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# Prosecuting Carjacking Cases

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# Topics we will cover

- Differentiating between possessing a stolen car and carjacking
- Identifying and Obtaining Evidence for your case
  - The common and the not-so-common evidence and how to get it
- Presenting your best case
- Case law in the area of carjacking



# Distinguishing between Possessing a Stolen Vehicle and a Carjacking

- In Illinois: Possession of a Stolen Motor Vehicle  
– 625 ILCS5/4-103
- It is a violation for: “[a] person not entitled to the possession of a vehicle \*\*\* to \*\*\* possess \*\*\* it, knowing it to have been stolen or converted.” (a)(1)
- Common elements across jurisdictions of possessing a stolen vehicle:
  - Possessed a motor vehicle
  - Not entitled to that possession
  - Knew it was stolen

# Distinguishing between Possessing a Stolen Vehicle and a Carjacking

- In Illinois: Vehicular Hijacking – 720 ILCS 5/18-3
- A person commits vehicular hijacking when he or she knowingly takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force
- Common elements across jurisdictions:
  - Knowingly takes or seizes control over a motor vehicle
  - From the person or their immediate presence
  - By the use of force or threatening force
  - Aggravating factor: Use of firearm or deadly/dangerous weapons

## What type of case do you have?

- Work with your police department so that you have all the information you need to make your charging decision
  - Do you have evidence to establish your offender as participating in the carjacking or were they simply present in a stolen car when it was recovered?
  - If your answer is no, is there information or evidence out there that will assist you in making your charging decision?

# Identifying and Obtaining Evidence

- Common Evidence:

- Surveillance Video
- Body-Worn Camera or Squad Video
- Identification:
  - Photo Array
  - Line-up
  - Show-up
- Recovered property
  - Key Fob/Car Key
  - Personal property

- Not-So Common Evidence:

- Social Media Posts
- Forensic Evidence:
  - Fingerprints
  - DNA
- Cellphone/Bluetooth Data





# SURVEILLANCE VIDEO

- Private security cameras:
  - Gas station/Convenience Store – internal and external
  - Homeowner/Landlord Security Cameras
- Governmental security cameras:
  - Police Observation Devices (PODs/DAS) or City CCTV Cameras
  - Traffic/Red Light Cameras
- How we get it?
  - Police recover and inventory during investigation
  - If not, then issue subpoenas and send investigators to obtain
- Be quick to subpoena video from entities, lest it be recorded over or discarded



## Body-Worn Camera

- Over half of the law enforcement agencies in the United States utilize body-worn cameras.<sup>1</sup>
- Videos are useful not only in capturing the apprehension of offenders, but also preserves victim's descriptions or accounts of the offense.

1-<https://www.govtech.com/data/Just-How-Common-Are-Body-Cameras-in-Police-Departments.html>

# Identification

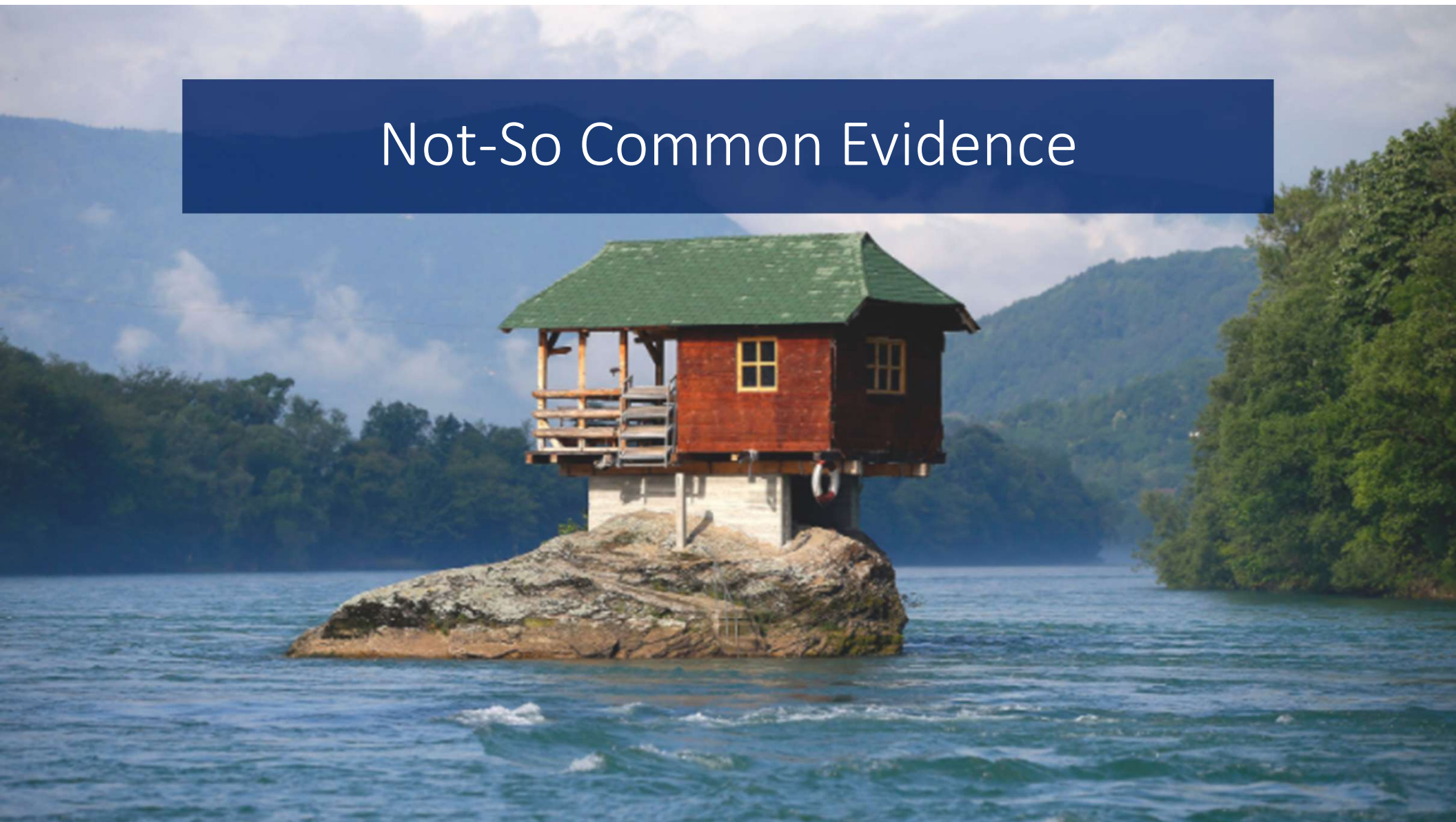
- Show-up
  - Was it captured on Body-Worn Camera?
  - How soon after the offense?
- Photo Array
  - Was it audio/video recorded?
  - How did the investigation lead to our suspect?
- Line-up
  - Was it audio/video recorded? Photographed?
  - How did the investigation lead to our suspect?



# Recovered Property

- Property either recovered from the offender or during the recovery of the vehicle
  - Victim's property: Identified by them after the offense
  - Weapons/Tools: Firearms, Replica Firearm, BB Gun, Screwdriver, etc.
  - Offender's property located in the recovered vehicle or from the crime scene

# Not-So Common Evidence





**Social Media Evidence**





# Identifying cases involving Social Media

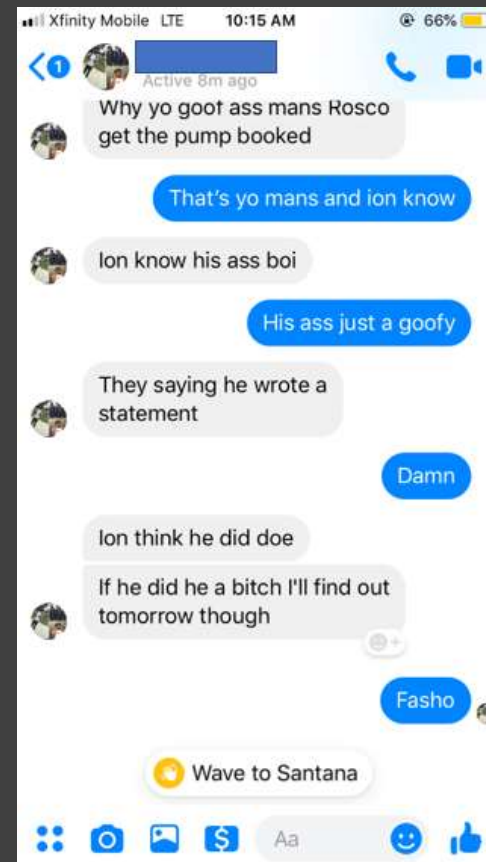
- Used to plan the crime
  - Messages between co-offenders
- Used during commission of crime:
  - Set up meeting place
- Used after the fact:
  - Posts regarding the crime containing admissions
  - Photos/Videos of joyriding

Wanna hit a stain?



# How do we get it?

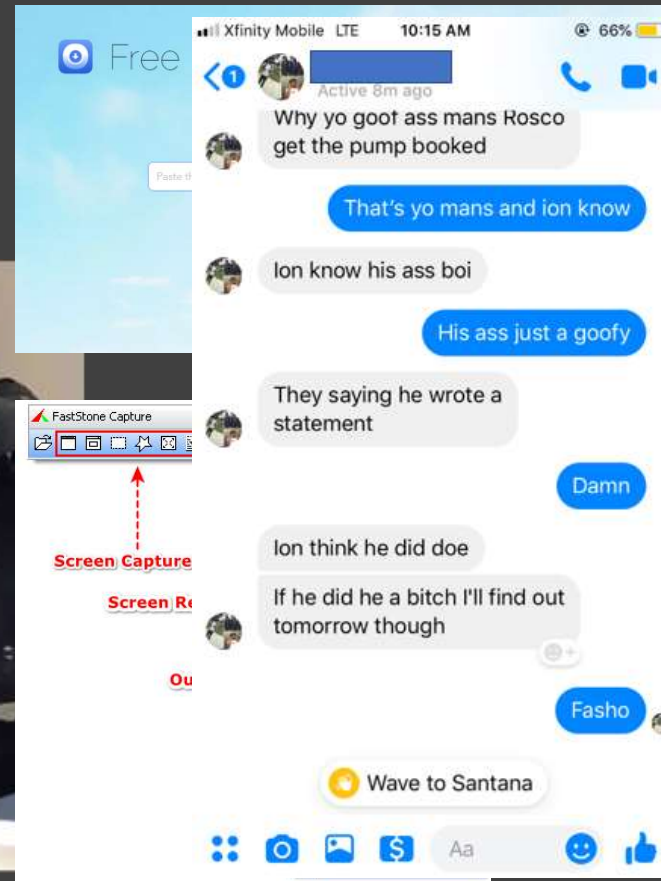
- Screen Capture





# How do we get it?


- Screen Capture
- Video Downloads




# How do we get it?

- Screen Capture
- Video Downloads
- Search Warrant



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**Registered Email Addresses**  
 **Vanity Name** gbuddy.lilhead  
**Registration Date** 2018-08-11 01:05:39 UTC  
**Registration Ip** 107.77.173.12  
**Account Closure Date** **Account Still Active** false  
**Time** 2019-03-14 21:21:45 UTC  
**Reason** deactivated  
**Account Status History** **Time** 2019-03-14 21:21:45 UTC  
**Status** deactivated  
**Mobile Devices** **Type** SAMSUNG-SGH-I337  
**Os** Android 4.4.2  
**Updated** 2019-04-02 03:40:56 UTC  
**Advertiser Id** ab77fdd4-2e1f-447f-8bfe-083514fc080e  
**Udid** 7c414747-cd48-4dca-997a-ca72974d2a79

## Why a search warrant?

- Most providers will only supply the most basic information with a subpoena.
  - Subscriber information, billing records
- For detailed records, content, videos/pictures, you'll need a search warrant
  - Stored Communications Act, 18 U.S.C. Sections 2701-2712



# LAW ENFORCEMENT Technology Investigations Resource Guide ©

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AMBER ALERT  
Best Practices



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## Copy/Tender/Review

- Print out or flag important quotes/messages/photos/dates
- Create stills for emphasis





# Forensic Evidence

A photograph of the interior of a car, showing the dashboard, steering wheel, and center console. Three blue callout boxes with white text are overlaid on the image, pointing to specific areas: the driver's side door handle, the steering column, and the gear shifter. The background shows a view out the windshield of a residential street with greenery and a fence.

Possible lifts on  
door handles

Did an Evidence Technician check the steering column for latent prints or swab for potential DNA (airbag)?

Possible lifts on  
gear shifter



# Forensic Evidence

- If you have latent print lifts and/or DNA swabs, the next step is to determine if your investigating agency obtained samples from the victim and the alleged offender
  - From the victim – to exclude their fingerprints and/or DNA
  - From the alleged offender – in order to do a comparison
- If you don't have samples from your victim, have an investigator from your office or the investigating agency obtain them
- If you don't have samples from the alleged offender, file a motion to compel them
  - Your jurisdiction may have a statute that covers this; generally required is a showing of probable cause
    - Examples:
      - Illinois Supreme Court Rule 413 – Disclosure to the Prosecution
      - *Matter of Abe A.*, 56 N.Y.2d 288 (1982)
      - *State v. Gathers*, 234 N.J. 208 (2018)





# Forensic Evidence

- Coordinate with your investigating agency and the criminal laboratory to arrange for analysis and comparisons.
  - Get the ball rolling early since juvenile cases move quicker.
- Once results are available, subpoena the reports as well as the lab notes and the *curriculum vitae* of the analyst
- Meet with your analyst even if the evidence is negative
  - Absence of Evidence ≠ Evidence of Absence



# Cell Phone/Bluetooth Data

- Almost every vehicle made in the past 5-7 years has Bluetooth capabilities.<sup>1</sup>
- As a result, your offender's cell phone may have paired with the victim's vehicle's system.
  - Attached Devices
  - Call Logs
  - Recent Destinations
- Law enforcement can recover and download information from the vehicle's data systems
  - Routine in crash investigations (ie: Black Box)



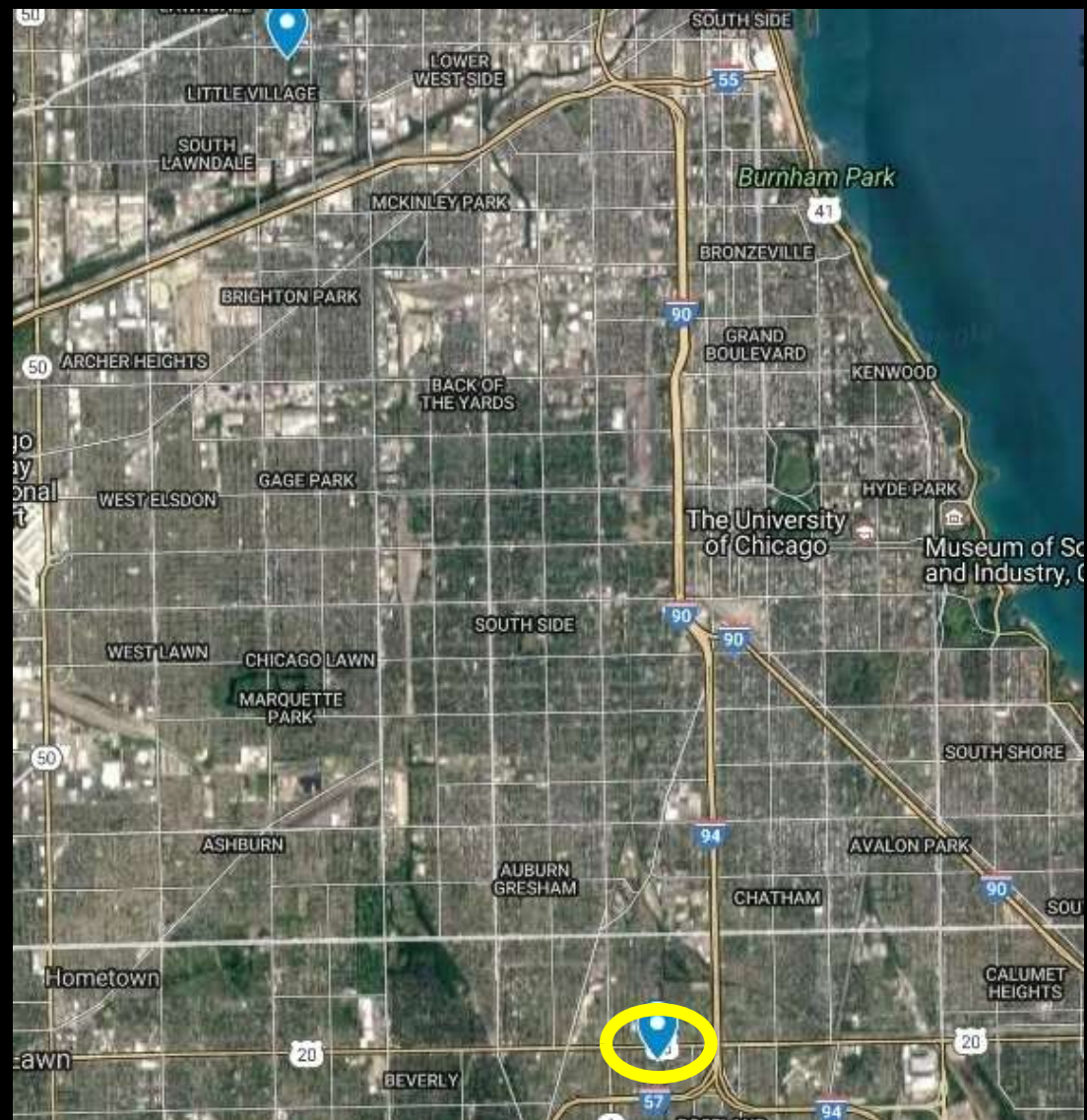
1 - <https://news.softpedia.com/news/Over-90-Percent-of-Cars-to-Feature-Bluetooth-Devices-by-2016-Study-Says-167469.shtml>

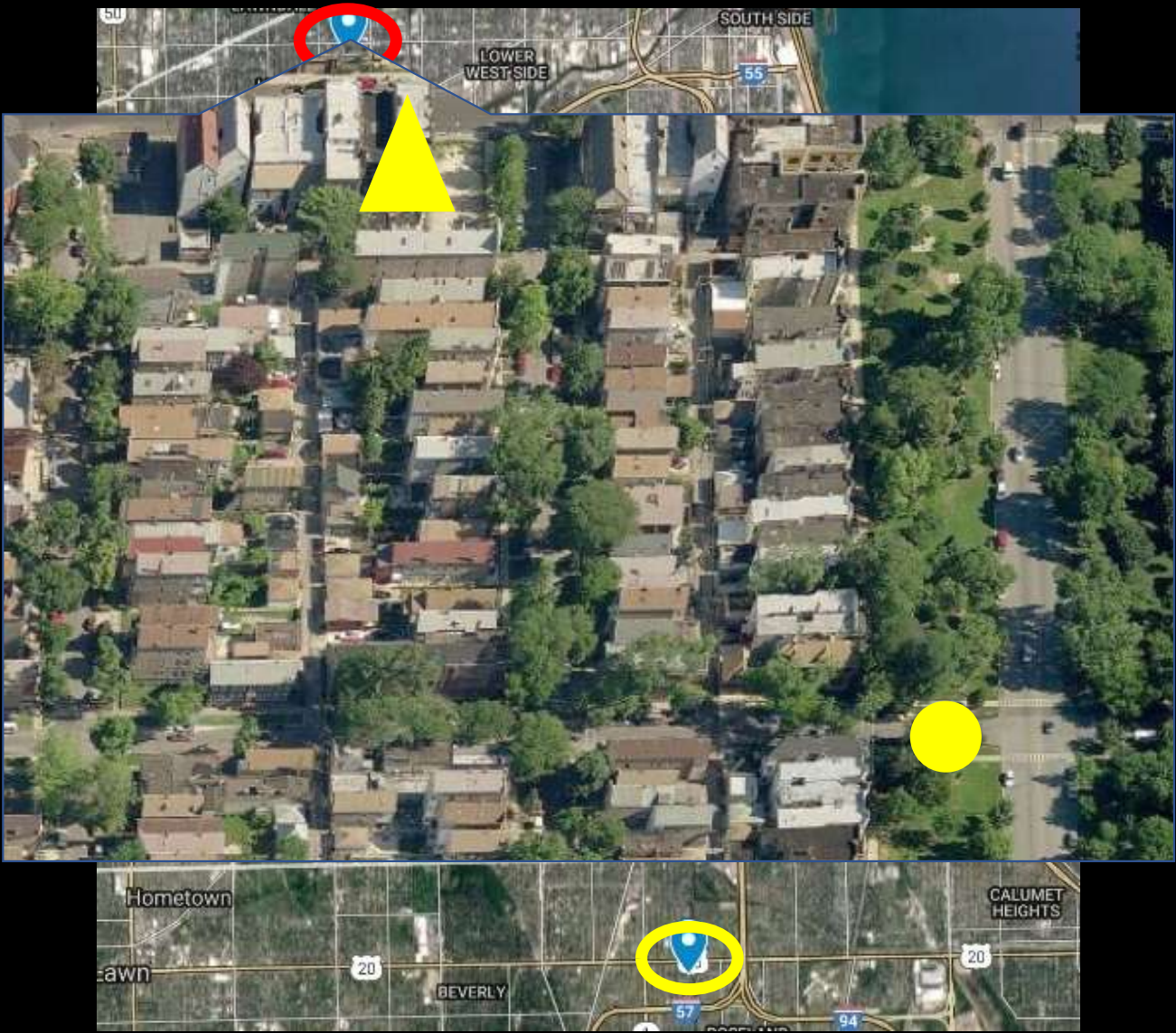


# Location is Everything

- Is there a connection between the incident and where the offender lives or was arrested?









# Presenting Your Case

- Many of these offenses are crimes of opportunity, so witnesses may be scarce
  - During direct examination, go over the details of the incident slowly and double-back with any exhibits with your victim
  - Corroboration is clutch – figure out how to corroborate key details of your victim's account
    - Personal effects stolen? Put on your responding officer to corroborate
      - “Was the victim able to provide an identification?”

# Presenting Your Case

## Things you know:

1. Crime of opportunity, witnesses are scarce.
2. Crime of opportunity, evidence may be scarce.
3. Slow down your direct to highlight key points of the incident.
4. The victim is your most important witness.
5. Present any forensic evidence in a compelling manner

## Ways to grow:

1. Point out that vulnerability is why the victim was chosen.
2. Have an investigator photograph the area where the crime occurred.
3. Double-back over the key points using exhibits.
4. Call witnesses who can corroborate details of victim's account.
5. Ask your analyst if they can create a presentation or provide slides.

# Case Law

## Definition of "taking" or "seizing control"

- *Hilton v. Commonwealth*, 293 Va. 293 (2017) – interprets the law so that an offender can “seize control” without ever entering into the vehicle.
- *People v. Gray*, 66 Cal. App. 4<sup>th</sup> 973 (1998) – victim may be deprived of possession when the offender exercises dominion and control over the car
- *Commonwealth v. George*, 705 A.2d 916 (1998) – victim forced to drive the offender to various locations at gunpoint; no requirement that the victim be ejected from the vehicle
- *People v. Reese*, 2017 IL 120011 (2017) – “taking” is accomplished by obtaining control, even if victim remains in the vehicle.
- *Williams v. State*, 990 So.2d 1122 (1<sup>st</sup> Dist. 2008) – jumped in car and ordered victims to drive. Offender need not necessarily be in physical control.



# Case Law

## Defining force or threat of force.

- **Commonwealth v. Jones**, 2001 PA Super 81 (2001) – Victim in the case was standing in the bed of his pickup truck when defendant jumped in and drove off with him inside.
  - “Force is that of which the victim is aware and by reason of that force, is compelled to part with his property.”
- **People v. Mooney**, 74 A.D.3d 617 (NY 1<sup>st</sup> Dep’t. 2010) – hand in pocket, making pointing gesture and saying “this is a carjacking” establishes force.
- **Williams v. State**, 863 So. 2d 1257 (FL 4<sup>th</sup> Dist 2004) – came up to victim, sitting in her car and stood next to her open door – met the element of “putting in fear”
- **State v. Smith**, 2011 N.C.App.LEXIS 2270 (2011) – robbery is committed when victim is induced to part with property as a result of violence or fear. The term force can be used interchangeably for both violence and fear. The force in this case was “concomitant” with the taking.



# Case Law

## Definition of "person or immediate presence"

*People v. Robinson*, 383 Ill.App.3d 1065 (1<sup>st</sup> Dist. 2008) – three houses away from her car does not constitute "immediate presence" or "immediate vicinity"

*Johnson v. State*, 246 Ga.App.109 (2000) – Clerk of gas station; car parked outside the gas station. Court reasoned he could've accessed the car within seconds.

*Commonwealth v. Bonner*, 27 A.3d 255 (Pa Super. 2011) – Defendant broke into the home of the victims and during the incident, took keys to their vehicle while in the kitchen, and drove off. Court reasoned that the victim's car was taken in her presence because she handed over the keys to her vehicle, which was parked outside the door.

*People v. Wilkes*, 229 N.Y.S.2d 793 (NY 1962) – Taking held to be in victim's presence where the victim was forced by the assailant to leave the place where the property was kept.

*People v. Medina*, 39 Cal.App.4<sup>th</sup> 643 (5<sup>th</sup> Dist. 1995) – using a trick or device to "detach" a victim from their property does not avail a defendant in a claim that the property wasn't in the immediate presence of the victim.



# Case Law

## Definition of "dangerous" or "deadly" weapon

*Johnson v. State*, 246 Ga.App.109 (2000) – use of a lit cigarette – State's burden to demonstrate that the way the object was used rendered it a deadly weapon

*People v. Calderon*, 214 Cal. App. 4<sup>th</sup> 656 (2013) – Victim's own vehicle constituted a deadly or dangerous weapon because defendant drove at the victim while victim was trying to prevent the defendant from driving off in his car.

*Quintana v. Commonwealth*, 224 Va. 127, 140 (1982) – hammer constitutes a deadly weapon – "deadly weapon is one which is likely to produced death or great bodily injury from the manner in which it is used, and whether a weapon is to be regarded as deadly often depends more on the manner in which it has been used than on its intrinsic character"

Pepper Spray can be a dangerous weapon: *United States v. Neill*, 166 F.3d 943 (9<sup>th</sup> Cir. 1999); *State v. Ovechka*, 292 Conn. 533 (2009); *People v. Lampton*, 385 Ill.App.3d 507 (4<sup>th</sup> Dist. 2008); *Handy v. State*, 357 Md. 685 (2000);

Many jurisdictions look to how the object was used



# Questions?

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