

1 THE COURT: You're free to go.

2 Thank you.

3 THE WITNESS: Thank you, Judge.

4 THE COURT: State.

5 MR. VOLKMER: Your Honor, the State
6 calls Tuan Pham.

7 THE BAILIFF: Judge, this witness
8 has not been sworn.

9 THE COURT: Come up, sir. Raise
10 your right hand.

11 *(Witness sworn.)*

12 THE COURT: Have a seat, please.

13 You may proceed.

14 **TUAN PHAM,**

15 having been first duly sworn, testified as follows:

16 **DIRECT EXAMINATION**

17 **BY MR. VOLKMER:**

18 Q. Investigator, could you introduce
19 yourself to the jury, please?

20 A. Yes. My name is Investigator Tuan Pham.
21 I'm an investigator here in the District Attorney's
22 Office.

23 Q. Specifically what do you do for the
24 D.A.'s Office?

25 A. I'm assigned to the Digital Forensic

1 Investigations Unit.

2 Q. And what are your job duties?

3 A. I extract all electronic data from
4 electronic media such as cell phones, laptops,
5 anything that has digital media on it.

6 Q. In your job duties, did you have an
7 opportunity to come into possession of State's 51
8 and State's 50?

9 A. Yes, sir, I did.

10 Q. And how do you recognize those?

11 A. That is the cell phone that was dropped
12 off to me for extraction.

13 Q. Who dropped that off?

14 A. You along with HPD Officer Todd Janke.

15 Q. Could you get to the information portion
16 of that phone?

17 A. No, sir, I couldn't.

18 Q. I mean, can you get to the battery
19 portion?

20 A. Oh, yes, sir, I could.

21 Q. Can you do that now, please?

22 A. Oh, yes, sir.

23 (Witness complied.)

24 Q. And what is the IMEI for that phone that
25 you have there?

1 MR. RAY: I'm going to object to
2 him testifying to an item that's not in evidence.

3 THE COURT: Sustained.

4 Q. (By Mr. Volkmer) Could you read what's
5 on State's 24?

6 A. It shows IMEI No. 359390051463455.

7 Q. And can you compare that to State's 50
8 that you have there without going into its contents?

9 MR. RAY: I'm going to object to
10 that's calling for him to testify about an item
11 that's still not in evidence.

12 THE COURT: Overruled.

13 Q. (By Mr. Volkmer) Just compare it. Take
14 a moment.

15 A. (Witness complied.)

16 They match.

17 Q. Do you recognize the make and model of
18 State's 50 that you have there?

19 A. Yes, sir, I do.

20 Q. Without going into what it is, do you
21 recognize it?

22 A. Yes, sir, I do.

23 Q. On State's 24, does it match with what
24 I'm pointing to here (indicating)?

25 A. Yes, sir, they do.

1 Q. And when did you -- where -- when you
2 received this phone, what did you do with it?

3 A. I logged it into my evidence.

4 Q. Okay. When did you next see it?

5 A. What do you mean?

6 Q. Did it go straight to evidence, or did
7 it remain in your possession for that time?

8 A. It remained in my possession at that
9 time.

10 Q. Okay. And then how did it get here to
11 court today?

12 A. I brought it here to court today.

13 Q. And is it the same condition, the same
14 packaging from Property when you retrieved it?

15 A. Yes, sir, it was.

16 Q. Okay.

17 MR. VOLKMER: State moves to
18 introduce State's 50 and State's 51, the packaging,
19 tenders to Defense counsel for inspection.

20 *(State's Exhibits No. 50 and 51*
21 *offered.)*

22 THE COURT: Any objection?

23 MR. RAY: May I take witness on
24 brief voir dire, Your Honor?

25 THE COURT: You may.

1
2 **VOIR DIRE EXAMINATION**3 **BY MR. RAY:**

4 Q. On State's 50 and 51 --

5 MR. RAY: Is that correct?

6 MR. VOLKMER: 50 is the phone. 51
7 is the packaging.8 Q. (By Mr. Ray) On State's 50 and 51, what
9 initials do you see on the outside of that red slip?10 A. Are you talking about the packaging that
11 I'm holding?

12 Q. Yes.

13 A. Looks to be a T and a J.

14 Q. T and a J?

15 A. Yes, sir.

16 Q. And do you know, I guess, who tagged
17 that into evidence?

18 A. No, sir, I don't.

19 Q. Okay.

20 MR. RAY: At this time we're
21 objecting that the proper foundation hasn't been
22 laid. I think it was -- Officer Janke said it was
23 Officer Mares who actually tagged the phone into
24 evidence. And so without the beginning of the
25 chain, the chain of custody has not yet been
established.

1 MR. VOLKMER: Your Honor, may I
2 respond?

3 THE COURT: Uh-huh.

4 MR. VOLKMER: Officer Janke
5 testified that he was present when Officer Mares
6 tagged it into custody, that he observed him making
7 the marks and he saw him tag it in.

8 THE COURT: Okay. Your objection
9 is overruled. It's admitted, 50 and 51.

10 *(State's Exhibits No. 50 and 51*
11 *admitted.)*

12 **DIRECT EXAMINATION CONTINUED**

13 **BY MR. VOLKMER:**

14 Q. Now, have you seen State's 24 before --
15 or what does this say here (indicating)?

16 A. "Search warrant."

17 Q. And what -- and we've already read the
18 IMEI. So pursuant to this search warrant, did you
19 interact with that phone several weeks ago?

20 A. Yes, sir, I did.

21 Q. And describe for the jury your
22 interactions with the phone several weeks ago.

23 MR. RAY: Judge, may we approach?

24 THE COURT: Okay.

25 *(Bench proceedings:)*

1 MR. RAY: This is the -- we were
2 told it's not going to come in. The discovery --

3 MR. VOLKMER: Judge, all I'm trying
4 to elicit is that several weeks ago he tried to dump
5 the phone and that he was unable to get past the
6 password.

7 THE COURT: You already told him.
8 Unless it's *Brady* or something, we've already talked
9 about this since he wasn't able to crack it last
10 week but --

11 MR. VOLKMER: Yeah, he cracked it
12 on Wednesday.

13 MR. RAY: I just didn't -- I didn't
14 know what they're --

15 MR. VOLKMER: Just trying to show
16 we weren't sitting on the phone.

17 THE COURT: Okay.

18 *(Bench proceedings concluded.)*

19 Q. (By Mr. Volkmer) So several weeks ago
20 how did you interact with the phone?

21 A. I first took it apart to check for the
22 IMEI number, and then we put it back together. I
23 took the SIM card out and powered the phone on to
24 make sure that it was not interacting with the
25 network just in case there was a wipe command to

1 erase the phone over the network.

2 Upon powering it on, I found that there
3 was a swipe password that did not allow me to get
4 any further into the phone.

5 Q. And from your -- at your attempts to get
6 past the password, were you able to?

7 A. No, sir.

8 Q. Could you pull anything from the phone
9 without having that password?

10 A. No, sir.

11 MR. VOLKMER: Pass the witness.

12 THE COURT: Defense.

13 MR. RAY: No questions from
14 Defense.

15 THE COURT: All right. May he be
16 excused?

17 MR. VOLKMER: Yes, Your Honor,
18 subject to recall.

19 THE COURT: All right. You're free
20 to go. Thank you.

21 State.

22 MR. VOLKMER: At this time, the
23 State rests, Your Honor.

24 THE COURT: All right. We will
25 stop there for today, and we will start back