How to Achieve Great Cross-Examinations

By: Victor D. Vital

To trial attorneys, young and old, and those aspiring to the practice of trial law, cross-examination is considered a valuable skill and a sacred art. As such, much written work and thought leadership has been devoted to the skill and art of cross-examination, e.g.:

- The Art of Cross-Examination, by Francis L. Wellman;
- The Art of Cross-Examination, by Irving Younger;
- Examining Witnesses, by Michael Tigar.

And, of course, all trial lawyers are aware of Irving Younger’s “Ten Commandments” of cross-examination. The vastness of the written work and thought leadership on cross-examination ensures that those seeking to practice the skill and art can do a good job at it.

In this author’s view, however, there are three virtues that separate cross-examinations that are “great” from those that are merely good: magnanimity, impeccability, and immaculate preparation. One of the highest goals of the trial lawyer is superior credibility, and practicing the virtues of magnanimity, impeccability, and immaculate preparation are the key ingredients to garnering and demonstrating superior credibility. Those virtues, applied to the skill and art of cross-examination, will invariably lead to great cross-examinations.

The three virtues in a nutshell are as follows:

- Magnanimity: When your first and invariable thought in the courtroom is to let others shine whenever and wherever appropriate or necessary and/or to concede non-essential points to your adversary, the trial lawyer exudes attractiveness that is inexorable. This virtue includes grace and forgiveness, which great cross-examiners don’t hesitate to extend. Every witness need not be browbeaten (as mentioned again in the next virtue). The virtue of magnanimity can lead to admissions that you might not otherwise secure from a cross-witness, and it engenders superior likability in the trier-of-fact.

- Impeccability: Keep appropriate boundaries. Never extend beyond them. Boundaries vary by the situation. In the extreme (by way of example), your boundaries and manners with a child or a nun will be different than what the moment yields with a “snitch” or a liar. Many lawyers have “one speed” with all witnesses, which is inadvisable. It is a rare witness who deserves to be “punished.” Michael Tigar has written that even when a witness deserves to be punished, such punishment should be exacted swiftly. Great cross-examiner Rufus Choate, as noted by Francis Wellman’s work, adhered to the same principle of “destroying” witnesses sparingly and then only modestly. Beyond staying bounded, keep your word and make your word worthy of being counted on and reliable. When you are wrong, promptly admit it openly and without guile or defensiveness, even to a cross-witness. Finally, always honestly describe and confront or acknowledge the facts and reality, even if harmful, explaining to the jury how the verdict or conclusion you seek and advocate is right and just.
Immaculate preparation: The lawyer who knows the facts and documents better than anyone will be viewed as the most credible. And you can ensure superior credibility through intense and fierce preparation. Of course, no human is perfect, but stating the virtue with the word immaculate connotes the level of intensity that the great cross-examiner must exert to ensure superior effectiveness. Great trial lawyer Edward Bennett Williams is quoted as saying, "There is no substitute for knowing everything." His cross-examinations demonstrated that. The chapter of Francis Wellman’s Art of Cross-Examination, entitled "Some Famous Cross-Examiners and Their Methods," notes (with examples) the value of immaculate preparation as a method of superior cross-examiners. And, as shown in the same chapter of Francis Wellman’s masterpiece, a byproduct of this virtue is such control and vision of an examination, that the cross-examiner "sees" fully mistakes, missteps, or opportunities that occur unexpectedly in the moment. These "gifts" always occur. The immaculately prepared advocate can be fully present so that he or she sees and seizes them.

To exemplify these virtues, this paper includes a full cross-examination conducted by this author in a federal criminal trial a few years ago. The cross-examination transcript is annotated to note how each virtue is carried out during the course of this examination. To understand the annotated cross-examination transcript, a brief summary of the case is in order.

The annotated cross-examination transcript is from a case styled U.S. v. Shorter. The author saw the case as a “prodigal son” story, involving a young man, Mecose Shorter, who was raised well and properly but was lured by the streets and drugs into criminal behavior. Shorter, hence, found himself looped into an indictment charging a human and sex trafficking conspiracy masterminded by his cousins. Shorter’s family sought the author’s assistance, and, because the author is afflicted with the “can’t say no” syndrome and a desire to help those in need of effective assistance of counsel, the author relieved Shorter’s prior counsel and substituted in pro bono.

While the defendant’s cousins were undoubtedly guilty of the charged offenses, and pleaded guilty to such, Shorter was overcharged by the Government’s indictment. The conspiracy case involved evidence from a number of mobile devices and reams and reams of voluminous data and reports from extraction reports from those mobile devices (read: mini-computers). There were two bad facts against Shorter: (1) a despicable video captured on one of the cousin’s phones in which Shorter and his cousins referred despicably to women and glorified their subjugation and exploitation, and (2) when one of the victims of the trafficking conspiracy was recovered, she was alone in a hotel room with Shorter.

The annotated cross-examination transcript of the lead detective who collaborated with the FBI demonstrates the author's dissection of the evidence against Shorter revealing the paucity of evidence implicating him in the charged offenses. The cross-examination exemplifies the virtues of magnanimity, impeccability, and (most importantly in this case) immaculate preparation that led to a thorough and encyclopedic knowledge of the reams of electronic data and extraction reports involved in the case. That preparation facilitated a mastery of the cross-witnesses encountered in the case.

The defense of Shorter resulted in a hung jury, leading the Government to properly charge Shorter of an offense for which he was guilty and to which he pleaded guilty. Shorter, who regularly writes the author life updates, has since redeemed himself to the values by which he was raised.
Q. Okay.

MS. PIERCE: Pass the witness, Your Honor.

MR. VITAL: Cross examination, Your Honor?

THE COURT: Please.

MR. VITAL: Thank you very kindly.

CROSS EXAMINATION

By Mr. Vital:

Q. Good morning, Detective Bordeleon. 12.8 - 12.25: Impeccability.

MR. VITAL: Good morning ladies and gentlemen.

Q. (BY MR. VITAL) I'd like to start off on what I

admittedly will say is a difficult cross examination by

agreeing that's a despicable video that we just saw. Fair?

A. Sure.

Q. I couldn't stand here and be an honest man if I made

excuses for that video, could I, in your view?

A. Well, there are no excuses.

Q. Absolutely. So if I said there was, I would be a

dishonest man. My voice is shaking. It is despicable.

Right?

A. Correct.

MS. PIERCE: Your Honor, we are having a hard time

hearing both the witness and Mr. Vital. Is there anything we

can do to turn up the volume?

MR. VITAL: I appreciate that interruption, because

I was feeling some emotion.
Q. (BY MR. VITAL) That video came from Kenneth White's mobile device.
A. Correct.

MR. VITAL: May I approach the witness, Your Honor?
THE COURT: Yes.

Q. (BY MR. VIDAL) Is this the devise or is this -- No, this is Damion White's device. Right?
A. Yes. That's the iPhone. The other one was the HTC phone that it came from.

Q. So Government Exhibit No. 27 is Damion White's device?
A. The other phone is the one the video came from.

MR. VITAL: May I approach the witness again?
For the record, I am walking towards the witness with?

Q. (BY MR. VITAL) Government Exhibit No. 9 is Kenneth White's phone?
A. Yes.

Q. And this is the phone that when you encounter M.S. at the motel room, she had this phone in her possession?
A. Yes.

Q. And this is also the phone from which you extracted the video that we saw earlier.
A. Yes.

Q. Okay. There is a lot of stuff on that phone. Right?
A. Yes.

Q. I think I'm at Defense Exhibit No. 13. I took it out of Shan McRoberts, RMR, CRR
Federal Official Court Reporter

**Damion White was one of Shorter's cousins.**

**M.S. was the victim with whom Shorter was found upon his arrest.**
MR. VITAL: May I approach the witness again, Your Honor?

Q. (BY MR. VIDAL) Defense Exhibit No. 13 in evidence, this is an extraction report. Is that right?

A. Yes.

Q. And this extraction report is from the Google Android phone?

A. Yes; HTC.

Q. Government Exhibit No. 9.

A. Yes.

Q. And within this extraction report we can find lots of information. Right?

A. Correct.

Q. Because these phones are, in essence, like many computers.

A. Correct.

Q. And just for your reference, when you print out the report it is 618 pages. Does that surprise you?

A. No.

Q. And, in fact, 618 pages does not do justice to what -- the amount of data that's actually on the phone, because some of the images, or some of what I printed, you can click on and drill down and find images and videos and links and websites and things like that.
A. Correct.

Q. We'll explore that a little bit.
A. Okay.

Q. I am quite proud of myself that I am running this technology.

So just for reference purposes and for the record, would you confirm that what we're looking at is the first page of the extraction report from the Android phone, Government Exhibit No. 9?
A. Yes.

Q. Okay. And what we did -- What we saw on your direct examination was some images that the Government chose to show through you to this jury. Right?
A. Correct.

Q. But, in fairness, there is much more on the phone than what the Government showed. Is that right?
A. Correct.

Q. There is a bunch more in this extraction report than what was portrayed to this jury.
A. Correct.

Q. And importantly, there are things that are not in this extraction report, which is Defense Exhibit No. 13. Right?
A. On the other phone?

Q. Okay. So let me give you a better question. Did you -- It's a lot to read when you print 618 pages. Did you
read each of the 618 pages?

A. No.

Q. Do you know if anybody did?

A. No, I don't know if anybody could read the entire thing.

Q. How did you locate the video that you located?

A. I scrolled through -- There is an image section and a video section, and the video section is -- it is not as large to scroll, through like through the texts or the images.

Q. Now, what you told the jury you concluded from the video, which was in June of 2013 -- The video was in June of 2013.

Right?

A. Yes.

Q. What you told the jury, and I wrote it down, is that from the video you reached the conclusion that Mecose was involved in a prostitution enterprise with Kenneth White.  

A. Yes.

Q. Okay. But in these extraction reports, isn't it a fact that you are able to isolate within the extraction reports references to phone numbers?

A. Yes.

Q. And phone calls with those phone numbers?

A. Yes.

Q. And text messages?

A. Correct.

Q. And what they are called is phone events.
17.5 - 18.8: Impeccability at the very beginning of this cross-examination quickly secured the detective’s confidence and trust, allowing the author to secure an early critical admission—that the Government had not painted a complete picture.

1. A. Yes.
2. Q. Tell the jury what a phone event is.
3. A. That's just when an action is done between one phone and another or one device and another device.
4. Q. And when these extraction reports include phone events, what is happening there, what is the extraction report showing or tending to communicate to whoever is reading the extraction report?
5. A. It's showing the history, time, date, some instances it's geo-located.
6. Q. Did you look for whether Mecose Shorter's number was in this phone?
7. A. I don't recall doing that.
8. Q. In an investigation, that would be a prudent thing to do to find out if the phone actually had the phone number of the individual who now sits accused and in judgment by this jury. Is that fair?
9. A. I handed the investigation over to the FBI and they were picking up the investigation on anybody other than Kenneth White, so I didn't look for that.
10. Q. But you found the video.
11. A. Yes.
12. Q. Will you indulge me That what I'm doing in cross examination is giving the jury a complete picture, a full picture, additional information that might not have been
called out on direct?
A. Sure.
Q. I mean not to attack you. Can we have that agreement?
A. Sure.
Q. Thank you.
This is not the first time you've had a defense attorney
cross examine you.
A. No, it's not.
Q. What about Damion White? Is his number in this phone?
A. Yes.
Q. You did check that?
A. Yes.

MR. VITAL: And just for confirmation pages and for
the record and Government counsel, I'm at page 18 of
Defendant's Exhibit No. 13.
Q. (BY MR. VITAL) Do you see the reference here to D.K.?
A. Yes.
Q. D.K. is the alias, a/k/a, or street name, whatever you
want to call it, of Damion White. Right?
A. Yes.
Q. And the 214-669-3582 number is the number that was
associated with the Apple phone in front of you. Correct?
A. Yes. I didn't know it at the time when I --
Q. But you know it now.
A. Yes.
Q. Government Exhibit No. 27.
A. Yes.
Q. Is the Apple phone. Right?
A. Yes.
Q. Damion White's phone.
A. Yes.
Q. Also known as D.K.
A. Yes.
Q. Who is number we see here in the extraction report recorded as part of the contacts of the cell phone.
A. Yes.
Q. Okay. And, ironically, all on one page 19 of Defendant's Exhibit No. 13 is the contact information for each of M. Baby, M. Grandma, and Meco. Do you see that? M. Baby is M.S. M. Grandma is M.S.'s grandmother.
A. Yes.
Q. And as charged in the indictment, Meco, you know, is Mecose Shorter.
A. Yes.
Q. Did you get his phone records?
A. No.
Q. Do we have those to show the jury?
A. I don't have them.
Q. Did you work this in collaboration with the FBI?
A. Yes.
Q. Do we know if the FBI has for this jury what may or may
not be on the phone or in the records for the number of Meco
ending in 7105?
A. I don't know that.
Q. Do we have text messages from him?
A. The FBI may have it, but I don't know.
Q. Did you suggest to the FBI it might be a good idea to
show this jury text messages from the phone of the person
charged with this offense?
A. No, I did not suggest that.
Q. If you were running this investigation, would you have
done that?
A. It would have been a good idea.
Q. Okay. So knowing that Mecose's number is 7105, if we
wanted to we could find out what on this phone makes reference
to 7105. Right?
A. Yes.
Q. And I think I recall your testimony to be that you had
not done that. Correct?
A. Correct.
Q. But we can do that right now in front of the jury if I go
to the phone events.
A. Yes.

MR. VITAL: Okay. For the benefit of Government
counsel, I am at page 517 of the extraction report for the
Android phone of Kenneth White, Defendant's Exhibit No. 13 for
the record.

Q. (BY MR. VIDAL) Are you able to see what's on the screen?
A. Yes.

Q. Would this be an example of what we call a phone event?
A. Yes.

Q. Okay. And just for the jury's benefit, if we go to page
479 of Defense Exhibit No. 13, we can actually look to confirm
that that's what we're looking at. It says "activity
analytics." Do you see that?
A. Yes.

Q. The activity analytics show or analyze the interaction
between this phone Government Exhibit No. 9 and any other
phone. Is that right?
A. Correct.

Q. And I just printed the records as they were given to me
by the Government, but it just so happens, ironically, in this
case the first entry is for M. Baby. Do you see that?
A. Yes.

Q. 474 phone events for that number. Right?
A. Yes.

Q. Which means that, at least for the analytics that were
able to be detected by the Cellbrite technology, there were
474 contacts between Kenneth White's number and M. Baby's
number.
A. Correct.
Q. Okay. Now, if we go back to page 517 of Defendant's Exhibit No. 13 and we look at Meco, how many phone events are there for him?
A. It looks like two.
Q. Two phone events for the person that is charged with this offense as being a conspiracy to pimp M.S.--two.
A. Correct.
Q. You were not present when Government counsel before opening read the indictment to the jury. Were you in the courtroom?
A. No.
Q. You may have been outside, but you weren't in the courtroom.
A. Correct.
Q. But you know that the indictment read to this jury regarding the offense for which my client stands charged with charges an offense from on or about July 4, 2013 through July 22nd, 2013. Right?
A. Yes.
Q. July 22nd, 2013 is significant because that's on or about when you had contact for the first time with M.S.
A. Correct.
Q. Beginning date beginning July 4, 2013.
A. The beginning date was --
Q. It says from on or about July 4, 2013 through on or about
July 22nd, 2013. Do you recall that from the indictment?

A. Yes.

Q. Okay. Do you recall how many phone events there were between Mecose Shorter's phone and Kenneth White's phone during that time period when the Government says M.S. was being pimped by my client?

A. I guess it would be the two.

Q. You guess. You're not sure?

A. I am not sure.

Q. Because these two phone events could be after that date range. Right?

A. It wouldn't be after, because once the phone is in possession being searched, it only -- it stops at that point. The phone is no longer able to be used.

Q. When did the phone get into possession of law enforcement to be searched?

A. It was on the 22nd.

Q. Okay. Well, in fairness, those two phone events could precede July 4. Right?

A. Correct.

Q. But we don't have to guess about it because those analytics would be in this extraction report.

A. Correct.
Q. I just have some notes on it. I was --

MR. VITAL: For the benefit of Government counsel, I'm going to be at page 7 of this 618-page extraction report, which is Defense Exhibit No. 13. On the screen is page 7 of Defense Exhibit No. 13. The top of the page says "outgoing."

Q. (BY MR. VITAL) Would you tell the members of the jury what that means?

A. It is a call going out from that particular device.

Q. So this page reflects calls going from Kenneth White's phone, which is Defendant's Exhibit No. 9, to other numbers?

A. Correct.

Q. On this page there are a number of calls outgoing to M. Baby that are reflected. Do you see those?

A. Yes.

Q. July 20 -- Appear to be a number of calls on July 20, 2013 going out to M. Baby.

A. Yes.

Q. All right. But there is a phone event outgoing to Mecose Shorter. Do you see that?

A. Yes.

Q. That's on June 22nd, 2013.

A. Yes.

Q. Does that predate the date of June 4 through July 2013?

A. Yes.
Q. So is it fair that, at least with respect to that phone event, that phone event, does not fall within the time period that Mecose was allegedly involved in this prostitution scheme that involved M.S.?

A. Correct.

Q. Okay. And now we just have to find the other phone event that was the only other of the two phone events in this gigantic extraction report. Right?

A. Correct.

MR. VITAL: And for the benefit of the record and Government counsel, we are now going to go and find the other phone event, which is at page 47 of this extraction report.

Q. (BY MR. VITAL) Would you, before we examine it, tell the members of the jury and the record what page 47 of this multi-page extraction report, Defense 13, is reflecting?

A. That's the incoming calls, I believe.

Q. You said incoming?

A. Yes.

Q. And there are actually incoming text messages?

A. Okay.

Q. Right?

A. Yes. It could be a text message or a phone call.

Q. But here what appears to be reflected are text messages.

A. Correct.

Q. Okay. Now, one could draw conclusions or speculate about
the proximity between the text message incoming from Mecose
and then one coming in a few hours later from M. Baby. Do you
see that?
A. Yes.
A. Yes.
Q. Do you have any idea what that proximity is about or why
they are so close in time?
A. No.
Q. Okay. But what we do see here is the only other phone
event that relates to Mecose Shorter in the phone, which was
used for this pimping offense, predates the date that this
alleged pimping took place. Right?
A. Correct.
Q. Okay. So to wrap this up and put a bow on it. This
gigantic extraction report of the phone, Government Exhibit
No. 9, which is in evidence, does not have a single phone
event relating to the interaction of Government Exhibit No. 9
with a phone related to Mecose. Correct?
A. Correct.
Q. But we did see and it doesn't surprise you that we saw
that the extraction or the Cellbrite technology detected 474
phone events between M. Baby's phone and Kenneth White's
phone.
A. Correct.
Q. Okay. Now, to be fair, because the phone that's Government Exhibit No. 9, for which we have this extraction report, Defense No. 13, because that phone was in M.S.'s possession when you found her, it's a fair and reasonable conclusion to draw that M.S. is responsible for some of the activity that's captured in the report.

A. Correct.

Q. Okay. And what the Government showed through your direct examination were — was one picture. Right? Of M.S. from this phone -- they showed at least one picture where she had a candy-striped red and white-striped shirt on. Right?

A. There is at least one photo of that.

Q. Okay. I couldn't sleep this morning, so I flipped through the report and saw for the first time, it had escaped me that that picture is actually on this phone. You said it, but I found it in the report. I had insomnia.

That's the picture. Right?

A. Yes.

MR. VITAL: Okay. For the record, that is page 382 of Defendant's Exhibit No. 13.

Q. (BY MR. VITAL) So the picture is on this phone or was on Kenneth White's phone. But that's what you said on direct.

A. Yes.

Q. And what that shows us is that that picture was taken with that phone.
A. Yes. It could be taken or sent to it.

Q. Taken or sent to it. Was this the only picture of M.S. on that phone?

A. No.

Q. Were there other pictures that we could have seen on direct examination of M.S. that were not shown to this jury on direct examination?

A. Yes.

MR. VITAL: For the benefit of the record and Government counsel, I am at page 384 of Defendant's Exhibit No. 13.

Q. (BY MR. VIDAL) Kenneth White likes to take a lot of selfies, it appears.

A. Yes.

Q. But in addition to pictures of Kenneth White on the phone, there is a picture at the top there. Would you tell the jury who that is?

A. That is M.S.

MR. VITAL: Okay. And for the record it is entry 2186 at page 384 of Defendant's Exhibit No. 13.

Q. (BY MR. VITAL) And in that picture that's captured in that snapshot or thumbnail, there's a flash at the top. What does that flash indicate to you?

A. A flash of a phone or a camera going off.

Q. Because she's looking in the mirror and she's taking a
picture and the mirror is -- captures the flash.

A. Correct.

Q. So she's taking a selfie.

A. On that one, yes.

Q. Okay. What does the date July 13, 2013 represent or indicate to you with respect to that selfie that M.S. is taking?

A. July 13? That would be the date the photo was taken.

Q. Okay. And that would be within the offense period. Right?

A. Yes.

Q. Page 385 of Defendant's Exhibit No. 13 shows quite a few selfies or pictures of Kenneth White. Do you see that?

A. Yes.

Q. That's the bottom. Third picture from the bottom. Who is that?

A. That's the victim.

Q. M.S.?

A. M.S.

Q. Is she taking another selfie?

A. Yes.

Q. Captured in this phone, Defendant's No. 9?

A. Yes.

Q. And the date there, what is the significance of that date--July 15, 2013?
A. That's within the offense range.
Q. Okay. And isn't it true that these images of M.S. that we're looking at are in the same section of the phone of the video that were shown to the jury on direct examination?
A. In the report it usually lists videos separate from images.
Q. Page 387 of Defendant's Exhibit No. 13, who is that a picture of?
A. That is Kenneth White.
Q. And that's entry 2232?
A. Yes.
Q. Does that picture look familiar to you?
A. It looks like the still photo of the video.
Q. Sometimes when videos are captured on cell phones, the first part of the video is, in essence, the still image. Right?
A. Correct.
Q. And at least from looking at this—I haven't clicked down on the link here—does it appear that the phone in this section of the report is capturing that still image of the despicable video that this jury has seen?
A. Yes.
Q. Okay. And on the very next page, 388, Defendant's Exhibit No. 13, is yet another picture of M.S. that appears that she is on the counter, this time taking her own selfie.

Impeccability continues in describing the video. An ugly truth can exist with a righteous story that compels the verdict the righteous story demands.
that's captured in this phone. Right?
A. Yes.
Q. And the date next to it is July 15, 2013?
A. Yes.
Q. And just one more before we move to another exhibit for a
moment and then we will come back to this one. Defendant's
Exhibit No. 13 at page 391 shows the picture with the red and
White shirt showing a partial shot of M.S. from behind.
Correct?
A. Correct.
Q. And on that same page of the picture that was shown on
direct examination, now we can see on cross examination there
is at least one other image that the jury did not see on
direct examination of M.S. on that same page taking a selfie
with that camera, like the other images we saw.
A. Correct.
Q. Okay. A lot of paper. I recycle, though.
MR. VITAL: For the benefit of the record and
Government counsel, I'm at Defendant's Exhibit No. 11, which
is in evidence.
Q. (BY MR. VIDAL) Defendant's Exhibit No. 11 is a closer
image of the pictures that we saw thumbnail sketches of for
the past five minutes on my cross.
A. Correct.
Q. Okay. Would you explain to the jury what M.S. is doing
in this picture?

A. She is taking a selfie portrait of herself.

Q. And is she smiling or frowning?

A. She is smiling.

MR. VITAL: For the record Defendant's No. 12 in
evidence is just another example of a close-up of one of those
many thumbnail sketches that we looked at.

Q. (BY MR. VITAL) What is the jury looking at here?

A. M.S. is taking another selfie picture.

MR. VITAL: May I approach the witness, Your Honor?

THE COURT: Yes.

MR. VITAL: Thank you.

Q. (BY MR. VITAL) And the selfie picture that is being
taken and is reflected in Defendant's Exhibit No. 12 was on
this phone, Kenneth White's phone, Government Exhibit No. 9.

A. Yes.

Q. Do you know whether there is a phone that belongs to
Mecose Shorter that has any images of M.S. on it?

A. I do not.

Q. Do you know if there is any phone of Mecose Shorter that
has any text messages on it that relate to M.S.?

A. I do not.

Q. Do you know if there is any phone of Mecose Shorter that
has any phone calls of M.S. on it or that relate to M.S.?

A. I do not.

Shawn M. McRoberts, RMR, CRR
Federal Official Court Reporter
Q. I'll ask you if you can confirm this from memory--the evidence will speak for itself, Defendant's Exhibit No. 13--but do you recall that the Cellbrite technology detected at least 34 contacts between Kenneth White's phone and Damion White's phone?

A. I don't know the number, but if the report reflects that, that would be correct.

Q. But you do recall there were, I think I can say, dozens of phone contacts between Kenneth White's phone and Damion White's phone. Right?

A. Yes.

Q. Government Exhibit No. 9, Kenneth White's phone; government Exhibit No. 27, Damion White's phone?

A. Correct.

Q. Reflected in this extraction report?

A. Yes.

Q. Defendant's No. 13?

A. Yes.

Q. And, in fact, we know that Damion White and Kenneth White were involved in pimping M.S. because the cell phone records tell us, don't they?

A. Not just based on cell phone records.

Q. But the cell phone records are things that we can see with our own eyes. We can see that. Right?

A. Correct.
Q. It's called evidence. Right?
A. It is part of the evidence.
Q. Part of the evidence, but things that we can tangibly see and touch. Right?
A. Yes.
Q. Okay. Defendant's Exhibit No. 9 -- Let me give you a predicate. I'm sorry. There is an extraction report that relates to Damion White's phone. Right?
A. Yes.
Q. And right before you were passed to me as a witness today, we saw that report. Right?
A. Yes.
Q. But we saw it, an online version where you can -- it's virtual. You can click through it.
A. Correct.
Q. I'm old fashioned. I kill trees, but I recycle them.
MR. VITAL: May I approach the witness?
THE COURT: Yes.
MR. VIDAL: Government Exhibit No. 9, for the record and Government counsel, I am handing to the witness.
Q. (BY MR. VIDAL) Would you identify what that is that is in evidence?
A. That is the phone extraction report.
Q. For the Apple phone of Damion White, Government Exhibit No. 27.
A. Correct.

Q. And this is just an extraction report for the text messages.

A. This section.

Q. I believe. Right?

A. I believe so, yes. That is what it appears.

Q. And just for Damion White's text messages shows the power of these devices that we carry in our pockets, like Government Exhibit No. 27. There are 812 pages. Right?

A. Correct.

Q. Okay. And in these 812 pages of that extraction report which came from Damion White's phone are text messages that relate to M.S. Right?

A. I glanced through it. There are a few.

Q. We will go through it in detail.

All right. We are looking at the first page. Right?

A. Yes.

Q. Of the Damion White extraction report. Right?

A. Yes.

Q. Okay. Now, did your investigation reveal to you that Pewee is the nickname for Damion White's mom?

A. I don't recall.

Q. Do you know who owned the phone?

A. No.

Q. Does Damion White go -- Have you ever known him to go by
Pewee?
A. I don't know that.
Q. You know him to go by D.K.
A. That and Jayqune.
Q. That is --
A. I am sorry. That is Kenneth.
Q. This says Pewee's phone, but we know that Damion White
was using it.
A. Yes.
Q. Right? This number, the very first text, very first text
in the text messages reflected in the extraction report, is a
message that came to Government Exhibit No. 27, Damion White's
phone, from who?
A. That's Kenneth White's phone.
Q. No. Isn't Government Exhibit No. 27 Damion White's
phone?
A. That one is.
Q. Right. And this extraction report relates to Government
No. 27.
A. The other phone?

MR. VITAL: May I approach again?
THE COURT: Yes.

Q. (BY MR. VIDAL) So now we're not -- Defendant's No. 13,
you recall, was the extraction report from Kenneth White's
phone.
A. Yes.

Q. And now we are looking at an extraction report from an Apple phone.

A. Correct.

Q. Government No. 27 is the Apple phone.

A. Correct.

Q. Damion White's. Right?

A. Yes.

Q. So Defense Exhibit No. 9 is the extraction report for Damion White's phone.

A. Okay.

Q. And in the extraction report for Damion White's phone regarding text messages, the very first one that we see is an incoming text message coming into Damion White's phone from who?

A. I think that's Kenneth's phone.

Q. You think 6681 is Kenneth's phone?

A. Yes.

Q. Isn't 0680 Kenneth's phone?

A. They had so many numbers going back and forth here, I may not be sure which phone is which on this.

Q. That's fair. We will reorient ourselves with the Damion White -- I mean, the Kenneth White extraction report, which is Defendant's Exhibit No. 13. I will just pick a random page. It is not really random--I have it flagged--but it is of no
consequence. I will put --

MR. VITAL: For the record and Government counsel, I am at 136 of Defendant's Exhibit No. 13.

Q. (BY MR. VIDAL) Do you see on that page a text message sent from Kenneth White's home to M. Baby?
A. Yes.
Q. Ending in 6681?
A. Yes.
Q. So now we have reoriented ourselves to who 6681 is.
A. Yes.
Q. Okay. So if we can go back to Defendant's Exhibit No. 9, the extraction report from Damion White's phone, which is Government Exhibit No. 27, the very first text message that is captured on the text messages on Damion White's phone comes to Damion White's phone from who?
A. M.S.
Q. M.S. And we know it came in because it says "read." That's what that means.
A. Correct.
Q. Right. And the opposite of read is sent, which means the phone, Government No. 27, is sending a text message out to other numbers.
A. Correct.
Q. Okay. And in this text message from M.S., M.S. is asking Damion, "Where are you?" Do you see that?
A. Yes.

Q. This is the extraction report that the Dallas Police Department ran. Right?

A. Yes.

Q. So you have seen this.

A. I glanced at it.

Q. How long did you glance at it?

A. Probably about an hour, because there was so much just to filter through. This's what I turned over to the FBI.

Q. How much time did you spend with the text messages that we are about to go through now between the 6681 phone and Damion White's phone?

A. About the same amount of time.

Q. Okay. If we go back to the one I looked at, the first text message that says, "Where are you?" coming from M.S.'s phone to Damion's phone -- That's June 29, 2013?

A. Yes.

Q. In your investigative experience with these types of cases, you would take that to mean that M.S. is asking Kenneth --

A. "Where are you?"

Q. Like she was expecting them?

MS. PIERCE: Your Honor, I would object. He just said Kenneth, and I think you asked if that was from Damion.

MR. VITAL: That is exactly right. Damion.
Q. (BY MR. VITAL) She was expecting Damion, either in person or by phone or something.

A. I would speculate so.

Q. All right. A few days later on July 1st, 2013, there is a text message that's indecipherable. It just says M. It is coming from M.S.'s phone to Damion's phone. Right?

A. Correct.

Q. And then Damion responds and says, "I'm on the way."

Right?

A. Yes.

Q. And right after, about four minutes after, he says, "I'm on the way." M.S. says, "K."

A. Yes.

Q. I struggle with what the English language is going to look like a hundred years from now, but "K" is okay --

A. Correct.

Q. -- in text speak. Right?

A. Correct.

Q. Okay. And apparently she was expecting Damion and wanting him to come so much and he didn't get there quickly enough, that within the next -- not 30 minutes later after saying okay, she's asking, "Where are you at?"

MS. PIERCE: Your Honor, I would object. The witness doesn't know what was going on in the person who was using the phone 979-248-6681's mind when they wrote a message.
THE COURT: Overruled.

Q. (BY MR. VIDAL) Please.

A. It appears she is wondering where that person is.

Q. Okay. And the person responds "On da way."

A. Correct.

Q. And we are saying person. Let's be specific, because Mecose Shorter is on trial. You understand that?

A. Correct.

Q. So, in fairness, can we say -- instead of person, can we say Damion White?

A. I don't know who was in possession of that phone.

Q. On direct examination did you tell this jury that you could draw conclusions about where people were going based on text messages?

A. Yes.

Q. Can we accept what the text messages say on my cross examination, just like you relied on them on direct, to tell this jury where you thought people were and what you thought they were doing?

A. Yes.

Q. Is this Damion White's extraction report?

A. Yes.

Q. And in his extraction report based upon his phone, a message coming from M.S., he says, "on da way."

A. Yes.
Magnanimity: Damning admission secured at 42.21. Grace quickly extended at 42.22 - 42.25, but the witness doesn't take the grace extended. So, the author swiftly punishes the witness with "righteous indignation" starting at 43.3. After feeling the sting of the indignation over the slipshod investigative effort undertaken, the witness gives the author the answer at 43.15 that the witness could have given at 43.1-i.e., blaming the FBI.

Q. And the person with 6681, M.S.'s phone, says, "Okay."
A. Correct.
Q. Then she says, "Can I have a hug?"
A. Yes.
Q. Then he says, "I'm outside."
A. Correct.
Q. Did you investigate whether M.S. was being picked up from McDonald's or whether Damion White was going directly to M.S.'s house where her grandma lived to pick her up?
A. She only --

MS. PIERCE: Your Honor, I would again object; facts not in evidence. We don't know who was picking anyone up or where they were picking them up from, and this witness with wasn't present for those situations.

THE COURT: Overruled.
Q. (BY MR. VIDAL) Please.
A. She only told me about the time she got picked up from her house.
Q. You didn't ask her anything about these text messages. Right?
A. No.
Q. If you were continuing with this investigation, you yourself, would it have been prudent to ask the person complaining of this offense specific questions about the text messages that we are now looking at?
A. Due to the volume of them, I do you want know if I would ask about every individual text message.

Q. Well, this is an important case, isn't it?

A. Yes.

Q. And we have only been going at this en toto on my cross not even an hour. Right?

A. Correct.

Q. An hour is not a lot of time, is it?

A. No.

Q. Okay. An hour is a fair amount of time to look at evidence and talk to somebody or people about that evidence so you can figure out what actually happened.

A. Correct.

Q. But you didn't do that.

A. This was the FBI's section of it.

Q. And as far as you know, the FBI didn't do that.

A. I don't know.

Q. All right. It appears that in these text messages that we're looking at from Damion White's phone, that in your investigative skill you would conclude that M.S. had a crush on D.K., which is Damion. Do you see that text message?

A. Yes.

Q. Is this the first time you have looked at this text message?

A. Yes.
Q. And it appears that she's asking D.K. why D.K. told Kenneth that M.S. had a crush on D.K.
A. Yes.
Q. Okay. And what he says or what D.K. says in response--and, again, this is a mangling of the English language--it says, "Cause you fa him. I just pose to be drivin' ."
A. Correct.
Q. You and I have been doing to be doing this long enough. We are going to decipher what this means.
So M.S. says, "Why are you telling your brother that I got a crush on you." Right?
A. Correct.
Q. And what Damion says is, "Because you are for him."
Right?
A. Yes.
Q. "I am just supposed to be driving."
A. Correct.
Q. So what we can deduce from this text message through prudent investigation, if it had been done, is that Damion White --
MS. PIERCE: Your Honor, I would object to the characterization of prudent investigation--if it had been done.
THE COURT: Overruled.
Q. (BY MR. VITAL) From prudent investigation is that if we are trying to figure out who's transporting or who the transporter is, that Damion or D.K. is doing some -- is in the transportation business.

A. Correct.

Q. There used to be a group--I listen to jazz now--they were called Po Pep. Do you remember that rap group? I listened to rap way back when. Kenneth is a po pep. He doesn't have a ride, so he relies on his brother to pick up women for him and transport. Right?

MS. PIERCE: Your Honor, I would object to -- The Defense lawyer is testifying. And, in fact, if he wants to know whose car anyone drove in, maybe he should ask that, but going along about some rap group or something. I would object.

THE COURT: I'm not sure I understand what the objection is.

MS. PIERCE: The objection is that he is assuming facts not in evidence as to who had a car and who didn't have a car.

THE COURT: Overruled.

Q. (BY MR. VIDAL) Well, so it's fair that Kenneth relied, for whatever reason, on his brother to do driving for him.

A. Correct.

Q. And his brother is telling M.S., "Look, I'm just supposed
to be driving for my brother. You, M.S., are for Kenneth."
Right?
A. Correct.
Q. And we know and it makes sense that he would say that
because the earlier text messages suggest that she, M.S., on
June 29 and now on July 1st is waiting for Damion. Right?
A. Correct.
Q. She says, "I know. You don't have to tell him stuff. I
be telling you. But okay." It doesn't say it exactly like
that, but that's what's being communicated.
A. Correct.
Q. We are still on July 1st, 2013.
A. Okay.
Q. And all of this so far, at least from what I've shown
you, we have not seen any text messages that relate to Mecose
related to M.S. Right?
A. Correct.
Q. Let's look at the next page. Page 3 of 812 Defendant's
Exhibit No. 9, the extraction report for Damion White, he says
in response to that text message where she said, "You don't
have to be telling him," he said, "I gotcha."
A. Correct.
Q. Response, "Yeah." You see that?
A. Yes.
Q. Then M.S. texts, "I been have a crush on you for a long
time." Right?
A. Yes.
Q. Now, the three question marks behind a question suggests emphasis of the question. Right?
A. Correct.
Q. "For a long time???" It's what D.K. writes in this text message. Right?
A. Correct.
Q. So on the same page, all of that that we've just been talking about relates to July 1st, 2013. Right?
A. Yes.
Q. Okay. And then the next day on July 2nd, 2013, there is a text message again from M.S. to D.K.--"Damion, where you at."
A. Yes.
Q. Okay. So now we have three texts on three separate days from M.S. asking D.K. "Where you at?"
A. Yes.
A. Correct.
Q. All right.
THE COURT: Can I see counsel for just one quick second, please?
MR. VITAL: Yes, Your Honor.
MR. VITAL: His honor points out a point that requires clarification as we go through and look at other of these text messages. This text message that we just looked at, the last one "Where you at," it says July 1st, 2013, that's actually the same day as the first one. What does GMT stand for. Do you know? A. I can't recall right now. Q. If I recall it correctly, and perhaps we will have examination from the FBI on this, it is a central time to figure out where you are. With respect to GMT time, you got to do some either addition or subtraction plus something or another. But it's a different time zone. But suffice it to say, it's another text message from M.S. saying, "Where you at." A. Okay. Q. And I'm not going to try to attempt to do the math on this, but at least GMT it says July 3rd, 2013 2:53:58 GMT, another text message from M.S., "Where you at?" A. Yes. Q. Which you could fairly deduce means that she, M.S., is expecting Damion, through your investigative skill and talent. Correct? A. Correct.
Q. He says, "On da freeway." Right?
A. Yes.

Q. Okay. She says, "Okay." You see that?
A. Yes.

Q. She then says, "Let me know when you here."
A. Yes.

Q. Right? Then he says, "Kall"--with a K--"my brotha"--which is brother--"and tell him da"--which means the.
A. The.

Q. ..."laws"--which is you and your brethren, laws are the police. Right?
A. Yes.

Q. Okay. "Tell him that the police are stopping me right now." Right?
A. I would assume he means he's getting stopped on a traffic stop by a marked unit.

Q. That wouldn't surprise you at all that a guy like Damion White is getting stopped. Right?
A. No.

Q. Okay. And he is texting to M.S., who is expecting him, and saying, "Hey, M.S., tell my brother that the police are pulling me over."
A. Correct.

Q. Then she responds back and says, "He didn't pick up."
Right?
A. Yes.

Q. Now, Damion White's brother is Kenneth.
A. Correct.

Q. Didn't pick up.
A. Correct.

Q. Within the same hour where she says, "He didn't pick up," she said, "You good?"
A. Yes.

Q. We means, "Are you okay?"
A. Yes.

Q. He didn't respond, so she says, "You good?"
A. Yes.

Q. And he didn't respond, so she says, "You good?"
A. Yes.

Q. And he says, "Tell him dey"--which is they--"taking me"--which you could fairly deduce from these text messages means that the police, or whoever pulled over Damion White, are taking him in.
A. Correct.

Q. She says. "Okay. He didn't pick up."
A. Yes.

Q. Kenneth didn't pick up.
A. Correct.

Q. All right. That's all on July 3rd, 2013 GMT?
A. Yes.
Q. Maybe he posted bail or something. I don't know. But over 12 hours later he finally says -- He, Damion White, texts to M.S., "I'm outside."
A. Yes.
Q. She says, "Okay."
A. Correct.
Q. Now that's on July 3rd, 2013 GMT, whatever that is. Right?
A. Correct.
Q. After being stopped and getting released, he's then outside and she says, "Okay."
A. Yes.
Q. The very next text message, in this conspiracy that starts on July 4, 2013, the very next text message in Damion's phone between the two of them comes from her to him. Right?
A. Yes.
Q. And she says, "The TV don't work."
A. Yes.
Q. Let's imagine that we are in a hotel room. We walk in a hotel room. We see a bed. Right? Oftentimes.
A. Yes.
Q. See pictures on the wall?
A. Yes.
Q. See a valet; sometimes valet stand, a closet?
A. Yes.
Q. Telephone?
A. Yes.
Q. And TV.
A. Correct.
Q. "The TV don't work."
   We know that M.S. was in hotel rooms, don't we?
A. Yes.
Q. And we know that TVs are in hotels. Right?
A. Yes.
Q. Now, in fairness, they got TVs in McDonald's, but they
   got TVs in hotel rooms, too. Right?
A. Correct.
Q. All right.

MR. VITAL: For the record, that was page 5 of 812,
Defendant's Exhibit No. 13.
Q. (BY MR. VIDAL) So far we have not seen any texts that
   make reference to Mecose, have we?
A. No.
Q. Texts that relate to M.S.?
A. Yes.
Q. Kenneth?
A. Yes.
Q. And Damion.
A. Yes.
Q. Page 6 of 812, July 4, 2013 GMT, "Tell your brother" --
And Damion's brother is Kenneth. Right?
A. Yes.
Q. "...his phone died."
A. Yes.
Q. Now, he might have other phones, but the phone we know about in this case is the phone Government Exhibit No. 9. Right?
A. Yes.
Q. Which M.S. just happened to have in her possession the first time you saw her.
A. Correct.
Q. And this text message from M.S., after she says "The TV don't work," is her texting Damion saying, "Tell your brother his phone died."
A. Yes.
Q. Now, because she had his phone on July 22nd, 2013, it does not surprise you that she could have his phone on July 4, 2013 GMT.
A. No.
Q. And for reiteration, "Tell your brother his phone died."
A. Yes.
Q. Then the question right after that is, "Where Jayqune at?"
A. Yes.
Q. So M.S. is asking D.K. or Damion where Jayqune is.
Right?
A. Yes.

Q. And Jayqune is another name for Kenneth.
A. Correct.

Q. Then the next text message exchange from them is incoming. Actually the next four, and I'll read them in order, and tell me if I've read them correctly. "Where you at? Where you at? Where you at? Where are you?" Did I read those correctly?
A. Correct.

Q. All on July 4, 2013. Right?
A. Yes.

Q. From M.S.'s phone?
A. Yes.

Q. To Damion's phone.
A. Yes.

Q. Damion says, "Kum outside."
A. Yes.

Q. Within minutes of the last, "Where are you?"
A. Yes.

Q. She says, "Okay."
A. Yes.

Q. Now, on July 5, 2013 GMT, M.S. is texting to Damion, "Tell Jayqune"--who is Kenneth--"to come here."
A. Yes.
Q. She sent two separate texts that said that.
A. Correct.

Q. Now we'll go to page 11 of 812 of Defense Exhibit No. 9. There is a text from M.S.'s phone, "When your brother birthday?" Do you see that?
A. Yes.

Q. From your investigation, do you recall that Kenneth had a birthday that fell on the 19th?
A. I don't remember that.

Q. Okay. And then after the response "19th," she, M.S., or the phone number associated with M.S., says, "Where you at?"
Right?
A. Yes.

Q. Now, at least consistent through all of the texts that we've seen, including the ones that predate the alleged conspiracy when -- most of the time when the word "where" is typed is without the E on the end. Right? Do you recall that?
A. I didn't notice it until just now.

Q. Okay. He said, "Fina pull up." Right?
A. Yes.

Q. Which is a slang way for saying fixing. And fixing comes from old folk language that means I'm fixing to do something. Right?
A. Correct.
Q. So fina means fixing, which mean's I am getting ready to pull up. Right?
A. Correct.
Q. She says, "Okay."
A. Yes.
Q. All of that is July 8, 2013 GMT. Right?
A. Yes.
Q. Now, in your investigation, you recall that there is some medical records that relate to M.S. where she was going to the doctor at some point in time in early July 2013. Right?
A. I didn't know that until recently.
Q. Okay. If her grandmother testified to that, that wouldn't surprise you. Right?
A. Correct.
Q. Based upon what you now know.
A. Correct.
Q. Okay. And in that same time frame, what we're seeing is that there is text messages between Damion White and M.S. sometimes relating to Jayqune, which is Kenneth.
A. Correct.
Q. Many text messages were "Where you at? When you going to get here?" Et cetera.
A. Yes.
Q. Just a few more texts from this phone. Page 14 of 812 of Defendant's Exhibit No. 19, there is a text on July 10, 2013
from -- sent from Kenneth -- sent from Damion's number to
M.S.'s number that says, "Outside." Right?
A. Yes.
Q. All right. And on that same date, GMT, there is a text
that says, "Daddy, it hot." Right?
A. Yes.
Q. Okay. Now, daddy is the slang language for the pimp.
Right?
A. Yes.
Q. And what she is texting, she, M.S., or the number
associated with M.S.'s number, is texting to Damion saying,
"Daddy, it hot." Right?
A. Correct.
Q. And then right after it says, "That for Jayqune." Right?
A. Yes.
Q. And what we know is that Jayqune, Kenneth, was the pimp
associated with M.S. Right?
A. Yes.
Q. Okay. When you were interviewing M.S., did you hear her
refer to Kenneth as Jayqune?
A. Yes.
Q. In fact, in her written statement. Right?
A. Yes.
Q. Okay. It says, "Jayqune, it hot out here for me." Do
you see that?
A. Yes.
Q. That's from M.S.'s phone to Damion's phone.
A. Yes.
Q. Okay. And one more set of text messages that we will look at from this phone is July 19, 2013. It says, "Can you take the white"—something—"to eat." That could be white person or something. Right?
A. Yes.
Q. Okay. And all of these text messages are from M.S.'s phone to Damion's phone.
A. Yes.
Q. Now, in fairness, we know that these phones moved hands many times. Right?
A. Yes.
Q. But in fairness to my client, no one, as far as you know, made an attempt to figure out who sent which text message to whom. Right?
A. Correct.
Q. So all we can do is speculate.
A. Yes.
Q. Not a good thing in criminal cases, is it? Is it good to speculate?
A. It is better to have proof.
Q. Okay.

MR. VITAL: I am at a natural breaking point, Your

Having handled the witness with such impeccability and magnanimity, the author is able to secure rock-solid sound bites at 58.19 - 58.23.
THE COURT: All right. We will take our morning break now, and see you all back at five till. Five till.

(Whereupon, the jury left the courtroom.)

THE COURT: Anything else?
MR. VITAL: No, Your Honor.
THE COURT: How much more do you think?
MR. VITAL: I expect -- I hope I can do it before the lunch -- be finished before the lunch hour, but I will try to speed it up.

THE COURT: Okay. That would be great.

(Brief recess.)

THE COURT: All set?
MR. VITAL: Yes, Your Honor.

(Whereupon, the jury entered the courtroom.)

THE COURT: Be seated.

Defendant may proceed.

MR. VITAL: Thank you very kindly.

Approach the witness, Your Honor?

THE COURT: Yes.

Q. (BY MR. VIDAL) Defendant's Exhibit No. 1 in evidence I am handing you a copy of. Would you confirm, Detective Bordeleon, that this is a subpoena from the federal government to backpage.com?

A. Yes.
Q. You see subpoenas go to backpage.com for these prosecution investigations?
A. Yes.

Q. And you see in response to that subpoena -- you've probably seen many of the records custodians from Backpage produce lots of backpage.com records. Right?
A. Correct.

Q. And we have records that were produced by backpage.com, some of which were shown to the jury, but all of which are in evidence between the Government, Defense counsel. Right?
A. Yes.

Q. And we have -- I'll give you an opportunity to thumb through this tab to confirm that there are many backpage.com ads that relate to this case.
A. Yes.

Q. In Defendant's No. 1, we saw this young woman on direct examination. Is that correct?
A. Yes.

Q. This was one of the people that was associated with the group that Kenneth White was in. Right?
A. Yes.

Q. Okay. And what does it mean when it says -- there is a reference to recent name?
A. That could be the name that they used to set up the account under.
Q. But it's the truth that these guys don't tell the truth. Right?
A. Correct.
Q. And in your investigation you didn't find anybody named Mike Green. Right?
A. I did not.
Q. But you did find somebody named Damion White. 
A. Yes.
Q. And although it appears that Damion White thought he was using a fake name Mike Green, he then has an email address that, quite obviously, is his. Right?
A. Yes.
Q. So when it says -- This is administrative data from the first -- second picture page of Defendant's Exhibit No. 1. This administrative data, if I am a John -- And in the urban vernacular the Johns, they refer to them as tricks sometimes. Right?
A. Correct.
Q. When the trick is looking at these Backpage ads, what the trick or the John sees are just the pictures and the title "sexy, petite," et cetera. Right?
A. Yes. He would see that --
Q. But the administrative data is hidden.
A. Correct.
Q. But the administrative data, when we get the records, is

Shawn M. McRoberts, RMR, CRR
Federal Official Court Reporter
helpful for investigative purposes. Right?
A. Yes.
Q. Because it gives us information about how who posts the information. Right?
A. Yes.
Q. And here the person that created this account was Mike Green, who we know to be Damion White.
A. Yes.
Q. And we can confirm that not only because it's a Yahoo address obviously associated with Damion White, but that, if you recall, 214-669-3284 is Damion White's phone number.
A. Right.
Q. That was associated with the Apple phone.
A. Correct.
Q. Government Exhibit No. 27.
A. Yes.
Q. Okay. And this account was created on July 15th, 2013. Right?
A. Yes.
Q. Okay. Now, I don't want to go back to the big extraction -- one of the extraction reports, but you recall in Defendant's No. 13 there was some selfies or pictures of selfies that were of M.S. Correct?
A. Yes.
Q. And do you recall that some of the dates were July 13?
A. They may have been. There were some in July.
Q. Do you recall July 15?
A. I believe there was.
Q. Okay. And this account with pictures that people are posting to Backpage, this account was created on July 15, 2013?
A. Yes.
Q. Now, is it fair that what happens when you want to take pictures to post for these ads, that you probably -- you take more pictures than you actually post?
A. Yes.
Q. So you can choose the best ones.
A. Yes.
Q. And, in fairness, if you wanted to post a picture, you would not want to post a picture that had the flash in it that looked like some of the images of M.S. when she had the black bra and the black panties. Right?
A. Correct.
Q. Those are not clear images.
A. Correct.
Q. Those are not good images to post.
A. Yes.
Q. What we see here are the better images to post.
A. Yes.
Q. And we saw the candy-striped shirt, red and white, on the
phone on the same page of the extraction report as the selfie pictures. Right?
A. Yes.
Q. The selfie picture did not make it in the Backpage ad.
A. Correct.
Q. But the candy-striped picture did.
A. Yes.
Q. Okay. Did you in your investigation look at every single Backpage ad that was associated with the Mike Green, a/k/a Damion White, account?
A. No.
Q. Okay. Do you know if anybody did?
A. I don't know if anybody looked at all of them.
Q. But you looked at some of them.
A. Yes.
Q. I'm just going to flip through. Can we confirm that with respect to these Backpage ads--and for the record, I'm flipping through pages, various pages of Defendant's Exhibit No. 1--that you see multiple references to Damion White? As I'm flipping, can you confirm that so far you saw multiple references to Damion White?
A. Yes.
Q. As the user account?
A. Yes.
Q. The person responsible for posting the content?
A. Yes.

Q. And so far we've seen a young black woman in all of these pictures. Right?
A. Yes.

Q. And there's a page somewhere, we don't know if this is the same young black woman or not because you can't see her face. Right?
A. Correct.

Q. Okay. But consistent with that so far--Damion White. Right?
A. Yes.

Q. Okay. Same account created on July 15, 2013.
A. Yes.

Q. Okay. So as we flip through, about halfway through Defendant's Exhibit No. 1, there is the first picture of M.S. Do you see that?
A. Yes.

Q. And I think you said on direct that this is not the type of picture that you typically see because it's not provocative.
A. Correct.

Q. These pictures would be more consistent with what you would see?
A. Yes.

Q. And this picture that is shown of M.S. was posted to the
account owned by Damion White. Right?
A. Yes.
Q. I'm just going to flip through a few just to confirm. If you will look as I flip, we will go quickly.
A. Okay.
Q. Pictures of M.S. Right?
A. Yes.
Q. The person responsible for the content is Damion White. Right?
A. Yes.
Q. Damion White?
A. Yes.
Q. And just in fairness, to speed things along, you don't have to look at all of them, there's another young woman, another young white woman.
   Damion White?
A. Yes.
Q. Okay. And here we have a reference to that phone that there are multiple text messages to and from. Right. 6681?
A. Yes. It's a little out of the picture, but yes, I believe it is.
Q. And got Damion White's phone listed here on this page?
A. Yes.
Q. Okay. In none of these records do you recall seeing a single reference to Mecose Shorter regarding this prostitution...
scheme that Kenneth White is involved in. Right?
A. No. Correct.
Q. We've seen text messages earlier where Damion does the
driving. Right?
A. Yes.
Q. And Damion also does the posting of the pictures. Right?
A. Yes.
Q. Did you look for a Backpage ad related to Mecose Shorter
or Backpage account?
A. No.
Q. Okay. And I wrote this down. On your direct examination
you said that the Backpage photos are usually posted by the
pimp. Correct?
A. Yes.
Q. Okay. Now I want to transition to when you first
encounter M.S. When you saw her, she was in a hotel room
where my client was present. Right?
A. Correct.
Q. You didn't see them interacting with each other. Right?
A. Correct.
Q. But, in fact, prior to your arrival you had no idea what
was going on in there. Right?
A. Correct.
Q. Okay. Still don't know.
A. Correct.
Q. Okay. And she, M.S., had this phone.
A. Yes.

Q. Was she talking on the phone?
A. No.

Q. What was she doing with the phone?
A. It was actually on a table, I believe, when we went in there, and she picked it up when we went out.

Q. Like she was familiar with it.
A. Yes.

Q. Okay. And then what did you -- how did you come into possession of Government Exhibit No. 9, which M.S. picked up?
A. I said -- I asked her if it was her phone, and she said no that's actually Mr. White's phone. I said, "Well, I will keep it for safekeeping."

Q. Okay. What was her demeanor like?
A. She was a little bit I think surprised that I was there when I first went in. She seemed a little bit confused.

Q. Okay. And in these cases you often have statements made by people in her position in the immediacy of the moment that are called outcry. Right?
A. Yes.

Q. Okay. And you had her make an outcry here. Correct?
A. Correct.

Q. And the outcry did not implicate my client, did it?
A. No, it did not.
Q. It implicated Kenneth White.
A. Yes.
Q. Said Kenneth White was doing whatever to her; not Mecose.
A. Correct.
Q. Okay. In fairness, the outcry statement or statements that were made, she didn't say she was recruited by Mecose, did she?
A. She did not.
Q. She didn't say that she was enticed by Mecose, did she?
A. No.
Q. She didn't say that she was harbored?
A. She didn't say harboring, but he was there.
Q. He was there, but she didn't say she was being harbored by him, did she?
A. Her perception what harboring is may not be the same what a normal person --
Q. She didn't say she was being kept by him, did she?
A. She didn't say that.
Q. Okay. She didn't say she was being transported by him, did she?
A. Correct.
Q. She didn't say she was being provided by him, did she?
A. Correct.
Q. Nor obtained?
A. Well, she wouldn't know what that meant, but --
Q. She didn't say it.
A. She didn't say it.

Q. She didn't say she was being kept by him.
A. She didn't say that.

Q. She didn't say she was being held hostage by him.
A. Correct.

Q. Which means she didn't say she was maintained by him.
Right?
A. Well, she wouldn't say that.

Q. Well, she didn't even say words to that effect, did she?
A. No.

MS. PIERCE: Your Honor, we would ask that that be marked, being that it's shown to the jury; marked as an exhibit, being it was shown to the jury.

MR. VITAL: That's fine. I will mark it as Defendant's 23 for demonstrative purposes only, for record purposes.

Q. (BY MR. VIDAL) You made assumptions about what Mecose was doing in the room. Right?
A. Yes.

Q. Okay. But your assumptions are not confirmed, as far as your investigation is involved, regarding anything that you can point to or recite. Correct? It's just your perception of what you saw?
A. That and what the victim told me.
Q. Okay. Well, the victim wrote a report -- an affidavit, didn't she?
A. Yes.
Q. And in that affidavit she made reference to Jayqune.
A. Yes.
Q. Who was Kenneth White.
A. Yes.
Q. Not a single reference to Mecose.
A. Correct.
Q. Okay. Now, I would imagine that because you found M.S. in the room with Mecose, that in your questioning you asked questions about Mecose. Correct?
A. Yes.
Q. And notwithstanding the fact that you asked questions about Mecose, what actually she reduced to writing related not to Mecose but to Kenneth. Right?
A. Correct.
Q. Jayqune.
A. Yes.
Q. Which does not surprise you at all because of the plethora of text messages that we have that relate to Jayqune and Kenneth. Right?
A. Correct.
Q. And the fact that -- Yeah. Okay. Let me leave that there.
You mentioned that Damion White, when you got to the Red Roof Inn, was there.

A. He was in the vicinity.

Q. Excuse me?

A. He was in the vicinity.

Q. Okay. So when you investigate these offenses, you do --

Human memory is not perfect. Correct?

A. Correct.

Q. Because human memory is not perfect, a prudent investigative tactic or protocol is to as quickly as you see or observe something to reduce it to writing.

A. Yes.

Q. In a report.

A. Yes.

Q. And in fairness to you, if you did see Damion, and you say you did, you wouldn't have appreciated who he was at the time.

A. Correct.

Q. When you got to the hotel, did you -- When you talked to Jinga Patel, did she give you the hotel records at that time?

A. I went back I think after I secured the room, then got the record then.

Q. So you had Damion White's picture. Right?

A. After, yes.

Q. All right. So you went to the room on the way of which
you claim you saw Damion. Right?
A. Yes. Well, I saw Kenneth first and then Damion.
Q. Going to the trash can.
A. Yes.
Q. Then you say you saw Damion.
A. Yes.
Q. And the way it was portrayed in your direct testimony, he was sort of keeping watch.
A. Yes.
Q. But you wouldn't have appreciated, according to you, who he was because you had never seen him before.
A. Correct.
Q. But you are a sharp-eyed guy. Right? You were in a dangerous environment.
A. Yes.
Q. You are taking in everything.
A. Yes.
Q. You want to make sure that you got a picture on whoever you see because your life is in danger. Right?
A. Yes.
Q. And they might be pertinent to this offense.
A. Yes.
Q. So with that birds-eye view, with all the years of experience, you eyeballed everybody, you got to the room, you saw what you saw, then you went back to the hotel office.

Shawn M. McRoberts, RMR, CRR
Federal Official Court Reporter
Right?
A. Yes.
Q. And you got records.
A. Yes.
Q. That relate to the room that you were in.
A. Yes.
Q. That was in the name Damion White.
A. Yes.
Q. And we saw in the Government’s exhibits there is a photo I.D. in color of Damion White.
A. Yes.
Q. And you saw that picture.
A. Yes.
Q. And you got back to your police station at some point in time and you recorded a police report.
A. Yes.
Q. In which you made not a single reference to this person Damion White that you say you saw keeping watch.
A. Yes.
Q. Isn’t it fact -- Isn’t it a fact that you did not see Damion White?
A. I believe I saw him.
Q. You make mistakes, do you not?
A. Yes.
Q. In fairness to you, I make mistakes, too, but you made

Magnanimity: In the midst of the impeachment that began at 73.5, the author allows the witness to be human by owning that the author is also imperfect. See 74.25. Hence, the witness’s credibility ding is not an assault on the witness’s value as a person. The impeachment continues through and is perfected at 76.25.
some on the witness stand so far, haven't you, regarding names
and phone numbers and such?
A. Yes.
Q. In fact, you said Markita Holmes was Kenneth White's and
Damion White's mom, when that's Kenneth White's baby's mother.
A. Correct.
Q. Okay. Isn't it true one of the mistakes that's being
made here is you think you saw Damion White, who you did not
put in your police report?
A. He's actually listed as an accomplice in my prosecution
report.
Q. But you do not indicate that you saw him in your
recitation of what occurred.
A. I didn't list it in that report.
Q. You even mentioned that you saw my client in the room.
Right?
A. Yes.
Q. Okay. By placing Damion White there, you would, through
your testimony, be placing all three individuals that you
claim were involved in this in close proximity at the same
time to M.S. Right?
A. Yes.
Q. But, in fact, you yourself have previously said that you
did not see Damion White. Do you recall saying that on July
22nd, 2013?
A. I may have said that.

Q. In fact, you -- It's not that you may have said it. You did say it. Do you recall interviewing Damion White?

A. In February.

Q. And I'm looking at Defendant's No. 17 marked solely for identification. Do you recall in your interview of Damion White saying, "I didn't see you"?

A. I may have said that.

MR. VITAL: May I approach the witness?

THE COURT: Yes.

MS. PIERCE: Your Honor, first of all, this exhibit has not been admitted. Second of all, with regard to what context he's talking about "I didn't see you" seems to be taken out of context.

MR. VITAL: I will provide context.

THE COURT: All right. Let's proceed.

MR. VITAL: May I approach?

THE COURT: Yes.

Q. (BY MR. VIDAL) Defendant's Exhibit No. 17 marked for identification, page 56. This is a transcript of your interview with Damion White. Correct?

A. That's the first time I am seeing it.

Q. Well, why don't you get acquainted to see if you recall the dialogue back and forth.

A. Okay. I may have said I didn't see him.
Q. And when you -- Damion earlier -- and this is solely for impeachment purposes only; not for the truth. "Damion: I've never said at the Red Roof." Do you see that?
A. Yes.
Q. Then you say something or another, blah, blah, blah. Damion then in that dialogue says, "So you've seen me? So you seen me?" And your response was, "Ah, I didn't see you. Other people saw you." Did I read that correctly?
A. Yes.
Q. How did you get to the Red Roof Inn? How did you know how to -- where -- how did you know where to go?
A. We had received a tip through our Fusion Information Center.
Q. And was the tip from grandma?
A. No. I think it was from her husband.
Q. Ivan Gibson.
A. Yes.
Q. And did he seem puzzled or did you -- did you have to search far and wide, or did the web tip tell you exactly where to go?
A. I told what hotel.
Q. Did you interview Ivan Gibson to figure out how he could give a web tip that was that specific?
A. I spoke to him later on.
Q. Okay. And did you learn that?
A. I don't recall exactly what he said other than hearsay.
Q. Okay. If you know, did grandma know where M.S. was?
A. I don't know if she knew where exactly she was.
Q. But she was talking to M.S. Did you learn that from the
records?
A. It came up later on that they had contacted by phone.
Q. Did you look at phone records in that regard?
A. No.
Q. Did your investigation reveal that or did you learn that
M.S. was raised to be street smart by her grandma?
A. I don't know exactly how grandma raised her to be street
smart.
Q. That's fair.
MR. VITAL: May I have a moment, Your Honor?
Q. (BY MR. VIDAL) When you got to the -- This is the final
thing. When you got to the police station with M.S., she was
there for quite a while. Do you recall that?
A. Initially she wasn't there too long.
Q. You said initially, but she was there on or around July
22nd for quite a while.
A. I would say probably three hours.
Q. And in that time you accomplished quite a bit with her.
Correct?
A. I interviewed her.
Q. You interviewed her. Right?
A. Looked at some Backpage --
Q. You found some Backpage ads and you took those Backpage ads to her?
A. Yes.
Q. And she looked at the Backpage ads and made notations about them; said things about them?
A. Yes.
Q. Right?

So you spent far in excess of 30 to 45 minutes with her. Is that fair?
A. I would talk to her, then I would get on the computer and look at things and maybe come back and show her something.
Q. Okay. You spent quite a bit of time with her. Right?
A. About three hours.
Q. Okay. And in that three hours that you spent with her being -- You are a thorough detective. Right?
A. I like to think so.
Q. Being as thorough as you could to find out all of the participants in this offense, you developed not any evidence implicating my client, other than the fact that he was in the hotel room. Right?
A. At that time, correct.
Q. And that was the closest period of time that anybody in this courtroom will ever get to what actually happened. Right? Time proximity-wise.
A. Time proximity, yes.

Q. Because as time goes, memories fail. Right?

A. They can.

Q. And facts sometimes get distorted.

A. Correct.

MR. VITAL: Pass the witness.

REDIRECT EXAMINATION

By Ms. Pierce:

Q. Detective Bordeleon, when we spoke earlier you mentioned a couple of things about your interview with M.S. Do you recall that?

A. Yes.

Q. You indicated that you interviewed her for about 30 or 45 minutes. Does that sound about right?

A. Yes.

Q. So when he says three hours, you weren't grilling her for three hours, were you?

A. No. I would get on the computer, look for documents, websites, preparing reports.

Q. I believe you also testified that in your experience, when girls are recovered from a human trafficking situation they are often very traumatized. Is that right?

A. Correct, yes.

Q. Are they often hungry?

A. Yes.