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3       **LIEUTENANT BARRY BUNTING**, having been first duly sworn by  
 4 the Clerk, testified on **DIRECT EXAMINATION** by **MR. YATES**:

5 Q.    (BY MR. YATES) You're Lieutenant Bunting of the Randolph  
 6 County Sheriff's Department, is that correct?

7 A.    That's correct.

8 Q.    And I believe you have testified at least twice before.

9 A.    In this trial, yes, sir.

10 Q.    And you were involved in the case up until approximately  
 11 July 16<sup>th</sup> of 1999?

12 A.    Officially, yes. And after that I continued to assist  
 13 Montgomery County.

14 Q.    Basically once you're in a case you're pretty much there  
 15 until someone else takes over, another department?

16                               MR. ATKINSON: Objection.

17                               THE COURT: Overruled.

18 A.    That's correct.

19 Q.    (BY MR. YATES) You received at some point some  
 20 transactions about a VISA debit card in the name of the  
 21 victim Christopher Gailey, did you not?

22 A.    I did.

23 Q.    And I believe that was from Wachovia Bank, I'm trying to  
 24 remember.

25 A.    That's correct. Barbara McQuire.

1 Q. And there's been some testimony concerning some  
2 transactions made I believe by Vanessa Smith on a  
3 transaction card that she got out of his wallet, is that  
4 a fair statement?

5 MR. OLDHAM: Objection, Your Honor.

6 THE COURT: Sustained.

7 Q. (BY MR. YATES) Were you aware there was a -- some  
8 transactions done on the VISA card sometime in July after  
9 July 9<sup>th</sup>, 1999?

10 A. Yes, I was.

11 MR. YATES: Approach the witness, Your Honor?

12 THE COURT: Yes, sir.

13 Q. (BY MR. YATES) I'm going to hand you a series of  
14 exhibits and ask if you can identify each exhibit. They  
15 are marked starting with -- Well, what's the first  
16 exhibit, Officer Bunting?

17 A. The first one is **STATE'S EXHIBIT EIGHTY-NINE (89)**.

18 Q. And what is State's Exhibit Number Eighty-Nine?

19 A. State's Exhibit Eighty-Nine is a fax copy of a  
20 transaction spreadsheet.

21 Q. Does that appear to be a VISA debit card for Chris  
22 Gailey?

23 MR. OLDHAM: Objection to the form.

24 THE COURT: Sustained.

25 MR. YATES: I would ask that the jury --

1 THE COURT: I can't hear you.

2 MR. YATES: Ask that the jury be sent out.

3 THE COURT: Folks, I'm going to take a moment  
4 here, and if you will, I'm going to excuse you to the  
5 jury room for a moment.

6 *(Jury is excused from the courtroom.)*

7 TIME: 4:08 p.m.

8 *(The following proceedings were held in open court,  
9 no jurors being present.)*

10 THE COURT: All right.

11 MR. YATES: I just -- Do they want me to get  
12 Barbara McQuire down here from Wachovia Bank, is that the  
13 nature of their objections?

14 THE COURT: Well, they haven't been  
15 authenticated, so I mean I'm doing my job. The  
16 objections are to be sustained.

17 MR. YATES: That's my question, Judge.  
18 Obviously he is not Barbara McQuire.

19 THE COURT: That's right. I'm not even sure he  
20 really knows what these are other than what Barbara  
21 McQuire has told him. Of course, you know, if he's --  
22 Here's the point, if they don't come in they can't ask  
23 him any questions about what he thought.

24 MR. YATES: I didn't know it was -- The reason  
25 I asked you is I didn't know it was a serious objection

1 because we've shown it to him. We kind of chased that  
2 rabbit for two days. I mean for a week it seems like. I  
3 didn't know there was an objection.

4 THE COURT: Well, granted. I mean this is the  
5 first time these have been offered. They've been talked  
6 about, but we can talk about Christmas if you want to,  
7 but it doesn't have anything to do with that it's not  
8 relevant until it's -- until someone tells me it's coming  
9 in.

10 MR. YATES: Well, I'm not disagreeing, Your  
11 Honor. I just meant --

12 THE COURT: All right. Let me ask the defense,  
13 I mean what is it, what's the nature of your objection to  
14 these documents?

15 MR. OLDHAM: Well, Your Honor, one, I'm not  
16 sure he knows, as the Court says, even what they are  
17 other than what somebody else has told him. One, I don't  
18 think they've been, the proper foundation has been laid  
19 for the admissibility. It's a copy.

20 THE COURT: All right. Well then, what we're  
21 going to do then is we're going to have break today. On  
22 Wednesday morning we'll come back in here, they can get  
23 Barbara McQuire down here to do that. That's fine with  
24 me. I get paid, it doesn't matter what I do. I mean if  
25 that's what -- I mean I'm not quarreling with you. I'm



1 not upset at anybody. I mean I'm getting a little bit  
2 upset about the pace.

3 MR. OLDHAM: Yes, sir.

4 THE COURT: The pace.

5 MR. YATES: I was just trying to, you know what  
6 I'm saying.

7 THE COURT: This is a four-year old case. You  
8 know.

9 MR. YATES: Yes, sir.

10 THE COURT: Let's go. Let's go. I mean we  
11 ought to know what everybody is going to say, when  
12 they're going to say it, what pieces of paper are going  
13 to come up, which pieces of paper aren't going to come  
14 up, who's going to be here, who's not going to be here.  
15 I mean I am a first-year judge. But I cannot quite  
16 understand why this case isn't as ready to go forward as  
17 it would be if I was a twenty-year judge. I mean I've  
18 been trying a lot of cases before I came here. I mean  
19 just because I'm a first-year judge doesn't mean that the  
20 jury that sits in my courtroom has not got to have the  
21 same degree of courtesy that all the other jurors do in  
22 every other case, whether it be a murder case or a  
23 shoplifting case. Frankly you know, I don't care about  
24 my own personal feelings here, but I've got fourteen  
25 jurors over there that I am concerned about.

1                   MR. YATES: Your Honor, give me five minutes to  
2 check and see if she's available. If she's not we'll  
3 proceed otherwise.

4                   THE COURT: Well, I mean if you want to bring  
5 her in here Wednesday morning all you have to do is just  
6 ask and we'll be recessed here and I would probably  
7 consider it because I want to make sure this is a fair  
8 trial here for everybody, whether we drag it out till  
9 Christmas or whether we take care of it in an orderly  
10 fashion. But there is, in a case of this magnitude, the  
11 rules aren't to be abbreviated just to be for a courtesy.

12                   MR. YATES: No, Your Honor. There was some  
13 question whether we were going to use that evidence, and  
14 Mr. Bunting was available to use it now, and we went  
15 through the authentication and we showed them  
16 photographs, and I didn't know it was seriously  
17 contested. I should have got a stipulation, but since I  
18 didn't, I'll go through the hard way and see if Ms.  
19 McQuire is available and go through it that way. I mean  
20 it's -- and if it's not possible, then we will not submit  
21 that evidence.

22                   THE COURT: Okay. Here's the question though  
23 too, I mean, and it's not one that has to be answered,  
24 but if I remember the voir dire that we had on the  
25 pictures and we went through that for two or three days,

1 I mean two weeks ago. If I remember correctly the  
2 defendant had every opportunity to get me to purchase  
3 them a time-delayed machine. I would have done it. So  
4 there you sat on it two or three days, or a week and a  
5 half, so, but I gave them the courtesy of being able to  
6 look at every piece of evidence in it, every frame that  
7 they needed to look at with their client, and they did.  
8 So part of me says then it wouldn't be fair now that the  
9 State -- the State hasn't had a week and a half to do the  
10 same thing.

11 MR. ATKINSON: Your Honor, please, it was our  
12 understanding, it was my understanding based on what the  
13 State said was they had no intention of using these.

14 THE COURT: Well, they're telling us otherwise  
15 now. But you see, if they didn't think they had any  
16 intention of using this you wouldn't have spent two weeks  
17 making sure you saw it.

18 MR. ATKINSON: The reason we were making sure  
19 we saw it was for another purpose that may have served  
20 us.

21 THE COURT: I understand that.

22 MR. ATKINSON: We were looking to show who was  
23 using it.

24 THE COURT: That's right, but I take it that if  
25 you want to do that though, you're going to have to do



1 the same thing that I'm asking them to do, and that is  
2 you're going to have to authenticate whatever it is  
3 that's on those pictures because I don't know what they  
4 are and nobody else in here seemed to know the other day  
5 who they were. In fact, one of them's off six minutes.  
6 Who are you going to bring in here to tell us the clock  
7 was off six minutes? I mean just because we've got these  
8 pictures don't mean squat. There is no way to say what  
9 they are. I mean if we want to do it for crime and  
10 order, perhaps it will work for that, because we don't  
11 have to do -- we don't have to follow the rules of  
12 evidence. But this is the real thing. No offense to  
13 you, Mr. Bunting or you, Mr. Allen, you know, we're all  
14 doing our job. It's just that -- or anybody else.  
15 Somebody's got to -- Somebody's got to be the person to  
16 move this case along, and I believe now after two weeks  
17 it's me. It's my job. Okay. I'm about ready to let the  
18 jury go. But I don't know when to tell them to come back  
19 because I don't know when we come back whether we're  
20 going to be any closer to going forward without them  
21 sitting in the jury room for half a day.

22 MR. YATES: Judge, if we cannot get her here  
23 first thing Wednesday morning, we will not get that in.  
24 We'll withdraw it. So we'll be, at that point we'd be  
25 finished. This is the last witness I would imagine we're



1 going to call. Unless something comes up over the next  
2 two days, I don't think there's any long period. I  
3 thought we'd finish this afternoon. I thought we'd get  
4 that in and that would be it.

5 THE COURT: Sir, have you looked at those  
6 frames again now that you've seen all the pictures of  
7 Vanessa Smith circa 1999 and Vanessa Smith as she  
8 appeared in court?

9 LIEUTENANT BUNTING: The last time, Judge, that  
10 I looked at those was with Mr. Atkinson, Mr. Allen, and  
11 his other attorney in the back room.

12 THE COURT: All right. Did you recognize, now  
13 that you have focused on this case, have you recognized  
14 any of the people in those photographs?

15 LIEUTENANT BUNTING: No, sir.

16 THE COURT: Well, where are we going with all  
17 this? I mean --

18 MR. YATES: Your Honor, I'm only introducing  
19 the transactions. I'm not introducing the photographs.  
20 I mean the chances of their finding the right person is  
21 one in a million probably. This is just that the  
22 transaction was made. That's all I was going to do. I'm  
23 not trying to introduce the video tape.

24 THE COURT: Well, I think this is the point.  
25 There's a transaction, and you've -- but nobody knows who

1           made the transaction. The videos that are made  
2           consistent with the times that are on the transactions do  
3           not show either Mr. Allen or Ms. Smith, according to Mr.  
4           Bunting, who is familiar with the way both of them look.  
5           And he's just said he doesn't know who the person is. So  
6           even -- Why should I allow transactions to come in when  
7           no one knows and there's no evidence as to when -- who  
8           did it, who made the transaction? I mean there is  
9           evidence there, but I mean if we let this in --

10                   MR. YATES: Well, she admitted she made the  
11           transactions and the time frames were within the date  
12           that we're talking about and the amounts that we're  
13           talking about. It would be corroborative of her  
14           statements.

15                   THE COURT: Tell them to crank up the bus, and  
16           bring the jury back in here.

17                   *(Jury enters the courtroom.)*

18   TIME: 4:20 p.m.

19                   *(The following proceedings were held in open court*  
20           *in the presence of the jury.)*

21                   THE COURT: Folks, last Friday I told you I  
22           felt certain the case could be resolved, at least the  
23           first stage, this week. I still believe that. However,  
24           I think at this moment I'm going to allow all of you to  
25           go home and have Veteran's Day tomorrow, and then we're