

UNITED STATES COURT OF APPEALS  
FOR THE FOURTEENTH CIRCUIT

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Case No. 22-1392

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BETHANY GATES,

Defendant-Appellant,

v.

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

Case No. 2:13-CR-1418

Appeal from the United States District  
Court for the Northern District of Arca-  
diaThe Honorable Vera Mital,  
District Judge

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**Order Regarding Briefs and Oral Arguments**

Notwithstanding Federal Rule of Appellate Procedure 28.1, parties to this litigation shall prepare only principal briefs, filed simultaneously on September 27, 2022. Neither party shall file additional briefs. The Defendant from the proceedings below is designated as the Appellant. *See* Fed. R. App. P. 28.1(b). Oral argument shall proceed pursuant to Fed. R. App. P. 34(c)–(d), with Appellant arguing first and Appellee arguing second. Appellant will be permitted an optional rebuttal. No sur-rebuttal or further reply by the Appellee will be permitted.

SO ORDERED:

*/s/ Jasper Kruger*Jasper Kruger  
Clerk of the Court

DATED: September 2, 2022

UNITED STATES COURT OF APPEALS  
FOR THE FOURTEENTH CIRCUIT

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Case No. 22-1392

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BETHANY GATES,

Defendant-Appellant,

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Case No. 2:13-CR-1418

Appeal from the United States District  
Court for the Northern District of Arca-  
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The Honorable Vera Mital,  
District Judge

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**Docketing Notice**

Appellant Bethany Gates having filed a Notice of Appeal on August 30, 2022, from the order of the United States District Court for the Northern District of Arcadia entered August 25, 2022, and the United States of America having filed a Notice of Cross-Appeal on August 31, 2022, from the same order, and the appropriate Docketing Fee having been paid and Docketing Statement filed, along with statements of representation by all parties; the Court hereby gives notice, pursuant to Circuit Rule 12, that this appeal has been docketed as of today's date.

SO ORDERED:

/s/ Jasper Kruger

Jasper Kruger  
Clerk of the Court

DATED: September 2, 2022

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ARCADIA

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:13-CR-1418
	)	
BETHANY GATES,	)	
	)	
Defendant.	)	
	)	

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**DOCKET [excerpted]**

**Item #**

1. Government's Notice of Cross-Appeal – August 31, 2022
2. Defendant's Notice of Appeal – August 30, 2022
3. Final Judgment – August 25, 2022
4. Memorandum Decision – August 25, 2022
5. Statement of Reasons – August 25, 2022 [*under seal and omitted*]
6. Sentencing Hearing – August 15, 2022 [*transcript omitted*]
7. Pre-Sentence Report – June 23, 2022 [*confidential and omitted*]
8. Order Denying Motion for a New Trial – April 11, 2022 [*omitted*]
9. Government's Response in Opposition to Defendant's Motion for New Trial – March 24, 2022 [*omitted*]
10. Defendant's Motion for a New Trial – March 10, 2022 [*omitted*]
11. Verdict Form (Guilty) – February 25, 2022 [*omitted*]
12. Plaintiff Exhibit 6: Photo of the Black Dress – February 16, 2022
13. Plaintiff Exhibit 5: Photo of the Sash – February 16, 2022
14. Plaintiff's Exhibit 4: Folder View of Defendant Gates's Laptop – February 15, 2022
15. Trial Transcript: Testimony of Tobias Jenkins – February 15, 2022

16. Trial Transcript: Testimony of Albert Chase – February 15, 2022
17. Plaintiff Exhibit 3: Blueprint of the Bill of Rights Room – February 14, 2022
18. Plaintiff Exhibit 2: Blueprint of the Museum Main Hall –February 14, 2022
19. Plaintiff's Exhibit 1: The Arcadia Times Article – February 14, 2022
20. Order Denying Defendant's Motion in Limine – January 18, 2022  
[*omitted*]
21. Government's Response in Opposition to Defendant's Motion in Limine – January 10, 2022 [*omitted*]
22. Defendant's Motion in Limine – January 4, 2022 [*omitted*]
23. Indictment of Bethany Gates – November 15, 2019 [*omitted*]

SO ORDERED:

/s/ Jasper Kruger  
Jasper Kruger  
Clerk of the Court

DATED: September 2, 2022

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ARCADIA

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:13-CR-1418
	)	
BETHANY GATES,	)	
	)	
Defendant.	)	
	)	

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**NOTICE OF CROSS-APPEAL**

On August 30, 2022, Defendant Bethany Gates file a notice of appeal of this Court's Final Judgment of August 25, 2022. Notice is hereby given that United States of America, by counsel Dior Rayne, cross-appeals to the United States Court of Appeals for the Fourteenth Circuit from the Final Judgment, entered August 25, 2022.

Respectfully submitted,

/s/ Dior Rayne  
Attorney for the United States

Dated: August 31, 2022

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ARCADIA

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UNITED STATES OF AMERICA,	)	
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Plaintiff,	)	
	)	
v.	)	No. 2:13-CR-1418
	)	
BETHANY GATES,	)	
	)	
Defendant.	)	
	)	

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**NOTICE OF APPEAL**

Notice is hereby given that Defendant Bethany Gates, by counsel Ruby Segars, appeals to the United States Court of Appeals for the Fourteenth Circuit from the Final Judgment, entered August 25, 2022.

Respectfully submitted,

/s/ Ruby Segars

Ruby Segars  
Attorney for Defendant

Dated: August 30, 2022

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ARCADIA

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UNITED STATES OF AMERICA,	)	
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Plaintiff,	)	
	)	
v.	)	No. 2:13-CR-1418
	)	
BETHANY GATES,	)	
	)	
Defendant.	)	
	)	

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**FINAL JUDGMENT**

MATEL, District Judge:

On February 25, 2022, a jury found Defendant Bethany Gates guilty of theft of United States' personal property, in violation of 18 U.S.C. § 2112. The Court hereby orders the Clerk to enter a **GUILTY** verdict against the Defendant and to enter a sentence of one hundred twenty-two (122) months.

SO ORDERED:

/s/ Vera Matel

Vera Matel, U.S.D.J.

August 25, 2022

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ARCADIA

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:13-CR-1418
	)	
BETHANY GATES,	)	
	)	
Defendant.	)	
	)	

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**MEMORANDUM DECISION**

VERA MATEL, United States District Judge.

**INTRODUCTION**

A grand jury indicted Defendant Bethany Gates for theft of property of the United States Government, in violation of 18 U.S.C. § 2112 (2022). After pleading not guilty, Defendant faced a two-week trial, and a jury found her guilty. This Court previously denied Defendant's motion *in limine* filed before trial and Defendant's post-verdict motion for a new trial, both of which rested on Fourth Amendment grounds. During the sentencing hearing, the Defendant also raised an objection to her recommended sentence. Upon sustaining Defendant's objection and issuing her sentence, the Court accompanies its Final Judgment with its reasoning below for both parties' benefit.

**FACTS**

The facts relayed herein were proven at trial or were otherwise proven by evidence submitted to this Court or stipulated to by the parties.

**A. The Gates Family**

Defendant Bethany Gates is the sole heir of the Gates family, which is well known to many members of the public. Tracing its lineage back to Dolley Madison, wife of fourth President James Madison, the Gates family made a name for itself through much of the nineteenth and twentieth centuries as collectors of Colonial American Antiquities. This tradition of treasure hunting brought the Gates family



immense wealth and notoriety. Public opinion, however, sundered. Some people lauded the Gates for preserving important artifacts of American history, but others labeled the Gates's ambition "Contemporary American Imperialism."

Defendant Gates spent most of her childhood on the road. Her mother passed away when she was young, so Defendant Gates accompanied her father, Patrick Gates, as he traveled around the country. He continued the family's tradition of artifact collecting and treasure hunting with Defendant Gates at his side. In addition to these projects, he frequently guest lectured at universities and worked at (or followed leads to) archaeological digs. As Defendant Gates grew older, she became her father's documentarian. She took photos and videos of her father in the field and edited them into promotional advertisements for funding. Over time, Defendant Gates became very experienced with photo editing and videography.

The Defendant's father spent much of his time and capital pursuing Dolley's Bounty ("the Bounty"), a treasure trove allegedly sent across America by Dolley Madison. The urban legend surrounding the Bounty stems from the supposition that Dolley shared her husband's well-documented opposition to a national bank. Out of fear that a national bank would hurt the country's future economic prosperity, the story goes that Dolley secured a trove of wealth to hold as a reserve and to prevent the government from collapse or defeat in war. Much of the Bounty supposedly consisted of treasures taken during the First Barbary War.<sup>1</sup> Once Thomas Jefferson became President, he used the United States Navy to address piracy problems off the Barbary Coast. The raids resulted in a wealth of jewels and gold returning to the States. According to treasure-hunting enthusiasts and testimony heard during trial, Dolley sequestered many of these riches. Despite her professed intention to liquidate the treasures to preserve the stability of the federal government in the aftermath of a collapse of the national bank, she is said to have asked Lewis and Clark to take it all with them on their journey out west. The Bounty's final resting place (should it exist at all) was ultimately lost to time.

Dolley's Bounty became Patrick Gates's obsession. He spent almost all the family fortune pursuing leads, but never uncovered the treasure. His research led him to believe that there was a clue to the Bounty's location on the back of the Bill of Rights. However, he was unable to access the document. Eventually, the National Archives banned him because he constantly harassed its employees. In 2004, Patrick Gates declared bankruptcy, and two years later, he passed away, leaving behind his sixteen-year-old daughter, the Defendant.

Defendant Gates shared her father's passion and became a treasure hunter. Her foray into the profession experienced only limited success, but in 2008, Gates began her self-produced video-blog ("vlog") called "Manifest Destination." The series

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<sup>1</sup> The First Barbary War was a series of raids against the provinces of Algiers, Tunis, Tripoli, and Morocco.

documented her pursuit of the Bounty. She began by retracing many of the steps she watched her father take and walking viewers through the Bounty's history. Gates filmed, edited, and produced everything on her work laptop. For a short moment in 2012, the History Channel picked up "Manifest Destination," but it dropped the show after two seasons because too much controversy erupted. Gates returned to producing the series on her own in the vlog format, but it never reached the same viewership.

While Defendant Gates's time in the limelight did not bring her any closer to the Bounty, it nonetheless connected her with like-minded individuals. The first was Rachel Poole, Gates's best friend. Poole was a costume and prop designer (all of which she handmade) on the set of "Manifest Destination." The two bonded over their love of American history and conspiracy theories. When the show was taken off the air, Poole left the History Channel to help Gates produce the vlog.

Gates also met publicist Ed Wilkinson, who oversaw the show's production when it first aired on the History Channel. When the public began raising concerns about the Gates family's sordid treasure hunting tradition, Wilkinson tried to protect Gates's public image. After the History Channel fired Wilkinson for poor job performance, he joined Gates and Poole's vlog production of the show.

Finally, Gates met her boyfriend Albert Chase. Chase was an actor hired as Gates's co-host for the series. By 2013, their professional relationship turned romantic. The couple remained together after the show ended, though Chase did not join the other three in their attempt to revive "Manifest Destination."

In early 2016, after a few years of waning viewership, "Manifest Destination" received a brief boom in popularity. While vlogging, Gates discovered a hidden trove of gold coins in a cave around the Rocky Mountains. Wilkinson circulated stories that the cache was part of the Bounty; and for a few days Gates, Poole, Wilkinson, and the vlog experienced viral fame. However, a few online sleuths began digging into the veracity of the find, and rumors emerged that the gold coins were Poole's hand-made props. Online forums demanded proof of authentication, but they were met with no reply. Within weeks the entire "Manifest Community" fell apart. The public eye shunned Gates and her friends, labeling them as frauds, and in 2016, Gates finally discontinued the project. She used her remaining resources to purchase a one-story house with Chase in Arcadia City, and she convinced Poole and Wilkinson to follow. Gates became a freelance photographer and continued photo editing by herself on her personal computer.

## **B. The Museum**

In late 2018, the National Archives and the Smithsonian jointly announced that they planned to open a new Smithsonian satellite museum, the Smithsonian Museum of Important Papers, in Arcadia City, where patrons could view displays of

rare and highly valued American historical documents. Though there would be several notable exhibits, the Museum also planned to operate a rotating exhibit whereby the National Archives headquarters loaned certain displays to the Arcadia location in one-month increments. Included in the list of rotating displays was an original copy of the Bill of Rights, which was scheduled as the Museum's first special display.<sup>2</sup>

The Museum's grand opening was October 31, 2019—Halloween night. The Museum Curator, Bruce Greenwood, designed the entrance gallery like a large ballroom, featuring a double curved staircase and a balcony that overlooked the main floor. Mindful of the tight timeline to complete construction and open the exhibits by October 31, Greenwood fast-tracked every job to keep on schedule.

Greenwood hired Gates as one of the event photographers for the grand opening event. Wilkinson secured a job as a promoter for the event, and using his museum access, he scouted the building's dimensions and layout before it was open to the public. Wilkinson promoted the Halloween Gala, which entailed the Bill of Rights' big reveal from the center museum balcony for everyone to see. He also discovered confidential information that the event would be operated by a skeleton crew, with minimal servers and security.

As the event drew closer, Greenwood realized that the entire museum would not be finished on time, so he instead focused his efforts on completing the ballroom area for the Halloween Gala. As the night of the event arrived, Gates informed her boyfriend Chase that she would be working the event and likely wouldn't be home until 1:00 a.m.

### **C. The Gala**

At 9:45 p.m. on October 31, 2019, when the Museum was preparing to display the Bill of Rights on the balcony, Gates and her associates launched their plan. Gates entered the bathroom on the Museum's upper balcony and surreptitiously changed into her alternate costume: a black dress with a matching masquerade mask, a pair of black satin gloves, and a scarlet "Miss Demeanor" sash. Wilkinson feigned passing out at the bottom of the balcony stairs, which caused a few people to shout and a small crowd to gather. The commotion distracted the guards stationed by the Bill of Rights at the top of the stairs. As the guards turned their heads, Gates slipped past and down the connecting hallway, through the archway on the south side, and into the room where the Bill of Rights was.

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<sup>2</sup> During his trial testimony, Chase indicated that it was during this time when Gates's behavior changed.

Upon entering, Gates encountered Greenwood, who had unlocked the display case that contained the Bill of Rights. He later admitted that he had been planning to hold the document while no one was around. Gates hesitated for a moment but soon realized that Greenwood was heavily inebriated. She then approached Greenwood and brandished a knife. In a hushed tone, Gates told Greenwood to stay quiet while she used her sash to tie Greenwood's hands behind his back and directed him away from the Bill of Rights.

Gates guided Greenwood through the archway to the north and across the hallway toward an unfinished exhibit room. Museum staff had blocked off the archway with two brass stanchions and a velvet rope. Gates and Greenwood maneuvered past the stanchions and walked toward an empty, inset wall display case that was approximately fifty feet from Greenwood's original position by the Bill of Rights. The acrylic doors had not yet been installed, so Gates nudged Greenwood into the display alcove and pulled back a heavy red velvet curtain that was otherwise intended to keep the construction eyesore out of patrons' view during business hours.

Gates returned to the Bill of Rights, where Greenwood had already conveniently opened the display case. She pulled the document out and replaced it with a replica created by Poole. Gates rolled up the original Bill of Rights and hid it in her tripod case. She returned to her original costume and finished taking photos for the night.

When the time reached 10:00 p.m., Museum staff wheeled out (what everyone assumed was) the Bill of Rights, and the fake document remained on display for the rest of the evening. Some people wondered where Greenwood was, and a rumor spread that he had too much to drink and needed to be driven home. Gates finished taking photos of the gala and left the Museum around 11:30 p.m.<sup>3</sup> By midnight, most guests had left the Museum. Greenwood was discovered by the cleaning staff at around 2:00 a.m. Though his hands were still tied, he had managed to crawl out from behind the curtain before passing out.

The cleaning crew immediately called Arcadia City Police and an ambulance to the scene. After Greenwood was medically cleared, he gave a statement to the police where he suggested that the Bill of Rights had been stolen. Greenwood's description of the assailant was not helpful due to the state he was in. Subsequent testing of the Bill of Rights in the Museum confirmed that it was fake. The only other physical evidence recovered from the scene was the red "Miss Demeanor" sash.

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<sup>3</sup> Chase later testified that Gates arrived home just before 5:00 a.m.

## D. The Investigation

In the following days, the Federal Bureau of Investigation (FBI) took over the case. With only a limited amount of evidence, the investigation moved slowly. The first step was a forensic analysis of the sash. After visiting all the costume stores in Arcadia City, the FBI determined that the sash was custom made and one of a kind. The FBI began conducting interviews with Gala patrons, but no one remembered anyone wearing the sash. To assist the investigation, the Arcadia City Police created a twenty-four hour tip line that quickly started receiving hundreds of calls.

A week after the gala, the authorities had made no progress in the investigation. Meanwhile, the Arcadia Times picked up the story and began running daily pieces about “The Scarlet Sash”: an eponym that the newspaper had created for the thief. Most of the reporting about the heist was either wild speculation or recirculation of the leaked sash photos. The Arcadia Times also regularly criticized Greenwood for rushing the event and law enforcement for failing to solve the case. The immense public pressure weighed heavily on the Arcadia Police Commissioner, who was quoted saying that “[the robbery] was one of the greatest embarrassments of [his] career” and that the police “[would] make progress soon or heads w[ould] roll.”

On November 15, Chase called the tip line, claiming that he found something he believed connected his partner Gates to the Halloween Heist. Detective Tobias Jenkins from the Arcadia City Crimes Against Persons Unit followed up on the call and drove to Chase’s residence.

When Detective Jenkins arrived, Chase ushered him into the house and directed him to Gates’s laptop where Chase had discovered a photo of Gates wearing a red sash. After a brief discussion with Chase about what prompted him to call the police, Detective Jenkins opened a folder on the laptop titled “Holiday Photos,” where he found four subfolders: “Halloween Event,” “Halloween Hijinx,” “Al’s Birthday 2019,” and “New Years 2019.” Detective Jenkins opened the first subfolder, “Halloween Event,” and found the photo of Gates wearing a red sash. Recognizing the sash from the investigation, Detective Jenkins continued perusing the laptop subfolders. He used the “Properties” function to discover that the two Halloween subfolders were both made within days of the Halloween Heist. He then opened the subfolder labeled “Halloween Hijinx,” where he discovered a photo of the Bill of Rights.

Detective Jenkins asked Chase if he was familiar with the location in the photo, and Chase replied that it might be Gates’s storage unit. After reporting his discovery, Detective Jenkins returned with a warrant to search Gates’s home and her storage unit. In the storage unit, authorities found the stolen Bill of Rights. Shortly

thereafter, law enforcement obtained a warrant for Gates's arrest and took her into custody. During interrogations,<sup>4</sup> Gates gave up her co-conspirators, Poole and Wilkinson, who law enforcement subsequently arrested.

## **E. Trial and Sentencing**

A grand jury indicted Gates for theft of government property in violation of 18 U.S.C. § 2112. Gates pleaded not guilty, and the matter proceeded to trial. At the final pre-trial conference, the Defendant filed a motion *in limine* to suppress all evidence derived from what she alleged was a constitutionally-tainted search of her laptop. This Court denied the Defendant's motion on the grounds that the search was permissible under the private search doctrine. Following trial, a jury found Gates guilty.

Shortly after the jury announced its verdict, Gates filed a motion for a new trial on the grounds that the Government unconstitutionally used evidence collected in violation of the Fourth Amendment. This Court also denied that motion.

Next, the Probation Office conducted a pre-sentence investigation to gather all relevant sentencing information. Both parties submitted their versions of the facts, and later the Probation Office interviewed Gates (with her attorney present). The Probation Office circulated a draft pre-sentence report ("PSR"), and Gates objected to the recommended application of a sentencing enhancement for "abduction."<sup>5</sup> Gates renewed her objection before this Court at a subsequent sentencing hearing. This Court determined, for the reasons more fully explained below, that the sentencing enhancement is inapplicable, and imposed a sentence that does not incorporate the enhancement.

## **DISCUSSION**

After she was indicted, Gates filed a motion *in limine* that requested this Court to suppress all evidence derived from the search of the second subfolder, "Halloween Hijinx." The motion argued that Officer Jenkins violated the Fourth Amendment when he conducted a warrantless search into Gates's laptop and accessed incriminating photos. The Government opposed the motion, arguing that these circumstances fell within the scope of the private search doctrine. This Court agreed with the Government and denied the motion. After trial, Gates again filed a motion for a new trial,

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<sup>4</sup> At this point, Gates had received her Miranda rights, and her attorney was present.

<sup>5</sup> An addendum to the PSR confirms that Gates objected to the PSR's application of the four-level abduction enhancement for forcibly moving Greenwood during the heist.

arguing that her conviction was based on unconstitutional evidence. This Court again denied that motion for reasons that will be addressed below. At the subsequent sentencing hearing, the parties disputed whether a sentencing enhancement for “abduction” was proper, and this Court declined to apply that enhancement for the reasons also provided in this Memorandum Decision.

## **I. The Defendant’s Fourth Amendment Rights**

In her pre-trial motion *in limine*, Gates argued that when Officer Jenkins opened the second subfolder on her laptop, he exceeded the scope of Chase’s private search and thereby committed an unreasonable search prohibited by the Fourth Amendment. The Government disagreed, arguing that while Officer Jenkins’s search may have gone outside the scope of the initial search by Chase, the “container rule” nonetheless sanctioned his actions. *See United States v. Jacobson*, 466 U.S. 109 (1984). In other words, Chase’s first search disrupted Gates’s reasonable expectation of privacy in the entire “Halloween” folder, which allowed Officer Jenkins to search the second subfolder without a warrant.

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. The Fourth Amendment thwarts two types of government invasions. *See Jacobsen*, 466 U.S. at 113. First, it preserves society’s reasonable expectation of privacy from government searches. *Id.* at 109. Second, it obstructs the government’s ability to seize property and interfere with people’s possessory interests in their property. *Id.*

The Supreme Court’s Fourth Amendment jurisprudence has consistently recognized that “[t]he Fourth Amendment protects people, not places.” *Katz v. United States*, 389 U.S. 347, 351 (1967). The *Katz* Court identified the “reasonable expectation of privacy” that now sits at the base of all Fourth Amendment cases. *Id.* at 361 (Harlan, J., concurring). The reasonableness of an officer’s conduct when performing a search requires a close factual analysis of the circumstances. *Terry v. Ohio*, 392 U.S. 1, 29 (1968).

While the Fourth Amendment limits *government* action, it does not reach *private* actions that may similarly frustrate an individual’s reasonable expectation of privacy. *Jacobson*, 466 U.S. at 113–14 (citing *Walter v. United States*, 447 U.S. 649, 662 (1980) (Blackmun, J., dissenting)). “[T]he Fourth Amendment proscribes only governmental action, and does not apply to a search or seizure, even an unreasonable one, effected by a private individual not acting as an agent of the Government or with the participation or knowledge of any governmental official.” *Id.* Yet sometimes the

interplay of a private individual’s initial search and a law enforcement officer’s subsequent search can be complex. In such cases, government agents infringe on Fourth Amendment rights only when they exceed the scope of the private citizen’s search. *See Jacobson*, 466 U.S. at 125–26. “It is well-settled that when an individual reveals private information to another, he assumes the risk that his confidant will reveal that information to the authorities, and if that occurs the Fourth Amendment does not prohibit governmental use of that information.” *Id.* at 117.

When addressing the constitutionality of government searches in the digital era, courts have found precedent less useful at articulating citizens’ reasonable expectations of privacy. *See e.g., United States v. Fall*, 955 F.3d 363, 370 (4th Cir. 2020) (“While we have not addressed the private search doctrine in the context of electronic devices, our sister circuits have utilized varying approaches when confronted with this issue.”).<sup>6</sup>

In the context of a private search, courts measure a government agent’s additional invasions of a defendant’s privacy by: (1) the degree to which they have exceeded the scope of the private search and, (2) whether, objectively, the government agent proceeded with virtual certainty that the search would reveal “nothing else of significance.” *Jacobson*, 466 U.S. at 119. If the government search exceeds the scope of the private one, or if there is no virtual certainty, the search is unreasonable and requires a warrant. *Id.* at 114. However, courts have been unable to define uniformly the “scope” of a particular search and the requisites for meeting the “virtual certainty” standard. Because the Fourteenth Circuit has not yet addressed this issue, this Court provides an overview of the current case law from other circuits.

Some courts read *Jacobson* narrowly and preserve an individual’s reasonable expectation of privacy in electronic devices. The narrowest of these approaches, in the context of searching electronic files, holds that the scope of an officer’s search must match the private search perfectly, down to the level of individual files. These courts limit the scope of an officer’s search to an exact one-to-one “file” view. If an officer’s search exceeds, rather than replicates, the breadth of the private party’s initial search, then it violates the Fourth Amendment. *United States v. Sparks*, 806 F.3d

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<sup>6</sup> While the Supreme Court has not addressed the facts here, it has held that searching a defendant’s phone incident to arrest violates the Fourth Amendment. *Riley v. California*, 573 U.S. 373 (2014). There, the Court observed that a cell phone “typically expose[s] the government to far more [personal data] than the most exhaustive search of a house” and therefore typically requires a warrant. *Id.* at 396. Though *Riley*’s facts are distinguishable and the relevant doctrine (search incident to arrest) does not apply here, *Riley* nonetheless provides some—albeit limited—legal guidance to the case before this Court.



1323, 1336 (11th Cir. 2015), overruled on other grounds by *United States v. Ross*, 963 F.3d 1056 (11th Cir. 2020) (holding that an unreasonable search occurs when an officer views a video on a cellphone that the private citizen had not viewed first). See also *United States v. Suellentrop*, 953 F.3d 1047, 1050 (8th Cir. 2020) (permitting officers' warrantless search of defendant's cellular telephone because the private citizen had already viewed that same, single image).

Courts that adopt this narrow view have determined that modern concerns, like those expressed in *Riley*, affect the “virtual certainty” analysis in ways that require additional privacy protections. 573 U.S. at 394. In other words, law enforcement agents cannot be “virtually certain” that a search into a massive trove of electronic data will not tell them any more than they had already learned from a private citizen’s antecedent search. See *United States v. Lichtenberger*, 786 F.3d 478, 488 (6th Cir. 2015). Absent this virtual certainty, any time an officer attempts to view evidence that a private party had not previously viewed, the officer violates the owner’s Fourth Amendment rights.

Other courts, however, have taken a different approach, viewing both scope and virtual certainty in ways more favorable to law enforcement. In those jurisdictions, an officer may exceed the scope of a private search if the search occurred within a closed container, and the officer was substantially certain of the container’s contents. See e.g., *United States v. Runyan*, 275 F.3d 449, 463 (5th Cir. 2001). In the Fourth Amendment context, the Supreme Court defines “container” as “any object capable of holding another object.” *New York v. Belton*, 453 U.S. 454, 460 n.4 (1981). While this definition typically refers to tangible chattel, some courts have assumed it also applies to digital media storage devices. *Runyan*, 275 F.3d at 458 (“[W]e assume without deciding that computer disks are ‘containers.’”). See also *Rann v. Atchison*, 689 F.3d 832, 837 (7th Cir. 2012); *United States v. Reddick*, 900 F.3d 636, 638 (5th Cir. 2018).

The general “container rule” is that when a private searcher accesses one part of the “container,” the owner’s expectation of privacy in the entire container dissolves. *Runyan*, 275 F.3d at 463. Thus, law enforcement officers do not conduct a new “search” for Fourth Amendment purposes each time they examine a particular item found within the container. *Id.* at 465. However, the subsequent search is only permitted by the Fourth Amendment if the officers are substantially certain of what they will find. *Id.* at 463. This caveat limits law enforcement’s ability to go on “fishing expeditions.” *Id.* at 463–64. A court may find substantial certainty “based on the statements of the private searchers, [law enforcement’s] replication of the private

search, and [law enforcement’s] expertise.” *Id.* This element grants police the discretion to increase the breadth of their search slightly to help with further investigation, while also still protecting the rights of the individual.

Turning to the case at hand, I find that Detective Jenkins’s search of the second subfolder did not violate the Fourth Amendment. This Court decides to join the Fifth and Seventh Circuits in reading *Jacobsen* broadly. Citizens and courts alike should trust law enforcement’s expertise and ability to act reasonably and with substantial certainty when an individual’s expectation of privacy has been compromised. Narrowly construing *Jacobsen*’s holding limits police officers too much. Thus, this Court understands that the “scope” of the private search must retain enough flexibility to include containers when law enforcement officers are substantially certain of what they will find inside.

Chase’s initial private search into the first subfolder and Detective Jenkins’s subsequent viewing of its contents were protected by the private search doctrine. Because the search frustrated any reasonable expectation of privacy in the laptop, Detective Jenkins was permitted to investigate areas where he was substantially certain of the contents. Here, a detective with seventeen years of experience was called to the scene explicitly to investigate a potential suspect who may have stolen the Bill of Rights. Chase’s recollection of Gates’s recent behavior as well as the photo of the sash from the crime scene added to the officer’s awareness of the situation. Lastly, the name of the second opened subfolder, “Halloween Hijinx,” combined with the fact that it was created days after the heist occurred, formed enough substantial certainty for Detective Jenkins to continue his search. I hold that Detective Jenkins’s decision to view the second subfolder in this case did not violate the Fourth Amendment, and the Court properly denied the Defendant’s motion *in limine* to suppress evidence obtained through the Detective’s action.

## **II. The Abduction Enhancement under the Federal Sentencing Guidelines**

Gates objected to her PSR’s recommended sentence because it included a four-point enhancement for abduction, which she believed should have been only a two-point enhancement for physical restraint.<sup>7</sup> *See* U.S.S.G. § 2B3.1(b) (2022). The two-

---

<sup>7</sup> Physical restraint is “the forcible restraint of the victim such as by being tied, bound, or locked up.” U.S.S.G. § 1B1.1 cmt. n.1(L).

point difference would entitle Gates to a thirty-month reduction in her minimum sentence.<sup>8</sup> Gates first objected to the Probation Office, which did not alter its recommendation, and raised the same objection in a timely manner at the sentencing hearing. There, the parties were heard on this matter and this Court sustained the objection, declining to apply the sentencing enhancement as described in this Decision.

The Government contended that by moving Greenwood into a separate part of the Museum during the heist, the Defendant committed an “abduction” within the meaning of the Sentencing Guidelines. The Defendant’s response was that because she and Greenwood remained within the same building, she did not force Greenwood to a “different location.” *See id.* § 1B1.1 cmt. n.1(A). Defendant further argued that applying the abduction enhancement in this case renders the distinction between the two-level physical restraint enhancement and the four-level abduction enhancement effectively meaningless. The Government disagreed, asserting that the purpose and text of the Guidelines support applying the abduction enhancement.

After considering the Defendant’s objection, this Court refrains from imposing the more severe enhancement and concludes instead that only the two-level physical restraint enhancement should apply.

Congress enacted the Sentencing Reform Act of 1984 (SRA), 18 U.S.C. § 3551 *et seq.*, in response to what was perceived as a wide disparity in sentences for similar crimes, owing to federal judges’ unconditional discretion at sentencing. The SRA created the United States Sentencing Commission (“the Commission”)—a “bipartisan expert agency located in the judicial branch”—to promulgate uniform sentencing guidelines. United States Sentencing Commission, *Federal Sentencing: The Basics 2* (2020), available at [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/202009\\_fed-sentencing-basics.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/202009_fed-sentencing-basics.pdf) (last visited September 2, 2022). Initially, the Federal Sentencing Guidelines were mandatory and binding on lower courts. *See Mistretta v. United States*, 488 U.S. 361, 367 (1989) (Congress “rejected a proposal that would have made the sentencing guidelines only advisory.”). But in *United States v. Booker*, the Supreme Court held that Sixth Amendment protections render “the Guidelines system advisory while [nonetheless] maintaining a strong connection between the sentence imposed and the offenders real conduct . . . .” 543 U.S. 220, 246 (2005).

---

<sup>8</sup> Specifically, her recommended sentence fell between 151 and 188 months. Alternatively, the two-point enhancement would entitle her to a range of 121 to 151 months. *See id.* § 5A.

At issue here is calculation of the Defendant’s sentence for violation of 18 U.S.C. § 2112 and whether that calculation should include an enhancement for abduction.<sup>9</sup> The Guidelines add four points to the base offense if a victim “was abducted to facilitate commission of the offense or to facilitate escape . . . .” U.S.S.G. § 2B3.1(b)(4)(A). The Commentary defines “abducted” as occurring when “a victim was forced to accompany an offender to a different location.” *Id.* § 1B1.1 cmt. n.1(A). The Commentary explains that one example of abduction is when “a bank robber forc[es] a bank teller from the bank into a getaway car.” *Id.*

The “[C]ommentary has no independent legal force—it serves only to *interpret* the Guidelines’ text, not to replace or modify it.” *United States v. Havis*, 927 F.3d 382, 386 (6th Cir. 2019) (citing *Stinson v. United States*, 508 U.S. 36, 46 (1993)) (emphasis in original). Thus, the “Commentary binds courts only ‘if the guidelines which the [C]ommentary interprets will bear the construction.’ ” *Havis*, 927 F.3d at 386 (quoting *Stinson*, 508 U.S. at 46). Additionally, the Commission’s “interpretation of its own regulations . . . must be given controlling weight unless it is plainly erroneous or inconsistent with the regulation.” *Stinson*, 508 U.S. at 45 (internal citations omitted). Though the Guidelines are advisory, federal judges must still defer to the Application Notes and Commentary to guide their judgments. Here, the parties do not challenge the provided definitions; rather, they disagree on the undefined phrase “different location” as it is used for the abduction enhancement.

The abduction enhancement has engendered a three-way circuit split over “whether the forced movement of victims from one room or area to another room or area within the same building constitutes an abduction for purposes of § 2B3.1(b)(4)(A).” *United States v. Archuleta*, 865 F.3d 1280, 1285 (10th Cir. 2017). See generally Sabrina Jemail, Note, *Location, Location, Location: The Federal Sentencing Guidelines’ Abduction Enhancement and the Meaning of “Different Location”*, 90 U. Cin. L. Rev. 1042 (2022). In other words, courts disagree on the precise meaning of “different location.”

Some circuits take a narrow view and hold that movement inside the same building does not amount to an abduction. See e.g., *United States v. Hill*, 963 F.3d 528 (6th Cir. 2020); *United States v. Eubanks*, 593 F.3d 645 (7th Cir. 2010). These courts recognize that “the phrase ‘different location’—by itself—is inherently vague because it can be interpreted at many different levels of generality.” *Hill*, 963 F.3d at 533 (citations omitted). Sometimes, the phrase refers to “a different worksite, subdivision,

---

<sup>9</sup> Neither party takes issue with the application of other specific offense characteristics under U.S.S.G. § 2B3.1. Accordingly, a district court may consider evidence presented at trial, undisputed statements from the PSR, and evidence presented at the sentencing hearing to reach its sentencing judgment. *United States v. Green*, 981 F.3d 945, 953 (11th Cir. 2020).

or bank,” and other times, it refers to a different place within the same room. *Id.* To reconcile the linguistic ambiguity, these courts incorporate the “plain and ordinary meaning” and reason that “[t]he ordinary meaning of ‘different locations’ would not apply to each individual office or room . . . .” *United States v. Whatley*, 719 F.3d 1206, 1222 (11th Cir. 2013). Instead, context and circumstances suggest that “different location” “refer[s] to a place other than the store being robbed, not to a separate area or spot within that store” or building. *Hill*, 963 F.3d at 533. Adopting this interpretation allows courts to remain faithful to the interpretive canon that “words and people are known by their companions.” *Maracich v. Spears*, 570 U.S. 48, 62 (2013). Moreover, this approach “avoid[s] giving statutory [language] ‘unintended breadth.’” *Id.* at 62–63.

Other circuits disagree. These courts adopt a broad reading of “different location” and conclude that even movement within the same building may make an offender’s conduct deserving of the abduction enhancement. *See e.g., United States v. Osborne*, 514 F.3d 377 (4th Cir. 2008); *United States v. Buck*, 847 F.3d 267 (5th Cir. 2017). The Fourth Circuit, for instance, evaluates “the presence or absence of doorways, lot-lines, thresholds, and the like” in conjunction with whether “ordinary parlance” would describe the victim’s new location as a “different location.” *Osborne*, 514 F.3d at 389–90. In *Osborne*, the court applied the abduction enhancement when a victim was moved from a secured pharmacy section of a drug store to the front door, reasoning that “one among several rooms in the same structure” can qualify as a “different location.” *Id.* at 390. Supporting its conclusion, the court emphasized that the pharmacy was particularly distinct from the rest of the store because it was “divided by a counter, as well as a secured door passable only by authorized persons via keypad.” *Id.* Furthermore, the abduction enhancement thwarts the potential that an offender may use a victim as “a potential hostage,” thereby exposing the victim to potentially “dangerous consequences of isolation.” *United States v. Whooten*, 279 F.3d 58, 61 (1st Cir. 2002) (internal quotation marks omitted) (abduction enhancement applied when defendant moved store clerk sixty-five feet from store’s entrance).

And yet some other courts have crafted a three-part test whereby (1) the robbery victims must be forced to move from their original position in a way that reasonable persons would infer they are not at liberty to refuse; (2) the victims must accompany the offender to that new location; and (3) their relocation must have been to further either commission of the crime or the offender’s escape. *United States v. Reynos*, 680 F.3d 283, 286–87 (3d Cir. 2012). Yet, like the other courts, parties still disagree about the meaning of “location.” The Third Circuit applies a flexible definition. *Id.* In *Reynos*, that court concluded that “location does not need to have a physical construct,” making it “broad enough to encompass different points of reference within

the constructs of a single building or geographic site.” *Id.* at 290. *See also United States v. Archuleta*, 865 F.3d 1280 (10th Cir. 2017).

This Court, like the Sixth and Seventh Circuits, is persuaded that the abduction enhancement is inapplicable under the facts of this case because the plain and ordinary meaning of “different location” is a separate building. The Commentary’s example of a getaway car—which exposes the victim to a greater risk of harm—suggests that the Commission was concerned with movements more egregious than merely across a corridor. Here, Gates did not move Greenwood to an entirely different location that merits a heightened degree of treatment. Moreover, I am not convinced that stanchions and a curtain are sufficient thresholds that in other circumstances might support the enhancement.

Additionally, to apply the abduction enhancement here would dissolve the distinctions between the abduction and the physical restraint enhancements. At that point, any movement from room to room could amount to an additional four points on an offender’s sentence, even if an offender’s conduct better matches the physical restraint description. The Sentencing Commission, if it wished, could modify these enhancements or issue commentary contravening this Court’s judgment. Until then, this Court declines the Government’s invitation to distort the plain and ordinary meaning of the Commission’s words.

### CONCLUSION

For the reasons set forth above, this Court hereby directs the entry of judgment against Gates in accordance with the jury’s verdict and the sentencing proceeding.

The Clerk is directed to enter a Final Judgment that the Defendant is guilty of violating 18 U.S.C. § 2112 and for reasons otherwise contained in the Statement of Reasons, a sentence against the Defendant of one hundred twenty-two (122) months to be served in the custody of the Federal Bureau of Prisons.

SO ORDERED:

/s/ Vera Matel

Vera Matel, U.S.D.J.

August 25, 2022

# The Arcadian Times

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## Constitutional Crisis!

*The Scarlet Sash Steals the Show, and much more, at the Opening of the Smithsonian Museum of Important Papers*

By: Diane Kruger



Above: A leaked image of the red sash used to bind the hands of Museum Curator Bruce Greenwood. Sources close to the investigation claim that the sash was the only piece of physical evidence recovered at the scene.

The Nation is still reeling after the events of Halloween Night. Amidst a celebration of the documents that helped bring this country together, one person attempted the pull us apart. You may know her as the Scarlet Sash, and on October 31st she did the unthinkable. She stole the Bill of Rights.

Not much is known about the mysterious figure. The only clue she left behind was a red sash that read "Miss Demeanor" which she used to bind the hands of Museum Curator Bruce Greenwood during the heist, "She crept up behind me and pulled a knife out," Greenwood told police. He went on to say that he never got a good look at the Scarlet Sash before she tied his hands and left him behind a velvet curtain. However, his account of the night is hazy at best. Multiple witnesses confirmed that Greenwood seemed overly intoxicated before his disappearance that night.

The extreme nature of the crime has left many people wondering if perhaps Greenwood himself is partially to blame for the theft. Greenwood was inexplicably alone in the room with the Bill of Rights, and has admitted that he did so he could take the document out of the case and hold it without anyone knowing. The next question is why was there so little security at the event. Interviews with staff members indicate that Greenwood cut corners in order to try and open the museum on time. One anonymous security guard even told our reporter that Greenwood attempted to, "hide the fact that he was unprepared from the public eye." **Continued on Page 4**

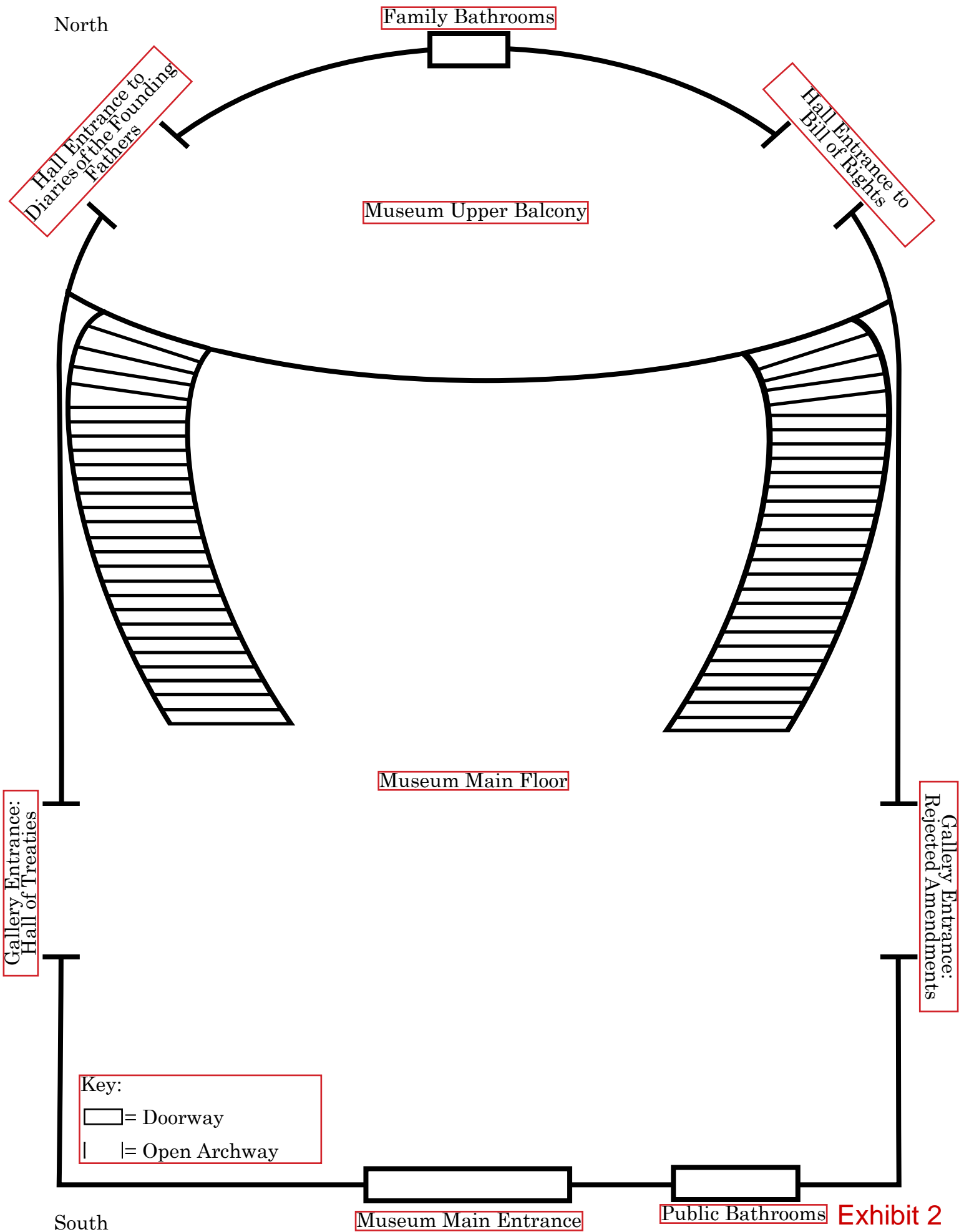
## Cold Case, Hot Heads

By: Harvey Keitel

*Tempers Flare as Federal and Local Authorities Are Left Fumbling in the Investigation of the Stolen Bill of Rights*

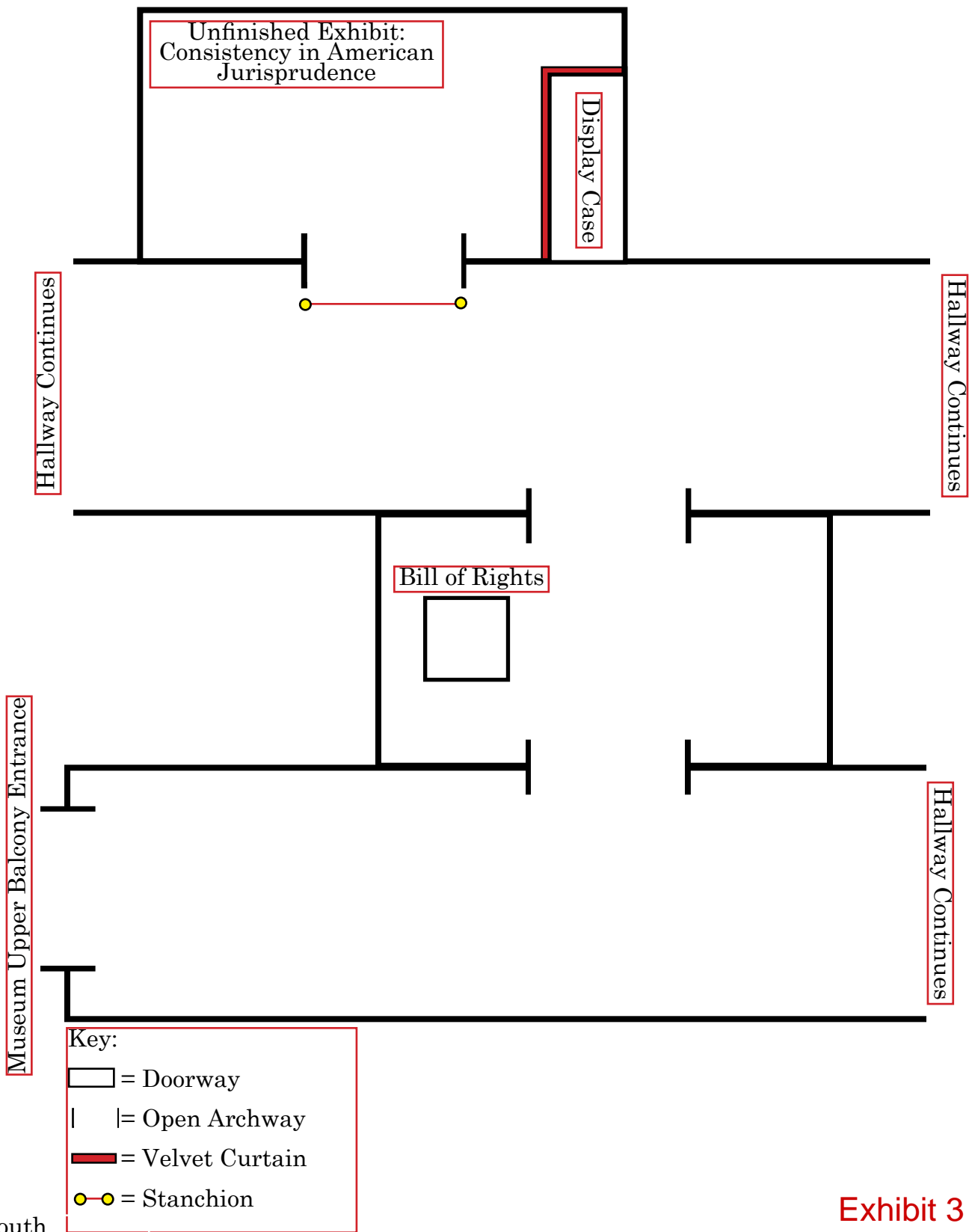
It's been seven days since the heist at the Smithsonian Museum of Important Papers, and police are no closer to naming suspects. The failure to make progress in the case has led to waning trust in police to recover the Bill of Rights. When questioned about the Arcadia City Police Department's failure to find any leads Commissioner William Wright snapped at the reporters and yelled that the theft, "is the greatest embarrassment of [his] career," and in a message to the department explained that if there wasn't a break in the case soon, "heads will roll." This threat was not made lightly as most people associate the success of the case with the potential success of Commissioner Wright's not-so-secret bid for mayor in next year's election. **Continued on Page 7**

**Exhibit 1**





North



South

Exhibit 3

United States District Court  
District of Arcadia

UNITED STATES OF AMERICA,

Plaintiff,

v.

BETHANY GATES,

Defendant.

Docket No. 2:13-CR-1418

Tuesday, February 15, 2022

VOLUME I

Trial Transcript In Front of the  
Honorable Vera Mital  
United States District Judge

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For the United States: Assistant United States Attorney  
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Proceedings recorded by electronic sound recording;  
Transcript produced by transcription service.

**United States v. Gates**

Day Two, Trial Transcript, 9:17 a.m.

**Testimony of Albert Chase**

**Direct Examination by Dior Rayne, Attorney for the United States**

RAYNE: Will you please state your name and profession for the record?

CHASE: My name is Albert Chase. Currently I am a bartender at the Arcadia City Tavern.

RAYNE: What is your relationship with the Defendant?

CHASE: Beth and I used to date. For a while actually. We met back on the set of her show because the writers thought it would be a good idea if she had a co-host; someone to bounce her theories off of. I was her foil. Things really took off after that. We began dating in 2013. We stayed together after the show got pulled. She wanted to keep making the series, but I wanted to settle down and start a life together.

RAYNE: What happened next?

CHASE: Well, we hit a bit of a rut. Around 2016 things got - complicated, I guess.

RAYNE: How so?

CHASE: Well, apparently a fair amount of her fans thought that Beth was lying to them. She had found some gold coins in a cave and was receiving a lot of pushback from the community about their authenticity. She never really talked about it with me though. Whenever I would ask, she would either snap at me or close up. All I ever got out of her was that she donated them, and she asked me never to bring it up again.

RAYNE: Did anything happen after that?

1  
2 CHASE: Well, then everything seemed to get better. The next week  
3 she told me she was cancelling the show. I was honestly overjoyed.  
4 She used the rest of her savings and got us a little house in  
5 Arcadia. Her free-lance job started picking up, and it finally  
6 felt like we were getting somewhere. We spent a few years getting  
7 to live as a couple. But, then 2018 came.

8  
9 RAYNE: What happened in 2018?

10  
11 CHASE: It was around the time they announced the museum. It was  
12 like everything changed overnight. Suddenly she was either out of  
13 the house or locked away in her office working on her computer.  
14 She was there one day then gone the next.

15  
16 RAYNE: How did you feel about this change in behavior?

17  
18 CHASE: Honestly, I was worried. The last time she had been like  
19 that was when she was working on the show. I saw what it had done  
20 to her, and I didn't want it to happen again. She was acting so  
21 frantic.

22  
23 RAYNE: Frantic how?

24  
25 CHASE: It was like I was living with a stranger. She began staying  
26 up late, never texting back. We'd be having a conversation and  
27 suddenly she would get an idea and run into her office and lock  
28 herself away for hours. I hardly saw her. If she wasn't out working  
29 a photography job she was hovering over her laptop.

30  
31 RAYNE: I see.

32  
33 \*\*\*

34  
35 RAYNE: Let's turn now to the events of November 15, 2019. Do you  
36 recall that day?

37  
38 CHASE: I do, that was the day everything changed.

39  
40 RAYNE: Can you elaborate?

41  
42 CHASE: Well, like I said I was worried about her. Everything had  
43 been so off. I had barely seen her. We had my birthday party a  
44 week prior, but even then she was just mostly taking photos and  
45 keeping to herself. It was like she didn't want to be there. So on  
46 the fifteenth, while she was out of the house, I went through her  
47 personal laptop. I just wanted to see if there was anything there  
48 that could explain why she was acting so strange.

1  
2 RAYNE: What did you find?

3  
4 CHASE: Well, I started going through some of the photo files. I  
5 remembered that on Halloween night she got home super late so I  
6 figured I would check there first. Her files are very organized so  
7 it wasn't very hard to find. I opened a folder labeled "Holiday  
8 Pictures" and saw four other folders.

9  
10 RAYNE: What were they called?

11  
12 CHASE: "Al's Birthday 2019," "Halloween Night," "Halloween  
13 Hijinx," and "New Years 2019."

14  
15 RAYNE: Please walk us all through what happened next.

16  
17 CHASE: Well I began going through the Halloween photos. At first  
18 it seemed like pretty normal stuff. I knew she had been taking  
19 photos at the event. But then I saw a photo of her. I was surprised  
20 because she usually keeps her personal photos separate from her  
21 work photos. My heart dropped when I took a closer look. I saw the  
22 "Miss Demeanor" sash.

23  
24 RAYNE: How were you familiar with the sash?

25  
26 CHASE: It was all over the news. Everyone knows that the sash was  
27 the only thing left at the scene. We had all seen it. I just didn't  
28 know why Beth was wearing it.

29  
30 RAYNE: What did you do next?

31  
32 CHASE: Well, I briefly flicked through some more of the photos, I  
33 wasn't paying a lot of attention though. Afterwards I locked the  
34 laptop and paced around for a bit. About ten minutes later I  
35 realized I had to have someone else look, so I called the police.  
36 Detective Jenkins arrived at the house shortly thereafter. I sat  
37 him down at the computer and pulled up the image.

38  
39 RAYNE: And then?

40  
41 CHASE: Well, he saw the photo of Beth. He asked if there were any  
42 other photos like it, and I told him not that I saw. But then he  
43 opened the "Halloween Hijinx" photos and then (pause) and then it  
44 all fell apart.

45  
46 RAYNE: What did you see?

47

1 CHASE: Well I wasn't looking at the photos with him, at least until  
2 he turned the screen around and showed me. He was looking at a  
3 photo of a small area with sheets hung up, and there was a big  
4 piece of paper on the table. He asked me if I recognized the area.  
5 I told him I didn't, but that Beth had a storage unit she would  
6 spend time at. I had never been there. After that, he told me not  
7 to touch the laptop and left in a hurry. He was back within the  
8 hour with a warrant and more officers. They tore apart the house  
9 looking around. I left. I couldn't stand to be around anymore. I  
10 heard over the news about what Beth did. I haven't talked to her  
11 since, I couldn't stand to.

12  
13 RAYNE: Thank you. I have no further questions.

14  
15 **Cross Examination by Ruby Segars, Attorney for the Defendant**

16  
17 SEGARS: You just testified that you looked into Ms. Gates's private  
18 laptop because you were worried about her, is that correct?

19  
20 CHASE: Yes.

21  
22 SEGARS: But during your phone call to Detective Jenkins, you said  
23 that you were actually just worried that she may have been cheating  
24 on you?

25  
26 CHASE: (pause) I did say that. She had come home really late  
27 though. Beth said that she would be back around one, but it was  
28 almost five by the time her car pulled up.

29  
30 SEGARS: Was she, in fact, cheating on you?

31  
32 CHASE: No, she wasn't.

33  
34 SEGARS: You were also unemployed at this time, correct?

35  
36 CHASE: I was.

37  
38 SEGARS: So the income you were living on was all coming from Ms.  
39 Gates?

40  
41 CHASE: Yes, but I was looking for a job. It was just hard at that  
42 time.

43  
44 SEGARS: I can see that. In fact, isn't it true that you attended  
45 Arcadia Law Enforcement Academy?

46  
47 CHASE: ALEA? I mean, yeah. Well, sort of. I dropped out after a  
48 month. It was hard finding a job I could really commit to.

1  
2 SEGARS: So it was hard to find a job, or it was just hard for you  
3 to commit to a job? Which is it?

4  
5 CHASE: Well, I mean (pause) it was hard to find a job I could enjoy  
6 for a long time. Like a good job.

7  
8 SEGARS: Do you not think police work is a good job?

9  
10 CHASE: That's not what I meant. I still think being a cop would be  
11 a great job.

12  
13 SEGARS: So then you called the cops hoping to one day get back  
14 into the academy?

15  
16 CHASE: No. I called the police because I thought it was the right  
17 thing to do.

18  
19 SEGARS: You mentioned in your testimony that when Officer Jenkins  
20 arrived, you "sat him down and showed him the photos"?

21  
22 CHASE: Yes, I did.

23  
24 SEGARS: But you didn't physically pull up the photos, did you?

25  
26 CHASE: What do you mean?

27  
28 SEGARS: You weren't the one who clicked open the folder and showed  
29 the photos to Officer Jenkins.

30  
31 CHASE: (pause) I did not.

32  
33 SEGARS: In fact you just pointed at the screen and said "There,  
34 that one. I found it in the Halloween Folder."

35  
36 CHASE: I did.

37  
38 SEGARS: Which folder were you pointing at?

39  
40 CHASE: At the time the "Holiday Photos" folder was pulled up.

41  
42 SEGARS: When Detective Jenkins opened the "Holiday Photos," did  
43 you then clarify for him that the file you had looked at was  
44 specifically in the "Halloween Event" folder?

45  
46 CHASE: I did.

47  
48 SEGARS: Was the "Halloween Event" folder the only folder you  
49 opened?

1 CHASE: Yes.

2

3 SEGARS: Did you, yourself, ever open up the "Halloween Hijinx"  
4 folder?

5

6 CHASE: No.

7

8 SEGARS: Thank you Mr. Chase. I have no further questions.

9

10 I hereby certify that the forgoing is a true and accurate  
11 transcription of the testimony of Albert Chase, taken on February  
12 14, 2022, at the jury trial in United States v. Gates, No. 2:13-  
13 CR-1418, in the United States District Court for the District of  
14 Arcadia.

15

16

Certified By:

17

*Charles Thomson*

18

Charles Thomson

19

Court Reporter

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21

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23

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United States District Court  
District of Arcadia

UNITED STATES OF AMERICA,

Plaintiff,

v.

BETHANY GATES,

Defendant.

Docket No. 2:13-CR-1418

Tuesday, February 15, 2022

VOLUME I

Trial Transcript In Front of the  
Honorable Vera Mital  
United States District Judge

Appearances:

For the United States: Assistant United States Attorney  
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1 Proceedings recorded by electronic sound recording;  
2 Transcript produced by transcription service.  
3

4 **United States v. Gates**

5  
6 Day Two, Trial Transcript, 1:15 p.m.  
7

8 **Testimony of Detective Tobias Jenkins**  
9

10 **Direct Examination by Dior Rayne, Attorney for the United States**  
11

12 RAYNE: Will you please recite your name and job for the record?  
13

14 JENKINS: My name is Detective Tobias Jenkins, and I am currently  
15 employed with the Arcadia City Police Department (ACPD). I have  
16 been with the ACPD for a total of seventeen years, and I finally  
17 made detective three years ago.  
18

19 RAYNE: What is your relation to this case?  
20

21 JENKINS: I was placed on the Bill of Rights case about one week  
22 after the incident. It was early November. I usually work  
23 homicides, but with a case like this it was all hands-on deck.  
24 Because of the nature of the case the Federal Bureau of  
25 Investigation had taken over a lot of the work, so most of us local  
26 officers were stuck at desk duty answering hundreds of calls on  
27 the tip line. We were chasing down cold calls and fielding every  
28 conspiracy people had.  
29

30 RAYNE: What do you mean by "conspiracy"?  
31

32 JENKINS: I mean people would call in saying the craziest things.  
33 One lady was convinced that her dog had eaten the Bill of Rights.  
34 She claimed that she had found a scrap of the Eighth Amendment on  
35 their morning walk. Another guy said that he received a ransom  
36 note from the ghost of Martha Washington and that her spirit was  
37 angry about campaign contributions or something like that. They  
38 weren't all that crazy, but those ones certainly stuck out. Most  
39 of them were pretty run of the mill.  
40

41 RAYNE: What did you do when you received these calls?  
42

43 JENKINS: Well, we followed protocol. For every call that came in,  
44 an officer went out to investigate. This was the Bill of Rights  
45 we're talking about. We had to do our due diligence and follow  
46 every lead. Even the crazy ones.  
47

1 RAYNE: Turning now to November 15, 2019. Did you receive any calls  
2 that day?

3 JENKINS: I did. I received about twenty calls before noon. I then  
4 received a call from Albert Chase. Chase told me that me that he  
5 had been worried that his girlfriend was cheating on him but that  
6 now he thought she may have been involved in the Halloween Heist.  
7

8 RAYNE: Did this call stand out at all?  
9

10 JENKINS: Not at the time. It was about as standard as those calls  
11 get. Everyone seems to think someone in their life is involved in  
12 some way, especially since it sounded like he already didn't trust  
13 her. But, again, we followed up on everything, so I made the drive  
14 over.  
15

16 RAYNE: The drive over to where exactly?  
17

18 JENKINS: 1791 East Todd Way, Arcadia City. Chase said that was  
19 where he and his girlfriend lived.  
20

21 RAYNE: What happened next?  
22

23 JENKINS: Well, Chase was waiting for me in the doorway when I  
24 pulled up. He was visibly upset and had bags under his eyes. The  
25 second I walked up to the house he ushered me inside.  
26

27 RAYNE: And then?  
28

29 JENKINS: He sat me down at the kitchen table in front of a laptop  
30 and then began pacing the room. I asked him what he had called me  
31 in about and he explained that he found a photo of his girlfriend  
32 wearing the red sash from the investigation. He pointed toward the  
33 laptop and told me to look for myself. The laptop, though, was  
34 locked on the home screen. After I pointed that out Chase reached  
35 over me and typed in the password. He had a folder pulled up on  
36 the screen.  
37

38 RAYNE: What was the file called?  
39

40 JENKINS: The folder was simply titled "Holiday Photos."  
41

42 RAYNE: What did Chase do next?  
43

44 JENKINS: He pointed at the screen and said "There, that one. I  
45 found it in the Halloween Folder."  
46

47 RAYNE: Did "Halloween Folder" mean anything to you?

1  
2 JENKINS: Not personally, I clicked on the "Holiday Photos" folder  
3 and it brought up four more folders. In order from left to right,  
4 the folders were "Al's Birthday 2019," "Halloween Event,"  
5 "Halloween Hijinx," and "New Years 2019." I asked Chase which file  
6 he was referring to and he said the photo was in the "Halloween  
7 Event" folder.

8  
9 RAYNE: What did you do next?

10  
11 JENKINS: I opened up that folder.

12  
13 RAYNE: And what did you find?

14  
15 JENKINS: It was mostly filled with photos of people at the  
16 Halloween Opening. I recognized a lot of them. The Mayor and  
17 Commissioner were both there, so was my Chief actually. He was  
18 dressed as Officer Wiggum from The Simpsons. At first nothing stood  
19 out to me, but then Chase directed me to a photo in the middle of  
20 the grouping.

21  
22 RAYNE: What did you see?

23  
24 JENKINS: It appeared to be a selfie of a woman in a black dress  
25 and black gloves with a red sash that read "Miss Demeanor." The  
26 woman was not wearing a mask, and the sash matched the one that  
27 had been recovered at the scene of the crime.

28  
29 RAYNE: Is that woman in the court room here today?

30  
31 JENKINS: Yes.

32  
33 RAYNE: Can you identify her? Just point to where she is.

34  
35 JENKINS: It was the Defendant, Bethany Gates. She is in a blue  
36 pantsuit.

37  
38 [Detective Jenkins points to the Defendant Bethany Gates]

39  
40 RAYNE: What did you do after seeing the photo?

41  
42 JENKINS: After seeing the photo, I was immediately intrigued. It  
43 was the first thing we had that was close to a break in the case.  
44 I confirmed with Chase that the woman in the photo was his  
45 girlfriend and then asked Chase if there was anything else in the  
46 "Halloween Event" folder similar to the selfie. He said he hadn't  
47 seen any, so I double checked.

1  
2 RAYNE: Did you find anything?

3  
4 JENKINS: I did not. The rest of the folder was just more photos  
5 from the event. So I went back into the "Holiday Photos" folder.  
6 I used the 'properties' function of the laptop and determined that  
7 the "Halloween Event" folder and the "Halloween Hijinx" folder had  
8 been created around the same time. So I opened the "Halloween  
9 Hijinx" folder.

10  
11 RAYNE: What did you find?

12  
13 JENKINS: Well, I found the Bill of Rights. The first photo in the  
14 folder showed a photo of the Defendant with two other people who  
15 would later be identified as Rachel Poole and Ed Wilkinson. The  
16 Defendant had a rolled-up document in her hand. The second photo  
17 showed a room with sheets hung up. It looked to be a make-shift  
18 clean room. On the table in that room was the Bill of Rights.

19  
20 RAYNE: How did you proceed?

21  
22 JENKINS: I asked Chase if he recognized the room. He told me that  
23 he did not but that the Defendant had a storage unit that she  
24 rented out. With that information I returned to the precinct. We  
25 got a warrant to search Gates's house and her storage unit.

26  
27 RAYNE: What was the basis for the search warrant?

28  
29 JENKINS: Oh, it was based entirely on the photos I'd just seen on  
30 the laptop at Gates's house. Before I saw those, we really didn't  
31 have anything to go on.

32  
33 RAYNE: Did the search of the house turn up anything?

34  
35 JENKINS: We collected the laptop at that time. We also found the  
36 black dress that the defendant had been seen wearing in the photo.

37  
38 RAYNE: Did the search of the storage unit turn up anything?

39  
40 JENKINS: It did. We found it. Right there in the storage unit  
41 sitting a table: the Bill of Rights.

42  
43  
44 **Cross Examination by Ruby Segars, Attorney for the Defendant**

45  
46 SEGARS: You mentioned during your direct that you received hundreds  
47 of calls every single day?

1  
2 JENKINS: Yes, we did. We also responded to every single one of  
3 them.

4  
5 SEGARS: So the call from Chase was just another drop in the bucket?  
6 Nothing out of the ordinary from what was going on?

7  
8 JENKINS: That is correct. When Chase originally called it sounded  
9 standard. There was nothing special about it.

10  
11 SEGARS: And when you arrived at the house you did not expect the  
12 call to actually yield anything useful for the investigation?

13  
14 JENKINS: Yes. When I arrived at the household, I did not expect a  
15 lead to turn up. At least until I saw the photo.

16  
17 SEGARS: When Chase pointed at the screen initially and said "There,  
18 that one. I found it in the Halloween folder" was the "Holiday  
19 Photos" folder present on the screen?

20  
21 JENKINS: Yes it was.

22  
23 SEGARS: And you were the one that opened the folder?

24  
25 JENKINS: I was.

26  
27 SEGARS: After you opened the main folder, you saw four separate  
28 folders inside?

29  
30 JENKINS: That is correct.

31  
32 SEGARS: And Chase then informed you that the photo he found was in  
33 the "Halloween Event" folder?

34  
35 JENKINS: Correct.

36  
37 SEGARS: You mentioned you recognized the sash in the photo?

38  
39 JENKINS: Yes. The sash stood out to me. It was the only physical  
40 piece of evidence left at the scene. Every cop from here to the  
41 coast had spent hours looking at that sash. I knew the second I  
42 saw it where it was from.

43  
44 SEGARS: You then checked the dates of "Halloween Event" and  
45 "Halloween Hijinx" to see when they were created?

46

1 JENKINS: That is correct. They had been created within a few days  
2 of each other, and just after the Bill of Rights went missing?

3  
4 SEGARS: Did you check the creation date of any of the other  
5 folders?

6  
7 JENKINS: I did not.

8  
9 SEGARS: So you do not know when the "Al's Birthday 2019" folder  
10 was created?

11  
12 JENKINS: No.

13  
14 SEGARS: This was a pretty high-stakes case from the get-go. Do you  
15 feel like there was a lot of pressure to try and find the Bill of  
16 Rights?

17  
18 JENKINS: I wouldn't say there was a lot of pressure on us. I mean,  
19 obviously this was a big deal, the Bill of Rights was taken, but  
20 we weren't skipping steps if that's what you're trying to imply.

21  
22 SEGARS: But you didn't go back and get a warrant before searching  
23 the rest of the laptop?

24  
25 JENKINS: I didn't need to.

26  
27 SEGARS: Not to mention that the Commissioner stated that your  
28 police department's failure to apprehend the culprits in the days  
29 following the heist was the one of the greatest embarrassments of  
30 his career? Didn't he?

31  
32 JENKINS: Yes. Commissioner Wright did say that. I didn't take it  
33 literally though. Everyone was on edge, and I think he was just  
34 reacting to how the story was being covered.

35  
36 SEGARS: But you still say there was no pressure to rush things?

37  
38 JENKINS: Yes, I suppose.

39  
40 SEGARS: Even though it is widely known that the Commissioner is  
41 planning on making a bid for Mayor next year?

42  
43 JENKINS: You'd have to ask him that.

44  
45 SEGARS: That's all I have. Thank you, Detective.

46

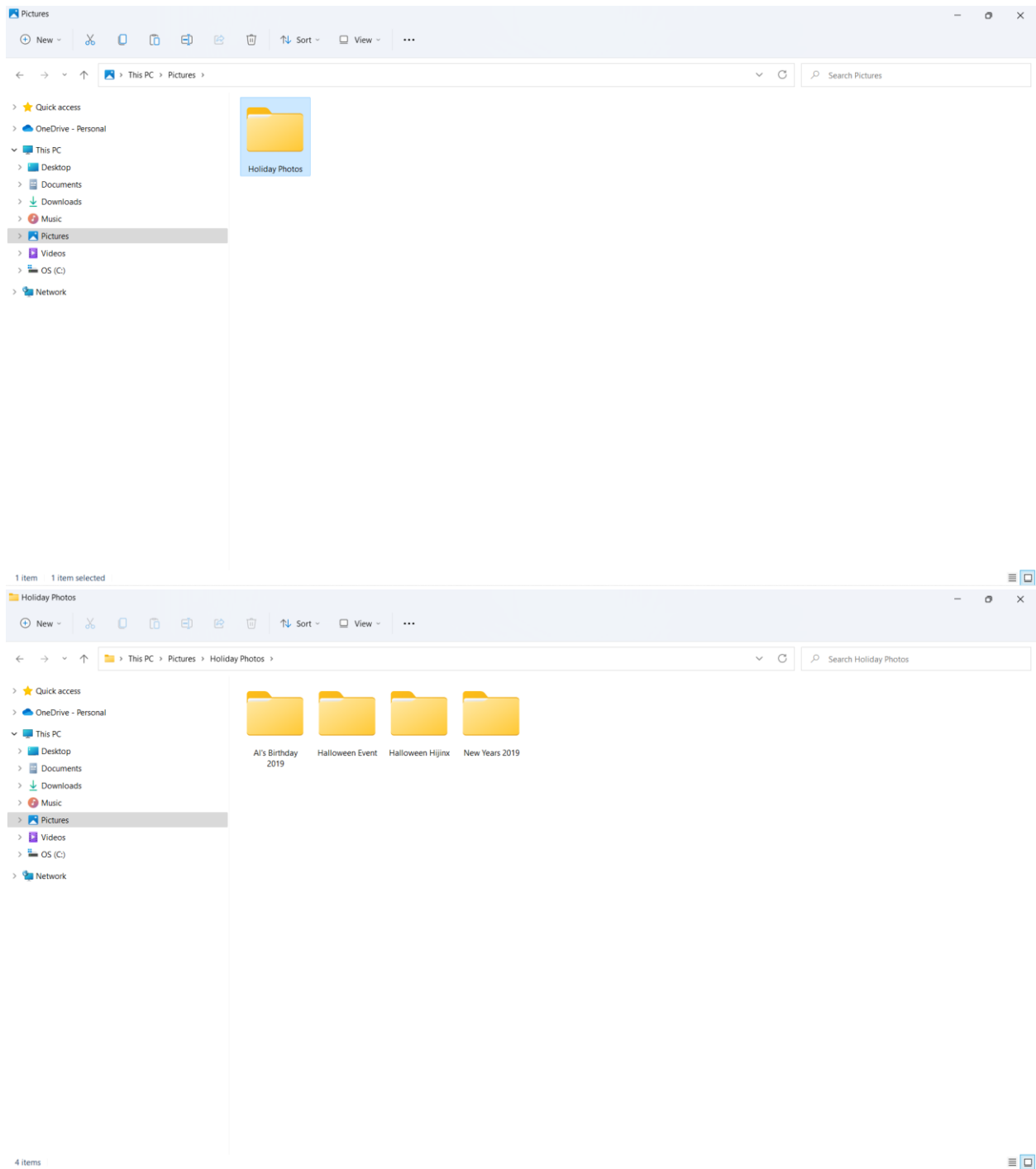
1 I hereby certify that the forgoing is a true and correct  
2 transcription of the testimony of Detective Tobias Jenkins, taken  
3 on February 14, 2022, at the jury trial in United States v. Gates,  
4 No. 2:13-CR-1418, in the United States District Court for the  
5 District of Arcadia.

6  
7 Certified By:

8 *Charles Thomson*

9 Charles Thomson  
10 Court Reporter  
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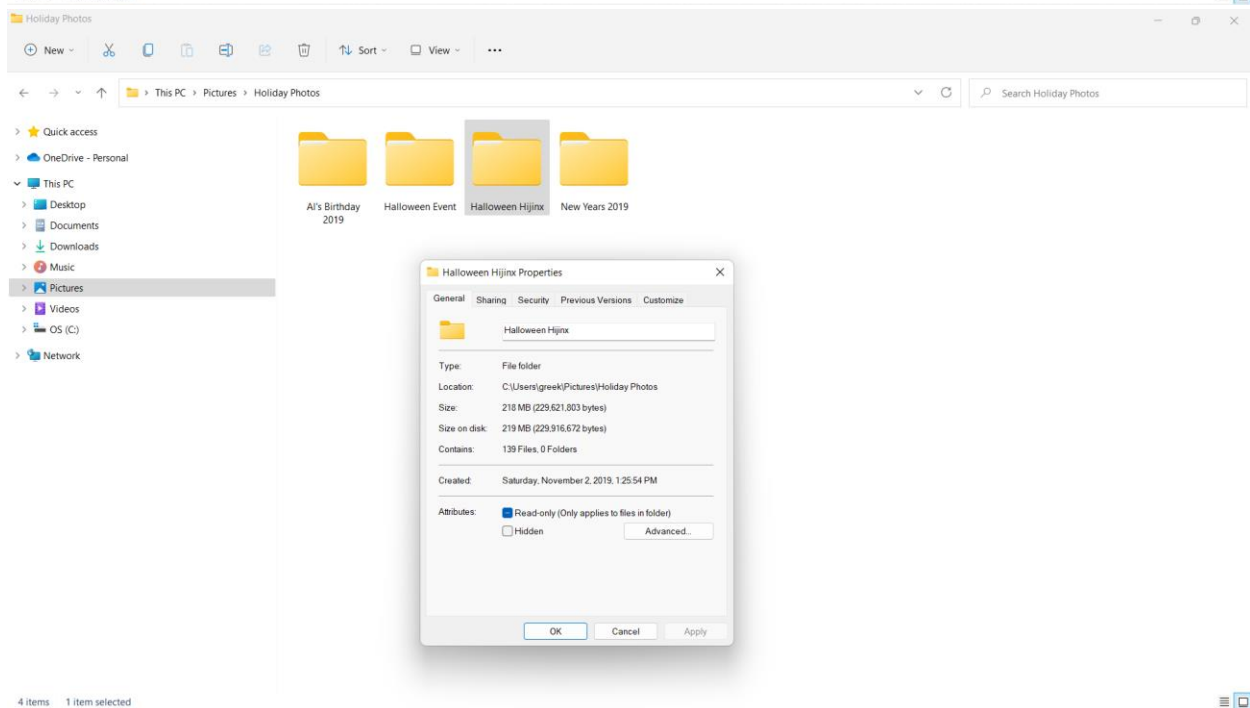
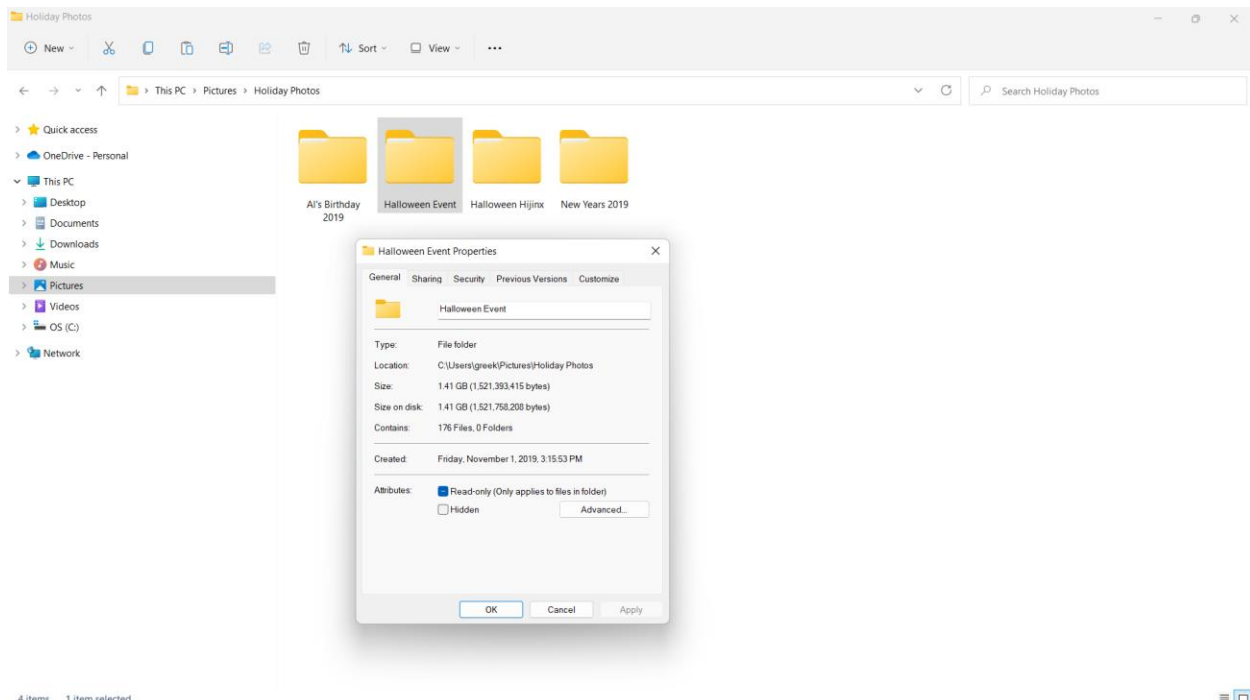




Exhibit 5



Exhibit 6