

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
MACON COUNTY, ILLINOIS**

JIM ROOT, )  
)  
Petitioner, )  
)  
v. )  
)  
TONY “CHUBBY” BROWN, as a )  
candidate for Sheriff of Macon County; )  
and JOSH TANNER, as Macon County )  
Clerk Constituting the Election Authority )  
for Macon County, for the General )  
Election held on November 6, 2018, )  
)  
Respondents. )

*For Court Use Only*

Case No. 2018-MR-1027

---

**RESPONDENT TONY “CHUBBY” BROWN’S MOTION TO BAR  
REGARDING PETITIONER’S “TWO REMAINING BALLOTS”**

---

**NOW COMES** the Respondent, TONY “CHUBBY” BROWN, as a candidate for Sheriff of Macon County, by and through his attorneys, Giffin, Winning, Cohen & Bodewes, P.C., and moves the Court as follows:

1. In *Petitioner’s Submission as to Remaining Contested Ballots*, he states that he intends to “as to present evidence as to two remaining ballots that were not included in the count for the Election, nor in the hand recount.”
2. On November 20, 2018, the County Clerk of Macon County proclaimed the results of the November 6, 2018 General Election for the office of Sheriff of Macon County to be:

<b>Candidate</b>	<b>Total</b>
Tony “Chubby” Brown	19,655
Jim Root	19,654

3. Petitioner's *Verified Election Contest Petition* (the "*Petition*"), filed on December 19, 2018, alleged "that two (2) properly cast ballots in this precinct [Hickory Point Township, Precinct 1] were wrongfully not counted and included in the vote totals reported by the election judges and County Clerk."

4. As a general rule, ballots are admissible in evidence in an election contest. *Anderson v. Wierschem*, 373 Ill. 239 (1940); *MacWherter v. Turner*, 52 Ill. App. 2d 270 (4th Dist. 1964). In such a proceeding, the ballots constitute the original evidence of the result of the election if they are in the same condition as when they were cast. *Armbrust v. Starkey*, 3 Ill. 2d 131 (1954); *Strubinger v. Ownby*, 290 Ill. 380 (1919); *Qualkinbush v. Skubisz*, 357 Ill. App. 3d 594 (1st Dist. 2004). Where the preliminary proof shows that the ballots have been preserved and are in the same condition as when they were cast, such ballots are considered the best evidence of the result of the election. *Wood v. Hartman*, 381 Ill. 474 (1942); *MacWherter v. Turner*, 52 Ill. App. 2d 270 (4th Dist. 1964).

5. For ballots to be admissible in an election contest, an adequate foundation must be laid, establishing that they are the same items as found on election night and that their condition has not substantially changed. *Qualkinbush v. Skubisz*, 357 Ill. App. 3d 594 (1st Dist. 2004). For ballots to be *inadmissible* in an election contest, it is not necessary that an unlawful interference with the ballots be shown; rather, it is sufficient to invalidate the ballots as evidence if the opportunity for interference of unauthorized persons existed. *Armbrust v. Starkey*, 3 Ill. 2d 131 (1954); *Qualkinbush v. Skubisz*, 357 Ill. App. 3d 594 (1st Dist. 2004).

6. The Appellate Court has explained:

In order for ballots to be admissible, an adequate foundation must be laid, establishing that they are the same items as found on election night and that their condition has not substantially changed. *Van Hattem v. Kmart Corp.*, 308 Ill.App.3d 121, 134, 241 Ill.Dec. 351, 719 N.E.2d 212 (1999). A proper foundation may be laid “either through identification of the object by a witness or through the establishment of a chain of custody.” *Van Hattem*, 308 Ill.App.3d at 134, 241 Ill.Dec. 351, 719 N.E.2d 212. The chain of custody “must be of sufficient completeness to render it improbable that the object has either been exchanged with another or subjected to contamination or tampering.” *Van Hattem*, 308 Ill.App.3d at 134-35, 241 Ill.Dec. 351, 719 N.E.2d 212. The burden rests upon the proponent of the evidence to prove that the ballots have been kept intact. *MacWherter v. Turner*, 52 Ill.App.2d 270, 273, 201 N.E.2d 325 (1964). It is not necessary that an unlawful interference with the ballots be shown. *Talbott v. Thompson*, 350 Ill. 86, 93, 182 N.E. 784 (1932). Rather, it is sufficient to invalidate the ballots as evidence if “the opportunity for interference of unauthorized persons existed.” *Talbott*, 350 Ill. at 93, 182 N.E. 784; *MacWherter*, 52 Ill.App.2d at 273, 201 N.E.2d 325.

*Qualkinbush v. Skubisz*, 357 Ill. App. 3d 594, 620 (1st Dist. 2004). In that particular case, the Appellate court determined that it was improper to count three ballots discovered after the election.

Here, Skubisz was required to demonstrate a sufficient chain of custody because there was no evidence establishing that the three ballots discovered late on election night as the same ballots discovered in the warehouse. We find that Skubisz failed to demonstrate a sufficient chain of custody. Again, these ballots had been discovered in materials from a precinct not within Calumet City, on or about August 21, during the course of trial, some four months after the election, when the clerk’s office was cleaning out its warehouse. The ballots belonged to precinct three, but were within precinct one materials, and were found within a larger envelope. A note from the election judges from precinct three was found within the envelope discovered on August 21. Although Belmares, the warehouse supervisor, had no knowledge as to what precinct the ballots found on August 21 had been

delivered to, Bieganik, a precinct three election judge, testified that Wilhelm had delivered an envelope to precinct three, presumably containing three absentee ballots. There was no direct evidence, however, as to what was contained in the envelope delivered to precinct three on election day. Although Bieganik testified that he believed it was three absentee ballots from some indication on the envelope, he was not positive because the judges never opened the envelope. In addition, Bieganik testified that the envelope delivered to precinct three on election day was not the same envelope discovered on August 21 and shown to him in court.

Based on the facts of this case, there was no evidence that the ballots discovered on August 21 remained unchanged or were, in fact, the same ballots delivered to precinct three on election night. To the contrary, the evidence was clear that the envelope, at the least, found in the warehouse was not the same envelope delivered to precinct three. There was no evidence identifying for a fact what was contained in the envelope discovered in precinct three. As such, Skubisz could not show there was no opportunity for interference and could not establish a sufficient chain of custody. Accordingly, we find that the trial court did not abuse its discretion in denying admission of these three votes.

*Qualkinbush v. Skubisz*, 357 Ill. App. 3d 594, 620-21 (1st Dist. 2004).

7. Here, the ballots referenced by Petitioner were discovered post-election. Such ballots cannot be presumed to be valid. See *Qualkinbush v. Skubisz*, 357 Ill. App. 3d 594, 620-21 (1st Dist. 2004); *Tuthill v. Rendleman*, 387 Ill. 321, 343-44 (1944).

8. In order to rely on these two ballots, Petitioner has the burden of proving:

- they were kept intact, *Zahray v. Emricson*, 25 Ill. 2d 121 (1962); *Armbrust v. Starkey*, 3 Ill. 2d 131 (1954); *Qualkinbush v. Skubisz*, 357 Ill. App. 3d 594 (1st Dist. 2004); *MacWherter v. Turner*, 52 Ill. App. 2d 270 (4th Dist. 1964);

- they were in the same condition as when properly cast, *Porter v. Greening*, 347 Ill. 434 (1932); *Bethard v. Mink*, 10 Ill. App. 3d 525 (4th Dist. 1973);
- they were so preserved that no reasonable opportunity for tampering with them, *Sargent v. Newell*, 368 Ill. 479; *Talbott v. Thompson*, 350 Ill. 86 (1932); and
- they are the identical ballots voted at the election, *Stevenson v. Baker*, 347 Ill. 304 (1932); *Sibley v. Staiger*, 347 Ill. 288 (1932).

9. The probative value of ballots depends on the care with which they have been preserved. *Anderson v. Wierschem*, 373 Ill. 239 (1940); *Crum v. Green*, 68 Ill. App. 2d 246 (4th Dist. 1964). Overall, Petitioner has the burden of proving that the ballots have been kept intact to establish that the ballots are better evidence of the election result than the returns from the election officials. *Pullen v. Mulligan*, 138 Ill. 2d 21 (1990). If the ballots were actually exposed to the reach of unauthorized persons, no actual evidence of tampering is required. *Bethard v. Mink*, 10 Ill. App. 3d 525 (4th Dist. 1973). The burden is not on the opposing party to prove that the ballots were changed. *Rogers v. Meade*, 363 Ill. 630 (1936).

10. Respondent raised a variety of issues with these two “Found Ballots” in his Second Affirmative Defense.

11. Petitioner cannot meet his burden that the two Found Ballots are better evidence than the certified election results.

12. Excerpts of the Discovery Deposition of Stephen M. Bean are attached hereto as “**Exhibit A**”. Excerpts of the Discovery Deposition of William R. Hutchins are attached hereto as “**Exhibit B**”.

13. Former County Clerk Stephen M. Bean (hereinafter, “BEAN”) has testified as follows:

- a. Sometime after the November 2018 election, BEAN found two ballots on his desk (hereinafter, the “Found Ballots”) with a note on them that they had not been counted. *Bean Deposition*, p. 16, at line 18 - p. 18, line 15.
- b. The Found Ballots were not handled in the manner established by his office. According to BEAN, the voted ballots are supposed to be in a bag with one of the tapes and locked with a clip lock, and, if the lock is broken and bag is opened, one will know. This is done in precinct so it will be known if the bag is tampered with. *Bean Deposition*, p. 22, line 22 – p. 23, line 13; see also *Bean Deposition*, p. 108, lines 12-14 (“the voted ballots are in a blue bag along with a tape that they run”).
- c. BEAN does not know where the Found Ballots came from. Someone else left the Found Ballots on BEAN’s desk, and BEAN put the Found Ballots in an envelope and put the envelope into his office’s vault with the provisional ballots. *Bean Deposition*, p. 26, at lines 2-16; p. 28, at lines 6-7. Thereafter, BEAN forgot about the Found Ballots. *Bean Deposition*, p. 31, at lines 1-7.

- d. The provisional ballots were reviewed the Tuesday before Thanksgiving, but BEAN does not recall seeing the envelope containing the Found Ballots when the provisional votes were counted on the Tuesday before Thanksgiving. *Bean Deposition*, p. 31, at lines 14-17; *Bean Deposition*, p. 32, at lines 10-17.
- e. BEAN did not remember that the two Found Ballots existed until the day after the provisional ballots were reviewed and counted, which was the Wednesday before Thanksgiving. *Bean Deposition*, p. 33, lines 20 – 24.
- f. BEAN did not know if the Found Ballots should be counted. *Bean Deposition*, at p. 34, lines 11-14.
- g. BEAN then contacted JERROLD STOCKS, who was at that time counsel for Petitioner, on the Friday after Thanksgiving to inform him about the two Found Ballots. The County Clerk's office was closed that day, as well as the Saturday and Sunday right after. *Bean Deposition*, p. 36, line 22 – p. 37, line 7; *Bean Deposition*, p. 36, lines 6 – 15.
- h. BEAN knew whose ovals were filled on the Found Ballots and did not contact Respondent Brown. At this meeting, BEAN told STOCKS about the two Found Ballots and that he did not know if the Found Ballots should be counted or not. *Bean Deposition*, p. 37, lines 8-13; *Bean Deposition*, p. 38, at line 24 – p. 39, at line 4; *Bean Deposition*, p. 39, lines 22-23.

- i. BEAN opened the County Clerk's office to meet with STOCKS on the Sunday after Thanksgiving before communicating these issues to Respondent. *Bean Deposition*, p. 41, lines 11-16.
- j. BEAN does not know whether he saw the envelope containing the two Found Ballots between when he put them in the vault and when he saw them at the discovery recount on November 30, 2018. *Bean Deposition*, p. 46, line 14 – p. 47, line 8.
- k. At the discovery recount on November 30, 2018, BEAN stated, as he had stated privately to others (including STOCKS) previously, that he did not know if the two Found Ballots should be counted or not. *Bean Deposition*, p. 49, lines 5-11.
- l. After reviewing the ballots at the discovery recount, BEAN sealed them and put them back in the vault. He does not recall whether the two Found Ballots were in the same envelope that they had been in prior to November 30, 2018. *Bean Deposition*, p. 51, at lines 5-10.
- m. Even though he denied it initially, BEAN knew prior to the discovery recount that Petitioner's ovals were filled on the Found Ballots. *Bean Deposition*, p. 28, at line 21 – p. 29, at line 3.

14. William Hutchins was an election worker at Hickory Point 1. *Hutchins Deposition*, at p. 7, lines 3-4. He has testified as follows:

a. He found four ballots in the overflow bins of the voting tabulators after the polls closed on election day. Two ballots were in the first machine he closed down. These ballots were fed through the second machine before they shut it down so these two ballots were counted. Two ballots were in the second machine he closed down. *Hutchins Deposition*, at p. 15, line 2 – p. 17, line 3.

b. Per protocol, he was supposed to check the overflow bin before shutting the machine down. *Hutchins Deposition*, at p. 16, lines 16 -21.

c. The overflow bins on the tabulators are only supposed to be used if the power goes out or something fails where the machine is not working properly. *Hutchins Deposition*, at p. 15, line 22 - p. 16, line 7.

d. After closing the second, and last, of the two machines, they discovered the two Found Ballots. Because the machines were shut down and the totals had already been run, there was nothing he could do with the Found Ballots, so they put them in an envelope. *Hutchins Deposition*, at p. 17, lines 2-8. However, when asked why they did not put them in a ballot bag, Hutchins stated he could not recall what bag he put the two Found Ballots in. He also said he thought he put them in “some kind of envelope or something.” *Hutchins Deposition*, at p. 17, lines 12-18.

e. Hutchins stated that they took all of the materials, and the other election worker he was with was supposed to give the materials to BEAN, but Hutchins did not witness that occur. *Hutchins Deposition*, at p. 18, lines 2 through 8.

f. The last time Hutchins saw the Found Ballots was when he was still at the precinct when they packed all of the materials up. He did not see the other election worker give the ballots to anyone in particular. *Hutchins Deposition*, at p. 18, lines 9-24.

g. Hutchins did not recall if he put a note on the Found Ballots. *Hutchins Deposition*, at p.19, lines 5-9.

h. Hutchins did not know why the Found Ballots were in the overflow bin on the back of the machine. Nobody knew why they were there. *Hutchins Deposition*, at p. 20, lines 3-13.

i. Hutchins stated “So, the question was did they even come from the County here or from the – yeah- with the ballots in them. I don’t know. \* \* \* That’s a question.” *Hutchins Deposition*, at p. 21, lines 15-19.

j. Hutchins did not know if anybody had checked the overflow bins before they started the machines for the day. This was supposed to be done. *Hutchins Deposition*, at p. 24, lines 14-22.

k. The overflow bin is on the back of the machine. There is no way for a ballot that is fed through the tabulator to end up in the

overflow bin. You would have to walk behind the machine and put it in there. There is an election worker by the tabulator machine who does not allow voters to put a ballot in the overflow bin and will have them feed it through the front of the tabulator machine. *Hutchins Deposition*, at p. 22, line 11 – p. 23, line 18; *Hutchins Deposition*, at p. 66, lines 5-8.

l. Voted ballots go in a bag that is sealed before being transported to the Clerk's office after the polls close. *Hutchins Deposition*, at p. 58, line 1 – p. 59, line 11.

m. Hutchins and the other election worker rode together to take the election ballots and other materials to the Clerk's office. *Hutchins Deposition*, at p. 60, line 16 – p. 62, line 13.

n. Hutchins did not see the bags with the ballots and materials taken into the county building. This was the last he saw of the bags with ballots and materials. *Hutchins Deposition*, at p. 62, at lines 8 -23.

o. Hutchins did not know if the ballots were sealed in the ballot bags. *Hutchins Deposition*, at p. 63, lines 8-12.

p. Hutchins does not know whether the two ballots from the overflow bin are the two Found Ballots that ended up on Beans desk. When asked, he stated "I don't know that, but I'm assuming they are. It may be a bad assumption." *Hutchins Deposition*, at p. 68, lines 19-23.

q. Hutchins stated that he thought the ballots were inserted into a full-sized 8 ½ x 11-inch envelope, but he could not recall the color of the envelope. *Hutchins Deposition*, at p. 76, line 10 – p. 77, line 4.

r. The overflow bin is to be used in situations such as when there is a loss of power. There was no situation that occurred like that where the overflow bin would have been used that day. *Hutchins Deposition*, at p. 78, line 22 – p. 79, line 3; p. 82, line 21 – p. 83, line 2.

s. Hutchins stated he did not know how the two ballots got in the overflow bin but “it would be real nice to know.” *Hutchins Deposition*, at p. 86, line 22 – p. 87, line 3.

15. Accordingly, Petitioner cannot establish a “chain of custody” with regard to the two Found Ballots. Rather, based on the evidence, the Found Ballots were exposed to the reach of unauthorized persons, and, therefore, no actual evidence of tampering need be shown to mandate their exclusion.

16. As a result of the irregularities outlined above, the integrity of the two Found Ballots has been compromised.

17. Based on the foregoing, the two Found Ballots cannot be counted, and this Court should bar Petitioner from presenting any evidence or argument regarding them.

WHEREFORE, the Respondent, TONY “CHUBBY” BROWN, prays that this Court enter an Order as follows:

A. Barring Petitioner from introducing any evidence or making any argument regarding the two Found Ballots; and

B. Granting such further and other relief as this Court deems appropriate and just.

Respectfully Submitted,

**TONY “CHUBBY” BROWN, as a  
candidate for Sheriff of Macon  
County, Respondent**

By: /s/ Christopher E. Sherer  
One of His Attorneys

David A. Herman, ARDC No. 6211060  
dherman@GiffinWinning.com  
Christopher E. Sherer, ARDC No. 6275910  
csherer@GiffinWinning.com  
Matthew R. Trapp, ARDC No. 6284154  
mtrapp@GiffinWinning.com  
GIFFIN, WINNING, COHEN & BODEWES, P.C.  
efile@GiffinWinning.com  
Post Office Box 2117  
Springfield, IL 62705-2117  
(217) 525-1571

**CERTIFICATE OF FILING AND PROOF OF SERVICE**

I hereby certify that on December 17, 2020, I caused to be submitted the foregoing document for filing with the Circuit Clerk for the Sixth Judicial Circuit, Macon County, Illinois by using the Odyssey eFileIL system.

I further certify that the following were served via email on the above date:

John Fogarty, Jr.  
fogartyjr@gmail.com

Keith E. Fruehling  
urbecf@heylroyster.com  
kfruehling@heylroyster.com  
tparker@heylroyster.com

Michael E. Raub  
urbecf@heylroyster.com  
mraub@heylroyster.com  
asnyder@heylroyster.com

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge.

By: /s/ Christopher E. Sherer  
Christopher E. Sherer, Reg. No. 6275910  
csherer@GiffinWinning.com  
GIFFIN, WINNING, COHEN & BODEWES, P.C.  
efile@GiffinWinning.com  
Post Office Box 2117  
Springfield, IL 62705  
(217) 525-1571

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

IN THE CIRCUIT COURT  
OF THE SIXTH JUDICIAL CIRCUIT  
MACON COUNTY, ILLINOIS

JIM ROOT, )  
)  
Plaintiff, )  
)  
- vs - )  
)  
TONY "CHUBBY" BROWN, as a )  
candidate for Sheriff of )  
Macon County; and JOSH )  
TANNER, as Macon County )  
Clerk Constituting the )  
Election Authority for )  
Macon County, for the )  
General Election held on )  
November 6, 2018, )  
)  
Defendants. )

Case No:  
2018-MR-1027

DISCOVERY  
DEPOSITION OF:           STEPHEN M. BEAN  
  
DATE:                     January 14, 2020  
  
TIME:                    10:15 a.m. to 12:46 p.m.  
  
LOCATION:  
  
                              Featherstun, Gaumer, Stocks,  
                              Flynn & Eck, LLP  
                              101 South State Street  
                              Decatur, Illinois  
  
TAKEN BY:                Defendant, Tony "Chubby" Brown  
  
REPORTER:                Deborah A. Krotz, CSR, RMR, CRR  
                              CSR No. 084-001848

**ASSOCIATED COURT REPORTERS, P.C.**

**P.O. Box 684  
Taylorville, IL 62568  
1-800-252-9915**



1 the same after transcription is not waived.

2 This deposition is taken for discovery  
3 purposes, and the same or any part thereof may be  
4 introduced into evidence for any purpose for which  
5 such depositions are rendered competent by Statute  
6 or Rule of Court, and without foundation proof, it  
7 being expressly stipulated that the Reporter, if  
8 called as a witness, would testify that the  
9 questions to the witness as set forth in such  
10 transcript were asked, and the respective answers  
11 thereto were given by the witness, insofar as the  
12 same are otherwise admissible.

13 Any party to this suit may obtain copies of  
14 the deposition from the Reporter at his expense.

15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 **APPEARANCES:**

2 **For the Plaintiff:**

3 Clark Hill  
4 BY: JOHN G. FOGARTY, JR., ESQ.  
5 130 East Randolph Street  
6 Suite 3900  
7 Chicago, IL 60601

8 **For the Defendant,**  
9 **Tony "Chubby" Brown:**

10 Giffin, Winning, Cohen &  
11 Bodewes, P.C.  
12 BY: DAVID A. HERMAN, ESQ.  
13 and MATTHEW TRAPP, ESQ.  
14 P.O. Box 2117  
15 Springfield, IL 62705

16 **For the Defendant,**  
17 **Josh Tanner:**

18 Heyl, Royster, Voelker & Allen  
19 BY: MICHAEL E. RAUB, ESQ.  
20 301 North Neil Street - #505  
21 P.O. Box 1190  
22 Champaign, IL 61824  
23  
24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

I N D E X

WITNESS:	PAGE:
STEPHEN M. BEAN	
EXAMINATION BY MR. HERMAN:	6
EXAMINATION BY MR. FOGARTY:	102
RE-EXAMINATION BY MR. HERMAN:	119

E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE:
Exhibit No. 20	"Using the Emergency Bin"	79
Exhibit No. 21	"summary of some election"	97
Exhibit No. 22	"some other format"	97
Exhibit No. 23	unidentified document	98

Note: Counsel retained the exhibits.

1 the office?

2 A. Well, they bring back -- they bring back  
3 the ballots, the preprinted -- or they bring back  
4 the spindles that, you know, the people sign in on.  
5 They bring back any provisional ballots and their  
6 payroll and so forth. They bring back the two  
7 tabulators or -- in the case of Hickory Point 1 and  
8 12, they brought two tabulators back. And then they  
9 would also bring back the touch screens.

10 Q. Do you remember any issues the night of  
11 the election? Anything arising from Hickory Point 1  
12 or Hickory Point -- Hickory Point 1 and 12 on the  
13 night of the election when those materials were  
14 returned from the precinct?

15 A. Not -- I don't recall anything.

16 Q. Okay. Anything from Hickory Point 7?

17 A. That, again, I don't recall anything.

18 Q. Okay. There's been some discussion about  
19 found ballots in Hickory Point 1. When was the  
20 first time you knew anything about these found  
21 ballots?

22 A. Okay. It would have been, I believe, to  
23 the best of my knowledge, I think it was Thursday  
24 afternoon.

1 Q. What Thursday afternoon?

2 A. Well, it was the Thursday following the  
3 election.

4 Q. Okay.

5 A. As best I can remember. On my desk, there  
6 were two ballots, and they --

7 Q. Hold on. On your desk?

8 A. Yeah, my desk.

9 Q. Okay.

10 A. They brought -- somebody brought -- One of  
11 the employees brought them over.

12 Q. Do you remember what employee brought them  
13 over to you?

14 A. That, I can't recall.

15 Q. So there were two ballots that should have  
16 been secured somewhere; correct?

17 A. They were -- From what I was told, they  
18 were in there with the provisional ballots.

19 Q. Okay. So who told you they were in with  
20 the provisional ballots?

21 A. I believe Fred did.

22 Q. What's Fred's last name?

23 A. It's C-A-R-B-A-N-O or something like that.

24 Q. So when you first saw them, were you at

1 your desk?

2 A. I was at my desk. They were laying on my  
3 desk. They had a note on --

4 Q. Hold on. When --

5 A. Okay.

6 Q. -- you walked into -- I don't know your  
7 office. When you walked into your office, there  
8 were two ballots sitting on your desk? Or did  
9 someone bring them to you while you were sitting at  
10 your desk?

11 A. They were on my desk.

12 Q. Okay. How did you come to find out where  
13 these two ballots came from?

14 A. Okay. They had a note on there that they  
15 weren't counted. They had got --

16 Q. What did the note say?

17 A. To the best of my recollection, it just  
18 said that they weren't counted. I didn't -- And I  
19 looked at the ballots. They were from Hickory Point  
20 1.

21 Q. Okay. So on Thursday afternoon, you show  
22 up in your office, and there's two ballots on your  
23 desk with a sticky that said --

24 A. Well, not sticky.

1 Q. Have you ever had just ballots show up on  
2 your desk after an election has been certified that  
3 say, "These should be counted"?

4 A. No.

5 Q. Okay. You've never had that before?  
6 Okay. Yes?

7 MR. FOGARTY: Object as to form. This  
8 wasn't the Thursday after.

9 BY MR. HERMAN:

10 Q. Okay. I'm sorry. After the election,  
11 prior to certification, have you ever had that  
12 before?

13 Tell you what. Let's start back, because  
14 I'm confused. I thought these ballots were supposed  
15 to be in Ziploc secured bags.

16 A. Okay, the --

17 Q. Hold on.

18 A. Okay.

19 Q. What's your ballot protocol? Because, to  
20 me, two ballots floating around seems to be odd.  
21 How are ballots supposed to be handled? That's a  
22 better question. I'm sorry. How are ballots  
23 supposed to be handled when they come to your  
24 office?

1           A.     Okay. The voter ballots are supposed to  
2 be in a bag --

3           Q.     Okay.

4           A.     -- with one of the tapes and locked.

5           Q.     Is it an actual lock? Is it a zip tie?

6           A.     It's a clip lock.

7           Q.     That if it's opened, it breaks, so you  
8 know --

9           A.     Right.

10          Q.     So basically once they do it in-precinct,  
11 they can tell if it's been tampered with if you guys  
12 get it?

13          A.     Correct.

14          Q.     Okay. We don't -- Did you ever find out  
15 where these ballots came from? Were they in one of  
16 those boxes? Did Fred tell you where he got them?

17          A.     He said they were in with the -- there --  
18 I can't remember.

19          Q.     You can't remember? Okay. So you don't  
20 remember what Fred said where they came from?

21          A.     No.

22          Q.     Okay. What did you do after you talked to  
23 Fred about these two ballots?

24          A.     Well, the first thing I thought was, you

1 in the office. And, like I say, that, and we had  
2 press inquiries about the touch screen. So I just  
3 put everything in -- I put it in an envelope and  
4 sealed it -- or put it in an envelope. I believe I  
5 sealed it. And I put it back into the vault.

6 Q. And where did you place it in the vault?

7 A. It was with the other -- where we kept the  
8 provisional ballots.

9 Q. Okay. So are those -- Is it a box? Is it  
10 a case?

11 A. It's a -- you know -- and the rest of  
12 those were sealed. So it was a box at the time.

13 Q. Okay. So you say the rest of what were  
14 sealed?

15 A. The -- you know -- all the provisional  
16 ballots.

17 Q. Okay. And I want to make sure I  
18 understand. What is in your provisional ballot  
19 bin/box? What kind of ballots are in there?

20 A. Okay. The provisional ballots are ballots  
21 that the judges have a question about whether -- For  
22 some reason, they didn't allow the individual to  
23 vote that day in the precinct. And it's -- A  
24 provisional ballot is a ballot that we have to

1 three sheets of paper, the two ballots?

2 A. I just put them in an envelope.

3 Q. Okay. And did you seal it with a sticky?  
4 Was it a -- What happened?

5 A. That, I can't recollect.

6 Q. Okay. And you put it in the provisionals?

7 A. Yes, sir.

8 Q. Okay. And so what did you next do with  
9 those ballots that were in the provisional -- The  
10 last you saw them, they were in the provisional box  
11 in your vault; right?

12 A. Yeah.

13 Q. Okay. What happened next that you had to  
14 do with those ballots?

15 A. That's where I can't remember.

16 Q. Okay. Do you remember, when they were on  
17 your desk, did you actually look to see who voted  
18 for what, because you had two tight elections, both  
19 the Londrigan election and the Sheriff's race? Did  
20 you look --

21 A. I just saw they were voted.

22 Q. Okay. You didn't look at the ballots?

23 A. I mean, I did, but I can't -- you know --

24 I --

1 Q. Okay.

2 A. I mean, I -- I -- I --

3 Q. You saw them. You didn't inspect them?

4 A. I did, and I -- you know -- it -- I -- you  
5 know -- I might have saw what they voted for. I --  
6 I --

7 Q. But they were not in an envelope? You saw  
8 two ballots on your desk?

9 A. Yes.

10 Q. You reviewed those two ballots?

11 A. Yeah.

12 Q. You don't recall what's on those two  
13 ballots at that time?

14 A. No. I mean, the Sheriff's race, I might  
15 have looked at, and the -- Yeah, I mean ...

16 Q. Well, there was a big reveal in your --  
17 the day of discovery, is my understanding in the  
18 hallway, where you took them out of an envelope and  
19 indicate, "Oh, there are two votes for Root."

20 Did you already know before you opened  
21 them up in the hallway who the votes were for?  
22 That's basically what I'm asking, sir. I'm sorry.  
23 I will just cut right to the chase.

24 A. Yeah, I probably did.

1 about these two ballots. When did you have anything  
2 to do with these two ballots either in your  
3 investigation or physically in touching, looking at,  
4 or anything with these ballots?

5 A. I -- we -- you know -- Like I say, we had  
6 a three-day weekend. I stayed totally away from the  
7 office. And then I think I forgot about them.

8 Q. Okay.

9 A. Honestly.

10 Q. That' --

11 A. And, I mean, I --

12 Q. So then you remembered somehow?

13 A. I --

14 Q. Well, let me go back, because the Tuesday  
15 before Thanksgiving, you did the provisional counts;  
16 right?

17 A. Yeah.

18 Q. Okay. So was the white envelope in the  
19 provisional box where you had put it?

20 MR. FOGARTY: Object as to form. I'm not  
21 sure it's been established it was a white  
22 envelope. If I'm wrong --

23 BY MR. HERMAN:

24 Q. I thought you said a white envelope.

1 A. I don't know. I don't know.

2 Q. Okay. The envelope. Okay. The envelope.

3 A. Okay. I --

4 Q. Fair enough. I'm not trying to --

5 MR. FOGARTY: No, no.

6 THE WITNESS: Okay. I don't -- I -- I  
7 don't have any recollection of that on the  
8 Tuesday.

9 BY MR. HERMAN:

10 Q. So where you placed it in your vault in  
11 the provisional area -- I don't know if it's a bin,  
12 a box --

13 A. Yeah.

14 Q. -- you placed it in there. And then when  
15 you were dealing with provisional ballots, you don't  
16 remember seeing them?

17 A. No.

18 Q. Okay. So you forgot about them. So your  
19 memory wasn't jogged by seeing the envelope you  
20 placed them in?

21 A. No.

22 Q. Okay. Did you handle the provisional  
23 counts?

24 A. Well, my -- my employees, Fred and Mickey,

1 they went through them, and then I go through them.  
2 And -- Because that was where, you know, all our  
3 inquiries were coming on --

4 Q. Sure.

5 A. -- was how many did we have in, you know,  
6 how many more mail-ins did we get. And so that  
7 became my main worry, because that's where we were  
8 getting all our inquiries.

9 Q. Okay. But that Tuesday was to handle the  
10 provisionals?

11 A. Yeah.

12 Q. And you had put these two ballots in the  
13 provisional?

14 A. Yeah. I thought I did.

15 Q. Okay. You thought you did?

16 A. Okay.

17 Q. And no further investigation at this  
18 point?

19 A. No, sir.

20 Q. Okay. When do you remember about these  
21 two ballots after you did the provisionals?

22 A. Not until the following day.

23 Q. The Wednesday before Thanksgiving?

24 A. The Wednesday before Thanksgiving --

1 Q. Okay.

2 A. -- and all of a sudden, I thought -- you  
3 know -- I thought about it.

4 Q. Okay. And so what did you do when you  
5 thought about that, "I had these two votes" --  
6 sorry -- "I have these two ballots."

7 A. Yeah.

8 Q. "Oh, my gosh. I just certified the  
9 election."

10 A. Yeah.

11 Q. "I have these two ballots. I don't know  
12 if they should be counted" -- Well, at that time,  
13 did you know whether they should be counted or not?

14 A. No.

15 Q. If you thought they should have been  
16 counted at that time, you would have counted them?

17 A. I hadn't finished my --

18 Q. I understand.

19 A. -- review. And so, I mean, at that time,  
20 I wasn't sure.

21 Q. Okay. So when you remembered on  
22 Wednesday, right before Thanksgiving --

23 A. Yes.

24 Q. -- what did you do?

1 any specifics about the conversation?

2 A. No, I didn't, sir.

3 Q. Okay. But it was more just general  
4 questions?

5 A. General questions and so forth.

6 Q. Okay. And your office is closed for the  
7 holiday weekend when you left? It's closed on  
8 Thanksgiving?

9 A. Yes, sir.

10 Q. It's closed on the Friday after  
11 Thanksgiving?

12 A. Yes.

13 Q. And Saturday and Sunday after  
14 Thanksgiving?

15 A. Correct.

16 Q. But somehow how you got ahold of Jerry?

17 A. Okay. What I did -- I didn't have Jerry's  
18 number.

19 Q. You did have Jerry's number?

20 A. I did not have Jerry's number.

21 Q. Okay. You did not. Okay.

22 A. I did not have Jerry's number. I sent  
23 Helen -- oh -- Albert, who works for -- I had her --  
24 her -- I had been texting her over the Congressman's

1 campaign and so forth. So I just texted her, and I  
2 said, "Can you get ahold of Jerry Stocks? I'd like  
3 to talk to him."

4 Q. Okay. And what did you intend to do? Why  
5 did you want to get ahold of Jerry?

6 A. I just wanted to inform him that -- about  
7 the two ballots.

8 Q. Okay. And do you recall if at that time  
9 you knew they were both ballots for Root?

10 A. I did, but I didn't say anything to him.

11 Q. Okay. And you didn't -- Did you call or  
12 try to call Mr. Brown?

13 A. No.

14 Q. Why did you call Mr. Stocks and not Mr.  
15 Brown?

16 A. Because they had said that they were going  
17 to -- they were going to do a discovery. And I  
18 thought that they should know about that.

19 Q. Okay. So you have an election with one  
20 vote difference. You have two ballots that may or  
21 may not be counted; right?

22 A. Yeah.

23 Q. And you called one of the candidates and  
24 not both?

1           A.     I know. That was a mistake.

2           Q.     Okay. Just an oversight on your part?

3           A.     Yeah.

4           Q.     Okay. Because my understanding is once  
5 the discovery recount was filed, everybody was  
6 copied on all communications. Is that true? Both  
7 sides?

8           A.     Yeah, I mean, during -- What I did,  
9 because I kept getting things from all the  
10 campaigns, I started, when I did an e-mail to talk  
11 about how many, you know, provisional or how many  
12 provisionals we had or how many outstanding -- or  
13 how many mail-in ballots came in or how many mail-in  
14 ballots were returned, I felt it was easier just to  
15 send it to the two party chairmen and anybody that  
16 was interested.

17          Q.     Okay.

18          A.     I mean, I had inquiries from Mr. Brown and  
19 Mr. Root's and the two candidates for Congress and  
20 some other people and their campaigns, and I just  
21 sent it to everybody.

22          Q.     Okay.

23          A.     And ...

24          Q.     So you called Jerry. And what did you

1 tell Jerry on Friday?

2 A. I told Jerry about the possibility of the  
3 two ballots. I didn't know if they should be  
4 counted or not.

5 Q. Okay. Somehow Jerry got to your office?

6 A. Yeah.

7 Q. Okay. How did Jerry get to the Clerk's  
8 Office that was closed on Friday?

9 A. I met him.

10 Q. Did you ask him to come down?

11 A. I told him I wanted to talk to him.

12 Q. Okay. And when you got in the Clerk's  
13 Office, what did you guys talk about?

14 A. I just told him that -- I just told him  
15 about ...

16 Q. Go ahead. Yes. What happened?

17 A. I just -- I told him about that -- the  
18 situation with the ballots, that I could not -- that  
19 I had got them, and I had set them aside, and I had  
20 forgotten about them.

21 Q. Okay.

22 A. And so I told him, I said, "I couldn't  
23 tell if they should be counted or not."

24 Q. How long did that conversation last or

1 about the two ballots?

2 A. Yeah. That was it.

3 Q. Okay. And then you went home?

4 A. Yes.

5 Q. No more communications with Mr. Stocks or  
6 Mr. Root's camp?

7 A. Not until they wanted to meet on -- They  
8 were worried about a timeline of filing the  
9 discovery recount, so they wanted to meet on a --  
10 meet Sunday.

11 Q. Okay. So you opened the office again when  
12 it was closed?

13 A. Yes, sir.

14 Q. Okay. And at this point, you still hadn't  
15 communicated with the opposing candidate, Mr. Brown?

16 A. No.

17 Q. Okay. So now you've had two meetings with  
18 Mr. Root's team and a telephone call -- or,  
19 actually, two telephone calls, one on Wednesday, and  
20 one on Friday; correct?

21 A. Well, not on Wednesday.

22 Q. Oh, I thought you said Jerry called -- I'm  
23 sorry.

24 A. No. I met with Jerry on Wednesday.

1 box in the office? Or when you left that office,  
2 was that box still in the office?

3 A. That, I can't tell you.

4 Q. Okay. Hold on. Is that -- You don't know  
5 what it is, so you don't know where you would have  
6 gotten that box?

7 A. No.

8 Q. Okay. We'll get the video and ...

9 Okay. At this point, when you met with  
10 Root's camp the two times on Sunday, had you seen  
11 the ballots that you had placed in the envelope  
12 since placing them in the envelope in the vault?

13 A. I can't recollect.

14 Q. Okay. When is the next time you recollect  
15 ever seeing the envelope that contained the two  
16 ballots or the two ballots themselves?

17 A. That, I can't tell you.

18 Q. Okay.

19 A. I know I -- I mean, I must have saw them  
20 on Friday.

21 Q. On which Friday?

22 A. The Friday of the discovery.

23 Q. Okay. On the discovery recount day?

24 A. Yeah. Yeah.

1 Q. Was that the 30th?

2 A. Yeah. It was the last day I was in  
3 office.

4 Q. Okay. So to the best of your recollection  
5 as you sit here, the discovery recount day,  
6 November 30th, was the next time you saw the two  
7 ballots?

8 A. Yes. Yes.

9 Q. Were they still in the same envelope that  
10 you placed them in?

11 A. Yes.

12 Q. Where did you get the envelope from?

13 A. It was from -- It was one of our stock  
14 envelopes.

15 Q. No, where did you get the envelope with  
16 the two ballots?

17 A. It was in our vault.

18 Q. Where at in your vault, if you remember?

19 A. I can't really tell you.

20 Q. Okay. And then you called -- What  
21 happened at the discovery recount with these two  
22 envelopes on November 30th?

23 A. Well, I mean, it -- I said I hadn't -- I  
24 can't remember exactly what I said or did.

1 that you touched the ballots from the Tuesday was  
2 the Friday of the discovery recount. What happened  
3 with the ballots on that day? Or what did you do  
4 with the ballots on that day?

5 A. Okay. They went through -- They started  
6 the discovery. And then I -- I remember -- I don't  
7 know how I did it, but I brought up the fact that  
8 there were two ballots.

9 Q. Okay.

10 A. I -- you know -- I didn't know if they  
11 should be counted or not.

12 Q. And you told the parties that?

13 A. Yeah. I believe so --

14 Q. Okay.

15 A. Because --

16 Q. Had you done any more investigation? I  
17 apologize. I didn't ask that question.

18 A. Okay. I -- I -- I never called anybody  
19 else. I went through the spindles myself, and I  
20 didn't find, you know, where there was any missed  
21 ballots or anything. At some time, I had Mickey,  
22 who worked for me --

23 Q. Okay.

24 A. I don't know if her or Fred went through

1 nothing -- I had certified the election. The only  
2 way that -- you know -- you know -- was just going  
3 to have to be something like this to solve the  
4 problem.

5 Q. Okay. So after the reveal of these  
6 ballots to both sides at the first day of discovery  
7 recount on November 30th, what was the next thing  
8 you did with these two ballots?

9 A. They looked at them, and I sealed them  
10 back up and put them back in the vault.

11 Q. Okay.

12 A. I believe Mr. Sheldon had come in. Mr.  
13 Sheldon went through the spindles --

14 Q. Okay.

15 A. -- as part of their discovery.

16 Q. Do you remember if he did that at the  
17 beginning of the day, the middle of the day, or  
18 anything?

19 A. I can't tell you when.

20 Q. Okay.

21 A. Because we had numerous -- numerous --

22 Q. A lot of stuff was going on?

23 A. Yeah. I mean, what -- we had -- we had --  
24 you know -- They were going through the ballots, and

1 Q. Okay. Is this one of many boxes, or is  
2 there just generally a box that looks like that?

3 A. No, I mean, there's -- it counts on the  
4 size of the precinct how many ballots. When you had  
5 a thousand ballots, I can't tell you how many go  
6 into it. So there's some -- Hickory Point 1 and 12  
7 had several thousand ballots, so there could have  
8 been multiple boxes. So I don't -- I don't remember  
9 that box at all.

10 Q. Okay. As ballot materials come in on  
11 election night from a precinct, you testified that  
12 they should be in bags; is that right?

13 A. The voted ballots are in a blue bag along  
14 with a tape that they run.

15 Q. Okay.

16 A. Some precincts, like this precinct,  
17 Hickory Point, you know, some precincts or polling  
18 locations -- they have more than one precinct --  
19 they would have a bag, and in one of them, we would  
20 put -- the judges are supposed to put the tape that  
21 they run so we know how many. Because what we have  
22 to do with a retab is take that tape from that night  
23 and do -- independently, the State does a -- you  
24 know -- we have to reconcile. And then what we --

IN THE CIRCUIT COURT  
OF THE SIXTH JUDICIAL CIRCUIT  
MACON COUNTY, ILLINOIS

JIM ROOT,

Plaintiff,

- vs -

TONY "CHUBBY" BROWN, as a  
candidate for Sheriff of  
Macon County; and JOSH  
TANNER, as Macon County  
Clerk Constituting the  
Election Authority for  
Macon County, for the  
General Election held on  
November 6, 2018,

Defendants.

Case No:  
2018-MR-1027

DISCOVERY

DEPOSITION OF:

WILLIAM R. HUTCHINS

DATE:

January 14, 2020

TIME:

8:30 a.m. to 9:56 a.m.

LOCATION:

Featherstun, Gaumer, Stocks,  
Flynn & Eck, LLP  
101 South State Street  
Decatur, Illinois

TAKEN BY:

Defendant, Tony "Chubby" Brown

REPORTER:

Deborah A. Krotz, CSR, RMR, CRR  
CSR No. 084-001848

**ASSOCIATED COURT REPORTERS, P.C.**

**P.O. Box 684**

**Taylorville, IL 62568**

**1-800-252-9915**



1 the same after transcription is waived.

2 This deposition is taken for discovery  
3 purposes, and the same or any part thereof may be  
4 introduced into evidence for any purpose for which  
5 such depositions are rendered competent by Statute  
6 or Rule of Court, and without foundation proof, it  
7 being expressly stipulated that the Reporter, if  
8 called as a witness, would testify that the  
9 questions to the witness as set forth in such  
10 transcript were asked, and the respective answers  
11 thereto were given by the witness, insofar as the  
12 same are otherwise admissible.

13 Any party to this suit may obtain copies of  
14 the deposition from the Reporter at his expense.

15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**APPEARANCES:**

**For the Plaintiff:**

Clark Hill  
BY: JOHN G. FOGARTY, JR., ESQ.  
130 East Randolph Street  
Suite 3900  
Chicago, IL 60601

**For the Defendant,  
Tony "Chubby" Brown:**

Giffin, Winning, Cohen &  
Bodewes, P.C.  
BY: DAVID A. HERMAN, ESQ.  
and MATTHEW TRAPP, ESQ.  
P.O. Box 2117  
Springfield, IL 62705

**For the Defendant,  
Josh Tanner:**

Heyl, Royster, Voelker & Allen  
BY: MICHAEL E. RAUB, ESQ.  
301 North Neil Street - #505  
P.O. Box 1190  
Champaign, IL 61824

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

I N D E X

WITNESS:	PAGE:
WILLIAM R. HUTCHINS	
EXAMINATION BY MR. HERMAN:	6
EXAMINATION BY MR. FOGARTY:	56
EXAMINATION BY MR. RAUB:	73
RE-EXAMINATION BY MR. HERMAN:	80
RE-EXAMINATION BY MR. FOGARTY:	84
FURTHER RE-EXAMINATION BY MR. HERMAN:	86
RE-EXAMINATION BY MR. RAUB:	87
FURTHER RE-EXAMINATION BY MR. HERMAN:	88

E X H I B I T S M A R K E D

EXHIBIT	DESCRIPTION	PAGE:
Exhibit No. 19	excerpt from the Election Judge Manual	90
Exhibit No. 20	election magazine excerpt	91

(Note: Exhibits were retained by Counsel)

1 election worker in the November 2018 election.

2 A. Yes.

3 Q. Okay. Were you at Hickory Point 1?

4 A. Yes.

5 Q. What is your training as an election  
6 worker?

7 A. A couple of times I've come down to the  
8 courthouse -- or not courthouse -- county building,  
9 and they'll give a -- they'll give a seminar, hour  
10 to two-hour seminar on what are the procedures and  
11 what needs to be done.

12 Q. Okay. Were you, on the date in question,  
13 which is the election -- That's all we're talking  
14 about is the election day; okay?

15 A. Okay.

16 Q. What time did you get to Hickory Point 1?

17 A. Right about a quarter -- 5:30 or a quarter  
18 to 6:00 --

19 Q. And what --

20 A. -- in the morning.

21 Q. Okay. And what time did you leave?

22 A. Around 7:30, quarter of 8:00.

23 Q. Okay. What was your responsibility when  
24 you were at Hickory -- Well, let me go back. Where

1           A.     Okay.    Okay.

2           Q.     Do you remember discovering, finding two  
3 ballots?

4           A.     I remember finding, discovering four  
5 ballots.

6           Q.     Okay.

7           A.     But I want to clarify, because that  
8 implies something.  When we closed down for the day,  
9 I had never closed the tabulators down.

10          Q.     Okay.

11          A.     And since then -- and even that night, Mr.  
12 Bill said to me, he says, "Don't you know you're  
13 supposed to check those overflow bins in back?"

14                 And I says, "Yeah, we covered that in  
15 class."

16                 But I closed the first machine down,  
17 printed out the ballots and everything, tore it all  
18 apart, and then I opened up the overflow, and there  
19 were two ballots in there --

20          Q.     Okay.

21          A.     -- which was unusual.

22          Q.     And tell me what the overflow bin is.

23          A.     There's a bin on the back of the tabulator  
24 machine, and it doesn't take overflows

1 automatically. It's if the power goes out or  
2 something fails, all the ballots can still be marked  
3 electronically or touch screen -- or manually or  
4 touch screen-wise. You take those ballots, and you  
5 put them in that bin in the back of the thing. It's  
6 not super big, but there is room to put them in, and  
7 then they can be counted at the appropriate time.

8 Q. Okay.

9 A. I tore the first machine down. There were  
10 two ballots in there. And I says, "What do I do?"

11 Well, I ran them -- I think I talked with  
12 Bill, I think.

13 Q. Okay.

14 A. Talked with Bill. We ran them through the  
15 machine that was still up. That's good.

16 Now same thing happened on the second  
17 machine. Now why after I did the first machine I  
18 didn't check the overflow before I shut the machine  
19 down, I don't know. But that's just the way it was.  
20 And everybody says, "Don't you know you're supposed  
21 to check those first?"

22 Yes, I know. Bill told me that night.  
23 Lady down here, I think it was, told me that night.  
24 And I talked with Steve Bean. He says, "Don't you

1 know you're supposed to check that?"

2 I says, "Yes, I know that. But I did not  
3 do it." Anyway, I had two extra ballots --

4 Q. Okay.

5 A. -- that the machines were shut down. We  
6 had already run the totals off of them. So there's  
7 nothing I can do with them. I says, "What should I  
8 do?" And we put them in an envelope. And he says,  
9 "Let's take them down and give them to Steve Bean."

10 Q. "He," being the other Bill?

11 A. Mr. Bill, yes.

12 Q. And why didn't you put them in the  
13 Ziploc -- or the bag, the ballot bag?

14 A. I don't remember what bag exactly we put  
15 them in.

16 Q. Okay.

17 A. But I thought we put them in some kind of  
18 envelope or something. But we had them to where I  
19 don't believe people could read them. In fact, I  
20 don't even know what was on them because I didn't  
21 read them. It wasn't any concern of mine. It's  
22 just -- It's another ballot.

23 Q. Right. And was that in the envelope --  
24 Where did you put the envelope? Was that in the

1 group of materials that you --

2 A. It was all of the materials we took down.  
3 It was my understanding that -- giving all  
4 secondhand testimony here -- but Bill was supposed  
5 to give those to Steve.

6 Q. Okay. Do you know if Bill gave them to  
7 Steve? Did you witness it?

8 A. I did not witness it.

9 Q. Okay. When was the last time you saw  
10 these two disputed ballots, that you personally had  
11 eyes on them?

12 A. Out at Hickory Point 1 and 12. At the  
13 Hickory Point polling place.

14 Q. Well, let me ask you a better question.  
15 You saw Bill put them in the envelope, or did you  
16 put them in?

17 A. No, I put them in.

18 Q. Okay. When's the last time you saw that  
19 envelope?

20 A. When we packed everything up and brought  
21 it down.

22 Q. Okay.

23 A. I did not see him give it away to anybody  
24 in particular.

1 Q. Okay. When you put it in the envelope,  
2 did you put any -- did you affix the two ballots  
3 together in any manner?

4 A. Staple them? Clip them? No.

5 Q. Okay. Did you put any notes on it or see  
6 anybody put any notes on the ballot, the envelope,  
7 anything about them?

8 A. Unknown. I hate to say that, but I do not  
9 know.

10 Q. You don't know? That's fair enough.  
11 That's all we're trying to figure out is what  
12 happened.

13 A. Just the facts, sir.

14 Q. Who did you talk to about the ballots?

15 A. Bill.

16 Q. Anybody else that --

17 A. No, because he was what I would consider,  
18 yes, in charge there, and -- as much as anybody.  
19 And I knew he was going to be taking the stuff back  
20 down. And there wasn't anybody else to really get  
21 the answer from.

22 Q. Okay. I'm going to hand you what's marked  
23 Deposition Exhibit 12. All it is is what's been  
24 purported to me to be a list of people that worked

1 that day. I just want to remind of you who was  
2 there and maybe if you talked to anybody else about  
3 the ballots that are at issue --

4 A. Talked to them that day?

5 Q. Yeah. Maybe. Or even after. I don't  
6 care when you talked to them. I just want to know  
7 if anybody else has any information that we can  
8 maybe find out what's going on.

9 A. At the risk of implicating people, I did  
10 talk with Charles and Kay Antrim later about -- I  
11 says, "You know, this all went on, because" --

12 Q. Just a second. Antrim is A-N-T-R-I-M. Go  
13 ahead, sir.

14 A. Okay. Yes, Charles and Kay.

15 Q. Okay.

16 A. And I know them outside of the voting.  
17 And I talked to them. I says -- because it had been  
18 in the paper about two extra ballots. Where did two  
19 ballots come from? Where did two ballots come from?  
20 Well, I knew where two ballots come from. We had  
21 two extra ballots up there.

22 Q. That night, did you guys try to see if  
23 they were extra ballots, or did you make any  
24 investigation that night when you were closing the

1 machines about these two ballots?

2 A. Investigation?

3 Q. As to why they were in the back of the  
4 machine? Did you do any investigation, you or Bill,  
5 or know of anyone who did to try to figure out what  
6 was going on?

7 A. No, I don't know. I believe there was a  
8 little bit of conversation -- believe there was a  
9 little conversation. And nobody -- it's nobody's  
10 responsibility to stick anything in those overflow  
11 bins. And that was the general -- What little was  
12 said, that was the only comment. What were they  
13 doing there? Nobody knew.

14 Q. And --

15 A. So the question was did they even come  
16 from the County here or from the -- yeah -- with the  
17 ballots in them. I don't know.

18 Q. Okay.

19 A. That's a question.

20 Q. So --

21 A. All I know is the first two I pulled out,  
22 I ran through the second machine. The second two, I  
23 didn't have a machine to run them through any  
24 longer.

1 Q. And I want to make sure I understand.  
2 When you say an overflow ballot, the machine -- I  
3 don't know the type. We'll ask Mr. Bean or Mr.  
4 Tanner if they can tell us -- that you had as a  
5 tabulator, but if I run it through the front --

6 A. Yes.

7 Q. -- does it go from the front to the  
8 overflow or is the overflow like in the side  
9 somewhere or in the back like a slot in a mailbox?  
10 I'm not familiar with the machine.

11 A. The overflow is on the back of the unit.

12 Q. Okay.

13 A. There is no physical connection between  
14 the two. There's no way to put anything in. It's a  
15 solid wall in there. You can't -- It doesn't  
16 automatically feed anything -- it could never feed  
17 anything. Even if the receptacle was full of  
18 ballots, it still couldn't put them into there,  
19 because there's no door to get in there.

20 Q. It's physically barred --

21 A. Yes.

22 Q. -- if it goes in the front of the machine  
23 to get into what we are describing today as the  
24 overflow area?

1           A.     It's barred from getting in there, yes.

2           Q.     So how does -- How would a ballot -- If  
3 I'm a voter and I don't know what I'm doing, and  
4 rather than feed it through the front of the  
5 machine, would I have to go behind the machine? I  
6 mean, where's the slot to get into this overflow bin  
7 area?

8           A.     Okay. Your tabulator. You walk up to the  
9 front. And behind, there is a -- is the overflow  
10 bin and a slot in there that it can go in. You  
11 would have to physically walk behind and put it in  
12 there. Typically, there's the gentleman -- and I  
13 don't -- I didn't run the tabulator machine all day.  
14 There's somebody there to, yeah, feed it in. Feed  
15 it in. And it'll automatically read it. And they  
16 don't have the opportunity to walk around behind,  
17 because somebody's there saying, "No, feed it in the  
18 front."

19          Q.     Were the machines out in the middle of the  
20 room to allow people to come from behind?

21          A.     They're off to one side against the wall,  
22 off to the north side against the wall.

23          Q.     But the back of the machine was adjacent  
24 to a wall?

1           A.     Adjacent to a wall, roughly yea far away.

2           Q.     When you say "yea far" --

3           A.     A foot.

4           Q.     Okay.

5           A.     It was not slammed up within 4 inches of  
6     it.

7           Q.     That's fine. I'm just trying to --

8           A.     Yeah. Exactly.

9           Q.     And you had not one, not two, but four  
10    ballots in -- two ballots in two different machines  
11    is my understanding?

12          A.     Yes. And that was a real mystery to me.  
13    We had never run into that before.

14          Q.     And you don't know if anybody checked the  
15    bins before the machines were set up?

16          A.     When they opened the machines up -- And  
17    when I say open, I mean, start the machines for the  
18    day, I don't know if anybody opened them up to  
19    check. That is part of what's supposed to be done.  
20    But nobody allowed that they opened up and that  
21    there was nothing in there. I didn't ask anybody  
22    that.

23          Q.     Okay. Okay. And the day in question, do  
24    you remember who you discussed with, "Hey, I've

1 Q. Okay. Voted ballots go in that bag?

2 A. Yes.

3 Q. Okay.

4 A. They've got a separate bag that it all  
5 goes together, yes.

6 Q. Okay. Did all of your materials fit into  
7 one bag?

8 A. I think there was a couple of bags.

9 Q. Okay. All right.

10 A. Too much material for one.

11 Q. Yeah. All right. Do you remember if it  
12 was two or three bags or --

13 A. No.

14 Q. Okay. More than one?

15 A. I believe two, but, hey, I don't know.

16 Q. All right. Were you and Bill the only  
17 individuals who packed up those bags?

18 A. No. In fact, I was not in on actually  
19 packing the bags.

20 Q. Okay.

21 A. I can't tell you who all was involved with  
22 packing up the bags.

23 Q. Okay.

24 A. Whoever brings in the materials they've

1 got, so you could say multiple people were probably  
2 involved with it.

3 Q. Okay.

4 A. But I don't know that physically.

5 Q. Okay.

6 A. I didn't stand there and watch.

7 Q. Okay.

8 A. I don't know.

9 Q. Are the bags, prior to being transported  
10 to the Clerk's Office, sealed in any way?

11 A. Yes.

12 Q. Okay. How do you know that?

13 A. How do I know that? Boy. I can't give  
14 you a good answer on that.

15 Q. Okay.

16 A. I can't give you an answer.

17 Q. In your training, is there some --

18 A. There's some sort of sticker that goes  
19 across them, as I recall. But I'm not a hundred  
20 percent clear on that.

21 Q. Okay.

22 A. But there is something that is done.

23 Q. And what would the purpose of the sticker  
24 be?

1           A.     So that if it's opened, you know that it's  
2     been opened.  It's not like it left us.

3           Q.     Okay.  Did you view the ballot materials  
4     in bags with seals on them?

5           A.     Say that again.

6           Q.     After the ballot -- After the material  
7     bags were packed up --

8           A.     Yes.

9           Q.     -- did you view them with seals on them?

10          A.     Unknown.  I do not recall.

11          Q.     Okay.

12          A.     So I'm going to say no.

13          Q.     Okay.  That's fair enough.

14          A.     I would like to say yes or no, but I don't  
15     ...

16          Q.     No, no.  Did you drive downtown -- not  
17     downtown.  Did you go to the Clerk's Office with  
18     Bill, but in separate cars?

19          A.     No.

20          Q.     No?

21          A.     I rode with him.

22          Q.     Oh, okay.

23          A.     We threw it all in the back, the bundle  
24     that he had.

1 Q. Okay.

2 A. And we all came downtown, waited in line a  
3 little bit, because they were stacked up with trying  
4 to run people in.

5 Q. Okay. So you drove in Bill's car to the  
6 Clerk's Office?

7 A. Or rode in his car, yes.

8 Q. Thank you. Thank you.

9 A. I didn't drive it. He drove.

10 Q. Fair point. And where were the ballot  
11 bags while you were riding in his car?

12 A. In the back end.

13 Q. Okay. Is that the backseat, or is that a  
14 pickup truck or --

15 A. I'm going to call it an SUV. I'm  
16 uncomfortable how to describe these vehicles.

17 Q. Okay.

18 A. But he had a large space back there.

19 Q. Okay. Very good. Was anybody else with  
20 you?

21 A. Bill was.

22 Q. Other than you and Bill?

23 A. No, sir.

24 Q. All right. So when you arrived at the

1 County building, what did you do next?

2 A. We waited in line. They had these --  
3 these guys coming out and dragging everything in.

4 Q. Okay.

5 A. When you get your car up there, they take  
6 it all in a precinct at a time.

7 Q. Okay. And you referred to "these guys."  
8 Are those County workers?

9 A. Yeah. That's a good description for them.

10 Q. Okay. And is this at the County Clerk's  
11 Office?

12 A. Or, yeah, just outside the building.

13 Q. Just outside it.

14 A. Did I see them take them in and so forth  
15 and so forth? No.

16 Q. Okay.

17 A. I saw them take them all out, and they ran  
18 them into the building.

19 Q. Okay.

20 A. And we could move on.

21 Q. Is that the last you saw of those bags of  
22 ballot materials?

23 A. Yes.

24 Q. Okay.

1           A.     And I do not remember -- Now this is going  
2 to be a good question. I do not remember, because I  
3 asked -- I talked with Bill. "We've got to make  
4 sure that Steve gets those two." And how does he  
5 get those two --

6           Q.     You talked --

7           A.     -- if they were not -- if they were not  
8 sealed in the things? And I don't know whether they  
9 were sealed in or not. That's a good question.

10          Q.     In the ballot bags?

11          A.     Yes. I do not know whether they were  
12 sealed in those bags.

13          Q.     Okay.

14          A.     But, somehow, they had to get to Mr. Bean.

15          Q.     Yes.

16          A.     Because they were ones that we -- or there  
17 had to be a note made about them that, "They're in  
18 here, and you've got to do something with them."  
19 Somehow that was supposed to be conveyed to him. I  
20 don't know if and when that got conveyed to him.

21          Q.     Okay. Would Bill, the other Bill --

22          A.     Yes, sir.

23          Q.     -- know?

24          A.     I would hope he does, yes.

1 Q. Okay.

2 A. Or they typically try to hand it to us.

3 Q. Yes.

4 A. It's, "No, you go ahead and stick it in."

5 Q. All right. But from -- Okay. So is it  
6 possible for a ballot to be run through the machine  
7 and end up in the overflow or no?

8 A. No.

9 Q. Okay. All right. So it has to be --

10 A. Absolutely no way.

11 Q. It has to be put there by a person?

12 A. It has to be --

13 Q. Okay.

14 A. -- put in the back by someone.

15 Q. All right. In your -- So in your  
16 training, I believe you've said, you were instructed  
17 --

18 A. Yes.

19 Q. -- to count ballots that are in the  
20 overflow bin?

21 A. Yes.

22 Q. And why is that, if you know?

23 A. Why is that?

24 Q. Yes.

1 remember talking with her specifically.

2 Q. And whereabouts was -- Where and when  
3 would this have been?

4 A. That would have -- When? Good grief.

5 Q. Just generally.

6 A. Well, let's say maybe in January.

7 Q. Okay. Do you know where?

8 A. Yes.

9 Q. Okay.

10 A. At Tabernacle Baptist Church.

11 Q. Okay. What did you say to her and what  
12 did she say to you?

13 A. The subject of the election still being in  
14 limbo come up and the fact that we had two ballots  
15 that didn't get counted that were supposed to have  
16 been counted, in my opinion should have been  
17 counted, if they're the same ballots that we're  
18 talking about.

19 See, I'm assuming I had two ballots left  
20 over, and there were two ballots showed up. I'm  
21 assuming they were the same ballots. I don't know  
22 that, but I'm assuming they are. It may be a bad  
23 assumption.

24 Q. Oh, no. Well, you can assume, but --

1 Q. Okay.

2 A. Same process for the whole stack.

3 Q. Okay. The envelope where the two ballots  
4 you found in the overflow bin were inserted, I know  
5 you didn't have a whole lot of eyes on that  
6 envelope.

7 A. Yeah. I'm fuzzy on that.

8 Q. That's okay. You obviously didn't recall  
9 or didn't know at the time whether it was going to  
10 be important or not. But can you recall, was it an  
11 envelope like that size there, or a regular mailing  
12 envelope?

13 A. I thought it was a full-sized envelope,  
14 like an 8-1/2 x 11.

15 Q. Okay. And to your knowledge, the ballots  
16 could be put in the envelope without them being  
17 folded or anything like that?

18 A. I believe so, yes.

19 Q. Okay. Do you recall the color of the  
20 envelope?

21 A. I don't know whether they could be folded  
22 or not. To say affirmatively no, they couldn't be  
23 folded, I don't know. I apologize.

24 Q. That's fine.

1           A.     But it was a larger ballot, yes, or larger  
2 envelope.

3           Q.     Do you recall the color of the envelope?

4           A.     No.

5           Q.     I know some envelopes have these things --  
6 have the little string on it that you can affix it  
7 around the little cardboard disk.

8           A.     I don't think they use any of those  
9 anymore here.

10          Q.     Okay. Let me show you something here. I  
11 have a photograph --

12          A.     Oh, my gosh.

13          Q.     -- of what we're talking about. I'll make  
14 a copy of this and make it as an exhibit. This is  
15 Page 23 of the Election Judge Manual for 2018-2019.  
16 And we'll look at Page 14. There's a heading called  
17 Emergency Ballot Bin. Is that what you're talking  
18 about as the overflow bin?

19          A.     Yes, sir. That's what I call the overflow  
20 bin.

21          Q.     Okay. So it's at the very back of the  
22 machine?

23          A.     Very back of the machine.

24          Q.     And it's also down low, isn't it?

1           A.     Well, it's not too low, but it is a little  
2 bit shielded there. So, yeah, you have to actually  
3 go back there to put it in.

4           Q.     Does it have any sort of flap on it that  
5 says "Ballot" or anything like that?

6           A.     No, sir. No.

7           Q.     Okay. It just has an open slot?

8           A.     Yes. No markings that I recall at all.

9           Q.     Okay. When that slot is to be used,  
10 you're instructed to basically turn the tabulator  
11 around so the voter could access that emergency bin;  
12 is that correct?

13          A.     That, I don't know. If that's what it  
14 says.

15          Q.     Okay.

16          A.     And if that's -- And I'd have to read it  
17 here for just a moment.

18          Q.     Sure. Take your time. Sure.

19          A.     Because I'm going to learn something here  
20 today.

21                   It does say, "Turn it around so it's  
22 accessible to all voters." Because I guess it's  
23 assumed that you've lost power and there's a need  
24 for using it continuously.

1 Q. Right. Right.

2 A. And that kind of situation never occurred  
3 that day with the loss of power.

4 Q. Okay.

5 A. Turn it around. Very interesting.

6 Q. Okay. And to access this emergency ballot  
7 bin, does it open up, slide open from the front, or  
8 do you have to just reach down and feel it?

9 A. It is key-locked from the back side.

10 Q. It is? Okay.

11 A. It is key-locked from the back side, and  
12 to get into it after a ballot has been inserted and  
13 you want to check in there, you have to unlock it  
14 and open it and remove it.

15 Q. How many keys are there to this emergency  
16 ballot box?

17 A. Good question. At least one.

18 Q. Okay. When you checked these two, did you  
19 have to get the key from someone to open it up?

20 A. Yes. Yes.

21 Q. Okay. Who had the key, if you recall?

22 A. I believe -- I believe Bill had them and I  
23 got them from him.

24 MR. RAUB: Okay. Okay. That's all I

1 whole process to maybe change things. But we don't  
2 see a whole lot of people use a cover.

3 Q. Okay.

4 A. They're not worried.

5 Q. Okay.

6 A. And if they are worried, they just turn it  
7 over, and they can feed it in upside down.

8 Whatever.

9 Q. You found no covers in either of the back  
10 of these overflow bins?

11 A. No, sir.

12 Q. Okay.

13 A. No, sir. That was not an issue.

14 Q. Mr. Fogarty asked you about your training  
15 that you were supposed to count the ballots in the  
16 overflow bin.

17 A. Everybody says, "Why didn't you count  
18 those?"

19 Q. Hold on.

20 A. Go ahead.

21 Q. What's your training tell you when to use  
22 the overflow bin?

23 A. If we have lost power.

24 Q. Okay. And I think you just said, "We had

1 no situation"?

2 A. We had no power losses.

3 Q. Okay. So you --

4 A. Even if we did have a power loss,  
5 theoretically, they're battery backed up, and we  
6 wouldn't have had an issue with the tabulators until  
7 they ran out of power.

8 Q. And you are trained if you are at the  
9 tabulator, you don't let someone go behind the  
10 machine?

11 A. No.

12 Q. You would --

13 A. Now do they say, "Don't let people go  
14 behind the machine"? No. But it's just, "Where's  
15 this go?" And we tell them, "It goes in the front  
16 of the machine right here," and we don't have people  
17 go around behind them.

18 Q. Did you have my mobbing of the tabulator  
19 or anything weird of the tabulator that day? Or do  
20 they just wait in line to feed at the tabulator?

21 A. I do not remember whether we had a big  
22 backup there or not. That's a fast operation.

23 Q. Okay.

24 A. And typically it goes right through.

1     **So-and-So"?**

2             A.     **If it won't take it?**

3             Q.     **Yes.**

4             A.     **No, because if it hasn't run through, we**  
5     **assume it's not been counted. And it's not a**  
6     **failure of the machine; it's a failure of the ballot**  
7     **somehow.**

8             Q.     **Okay.**

9             A.     **If you would have a situation like that.**  
10    **It just doesn't happen. And you try to get that**  
11    **rectified then so that the ballot gets counted.**

12            Q.     **Okay. Okay.**

13            A.     **Could they have put it in behind? Yes,**  
14    **they could have. The judge at that station could**  
15    **have put it behind. Could have.**

16            Q.     **Mmm-hmm. Okay.**

17            A.     **But that's just not the flow.**

18                    **MR. FOGARTY: Okay. All right. That's**  
19                    **all.**

20                                    **FURTHER RE-EXAMINATION**

21    **BY MR. HERMAN:**

22            Q.     **Mr. Fogarty asked you a bunch of**  
23    **questions. I just want to sum it up. You don't**  
24    **know how they got there; right?**

1           A.     No.

2           Q.     Okay. Thank you.

3           A.     It would be real nice to know.

4           MR. HERMAN: Thank you.

5   RE-EXAMINATION

6     BY MR. RAUB:

7           Q.     Let me ask you one. If a voter completely  
8 screws up and rather than filling in the little  
9 circles, they put X's out to the side, if you put  
10 that in the tabulator, it's going to kick it back  
11 out; right?

12          A.     Yes, because -- in my understanding -- and  
13 I only have my understanding -- if you want don't  
14 have them marked, then it assumes you've not marked  
15 a place to vote.

16          Q.     Okay.

17          A.     And it says you've under voted there. And  
18 it will say, "Oh, he's under voted," and it will  
19 kick it back out.

20          Q.     Now if the voter, if you bring that to the  
21 voter's attention, and he says, "Oh, the heck with  
22 it," do you put it back in the machine, run it  
23 through again so it will take it? Or what do you do  
24 then?