the explanation of what happened with the dynamics of the knock and announce that's detailed uh in Sergeant Lang's, um, statement which is now has a current cover affidavit to it, uh, filed with the court, um, that's S5 um I'm not going to publicly go through all the factors unless the court wishes me to. Uh, because they are, uh, quite incriminating, um, uh, as far as the applicable factors, uh, that would justify either an abbreviated knock and announce or frankly elimination of knocking out entirely and from what we have before the court now, it, uh, it's clear that Pennsylvania's police were operating in a dynamic sense, reacting to real-time information was coming in. Uh, that's all documented in the various, uh, reports and log sheets that have been submitted with our, our pleadings, uh, which are not particularly lengthy in nature. Finally, uh, as to the defendant's statements, uh, I think the key notion here on any statements the defendant made and frankly he really didn't make much in the way of incriminating statements is there was never any interrogation. uh, he was Mirandized eventually, but even the prior conversations that occurred with Pennsylvania law enforcement, there was never an interrogation and so Miranda is not implicated, uh, and so there's no issue on the statements themselves. Uh, as to his car and his person, as I've already mentioned, uh, there were valid specifics of Pennsylvania search warrants for each of those. So, uh, uh, those are presumed, uh, to be lawful. There's been no substantive attack on those. There is a motion to suppress regarding, and I'll use the air quotes, arrest warrant, and frankly, I, I have yet to be able to figure out what arrest warrant is being referred to. But again, all the actions in Pennsylvania were taken pursuant to valid warrants, search warrants from the Pennsylvania courts, uh, and the applicable fugitive, uh, arrest statutes and so we don't see that there's any issue before the court there. Uh, the defense also raised the issue of a search warrant for the defendant's person in a separate motion which, uh, appears to be the search warrant for the defendant's person here in Idaho when he was returned to Idaho. Uh, and as the search warrant and the affidavit for the search warrant, uh, show, which were attached to our reply, uh, there was a valid search warrant for that. I think any issues to be argued beyond that relate to the ITG and Franks that are already pending with the court. As far as the defendants, uh, the search of the defendant's apartment in Washington, um. For whatever reason, the, the defendant did not include all the documentation with their particular motion to suppress, but we provided that in our response that there was a Washington search warrant. There was also an amendment to the Washington search warrant, um, they, the Washington search warrants, the applications. Included all the information, the exhibit A information from the state, and then the WSU police department added their additional state of Washington specific information. There's nothing in the questions the validity of that warrant on its face. So Your Honor, unless the Court has questions, I don't have anything further to offer in the way of argument oral argument. Thank you. Thank you, sir. Fox and rebuttal? Sure, I, I think I just

rely again on the, on the reason for the most part in terms of the The knock and announce, um. I think the totality of the circumstances of this particular raid or something that the court has to be cognizant of. If Dylann Roof could essentially be picked up in a parking lot outside of a a drugstore or whatever it is that they were able to do facts about which I have no idea, uh, and so it's not gonna be helpful to compare it to, well, whoever Mr. Roof is so. I guess the point is that in this particular case. The the state manufactured the exigencies, if they had them at all. The reality is, as they explained in their own affidavit. They're essentially watching uh Mr. K Coburger as he moves around his house via snipers. I mean, they were quite safe, uh, and there was simply no reason to. Bash the doors in momentarily after yelling from their bear cats. There's two issues. There's officer safety, there's also destruction of evidence concerns. In the cases that we cited Judge, when The claim has been that there's evidence being destroyed the. Evidence what's known to the officers is something along the lines of here somebody running away after they announce themselves. That's, it's not typical that the police simply don't knock and announce at all in those cases they usually give the person. The opportunity to surrender, but it's not a particularly long one. And in this case, they don't do that at all. And with all the only thing they knew is that he's walking around from room to room and that he has some uh kitchen gloves on. And I don't think that that equates necessarily to the destruction of. Yeah, that's not all they knew, but I won't go into the detail in order to. Uh, preserve uh the. So that we don't go into those issues. Thank you Josh. Um, but beyond that, we'll rely on the briefing. Thank you. Um, OK. I'll take uh the motions to suppress under advisement and issue, uh, ruling, uh, forthwith. Uh, the next issue is the state's motion to compel regarding the defendant's expert disclosures. I'm sorry, Your Honor. The defendant's motion to compel the I, did I say the state's motion to compel the defendant's motion to compel regarding the state's experts disclosure. We did file ours yesterday, so their motion may be coming. Well, I would be impressed if they had filed something already on that, uh, given they were just. Served yesterday afternoon, so they work. Thank you. Your Honor, we are here on our motion to compel, asking that the court Remedy what the state has done with their expert disclosures. We rely on Idaho Criminal Rule 16 and the court's order setting out what we should do and when we should do it in this case. Let me ask a question from a um framework standpoint. Um, I don't know what these folks are going to testify to at trial, specifically as it relates to what they've disclosed. The way expert disclosure issues usually works, I don't tell a party. What you have to specifically disclose about your experts, you disclose about what you think you need to disclose. If you haven't disclosed its consistent with the rule and you try to offer it, there's a good chance it may not come into evidence. Um, that's the general framework, so I'm a little. I guess concerned about what appears to be you asking me to tell them what to say in their disclosures. The the court brings up a really, really good point. And I think As a remedy the court has and one that we would hope

and ask the court to Issue in this case I think when we filed the motion, Your Honor, we had a couple of disclosures that could appear to be disclosures with wiggle words in them. Yeah, wiggle words are not going to save the lack of disclosure. I'll let the state know that right now. The fact that you say, well, you could talk about anything else doesn't mean he's gonna get to talk about anything else. In an abundance of caution, we were worried about those words. I appreciate what the courts saying and I'm gonna make this really short. The the lists are problematic for us. There are. 4 or 5 experts with lists. I understand what the court said. I like what the we also have reports. That they reference lab people do have reports. I understand those are their opinions when we're talking about and I'm going to specifically talk to you about their disclosure number 7. It's an FBI agent Douglas. There's a list of financial records that he collected and looked at. I, other than that those records exist, there's not a report telling me what they mean to him at all. If he's limited to say I collected these records, this is what we have. Well, my understanding the state can correct me, is what. I understand from the briefing is. Respect to that, I think that's the Amazon documents, correct? Those were some of those documents, Your Honor, there are a lot of others. Was his expertise was in. Extracting or reviewing the information, um. And how those were sort of. Obtained electronically and then simply guiding through, well, this is a transaction on this date that does this. Which is not necessarily expert testimony, it's simply testimony. No, but I, I believe it's a different expert that they have to do that that does not have a report. Um, but is that expert testimony? Let's just say, uh, Mr. Coberger on X date purchased a, uh, Television, if for some reason that were to be uh important and that this transaction demonstrates that this is Mr. Coberger's account, this is Mr. Coberger's credit card, and this is the purchase on Amazon. And that was delivered to this address associated with Mr. Cober. Those are factual issues, Your Honor. It's when we get to what do they mean or I put these things together and I've made this picture out of something that when we get to opinion, I, I appreciate what the court's saying um, I, it sounds to me like lists don't do it if you want to interpret a record that's what we hope to hear. That's what I wanted to accomplish today. Well, I, I think it's pretty clear you cannot simply say an expert's going to talk about topic A, topic B, topic C, and then be able to give a host of opinions that fall within those topics. Um, the requirement is to list what their opinions are and, uh, what they, uh, relied on to give those opinions. It's different than civil rule. I don't think they have to give as much detail um as the civil rule. Requires, but they have to at least give what the opinions are, and I believe what they um. Reviewed as I recall rule top of my head. I believe the court's about right. There may be another term or two in the rule that's specific, but I hear the court loud and clear. I'll point out one last thing and um stop because I think I understand how the court interprets these issues and these rules. When you look at page 9 of the state's objection to our motion and in the second to last paragraph they tell you that they will continue to supplement their expert responses based on later

discovery or whatever they decide to use that whatever they decide to use has me worried so I wanted to to bring that up. I appreciate the court saying the court's going to apply. The court rules and the discovery rules and follow the case law, and that's all we want. Thank you. So that I'm clear as the state's approaching to talk about this, um. In terms of supplementation, it's allowed. It needs to be seasonable, um, which means it has to be, uh, um, um, not just whole cloth new, um. Experts, for example, uh, without good cause showing me why that's necessary, it needs to be, um, Seasonable in the sense of of the timing of it based upon when the information was received when it was determined it was necessary to supplement um and then obviously we'll look at that in relation to what may prejudice the other side in terms of the timing of it. Certainly, I, I understand that their discovery deadline has come and gone. If something brand new happens, that would be a different issue. I would assume we would deal with that then. It's when I read whatever we decide to use, that's very, very broad. That's it, thank you. I can keep this pretty short. I don't think that there's really much in dispute at this point. Um, state's position we've complied through our expert disclosures with Criminal Rule 16B7, as well as your courts scheduling order. Um, state understands the framework that you've outlined. We're under the same impression, and I, I don't think that there's any anything else in dispute. Yeah, so let me give you a word of caution. Um, Sometimes there's dissonance between what an expert thinks that they're gonna talk about. And what the lawyer understands from that expert and the lawyer submits these disclosures. And I think it's really important that you be on the same page if you don't have a specific written report from the expert about what it is they're going to talk about and make sure that you have supplemented uh and that you have uh provided uh a listing of the opinions that are going to be provided and the whatever else is required under the rule in terms of what that's based on. Um, And I would encourage both sides to over disclose. Uh, those opinions in caution rather than under disclose because two things. One, you may find yourself in a bad position if you're not allowed to go into an opinion you felt you were going to be allowed to go to because it's not disclosed, and 2. I don't want to spend half our day at trial with me saying, where's that disclosed at? And then chasing the jury out while you dig through your thousands of pages trying to find where that is. Um, and so the, the, the more exhaustive your disclosures, the less likely it is it's going to draw that objection, uh, and the less time that we're going to waste a trial trying to find where you disclose that. And so, um, I think sometimes, and I'm not saying you did that in this case, um, I think sometimes lawyers View this expert disclosure requirement as sort of tedious work that they need to get done in order to comply with the timeline, a requirement of the court, and then they um sort of move on from it and forget about it. That's a dangerous tact to take. Um, it is, uh, for the case, one of the most important things that you can do is to understand what the person is going to testify to, um, and give a disclosure of what they're going to testify to, what those opinions are, um, and to be looking at that as you're thinking

about their testimony as you should be doing certainly now, even though it's months away from trial on a continuing basis. Um, So I would, I would really stress the importance of that in a case, particularly of this import. Um, You know, and so, uh, don't feel like your job is done at this point, cause I would suggest to you, it's not. That uh you may consider needing to do uh some cleaning up and making sure things are more uh fulsome in in the scope of those disclosures uh and uh what you're doing. The other thing, you know, I, I think you tried to do to a degree is you thought, well, we think this is fact testimony, but you know, uh, in an abundance of caution, we're gonna put it in an expert disclosure. Well, If you're gonna put it in an expert disclosure because in an abundance of caution, it could be viewed that way, suggest you treat it that way, uh, in terms of what you give. OK. Thank you. And that goes to both sides. I haven't read your disclosures yet, so I don't know if you know where that stands, but certainly, uh, goes to both sides and I know that also, you know, the the the rules are different as to what the defense has to disclose necessarily and what the state does to some degree and so I appreciate that. Well, I think the court will um anticipate that there's a rather large filing that contain a lot of actual reports, Your Honor, listening to the court's comments and, and understanding where we were a moment ago when we spoke, I feel like I, I must go through what their disclosures were because there are so many lists um my hope was that they would be limited because they didn't fulfill their disclosure requirement and we did and that put us at quite a disadvantage. Not knowing what their experts will, and, and if they supplement, you certainly can supplement based upon what they supplemented, and I will permit that, and that's kind of the nature of the beast. I do appreciate that. um, and should that become necessary, we'll definitely take you up on that, Your Honor. I, I wanna make a record about some of their expert disclosures though. All of the lab people, they have lab reports and notes, the Idaho State Police Forensics lab, I better be really clear on that. Um. Other than the wiggle room language, which would ask that they not be permitted to have any wiggle room language, the lab reports are fine with the exception of one of the witnesses, Ms. Nowen, that they've disclosed, and there's, she's written no reports. Is that the one they said is a rebuttal witness? They said she might be a rebuttal witness, so they, I suppose now they know what our, our witness is going to say. The um I want to talk about the cast report, the court's heard a lot about the cast report. When I say cast report, that's because that's what it's called. It's really a PowerPoint presentation. There's not any analysis in that. There's. Just this will be my testimony. This is what it's going to be without much more it's a picture and it has some dots and some arrows, Your Honor, that needs to be cleaned up. We need to understand the analysis that went into coming up with those PowerPoint presentations. That's just not plain good enough. I would let the court know that the uh cell phone experts, there's wiggle language in both of those if the court hasn't seen that. Their disclosure number, that's a Mr. Cox, that's a person that has not written a report at all. We have no idea besides the state's

disclosure, what that person's going to talk about. Agent Douglas that I talked about before, I don't think I need to make further record. It's, there's a lot of documents, no analysis, um no opinion stated. We put several of these in our pleadings and so I won't go through all of them. I'm highlighting the ones that we're really concerned about. We have 3 that looked at digital data. The court should understand there's 60 some devices. There's digital data from third party sources, and there are 3 people that are listed with just lists of things. It's Maui, Tanzola, and you're, they have lists of devices or social media accounts that they're going to talk about. That our expert told us would take 3 years to look at every bit of the of the data. So having no clue what's going to happen, I can envision exactly what the court's fear is when we get to jury trial, me wondering if this particular thing was ever disclosed. So I definitely needed to make a record of that. Further with the lab personnel, there's a caveat that says they'll talk about other people's reports and other things that are outside of their report, um, in addition to some of the other wiggle language that I referred to. Your Honor, given that the state is now cautioned to think about those things and submit more. I feel like it's important for us to bring out that. We have a right to confront the evidence that's brought against us. Brian has constitutional rights. United States and state of Idaho constitutional rights for a fair trial and to confront evidence. The expert disclosures are designed to advise us of what the state is going to do. Their disclosures were insufficient. I appreciate what the court said. But exactly what the court's worried about will happen if we don't have better disclosures. There, the jury will be in and out and in and out while we make sure that we have a clean record. We appreciate what the court said today and we'd ask the court to order the state to comply or for the court to exclude anything that hasn't been disclosed so far. So I'm, I'm gonna give like both sides an example of what I expect so you understand there's been talk in this case about DNA. Uh, if somebody's gonna talk about DNA and or your intent is they're going to let the jury understand what DNA is. And essentially going to do a mini course on DNA. I expect to see that in the expert disclosures, not that they're going to do a mini course on the DNA. I expect to see the mini course in the disclosures if that makes sense in terms of what their opinions are, uh, what their, uh, uh, information is that they're conveying that is expert in nature, um, and so it really does behoove both sides to spend the time. To do that. And that's the last I'll say about that. It is probably the most critical thing that you have to do at this point. Prior to trial, Is to ensure that you have not just disclosed but potentially over disclosed uh those opinions uh and what is required by the rule. All right, is there anything else with respect to those? Your Honor, is the court giving the state a new date to fix their disclosures? I, I'm not giving either side a new date. I'm there, there's you, you understand. I think what I expect. Um, so, uh, you can choose to try to supplement those, um, if they are simply expansions of what it is that they've disclosed that are just being more fulsome, I'm probably not gonna have a problem with that given where we're at in advance of trial, and the defense certainly can

look at those and decide that they want to expand or change or whatever their opinions are based on that if it's whole new stuff, then you're gonna have to demonstrate to me, uh, you know, new opinions, new. Uh, lines or even new experts, you're gonna have to demonstrate why you didn't get that in in the timeline. Thank you. OK. Is there anything else that we need to take up today? Nothing from the defense. Um, I don't know whether we're gonna have a Frank's hearing or not. I need to go and do that, but if you don't mind emailing. Um, some dates that you have available in the next. Say 3 weeks uh to do that in the event that we need to do it, I would appreciate that. OK. All right. Well, I appreciate uh everybody's uh work, uh, not just for the hearings this week, but in this case in general, and I uh know how busy you all are, and uh I hopefully have not, um, taken more of your time than is necessary. Um. Travel safe. Thank you. All right, please.