



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JASON WHITE, :
 :
 :
 Defendant-Below, :
 Appellant, :
 :
 v. : No. 328, 2020
 :
 :
 STATE OF DELAWARE, :
 :
 :
 Plaintiff-Below, :
 Appellee. :

Upon Appeal from the Superior Court of the
State of Delaware in and for New Castle County
to the Supreme Court of the State of Delaware

AMENDED OPENING BRIEF
OF APPELLANT JASON WHITE

JOHN S. MALIK
ID No. 2320
100 East 14th Street
Wilmington, Delaware 19801
(302) 427-2247
Attorney for Appellant,
Jason White

Dated: March 1, 2021

TABLE OF CONTENTS

Table of Contents	i
Table of Citations	ii
Nature and Stage of Proceedings	1
Summary of the Argument	3
Statement of Facts	4
Argument	14
1. THE TRIAL COURT ERRED IN ADMITTING TEXT MESSAGES THAT PURPORTEDLY ORIGINATED FROM A CELL PHONE FOUND IN APPELLANT WHITE’S ROOM SINCE THE PROSECUTION FAILED TO ESTABLISH A SUFFICIENT FOUNDATION THAT THE RELEVANT TEXT MESSAGES WERE FOUND ON MR. WHITE’S PHONE OR WERE AUTHORED BY MR. WHITE.....	14
2. THE PROSECUTOR’S IMPROPER COMMENTS IN REBUTTAL SUMMATION VIOLATED APPELLANT’S STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND REQUIRE REVERSAL OF APPELLANT’S CONVICTIONS.....	21
Conclusion	30
SENTENCING ORDER DATED AUGUST 28, 2020	EX. “A”
ARGUMENT & RULING ON ADMISSION OF TEXT MESSAGES	EX. “B”
TEXT MESSAGES	EX. “C”
CERTIFICATE OF TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION	
CERTIFICATE OF SERVICE	

TABLE OF CITATIONS

State of Delaware Code

11 <i>Del.C.</i> § 301	26
------------------------------	----

United States Supreme Court

<i>Darden v. Wainwright</i> , 477 U.S. 168 (1986)	29
<i>Donnelly v. DeChristoforo</i> , 416 U.S. 637 (1974)	29
<i>Greer v. Miller</i> , 483 U.S. 756 (1987)	29
<i>In re Winship</i> , 397 U.S. 358 (1970)	26
<i>United States v. Bagley</i> , 473 U.S. 667 (1985)	29

Delaware Supreme Court

<i>Baker v. State</i> , 906 A.2d 139 (Del. 2006)	22
<i>Bennett v. State</i> , 164 A.2d 442 (Del. 1960)	23
<i>Brokenborough v. State</i> , 522 A.2d 851 (Del. 1987)	23
<i>Czech v. State</i> , 945 A.2d 1088 (Del. 2008)	22
<i>Firestone v. Tire & Rubber Co. v. Adams</i> , 541 A.2d 567 (Del. 1988)	14
<i>Hooks v. State</i> , 416 A.2d 189 (Del. 1980)	23
<i>Hunter v. State</i> , 815 A.2d 730 (Del. 2002).....	25, 28
<i>Parker v. State</i> , 85 A.3d. 682 (Del. 2014)	16
<i>Seward v. State</i> , 723 A.2d 365 (Del. 1999).....	15
<i>Swanson v. Davis</i> , No. 64, 2013, 69 A.3d 372 (Del. 2013).....	15

Stickel v. State, 975 A.2d 780 (Del. 2009) 14

Wainwright v. State, 504 A.2d 1096 (Del. 1986) 22

Walker v. State, 790 A.2d 1214 (Del. 2002) 25, 27, 28

Delaware Superior Court

State v. Zachary, I.D. No. 1208018630, 2013 WL 3833058 (Del. Super. Ct. Jul. 16, 2013)..... 15, 19

Other Courts

Sizemore v. Fletcher, 921 F.2d 667 (6th Cir. 1990) 29

State v. Conyers, 127 A.3d 1077 (Conn. App. Ct. 2015) 26, 27

United States v. Amer. Radiator & Standard Sanitary Corp., 433 F.2d. 174 (3d Cir. 1970)..... 16

Delaware Rules of Evidence and Procedure

D.R.E. 901 3,15

Delaware Lawyers’ Rules for Prof’l. Conduct Rule 3.4 (2002) 28

Delaware Supreme Court Rule 8..... 22

Other Authorities

ABA Standards for the Prosecution Function (4th ed. 2017) 23, 24

ABA Standards for Criminal Justice (2d ed. 1980) 28

Jay M. Zitter, *Authentication of Electronically Stored Evidence, Including Text Messages and E-Mail*, 34 A.L.R. 6th 253 (2008)..... 15

NATURE AND STAGE OF THE PROCEEDINGS

Appellant Jason White was arrested on August 16, 2018. (A1). A New Castle County Grand Jury first indicted Mr. White on October 22, 2018. (A1). New Castle County Grand Juries subsequently reindicted Mr. White two more times on October 14, 2019 and October 28, 2019. (A3). The final indictment charged Mr. White with Drug Dealing four grams or more of heroin (Count 1), Drug Dealing 20 grams or more of methamphetamine (Count 3), Drug Dealing 30 doses or more of Fentanyl (Count 5), Aggravated Possession of five grams or more of heroin (Count 2), and Aggravated Possession of 25 grams or more of methamphetamine (Count 4), and three counts of misdemeanor Endangering the Welfare of a Child (Counts 6-8). (A7-10).

This case proceeded to trial on November 19, 2019. A jury was selected on November 19, 2019 and the trial commenced that day. (A4). The trial lasted three days, concluding on November 21, 2019. (A4). The jury deliberated on November 22, 2019 and announced its verdict that day. The jury found Mr. White guilty of all charges. (A4). The Court revoked Mr. White's bail and ordered a presentence investigation. (A4).

Sentencing was held via Zoom on August 28, 2020. (A132-171). At Sentencing, the Aggravated Possession of Heroin and Aggravated Possession of Methamphetamine charges, Count 2 and Count 4, merged with the Drug Dealing

Heroin and Drug Dealing Methamphetamine charges, Count 1 and Count 3. (A168). The Superior Court sentenced Mr. White as follows:

- For Drug Dealing Heroin, Tier 4 (Count 1): 25 years of Level 5 incarceration suspended after 2 years for 2 years at Level 4, DOC discretion, suspended after 6 months for 18 months at Level 3. (A165).
- For Drug Dealing Methamphetamine, Tier 4 (Count 3): 2 years of Level 5 incarceration (minimum mandatory sentence). (A166).
- For Drug Dealing Fentanyl, Tier 2: 2 years of Level 5 incarceration (minimum mandatory sentence). (A166).
- For each Endangering the Welfare of a Child charge (Counts 6-8): 1 year of Level 5 incarceration suspended for 1 year Level 3. (A167).

At the Zoom Sentencing Hearing, Mr. White was also sentenced for charges from other cases in which he entered pleas of guilty. (A166). For those offenses, the Court sentenced Mr. White to an additional 4 years of Level 5 incarceration. (A166). Mr. White does not appeal those sentences. The Court ordered that all sentences of Level 5 incarceration be served consecutively and that all terms of probation run concurrently. (A168).

A timely Notice of Appeal was filed on September 27, 2020. (A5). This is Mr. White's Opening Brief.

SUMMARY OF THE ARGUMENT

1. The Superior Court abused its discretion when it admitted text messages from a cell phone seized during the execution of a search warrant because the State failed to authenticate the texts pursuant to D.R.E. 901.

2. The Prosecutor made improper arguments during his rebuttal summation by stating his personal opinion about a piece of evidence, misstating the burden of proof, and denigrating the role of defense counsel.

STATEMENT OF FACTS

The Execution of the Search Warrant and Arrest

Sometime in 2018, New Castle County Police officers became aware of drug activity at 115 Cross Avenue in New Castle. The New Castle County Police, (“NCCPD”), commenced an investigation. Detective Jared Miller of NCCPD applied for and obtained a search warrant for that residence. Just after 6:00 A.M. on August 16, 2018, NCCPD officers, including a SWAT team, executed the search warrant at 115 Cross Avenue. (A21).

NCCPD officers led by SWAT Team member Detective Ashby knocked and announced that they had a warrant and breached the door. (A45). Another SWAT officer, Detective Raftery, broke the bathroom window of the house and monitored the bathroom. (A40). When officers went inside through the front door, they encountered dogs, two men, and a child. (A45). One of the men told the officers that he would secure the dogs in a cage in the house and the officers allowed him to do so. (A45).

Soon after the officers’ entry into 115 Cross Avenue, Detect Raftery saw a man walk into the bathroom and then quickly turn around and walk away from the bathroom. Raftery ordered the man to put his hands up. The man did not put his hands up, but instead left the bathroom and went into another room. (A42). Detective Raftery did not see the man holding anything. (A42). At trial, Detective

Raftery identified that man who did not put his hands up and walked out of the bathroom as Appellant White. (A40-41).

Detective Ashby monitored the hallway while police secured the house. He saw a man bending down and picking something up and moving it into the back bedroom. The man looked like he was throwing something into the room. (A45). Detective Ashby told the man to leave that room. The man left the bedroom after being told to do so several times. (A45). The man who was ordered to leave the back bedroom several times was Mr. White. (A45). Detective Ashby was wearing a body camera when police breached the door at 115 Cross and secured the house. That footage was played for the jury at trial. (A46).

After the house was secured by the SWAT team, investigating officers led by Detective Jared Miller conducted a search. In the back right rear bedroom, detectives located small bags of heroin and fentanyl. There was also a large amount of methamphetamine on the floor behind the dresser. That substance was collected, tested, and determined to be a combination of methamphetamine and fentanyl weighing over 38 grams. (A58). Another bag was collected behind the dresser in that same room. That bag contained heroin and fentanyl and weighed 12.211 grams. (A57). Six other smaller bags were also found behind the dresser or on the floor all of which contained heroin, fentanyl, methamphetamine, oxycodone, tramadol, or some combination thereof and each weighed about a gram

or less. (A54-55; A58-59). Another package found in the same back bedroom weighed 33.959 grams and contained methamphetamine, tramadol, heroin, and fentanyl. (A59). One last bag of fentanyl weighing 4.348 grams also was located behind the dresser on the floor of the same bedroom. (A59).

Additionally, detectives found a pile of pills on the floor in the back bedroom. They were round tablets that appeared to be oxycodone pills. (A59-A60). Testing determined that the pills were actually fentanyl, not oxycodone. (A59). Detectives also found another collection of pills, some of which appeared to be oxycodone pills and some with no markings on them. Testing determined that all of those pills actually contained methamphetamine, cocaine, and oxycodone. (A60-A61). The back bedroom where all the drugs were found belonged to Jessica Etsy. (A61). She was not home when NCCPD conducted the search. (A61).

In the front bedroom, detectives found a small amount of marijuana, a box of empty plastic baggies, cut straws, and a smoking pipe. (A23). Detectives discovered a digital scale and glass smoking pipe near the fireplace in the living room. (A28).

During the search, detectives located three cell phones in the front bedroom. (A31). One of the phones contained information detectives found relevant to their investigation. (A68). The phone itself indicated that the owner's name was "Joe

Schmoe.” (A69). NCCPD detectives did not seek subscriber information for that phone from the cell phone service provider. (A75).

The Admission of the Text Messages into Evidence

The State sought to admit numerous text messages at trial. The trial judge found the State’s evidence to be disorganized and confusing:

So I’ve gone through two documents. Tell me—I’m still at a loss as to what you’re—how you’re going to get it in. I mean, there are parts of this ... conversation that is reasonable to assume perhaps drug-related ... then there’s random things that he thinks involves drugs which I can’t make any connection to. I mean, I spent now 10 minutes going through the document, and I can pinpoint blocks of texts that make sense. But putting this document in is meaningless. I mean, I don’t know what you’re trying to get to, how you’re going to get to it. Get [the officer] to testify that I sat there and pulled out these text messages. Yeah. And now what? (A65).

The prosecutor said that the State’s drug dealing expert would be able to explain how the text messages could be interpreted as evidence of drug transactions. (A65-66). The trial court still expressed skepticism at the relevance of the text message evidence:

But the document as it’s created just putting it in doesn’t explain anything. It’s just random text messages. ... Do you understand my problem? I mean, you have evidence here that is relevant. It’s just not in the form that is logical in the sense of how to put it in. (A66).

Defense counsel also objected to the admission of the text messages. He argued that the State failed to establish a sufficient foundation linking the evidence to Mr. White:

I don't believe there's any type of subscriber information that indicates this phone was ... maintained by Jason White. I don't think there's anything that could definitively tie it to him in that fashion.

(A67-68).

After debate, the trial court leaned towards allowing the text messages to be admitted into evidence:

I think your expert, if he wants to, he can look at these and then say, you know, ... [this] or that word is used and this is how they communicate. I'm willing to let you go down that road. It's not how I would do it, but I gave up that obligation 25 years ago when I left. But I don't think it's fair for him to say from this time to this time it looks like a drug transaction.

(A68).

The trial court also permitted additional voir dire pertaining to the text messages. Defense counsel inquired about the State's choice not to call the tech crimes detective to explain how the texts were obtained from the phone; the State's failure to obtain subscriber information for the cell phone; and, the fact that there was a single text message from a woman named "Cass" which stated, "I told him your name is Jason White." (A69-70). Prior to ruling, the Court remarked:

I'm going to think about it. I can't remember the last time I had a case that somebody didn't go and get the subscriber information. Maybe they did and nobody knows about it in the courtroom ... And I have a document here that are random calls, disorganized that are not put in a logical fashion to reflect a drug transaction. There is no question in my mind that they do, but I'm not sure how you're going to present it to the jury. ... So let me look at the documents. We stand in recess.

(A70).

During a break, the Court highlighted certain text messages it found relevant and also redacted certain messages that it would not admit and gave the documents to the State so that it could redact the messages in accordance with the Court's ruling:

I've highlighted the conversations or text messages that I think are relevant ... there's some taken out. So we'll proceed forward with the understanding that we'll give these documents to the State, ask them to redact the portions that I have ruled are not coming in. (A71).

The Court also stated that it would give a *Getz* instruction at the appropriate time.

(A71).

Defense counsel then clarified his objection to the text messages:

Your Honor, I just wanted to make sure that I address this on the record, so I didn't waive it. The foundation objection that I had ... was based upon that there didn't seem to be any time of verification that this was a phone that was subscribed to by Mr. White and the connection of one cell phone text and one response basically 27 or

28 hours later which is insufficient. So I want to note my objections....

(A71).

The Court responded:

I think that goes to weight and not to admissibility. Certainly it's an area that I would like cross-examination on. ... [T]here's been testimony ... that this is a room that he occupied, this is a phone that was found in that room, and ... the subscriber information perhaps either wasn't received or doesn't match doesn't foreclose the admissibility of it. It certainly goes to weight that the jury should hear. (A71).

After redacting the text messages as ordered by the trial judge, the text messages were admitted as State exhibits and reference was made to the text messages during the testimony of Detective Miller, the Chief Investigating Officer, and Detective Schupp, the drug dealing expert called by the State. (A75; A96-98).

Appellant White's Post-Arrest Statement

In addition to the text message evidence, the State admitted Mr. White's brief statement to police officers at 115 Cross Avenue when they searched the house as well as another statement he made at the police station that was recorded. (A64). At the house, Mr. White said that he did not know about the drugs in the house, that he slept on the couch, and that he had been staying at the house for two weeks. (A75). In the recorded statement at the police station, Mr. White admitted to dumping "ice." (A64). "Ice" is a nickname for methamphetamine, which

detectives found on the floor in Etsy's bedroom. (A64). Mr. White said he thought there was about 30 grams of crystal meth in the house. (A77). He also said he had less than ten grams of heroin in smaller bags and that the big bag of heroin in the house weighed 10 grams. (A76). Mr. White also admitted in the interview that he possessed drugs at 115 Cross Avenue. (A70).

Excerpt from Wire-Tap Phone Call

The State also played excerpts of phone calls purportedly between Mr. White and other people that were being investigated in a separate wiretap investigation. (A78). These calls occurred around the date that detectives searched the residence at 115 Cross Avenue. The State argued that on these phone calls, Mr. White spoke to the targets of the wiretap investigation, namely, Victor Fairley and Angel Cunningham. (A78). The jury heard calls between Mr. White and Fairley from 9:00 P.M. and 10:20 P.M. from day prior to the search. (A79). The jury also heard another call between Mr. White and Fairley that occurred shortly after the search. (A79). The sound quality of these calls was extremely poor. The trial judge remarked:

I mean, I have all of a sudden in the middle of the trial a wiretap. I'll be candid with you. If you think anybody in this courtroom heard anything that was said on this tape, I assure you that they didn't because it was almost inaudible.

(A81).

The Detective from the wiretap investigation was asked about the subscriber information for the calls that purportedly occurred between Fairley and Mr. White. The wiretap detective testified that he did not recall what the subscriber information was for that phone; but, that it was requested as a part of that investigation. (A81-82). The detective from the wiretap investigation testified that the person on the phone speaking with Fairley sounded like Mr. White. (A79). No subscriber information for the ZTE cell phone seized from the front bedroom at 115 Cross Avenue that the State found relevant to the investigation was presented to the jury at trial.

The State's Drug Expert

Detective Alexis Schupp of the Wilmington Police Department was called as an expert witness for the State. He testified that given the amount, variety of drugs, the nature and quantity of the paraphernalia found in the residence, and the text message and wiretap evidence, that the heroin, fentanyl, and methamphetamine found in the residence were possessed with the intent that they be sold or distributed, and was not possessed for personal use. (A98).

Appellant White elected not to present any evidence at trial and rested his case after the State rested their case-in-chief. (A113).

The Prosecution's Rebuttal Argument

In the rebuttal portion of closing argument, after giving his interpretation of a conversation that occurred during one of the wiretap calls, the prosecutor stated, “I think right there that pretty much explains where the stuff [drugs] went....” (A123). Shortly thereafter, the prosecutor related, “Mr. [defense counsel] in doing his job for his defendant, tries to raise as much reasonable doubt as he can....” (A124). Then, moments later the prosecutor argued: “One of the ways Mr. [defense counsel] attempted to raise issues with reasonable doubt is based on the defendant’s own statement to Detective Miller....” (A124). At the trial, no objections were made to these comments by the prosecutor.

ARGUMENT I

THE TRIAL COURT ERRED IN ADMITTING TEXT MESSAGES THAT PURPORTEDLY ORIGINATED FROM A CELL PHONE FOUND IN APPELLANT WHITE’S ROOM SINCE THE PROSECUTION FAILED TO ESTABLISH A SUFFICIENT FOUNDATION THAT THE RELEVANT TEXT MESSAGES WERE FOUND ON MR. WHITE’S PHONE OR WERE AUTHORED BY MR. WHITE.

A. Question Presented.

Whether the trial court erred when it admitted text messages that were purportedly from a phone found during the search of Appellant’s room where the State never obtained subscriber information from the cell phone provider and the State failed to provide any first-hand knowledge about the recovery of the phone from the room and the recovery of the text messages from the cell phone? This issue was preserved by timely objection and argument.¹

B. Standard and Scope of Review.

This Court reviews the trial court’s evidentiary rulings for abuse of discretion.² An abuse of discretion occurs when the trial judge “has exceeded the bounds of reason in view of the circumstances or so ignored recognized rules of law or practice so as to produce injustice.”³ If this Court finds an abuse of

¹ (A71).

² *Stickel v. State*, 975 A.2d 780, 782 (Del. 2009).

³ *Firestone v. Tire & Rubber Co. v. Adams*, 541 A.2d 567, 570 (Del. 1988).

discretion, the final inquiry is whether the error caused Mr. White significant prejudice.⁴

C. Merits of Argument.

The State failed to properly authenticate the text messages pursuant to D.R.E. 901. “Authentication is an indispensable condition precedent to the admissibility of documentary evidence.”⁵ While this Court has not explicitly outlined a framework for the admission of text message evidence in court proceedings, it has referenced “the importance of proper authentication in electronic communication” and the American Law Reports pertaining to this issue.⁶ The proponent seeking to admit a piece of writing must produce evidence “sufficient to support a finding that the matter in question is what its proponent claims.”⁷ Authenticity can be based entirely upon circumstantial evidence.⁸ Furthermore, proof of authorship does not need to be conclusive; but, “a *prima*

⁴ *Seward v. State*, 723 A.2d 365, 372 (Del. 1999) (citations omitted).

⁵ *State v. Zachary*, I.D. No. 1208018630, *4, 2013 WL 3833058 (Del Super. Ct. Jul. 16, 2013) (citing D.R.E. 901(a))

⁶ *Swanson v. Davis*, No. 64, 2013, at ¶ 20, 69 A.3d 372 (Del. 2013) (ORDER) (citing Jay M. Zitter, *Authentication of Electronically Stored Evidence, Including Text Messages and E-Mail*, 34 A.L.R. 6th 253 (2008)).

⁷ *Zachary*, I.D. No. 1208018630, at *4.

⁸ D.R.E. 901(b)(4).

facie showing of the author’s identity must be established for the writing to be admissible.”⁹

In the context of social media evidence, this Court has held that a social media post may be admitted where the proponent provides evidence “sufficient to support a finding by a reasonable juror that the proffered evidence is what the proponent claims to be.”¹⁰ As explained in the Statement of Facts, the State sought to introduce several text messages that were purportedly located in one of the cell phones found in a bedroom that the State alleged was where Mr. White lived at 115 Cross Ave.¹¹

The State used extensive second-hand knowledge to attempt to make a *prima facie* case that the text message came from the ZTE cell phone purportedly found in the bedroom that the State argued was Mr. White’s phone. The State sought to admit the messages through its Chief Investigative Officer, Detective Miller. First, Detective Miller testified that another officer, not him, found three cell phones in the room that the State represented as Mr. White’s bedroom; however, Miller did not know where two of the phones were found. “There were three phones found in the room. I believe that to be one of them. ...The other two

⁹ *Zachary*, I.D. No. 1208018630, at *5 (citing *United States v. Amer. Radiator & Standard Sanitary Corp.*, 433 F.3d 174, 192 (3d Cir. 1970), *cert. denied*, 401 U.S. 948 (1971)).

¹⁰ *Parker v. State*, 85 A.3d 682, 683 (Del. 2014).

¹¹ See pages 6-10, *supra*.

I'm not exactly sure where in the room they were found.”¹² The prosecutor then specifically asked where in the room the phone was found from which the State sought to admit the text messages. Detective Miller did not know:

Q [the prosecutor, referencing a photo]: Okay. And do you know which of the cell phones this one was, Detective?

A [Det. Miller]: I don't recall specifically, no.¹³

In addition to not knowing exactly where the phone was found, Detective Miller then explained that another officer, who never testified at the trial, took the cell phones that were seized and obtained data from them. Detective Miller had no first-hand knowledge of how the phones were handled, exactly what was done with them, or that the text messages the State sought to admit came from the phone that he attributed to Mr. White. Miller testified: “The [tech] crimes detective would retrieve the cell phone from the evidence storage area and then use various programs to download the information onto a forensic report, which would be provided to me.”¹⁴ Then the prosecutor asked, “I guess what's the involvement of the tech crimes person? Do they view the phone? Is it simply—.” Detective Miller answered, “I don't know. I think it's more functional. They're basically responsible for downloading the information.”¹⁵ Detective Miller explained that to his knowledge a report is generated from the download and that another detective

¹² (A31).

¹³ (A31).

¹⁴ (A62).

¹⁵ (A62).

did all of that work with the cell phones seized. “They [the cell phones] were all downloaded by Detective Burse in the tech crimes unit.”¹⁶ Detective Burse was not called by the State to testify as to what he did with the cell phones seized, to what programs or software he used, or to what reports were generated as a result of his work with the seized cell phones.

In addition to the lack of first-hand knowledge as to where exactly the phones were found and how the tech crimes detectives extracted text messages from one of the phones, Detective Miller also did not ascertain or know the subscriber information from the cell phone provider for the phone in question. Neither the parties, nor the Court, knew if Jason White or another person was the registered user of the phone with the cell phone company.¹⁷

Other than the second-hand knowledge that the phone was found in Mr. White’s bedroom, the only other evidence linking Mr. White to the text messages was one message allegedly found in the phone by the tech crimes detective who never testified. That message stated something to the effect of, “I told him your name is Jason White...”¹⁸ This message purportedly was from a person in the phone labelled “Cass”. According to Detective Miller, the name of Mr. White’s girlfriend was “Cass”.

¹⁶ (A62).

¹⁷ (A70).

¹⁸ (A69).

As the Superior Court has previously observed:

[T]he State, as the proponent of text message evidence, must explain the purpose for which the text messages are being offered and provide sufficient direct or circumstantial evidence corroborating their authorship in order to satisfy the requirements of D.R.E. 901.¹⁹

In this case, the second-hand testimony concerning the recovery of the cell phone from 115 Cross Avenue, the second-hand testimony about the recovery of the text messages from the phone itself, and the lack of subscriber information, were insufficient to establish a *prima facie* showing that the text messages actually originated from the phone that the State alleged and actually were authored by Mr. White. Based on such an insufficient foundation, the trial court erred in admitting the text messages.

The trial court's error caused Mr. White significant prejudice. Using the text messages, the drug expert called by the State rendered an opinion that the drugs found at 115 Cross were possessed for sale or dealing, not for personal use.²⁰ The prosecutors also discussed the text message contents both in closing argument and rebuttal. In closing, the prosecutor argued:

We also had text message conversations between the defendant, conversations that were extracted from the ZTE cell phone, Jason White's cell phone. In those conversations he's talking about Fet, he's talking about an ounce of glass, people are asking—numerous

¹⁹ Zachary, I.D. No. 1208018630, at *7.

²⁰ (A96-98).

individuals are asking him about these. Someone is asking him about ice cube trays. Think about it. Have you had someone text—does it makes sense that someone would text about an ice cube tray? Detective Schupp came on, testified, and he was able to show you that those conversations were indicative of drug dealing.

(A117).

In rebuttal, the prosecutor argued: “The defendant did say he wants to take [responsibility for] everything, ...and the State submits that’s what the evidence does indeed show if you look at the defendant’s cell phone conversations with that ZTE cell phone: heroin, meth, Fet [fentanyl].” (A124).

The admission of the text message evidence was central to Appellant White’s three drug dealing convictions since they linked him to the drugs in question. As a result of the error in admitting the text messages without a sufficient evidentiary foundation, Mr. White’s three drug dealing convictions must be reversed.

ARGUMENT II

THE PROSECUTOR'S IMPROPER COMMENTS IN REBUTTAL SUMMATION VIOLATED APPELLANT'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO A FAIR TRIAL AND REQUIRE REVERSAL OF APPELLANT'S CONVICTIONS.

A. Question Presented.

Whether the prosecutor's improper remarks in rebuttal argument require reversal of Mr. White's convictions?

At trial, no objection was made during the State's rebuttal summation when the prosecutor interjected his personal opinion regarding the wiretap phone call recording, misstated the burden of proof, and denigrated their role of defense counsel. Appellant White submits that it would be in the interests of justice to review the prosecutor's improper comments for the first time on appeal since they impact Appellant's substantial rights including his right to a fair trial as guaranteed by the Delaware and United States Constitutions. Furthermore, reviewing this issue on appeal would insure the fairness and integrity of the trial process.

B. Standard and Scope of Review.

This issue was not raised to the Court below. This Court reviews statements made by the prosecution during closing arguments without an objection from the

defendant for plain error.²¹ Also, this Court examines the record *de novo* to determine whether prosecutorial misconduct occurred.²² If no misconduct occurred, the analysis ends. If the prosecutor did engage in misconduct, this Court applies the *Wainwright* standard under which the error complained of must be clearly prejudicial to a defendant's substantial rights as to jeopardize the integrity of the trial process.²³ Plain errors are those "material defects which are apparent on the face of the record, which are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice."²⁴

C. Merits of Argument.

This Court has repeatedly stressed that the prosecutor in representing the people has a responsibility to ensure that a defendant's trial is fair: "It is [the prosecutor's] duty to see that the State's case is presented with earnestness and vigor, but it is equally his duty to see that justice be done by giving the defendant a

²¹ *Czech v. State*, 945 A.2d 1088, 1098 (Del. 2008).

²² *Baker v. State*, 906 A.2d 139, 150 (Del. 2006).

²³ *Id.*

²⁴ *Wainwright v. State*, 504 A.2d 1096, 1010 (Del. 1986). See also, Delaware Supreme Court Rule 8, which reads as follows:

Only questions fairly presented to the trial court may be presented for review, provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented.

fair and impartial trial.”²⁵ In *Hooks*, this Court stated that this duty applies to “the propriety of the content of closing arguments as well as to other aspects of a criminal trial.”²⁶

a. The prosecutor’s argument was improper when he used the first person to express an opinion about the importance of the wiretap call admitted against the Appellant White.

This Court has long-held that prosecutors should avoid the use of the word “I” and not speak in the first-person in closing argument:

In a closing argument, the use of the word “I” only serves to emphasize for the jury that the prosecutor, i.e. the speaker, personally believes the point that is being submitted to the jury for consideration. ...This type of argument is contrary to the ABA Standards and the Delaware Rules of Professional Responsibility.”²⁷

During rebuttal, after giving his interpretation of what was said in one of the wiretap phone calls, the prosecutor used the first person in his argument. He stated, “**I think** right there that pretty much explains where the stuff [drugs] went...” [Emphasis added.] (A123). When the prosecutor made that declaration, he was expressing a personal opinion about the significance of a particular piece of evidence to the jury and how it tended, in his opinion, to implicate Mr. White in possessing all of the drugs found at the 115 Cross Avenue residence. As the

²⁵ *Hooks v. State*, 416 A.2d 189, 204 (Del. 1980) (quoting *Bennett v. State*, 164 A.2d 442, 446 (Del. 1960)).

²⁶ *Hooks*, 416 A.2d at 204.

²⁷ *Brokenbrough v. State*, 522 A.2d 851, 858 (Del. 1987).

current ABA Standards for the Prosecution Function state, “The prosecutor should not argue in terms of counsel’s personal opinion, and imply special or secret knowledge of the truth or of witness credibility.”²⁸ The prosecutor’s expression of personal opinion about the significance of a specific piece of evidence was improper in the case at bar.

The prosecutor’s remark was especially harmful because he improperly was commenting on a piece of evidence, the wiretap calls, which were of poor audio quality. As noted in the Statement of Facts,²⁹ the trial judge remarked of the wiretap calls:

I mean, I have all of a sudden in the middle of the trial a wiretap. I’ll be candid with you. If you think anybody in this courtroom heard anything that was said on this tape, I assure you that they didn’t because it was almost inaudible.

(A81). In emphasizing the significance of the call, the prosecutor was also arguing by implication, that even though the content of the call was not easily comprehensible to the jurors’ ears, the jurors should take his word for it that the call was highly inculpatory evidence that Mr. White possessed all of the drugs. Thus, the prosecutor’s remark was especially harmful because he was vouching for the content of the calls—calls which, according to the court, were of poor sound

²⁸ ABA Standards for the Prosecution Function 3-6.8(b) Closing Arguments to the Trier of Fact (4th ed. 2017).

²⁹ See page 11, *supra*.

quality. In making a remark in the first person calling attention to the significance of the wiretap call, the prosecutor committed error.

b. The prosecutor engaged in improper conduct when he misstated the burden of proof and denigrated the role of defense counsel.

This Court has held that a prosecutor shall not denigrate the role of defense counsel.³⁰ In 2002, this Court added an additional admonition for prosecutors: “do not disparage the ‘reasonable doubt’ standard that governs the jury’s determination of guilt.”³¹

The prosecutor advanced another improper argument when he stated in rebuttal that, “[Defense counsel] in doing his job for his defendant, tries to raise as much reasonable doubt as he can[,]” and “One of the ways [defense counsel] attempted to raise issues with reasonable doubt is based on the defendant’s own statement....” (A124). These two remarks misstated the law as to the burden of proof and confused that issue for the jury. Also, in stating that it is defense counsel’s “job” to “raise reasonable doubt” the prosecutor denigrated the role of defense counsel in the adversarial process.

First, the prosecutor misstated the law as to the burden of proof and confused the jury when he stated that defense counsel was doing his job and “tries to raise as much reasonable doubt as he can....” (A83). This is a clear

³⁰ *Walker v. State*, 790 A.2d 1214 (Del. 2002).

³¹ *Hunter v. State*, 815 A.2d 730, 732 (Del. 2002).

misstatement of the law. The Due Process Clause of the Fourteenth Amendment and Delaware Constitution require that the State bear the burden of proving each and every element of a crime beyond a reasonable doubt.³² The defendant has no burden of proof in a criminal case and does not have any burden or legal obligation to “raise” any doubt, reasonable or otherwise. In stating that defense counsel “tries to raise reasonable doubt”, the prosecutor confused the jury as what the burden of proof was in the case and which party was obligated to meet that burden.

A prosecutor should not misstate the burden of proof in closing argument or rebuttal. A prosecutor’s misstatement of the burden of proof undermines confidence that the fact finder applied both the presumption of innocence and the burden of proof to the case presented by the prosecution. Furthermore, the choice of words “raise” and “reasonable doubt” in the context of arguing about the weaknesses or shortcomings of the points made by defense counsel was misleading. In a recent case, the Connecticut Court of Appeals affirmed the trial court’s refusal to use the phrase “raise reasonable doubt” in a jury instruction. The Court of Appeals observed that the phrase was “potentially confusing and misleading.”³³ The Connecticut Court of Appeals quoted an excerpt from the State’s brief in that case explaining how the “raise reasonable doubt” language would be incorrect and harmful:

³² *In re Winship*, 397 U.S. 358, 364 (1970); 11 *Del.C.* §301(b).

³³ *State v. Conyers*, 127 A.3d 1077, 1082 (Conn. App. Ct. 2015).

By including language that the testimony ... if believed, is sufficient to raise a reasonable doubt, the court would be suggesting that the jury must affirmatively find that the defendant proved that a reasonable doubt existed.... Including the ... proposed language ... would suggest that the jury had to credit something in the evidence it heard in court in order to find a reasonable doubt. This is an incorrect statement of the law. ...³⁴

The phrasing employed by the prosecutor implied that the defense counsel's job was to "raise" or create doubt in the juror's minds. This is not a correct statement in that it ignores the presumption of a defendant's innocence and the prosecution's unshifting burden of proof. It was improper for the prosecutor to misstate the burden of proof and confuse the jury by saying that defense counsel "tries to raise as much reasonable doubt as he can."³⁵

Additionally, in stating that it was defense counsel's "job" to "raise reasonable doubt" or "attempt[] to ... raise issues with reasonable doubt" the prosecutor was impugning, indirectly, the integrity and institutional role of defense counsel at a criminal trial. This Court has stated previously:

It is impermissible for a prosecutor to discredit defense counsel in front of the jury. Even subsequent jury instructions to rectify that type of error "may not ensure that [such] disparaging remarks have not already deprived the defendant of a fair trial."³⁶

³⁴ *Id.* at n.9.

³⁵ (A124).

³⁶ *Hunter v. State*, 815 A.3d at 735 (quoting *Walker v. State*, 790 A.2d 1214, 1219 (Del. 2002)).

This Court also has stated that, “In our adversarial system, defense counsel is not only permitted but expected to be a zealous advocate for the defendant.”³⁷

In *Hunter v. State*, this Court held that a prosecutor engaged in misconduct when he said that it was defense counsel’s job to trick the jury into letting Hunter go free.³⁸ In arguing that defense counsel was doing his “job” attempting to “raise” reasonable doubt, the prosecutor was implying that defense counsel’s arguments were not based upon evidence or that they were somehow disingenuous, or cynical. This was disrespectful and denigrated the role of defense counsel at trial. It was improper for the prosecutor to undermine the role of defense counsel in the trial in that manner. As this Court stated in *Walker v. State*, “Arguments by the prosecutor to the jury, however, should focus on evidence introduced at trial rather than on his or her opinion of defense counsel's personality or trial strategy.”³⁹ By commenting on defense counsel’s trial strategy in a manner that misstated the burden of proof and was likely to confuse the jury, the prosecutor engaged in improper conduct.

c. The prosecutor’s improper argument in rebuttal amounted to plain error requiring reversal of Appellant White’s convictions.

³⁷ *Walker v. State*, 790 A.2d 1214, 1218 (citing Delaware Lawyers' Rules of Prof'l Conduct, Preamble (2002)).

³⁸ *Hunter, supra* at 736-37.

³⁹ *Walker v. State*, 790 A.2d at 1220 (Del. 2002) (citing ABA Standards for Criminal Justice 4-7.8(a) (2d ed. 1980); Delaware Lawyers’ Rules for Prof'l. Conduct Rule 3.4 (2002)).

As this Court observed in *Walker*, “It is impermissible for a prosecutor to make a closing argument that ‘limits the fundamental due process right of an accused to present a vigorous defense.’”⁴⁰ The United States Supreme Court has stated that, “To constitute a due process violation, the prosecutorial misconduct must be ‘of sufficient significance to result in the denial of the defendant’s right to a fair trial.’”⁴¹ In making this determination, the prosecutor’s remarks must be put in context.⁴²

In his remarks, the prosecutor impermissibly interjected his own belief in the importance of the wiretap evidence and then made comments that misstated the burden of proof and denigrated the role of defense counsel in the trial process. These improper arguments are clear on the face of the record and occurred in rebuttal. They were the last comments by either party that the jury heard. Given when they were said and that the comments went to core concerns of due process, namely, the role of defense counsel and the burden of proof, these inappropriate statements constituted a denial of Mr. White’s right to a fair trial. Accordingly, reversal of all of Mr. White’s convictions is required.

⁴⁰ *Walker v. State*, 790 A.2d at 1219 (quoting *Sizemore v. Fletcher*, 921 F.2d 667, 671 (6th Cir. 1990)).

⁴¹ *Greer v. Miller*, 483 U.S. 756, 765 (1987) (quoting *United States v. Bagley*, 473 U.S. 667, 676 (1985)).

⁴² *Greer*, 483 U.S. at 765-66; see also *Donnelly v. DeChristoforo*, 416 U.S. 637, 639 (1974); *Darden v. Wainwright*, 477 U.S. 168, 179 (1986).

Conclusion

Based upon the facts and legal authorities set forth above, Defendant-Below, Appellant Jason White respectfully requests that this Honorable Court reverse his convictions and remand this case to the Superior Court for a new trial.

Respectfully submitted,

/s/ John S. Malik

Delaware Bar I.D. No. 2320

100 East 14th Street

Wilmington, DE 19801

(302) 427-2247

Attorney for Appellant,

Jason White

Dated: February 26, 2021

EXHIBIT “A”

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE

VS.

JASON WHITE

Alias: No Aliases

DOB: 02/14/1987

SBI: 00521649

CASE NUMBER:

N1810008071

N1808010617

N1906002560

IN AND FOR NEW CASTLE COUNTY
CRIMINAL ACTION NUMBER:

IN19-10-1257

DDEAL TIER 4 (F)

IN19-10-1259

DDEAL TIER 4 (F)

IN19-10-1261

DDEAL TIER 2 (F)

IN19-11-0382

DDEAL TIER 4 (F)

IN18-10-1725W

RACKETEERING (F)

IN19-10-1262

ENDANG WELF CHD (M)

IN19-10-1263

ENDANG WELF CHD (M)

IN19-10-1264

ENDANG WELF CHD (M)

COMMITMENT

Nolle Prosequi on all remaining charges in this case
ALL SENTENCES OF CONFINEMENT SHALL RUN CONSECUTIVE

SENTENCE ORDER

NOW THIS 28TH DAY OF AUGUST, 2020, IT IS THE ORDER OF THE
COURT THAT:

The defendant is adjudged guilty of the offense(s) charged.
The defendant is to pay the costs of prosecution and all
statutory surcharges.

AS TO IN19-10-1257- : TIS
DDEAL TIER 4

Effective June 5, 2019 the defendant is sentenced
as follows:

- The defendant is placed in the custody of the Department
of Correction for 25 year(s) at supervision level 5 with
credit for 1 day(s) previously served

APPROVED ORDER

1

January 22, 2021

CERTIFIED AS A TRUE COPY
ATTEST: LISA M. GONZALEZ
CHIEF DEPUTY PROTHONOTARY
BY: 

STATE OF DELAWARE
VS.
JASON WHITE
DOB: 02/14/1987
SBI: 00521649

- Suspended after 2 year(s) at supervision level 5
- For 2 year(s) supervision level 4 DOC DISCRETION
- Suspended after 6 month(s) at supervision level 4 DOC DISCRETION
- For 18 month(s) supervision level 3
- Hold at supervision level 5
- Until space is available at supervision level 4 DOC DISCRETION

AS TO IN19-10-1259- : TIS
DDEAL TIER 4

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Probation is concurrent to criminal action number IN19-10-1258 .

AS TO IN19-10-1261- : TIS
DDEAL TIER 2

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Probation is concurrent to criminal action number IN19-10-1260 .

AS TO IN19-11-0382- : TIS
DDEAL TIER 4

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Probation is concurrent to criminal action number IN19-10-1261 .

AS TO IN18-10-1725-W : TIS
RACKETEERING

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Probation is concurrent to criminal action number IN19-11-0382 .

APPROVED ORDER 2 January 22, 2021 11:47

STATE OF DELAWARE
VS.
JASON WHITE
DOB: 02/14/1987
SBI: 00521649

AS TO IN19-10-1262- : TIS
ENDANG WELF CHD

- The defendant is placed in the custody of the Department of Correction for 1 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to criminal action number IN18-10-1725 .

AS TO IN19-10-1263- : TIS
ENDANG WELF CHD

- The defendant is placed in the custody of the Department of Correction for 1 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to criminal action number IN19-10-1262 .

AS TO IN19-10-1264- : TIS
ENDANG WELF CHD

- The defendant is placed in the custody of the Department of Correction for 1 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to criminal action number IN19-10-1263 .

SPECIAL CONDITIONS BY ORDER

STATE OF DELAWARE
VS.
JASON WHITE
DOB: 02/14/1987
SBI: 00521649

CASE NUMBER:
1808010617
1906002560
1810008071

The defendant shall pay any monetary assessments ordered during the period of probation pursuant to a schedule of payments which the probation officer will establish.

Have no contact with Codefendants

Forfeit seized vehicle and USC

Defendant shall receive mental health evaluation and comply with all recommendations for counseling and treatment deemed appropriate.

Defendant shall be evaluated for substance abuse and follow recommendation for treatment, counseling and screening.

See Notes

For the purposes of ensuring the payment of costs, fines, restitution and the enforcement of any orders imposed, the Court shall retain jurisdiction over the convicted person until any fine or restitution imposed shall have been paid in full. This includes the entry of a civil judgment pursuant to 11 Del.C. 4101 without further hearing.

NOTES

Defendant is to have mental health evaluation and substance abuse evaluation followed by any recommended treatment while at Level 5.

Charges ending in CRA #s IN19-10-1257 & IN19-10-1258 are to be merged.

Charges ending in CRA #s IN19-10-1259 & IN19-10-1260 are to be merged.

The Level 5 time for this sentence is 10 years.

JUDGE WILLIAM C CARPENTER JR.

APPROVED ORDER

4

January 22, 2021 11:47

FINANCIAL SUMMARY

STATE OF DELAWARE
VS.
JASON WHITE
DOB: 02/14/1987
SBI: 00521649

CASE NUMBER:
1808010617
1906002560
1810008071

SENTENCE CONTINUED:

TOTAL DRUG DIVERSION FEE ORDERED	
TOTAL CIVIL PENALTY ORDERED	
TOTAL DRUG REHAB. TREAT. ED. ORDERED	
TOTAL EXTRADITION ORDERED	
TOTAL FINE AMOUNT ORDERED	
FORENSIC FINE ORDERED	
RESTITUTION ORDERED	
SHERIFF, NCCO ORDERED	135.00
SHERIFF, KENT ORDERED	
SHERIFF, SUSSEX ORDERED	
PUBLIC DEF, FEE ORDERED	200.00
PROSECUTION FEE ORDERED	300.00
VICTIM'S COM ORDERED	
VIDEOPHONE FEE ORDERED	10.00
DELJIS FEE ORDERED	10.00
SECURITY FEE ORDERED	100.00
TRANSPORTATION SURCHARGE ORDERED	
FUND TO COMBAT VIOLENT CRIMES FEE	150.00
SENIOR TRUST FUND FEE	
AMBULANCE FUND FEE	

TOTAL 905.00
APPROVED ORDER 5 January 22, 2021 11:47

APPROVED ORDER

6

January 22, 2021 11:47

A170

AGGRAVATING-MITIGATING

STATE OF DELAWARE

VS.

JASON WHITE

DOB: 02/14/1987

SBI: 00521649

CASE NUMBER:

1808010617

1906002560

1810008071

AGGRAVATING

NEED FOR CORRECTIONAL TREATMENT

LACK OF REMORSE

APPROVED ORDER

7

January 22, 2021 11:47

A171

EXHIBIT “B”

00:45:50 **1** dresser previously I believe.

00:45:51 **2** **A.** Yes.

00:45:52 **3** **Q.** But that is Jessica Esty's bedroom?

00:45:55 **4** **A.** Yes.

00:46:00 **5** **Q.** Once again I'm going to show State's Exhibit 7.

00:46:05 **6** Zoom in some on it. Is this also taken in Jessica

00:46:15 **7** Esty's bedroom?

00:46:15 **8** **A.** Yes.

00:46:15 **9** **Q.** And based on the photos that were taken from

00:46:21 **10** the ME's office and what was seized that day, what are

00:46:22 **11** we looking at there?

00:46:24 **12** **A.** It appears to be a mixture of Crystal

00:46:28 **13** methamphetamine and heroin.

00:46:28 **14** **Q.** You testified before that you're a drug

00:46:36 **15** detective and had taken part in many drug

00:46:48 **16** investigations. Based on your knowledge of drug

00:46:48 **17** investigations, is that how one might normally package

00:46:48 **18** Crystal methamphetamine?

00:46:48 **19** **A.** No. It would be in a bag.

00:46:48 **20** **Q.** Thank you. Detective, we went through stuff

00:46:51 **21** that was found in the A/B bedroom identified as Jason

00:46:55 **22** White's. You mentioned there were multiple cell phones

00:46:59 **23** seized. Did you have an opportunity to download those

00:47:02 **1** cell phones?

00:47:02 **2** **A.** One of our tech crimes detectives did. Yes.

00:47:05 **3** **Q.** Can you go through for the jury what takes

00:47:10 **4** place when a forensic examination of a cell phone is

00:47:13 **5** done?

00:47:13 **6** **A.** The crimes detective would retrieve the cell

00:47:15 **7** phone from the evidence storage area and then use

00:47:19 **8** various programs to download the information onto a

00:47:20 **9** forensic report, which would then be provided to me.

00:47:23 **10** **Q.** I guess what's the involvement with the techs

00:47:28 **11** crimes person? Do they view the cell phone? Is it

00:47:32 **12** simply --

00:47:33 **13** **A.** I don't know. I think it's more functional.

00:47:35 **14** They're basically responsible for downloading the

00:47:37 **15** information.

00:47:37 **16** **Q.** Does that then generate a file?

00:47:40 **17** **A.** It does.

00:47:41 **18** **Q.** That file is given to you so you can actually

00:47:45 **19** review it?

00:47:45 **20** **A.** Correct.

00:47:45 **21** **Q.** Once that file is generated, is it editable?

00:47:48 **22** **A.** No.

00:47:49 **23** **Q.** So you can't add anything or subtract anything

00:47:53 **1** from it?

00:47:53 **2** **A.** Not to my knowledge.

00:47:54 **3** **Q.** What does the download provide?

00:47:56 **4** **A.** Everything from basic phone information to call

00:47:59 **5** logs, contact information, text messages, images,

00:48:03 **6** videos. Any type of data that's basically stored on a

00:48:06 **7** phone.

00:48:06 **8** **Q.** If something has been deleted, is it possible

00:48:08 **9** to recover it?

00:48:09 **10** **A.** Yes.

00:48:09 **11** **Q.** Are you always able to recover it though?

00:48:11 **12** **A.** I don't believe so. No.

00:48:13 **13** **Q.** Now, you indicated there's a forensic

00:48:18 **14** examination done on the three cell phones found in the

00:48:20 **15** target bedroom identified as A/B. Have you had a chance

00:48:25 **16** to view all three of those?

00:48:26 **17** **A.** They were all downloaded by Detective Burse in

00:48:32 **18** the tech crimes unit.

00:48:33 **19** **Q.** Did you view the results?

00:48:34 **20** **A.** Yes.

00:48:35 **21** **Q.** What did you find in respect to each individual

00:48:39 **22** cell phone?

00:48:39 **23** **A.** There were three cell phones that were

00:48:41 **1** downloaded. There was I believe a Coolpad, ZTE phone,

00:48:49 **2** and Alcatel. The Alcatel cell phone and the Coolpad,

00:48:53 **3** one of them had next to no information on it, like it

00:48:56 **4** was never used. The other one had information that was

00:48:58 **5** much older to our investigation. I believe the most

00:49:00 **6** recent information on that phone was seven or eight

00:49:04 **7** months before our investigation started. And then the

00:49:06 **8** ZTE phone had some relevant information to our

00:49:09 **9** investigation.

00:49:09 **10** **Q.** When you say relevant, what are you looking for

00:49:11 **11** to sort of determine that something is relevant to the

00:49:16 **12** investigation?

00:49:16 **13** **A.** Typically what I would be looking for is text

00:49:19 **14** messages that are always big, information on text

00:49:22 **15** messages about amounts of drugs, meeting up to make

00:49:25 **16** exchanges, sales, dollar amounts and location points to

00:49:30 **17** meet up.

00:49:30 **18** **Q.** Are you also looking for identifying

00:49:34 **19** information to help determine whose phone it may

00:49:37 **20** actually be?

00:49:37 **21** **A.** Correct.

00:49:37 **22** **Q.** On that ZTE did you find any identifying

00:49:40 **23** information?

00:49:40 **1** **A.** There were several conversations between the
 00:49:42 **2** owner of the phone and a woman named Cass that made me
 00:49:46 **3** believe that they were in some sort of romantic
 00:49:49 **4** relationship.
 00:49:49 **5** **Q.** Are you aware if the defendant had a
 00:49:51 **6** significant other at the time?
 00:49:52 **7** **A.** Yes.
 00:49:52 **8** **Q.** Did you learn that through the course of your
 00:49:55 **9** investigation?
 00:49:55 **10** **A.** Yes.
 00:49:56 **11** **Q.** What's that person's name?
 00:49:57 **12** **A.** Cassie.
 00:49:58 **13** **Q.** Was she present at the time that you searched
 00:50:01 **14** the residence?
 00:50:04 **15** **A.** She was not.
 00:50:04 **16** **Q.** Detective Miller, at this time I'm going to
 00:50:07 **17** show you what's been marked as State's Exhibit 28 I
 00:50:10 **18** believe without objection.
 00:50:27 **19** MR. MALIK: Your Honor, there's no objection.
 00:50:28 **20** THE COURT: Okay. Twenty-eight entered without
 00:50:33 **21** objection.
22
23

00:50:34 **1** EXAMINATION
 00:50:34 **2** BY MR. COOKSEY:
 00:50:34 **3** **Q.** Detective Miller, we're going to look at
 00:50:36 **4** State's Exhibit 28. There's a variety of information
 00:50:39 **5** here, and I'll zoom because I know the blue isn't
 00:50:42 **6** showing up very well, but can you just sort of go
 00:50:45 **7** through. I'm pointing here. What am I looking at right
 00:50:49 **8** here?
 00:50:49 **9** **A.** That's a timestamp of August 11, 2018, at 12:33
 00:50:53 **10** p.m.
 00:50:53 **11** **Q.** What is that here?
 00:50:55 **12** **A.** Says sent. Phone number to (302) 407-2224 Cass
 00:51:18 **13** and the message says okay.
 00:51:18 **14** **Q.** We'll zoom in so we can see a little better
 00:51:18 **15** here.
 00:51:18 **16** **A.** Again, a timestamp August 10, 2018, at 9:18
 00:51:18 **17** a.m.
 00:51:19 **18** **Q.** So in looking at these two text messages, this
 00:51:22 **19** one on August 10 theoretically is sent prior to the one
 00:51:25 **20** on August 11?
 00:51:26 **21** **A.** Yes. Inbox meaning that the message was found
 00:51:31 **22** in the inbox on the phone and it was from phone number
 00:51:35 **23** 1-302-407-2224 and again from Cass. And the message I

00:51:42 **1** told the lady down the block ya name Jason White.
 00:51:46 **2** **Q.** What's the defendant's name?
 00:51:47 **3** **A.** Jason White.
 00:51:48 **4** **Q.** You indicated you found some other information
 00:51:52 **5** on that phone that led you to believe it was Jason
 00:51:56 **6** White's phone, some of these being conversations with
 00:52:00 **7** somebody named Cass. Were you able to determine an
 00:52:03 **8** approximate amount of text messages from that person?
 00:52:06 **9** **A.** Hundreds.
 00:52:09 **10** **Q.** Detective Miller, at this time I'm going to
 00:52:12 **11** show you what's been marked as State's Exhibit 19 I
 00:52:16 **12** believe without objection.
 00:52:26 **13** MR. MALIK: Your Honor, can we approach,
 00:52:27 **14** please?
 00:52:28 **15** THE COURT: Yes.
 00:52:47 **16** (The following sidebar conference was held.)
 00:52:47 **17** MR. MALIK: Your Honor, we're going to be
 00:52:50 **18** getting into some text messages from the cell phone that
 00:52:54 **19** predate the August 16 search, and some of the
 00:52:57 **20** conversations I believe the State is going to suggest
 00:53:06 **21** were evidence of negotiations about different types of
 00:53:06 **22** substances, drugs, quantities, amounts, things of that
 00:53:10 **23** nature. Since -- I believe you're going to attribute to

00:53:14 **1** to Jason White.
 00:53:15 **2** Since there are things, events, acts, crimes
 00:53:18 **3** that occurred prior to the August 16 incident here, I
 00:53:20 **4** think they come under other crimes, evidence, prior bad
 00:53:25 **5** acts analysis. I would be requesting that the Court
 00:53:32 **6** concludes these items are evidence of probably intent,
 00:53:37 **7** things of that nature that there be an instruction given
 00:53:40 **8** that they can only be considered for the proper purpose
 00:53:43 **9** and that they can't be used as evidence as crime he
 00:53:48 **10** commits or think that the defendant's a bad person. I
 00:53:51 **11** want to bring that up because I think we're getting to
 00:53:53 **12** that now. I would have requested contemporaneous
 00:54:02 **13** instruction.
 00:54:02 **14** MR. COOKSEY: These text messages are all
 00:54:03 **15** within a few weeks of this arrest. There's an
 00:54:07 **16** allegation of drug dealing here. One of the ways to
 00:54:12 **17** show intent if there's not an actual physical drug deal
 00:54:15 **18** that's taken place, maybe an undercover if there's an
 00:54:20 **19** arrest is to show the defendant's state of mind, his
 00:54:24 **20** conversations.
 00:54:24 **21** These statements are what these essentially
 00:54:28 **22** are, conversations with other people. They would come
 00:54:31 **23** in to sort of show context to the conversation the

00:54:33 **1** defendant is having with somebody else. They're all
 00:54:38 **2** close contemporaneous time period to the arrest. They
 00:54:43 **3** show motive, intent, common scheme because of language
 00:54:49 **4** used, but I don't feel they're too far out of the time
 00:54:52 **5** for the events in this case.
 00:54:55 **6** THE COURT: The problem is I haven't seen them.
 00:55:00 **7** I don't know what they are. I know what you're trying
 00:55:03 **8** to get in, the context of the document that you're
 00:55:08 **9** trying to get in. You don't object to contents, context
 00:55:17 **10** coming in? You just want the instruction?
 00:55:21 **11** MR. MALIK: Your Honor, I think that the Court
 00:55:22 **12** probably should -- I think maybe we should do it outside
 00:55:26 **13** of the presence of the jury just a quick run-through. I
 00:55:29 **14** don't believe there's that many of them. That way the
 00:55:31 **15** Court can consider the factors. I think that would be
 00:55:39 **16** the most thorough way to protect Mr. White's rights.
 00:55:42 **17** THE COURT: Is he the guy who's going to -- is
 00:55:49 **18** this detective the one that's going to say these are
 00:55:54 **19** messages that reflect drug activity? Or is it somebody
 00:55:58 **20** else who's your expert?
 00:56:00 **21** MR. COOKSEY: For context our expert is going
 00:56:02 **22** to go through and walk through an analysis on the text
 00:56:06 **23** messages and content and how they're connected to drug

00:56:09 **1** dealing. This is more for identification and just
 00:56:14 **2** laying a foundation that these text messages came from
 00:56:16 **3** his cell phone and that Detective Miller in the course
 00:56:21 **4** of his investigations as a CIO was reviewing these.
 00:56:26 **5** That's why I'm showing these instead of 7,000 other text
 00:56:30 **6** messages that were on the phone. A more thorough
 00:56:34 **7** investigation will be done by Detective Schupp when he
 00:56:36 **8** testifies as a drug dealing expert.
 00:56:39 **9** THE COURT: Well, you're asking me to make a
 00:56:47 **10** decision in a vacuum, and I can't do that. Do you have
 00:56:54 **11** anything else to put on before lunch?
 00:56:57 **12** MR. COOKSEY: Detective Miller was also going
 00:57:00 **13** to go through -- the defendant gave an interview as
 00:57:04 **14** well. It's about seven, eight minutes long. We were
 00:57:06 **15** going to play that interview as well. He was going to
 00:57:11 **16** put that into evidence.
 00:57:12 **17** THE COURT: So can we switch gears to that and
 00:57:16 **18** then when that's done we'll send the jury to lunch and I
 00:57:20 **19** can hear the rest?
 00:57:21 **20** MR. COOKSEY: Yes, Your Honor.
 00:57:22 **21** MR. MALIK: Thank you, Your Honor.
 00:57:44 **22** (The sidebar conference concluded.)
 00:57:44 **23** BY MR. COOKSEY:

00:57:45 **1** Q. Detective Miller, we're going to switch gears
 00:57:47 **2** for a moment at this time and get back to some cell
 00:57:50 **3** phone stuff at a later time. At this time what we're
 00:57:54 **4** going to do is move into the defendant's statement. You
 00:57:59 **5** testified earlier that after the defendant was arrested
 00:58:02 **6** and went back to New Castle County Police Department
 00:58:04 **7** that you gave -- you sat down with the defendant and
 00:58:07 **8** subsequently had an interview of him.
 00:58:08 **9** A. Yes.
 00:58:10 **10** Q. What are the parameters you go through before
 00:58:14 **11** conducting an interview with a suspect?
 00:58:16 **12** A. Typically a written Miranda form I would go
 00:58:20 **13** over with the suspect.
 00:58:21 **14** Q. Did you do that in this case?
 00:58:22 **15** A. I did.
 00:58:22 **16** Q. Now, where is this conducted at?
 00:58:27 **17** A. New Castle County Police Department
 00:58:30 **18** headquarters.
 00:58:30 **19** Q. Is it in a private interview room?
 00:58:33 **20** A. It's a secluded interview room. Yes.
 00:58:42 **21** Q. Would this have been recorded?
 00:58:49 **22** A. Yes. Audio and visual.
 00:58:51 **23** Q. Detective Miller, at this time we're going to

00:59:48 **1** play State's 26 exhibit, which I believe is admitted
 00:59:52 **2** without objection.
 00:59:53 **3** MR. MALIK: No objection, Your Honor.
 01:00:10 **4** BY MR. COOKSEY:
 01:00:10 **5** Q. Is that one of the interview rooms at the New
 01:00:13 **6** Castle County Police Department?
 01:00:13 **7** A. Yes, it is.
 01:00:25 **8** (A video is played.)
 01:00:28 **9** BY MR. COOKSEY:
 01:02:56 **10** Q. I'm going to pause it real quick, Detective,
 01:02:58 **11** because the volume is not coming through as loud on the
 01:03:03 **12** monitor system here. What did you just ask the
 01:03:04 **13** defendant?
 01:03:04 **14** A. I asked him if it was heroin that he dumped out
 01:03:07 **15** in the bedroom.
 01:03:08 **16** Q. And what was his response?
 01:03:10 **17** A. He said, "No. It was ice."
 01:03:12 **18** Q. What was the only room in the residence that
 01:03:14 **19** you found any drugs that appeared to be dumped?
 01:03:17 **20** A. The back right bedroom. Jessica Esty's
 01:03:21 **21** bedroom.
 01:03:21 **22** THE COURT: Since I have to do something else
 01:03:26 **23** with regards to some other evidence, why don't we let

01:03:28 **1** the jury go to lunch. I'll spend the next half-hour
 01:03:33 **2** dealing with the other issue, and then we'll see if we
 01:03:35 **3** can't solve the technology issue.
 01:03:38 **4** MR. COOKSEY: Yes, Your Honor.
 01:03:39 **5** THE COURT: Ladies and gentlemen, there's
 01:03:40 **6** something I need to do outside of your presence to
 01:03:43 **7** decide the admissibility of some evidence. I need to
 01:03:45 **8** hear it first. So I'm going to go ahead and send you to
 01:03:50 **9** lunch. We should be done to be able to continue at two
 01:03:55 **10** o'clock, so you're excused until then. All right?
 01:03:57 **11** Thank you.
 01:04:36 **12** (The jury leaves the courtroom at 12:31 p.m.)
 01:04:36 **13** THE COURT: You have multiple --
 01:04:38 **14** MR. COOKSEY: Yes, I do. That's what I was
 01:04:40 **15** grabbing, Your Honor, so I can hand up the Court's
 01:04:43 **16** copies.
 01:05:26 **17** THE COURT: So I have four documents here. I'm
 01:05:28 **18** assuming you're not trying to get in all the messages
 01:05:32 **19** from these four documents. That's lots of documents.
 01:05:37 **20** Tell me what you're --
 01:05:40 **21** MR. COOKSEY: Essentially, Your Honor, I mean,
 01:05:43 **22** a lot of this is -- going through some of these messages
 01:05:45 **23** here are very brief in nature, but it's discussion about

01:05:49 **1** arranging a drug deal. I mean, I'm not sure which one
 01:05:56 **2** Your Honor has in front of you first.
 01:06:02 **3** THE COURT: The document that says SMS messages
 01:06:06 **4** 130.
 01:06:07 **5** MR. COOKSEY: 130.
 01:06:08 **6** THE COURT: There was 15, I guess, listed here.
 01:06:10 **7** MR. COOKSEY: Yes, Your Honor. So a little
 01:06:13 **8** context, the reason there's a redacted portion down
 01:06:16 **9** there at the bottom is because it appears from the
 01:06:18 **10** download there was some time in between the July 14
 01:06:21 **11** message and then the last time this caller had spoke to
 01:06:24 **12** that person. I believe they were back in March. And so
 01:06:27 **13** because of that time frame, the State redacted those
 01:06:30 **14** out.
 01:06:30 **15** Essentially what the 130 identifies is that
 01:06:33 **16** there were 130 messages with this telephone number
 01:06:36 **17** inside this phone. You were able to run sort of a query
 01:06:42 **18** to look for phone numbers so you can pull up all the
 01:06:45 **19** phone numbers that that target phone contacts and these
 01:06:49 **20** messages here that sort of go through sort of discussion
 01:06:55 **21** about drug deals or arranging a drug deal.
 01:06:59 **22** THE COURT: Tell me, maybe the officer can
 01:07:03 **23** enlighten us, I was told by his testimony that there

01:07:06 **1** were three phones.
 01:07:07 **2** MR. COOKSEY: Yes, Your Honor.
 01:07:08 **3** THE COURT: Two of the phones he said had
 01:07:10 **4** pretty much absolutely no value at all.
 01:07:13 **5** MR. COOKSEY: Yes.
 01:07:13 **6** THE COURT: So this is -- so these are all
 01:07:21 **7** messages out of the one phone?
 01:07:24 **8** MR. COOKSEY: Yes, Your Honor.
 01:07:24 **9** THE COURT: Okay. And they are separated into
 01:07:31 **10** five documents because of what?
 01:07:33 **11** MR. COOKSEY: So each of these documents, Your
 01:07:35 **12** Honor, indicates that this was with one phone.
 01:07:40 **13** THE COURT: Are they separated by numbers that
 01:07:43 **14** either called him, the same number calling him or he
 01:07:47 **15** calling that number?
 01:07:48 **16** MR. COOKSEY: Text messages. But yes, Your
 01:07:53 **17** Honor. So each item is with theoretically the same
 01:07:58 **18** other phone.
 01:15:31 **19** THE COURT: So I've gone through two documents.
 01:15:36 **20** Tell me -- I'm still at a loss as to what you're -- how
 01:16:03 **21** you're going to get it in. I mean, there are parts of
 01:16:03 **22** this listing that time matches of a conversation that is
 01:16:03 **23** reasonable to assume that is perhaps drug-related. And

01:16:03 **1** so there are blocks of texts that perhaps would be
 01:16:10 **2** relevant for him to testify in these time frames I found
 01:16:16 **3** these. But that's not what you're -- but this is like
 01:16:21 **4** -- then there's random things that he thinks involves
 01:16:25 **5** drugs which I can't make any connection to.
 01:16:29 **6** I mean, I spent now 10 minutes going through
 01:16:32 **7** the document, and I can pinpoint blocks of texts that
 01:16:36 **8** make sense. But putting in this document is
 01:16:40 **9** meaningless. I mean, I don't know what you're trying to
 01:16:43 **10** get to, how you're going to do it. Get him to testify
 01:16:53 **11** that I sat there and I pulled out these text messages.
 01:16:54 **12** Yeah. And now what?
 01:16:55 **13** MR. COOKSEY: Your Honor, as he's testified,
 01:16:57 **14** he's done hundreds of drug investigations as a CIO.
 01:17:02 **15** It's his job to go through and review the cell phone and
 01:17:06 **16** so in doing so he's reviewed text messages that he felt
 01:17:10 **17** were relevant to his investigation.
 01:17:16 **18** THE COURT: Okay.
 01:17:16 **19** MR. COOKSEY: Based upon terminology used,
 01:17:18 **20** discussions, fact that it's shown to be the defendant's
 01:17:24 **21** cell phone. If you get this into evidence, it allows
 01:17:26 **22** the drug dealing expert who's going to come on and
 01:17:29 **23** testify about different terminology for different drugs,

01:17:32 **1** specifically drugs that were seized from this residence
 01:17:35 **2** and what they may be called on the street. I think it's
 01:17:37 **3** clear to most people if you're calling somebody you
 01:17:41 **4** don't walk up to them on the street and say hey, I would
 01:17:45 **5** love to buy 50 grams of heroin, friend.
 01:17:49 **6** THE COURT: I've been here 25 years. You don't
 01:17:52 **7** need to educate me on drug dealing.
 01:17:55 **8** What I don't get, I understand he went through
 01:17:58 **9** and identified some text messages that he believes is
 01:18:02 **10** drug transactions. I get it. Great. I agree there are
 01:18:05 **11** text messages in this document in a time frame that
 01:18:07 **12** makes sense that appears as an example on the one that
 01:18:13 **13** says 56 on that starting at no. 13 and going up to no. 6
 01:18:22 **14** appears to be perhaps a drug transaction or the one that
 01:18:35 **15** has 12 on it 10 to 2 is perhaps a drug transaction. I
 01:18:43 **16** mean, there are blocks in here that I think that's true.
 01:18:48 **17** But I think that's my problem. It's not
 01:19:02 **18** organized in any fashion that makes sense. He just
 01:19:05 **19** pulled out -- if he wants to say that on one that's
 01:19:08 **20** marked 56 there's a series of text messages from 13 to 6
 01:19:13 **21** that I believe reference to the drug deal that was going
 01:19:17 **22** to occur on August 11, which is only five days before.
 01:19:21 **23** That makes sense.

01:19:24 **1** But the document as it's created just putting
 01:19:30 **2** it in doesn't explain anything. It's just random text
 01:19:34 **3** messages. In fact, there's some that it's just a single
 01:19:37 **4** day where he says hi. Okay. Do you understand my
 01:19:42 **5** problem? I mean, you have evidence here that is
 01:19:45 **6** relevant. It's just not in a form that is logical in
 01:19:58 **7** the sense of how to put it in. I mean, I could go
 01:20:02 **8** through the other three documents, but I don't know
 01:20:06 **9** that's my job of deciding what is going to be reflective
 01:20:11 **10** of a drug transaction.
 01:20:14 **11** I mean, I don't know what you want me to do.
 01:20:19 **12** I'll go through the other three documents if you want,
 01:20:22 **13** and I can tell you what you can put in and what you
 01:20:26 **14** can't put in. I mean, if you want him to say I pulled
 01:20:33 **15** these from the phone and that's all, I went through the
 01:20:37 **16** phone and I thought there may be some relevant
 01:20:40 **17** conversations about drug dealing and this is what I
 01:20:42 **18** pulled out, period.
 01:20:43 **19** MR. COOKSEY: I mean, essentially that's -- I
 01:20:46 **20** just need to authenticate them through him that he
 01:20:49 **21** pulled these from a phone, he viewed them, they came
 01:20:53 **22** from the ZTE, that way my drug dealing expert can talk
 01:20:56 **23** about language that was used, terminology that's used,

01:21:01 **1** nicknames for drugs on the street, prices. There's a
 01:21:05 **2** lot of numbers in here that are involved in these drug
 01:21:08 **3** transactions.
 01:21:09 **4** I'm not trying to have Detective Miller also
 01:21:11 **5** testify about it. Just mainly laying the foundation for
 01:21:14 **6** him to be able to say I viewed the phone, we were able
 01:21:20 **7** to go through and search in multiple different ways. In
 01:21:20 **8** doing so to look for things that may have been
 01:21:26 **9** indicative and relevant to my investigation, I was able
 01:21:26 **10** to pull these items, and I felt that they were relevant
 01:21:27 **11** to my investigation. I mean, I think that lays a
 01:21:31 **12** significant foundation for it.
 01:21:32 **13** THE COURT: I got that. Let's say he did that
 01:21:36 **14** and now you get these five documents. Is the drug
 01:21:43 **15** expert then going to say if you go to this one which is
 01:21:55 **16** July 16 and you look at the conversations from 10 up to
 01:21:59 **17** 2 I believe that is indicative of what is a drug
 01:22:05 **18** transaction that is -- that was being organized on that
 01:22:09 **19** particular day?
 01:22:11 **20** MR. COOKSEY: Based on terminology in there, I
 01:22:14 **21** believe he would, Your Honor. Line 10 can I buy some.
 01:22:20 **22** He specifically says buy, which is what happens in a
 01:22:23 **23** drug deal. Somebody's buying drugs.

01:22:27 **1** THE COURT: Let's try to get back on the same
 01:22:29 **2** page. I don't have any doubt that some of these
 01:22:32 **3** conversations as being pulled out is fairly reflective
 01:22:37 **4** of a drug transaction attempting to be organized. What
 01:22:43 **5** I don't know is whether or not the expert is going to
 01:22:47 **6** use the document and say, you know, on July 16 he had a
 01:22:55 **7** conversation with telephone number such and such and
 01:23:14 **8** based upon the information that was gathered I believe
 01:23:14 **9** that was an attempt to organize a drug transaction. And
 01:23:14 **10** I don't think that's what you're intending to have him
 01:23:14 **11** do.
 01:23:14 **12** MR. COOKSEY: Not necessarily, Your Honor.
 01:23:14 **13** It's to identify terminology used in these conversations
 01:23:16 **14** that would be indicative of either personal use drug use
 01:23:21 **15** or possible drug sales. I mean, I think it's -- a lot
 01:23:26 **16** of it's identifiable. If you go up to line 2 there, Fet
 01:23:32 **17** for 100 G I think him to be able to identify that's a
 01:23:37 **18** sent message from Mr. White's phone, to be able to
 01:23:42 **19** identify what Fet may be called on the street.
 01:23:46 **20** THE COURT: I agree.
 01:23:47 **21** MR. COOKSEY: I guess I'm missing something as
 01:23:50 **22** far as what you're looking for from me. I mean, I feel
 01:23:54 **23** like we're on the same page, but I'm missing something.

01:24:05 **1** THE COURT: What I think you haven't done, and
 01:24:07 **2** I'm not sure it's my job to do that, is that taking
 01:24:10 **3** these five documents and then putting them into this
 01:24:18 **4** grouping of messages I believe was a drug transaction
 01:24:22 **5** that was being organized the day before or five days
 01:24:26 **6** before. What I have is a document that just has random
 01:24:33 **7** -- "random" is not the right word but inside that and I
 01:24:38 **8** have other text messages that don't relate to anything,
 01:24:40 **9** that don't -- he believes they may be a drug
 01:24:46 **10** transaction, but the flow of the text doesn't reflect
 01:24:48 **11** that. It's just a random no.
 01:24:52 **12** MR. COOKSEY: Based on my understanding, Your
 01:24:54 **13** Honor, of how this is done, this is a running
 01:24:56 **14** conversation. There's no texts that aren't included in
 01:25:00 **15** between. There's nothing missing. There is a running
 01:25:03 **16** conversation between the ZTE cell phone and another one.
 01:25:06 **17** You run a query based on a phone number, and it gives
 01:25:10 **18** you 130 messages that are on the phone with that
 01:25:12 **19** individual phone number. There's nothing taken out in
 01:25:15 **20** between.
 01:25:15 **21** There is a running conversation from what is
 01:25:21 **22** the newest down to the -- number 1 down to the oldest.
 01:25:26 **23** So this is a running conversation. There's nothing

01:25:29 **1** missing in between that might provide some sort of
 01:25:33 **2** context. It's essentially his conversation with the
 01:25:35 **3** owner of that other phone.
 01:25:55 **4** THE COURT: Okay. Well, let's go to the
 01:25:57 **5** document that has 56 on top of it. It appears that 5 to
 01:26:18 **6** 1 is for one drug transaction. Thirteen to 6 perhaps is
 01:26:22 **7** another drug transaction. They're not even on the same
 01:26:30 **8** day, the same document.
 01:26:37 **9** Then you have another drug transaction that
 01:26:39 **10** looks like on 8/11 different from the one above it.
 01:26:55 **11** Twenty is a random 8/20 at 7:11 in the evening. I think
 01:27:29 **12** then you get -- from 24 to 21 you probably have a drug
 01:27:29 **13** transaction occurring.
 01:27:29 **14** Do you see what I'm trying to get to? In the
 01:27:29 **15** same document there is multiple days with not
 01:27:29 **16** necessarily the same drug transaction. Okay? And so if
 01:27:35 **17** this was a document that was arranged in regards to I
 01:27:38 **18** went and looked at text messages, if I look at this
 01:27:41 **19** series of text messages that are from the time it
 01:27:44 **20** started to the time it ended, the expert will be able to
 01:27:48 **21** say I think that's a drug transaction based upon my
 01:27:51 **22** training and experience.
 01:27:53 **23** But I'm not quite sure how these documents were

01:27:57 **1** created in the five documents that they have. I mean,
 01:28:03 **2** why wouldn't you take a document that says on August 11
 01:28:08 **3** there were these text messages and this is what the
 01:28:14 **4** discussion was? And therefore I, the expert, believe
 01:28:16 **5** it's a drug transaction.
 01:28:16 **6** MR. COOKSEY: This is the way I've done it
 01:28:18 **7** multiple times before and had it done in cases, Your
 01:28:21 **8** Honor. I mean, it's very common for somebody who's
 01:28:25 **9** buying drugs from somebody to purchase drugs from them
 01:28:29 **10** multiple times. We're showing this is his course of
 01:28:31 **11** business. This individual person reaches out to him on
 01:28:35 **12** different days for drugs.
 01:28:36 **13** THE COURT: Now you add another thing. Are you
 01:28:38 **14** saying that each of the five documents is the same phone
 01:28:46 **15** number for the same buyer?
 01:28:47 **16** MR. COOKSEY: Absolutely. And I apologize if I
 01:28:50 **17** wasn't clear. I was attempting to indicate that before
 01:28:52 **18** that all five of these documents you run a query on a
 01:28:57 **19** phone number. For instance, from my understanding of
 01:29:02 **20** the program, you can type in "glass" and you can
 01:29:04 **21** identify anybody who's using the terminology glass in
 01:29:08 **22** that phone and you can run a query on that phone number
 01:29:12 **23** to pull up any time that phone number contacted the

01:29:17 **1** target phone.
 01:29:18 **2** So all of these documents -- document 56,
 01:29:21 **3** that's the exact same phone number to contact the
 01:29:24 **4** defendant's ZTE cell phone and so on and so forth.
 01:29:29 **5** These are all the same phone number contacting the ZTE.
 01:29:32 **6** It's not different people. It's not different
 01:29:34 **7** transactions. It's the same five documents it lists.
 01:29:39 **8** THE COURT: Okay. Mr. Malik, do you want to
 01:29:42 **9** chime in, or are you willing to just stand quiet? Am I
 01:29:49 **10** doing a sufficient job?
 01:29:50 **11** MR. MALIK: I think you are, Your Honor. I
 01:29:52 **12** don't have that much more to add.
 01:29:54 **13** I probably would have some voir dire regarding
 01:29:58 **14** how other than finding the defendant in the room how it
 01:30:02 **15** was determined -- in that one text message that was
 01:30:07 **16** identified as State's Exhibit 20 conclusively
 01:30:11 **17** establishes that this was Mr. White's phone and he was
 01:30:13 **18** the source of the texts that were being sent out for the
 01:30:19 **19** drug transactions. That's the only other point that I
 01:30:22 **20** might raise to make a record of.
 01:30:24 **21** In other words, I don't believe there's any
 01:30:27 **22** type of subscriber information that indicates this phone
 01:30:31 **23** was a T-Mobile maintained by Jason White. I don't think

01:30:35 **1** there's anything that could definitively tie it to him
 01:30:39 **2** in that fashion.
 01:30:43 **3** THE COURT: I don't know if it's going to be
 01:30:47 **4** introduced or not. I'm willing to let this officer
 01:30:49 **5** testify that he ran whatever program he runs and these
 01:30:55 **6** -- and somehow or other he came up with these -- I don't
 01:30:59 **7** know how he came up with the five phone numbers but how
 01:31:02 **8** he came up with the five phone numbers that he believed
 01:31:06 **9** based upon his training and experience perhaps reflect
 01:31:10 **10** that an interaction between somebody on that phone and
 01:31:17 **11** the defendant's phone or the phone that was found in the
 01:31:20 **12** bedroom ZTE and he has run a document of what he
 01:31:32 **13** believed is relevant text messages relating to that
 01:31:36 **14** other person's phone to the ZTE phone.
 01:31:45 **15** What I'm not comfortable with doing is allowing
 01:31:50 **16** him to say well, these -- I looked from this date to
 01:31:53 **17** this date or this time and this time it appears this is
 01:31:56 **18** a drug transaction. I think your expert, if he wants
 01:32:01 **19** to, he can look at these and then say, you know, in the
 01:32:06 **20** text this word is used or that word is used and this is
 01:32:10 **21** how they communicate. I'm willing to let you go down
 01:32:19 **22** that road. It's not how I would do it, but I gave up
 01:32:24 **23** that obligation 25 years ago when I left.

01:32:28 **1** But I don't think it's fair for him to be able
 01:32:31 **2** to say from this time to this time it looks like a drug
 01:32:35 **3** transaction. I mean, it's clear to me in reading the
 01:32:39 **4** documents having done this for a while I can see the
 01:32:41 **5** drug transaction. I can see the arrangement of the drug
 01:32:44 **6** transaction, but not all of them. And I don't know
 01:32:51 **7** whether or not you're intending your expert to do that
 01:32:53 **8** or just say these are some words I found in these
 01:32:58 **9** extracts that are used, words used for the drugs.
 01:33:03 **10** I'll let you go down that road. Do you want to
 01:33:11 **11** ask any questions of this witness, or are you going to
 01:33:13 **12** wait until the expert arrives?
 01:33:15 **13** MR. MALIK: I think I can ask a couple
 01:33:17 **14** questions, Your Honor, regarding the foundation.
 01:33:20 **15** EXAMINATION
 01:33:20 **16** BY MR. MALIK:
 01:33:20 **17** Q. Detective Miller, you indicated that there were
 01:33:23 **18** three cell phones found. Correct?
 01:33:26 **19** A. Yes. In the one bedroom.
 01:33:27 **20** Q. That was in the room you've identified as
 01:33:30 **21** Jason's bedroom. Right?
 01:33:30 **22** A. Correct.
 01:33:31 **23** Q. He had the Alcatel. Correct?

01:33:33 **1** A. And a Coolpad and ZTE.
 01:33:33 **2** Q. And the Alcatel and Coolpad had nothing on
 01:33:33 **3** them?
 01:33:38 **4** A. Nothing relevant to this investigation.
 01:33:38 **5** Correct.
 01:33:40 **6** Q. The ZTE is the one we're talking about.
 01:33:40 **7** State's Exhibit 28, that indicated there were two cell
 01:33:44 **8** phone text messages. One basically said I told the lady
 01:33:50 **9** down the block ya name Jason White.
 01:33:54 **10** A. Yes.
 01:33:54 **11** Q. And that one was dated August 10, 2018, and the
 01:33:58 **12** time was 9:18 a.m.
 01:34:04 **13** A. Yes. I believe it to be.
 01:34:06 **14** Q. And then there was another text message and
 01:34:10 **15** that was from -- I believe you indicated it was from a
 01:34:13 **16** number 1-302-407-2224 and then there's the name after it
 01:34:20 **17** Cass. C-A-S-S.
 01:34:21 **18** A. Yes.
 01:34:22 **19** Q. Is that what came up in the phone? Cass?
 01:34:23 **20** A. Yes.
 01:34:24 **21** Q. And then the next cell phone message is August
 01:34:27 **22** 11, 20 -- text message. August 11, 2018. That's the
 01:34:36 **23** date of the next message that says okay in response to

01:34:39 **1** Cass' messages?
 01:34:40 **2** A. Yes.
 01:34:40 **3** Q. And that was at 12:33 p.m.?
 01:34:42 **4** A. Yes.
 01:34:43 **5** Q. So that would be basically a day and about
 01:34:47 **6** three hours after the message that was sent from Cass on
 01:34:56 **7** August the 10th?
 01:34:56 **8** A. About that. Yes.
 01:34:56 **9** Q. Okay. Were there any messages -- you indicated
 01:34:59 **10** that there were thousands of messages between Cass and
 01:35:04 **11** what purports to be Mr. White's phone. Were there any
 01:35:07 **12** other messages between Cass and what purported to be
 01:35:13 **13** Mr. White's phone on August 10 at 9:18 to August 11 to
 01:35:20 **14** 12:33?
 01:35:21 **15** A. When I viewed the report, those messages were
 01:35:24 **16** right next to each other.
 01:35:25 **17** Q. That's what you saw. Right?
 01:35:27 **18** A. Yes.
 01:35:27 **19** Q. Do you know if there were messages between
 01:35:29 **20** those two?
 01:35:29 **21** A. I do not know.
 01:35:31 **22** Q. So if you don't know that -- if you don't know
 01:35:34 **23** if they were for certain one after the other, how can

01:35:37 **1** you be certain that the one from August the 11th was a
 01:35:40 **2** response to the text message from August the 10th? Do
 01:35:48 **3** you follow my question?
 01:35:49 **4** **A.** Yes. I mean, the way the phone generates the
 01:35:53 **5** report, it generates the text messages and sometimes
 01:35:56 **6** it'll interject certain conversations in between the
 01:35:59 **7** messages as they come in. So it can be kind of
 01:36:01 **8** confusing to read.
 01:36:03 **9** I'm saying those messages when I looked at the
 01:36:06 **10** report they were right next to each other, and there was
 01:36:09 **11** nothing in between. So the answer is I don't know, I
 01:36:10 **12** guess.
 01:36:10 **13** **Q.** So in other words, it's being assumed that the
 01:36:12 **14** message "okay" from the phone identified as Mr. White's
 01:36:15 **15** phone, it's assumed that is the response to the August
 01:36:18 **16** the 10th message I told the lady down the block ya name
 01:36:24 **17** Jason White.
 01:36:25 **18** **A.** I would assume so. Yes.
 01:36:26 **19** **Q.** And then was this the type of phone that you
 01:36:29 **20** were able to get like the phone number? I know they
 01:36:34 **21** have other identifying numbers. That you can go to a
 01:36:37 **22** service provider and find out who the cell phone
 01:36:40 **23** subscriber was?

01:36:45 **1** **A.** I'd have to read the data. Usually on the
 01:36:45 **2** front page of the report it has some identifying
 01:36:49 **3** information for the phone. I'd have to look
 01:36:51 **4** specifically at this report.
 01:36:51 **5** **Q.** Is that something that you have, Detective?
 01:36:53 **6** **A.** Physically right now I do not.
 01:36:56 **7** **Q.** Okay.
 01:36:56 **8** **A.** I don't know if counsel has it.
 01:36:58 **9** **Q.** Okay. Do you know if that phone -- you don't
 01:37:01 **10** know whether the phone came back to Jason White, if it
 01:37:03 **11** came back to Cassie, came back to John Gildersleeve or
 01:37:08 **12** Jessica?
 01:37:08 **13** **A.** I think it came back with an alias. There was
 01:37:10 **14** like a Joe Shmoe type name in the personalized box. It
 01:37:16 **15** was an alias. It was just an alias.
 01:37:17 **16** **Q.** Okay. How did you know it was an alias?
 01:37:18 **17** **A.** I'm just assuming based off of the name Joe
 01:37:22 **18** Shmoe.
 01:37:22 **19** **Q.** That was the actual name? Joe Shmoe?
 01:37:25 **20** **A.** It seemed like a fictitious name. Yes.
 01:37:28 **21** **Q.** And was there -- I know you said it was a ZTE
 01:37:31 **22** phone. Was the service by Sprint or --
 01:37:33 **23** **A.** I don't recall.

01:37:34 **1** **Q.** You don't recall? So there was no contact made
 01:37:35 **2** with either like Sprint, T-Mobile --
 01:37:38 **3** **A.** Correct.
 01:37:38 **4** **Q.** -- Verizon to find out -- AT&T to find out any
 01:37:46 **5** other information about who may have it this phone?
 01:37:47 **6** **A.** That's correct.
 01:37:47 **7** **Q.** Basically what we have is the identifying link
 01:37:50 **8** between this phone and Jason White is, number one, it
 01:37:53 **9** was found in the bedroom that you've identified as
 01:37:55 **10** purportedly Jason White's bedroom. Is that one factor?
 01:37:58 **11** **A.** Yes.
 01:37:59 **12** **Q.** And then the other factor would be these two
 01:38:02 **13** text messages, one dated August 10, 2018, around 9:18
 01:38:06 **14** and the second one being a purported response dated
 01:38:09 **15** August 11, 2018, 12:33.
 01:38:12 **16** **A.** Yes. Message that states I told him your name
 01:38:16 **17** is Jason White.
 01:38:17 **18** **Q.** The response a day and a half later that says
 01:38:20 **19** okay?
 01:38:20 **20** **A.** Yes.
 01:38:20 **21** **Q.** We don't know for certain whether there were
 01:38:24 **22** intervening exchanges between these two numbers?
 01:38:27 **23** **A.** I'd have to look at the report again.

01:38:30 **1** **Q.** Thank you. No further questions.
 01:38:31 **2** MR. COOKSEY: Your Honor, may I approach?
 01:38:34 **3** EXAMINATION
 01:38:34 **4** BY MR. COOKSEY:
 01:38:36 **5** **Q.** Did you run a report for that number associated
 01:38:39 **6** with the contact Cass in this phone?
 01:38:40 **7** **A.** I did.
 01:38:41 **8** **Q.** When you'd run that report, does it end up
 01:38:43 **9** showing up like the other reports that we've discussed
 01:38:45 **10** where it pulls just that phone number and it goes in a
 01:38:48 **11** chronological timeline?
 01:38:50 **12** **A.** Yes.
 01:38:50 **13** **Q.** And those two messages when you ran that report
 01:38:56 **14** were next to each other?
 01:38:57 **15** **A.** They were next to each other. Yes.
 01:38:57 **16** **Q.** So based on your knowledge how cell phone
 01:39:01 **17** downloads work, they would have put them in
 01:39:02 **18** chronological order?
 01:39:03 **19** **A.** I would believe so. Yes.
 01:39:05 **20** **Q.** Do you know any other identifying information
 01:39:08 **21** regarding Cassie and Mr. White's relationship?
 01:39:11 **22** **A.** I know they have a child together.
 01:39:12 **23** **Q.** Did you view any conversations on being --

01:39:16 **1** **A.** There were lots and lots of messages between
 01:39:18 **2** that phone and a Cass, and it was very romantic in
 01:39:21 **3** nature discussing family matters and things like that
 01:39:25 **4** that would make me believe it was a relationship.
 01:39:27 **5** **Q.** Did you download this phone after you had a
 01:39:31 **6** chance to have a conversation with Jason White?
 01:39:33 **7** **A.** I didn't download it. It was downloaded by
 01:39:33 **8** Detective Burse. It was after speaking with the
 01:39:36 **9** defendant.
 01:39:36 **10** **Q.** Did you view the contents of the download?
 01:39:42 **11** **A.** Yes.
 01:39:43 **12** **Q.** In your interview with Jason White, did you
 01:39:48 **13** discuss different drugs that he had in the residence?
 01:39:48 **14** **A.** Yes.
 01:39:48 **15** **Q.** As a detective in going through that, did you
 01:39:50 **16** find conversations indicative of what Mr. White admitted
 01:39:53 **17** to you in his interview in there?
 01:39:54 **18** **A.** Yes.
 01:39:55 **19** **Q.** A couple brief examples of what that might be.
 01:39:59 **20** **A.** In the interview he makes mention that he does
 01:40:03 **21** sell heroin and meth, and there were some messages
 01:40:05 **22** indicative of drug sales on the phone.
 01:40:07 **23** **Q.** Indicative of possibly meth and/or heroin?

01:40:09 **1** **A.** Yes.
 01:40:09 **2** **Q.** Based on common terminology used to identify
 01:40:13 **3** those drugs?
 01:40:14 **4** **A.** Yes.
 01:40:15 **5** MR. COOKSEY: Thank you.
 01:40:16 **6** MR. MALIK: One further questions on that, Your
 01:40:18 **7** Honor.
 01:40:18 **8** EXAMINATION
 01:40:18 **9** BY MR. MALIK:
 01:40:18 **10** **Q.** My understanding is you got the data. You
 01:40:20 **11** didn't do whatever --
 01:40:21 **12** **A.** I didn't download the phone. A report was
 01:40:24 **13** generated and that was provided to me.
 01:40:25 **14** **Q.** So there is another detective who specialized
 01:40:28 **15** in I guess that cyber type of --
 01:40:31 **16** **A.** Correct.
 01:40:31 **17** **Q.** -- aspect of police work, and he downloaded and
 01:40:35 **18** gave it to you to look at?
 01:40:36 **19** **A.** He generated the report. Yes.
 01:40:37 **20** **Q.** Would he be the one who would know a little bit
 01:40:40 **21** more about --
 01:40:41 **22** **A.** Absolutely.
 01:40:41 **23** **Q.** Sorry to ask you the questions that are

01:40:43 **1** probably not in your area. Thank you, Detective.
 01:40:46 **2** **A.** Yes.
 01:41:17 **3** THE COURT: I'm going to think about it. I
 01:41:23 **4** can't remember the last time I had a case that somebody
 01:41:25 **5** didn't go and get the subscriber information. Maybe
 01:41:30 **6** they did and nobody knows about it in the courtroom or
 01:41:33 **7** who it was to and if it was a -- whether we did anything
 01:41:37 **8** to verify it was a fake. And I have a document here
 01:41:41 **9** that are random calls, disorganized that are not put in
 01:41:49 **10** a logical fashion to reflect a drug transaction. There
 01:41:53 **11** is no question in my mind that they do, but I'm not sure
 01:41:56 **12** how you're going to present it to the jury.
 01:41:59 **13** Sir, Mr. Cooksey, if you ever say to me again,
 01:42:03 **14** ever this you've done it in some other way in another
 01:42:07 **15** case and some other judge let you do it, sir, it is the
 01:42:11 **16** absolute worst thing that you can do to another judge
 01:42:15 **17** because at the moment I'm inclined not to let you do it
 01:42:18 **18** just for being -- just for telling me how stupid I am
 01:42:26 **19** that somebody else has done it and therefore, Judge, you
 01:42:31 **20** should do it. I don't want you to respond. That's how
 01:42:43 **21** it comes across. All right? Don't do that again to
 01:42:43 **22** anyone because you're reflecting poorly upon the judge
 01:42:43 **23** who's going to have to make the decision in this case.

01:42:43 **1** So let me look at the documents. We stand in
 01:42:46 **2** recess.
3 (A lunch recess was taken at 1:10 p.m.)
4 -----
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1 2:19 p.m.
Courtroom No. 6A
2 The same day

3 PRESENT:

4 As before noted.

02:51:25 5
02:51:25 6 MR. COOKSEY: I apologize, Your Honor. I'm
02:51:27 7 trying to resolve this audio issue.
02:51:30 8 THE COURT: Is there a reason we're not trying
02:51:32 9 to play it through the court's machine? It won't play?
02:51:35 10 MR. COOKSEY: It won't play on the DVD player,
02:51:38 11 Your Honor. I did attempt to do that. I have attempted
02:51:42 12 to plug it up through the court's audio, and it didn't
02:51:44 13 get any louder either.
02:52:00 14 THE COURT: During the break I looked at the
02:52:01 15 document 19 to 23, and I've highlighted the
02:52:29 16 conversations or text messages that I think are relevant
02:52:43 17 and on some and some most all the document. On some
02:52:47 18 there's some taken out. So we'll proceed forward with
02:52:52 19 the understanding that we'll give these documents to the
02:52:56 20 State, ask them to redact the portions that I have ruled
02:53:00 21 not coming in.
02:53:04 22 What I try to do is there are portions of the
02:53:12 23 conversations that if we didn't have the suspicious

02:53:18 1 minds that we have, we would say could be anybody
02:53:21 2 talking about anything. But there are clearly some
02:53:28 3 conversations that I think have some drug connotations
02:53:33 4 to it that I think are fair for the State to introduce.
02:53:37 5 I guess what I was trying to say before I left,
02:53:40 6 it would have been I think more helpful if instead of
02:53:46 7 having just one number with all the conversations each
02:53:49 8 conversation blocked out and each conversation being an
02:53:53 9 exhibit. I think that would have been easier to
02:54:00 10 understand, but that's the document that was given to
02:54:02 11 me. I've looked at it, and I will do Getz the
02:54:10 12 instruction at the time the officer begins talking about
02:54:13 13 the download of the phone.
02:54:16 14 MR. MALIK: Your Honor, I just wanted to make
02:54:19 15 sure that I address this on the record so I didn't waive
02:54:21 16 it. The foundation objection that I had to -- that was
02:54:26 17 what my question was based upon that there didn't seem
02:54:29 18 to be any type of verification that this was a phone
02:54:32 19 that was subscribed to by Mr. White and the connection
02:54:34 20 of one cell phone text and one response basically 27 or
02:54:39 21 28 hours later which is insufficient. So I want to note
02:54:42 22 my objections on those grounds to make sure the Court
02:54:46 23 ruled on it.

02:54:47 1 THE COURT: I think that goes to weight and not
02:54:52 2 to admissibility. Certainly it's an area that I would
02:54:52 3 like cross-examination on.
02:54:54 4 MR. MALIK: Yes, Your Honor.
02:54:55 5 THE COURT: But in the case there's at least
02:54:58 6 this is -- there's been testimony to at the moment that
02:55:02 7 this is a room that he occupied, this is a phone that
02:55:06 8 was found in that room, and I think the fact that the
02:55:14 9 subscriber information perhaps either wasn't received or
02:55:19 10 doesn't match doesn't foreclose the admissibility of it.
02:55:25 11 It certainly goes to the weight that the jury should
02:55:28 12 hear.
02:55:28 13 MR. MALIK: Yes, Your Honor. Thank you, Your
02:55:33 14 Honor.
02:55:33 15 MR. COOKSEY: Your Honor, let me see the
02:55:35 16 exhibits as you prepared. I want to look over them.
02:55:42 17 Before I do anything with them, I want to make sure
02:55:45 18 there's no questions to clarify.
02:55:52 19 So Your Honor, to clarify, the highlighted --
02:55:55 20 THE COURT: Highlighted is in.
02:55:57 21 MR. COOKSEY: -- is admissible?
02:55:59 22 As far as presenting them to the jury or to at
02:56:02 23 least Detective Miller now, how should the State go

02:56:07 1 about since they are unredacted currently before they go
02:56:10 2 back? Redactions are something that the State can
02:56:15 3 prepare before even handing them to Mr. Schupp when he
02:56:19 4 testifies likely tomorrow at this point. More
02:56:23 5 generalized --
02:56:25 6 THE COURT: I don't know what you intend to do
02:56:27 7 with this detective as far as other than he's the one
02:56:30 8 who went through the thousands of text messages and
02:56:34 9 these are the ones he thought were relevant, potentially
02:56:38 10 relevant to drug activity. He's pulled them out. I
02:56:45 11 don't know if you intend to ask him about them or that
02:56:49 12 would wait until the expert.
02:56:50 13 MR. COOKSEY: My intention was to wait until
02:56:52 14 the expert was merely to show him a conversation, have
02:56:55 15 him identify it as one he pulled out as relevant to his
02:56:58 16 investigation and sort of explain how he narrowed down
02:57:01 17 certain conversations but not specifically to each
02:57:04 18 specific conversation. Sort of lay a foundation so that
02:57:07 19 they can come in and then the drug dealing expert can
02:57:10 20 talk about the language that's used in them and how it
02:57:13 21 may be indicative of certain drugs or prices on the
02:57:15 22 street of certain drugs.
02:57:17 23 Detective Miller's testimony purely was to

02:57:23 **1** identify the conversations as ones that he identified on
 02:57:26 **2** the phone and that they came from the phone and --
 02:57:30 **3** THE COURT: I think if you were going to show
 02:57:31 **4** the conversations to the detective, I think you have two
 02:57:36 **5** alternatives: One, you can try to maneuver around the
 02:57:45 **6** ELMO and take out the portions that I did.
 02:57:48 **7** The more significant suggestion to you is that
 02:57:51 **8** you move on to something else, do the redactions
 02:57:54 **9** tonight, put the officer back on the stand tomorrow, put
 02:57:58 **10** the texts on, which would be probably closer in time. I
 02:58:05 **11** assume the expert's not here today, is not going to
 02:58:08 **12** testify today.
 02:58:11 **13** MR. COOKSEY: It was all depending on timing.
 02:58:13 **14** I told him it was not likely until first thing in the
 02:58:16 **15** morning.
 02:58:16 **16** THE COURT: So you would have the text
 02:58:20 **17** messages, then the expert. It does seem closer in time.
 02:58:24 **18** Safest way to do it would be that. If you want to try
 02:58:28 **19** it from a technical point of view move around, you can,
 02:58:31 **20** but it doesn't -- it's not a perfect cutoff.
 02:58:36 **21** MR. COOKSEY: I understand, Your Honor. And
 02:58:38 **22** that's why I was sort of trying to see since the State
 02:58:43 **23** is unable to do it right now.

02:58:45 **1** THE COURT: It's up to you.
 02:59:39 **2** MR. COOKSEY: For clarification, Your Honor,
 02:59:40 **3** the pen stripes are unhighlighted text messages.
 02:59:46 **4** THE COURT: The unhighlighted text messages are
 02:59:46 **5** not admissible.
 02:59:47 **6** MR. COOKSEY: So the pen strikes are not
 02:59:49 **7** indicative of anything?
 02:59:51 **8** THE COURT: I'm not sure what you mean by that.
 02:59:53 **9** MR. COOKSEY: There was some highlighted here
 02:59:56 **10** --
 02:59:56 **11** THE COURT: Those are my effort -- the blue
 02:59:58 **12** lines that you see there are my effort to try to break
 03:00:03 **13** the conversations in time to when they occurred. I
 03:00:09 **14** think that was my problem earlier.
 03:00:12 **15** MR. COOKSEY: Understood, Your Honor.
 03:00:14 **16** THE COURT: Instead of having four
 03:00:17 **17** conversations in one document, I think it would be
 03:00:20 **18** clearer if you have four documents. But you have what
 03:00:24 **19** you got. So the blue lines were my attempt to try to
 03:00:28 **20** break it into what I thought was a consistent
 03:00:32 **21** conversation.
 03:00:33 **22** MR. COOKSEY: Understood, Your Honor.
 03:00:36 **23** I think, Your Honor, it might be more

03:00:38 **1** appropriate to have these redacted this afternoon, go
 03:00:41 **2** through everything else with Detective Miller, finish up
 03:00:43 **3** the statement and then simply bring him back on. That
 03:00:47 **4** way there's no mishap.
 03:00:48 **5** THE COURT: Do you have people for this
 03:00:50 **6** afternoon?
 03:00:50 **7** MR. COOKSEY: Detective Macauley from Delaware
 03:00:54 **8** State Police. He may even be here. I told him to try
 03:00:57 **9** to get here before 2:30. So he would be testifying. I
 03:01:04 **10** don't expect him to be lengthy because I thought there
 03:01:04 **11** would be more to go through with Detective Miller. So I
 03:01:08 **12** thought that was how we would wrap up the day, a
 03:01:11 **13** situation where it's a little bit earlier.
 03:01:13 **14** THE COURT: The only other alternative, and I
 03:01:16 **15** don't know if Mr. Malik wants to look at the documents,
 03:01:18 **16** what I had pulled out really are not prejudicial to the
 03:01:24 **17** defendant. They're just they don't make any -- I don't
 03:01:28 **18** think they reference a particular drug transaction. So
 03:01:32 **19** it's potentially you could agree that the document could
 03:01:36 **20** go in, but only the highlighted parts would be
 03:01:41 **21** questioned because the others are things I didn't think
 03:01:49 **22** fairly represent a drug transaction. And then get the
 03:01:52 **23** document redacted. It's up to you.

03:01:58 **1** MR. MALIK: Your Honor, I think as long as --
 03:01:58 **2** I'm sure my thought is the jury probably would want to
 03:02:03 **3** take a closer look at this during deliberations. If
 03:02:07 **4** we're going to be using it to identify some blocks of
 03:02:10 **5** potentially relevant text messages conversations, that
 03:02:12 **6** can be done with the witness on the stand, and tonight
 03:02:16 **7** you can basically do a redaction and then we can
 03:02:19 **8** substitute that and that would go back to the jury.
 03:02:21 **9** We'll be able to cover some ground with the detective
 03:02:23 **10** today. I wouldn't object to that, Your Honor, if that's
 03:02:26 **11** okay with you.
 03:02:26 **12** MR. COOKSEY: Yes.
 03:02:42 **13** Your Honor, I think that's fair. We'll have
 03:02:45 **14** Detective Miller come back up, explain sort of how he
 03:02:48 **15** went through the phone, the process that goes through
 03:02:50 **16** it, reports that can be generated from it and what he
 03:02:54 **17** was looking for.
 03:02:55 **18** THE COURT: Okay.
 03:02:55 **19** MR. COOKSEY: And whether or not he ended up
 03:02:57 **20** generating separate reports that he felt were relevant
 03:03:01 **21** and then play the defendant's statement and then we can
 03:03:04 **22** bring Detective Macauley on.
 03:03:06 **23** THE COURT: Detective, retake the stand.

EXHIBIT “C”

Pertinent Calls and Texts between Victor Fairley 267-367-0050 and Jason White 302-407-2299

~August 15th 2018

Session:	390	Total Duration:	00:00:23	Associate DN:	(302) 407-2229
Start Time:	20:14:42 EDT	Language:	Unknown	Monitor ID:	mpfuski
Stop Time:	20:15:05 EDT	Complete:	Completed	In/Out Digits:	3024072229
Date:	08/15/2018	Direction:	Outgoing	Subscriber:	
Content:	Audio	Classification:	Pertinent	Participants:	Fairley "LV", Victor

Synopsis 1

OC from VF to 302-407-2229 (Unknown Female)

VF: Hello

UF: Hello

VF: Yeah

UF: (UI)

VF: You say, what'd you say, yo

UF: Hello

VF: Where you at

UF: I'm pulling up

VF: Alright, here I come

Call disconnected. ETH 309

Session:	394	Total Duration:	00:01:48	Associate DN:	(302) 407-2229
Start Time:	21:00:33 EDT	Language:	Unknown	Monitor ID:	ethuston
Stop Time:	21:02:21 EDT	Complete:	Completed	In/Out Digits:	3024072229
Date:	08/15/2018	Direction:	Incoming	Subscriber:	
Content:	Audio	Classification:	Pertinent	Participants:	Fairley "LV", Victor

Synopsis 1

IC from 302-407-2229 (Unknown Female):

VF: Hello

UM: Yo

VF: Yo

UM: What's her shit dead

VF: Yeah, man her shit fucking boot legged dog

UM: Yeah, I already tried to hit her, my shit been dead, I even charged it up, that shit was only fucking (UI)

UF: Hello

UM: My phone was charged up it was only 37 jawns

UF: It's a 39 boy, I just counted them

UM: Yeah you ain't counting, your counting ain't too good, cause as soon as I got into the crib, she was on 37

UF: Alright

UM: (UI)

UF: Alright, yo, yo, come down the, come down the street

UM: Man, I ain't, I'm not

UF: Please

UM: You going to be around or not, I'm not getting ready to come out right, where you, where

UF: Oh yeah, yeah, I'm at the, I'm at the gas station

UM: At the gas station

UF: Yeah look where you, look, where you come out to, where you to um neighborhood right, you know how, where that, that, that BP at

UM: The BP, yeah

UF: Come to the next BP

UM: Oh

UF: It's at the next light after the right aid
 UM: Alright
 UF: Alright, call me, when you come though that light, when you go through that light at the BP and the Cumberland, well Gulf, or whatever that is, when you go through that light, make the next left. You hear me
 VF: So listen, across the street from the BP
 UF: No, don't make the left at the light, go through the light and make the next left
 VF: Oh so it's, it's on the opposite side of the BP
 UF: Yeah
 VF: (UI)
 UF: It's the other BP though, not the one right there by you, its the other one
 VF: Yeah, I know
 UF: Oh alright
 VF: Alright
 UF: Alright
 Call disconnected.
 ETH 309

Session: 396	Total Duration: 00:01:03	Associate DN: (302) 407-2229
Start Time: 21:11:35 EDT	Language: Unknown	Monitor ID: ethuston
Stop Time: 21:12:38 EDT	Complete: Completed	In/Out Digits: 3024072229
Date: 08/15/2018	Direction: Incoming	Subscriber:
Content: Audio	Classification: Pertinent	Participants: Fairley "LV", Victor

Synopsis 1

IC from 302-407-2229 (Unknown Male)
 VF: Hello.
 UM:Yo.
 VF: What you in the crib bro.
 UM: Huh. make a left by the church at.
 VF: You said make a left where the church at.
 Music in the background.
 VF: Hello.
 UM: Ya, IA she made a left on um, She right here.
 VF: Oh, I see.
 END
 Rose 672

Session: 404	Total Duration: 00:01:39	Associate DN: (302) 407-2229
Start Time: 22:16:08 EDT	Language: Unknown	Monitor ID: ethuston
Stop Time: 22:17:47 EDT	Complete: Completed	In/Out Digits: 13024072229
Date: 08/15/2018	Direction: Outgoing	Subscriber:
Content: Audio	Classification: Pertinent	Participants: Fairley "LV", Victor

Synopsis 1

OC from VF to 302-407-2229
 um yo
 VF hey yo
 UM yeah
 VF so look right so look how bout im trying to get some of the mix right so listen you said you paid 70 right for your uh for your shit, 70 dollars a gram right?
 UM oh you said what?
 VF you paid 70 dollars a gram for your shit right?
 UM 75
 VF no im talking about for your other shit thats 70
 UM oh the brown shit
 VF yeah 70 right
 UM yeah
 VF get some of the mix man and i can give it to you for 50 it's 40

UM you said get you some of what?
VF the mix. i need some of that mix shit you got
UM what mix what you mean mix
VF huh?
UM what you mean mix
VF the shit that mix you gave me i need some of that
UM oh you talking about the white shit yeah
VF yeah!
UM thats what im saying imma try and figure something out
VF can you get me like 2 ounces of it?
UM i dont know thats what im saying imma have to ask my man if he got any you could probably buy it
VF yeah see whats up man get on that shit for me like soon
UM yeah i got you imma probably uhhh yea just hit me in the morning imma see where he at with it
VF alright
UM imma a definitely be on that shit
VF alright
UM i need more my damn self
VF yeah that shit was
UM IA
VF alright see whats going on man see what you got
UM alright
VF alright
END CALL
Tm1483

~August 16th 2018

Session:	488	Total Duration:	00:01:13	Associate DN:	(302) 407-2229
Start Time:	18:11:40 EDT	Language:	Unknown	Monitor ID:	tjmacauley
Stop Time:	18:12:53 EDT	Complete:	Completed	In/Out Digits:	13024072229
Date:	08/16/2018	Direction:	Outgoing	Subscriber:	
Content:	Audio	Classification:	Pertinent	Participants:	Fairley "LV", Victor

Synopsis 1

OG CALL TO 302-407-2229 UNKNOWN MALE

UM hello
UF are you still um needed the thing
UM hello
UF oh hey, who's this
UM who's this
UF huh
UM who's this
UF hello
UM oh
UF where Nathan
UM hello
UF yo
UM can you hear me
UF yeah
UM who's this, uh, what's your name
UF haha
UM he got booked
UF when
UM just today, for a minute, they hit the crib
UF when
UM this morning
UF aight
UM aight
call ended

MF 221
UM yo
UF where

~August 18th 2018

Session:	765	Total Duration:	00:00:46	Associate DN:	(302) 407-2229
Start Time:	13:21:16 EDT	Language:	Unknown	Monitor ID:	mpfuski
Stop Time:	13:22:02 EDT	Complete:	Completed	In/Out Digits:	3024072229
Date:	08/18/2018	Direction:	Outgoing	Subscriber:	
Content:	Audio	Classification:	Pertinent	Participants:	Fairley "LV", Victor

Synopsis 1

OG call to 302-407-2229 unknown male
UM Yeah

VF Hey yo

UM yeah

VF Whatcha name told me to call you What you at the crib?

UM Huh

VF Huh, Angel told me to call you.

UM UI

VF Huh, Hello

UM Yo

VF Hello

SHULLI 1180

Session:	806	Total Duration:	00:01:30	Associate DN:	(302) 407-2229
Start Time:	17:55:08 EDT	Language:	Unknown	Monitor ID:	mrradcliffe
Stop Time:	17:56:38 EDT	Complete:	Completed	In/Out Digits:	3024072229
Date:	08/18/2018	Direction:	Incoming	Subscriber:	
Content:	Audio	Classification:	Pertinent	Participants:	Fairley "LV", Victor

Synopsis 1

IC: 302 407 2229 Unkown Male.

VF: Hello.

UM: Yo.

VF: Yo.

UM: I just got a ride now shit, Got a different ride. I am going highway now.

VF: Say you do what.

UM: I am on the highway now and shit.

VF: When you coming back

UM: No I was getting ready to come to wherever you, which you want me to do.

VF: Oh alright um, come to um do you know where Ginos at

UM: You said Ginos

VF: Ya.

UM: Ginos

VF: By ah Save A Lot.

UM: Huh, where.

VF: Um, right here whats that um, Lancaster Ginos Save A Lot

UM: Oh Ok, ya ya.

VF: Ya, Just go there I will meet you right there.

UM: Alright. You hear me

VF: Yo.

UM: My cousin number and shit that was over at the crib that day he was trying he was tryingt to get something too. Ya he was just trying get a little something to get to try but get on that shit.

VF: Just come right come and I will talk to you when you get there.

UM: Alright.

END

Page 679

out ya know cause i need i need somethin my self i dont wanna be like yo hit me yah know what i mean i wanted to see how it was going to go i supposed to get up with him i still never got a chance to get up with him so i didnt do to much rap about it but i told him that soon as i spoke to him know what i mean

VF Yeah

JW so hopefully niggas is on it cause i been telling him even before that like yo make sure that shit is on because thats it

VF yeah

JW im like make sure that nigga know that whatever he did wherever he got that shit from he get more thats not thats not thats a go so know im saying hopefully that shit thats still there i just didnt know that i didnt know that he gonna IA but im pretty sure that if nigga got it he gonna do it but i told him i told him you have the cash just to make him move know im saying

VF Yeah

JW hopefully that shit hopefully get him on the go

VF aight

JW yeah cause i already told him situation so im pretty sure he know how to get up with them even if he you know im saying he know how to get up you know make it happen if aint gotta go through me anyway

VF aight aight well whatsup with her she cool

JW yeah yeha

VF im ready go back where she at now

JW yeah tell her to hit me tell i had to get up with her i been running around shit

VF she said she was waiting for you to call her

JW huh

VF she said she was waiting for you to call her

JW yeah yeah im waiting for my cousin to get situated cause he at work right now but once he gets off he gonna be ready and shit so i wanted him to pretty much take care of this shit

VF aight

JW but yeah tell her to hit me and shit and im uh im uh keep you updated soon as he hit me back cause trust me i need to i need get back in the mix to aint making no plays i aint doing nothing im just running around spinningg just running around with these phones trying i dont know but yeah

VF aight we gonna get it right we gonna get it right i aint even worried about that

JW yup i got you im keep you updated

VF aight

Call End.

SD 1474

~August 20th 2018

Session:	966	Total Duration:	00:09:41	Associate DN:	(302) 525-1016
Start Time:	10:38:22 EDT	Language:	Unknown	Monitor ID:	slinus
Stop Time:	10:48:03 EDT	Complete:	Completed	In/Out Digits:	13025251016
Date:	08/20/2018	Direction:	Outgoing	Subscriber:	
Content:	Audio	Classification:	Pertinent	Participants:	Fairley "LV", Victor White, Jason

Synopsis 1

OG: 302-525-1016 Jason White (JW)

JW: Yo

VF: Hey bro

JW: yeah

VF: that nigga aint call you back.

JW: You said did he call me back.

VF: Yeah, did he call back.

JW: Yeah, I went out with him last night and was talking to him and shit and he said that but he was like yea everything everything good its still around and shit but i was like yea and i told him what I think. But I don't think it's like close. But the nigger still got it, but it just ain't close. You know what I'm saying so, but I told him last night, I'm getting ready to get back up with him in a second and see what's going on.

VF: Yeah, so, I mean, did he, did he say he gonna, he gonna give you some of it

JW: Yeah, well I told him, I told, I explained the whole situation to him again, and then, he said that he was going, he's going, try and make the shit happen

VF: Alright

Pertinent Calls and Texts between Victor Fairley 267-367-0050 and Jason White 302-525-1016

~August 19th 2018

Session:	912	Total Duration:	00:04:56	Associate DN:	(302) 525-1016
Start Time:	15:11:59 EDT	Language:	Unknown	Monitor ID:	sldevenney
Stop Time:	15:16:55 EDT	Complete:	Completed	In/Out Digits:	+13025251016
Date:	08/19/2018	Direction:	Incoming	Subscriber:	
Content:	Audio	Classification:	Pertinent	Participants:	Fairley "LV", Victor White, Jason

Synopsis 1

Refer to Session 913. Call between Jason White and Victor Fairley.

Session:	913	Total Duration:	00:04:56	Associate DN:	(302) 525-1016
Start Time:	15:11:59 EDT	Language:	Unknown	Monitor ID:	mrradcliffe
Stop Time:	15:16:55 EDT	Complete:	Completed	In/Out Digits:	3025251016
Date:	08/19/2018	Direction:	Incoming	Subscriber:	
Content:	Audio	Classification:	Pertinent	Participants:	Fairley "LV", Victor White, Jason

Synopsis 1

IC from 302-525-1016 Jason White

VF What you doing got something good

JW i mean i mean i told my man , he already knows he already knows her and shit so i told him what was going on i told him you wanted the shit so he said he gonna let his man know and then try figure it all out and shit so im saying he know

VF what the fuck he tryin whats there to figure out shit (laughing)

JW i guess i guess cause i dont think his mans i dont think his man the nigga is down there

VF Ohhh

JW and he just he just dropped the shit off to him when its down there so he had to let the nigga know that ya know what im saying but i guess he they got the shit they just gotta get it i guess i dont even i dont even i dont know if whatcha name know im saying i aint even tell him i wanted any cause i didnt know if he gimme any naw im saying or nothing

VF yeah

JW so i was like so i got someone i got somebody i got her and her man wants that jawn know im saying he already know so know what im saying so it aint like he bullshit me he cant naw im saying he is out there know what i mean

VF oh he know he know he know home he know ang

JW yeah yeah yeah thats he her folks i told her last night i told her last night who i was fucking with she like ya she already know so and i told him i said yeah its her her her man the nigga she fucking with and she nah im saying but im mention it again he just called me and was like yo i got i got two jawns two pounds of loud that he was trying to get rid of and shit so yah idk he aint have nothing else on him other than that i guess cause thats all he mentioned

VF what he got two pounds of loud

JW yeah

VF what he want for that shit

JW i dont even know he tried i mean i mean he proly take mother fucking 19 i i i he proly take 19 whats his name 19 or 2 but like most of the time like i had him dealing with my mans he dont used to be having the money like a rack so hell give him and i just tell him to charge him 23 cause he be tossing it and then know im saying they both be satisfied and he make something off man and be cool with it but im pretty

mother fucker had the paper of whatever he gonna proly want more decent number but he be having them jawns having them jawns sometimes he be get em then, then he then he he may be out for little bit but he saying he got 2

VF oh shit

JW ill leave that my man supposed to hit me later on but then im talk to him again when he said he gonna call me back at 5 so when he calls back im say well whate the verdict cause mother fucker

JW: Yep so he said he was try and make this shit happen (UI)

VF: He don't be, he don't be bullshitting do he

JW: Huh

VF: He be bullshitting though

JW: Nah, I mean he was, nah, nah, usually when he say something this, you know what I mean, it means it's going to go through. It just, I don't know, I don't know what he, I don't know, I don't know what he trying to do. I don't, he trying, he, you know what I'm saying he be, he be moving around town like everything ready. He can't really move too much that I don't know. I don't know really what the deal, what the deal is with it. You know what I'm saying but

VF: Yeah

JW: I'm going dig fucking, I'm a, I'm a call him back once I say it again today and then, you know what I saying, I don't. He going to know that it's pretty much a, a mother fucking sign, a mother fucking sign too. Now, I don't know, so he should, he should already know that now cause that's all that I'm talking, cause I ain't, I ain't got nothing really other going on. I ain't shit, shit other lined up than what I need from her and then so, and the only thing I really need from him, he ain't got no mother fucking the kings, so I'm like, the only other moves I could make for him is that, you know what I'm saying

VF: Yeah

JW: So I'm trying to help him out and help me out at the same time and help you, you know what I'm saying and it's

VF: Yeah

JW: So if it can happen it's definitely gonna, it's definitely gonna go down. I just got to see when he gonna, when he gonna get it done

VF: Alright

JW: Bet

VF: Alright

JW: Yo did that uh, did that shit, that shit I got from yo, you the other night, did that shit have any dope in it like that

VF: Say that again

JW: (Laughing), Yo did that shit I got from you the other night that shit ain't have no dope in it, did it

VF: Yeah, yeah it did

JW: Word, just very very little. Yeah they said it ain't have no taste, like, like, like

VF: Said it ain't have no taste to it

JW: Yeah, like the dope like, you know "Bagger" takes, but I just, I just found out this morning (begins talking to Unk 3rd party in background). He mother fucking uh, Oh no, I just found, I just found, I just found twenty joints in the car last night, twenty "B's", of them, of them little similar joints, but that shit was sticky, it was that brown shit and that other shit mixed with it, that shit was mother fucking. I gave it to somebody, they was sick as shit, that mother fucker dropped straight, straight the fuck out

VF: Oh yeah

JW: Yeah, about what that shit did like (UI). That shit had him warned though, but it ain't happening like, if you did that much of that shit, that white shit, hell yeah, that shit, but he was like what the fuck

UM: Oh yeah, if I had that blue shit bro I would've been out, I wouldn't a, I wouldn't a been able to drive, I was banged out when I left the mother fucking (UI)

VF: Damn, I still got some of that, I still got some of that blue shit left too

JW: Yeah, that shit real

UM: Is it straight blue or is it

JW: He blended it with some of that (UI)

UM: Oh he already blend it

JW: Where's all that shit go

VF: What he say

JW: Nah he said it was straight, as in straight, like the way I gave it to the mixed in the shit

UM: Yeah straight blue or is it mother fucking mixed

VF: Nah, I can, I can, I can, holy shit. Police over in that mother fucker. Yeah, I can uh. See what I, I be, I be at first, I told you with the shit I be using, I think I'm ready to stop using that shit though

JW: That shit is plain clothes

VF: I think I'm going to stop using it

JW: Yeah look, yo look, my what's his name, my brother, he shoot the shit, the shit that was, that brown shit you gave me the one time, and I gave it to him. This mother fucker came straight out in two minutes, he said it got a crazy taste, he said, I said what, and he said nah but it something with, when you do it you, you can still taste it a little bit, but this shit you can clearly

UM: Yeah it brings saliva, brings like saliva, like saliva

gave him (UI)

UM: Yeah it be right here, it gives you like uh, taste in the back of your throat for mother fuckers that shoot it, you know what I mean, you get a taste in the back

JW: Yeah that shit run through your mother fucking

UM: I hear it gives mother fuckers saliva like I, you know what I mean like, I always hear that, I don't shoot but

VF: So how was, so how was that brown shit then you said

JW: Huh, what you say

VF: The brown shit

JW: The shit, the shit you gave me

VF: How was it though

JW: Oh nah, he said, he, he, he was, he was, he was hurting you know what I'm saying, he was uh, he was still in bed, but then once he got it, he was like ah, he was came in his eyes was low and he was like I feel good. He got, I'm, I'm feeling it, he said I'm feeling it, you know what I mean, so it, it, it did the job, it did what it, it was supposed to do

UM: Yeah, I felt, I felt it too, but it wasn't like, wasn't like you known what I mean

JW: Yeah, he was, he was feeling it but he wasn't

UM: It wasn't

JW: It, it, it'll be like he was feeling it more than "D wag" was feeling, you know what I'm saying, cause it hits you faster, so you can feel it

UM: It didn't have, it didn't have me feeling good until like after I, I came back here. Then I started feeling a little bit, but it didn't really like, not like, not like the other shit when you blend it, you know what I mean, like that shit, i would've been like, shit I was nodded out in front of the crib and didn't even know it

VF: So that blue, so, so that blue shit was, it was, is better than the, better than both of them

JW: Oh yeah, oh yeah, yeah, yeah that blue shit was on for sniffers, I mean I don't know

UM: For anybody, mother fuckers paying twenty two, I mean

JW: (Laughing) Yeah

UM: Saying what you said for sniffers, so you know what it was for the, what's it name, the hitters

JW: Yeah, hitters got to watch it

UM: They got to watch out this stuff

JW: Yeah, they got to watch it

UM: Yeah

VF: Alright

(JW and UM begin separate conversation)

VF: So then that, alright, so look on a, on a, on a, hold on, on a scale from one to ten, that shit I gave you, you'll got at the parking lot, what you think that is

UM: (UI) uh, it was a 6 or a 7 maybe

VF: Yeah

UM: Probably give it a 6 yeah

VF: Alright

UM: Yeah, I'd say, but then that brown shit was, that brown shit, I don't know if you can get that or not, but that shit was, that shit wasn't bad neither, that shit was good

VF: No, I got, I got some more of that

UM: Yeah bro that brown, he would pro, he would probably like that brown shit you had better. I didn't even, I didn't even ever try that, I didn't even get a chance to even try that other shit (UI)

JW: Mother fuckers try that, they tried that brown shit and they was like yeah it's pretty decent, so he probably woulda liked that cause, you know what I'm saying

UM: Bro he probably ain't listening

JW: If that shit, if it ain't real strong they already know. But fucking. Yeah I'm going to get ready to get back up with him in a second, see what, see what the verd is on that, cause I asked him one too many times, about the shit, but I'm supposed to give him like a couple dollars, he (UI) uh, I'm supposed to, my man owe me a couple dollars, so I'm getting ready give him a little bit of money cause then hopefully get 8 mother fucking, doing something, doing something, you know what I'm saying. I don't know if that's what he waiting on or what but the fuck, that's why I'm glad wasn't even in the situation so I could like look, the niggers got paper as well, you know what I'm saying, so what you going to do (UI)

VF: Yeah, just find out, go ahead and call his ass back and call me back

JW: Alright, I got you. What's up with her. Tell her she (UI), my folks now I'm ready get up her whenever she can get up with me

VF: She uh, she where, she went home

JW: Yeah

JW: Damn, so what I ain't going (UI)
 VF: But she said, she said she had that shit for you or something she told me. That's the last thing she said to me
 JW: Yeah I know that shit was supposed to be
 VF: She said I got, she said I got to come back because i got, like I said, I got to get up, she had got to get up with you
 JW: Yeah
 VF: And then, and then she rolled, she bounced after that, after she told me that she rolled
 JW: Yeah I know she said in the A.M. yesterday (UI), alright, well she
 VF: I don't know, I don't know what she waiting on but she said, she said she got she got to see you though, that's what she said
 JW: Yeah and I was like shit I got, that's I got everything lined up, everything lined up with that shit, that's, that's, I need that
 VF: I mean you got to probably like, try call her, try to call her dumb ass, dumb ass phone she got
 JW: Ok, alright, yeah I'm a, I'm a let you know
 VF: Alright, alright
 JW: I musta let, I already, I messing up shit, that shit my damn self (UI). I need something to keep it, keep shit flowing and that's it
 VF: Alright
 JW: I'm a get with you
 VF: Alright
 Call disconnected.
 ETH 309

Session: 989	Total Duration: 00:00:00	Associate DN: (302) 525-1016
Start Time: 13:31:19 EDT	Language: Unknown	Monitor ID: ethuston
Stop Time: 13:31:19 EDT	Complete: Completed	In/Out Digits: 13025251016
Date: 08/20/2018	Direction: Outgoing	Subscriber:
Content: SMS	Classification: SMS Pertinent	Participants: Fairley "LV", Victor White, Jason

Content (SMS - Pager)

What he say

Synopsis 1

What he say

Session: 990	Total Duration: 00:00:00	Associate DN: (302) 525-1016
Start Time: 13:45:19 EDT	Language: Unknown	Monitor ID: ethuston
Stop Time: 13:45:19 EDT	Complete: Completed	In/Out Digits: 13025251016
Date: 08/20/2018	Direction: Incoming	Subscriber:
Content: SMS	Classification: SMS Pertinent	Participants: Fairley "LV", Victor White, Jason

Content (SMS - Pager)

I talked to him he said he calling

Synopsis 1

I talked to him he said he calling

Session: 991	Total Duration: 00:00:00	Associate DN: (302) 525-1016
Start Time: 13:45:45 EDT	Language: Unknown	Monitor ID: ethuston
Stop Time: 13:45:45 EDT	Complete: Completed	In/Out Digits: 13025251016
Date: 08/20/2018	Direction: Incoming	Subscriber:
Content: SMS	Classification: SMS Pertinent	Participants: Fairley "LV", Victor White, Jason

Content (SMS - Pager)

I guess he didn't hit him yet

Synopsis 1

I guess he didn't hit him yet

Session: 992	Total Duration: 00:00:00	Associate DN: (302) 525-1016
Start Time: 13:45:59 EDT	Language: Unknown	Monitor ID: ethuston
Stop Time: 13:45:59 EDT	Complete: Completed	In/Out Digits: 13025251016
Date: 08/20/2018	Direction: Incoming	Subscriber:
Content: SMS	Classification: SMS Pertinent	Participants: Fairley "LV", Victor White, Jason

Content (SMS - Pager)

That was 30min ago

Synopsis 1

That was 30min ago

Session: 993	Total Duration: 00:00:00	Associate DN: (302) 525-1016
Start Time: 13:46:41 EDT	Language: Unknown	Monitor ID: ethuston
Stop Time: 13:46:41 EDT	Complete: Completed	In/Out Digits: 13025251016
Date: 08/20/2018	Direction: Outgoing	Subscriber:
Content: SMS	Classification: SMS Pertinent	Participants: Fairley "LV", Victor White, Jason

Content (SMS - Pager)

K

Synopsis 1

K

Session: 996	Total Duration: 00:00:00	Associate DN: (302) 525-1016
Start Time: 14:07:09 EDT	Language: Unknown	Monitor ID: ethuston
Stop Time: 14:07:09 EDT	Complete: Completed	In/Out Digits: 13025251016
Date: 08/20/2018	Direction: Incoming	Subscriber:
Content: SMS	Classification: SMS Pertinent	Participants: Fairley "LV", Victor White, Jason

Content (SMS - Pager)

She ain't say nothing

Synopsis 1

She ain't say nothing

Session: 997	Total Duration: 00:00:00	Associate DN: (302) 525-1016
Start Time: 14:07:29 EDT	Language: Unknown	Monitor ID: ethuston
Stop Time: 14:07:29 EDT	Complete: Completed	In/Out Digits: 13025251016
Date: 08/20/2018	Direction: Incoming	Subscriber:
Content: SMS	Classification: SMS Pertinent	Participants: Fairley "LV", Victor White, Jason

Content (SMS - Pager)

She texted u I think

Synopsis 1

She texted u I think

Session: 998	Total Duration: 00:00:00	Associate DN: (302) 525-1016
---------------------	---------------------------------	-------------------------------------

Stop Time: 14:07:33 EDT
Date: 08/20/2018
Content: SMS

Complete: Completed
Direction: Incoming
Classification: SMS Pertinent

In/Out Digits: 13025251016
Subscriber:
Participants: Fairley "LV", Victor White, Jason

Content (SMS - Pager)

Said

Synopsis 1

Said

Session: 1003
Start Time: 14:32:35 EDT
Stop Time: 14:32:35 EDT
Date: 08/20/2018
Content: SMS

Total Duration: 00:00:00
Language: Unknown
Complete: Completed
Direction: Outgoing
Classification: SMS Pertinent

Associate DN: (302) 525-1016
Monitor ID: ethuston
In/Out Digits: 13025251016
Subscriber:
Participants: Fairley "LV", Victor White, Jason

Content (SMS - Pager)

She never called

Synopsis 1

She never called

Session: 1004
Start Time: 14:38:01 EDT
Stop Time: 14:38:01 EDT
Date: 08/20/2018
Content: SMS

Total Duration: 00:00:00
Language: Unknown
Complete: Completed
Direction: Incoming
Classification: SMS Pertinent

Associate DN: (302) 525-1016
Monitor ID: ethuston
In/Out Digits: 13025251016
Subscriber:
Participants: Fairley "LV", Victor White, Jason

Content (SMS - Pager)

Damn

Synopsis 1

Damn

~August 23rd 2018

Session: 1206
Start Time: 16:03:35 EDT
Stop Time: 16:03:41 EDT
Date: 08/23/2018
Content: Audio

Total Duration: 00:00:06
Language: Unknown
Complete: Completed
Direction: Incoming
Classification: Pertinent

Associate DN: (302) 525-1016
Monitor ID: mrradcliffe
In/Out Digits: 3025251016
Subscriber:
Participants: Fairley "LV", Victor White, Jason

Synopsis 1

IC from 302-525-1016 Jason White
no answer
MR1488

Session: 1207
Start Time: 16:03:35 EDT
Stop Time: 16:03:45 EDT
Date: 08/23/2018
Content: None

Total Duration: 00:00:10
Language: Unknown
Complete: Completed
Direction: Incoming
Classification: Pertinent

Associate DN: (302) 525-1016
Monitor ID: mrradcliffe
In/Out Digits: +13025251016
Subscriber:
Participants: Fairley "LV", Victor White, Jason

Synopsis 1

IC from 302-525-1016 Jason White

no answer
MR1488

Pertinent Calls and Texts between Victor Fairley 302-345-4677 and Jason White 302-525-1016

~August 28th 2018

Session:	7551	Total Duration:	00:05:19	Associate DN:	(302) 525-1016
Start Time:	11:07:54 EDT	Language:	Unknown	Monitor ID:	jcgibbons
Stop Time:	11:13:13 EDT	Complete:	Completed	In/Out Digits:	13025251016
Date:	08/28/2018	Direction:	Outgoing	Subscriber:	
Content:	Audio	Classification:	Pertinent	Participants:	Fairley, Victor White, Jason

Synopsis 1

OG call to 302-525-1016 Jason White:

JW: Hello

VF: (Hold on, hold on): Hey yo

JW: Yeah

VF: Tell me something good man, what's happening

JW: Oh shit, shit, I've been up for a second, I had to run my girl to the hospital and shit so I ain't really get this shit, get shit going on

VF: They did where

JW: Nah, I said I had to run my girl to the hospital and shit so I didn't really get shit going on. What's what's going on

VF: Damn man, what the fuck up with the shit man, what the fucks going on

JW: The (UI) shit

VF: Yeah, what's up with that

JW: That's what I was trying to do, I was trying pick up some shit to try and, try and do that shit, but, you know what I'm saying

VF: I was on the phone, I was on the phone talking to "Angel"

JW: Yeah, fucking, I don't know I could roll over there and try to do this shit

VF: So where do we got to go at man, where you at

JW: I'm down at what's her names bro, but I got to get ready to go in town and fucking pick up my girl up from the uh, what's it name, the hospital. So I could probably do that shit

VF: Ah man

JW: Yo I'm out there or fucking. You want me to pick you up

VF: Angel said you got, you got, you got, you got that, you got the money money ready or something

JW: Huh

VF: You got the money ready

JW: No, I ain't got shit, that's what I'm saying. I would of went and grabbed the shit my damn self and I still got some more of that shit

VF: (UI) Angel called me this morning said you got some money for her or something

JW: Nah, I ain't tell her that shit, she would've probably already been out here if I a told her that she wouldve been

VF: Hold on, hold on

JW: (UI)

VF: Yo, hold on real quick, don't hang up. Yo, yo

JW: Can you hear me

VF: Yeah, hold on man, hold on man, I was talking, I was talking to your folks. I got em on the other phone. Yo listen, Hey you over there

JW: I just said I'm here (UI)

VF: Yeah I know, I know that, I know that already. So, how (stuttering) long you gonna be dog, cause I mean. I'm trying to get some of that shit man. Seriously

JW: Yeah, we could go over there, I'll be there, shit

VF: What time, what time, what time, huh

JW: Within the hour or something, I'll be in town

VF: An hour

JW: I'll be over there, yeah. I can be in town
VF: Yeah we got to see what's up man, I been, I been, I been waiting two or more for this shit
JW: Yeah this shit, I ain't have nothing left my damn self, I can't even, I can't even do shit (UI)
VF: Well listen, I told you, listen. I told you to call him, right, tell him you got somebody trying to spend some money
JW: Word
VF: I mean, I don't want nothing for free
JW: Yeah
VF: So that way, so listen, that way, that, that uh, that uh, that can, that can get ya'll back on whatever ya'll need to get back on if you bringing somebody out spending some money
JW: That's what I said, hold up, really, I don't even know my, I got to just look, I mean, I'm just going to play this
VF: Cause, I, I, remember you told me that he saying, I, he wasn't trying to give you none cause he, cause you owe him money right
JW: No, I don't, I don't owe him money (UI) like that, "papi" this the "papi", I don't owe the "papi" nothing. They just on some bullshit because the last time I fucking, I was dealing with the nigger for about a year and mother fucking the last I was paying him, they was giving me like a hundred grams, and I was paying them like every month, like every three weeks to a month but then the last time I, I dealt with them, it's I, I was getting, I was getting put out my crib and shit, so I was trying to relocate and I was, and I thought the boy, mother fuckers was on my ass so I ended up taking like two months, you know what I'm saying, he thought I was going, he thought I was going to burn him so he ended up getting my, sending my original man to me, and ya know what I mean telling me to go do some shit but he said, he said because I took too long, so now he like, nah, no more credit because I can't, that's cause we waited, you know what I'm saying, but I, I paid him off, he just had to wait, he was just waiting for a minute. But now he don't front me shit
VF: Right, but you don't, we don't, we don't need him to front nothing shit
JW: For real, I know, what I'm saying, but he, but he saw, he was like, he was like yeah if you come with two thousand I'll front you, but usually I don't even, I, I want to try and call him, I want to try and call him while you on the phone and so I could see like how much he want charge for it, but look
VF: I'm a call
JW: (UI) I just want something out of it but he
VF: Yeah
JW: But look, he said he (UI), he said already he going to give me forty grams for two racks, but he usually charge like eighty to eighty five for a gram so I'm trying, how much is that, how much is for two racks
VF: That's twenty
JW: Either way, either way we going, we going to have the shit anyway because, uh, because he, I mean. Even if I do pay the nigger back, on whatever he fronted it's only going to be like ten grams and then I, we could, I could bring it back three weeks or you know what I'm saying, or whatever the case may be
VF: Alright, you said, you said, you said, you said, you said an hour
JW: Yeah, yeah
VF: Alright
JW: Alright man
Call disconnected.
ETH 309

During this interception Fairley is asking White to provide him with a meet to the "papi" unknown source of supply. Fairley advises he is wanting to spend money for a sample of the product. During this telephone call White advises he was previously being supplied "100 grams" (believed to be heroin) in exchange White would pay the "papi" once a month as White would be fronted product without an initial payment. White also states since he now is no longer in debt to the "papi", the "papi" agreed to sell 40 grams (believed to be heroin) in exchange for "2 Racks" (1 Rack = \$1,000.00). White continues to state the "Papi" charges approximately \$80 - \$85 per gram.

Session:	7582	Total Duration:	00:03:34	Associate DN:	(302) 525-1016
Start Time:	11:49:09 EDT	Language:	Unknown	Monitor ID:	ethuston
Stop Time:	11:52:43 EDT	Complete:	Completed	In/Out Digits:	+13025251016
Date:	08/28/2018	Direction:	Incoming	Subscriber:	
Content:	Audio	Classification:	Pertinent	Participants:	Fairley, Victor White, Jason

Synopsis 1

IC call from 302-535-1016 Jason White

VF yo, yo
 JW yo, you hear me?
 VF wut up
 JW yeah na he just hit me back, he gunna he said he only can do the 25 right now until Thursday and he can do the credit
 VF 25
 JW he said he got he only got 25 grams of the white shit right now and then on Thursday he gunna he gunna have both of them and then they just toss somethin in it
 VF i got, back the fuck up
 JW yea but
 VF thats (IA) just an ounce of it
 JW he like (IA) 25 minutes now he only got 25 whats the names and that only like a gram whats that ...its only uh uh an extra fuckin two grams or some shit
 VF iiiight
 JW yea .. i dont know whatchu whatchu wanna do
 VF nahh i want i want that shit
 JW ight ill be ill be i guess im gettin ready to just come up I I still got that sample of of the shit that he gave me on me and shit i mean I could I could give it i could give it to you uhh whatever you know what im sayin i could come im ready to come im ready head in to the city now so can link up but if you wanna if you wanna take this sample and have somebody get it real quick or whatever and but i already know i already know that its that its that shit fo for real
 VF iight .. so he gunna so he gunna he gunna meet up with you to bring the bring the shit
 JW he he im gunna have to go go to him im gunna have to pull up to the store
 VF iight
 JW yea but you can go you can go over there wit me i dont give a f..u can i mean i dont know if he care or not but i dont ii ... he still he could pull up there you no what im sayin .. and you can see
 VF yea
 JW im gunna hand him the paper he gunna he gunna where ever you know what im sayin he gunna toss me the shit but I I I
 VF ight so you said he said he said 80 he said 85 a gram right
 JW yup and then he said
 VF ight
 JW but he suppose but look when he toss this shit im gunna give it i was gunna give it to you and cause look i wasnt gunna reverse i was gunna take a minute anyway and i was gunna just for you cause the money he gettin me gettin me involved i was just gunna give you
 VF listen... listen bro
 JW I was gunna give you the most it and like if he gave me 40 bro i was gunna toss you an extra you know what im sayin
 VF this what we gunna do bro .. listen hold on look .. when we get this shit right .. im gunna get my folks to mix everything up for us right
 JW that shit gunna be fuckin on yo
 VF im gunna give him the mix and everything up before i get everything done up and then we can we can we can start like that bro
 JW yea i want you i want you to give i want you to give somebody some of that boi give em a lil piece (IA) do you got like a mutha fucker that you know that you can give a lil piece or are they gunna let you know whats goin on
 VF yea
 JW yea thats what you need i wanted i want to see you give a mutha fucker just a lil lil piece of that shit you gotta (IA) mutha fucker gotta hit it

JW yea im ready im ready (IA) whatch where u want me to meet you at
VF uhh you can meet me ummm you can meet me uhh up there eh eh save alot joint
JW oor so what you want me to pick you up or you want to meet me over there
VF umm...you can pick me up just pick me up from there
JW ight you said save alot ight
VF ight
call disconnected
MR1488

During this interception, White advises Fairley that he had spoken to the Papi, the Papi advised he only has "25" until Thursday. The 25 refers to 25 grams (believed to be heroin). White then states he and Fairley will respond to the "shop" later identified as Estevez Market (1023 W 5th Street, Wilmington, de). White advises as both parties arrive he will provide the money to the Papi, Papi will then provide the product. After White obtains the product White will then provide Fairley with the product obtained by Papi. Fairley confirms the Papi requesting is \$80 to \$85 per gram. White then requests that Fairley provide a sample of the product to a user for a review of the product. Fairley then advises White to meet at the Save A lot.

Session:	7590	Total Duration:	00:01:13	Associate DN:	(302) 525-1016
Start Time:	12:21:49 EDT	Language:	Unknown	Monitor ID:	ethuston
Stop Time:	12:23:02 EDT	Complete:	Completed	In/Out Digits:	+13025251016
Date:	08/28/2018	Direction:	Incoming	Subscriber:	
Content:	Audio	Classification:	Pertinent	Participants:	Fairley, Victor White, Jason

Synopsis 1

IC from 302-525-1016

VF hello

JW yo IA at the fucking chinese store this nigger want us to over to the fucking apartments over there near forman mills over north

VF ok

JW my car aint got no ac shit hot as fuck

VF give me a second alright. give me like fifteen minutes

JW god damn he said you gotta be there in ten he gotta roll. you cant just meet me over there?

VF you said your car aint got no ac?

JW na

VF damn im to big and to black for me to be sitting about no ac

JW im fucking already been sweating since 9 oclock this morning. you cant meet me, you dont want to meet me over there?

VF ummm im down at this train station right now im trying to take care of something at this train station real quick it aint gonna be long bro just give me a couple minutes

JW alright then what you want me to do sit right here?

VF yeah just sit there give me a couple minutes it aint gonna be long.

JW alright

VF alright

END CALL

TM1483

White advises Fairley the Papi has switched the meet location to an apartment complex (Brandywine Hills Apartments) in the area of Foreman Mills. Surveillance does observe White inside a Chrysler 200 within the apartment complex parking lot.

Session:	7601	Total Duration:	00:01:25	Associate DN:	(302) 525-1016
Start Time:	12:36:10 EDT	Language:	Unknown	Monitor ID:	ethuston
Stop Time:	12:37:35 EDT	Complete:	Completed	In/Out Digits:	13025251016
Date:	08/28/2018	Direction:	Outgoing	Subscriber:	
Content:	Audio	Classification:	Pertinent	Participants:	Fairley, Victor White, Jason

Synopsis 1

VF A yo hello hello
 JW yo
 VF Im ready come up now yo i had to mother fucking um uh had to swap this mother fucking car out and shit
 JW yeah he telling me he texting me
 VF Yeah tell him tell him we be ready to be on our way i had to i had to im down the train station i had to come down here and swap this car out
 JW you still down there now
 VF im ready to leave out though im telling you it dont take long cause i already had called the mother fuckers and all that shit
 JW you want me head down there
 VF if you want to you can but the car we got AC in the car so but we still gonna have to go park your shit up real quick
 JW yeah but i might just tell her and park wherever the fuck you at
 VF aight well listen this is what we gonna do you gonna come down here then well then im ready leave from out of here now and then well go park the car and you can just get in the car with me but we cant drive,
 JW where you at
 VF im at the train station
 JW alright im ready head down there then
 VF aight
 Call End.
 SD 1474

Fairley is known to use the Enterprise Car rentals located at the Wilmington Train Station.

Session: 7607	Total Duration: 00:00:27	Associate DN: (302) 525-1016
Start Time: 12:42:17 EDT	Language: Unknown	Monitor ID: ethuston
Stop Time: 12:42:44 EDT	Complete: Completed	In/Out Digits: +13025251016
Date: 08/28/2018	Direction: Incoming	Subscriber:
Content: Audio	Classification: Pertinent	Participants: Fairley, Victor White, Jason

Synopsis 1

IC from 302-525-1016 Jason White

JW Yo
 VF Yo
 JW you out front already
 VF yeah im right out front yeah
 JW aight im get something you can just follow me over
 VF im have to find somewhere to park or somethin
 JW i mean yall can just follow me over where you at
 VF you got AC in that mother fucker
 JW fuck no this shit fucked up
 Call end.
 Sd 1474

Session: 7613	Total Duration: 00:00:49	Associate DN: (302) 525-1016
Start Time: 12:57:20 EDT	Language: Unknown	Monitor ID: ethuston
Stop Time: 12:58:09 EDT	Complete: Completed	In/Out Digits: 13025251016
Date: 08/28/2018	Direction: Outgoing	Subscriber:
Content: Audio	Classification: Pertinent	Participants: Fairley, Victor White, Jason

Synopsis 1

OG to 302-525-1016 Jason White

JW Yo
 VF Yo im driving im dropping her off now where you at hospital right
 JW yeah i cant be, my man going nuts he done called me three times back to back and i aint pick up so he uh

VF Yo pick the phone up
JW he proly
VF you said what
Call End.
SD 1474

Session:	7615	Total Duration:	00:03:20	Associate DN:	(302) 525-1016
Start Time:	12:58:51 EDT	Language:	Unknown	Monitor ID:	ethuston
Stop Time:	13:02:11 EDT	Complete:	Completed	In/Out Digits:	+13025251016
Date:	08/28/2018	Direction:	Incoming	Subscriber:	
Content:	Audio	Classification:	Pertinent	Participants:	Fairley, Victor White, Jason

Synopsis 1

IC from 302-525-1016 Jason White

JW Yo

VF yo

JW yeah , i dont even know if he gonna wait but you know where im talking about

VF by where you said by Foreman Mills right

JW yeah you know where Foreman Mills at but you can go straight all the way back all the way to like where washington and shit at

VF so where

JW its them apartments back there like on miller road and the

VF them ones to the right

JW yeah like once you go you know its that little bend when you go back there towards like you go in between fucking Foreman Mills and the gas station you drive back uh towards you know like that Hot Spots Store

VF oh ok ok yeah yeah yeah yeah yeah yeah

JW yeah but those little apartments right there as you go around that bend as you ready go

VF oh you go you go you go you go past the car lot right

JW yeah thats uh fuck you go back you pull back foreman mills and you go back there fucking go back past uh

VF thats the car lot right there right

JW huh

VF I gotta go past that car lot and go towards the right round that bend right

JW yeah but its not around damn and then my girl calling hold up uhm let me see

JASON WHITE TAKES CALL FROM FEMALE POSSIBLY ANOTHER PHONE IN BACKGROUND

call returns to conversation with VF at 13:00:45

VF aight so look when i go over by Hot Spots right

JW SPEAKS WITH FEMALE

call returns to VF and JW 13:01:05

VF when i get by hot spots where i go at from there

JW you keep going straight you gonna go straight ..yeah that shit its right back there its in them little apartments you know where you come up and its that stop sign that little intersection jawn where theres a stop sign and a home depot and shit back there

VF yeah

JW on that yeah so its them apartments thats right there on the corner its right back in the corner

VF oh yeah ok how long im on my way there now

JW im ready be there once i get there he pull up and then he gonna be like that mother fucker dont fuck around and take off if you aint there how much longer you gonna be

VF im ready come around now

JW oh aight bro im uh

CALL END

SD 1474

Session:	7618	Total Duration:	00:01:33	Associate DN:	(302) 525-1016
Start Time:	13:08:54 EDT	Language:	Unknown	Monitor ID:	ethuston
Stop Time:	13:10:27 EDT	Complete:	Completed	In/Out Digits:	+13025251016
Date:	08/28/2018	Direction:	Incoming	Subscriber:	

Content: Audio

Classification: Pertinent

Participants: Fairley, Victor
White, Jason

Synopsis 1

IC from 302-525-1016 Jason White

VF: Hello

JW: Yo Yeah you know where I'm at?

VF: Yeah I'm gonna find you, I'm comin right now, I'm gonna find you. You said go around that little turn, I'm gonna find you. Soon as I get right there.

JW: (UI) No I don't like this (UI) scared as shit

VF: Nah I told him, he don't listen, he don't listen. Yo listen bro, tell him he know where my folks is yo.

JW: yeah i dunno

VF: Tell him where my peoples is, he he he know. Tell him tell him it's the obama boy, I'm coming right now. He ain't gotta be nervous, I know they be nervous and all that shit, he ain't gotta be nervous, not with me. I'm good money bro, trust me. Tell him that, just tell him.

JW: He don't they don't, they don't wanna hear none of that shit. They already, they already said all that shit. They talkin bout they don't wanna see nobody pop nobody niggas scared to death

VF: Thats because motherfuckers be doin them wrong and all that shit, thats why, thats why. I'm comin right now though.

JW: Alright alright fuckin, alright yeah, I'm right over here (UI) how much longer he gonna be?

VF: A couple minutes, I'm comin right now. I can't run a red light

JW: Oh yeah I know I get stuck behind all them shits

VF: Yeah I'm comin, comin right now

JW: Alright

VF: Alright

End of call

CRW

Session: 7625

Total Duration: 00:02:08

Associate DN: (302) 525-1016

Start Time: 13:15:36 EDT

Language: Unknown

Monitor ID: ethuston

Stop Time: 13:17:44 EDT

Complete: Completed

In/Out Digits: +13025251016

Date: 08/28/2018

Direction: Incoming

Subscriber:

Content: Audio

Classification: Pertinent

Participants:

Fairley, Victor
White, Jason

Synopsis 1

IC from 302-525-1016 Jason White

VF Yo he left didnt he

JW yo

VF huh

JW you said what?

VF he left didnt he?

JW say that mother fucker i dont know im trying figure out where he at

VF huh

JW where yous at

VF im coming off im ready im ready bang this turn in few minutes

JW oh aight

VF im meet him i mean he dont want to come closer like the uh whats that uh uh home depot somethin

JW he aint gonna go no where cause he gets mother fucking he got it from my man my man not even gonna let him go no where with the shit he got it from a whole nother nigga that nigga he aint even i dont know what type games they got going on but that mother fucker

VF so what what they they aint answering the phone now

JW yeah i dont know Nah he said he said he was out here

VF huh

JW he said he was out here

VF aw man

JW yeah he calling back now now he proly he getting ready to leave now getting ready leave now he calling back now i dont know

VF yo im right here bro word im right here dog

JW you dont even know where im you dont even know where you going at

thats at
JW you said what
VF its them little apartments when you go around that little turn its them little apartments to the right by
uhm riverside hospital
JW I think so
VF its a its a big hospital its a hospital right there right
JW yeah i dont yeah its right near that home i mean not right near home depot but same how much
longer you think you gonna be
VF a couple minutes bro im right here im right here literally im right here whats this by Haines Park this
little park right here you gotta ride by to get to hot spots
JW yeah aight aight let me see
CALL END.
SD 1474

Session:	7632	Total Duration:	00:02:27	Associate DN:	(302) 525-1016
Start Time:	13:20:45 EDT	Language:	Unknown	Monitor ID:	ethuston
Stop Time:	13:23:12 EDT	Complete:	Completed	In/Out Digits:	3025251016
Date:	08/28/2018	Direction:	Incoming	Subscriber:	
Content:	Audio	Classification:	Pertinent	Participants:	Fairley, Victor White, Jason

Synopsis 1

IC call from 302-525-1016
VF ah yo so where i gotta go at bro cause im right here bro
JW inaudible
VF im right here im im im right here by um whats this home depot
JW yeah um no hes probably right around back over there to the city cause we IA and he said he called
him when hes ready and he back over near the store or something
VF so where you where you at now?
JW im leaving the mother fucking apartment soaking wet
VF so you said we gotta go by the store?
JW i think so
VF you think though or thats what he told you?
JW yeah thats what he said thats what he said bro im pretty sure hes still sitting around probably just
watching but im nosed in cause thats what he said but i dont even know
VF so you
JW and i gotta go pick up my girl so i dont know how its gonna work out i gotta go get her now. i been had
to get her
talking over each other
VF huh
JW i wasnt even sure if you was doing this shit right now thats what i was saying i got IA cause i already
had some shit i already had to do i gotta pick up my girl then im bout to drop her the fuck back off she
been IA for the last fucking hour
VF what the hell you at now though
JW im driving past home depot
VF you driving past home depot
JW yeah yup passing the gas stations where you at?
VF i mustve just we mustve just rode by eachother
JW where you at back at the apartments?
VF im right now im ready to slide through home depot parking lot now
JW yeah back over across the country back on fourth street
VF so he said he said go to the store?
JW i dont yeah i cant ride up by that store i cant ride back past that hospital without going to the store i
mean without picking my girl up i dont fucking know
VF you need to do what?
JW i gotta go pick my girl up so i cant ride past the hospital without picking her up and then coming back
and doing na saying? thats way too much
VF so your so you pick her up from the hospital you can you can uh
JW where you at now im still sitting in front of whatcha name i could been called him if you were back at

that apartment

VF im back im riding past home depot now back towards the city now

JW IA black shit?

VF yeah

JW ok well you might as well just park right here and then see what imma call him and see where he at

VF damn

Call End.

SD 1474

Session:	7644	Total Duration:	00:02:47	Associate DN:	(302) 525-1016
Start Time:	14:31:55 EDT	Language:	Unknown	Monitor ID:	ethuston
Stop Time:	14:34:42 EDT	Complete:	Completed	In/Out Digits:	+13025251016
Date:	08/28/2018	Direction:	Incoming	Subscriber:	
Content:	Audio	Classification:	Pertinent	Participants:	Fairley, Victor White, Jason

Synopsis 1

IC from 302-525-1016 (Jason White)

JW: Yo

VF: Yeah. You already fuck with that shit you aint give that shit out yet?

JW: I mean I give him a lil, lil, lil, lil cheese, lil

VF: Mhmm

JW: Yeah it was

VF: Nah the motherfuckers

JW: Called me (UI) shit He had my other man with him and shit, my original man I heard in the background talkin to him and shit

VF: Yeah

JW: But, yeah, hopefully them motherfuckers get that shit. It probably was fucked up for a minute. His folks probably got (UI) That shit be comin from up top

VF: Comin from up top you said?

JW: Yeah thats where they be grabbin that shit from cause my man, my original man stay up Philly

VF: Oh ok. I'm gonna find out that, I'm gonna find out whats up with it. Like in a few, give me few I'll let you know

JW: Alright yeah just hit me

VF and JW talking over each other

VF: I gave them that little teeny teeny shit, that shit...probably wasn't enough. It was little little, that shit was like, I don't know what the fuck it was like

JW: That shit will spin a motherfucker (UI). I already know, I mean

VF: He probably, he probably on, he probably on gangster lean right now because he did this shit

JW: It only took like 2 minutes

VF: Yeah it was, it was too fast the way the response was so you know how like, it's different in the hood you know what I mean?

JW: Yeah

VF: Motherfuckers tell you some shit real quick just to be on some fast shit like it was too fast. So he probably on that gangster lean right now.

JW: laughing

VF: I'm ready to go back through there and see whats up cause like like

JW: That nigga gonna be stuck

VF Yeah we gave it to him and it was just too fast for him to be like yeah like you know what I mean

JW: Yeah (IA)

VF: But I know for that little

JW: (IA) callin he was like Thursday he supposed to get more and thats when he gonna he gonna he supposed to toss me some of this shit on Thursday. He like yeah let me know if your shit hit cause it should be FOUR FIFTY for the extra five. So he like when you gonna have that, I'm like it's probably gonna be tomorrow or the next day. I'm like, he like I'm already ready but then he was like it's gonna be Thursday and I heard my man chime in the background like nah Thursday, Thursday. He was like I'll be ready Thursday when you gonna be ready for that money. I'm like what money? He like the 450. (UI) Let me know how that shit turn out.

VF: Yo

VF: Yeah I'm ready to ride, I'm ready to ride through the, I'm ready to ride back through the hood real quick and see whats up with this nigga

JW: Alright yeah just let me know, let me know

VF: I'm gonna let you know as soon, but I'm uh, I told you what I'm gonna do, I'm gonna uh

End of call

CRW

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JASON WHITE, :
 :
 :
 Defendant-Below, :
 Appellant, :
 :
 v. : No. 328, 2020
 :
 :
 STATE OF DELAWARE, :
 :
 :
 Plaintiff-Below, :
 Appellee. :

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT
AND TYPE-VOLUME LIMITATION**

1. Appellant’s Amended Opening Brief complies with the typeface requirement of Rule 13(a) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word and reviewed by Microsoft Word for Mac, Version 16.46.

2. This brief complies with the type-volume limitation of Rule 14(d) because it contains 6,507 words, as counted by Microsoft Word.

/s/ John S. Malik
JOHN S. MALIK
ID No. 2320
100 East 14th Street
Wilmington, Delaware 19801
(302) 427-2247
Attorney for Appellant,
Jason White

Dated: March 1, 2021

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JASON WHITE, :
 :
 :
 Defendant-Below, :
 Appellant, :
 :
 v. : No. 328, 2020
 :
 STATE OF DELAWARE, :
 :
 :
 Plaintiff-Below, :
 Appellee. :

CERTIFICATE OF SERVICE

I, John S. Malik, do hereby certify that on this 2nd day of March, A.D., 2021, I have had forwarded via File and Serve Express electronic copies of Appellant Jason White’s Amended Opening Brief to the following individual at the following address:

Maria T. Knoll, Esquire
Chief of Appellate Division
Department of Justice
820 North French Street
Wilmington, Delaware 19801

/s/ John S. Malik
JOHN S. MALIK
ID No. 2320
100 East 14th Street
Wilmington, Delaware 19801
(302) 427-2247
Attorney for Appellant,
Jason White