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7-15-11

STATE OF WISCONSIN:

CIRCUIT COURT:  
FELONY DIVISION

RACINE COUNTY:

STATE OF WISCONSIN,

Plaintiffs,

Case No. 08-CF-1519 ✓

-vs-

Preliminary Hearing

MARTELL ROGERS,

Defendant.

PROCEEDINGS HAD in the above-entitled matter  
before the HONORABLE ALICE A. RUDEBUSCH, Judicial Court Commissioner, at  
the Racine County Law Enforcement Center, on the 6<sup>th</sup> day of May, 2009. ✓

**FILED** ✓

JUN 15 2009

CLERK OF CIRCUIT COURTS  
RACINE COUNTY

APPEARANCES:

Assistant District Attorney Jennifer Tanck-Adams  
appeared on behalf of the State of Wisconsin.

Attorney Dirk Jensen appeared on behalf of the  
defendant, Martell Rogers. The defendant, Martell  
Rogers, appeared in proper person.

Patricia K. Humfeld-Phinisee

Court Reporter

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THE COURT: State versus Martell Rogers. Appearances.

MS. TANCK-ADAMS: Assistant District Attorney Jennifer Tanck-Adams appears on behalf of the State.

MR. JENSEN: Martell Rogers appears in person with Attorney Dirk Jensen.

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THE COURT: ~~We're here for preliminary hearing, are the parties~~  
ready?

MS. TANCK-ADAMS: Yes, State's first witness will be Dr. Lawrence Smith.

MR. JENSEN: I'd ask for a sequestration order, if there is more than one witness in the courtroom.

MS. TANCK-ADAMS: There aren't. I had asked for the order.

THE COURT: All right, I'll grant the motion, the witnesses are sequestered. So the first witness is?

MS. TANCK-ADAMS: Lawrence Smith.

THE COURT: Thank you.

MS. TANCK-ADAMS: He hasn't quite made it into the courtroom.

(Witness enters the courtroom)

LAWRENCE SMITH, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

THE COURT: Have a seat. Talk loudly into the microphone, please.

DIRECT EXAMINATION BY MS. TANCK-ADAMS:

Q Please state your name.



A Lawrence Smith.

Q Where do you reside?

A 2925 Washington Avenue, Racine, Wisconsin, 53405.

Q Were you residing there on July 31<sup>st</sup>, 2006?

A Yes.

~~Q Did you have property taken from that address on that date?~~

A Yes, I had.

Q Was that taken without your consent?

A Yes.

Q What property was taken?

A It was a-- It's in the police report, but there were multiple watches. There was video equipment, video camera, a new cell phone, and what I didn't list on that was well-- There was also a wedding band. What I didn't list was there was a bunch of Play Station games which I listed later on, but it was many, many watches, the bulk of what was stolen, plus a duffel bag that contained some tools. They stuffed all the jewelry in that. That's what I can recollect. Again, I did give a statement to police, it's all in that police report.

Q You were not home when those items were taken; is that correct?

A No, I was not.

Q Your residence is in the City and County of Racine, Wisconsin?

A That's true.

MS. TANCK-ADAMS: I have no further questions of this witness.

THE COURT: Any cross?

CROSS-EXAMINATION BY MR. JENSEN:



Q Just so it's clear, you were not present, correct?

A That's correct.

Q So, you're not an eyewitness to anything that occurred during the time that you were not at the residence, correct?

A That's correct.

~~Q All right. You have no firsthand information as to how the items came up missing from your home; is that correct?~~

A That is correct.

MR. JENSEN: I don't have anything further.

THE COURT: You're all done. Thank you, you can step down.

THE WITNESS: Thank you.

(Witness is excused)

THE COURT: Who's next?

MS. TANCK-ADAMS: Xanthi Merlo.

(Next witness enters the courtroom)

THE COURT: Raise your right hand.

XANTHI MERLO, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

THE COURT: Have a seat. Talk loudly into the microphone, please.

DIRECT EXAMINATION BY MS. TANCK-ADAMS:

Q State your name and spell your first name.

A Xanthi is X-A-N-T-H-I Merlo.

Q Where were you residing on July 19<sup>th</sup>, 2006?

A 922 Melvin Avenue.





Q Do you have parents that live at 3025 Spring Street?

A I do.

Q And were they living there on July 19<sup>th</sup>, 2006?

A They were.

Q *Were you at that residence on that date as well?*

A I was.

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Q Is that in the City and County of Racine, Wisconsin?

A It's the County of Racine. It's the City of Mt. Pleasant.

Q Thank you. Where were you seated in the afternoon on that date?

A We were seated in the screen house, housed at the back of the property that overlooks a wooded park.

Q Were you approached from the rear of the residence by anyone?

A We were approached from the rear by two men wearing ski masks.

Q Did they make any requests of you or your parents?

A They came up to us holding guns, and they asked my father to put his phone away, which he was taking out to call the police.

Q Did your father do that?

A He did not.

Q What happened?

A He knocked the phone out of his hand and pushed him down.

Q Did they make further requests of you?

A The second gentleman came around to the side of both of them and held a gun on us. We asked them what they wanted. They asked for my father's name, and where he worked. He told them, "Tony Merlo, I work at Midwest Auto Supply." We told them the neighbors could see them where they were, and they always



watch, and asked them again what they wanted. They then asked for a man named Jerry. We told them a man named Jerry did not live there, and then the first gentleman signaled the second gentleman to leave, and they turned around and walked back through the park and left.

Q Did they damage any property while they were at that residence?

A ~~They damaged the screen of the screen house when they pushed my father down.~~

MS. TANCK-ADAMS: I have no further questions.

CROSS-EXAMINATION BY MR. JENSEN:

Q Ma'am, this was back on July 19<sup>th</sup>, 2006?

A Yes, sir.

Q Okay, you said two gentlemen came into the backyard where you were with your parents?

A Yes, sir.

Q Okay, and you said they were wearing ski masks?

A They were. One gentleman, the black gentleman was wearing a mask that covered only the front of his face. The other gentleman was wearing a mask that covered most of his head.

Q Okay, did you see-- This is going to sound like a silly question, but did you see either person?

A No, sir.

Q Now, did you hear either party identify themselves by name?

A No, sir.

Q Any nicknames?

A No, sir.



Q Okay, did you see any identifying scars or anything of that nature on any of the individuals?

A There was some marks on the chin on one of the gentlemen.

Q Which gentleman would that have been?

A *It was the darker gentleman who also had longer hair.*

~~Q Now, when you say the darker gentleman, there were two gentlemen?~~

A One man was black. I couldn't tell if the other was Hispanic or White.

Q Okay, and you say he had marks on the chin?

A Yes, there was a small scar on the left side of the gentleman's chin or a fresh cut. I honestly couldn't tell at that time.

Q Okay, and did you see any tattoos, anything of that nature?

A No, sir.

Q Okay, you reported it to the police department?

A Yes, sir, but the Mt. Pleasant Department.

Q Okay, did you provide them with this physical description?

A *I provided them with a description of what happened. I don't honestly remember what I wrote at the time.*

Q Okay, did you provide a written statement?

A Yes, I did provide a written statement.

Q All right.

A As did my parents.

Q Okay, and during the time these gentlemen were there, did they demand anything from you?

A No, they just held guns to us.

Q Okay, and they said they were looking for someone else?



A Right before they left they said they were looking for someone else.

Q Now, did the police ever ask you to look at any photos or ever try to identify either of these individuals?

A Not to my knowledge.

Q So it would be safe to say, you cannot identify either of the individuals today?

A That is true.

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Q Did either of the gentlemen threaten to harm either you or your parents that you heard?

A Yes, they a held gun to all of us.

Q I understand they held guns—

A Are you asking if they verbally threatened us?

Q Let me rephrase. Did they threaten, verbally threaten to harm you?

A Did not verbally threaten us. Again, the gun was sufficient.

Q But there were no statements?

A There was no verbal threats made.

MR. JENSEN: I don't have anything further.

THE COURT: You're all done. You can step down. Thank you.

(Witness is excused)

MS. TANCK-ADAMS: State would call Rachel Ritacco.

(Next witness enters the courtroom)

THE COURT: Ma'am, before you sit down, raise your right hand.

RACHEL RITACCO, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

THE COURT: Have a seat.

DIRECT EXAMINATION BY MS. TANCK-ADAMS:





Q Please state your name and spell the last.

A Rachel Ritacco. R-I-T-A-C-C-O.

MS. DELERY: Commissioner, at this time, I would like to tell the Court that she is represented by the State Public Defender's Office, and we have advised our client she's not to answer any questions. She is invoking her Fifth Amendment Right.

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THE COURT: I think she's got to ask some questions, then you can invoke the right.

Q Do you know Martell Rogers?

A Yes, I do.

Q Do you see him present in the courtroom today?

A Yes, I do.

Q Would you please point to where he is seated--

MS. DELERY: Rachel.

THE COURT: Do you want to talk to Ms. Delery—that lawyer sitting right there?

MS. DELERY: Just for a brief moment.

THE COURT: Did she tell you how to invoke your right not to self-incriminate yourself?

THE WITNESS: Okay.

THE COURT: I can't hear you.

THE WITNESS: I need to plead the Fifth.

THE COURT: Right. So just for form sake, how it works is the District Attorney asks questions, and then you have to invoke your Fifth Amendment Right, okay?



THE WITNESS: Okay.

THE COURT: It's not good enough for Ms. Delery to stand up and say it for you. Okay? She's going to ask you questions, and then you have got to start invoking your Fifth Amendment Right.

THE WITNESS: Okay.

~~THE COURT: Okay. Restate the question you just asked.~~

MS. TANCK-ADAMS: Sure.

Q Do you see Martell Rogers present in court today?

A I'm going to invoke my right to the Fifth Amendment.

Q Were you involved in a robbery that took place on July 31<sup>st</sup>, 2006?

A I'm invoking my right to the Fifth Amendment.

Q Were you involved in a robbery on July 19<sup>th</sup>, 2006?

A I'm invoking my right to the Fifth Amendment.

Q Were you involved in a robbery on July 28<sup>th</sup>, 2006?

A I'm invoking my right to the Fifth Amendment.

THE COURT: And you are doing this for all questions that she asks?

THE WITNESS: Yes.

MS. TANCK-ADAMS: At this time, I would ask the Court to declare Ms. Ritacco unavailable, and allow me to get her testimony in through Investigator Schlitz.

MR. JENSEN: I'm going to object at this time. There has been no basis on how her testimony would incriminate her. There's been no colloquy, no information presented to the Court. She's not just allowed to invoke her right willy-nilly.

Should Jensen have  
Sought interlocutory appeal  
of the order on this basis?

No



The Court was  
Correct

Does the ~~fact~~ fact that  
a  $\Delta$ 's conviction is still  
appealable make her  
unreviewable due to 5th Amend.  
issues?

- Possibly, b/c if she appeals  
and conviction is overturned,  
state could use her  
incriminatory testimony  
against her. See

Anyway!  
① the am # has  $\rightarrow$  1 and  
② after Rachel was  
granted immunity  
State re-issued a  
sound over.

She started to answer some questions, then she was stopped. There has to be some indication there is a basis.

THE COURT: At this time, based on the questions that she's asked about being involved in robberies, I find that she's unavailable.

MR. JENSEN: Commissioner—

THE COURT: Okay.

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MR. JENSEN: She's-- I mean--

THE COURT: I understand you're making a record.

MR. JENSEN: Your Honor, she was charged. She pled out. She's been sentenced, so I think you have to do more than say she was asked if she was involved. She's no longer in jeopardy for those issues.

MS. TANCK-ADAMS: It's my understanding that she is not outside her appeal period. She has just been sentenced on Monday of this week.

THE COURT: I've made my ruling, so I have let everybody make their record. Let's move on.

*(Witness is excused)*

THE COURT: Is the Investigator coming in?

MS. TANCK-ADAMS: Yes.

MR. JENSEN: Your Honor, so it's clear—so the record is clear, I'm objecting to the granting, based on the record that was made. I don't believe it was sufficient.

*(Next witness enters the courtroom)*

THEODORE SCHLITZ, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

THE COURT: Have a seat.



DIRECT EXAMINATION BY MS. TANCK-ADAMS:

Q Please state your name and spell your last name.

A Theodore Schlitz. S-C-H-L-I-T-Z.

Q How are you employed?

A *As a detective with the Racine Police Department.*

Q ~~How long have you been employed in that capacity?~~

A Nineteen years.

Q Were you working in that capacity in July of 2006?

A Yes, I was.

Q Did you have an opportunity to investigate a series of armed robberies and burglaries that occurred both in Mt. Pleasant, as well as in the City of Racine?

A Yes, I did.

Q Did you have an opportunity during that investigation to speak with someone by the name of Rachel Ritacco?

A Yes, I did.

Q *Was she, ultimately, a person that was charged as a party to the crime of a number of offenses over a span of, approximately, six weeks?*

A Yes, she was.

Q Did you have an opportunity to speak with Ms. Ritacco, specifically, about July 31<sup>st</sup>, 2006, an incident regarding an armed robbery at 200 Gaslight Circle?

A Yes, I did.

Q Was the victim in that complaint Paul Mueller?

A Yes.

Q And with respect to your conversation with Ms. Ritacco, did she indicate that she was in a vehicle with—





MR. JENSEN: I'm going to object. It's extremely leading.

Q What did Ms. Ritacco indicate was-- Did Ms. Ritacco indicate she knows a person by the name of Martell Rogers?

A Yes.

MR. JENSEN: I'm going to object, it's hearsay.

~~THE COURT: Overruled.~~

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Q How did she indicate she was familiar with Martell Rogers?

A She was living at his house-- He was living at her house.

Q During what time frame?

A Late Spring through late Summer of '06.

Q And did you have an opportunity to during the course of your investigation to also come into contact with Martell Rogers?

A Yes, I did.

Q Did you charge him with a number of counts regarding armed robberies and burglaries?

A Yes, I did.

Q Do you see Martell Rogers present in court today?

A Yes, I do.

Q Please indicate where he is seated, and what he is wearing.

A He's seated at defense table in an orange jumpsuit.

MR. JENSEN: I'll stipulate to identification.

Q Specifically, regarding the 200 Gas light Circle armed robbery, did you have an opportunity to speak with Rachel Ritacco?

A Yes, I did.

Q Did she indicate that Martell Rogers—

N/O indication  
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Hammers, Thekelton,

MR. JENSEN: Objection, she's leading.

THE COURT: I don't think she's finished her question, so I guess I can't rule yet. Were you finished with the question?

MS. TANCK-ADAMS: No.

THE COURT: Ask the question, then you object.

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Q Did she indicate that Martell Rogers was involved in that incident?

MR. JENSEN: I'm going to object. It's hearsay and leading.

THE COURT: Wait. Overruled. You can answer.

A Yes, she did.

Q Was Martell Rogers involved in that incident?

A She said that—excuse me—they were driving through the area by the Radisson and Chancery, and he saw a gentleman walking from the parking ramp to the hotel, and Martell said he was going to go get him. He got out of the car, she drove around the block. A minute later, she came back, and he had a man's wallet with him.

Q Was that man Paul Mueller?

A Yes.

Q Did that man give consent for his wallet to be taken?

A No, he didn't.

Q Did she indicate if she was aware Mr. Rogers had a weapon during that incident?

A I-- I don't recall if she, specifically, knew he had a weapon for that robbery or not.

Q Did she also indicate to you the involvement of Martell Rogers with respect to a burglary at 4925 Washington Avenue?

A Yes, she did.



Q What did she indicate took place on July 31<sup>st</sup> at that residence?

MR. JENSEN: I'm going to—for the record—just going to object.

It's hearsay.

THE COURT: I'm going to overrule the objection.

A She said that she had been with Martell when they stopped at a house earlier in the afternoon to make contact with one of the juveniles at the house, and later returned to her house on Domanik, and then Martell later came out and told her to leave that house. They went back to the house on Washington Avenue. Martell said he was going to rob it, and handed her a two-way radio. She waited outside while Martell and Gerry Halcsik went in and robbed the house. She actually used the two-way radio to notify Martell when someone was walking to the front door, and when she did that, Martell said they were on their way out. She drove around the back of the house, they put two bags in the back of her car, and drove back to her house.

Q Did she indicate that one of these bags was a green duffel bag?

A One of them was, yes.

Q Did you have an opportunity to do a search of Rachel Ritacco's vehicle during the course of your investigation?

A It was actually a different investigation, but yes, I did search her vehicle.

Q Are you aware if a green duffel bag was recovered?

A Yes, it was.

Q What was recovered inside of it?

A Personal documents belonging to Martell Rogers, including a birth certificate, photos, several wristwatches, and a ski mask.

Q And were those wristwatches later identified by Dr. Larry Smith as being his?



A Yes.

Q Did she-- Did Rachel Ritacco have an opportunity to speak with you regarding an incident on July 28<sup>th</sup>, 2006, at 4<sup>th</sup> Street and Lake Avenue?

A She didn't recall that incident.

Q Okay, did she indicate to you that on that date, cigarettes were purchased with a credit card?

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A Yes.

Q And how did she indicate the credit card was obtained?

A She believed that the credit card was taken in the robbery at the Gas Light address of a Mr. Mueller. I advised her that was a separate incident.

Q And did you also have an opportunity to speak with Rachel Ritacco regarding an attempted robbery on July 19<sup>th</sup>, 2006?

A Yes.

Q And did she provide you--I'm sorry--at 3025 Spring Street, the castle house?

A Yes.

Q Did she provide you a written statement regarding that incident?

A Yes, she did.

Q And in that written statement, did she indicate that Martell Rogers told her that they were robbing the people at that residence?

A Yes.

Q Did she, specifically, indicate that the older man picked up a cell phone to call the police, and that Martell had damaged the door of that screen house?

A Yes.

Q Did she also indicate that he grabbed that man's phone and broke it?

A Yes.





Q Did she indicate if there was a weapon used in that incident?

A I don't recall if she mentioned a weapon or not.

MS. TANCK-ADAMS: I have no further questions.

THE COURT: Any cross?

MR. JENSEN: Yes.

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CROSS-EXAMINATION BY MR. JENSEN:

Q Now, to go back, this robbery that occurred on-- There's a number of incidents, and I'll try to approach them one at a time.

A Okay.

Q At the time you talked to Ms. Ritacco, she didn't say she was a witness to the event, correct?

A The robbery on Lake Avenue, correct.

Q And she did not say that anyone admitted involvement in that robbery to her, did they?

A No.

Q And you interviewed other people in relation to that robbery?

A Yes.

Q And one of those people was Mr. Rogers?

A Yes.

Q Okay, he did not admit involvement in that robbery, correct?

A Correct.

Q Okay, the only information provided by Ms. Ritacco tying Mr. Rogers to that incident is her belief that a credit card that was used that day came from a different robbery; is that correct? That was your testimony?

Mar 6 2009  
Prelim

State Court Prove  
Charge (# 6 of original  
~~complaint~~  
or earlier  
complaint)

Court ≠ say whether with or w/o  
presumption is  
Also - complaint

A She believed the credit card that was used—she believed that was taken in a robbery down by the Radisson which was on the 31<sup>st</sup>.

Q And your investigation showed that to be impossible?

A Correct.

Q Okay, and that credit card was not used by Mr. Rogers, correct?

A Correct.

---

Q So where, outside of her statement that she believed there was some involvement, you don't have any physical evidence tying Mr. Rogers to that incident, correct?

A Are you talking about on Lake Avenue?

Q I'm talking about Lake.

A Well, actually, the credit card that was used was given to a Gerald Halcsik by Martell.

Q Now, first off, how did that information come to you? From whom?

MS. TANCK-ADAMS: If it will save time, I don't think I could prove-up Count 6. I would be willing to dismiss that to shorten the hearing up—

MR. JENSEN: And that's the one that references the Lake Street cigarette buy?

MS. TANCK-ADAMS: Exactly.

THE COURT: I'll dismiss Count 6.

MR. JENSEN: I'm not going to object.

Q Now, let's go back. You spoke to Ms. Ritacco about all of these incidents several times, correct?

A Twice.



Q Okay, and one of the times you spoke with her or to her about an incident-- Strike that. Now, you stated that Ms. Ritacco provided information about this Gas Light robbery, correct?

A Correct.

Q Okay, did she tell you she observed anything?

A No.

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Q Okay, did she say she saw any identification indicating it was Mr. Mueller's property?

A No. You're talking about the one on Gas Light now, right?

Q Gas Light, that's correct.

A No.

Q Okay, so the testimony that ties Mr. Rogers to that incident is Ms. Ritacco's statement, once again, that she believed that he did that; is that correct?

A And the victim gave a similar description.

Q Okay, did you ever provided the victim with a photo line-up?

A No.

Q *Did the victim ever say they could identify this individual?*

A They could not because they were masked.

Q Did the victim-- So the victim never identified the robber as being involved in that incident?

A Correct.

Q Now, and that's the incident that occurred later on, on Washington Avenue?

A Washington Avenue, actually, was before the one on Gas Light.

Q It was the same day?

A Same day.



Q Okay, and you spoke with Ms. Ritacco about that incident, correct?

A Correct.

Q All right, and the information tying Mr. Rogers to going into that house and being involved in that comes from her statements, correct?

A Yes.

Q ~~Okay, no one from that incident was ever shown photo line-ups?~~

---

A I don't believe so.

Q Okay, to your knowledge, based on your investigation, no one ever identified Mr. Rogers as being involved in that incident besides Ms. Ritacco?

A Gerald Halcsik did also.

Q And Mr. Halcsik was also charged in all of those matters?

A Yes.

Q So outside of the two people who have admitted to being involved in that matter, no one else is able to identify Mr. Rogers?

A Correct.

Q And you have said that at a later time, you searched a vehicle owned by Ms. Ritacco; is that correct?

A That was, actually, before-- That would have been a later time in reference to what?

Q In relation to the Washington Avenue incident, when did you search Ms. Ritacco's vehicle?

A It would have been the first part of August because it was after the incident at the Speedway which was with the credit card that was used. I was getting information-- I was given information from the clerk that was working that Rachel—





Q Okay, anything that went on at the Speedway, Mr. Rogers has not been charged with, correct?

A Correct.

Q So in early August then, you searched this vehicle?

A Correct.

~~Q Okay, where was the vehicle when you searched it?~~

---

A Rachel Ritacco's driveway.

Q Okay, who was present?

A Myself, and I don't remember the other officers that were there at the time.

Q Was Ms. Ritacco present?

A Yes.

Q Was Mr. Rogers present?

A No.

Q To your knowledge, was Mr. Rogers still in Racine at that time?

MS. TANCK-ADAMS: I'll object as to relevancy for purposes of preliminary hearing.

MR. JENSEN: Your Honor, I think it's relevant because what we have is no evidence that's really tying Mr. Rogers to these incidents besides Ms. Ritacco's statements, whose taken the Fifth. Everything is coming in through hearsay. No victim or anyone else has ever been able to identify Mr. Rogers. The State's trying to show that through these items found in another person's car.

THE COURT: Overruled. You can answer, if you understand the question.

A Could you repeat the question?



Q To your knowledge, was Mr. Rogers still in the area or present when you searched the vehicle?

A I had been advised by Rachel that he was out of town.

Q Okay, that he was out of town on vacation or had moved?

A *Supposed to have been going back to Milwaukee, if I remember correctly.*

Q So, he had moved?

---

A Yeah.

Q Okay, and then the items that were in the bag were some photos?

A Yes.

Q Were those photos of him?

A Yes.

Q Okay, and there were some watches found?

A Yes.

Q *What other information was in that bag besides Rachel's statements that led you to believe that it was connected to Mr. Rogers?*

A His birth certificate.

Q His birth certificate was in the bag?

A Yes. I think there were letters addressed to him, too, if I remember correctly.

Q But those are all items that, apparently, he had left behind when he moved out of the area?

A She told me he had gone back to Milwaukee.

Q You don't have any firsthand knowledge how these items got in that bag?

A No.

Q So it's very possible that Ms. Ritacco put them in there, for all you know?

A *I couldn't say. I don't know.*



Q Now, the incident that occurred over on Spring Street, that's actually outside your jurisdiction, correct?

A Correct.

Q All right, but you did some work on that matter; is that correct?

A I did some research.

~~Q Okay, now during your research, did you ever find any information that led you to~~  
believe any of the three victims present identified either of the two men that were involved?

A I guess I don't understand the question.

Q Did the victims identify any suspects in that case?

A No.

Q All right, and you spoke with Ms. Ritacco about this incident also, correct?

A Correct.

Q All right, now she didn't tell you that Mr. Rogers admitted involvement, correct?

A She said that she had been in Milwaukee, she came home, and Gerald and Martell were talking about it.

Q Okay, but that's based solely on, basically, a hearsay statement that someone else told her something or she overheard it?

A She overheard it, correct, yes.

Q Now, during all of the cases that you have investigated, were you able to link any physical evidence to Mr. Rogers for these matters?

A Other than the bag with his personal belongings in it, no.

MR. JENSEN: Okay, I don't have any further questions.

RE-DIRECT EXAMINATION BY MS. TANCK-ADAMS:



Q With respect to the July 31<sup>st</sup>, 2006 Gas Light Circle robbery, did Rachel Ritacco's version collaborate that of the victim Paul Mueller's version of the events?

A Yes.

MS. TANCK-ADAMS: Nothing further.

RE-CROSS-EXAMINATION BY MR. JENSEN:

~~Q When you say robbery, she didn't observe anything, correct?~~

A Correct.

Q Did you speak with Mr. Mueller about this incident?

A Yes.

Q Okay, did he say that he observed the individual who robbed him get into a vehicle?

A No.

Q So what we have is two people saying two things, and they did not witness, from your investigation, overlapping segments of this event, correct?

A Correct.

Q So you don't know if they witnessed the same events or not; is that correct?

A Well, Rachel said she witnessed the guy walking to the hotel.

Q Okay, but the question is, she did not witness a robbery?

A Correct.

Q Okay, and you just testified that Mr. Mueller didn't witness anyone get into a vehicle and drive away, or any people in a waiting vehicle, correct?

A Correct.

Q So the statements that they have provided, did not overlap as far as the incident of a robbery?

A Correct.

IMPROPER  
REQUEST  
# 6





MR. JENSEN: I don't have any further questions.

THE COURT: You're all done then, you can step down.

(Witness is excused)

MS. TANCK-ADAMS: Commissioner, it's my understanding that the Counts One, Two, and Three were previously bound over either-- I'm sorry. I have nor further evidence.

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MR. JENSEN: No witnesses.

MS. TANCK-ADAMS: It's my understanding that Counts One, Two, and Three were bound over on or about January 8<sup>th</sup> or 15<sup>th</sup> of 2009. The Court dismissed Count Six. I would ask for bindover on Counts Four, Five, and Seven through Twelve.

MR. JENSEN: I would concur the bindover on Counts One, Two, and Three previously occurred. I won't object to those. I would object to bindover on any remaining counts, specifically, Six, since it's been dismissed.

Basically, we have got no witness identification of Mr. Rogers being involved. At best, what we have is hearsay statements from a co-actor who is refusing to testify, saying that Mr. Rogers was involved in these matters.

Even at this early phase of the proceedings, the low level and low burden the State has, I don't believe they have met it. Specifically, as pertains to the July 31<sup>st</sup>, 2006, incident involving the Gas Light Village robbery. We don't have any information connecting Mr. Rogers there. All we have is an individual who is saying he was in the neighborhood. As far as Counts Seven through Eleven, once again, no evidence that we can verify tying Mr. Rogers directly to this allegation of false imprisonment. I would object to bindover on all counts.

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THE COURT: The State's asking for bindover on which Counts in particular again?

MS. TANCK-ADAMS: Four, Five, Seven, Eight, Nine, Ten, Eleven, and Twelve.

THE COURT: Okay.

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~~MR. JENSEN: Commissioner, I know that this is confusing, so~~  
with respect—

THE COURT: No, it's-- I'm following the counts. You're referring to the victim, and testimony was coming in with regard to the geographic location, so I'm just trying to correlate the evidence here. So, Four, Five was to do with the people in Mt. Pleasant who were in the screened-in porch?

MS. TANCK-ADAMS: Correct.

THE COURT: And then, apparently, Eight and Nine have to do with the abduction of a child.

MR. JENSEN: Commissioner, so it's clear, I'll help you out. Seven through Eleven have to do with the Washington Avenue incident. Twelve has to do with the Gas Light Circle.

THE COURT: So Lawrence Smith, was he the one who was involved as the victim for Seven, Eight, Nine, Ten, and Eleven—those counts?

MS. TANCK-ADAMS: Yes. I guess, I'm just asking for the burglary, and when I file my information, I can transactionally tack on Counts Seven through Ten.

THE COURT: All right, with regard to probable cause on the counts that were requested by the State, I find there is probable cause with regard to Count Twelve, and I'll bind him over to stand trial on that, as well as with regard to the

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As an Afterthought

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robbery that Mr. Lawrence Smith testified to . I'll make a finding of probable cause on that, and bind him over on that.

MS. TANCK-ADAMS: I believe that was Count Eleven, burglary.

THE COURT: Right. So are we scheduling an arraignment?

MS. TANCK-ADAMS: *Is the Court making a finding with regard*

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~~to the screen house incident?~~

THE COURT: Oh, yeah, there's probable cause on the Spring Street screen house.

MR. JENSEN: That would be Four and Five because they're related?

THE COURT: Right.

MR. JENSEN: At this time, I think both parties are going to ask for two weeks for arraignment. We've got some things to do, obviously.

THE CLERK: May 20<sup>th</sup>, at 8:30.

MS. TANCK-ADAMS: I prefer the 21<sup>st</sup>, if we can do that.

MR. JENSEN: *That's fine.*

THE CLERK: May 21<sup>st</sup>, at 8:30.

(Whereupon proceedings were concluded)



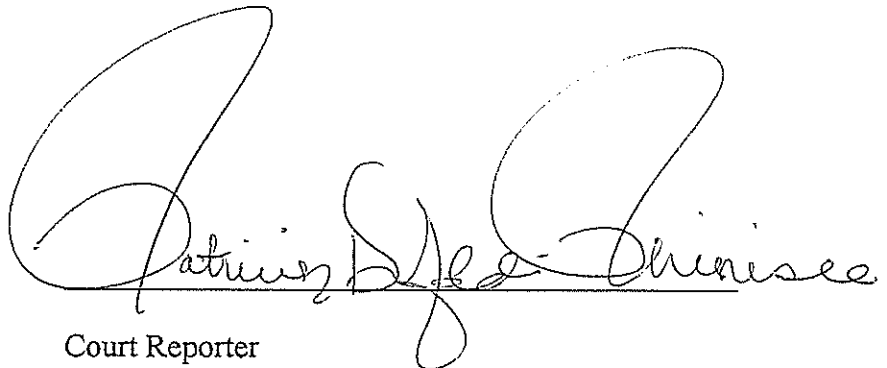
STATE OF WISCONSIN)

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RACINE COUNTY )

I, Patricia K. Humfeld-Phinisee, certify that I am the freelance court reporter for the Circuit Court, Felony Division; that the foregoing 26 pages have ~~been carefully compared by me with my stenographic notes; that the same is a true and~~ correct transcript of all such proceedings taken on the 6<sup>th</sup> day of May, 2009.

Dated this 14<sup>th</sup> day of June, 2009.

  
Court Reporter

\*\*\*Copies of this transcript have been provided to:

Attorney Dirk Jensen

ADA Jennifer Tanck-Adams

