

DISCLAIMER

This project is supported by Grant #2019-MU-MU-K002 awarded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office of Justice Programs, U.S. Department of Justice.

The opinions, findings, and conclusions or recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect those of the Department of Justice.



Prosecuting Carjacking Cases

Robert Kline

Trial Supervisor – Juvenile Division

Cook County State's Attorney's
Office

Notice of Copyright Use

This presentation contains the creative works of others which are used either by permission, license, or under 17 U.S.C. 107 (fair use). The presentation was created under the Fair Use Guidelines and further use or distribution of the presentation is not permitted.

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.¹
- 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>

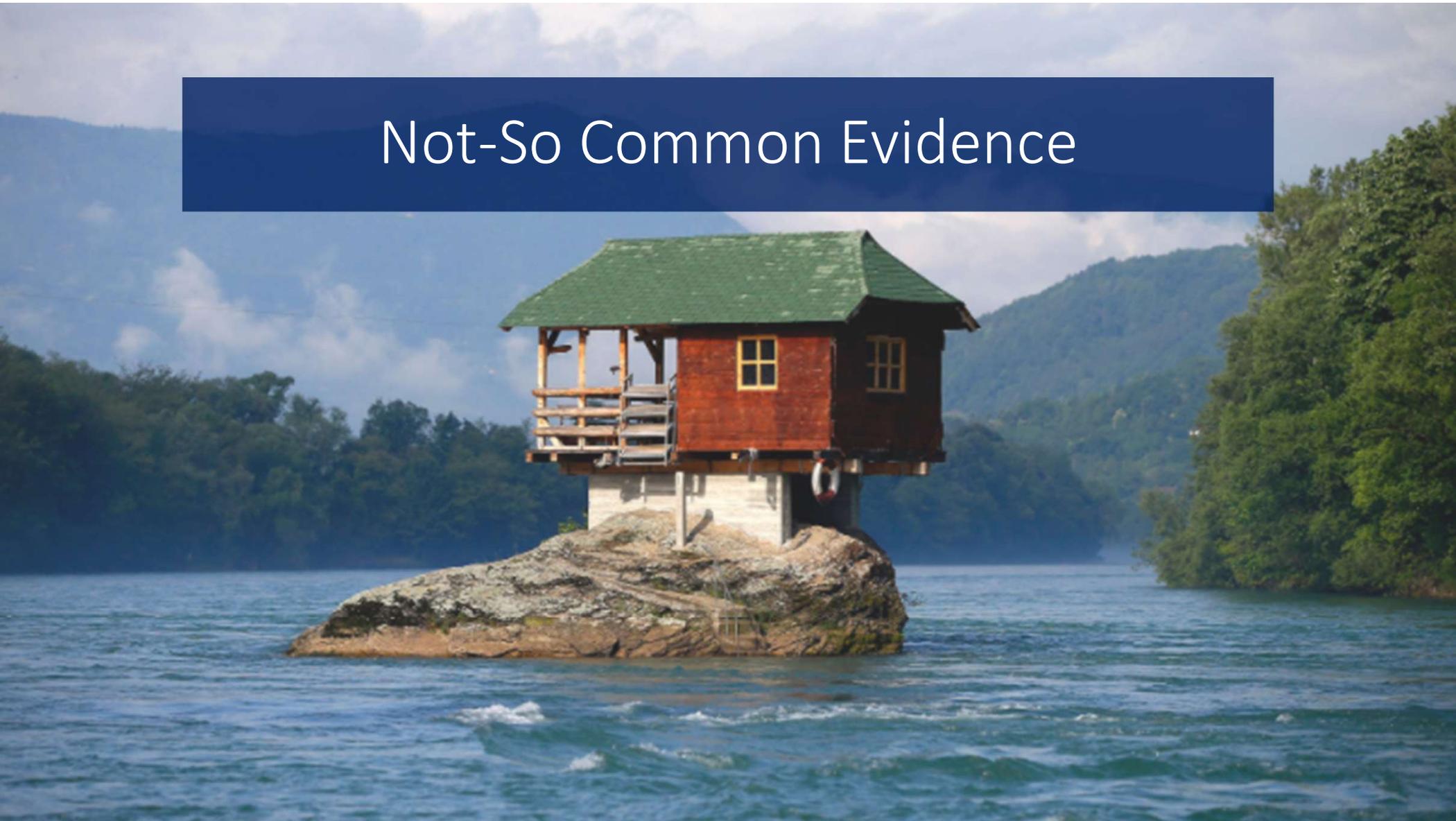
Identification

- 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

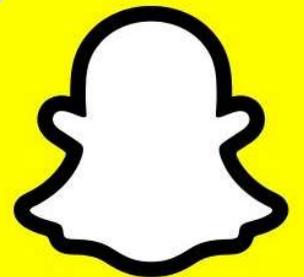
- Property either recovered from the offender or during the recovery of the vehicle
 - Victim's property: Identified by them after the offense
 - Weapons/Tools: Firearms, Replica Firearm, BB Gun, Screwdriver, etc.
 - Offender's property located in the recovered vehicle or from the crime scene

Not-So Common Evidence





Social Media Evidence



Identifying cases involving Social Media

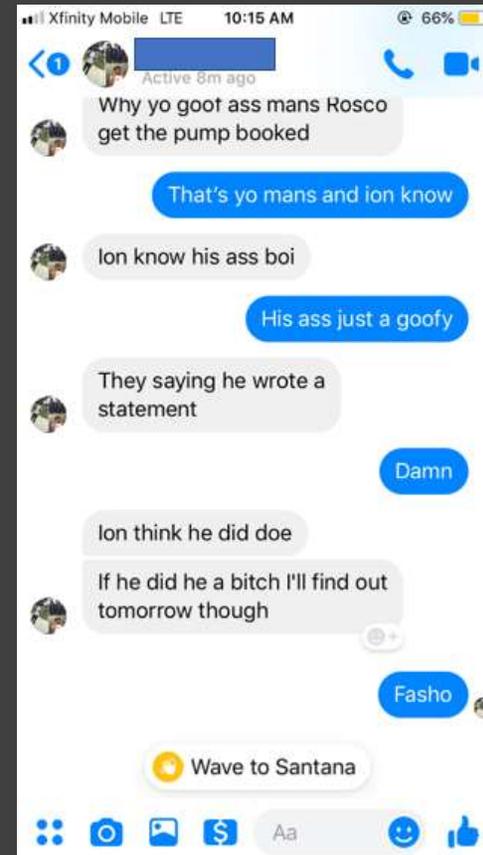
- Used to plan the crime
 - Messages between co-offenders
- Used during commission of crime:
 - Set up meeting place
- Used after the fact:
 - Posts regarding the crime containing admissions
 - Photos/Videos of joyriding

Wanna hit a stain?



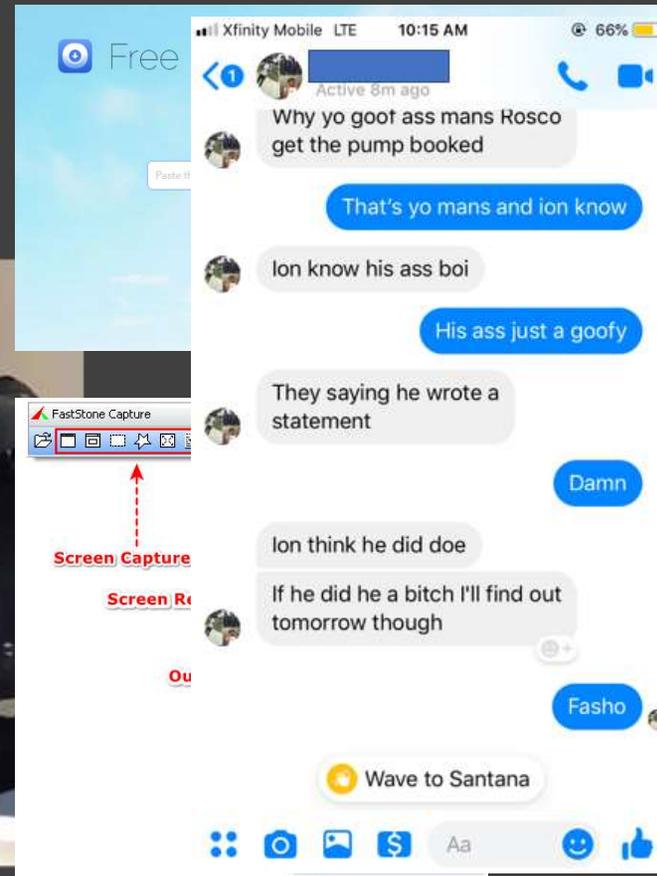
How do we get it?

- Screen Capture



How do we get it?

- Screen Capture
- Video Downloads



How do we get it?

- Screen Capture
- Video Downloads
- Search Warrant



Free Online Video Downloader
Download Any Videos from Web for Free
Reviews (406) ★★★★★

Paste the video link here [Download App](#)

Disclaimer

[Download App](#) [Buy 1 Get 1 Free](#)

Page 1

Registered Email Addresses [REDACTED]

FastSt Vanity Name gbuddy.lilhead

Registration Date 2018-08-11 01:05:39 UTC

Scr Registration Ip 107.77.173.12

Account Closure Date Account Still Active 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 Hdid 2c11477-cd48-4d3a-992a-caf7974d2a79

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 ©

GUIDELINES FOR SEIZING
DIGITAL DEVICES

HOSTAGE NEGOTIATIONS
REQUEST CONTROL OF
TARGET PHONE

AMBER ALERT
Best Practices



CURRENT EDITION:
2021
VERSION 1.0



THE GUIDE IS PROVIDED TO
AUTHORIZED LAW ENFORCEMENT
WITH HOSTING SUPPORT FROM
HAWK ANALYTICS



Law Enforcement Technology Investigations Resource Guide ©



THIS GUIDE IS MAINTAINED AND PROVIDED AS A FREE RESOURCE TO ASSIST US LAW ENFORCEMENT AGENCIES

Send updates, corrections, suggestions or comments to:
TechnologyResourceGuide@outlook.com

Colin Fagan, CFCE

Detective Sergeant – Digital Evidence Forensic Examiner (ret) / President Emeritus - Oregon Homicide Investigators Association

<https://support.hawkanalytics.com/>

Copy/Tender/Review

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



Forensic Evidence

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

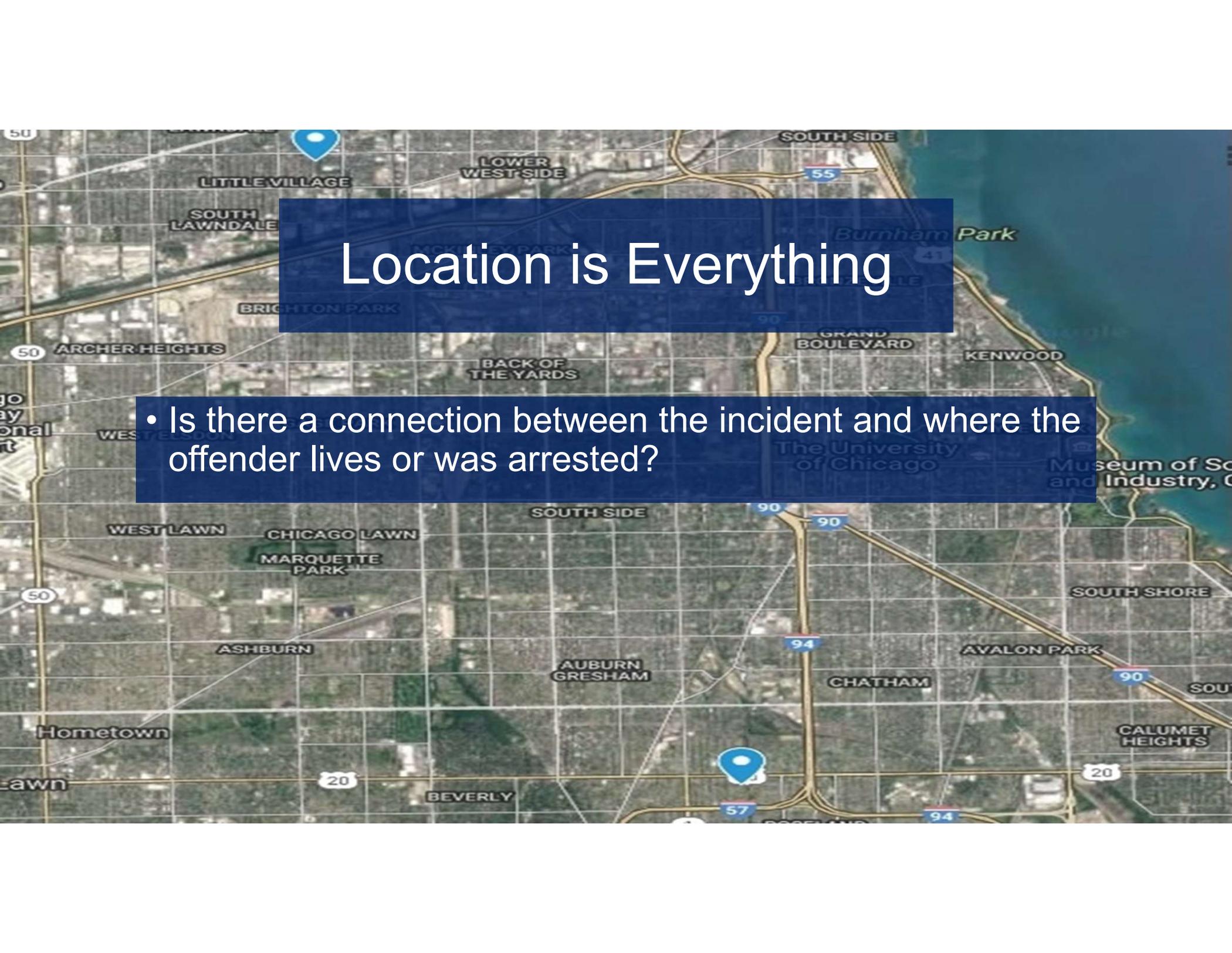
- Coordinate with your investigating agency and the criminal laboratory to arrange for analysis and comparisons.
 - Get the ball rolling early since juvenile cases move quicker.
- Once results are available, subpoena the reports as well as the lab notes and the *curriculum vitae* of the analyst
- Meet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

Cell Phone/Bluetooth Data

- Almost every vehicle made in the past 5-7 years has Bluetooth capabilities.¹
- 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)

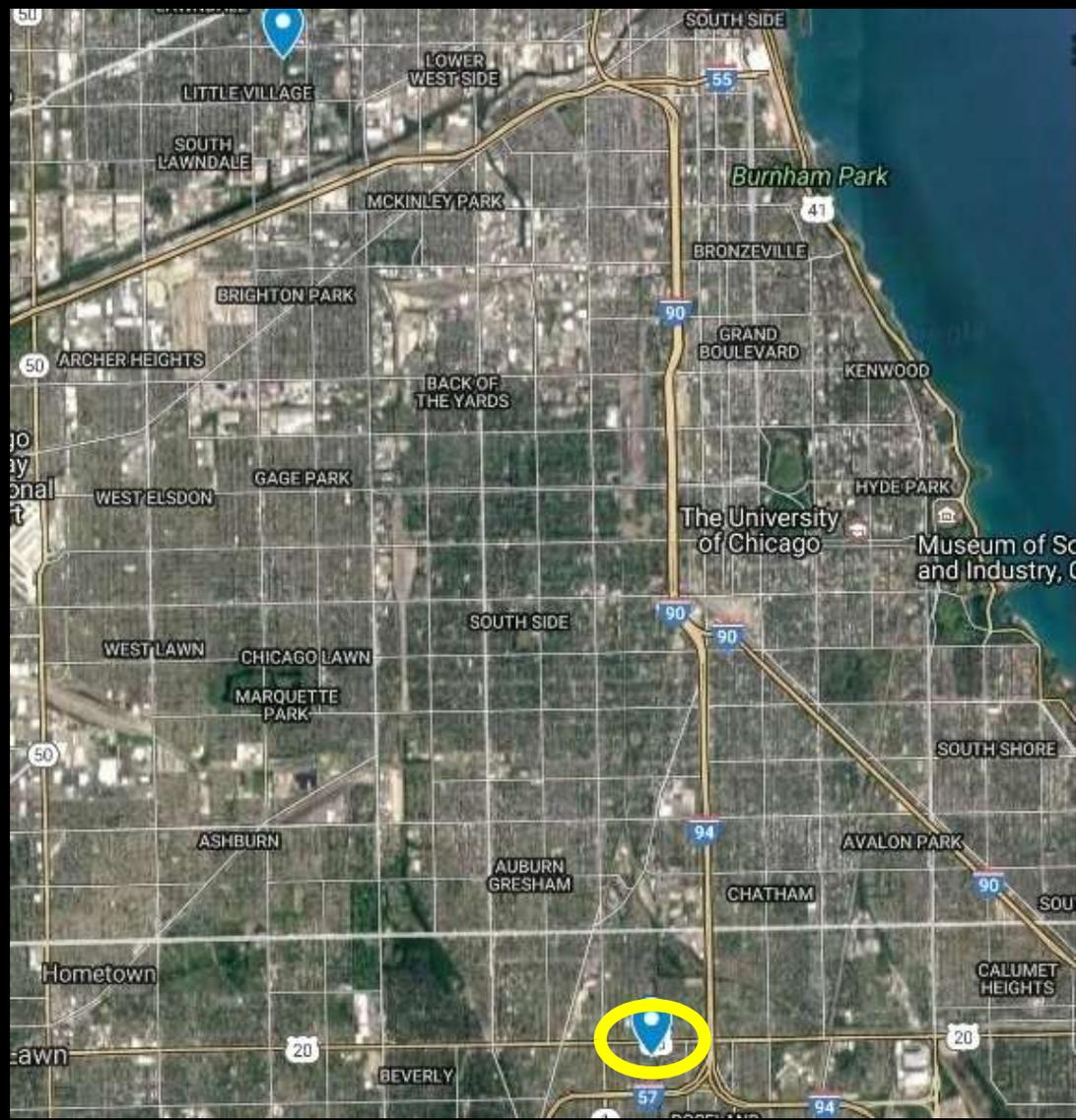


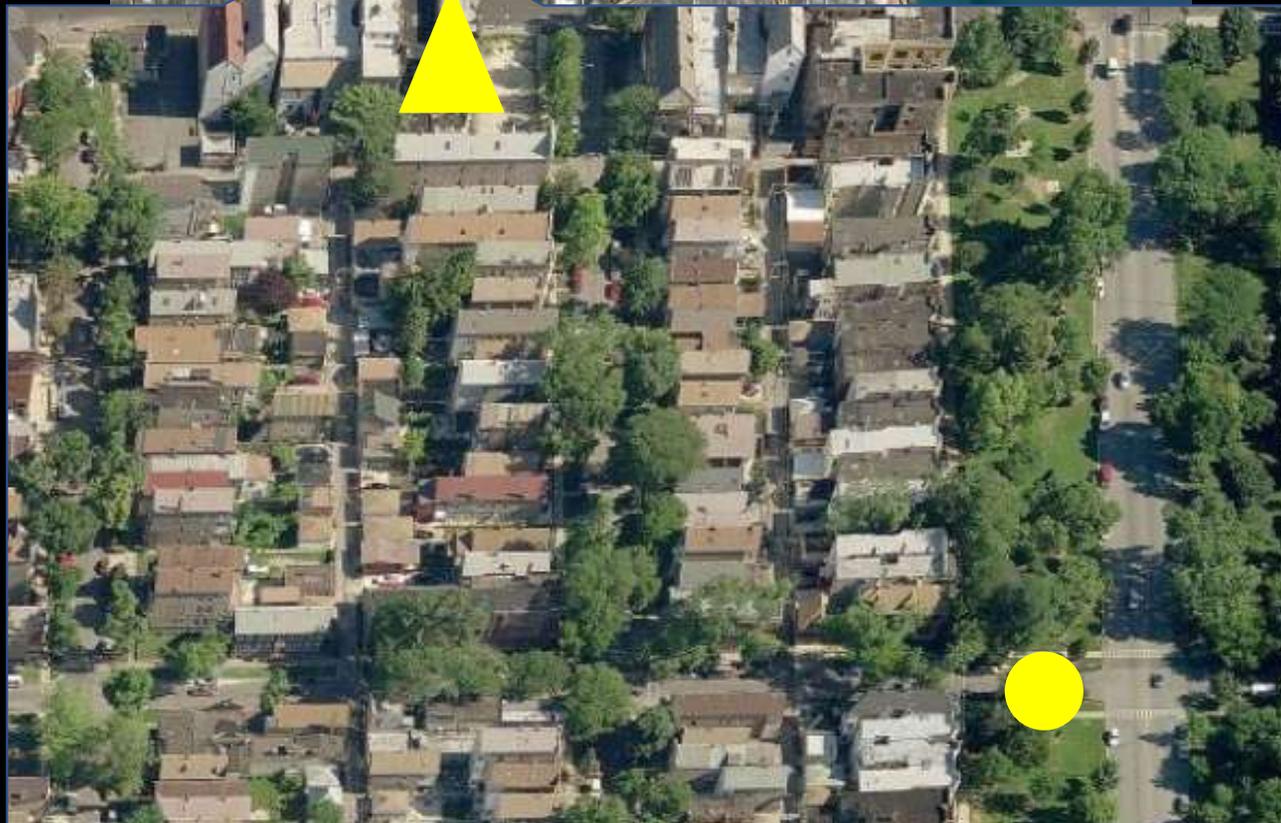
1 - <https://news.softpedia.com/news/Over-90-Percent-of-Cars-to-Feature-Bluetooth-Devices-by-2016-Study-Says-167469.shtml>

An aerial satellite map of Chicago, Illinois, showing various neighborhoods and major highways. A blue location pin is placed in the upper left quadrant, near the intersection of I-55 and I-90. The map labels include Little Village, Lower West Side, South Side, Brighton Park, Archer Heights, Back of the Yards, Grand Boulevard, Kenwood, West Lawn, Chicago Lawn, Marquette Park, Ashburn, Auburn Gresham, Chatham, South Shore, Avalon Park, Calumet Heights, and Beverly. Major highways like I-55, I-90, I-94, and I-57 are also visible.

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. 4th 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 (1st 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 1st 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 4th 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 (1st 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.4th 643 (5th 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

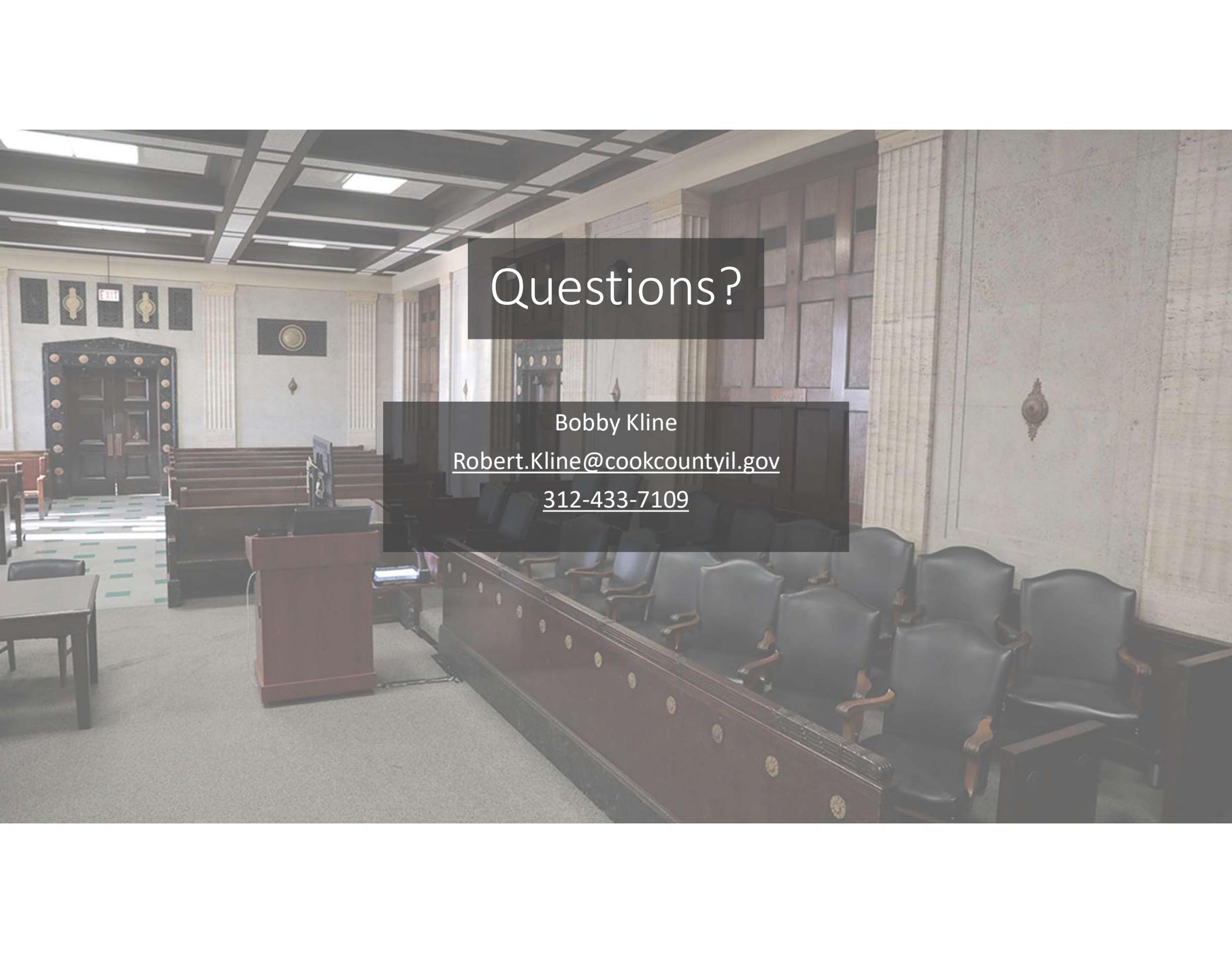
Johnson v. State, 246 Ga.App.109 (2000) – use of a lit cigarette – State’s burden to demonstrate that the way the object was used rendered it a deadly weapon

People v. Calderon, 214 Cal. App. 4th 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 (9th Cir. 1999); *State v. Ovechka*, 292 Conn. 533 (2009); *People v. Lampton*, 385 Ill.App.3d 507 (4th Dist. 2008); *Handy v. State*, 357 Md. 685 (2000);

Many jurisdictions look to how the object was used



Questions?

Bobby Kline

Robert.Kline@cookcountyil.gov

[312-433-7109](tel:312-433-7109)