

1 the afternoon, the Judge may not be there. In that
2 instance, I definitely would call the bonding company.

3 Q. You have no idea whether Chip Lewis or Brian
4 Roberts called the bonding company, do you?

5 A. I do not.

6 Q. Now, you were here on the 2nd. Do you remember
7 being here -- do you remember how long you were here
8 that week, were you here that day, or you wouldn't know?

9 A. No, I don't know.

10 MR. SASSER: Pass the witness, Your Honor.

11 MR. BREWER: Pass the witness, Your Honor.

12 THE COURT: All right. You may step down.

13 Y'all hungry? You are.

14 There's two rules when you go out to eat
15 with the bailiff. If you like the food, you thank me.
16 If you don't like the food, you blame him.

17 (Lunch recess)

18 (Open court, defendant and jury present)

19 THE COURT: Call your next witness.

20 MR. BREWER: State calls Vivica Mason to
21 the stand, Your Honor.

22 (Witness sworn)

23 THE COURT: You may proceed.

24 **VIVICA MASON,**

25 having been first duly sworn, testified as follows:

DIRECT EXAMINATION

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BY MR. BREWER:

Q. Ms. Mason, please introduce yourself.

A. Hello. My name is Vivica Mason.

Q. Would you please spell your first and last name for the court reporter?

A. V-i-v-i-c-a. M-a-s-o-n.

Q. All right. Ms. Mason, you have fantastic posture. If you need to pull that mic down -- there you go.

Ms. Mason, how are you currently employed?

A. I'm employed with the Harris County District Clerk's Office.

Q. And being employed by the Harris County District Clerk's Office, where are you assigned now?

A. I'm assigned to the 174th District Court.

Q. And so, you are one of the assistant --

A. I am the lead clerk.

Q. I was going to say assistant district clerks. You're the lead clerk in this court?

A. Correct.

Q. Normally when dockets are being worked on, you sit where?

A. I sit on the opposite side.

Q. Of the Judge, right?

1 A. Yes.

2 Q. As part of your duties and responsibilities as
3 the lead clerk in this particular court, are you charged
4 with maintaining the official documents that are
5 produced in each of the cases that are in this court?

6 A. Yes, sir.

7 Q. All right. And we looked earlier at State's
8 Exhibit No. 2, which I'll put on the big screen here a
9 series of resets. Are these part of the documents that
10 you are charged with maintaining in Case No. 1212467
11 (indicating)?

12 A. Yes, sir.

13 Q. And were these copies you actually made for us
14 for this trial?

15 A. Yes, it is.

16 Q. Are these records maintained and kept there as
17 part of your official duties?

18 A. Yes, sir.

19 Q. All right. Let's talk a little bit about
20 another one of the sheets of paper that's attached here.
21 We haven't talked much about that. Okay. Can you see
22 this sheet from that distance? What is it? Can you see
23 it from there (indicating)?

24 A. I can. Yes, sir.

25 Q. What is that?

1 A. That is a docket sheet. As a clerk, we make
2 entries whenever a defendant is to appear on the docket.
3 And that basically explains what happened that
4 particular day.

5 Q. All right. And are there certain things that
6 happen over and over that the clerks have stamps for,
7 for instance, so you don't have to write the same thing
8 down every time?

9 A. Yes, sir.

10 Q. Is one of those things -- is it your practice
11 to use some of those stamps when you're in here?

12 A. Yes, sir.

13 Q. Like we talked about with Ms. Madrid, if
14 there's a day you're sick or can't be here for some
15 reason, what is the system? How is it dealt with? Is
16 it just an empty chair or does somebody take your place?

17 A. There will be another -- a replacement.
18 Another assistant -- another clerk will sit in on my
19 behalf.

20 Q. Although there are protocols you-all follow,
21 are there slightly different ways different clerks
22 maintain their records?

23 A. Yes. Some clerks do write in the information
24 and others use stamps that we have preprinted.

25 Q. Let's go ahead and take a look at that docket

1 sheet and see if we can have you tell us you're the one
2 that made the docket sheet, what one of these things
3 mean. The first thing we see on here is April 22nd of
4 2009. And next to that it says: No arrest. What does
5 that mean (indicating)?

6 A. No arrest means that a warrant was issued for
7 that defendant, but they're not in custody.

8 Q. So, the person hasn't been arrested, but
9 there's a charge floating out there. Is that a fair
10 description?

11 A. Yes, sir.

12 Q. Now, on April 28th, that's the first time that
13 we see -- first of all, we see the date and we see kind
14 of a stamp used here, correct?

15 A. Correct.

16 Q. And is that the stamp that you use?

17 A. Yes, sir, it is.

18 Q. Tell us the circumstance that causes you to
19 stamp that. And in this case, you circled it. Tell us
20 what all that means.

21 A. Yes, sir. A clerk receives a reset from the
22 coordinator for the defendant for that particular day
23 stating if the defendant appeared with an attorney or
24 without an attorney.

25 Q. So, after Diane Madrid has found out if the

1 defendant has a lawyer or not, if the defendant has not,
2 she gets a date, has a defendant sign it, and she gives
3 you a copy?

4 A. She gives me a copy, that's correct.

5 Q. And just to be clear, if we go back to State's
6 Exhibit No. 1, this blank form, the very first copy has
7 district clerk written on it. Is that the one that goes
8 to you (indicating)?

9 A. Yes, sir.

10 Q. The top sheet?

11 A. The top sheet.

12 Q. What we know from this docket sheet is that the
13 defendant was here on April 28th for the first time, she
14 did not have a lawyer. And then out here, what do those
15 two -- well, what is that (indicating)?

16 A. It appears to be R/S. Stands for reset.

17 Q. So a new date is given?

18 A. A new date is given, yes, sir.

19 Q. And that date would be 5 of '09?

20 A. It looks like 5-29.

21 Q. 5-29.

22 A. And that's an arraignment setting.

23 Q. Arraignment setting?

24 A. Right.

25 Q. The information on the docket sheet, it kind of

1 mirrors some of the information on the reset forms that
2 are used by the coordinator; is that correct?

3 A. That's correct.

4 Q. All right. I want to go ahead and bring just a
5 couple more things to your attention. On this
6 particular one 8-5 of '09, we talked a little about it
7 being off-docket. Is that what's indicated by the OD
8 here (indicating)?

9 A. It appears, yes, sir.

10 Q. Some of this is done by you, some is done maybe
11 by an assistant clerk as well?

12 A. Yes, sir.

13 Q. Do both of you work on docket sheets or always
14 the lead clerk?

15 A. No. We both share the responsibilities. Yes,
16 sir.

17 Q. Now, let's go ahead to get to the crux of the
18 matter here. On 9-21, if we look at the docket sheet,
19 can you tell us what happened on 9-21 according to the
20 official docket sheet for the 174th District Court in
21 Harris County, Texas?

22 A. On 9-21-2010, that appears to be a stamp, a
23 bond forfeiture stamp stating that docket was called at
24 9:00 a.m., the bailiff went out in the hallway, called
25 the defendant's name three times, no answer, and an

1 alias capias was issued at that time.

2 Q. Let's talk about that. There are a lot of
3 words in there. Let's talk about them. First of all,
4 how long have you been assigned to this court?

5 A. About two-and-a-half years.

6 Q. Does the court really follow that procedure?
7 Does the bailiff really walk out that door and call
8 people's names? Did you know Bailiff Higgins before he
9 retired?

10 A. Yes, sir.

11 Q. Did he actually do that?

12 A. Yes, sir.

13 Q. When you put this stamp here, at whose
14 direction are you putting it there? If Diane comes and
15 tells you, do you immediately stamp, or Higgins? When
16 do you decide to stamp it?

17 A. I do not stamp it unless normally the D.A. will
18 approach before the end of docket and inform the Judge
19 this defendant did not answer at the time of docket
20 call. At that time, once the Judge grants the bond
21 forfeiture, I'll go ahead and stamp the docket sheet.

22 Q. The Judge turns to -- I guess, to his left.
23 And you do this as a result of what the Judge says, not
24 the result of what Ms. Madrid says or the prosecutor or
25 the bailiff. You do it as a result of what the Judge

1 says, correct?

2 A. Correct.

3 Q. So, on this date, did this defendant show up in
4 court, yes or no?

5 A. No.

6 Q. All right. The other thing I want to talk
7 about here is you said alias capias to issue. What does
8 that mean?

9 A. That is simply just a warrant, a warrant was
10 issued.

11 Q. An order for someone's arrest?

12 A. Right.

13 Q. Is there something you do in the computer based
14 on what the Judge turning to the left saying do this, is
15 there something you do that gets that warrant to issue
16 for somebody's arrest?

17 A. Yes, sir. There's an entry made, a warrant
18 entry is made in the system to reflect that the
19 defendant's bond was forfeited and to notify the
20 sheriff's department that a warrant was actually issued
21 for the defendant.

22 Q. All right. In this case, we know that the
23 defendant did have a bond at some point of 15,000. What
24 does this mean: New bail fixed in the sum of zero
25 (indicating)?

1 A. That is now the defendant's new bond. The old
2 bond has been forfeited. Since there was no appearance
3 in court, the bond is now no bond.

4 Q. Explain that to us. Does that mean a defendant
5 gets to get out of jail without putting any money down?
6 What does it mean?

7 A. With the no bond, you're not allowed to post a
8 bond. There is no bond to post.

9 Q. Essentially, the Judge is saying there's a
10 warrant now for your arrest, when you get picked up
11 you're staying in jail?

12 A. Yes, sir.

13 Q. Until and if something changes?

14 A. Yes, sir.

15 Q. And this is a note you made for the -- per the
16 Judge's order?

17 A. Yes, sir.

18 Q. The last thing I want to look at is if we go up
19 a little further and we actually go one date to
20 September 8th of 2010, can you tell me what was done on
21 that day? Can you see all of it (indicating)?

22 A. Yes, sir. Bond revoked, alias capias issued,
23 no bond.

24 Q. What was actually done on the 8th as well?

25 A. The bond was revoked and set at no bond. Alias

1 MR. SASSER: No objection.

2 THE COURT: Admitted without objection.

3 (State's Exhibit No. 3 Admitted)

4 Q. (By Mr. Brewer) I'll do it from back here.

5 Ms. Mason, can you tell the ladies and gentlemen of the
6 jury, is this the -- you call this the indictment. Is
7 this the charging instrument for this defendant, LaJuan
8 Cecile Bailey, for the charge of fraudulent use,
9 possession of identifying information in Cause
10 No. 1212467 (indicating)?

11 A. Yes, sir.

12 Q. And so, this is the case that all of these
13 resets and the docket sheet and everything pertain to,
14 correct?

15 A. Correct.

16 MR. BREWER: Pass the witness, Your Honor.

17 THE COURT: All right.

18 CROSS-EXAMINATION

19 BY MR. SASSER:

20 Q. And just to be clear. That case that all of
21 this is about, that identity theft case, to this date,
22 that case still hasn't been tried, has it?

23 A. No, sir.

24 Q. The defendant has never been found not guilty
25 of that case?

1 A. No, sir.

2 Q. The State can choose which case they want to
3 try first, can't they?

4 A. Yes, sir.

5 Q. So, for over two years the State has chosen not
6 to try that case, right?

7 A. Yes, sir.

8 MR. BREWER: That calls for speculation,
9 Judge.

10 MR. SASSER: The record speaks for itself.
11 We've got the resets in evidence.

12 THE COURT: That would be sustained.

13 Q. (By Mr. Sasser) Okay. The prosecutor -- is it
14 okay if I call you Vivica?

15 A. Yes, sir.

16 Q. We've known each other from the past, right?

17 A. (Moves head up and down).

18 Q. Basically, the prosecutor went over with you
19 what happened on September 21st, which is that the bond
20 was forfeited and it was set at zero and you said alias
21 capias was issued. Right?

22 A. Yes.

23 Q. September 21st?

24 A. Yes.

25 Q. You also testified that same exact procedure

1 happened on September 8th, correct?

2 A. September 8th the bond was revoked.

3 Q. And it was set -- her bond was set at zero?

4 A. Yes, sir.

5 Q. Which means she had no bond?

6 A. Correct.

7 Q. Which means if she were arrested, she would be
8 in the Harris County Jail, as the prosecutor put it,
9 until something else happened?

10 A. Yes, sir.

11 Q. There was a warrant of alias capias issued for
12 her arrest on September 8th, correct?

13 A. Correct.

14 Q. Were you -- when the bond was revoked -- excuse
15 me -- forfeited on September 21st of 2010, that's the
16 day the prosecutor just alleged in the indictment that
17 he introduced through you, that's the date the State is
18 saying she did not appear, therefore, that's the reason
19 for the bail jumping. Correct?

20 A. Are you referring to the charging instrument
21 and -- date of offense on the charging instrument?

22 Q. The date she failed to come to court, that date
23 is listed as September 21st, 2010, correct?

24 A. I would have to see the charging instrument.

25 MR. SASSER: May I approach the witness,

1 Your Honor?

2 THE COURT: You may.

3 Q. (By Mr. Sasser) That's the charging instrument
4 for the bail jumping case. The date they have alleged
5 in that indictment is September 21st, 2010, correct
6 (indicating)?

7 A. Yes, sir.

8 Q. That date has been marked out. It was
9 originally September 7th and it was marked out and
10 changed to September 21st?

11 A. Correct.

12 Q. Who did that mark-out?

13 A. I'm not exactly sure who did it. There was --
14 I'm not exactly sure who did it.

15 Q. Somebody even on the indictment was confused
16 about the date she was supposed to come in from this
17 entry?

18 A. It appears.

19 Q. Originally, whoever typed this indictment --
20 usually it's the D.A.'s office, correct?

21 A. Correct.

22 Q. They put the 7th instead of the 21st?

23 A. Correct.

24 Q. When was that date changed, do you know?

25 A. No, sir, I do not.

1 Q. Okay. Ma'am, after September 21st, according
2 to your reports, was the bond jumping case filed against
3 my client on September 22nd of 2010?

4 A. I do not know.

5 Q. Can you check your records and find out when a
6 bond jumping case was actually filed? Is there any way
7 you can check?

8 A. I would need a moment to check that, yes, sir.

9 Q. If I show you the indictment, would that help
10 you?

11 A. Yes, sir.

12 MR. SASSER: May I approach the witness,
13 Your Honor?

14 THE COURT: You may.

15 Q. (By Mr. Sasser) I can come back to that.

16 A. It was filed on March 9th, 2011.

17 Q. Thank you.

18 March 9th of 2011. So, this bond -- this
19 alleged bond jumping case supposedly happened on
20 September 21st, but the actual charge wasn't filed until
21 March 9th, 2011, correct?

22 A. Correct.

23 Q. Do you know, was there anything different about
24 the case on March 9th than there would have been on
25 September 22nd, if you know, any difference in the

1 ability to file a case?

2 MR. BREWER: Objection. Calls for
3 speculation.

4 MR. SASSER: If she knows.

5 THE COURT: Overruled.

6 A. I don't know.

7 Q. (By Mr. Sasser) Doesn't seem to be any
8 different facts that you know of?

9 A. I do not know.

10 Q. And do you know -- are you aware that the
11 defendant was arrested on March 3rd of 2011?

12 A. I would not know unless I'm looking -- I have
13 some evidence in front of me. I have no idea.

14 Q. While we were on break earlier today, did I
15 come up and talk with you briefly about some dates and
16 we did a printout?

17 A. We did speak briefly, yes.

18 Q. If I showed you some documents, could it
19 possibly refresh your memory?

20 A. Yes, sir.

21 MR. SASSER: May I approach the witness,
22 Your Honor?

23 THE COURT: You may.

24 Q. (By Mr. Sasser) When the alias capias was
25 issued on, I guess, September 8th, was the first time it

1 was issued, when that capias was issued after
2 September 8th, the defendant didn't appear in court
3 until sometime in March of 2011, correct?

4 A. There was -- excuse me -- a scheduled court
5 date for March 8th, 2011.

6 Q. And, generally, that Court date would hit the
7 system after she was arrested and in the county jail,
8 correct? So -- let me rephrase.

9 If you have a defendant who you issued a
10 capias for them, you issued a warrant for their
11 arrest -- okay -- there's not going to be any settings
12 on that case until that person is arrested, correct?

13 A. Correct.

14 Q. Why would you have some future setting when you
15 don't even have a defendant in custody, correct?

16 A. Correct.

17 Q. So, would it surprise you then if she were
18 arrested on March 3rd, 2010, that would have triggered
19 something in the system to where maybe Ms. Madrid would
20 note to docket that day that the defendant is in
21 custody, we need to put them on the docket?

22 A. That's correct. If she was in custody,
23 correct.

24 Q. You showed the first date that she came to
25 Court after this capias was issued was March 8th of

1 2011, correct?

2 A. A capias was issued.

3 Q. No, ma'am. The capias was issued the first
4 time on September 8th.

5 A. Right.

6 Q. When the bond was set at zero, correct?

7 A. Correct.

8 Q. The defendant was never in custody, never came
9 to court again until March 8th?

10 A. That is correct, yes, sir.

11 Q. My question to you: Is that a pretty normal
12 thing, the defendant taken into custody on the 3rd of
13 March, their case might appear in your court a few days
14 later?

15 A. It's possible.

16 Q. That's what happened in this case, right?

17 A. Yes, sir.

18 Q. On March 8th, the defendant was appointed an
19 attorney, wasn't she?

20 A. Yes, sir.

21 Q. Okay. And that attorney's name is Marcus
22 Fleming, correct, or do you know?

23 A. I do not know for certain, but it appears it's
24 Marcus Fleming that was appointed, yes.

25 Q. Okay. That's on the 8th. We know she was in

1 court, right?

2 A. Right.

3 Q. The purpose of bringing clients over -- or
4 defendants over to court whether they're on bond or
5 whether they're in custody is to try to work on their
6 case, correct, try to get their case resolved?

7 A. Correct.

8 Q. To hopefully not have to go to trials like
9 this, correct?

10 A. Correct.

11 Q. Because if we had all the hundreds of thousands
12 of cases in Harris County actually go to a trial like
13 this, we would be backlogged for a pretty long time,
14 wouldn't we?

15 A. Correct.

16 Q. The Court relies on plea bargains, dismissals,
17 others ways to dispose of cases, correct?

18 A. Yes, sir.

19 Q. March 8th after she's been arrested, that would
20 have been a day where her attorney could have come in
21 here and tried to work on her case, right? Isn't that
22 normally how it works?

23 A. Normally, yes, sir.

24 Q. Like this morning, we had 40, 50 cases on the
25 docket, and we had the attorneys coming in and working

1 on them, correct?

2 A. Yes.

3 Q. What we know is that when she didn't work out
4 her case on March 8th, we know that this new case, this
5 bond jumping case was filed the very next day, don't we?
6 We know it was filed on March 9th, the day after her
7 court date, wasn't it?

8 A. It was.

9 Q. The prosecutor probably wasn't real happy with
10 her about not working on her case, was he?

11 A. I'm not sure.

12 Q. The prosecutors sometimes, if they're not
13 happy, they'll try to file new cases against you to try
14 to make it even more difficult.

15 MR. BREWER: Objection, Judge. He's
16 already --

17 THE COURT: Sustained.

18 Q. (By Mr. Sasser) You stated on direct with
19 Mr. Brewer on the 21st that you would have -- after the
20 bailiff called the defendant's name in the hallway three
21 times and she didn't answer, that the State would have
22 moved for bond forfeiture, correct?

23 A. Yes, sir.

24 Q. And, again, I'm talking about September 21st
25 right now. Okay? They did move for bond forfeiture on

1 September 21st, correct?

2 A. Yes, sir.

3 Q. But in reality, the bond had already been
4 revoked, hadn't it? It was already set at zero bond
5 before September 21st, specifically on September --

6 A. The bond was revoked on September 8th.

7 Q. What you did on the 21st was basically
8 superfluous. What need was it to revoke it again if it
9 was already at zero? Do you have an answer to that
10 question, or is that something you just do because you
11 were told to do it?

12 A. I don't have an answer to that question. I was
13 instructed to do so and did it.

14 MR. SASSER: No further questions. Pass
15 the witness.

16 MR. BREWER: Pass the witness, Judge.

17 THE COURT: All right. You may step down.
18 Call your next, please.

19 MR. BREWER: Stim Bowie.

20 (Witness sworn)

21 **STIM BOWIE,**

22 having been first duly sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 **BY MR. BREWER:**

25 Q. Mr. Bowie, please turn to the ladies and