[Cite as *State v. Hood*, 2010-Ohio-5477.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93854

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAMES D. HOOD

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-523219-C

BEFORE: Celebrezze, J., Kilbane, P.J., and Sweeney, J.

RELEASED AND JOURNALIZED: November 10, 2010

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Defendant-appellant, James Hood, appeals his convictions. Based on our review of the record and the apposite case law, we affirm.

Factual History

{¶ 2} Appellant's co-defendant, Kareem Hill, testified that he and appellant began hanging out at 3:00 p.m. on January 25, 2009. The two made arrangements to meet later that evening and go to Atmosphere, a bar in Cleveland. Hill picked up appellant and the two arrived at Atmosphere at approximately 12:30 a.m. on January 26, 2009. The two had arranged to meet two acquaintances at the bar, Samuel Peet and Terrence Davis.

{¶ 3} While at the bar, Davis, Peet, Hill, and appellant concocted a plan to rob a card party that was occurring that evening on Parkview Avenue. According to Hill, Davis had attended the party earlier in the evening and formulated a plan to rob those who were still in attendance. Hill specifically testified that Davis knew the layout of the Parkview house and believed committing the robbery would be easy.

{¶ 4} Hill testified that Davis left the bar, but returned later with additional information. Davis told the other three men that the card party was in the basement of the Parkview residence, and 12 to 14 unarmed individuals would be in attendance. When Davis left Atmosphere a second time, he took Peet with him, but first told Hill and appellant to remain at the bar until it closed and then to travel over to the Parkview address.

{¶ 5} Hill and appellant left the bar and went to appellant's house. According to Hill, appellant went inside his residence and returned with two guns — a black .40 or .45 caliber firearm and an Uzi. The two then drove toward the Parkview address and saw Peet standing in a driveway. According to Hill, Davis was inside the card party at this time.

{¶ 6} Davis later came out of the Parkview address. He told Hill to park the vehicle and meet the other three men outside the house. According to Hill, he was carrying the .40 or .45 caliber firearm, appellant was carrying the Uzi, Peet was armed with a silver revolver, and Davis had a black

semiautomatic pistol. Hill also testified that he was wearing a black Pelle Pelle coat, a Rocawear hooded sweatshirt, Rocawear jeans, and Columbia boots. Appellant was wearing a black Rocawear coat, blue jeans, and brown Timberland boots. Peet was wearing a black and red jacket, blue jeans, and tennis shoes.

{¶ 7} Hill testified that as they were preparing to barge into the basement, a man in a red shirt walked inside the home. The four men shoved the man, later identified as Jerrell Jackson, into the basement and began the robbery.

{¶ 8} Several victims of the robbery testified including Roxie Watkins, Jerrell Jackson, Sharon Jackson, Rodney Jones, Denotra Jones, Brian Sanders, Lavennea Reeves, Patricia Robinson, and Lavelle Neal (collectively referred to as "the victims"). Although the testimony of these victims differed slightly, their versions of the event were essentially the same. They all testified that Sharon Jackson lives at the Parkview address with her husband and children, one of whom is Jerrell Jackson. Sharon had agreed to host a card party in her basement on the evening of January 25, 2009 to celebrate Rodney and Denotra Jones's birthdays. They testified that Davis had attended the card party, but left and returned multiple times throughout the evening.

{¶ 9} The victims testified that at approximately 5:00 a.m., Jerrell left the house to walk two older women to their cars. According to Jerrell, as he left the house, he told someone to lock the door. When he returned, he was surprised to find the door ajar. As he entered the house, Jerrell saw four men with masks and guns standing in the entryway. Jerrell testified that he immediately ran downstairs yelling about men with guns being in the house. The victims testified that the robbers followed Jerrell into the basement. There was differing testimony, however, with regard to how many men were actually robbing the card party. Some victims testified that there were four men, some testified to three, and some testified to two.

{¶ 10} The victims testified that once the robbers entered the basement, they ordered everyone to get on the ground and to give the robbers all of their money. Several of the victims ran into a smaller room adjacent to the room where they had been playing cards. Those victims, who included Roxie Watkins, Rodney Jones, Brian Sanders, and Lavennea Reeves, testified that two robbers came into the adjacent room and told everyone to strip. One of the victims, Brian Sanders, was not undressing fast enough, so one of the robbers approached him and pulled his pants off. The two robbers that were in the smaller room forced Sanders to his feet and ordered him out of that room.

{¶ 11} The victims who remained in the main room — Jerrell Jackson, Sharon Jackson, Denotra Jones, Patricia Robinson, and Lavelle Neal — all testified to a similar chain of events. These victims testified that they were ordered to get on the ground and turn over any money they had. Several of these victims also testified that one of the robbers pointed his gun at Jerrell and pulled the trigger; the gun made a clicking noise but did not discharge.

{¶ 12} The victims also testified that one of the victims who did not testify at trial, John "Sean" Ragland, was hiding under a table. One robber, who the victims testified was wearing a jacket that was noticeably different from the rest, began hitting Ragland over the head with his gun. According to the victims, this robber, later identified as Peet, was carrying the Uzi.

{¶ 13} After collecting money and cell phones, the robbers forced Sanders to accompany them upstairs. The victims testified that they then heard gunshots. Rodney Jones, who was only wearing underwear and one sock by this point, left the basement. As he left the Parkview residence, he ran into a man wearing a leather jacket who was running away from the scene. Rodney testified that he hid in the yard of a neighboring home until the police arrived.

{¶ 14} Sanders testified that once he reached the top of the basement stairs, he ran inside the main residence and shut the door behind him.

Sanders, who was only wearing a shirt and socks, then hid inside one of the home's bedrooms until the police arrived.

{¶ 15} The remaining victims testified that they stayed in the basement until the police arrived. The victims provided statements to the police and then went their separate ways.

{¶ 16} Officer Antonio Curtis with the Cleveland Police Department testified that just after 4:00 a.m. on January 26, 2009, another zone car received a call that a male was putting a gun in another male's face. Officer Curtis and his partner responded to assist that zone car. As they approached, Officer Curtis noticed a green four-door Jeep Cherokee in the middle of the street with its lights on. The car began going eastbound on Parkview Avenue, and the officers had to make a U-turn in order to follow it. After attempting to follow the Jeep, the officers were only able to obtain a partial license plate number of EOF. During the same shift, Officer Curtis responded to a call that a home on Parkview had been robbed. As he was approaching the Parkview residence, Officer Curtis found a .22 caliber silver revolver lying in the driveway. Officer Curtis took the victims' statements. He later received a phone call that the green Jeep had been pulled over in a nearby McDonald's parking lot.

{¶ 17} Hill testified that once they left the Parkview residence, he and appellant proceeded to his vehicle, Davis ran in a different direction, and he

did not see Peet. Hill and appellant drove to appellant's home so they could dispose of their weapons. While appellant was inside, Hill received a phone call from William Sparks, who asked Hill to pick him up and take him to McDonald's. Appellant returned, and the two proceeded to go pick up Sparks. Hill testified that when they arrived at Sparks's home, he was shaken up by the night's events so he let Sparks drive his vehicle. After being followed by a police cruiser, the men pulled into the McDonald's drive-thru lane. While waiting in the drive-thru lane, the parking lot was swarmed with police cars. Hill, appellant, and Sparks were ordered out of the vehicle and placed under arrest.

{¶ 18} The police officers found money and cell phones inside the vehicle. The officers contacted Roxie Watkins, Rodney and Denotra Jones, Brian Sanders, and Lavennea Reeves and asked them to come to the parking lot and identify their property. Several of the cell phones in Hill's car were identified as those stolen from the victims.

{¶ 19} Officers later received a call that a dead body was found on Parkview Avenue near the residence that had been robbed. After responding to the scene, officers found a man, later identified as Samuel Peet, wearing black tennis shoes, blue jeans, and a maroon jacket. The man also had a mask covering part of his face. Several of the robbery victims were called to the scene and identified Peet's clothing as that worn by one of the robbers.

An autopsy revealed that Peet died of two gunshot wounds and his death was ruled a homicide.

Procedural History

{¶ 20} On February 11, 2009, in case number CR-520967, appellant was indicted in a 24-count indictment on 11 counts of kidnapping, 12 counts of aggravated robbery, and one count of having a weapon while under disability. After various motions and discovery requests were filed, this indictment was dismissed on April 23, 2009.

{¶ 21} Appellant was reindicted in a 26-count indictment in case number CR-523219 on two counts of murder, 11 counts of kidnapping, 11 counts of aggravated robbery, one count of aggravated burglary, and one count of having a weapon while under disability. With the exception of the count for having a weapon while under disability, all charges carried one- and three-year firearm specifications, notice of a prior conviction, and repeat violent offender specifications.

{¶ 22} This matter proceeded to a jury trial on July 27, 2009. At the close of the state's case-in-chief, appellant's counsel made a Crim.R. 29 motion for acquittal. Based on this motion, the trial court dismissed two counts of kidnapping and two counts of aggravated robbery. These were the counts that related to John Ragland and Cortez Kirby, two alleged victims who did not testify at trial. The jury found appellant guilty of one count of

murder,[1] nine counts of kidnapping,[2] nine counts of aggravated robbery,[3] and one count of aggravated burglary.[4] The court found appellant not guilty of having a weapon while under disability. Appellant was also found guilty of the one- and three-year firearm specifications, but not guilty of the repeat violent offender specifications.

{¶ 23} The court sentenced appellant to 15 years to life for murder, to run consecutively to three years imposed for the firearm specification. Appellant was also sentenced to three years each for all remaining counts. These three-year terms were to run concurrently to each other, but consecutively to the sentence imposed for murder, for an aggregate sentence of 21 years to life in prison.

{¶ 24} This appeal followed wherein appellant argues that the trial court improperly admitted cell phone records that were not properly authenticated, the trial court failed to bring him to trial within his allotted speedy-trial time, his conviction is against the manifest weight of the evidence, and he was prejudiced by an improper prosecutorial comment made during the state's closing argument.

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[1]R.C. 2903.02(B), an unclassified felony.

[2]R.C. 2905.01(A)(2), first-degree felonies.

[3]R.C. 2911.01(A)(1), first-degree felonies.

[4]R.C. 2911.11(A)(2), a first-degree felony.

Law and Analysis

Authentication of Business Records and Confrontation Clause

{¶ 25} In his first assignment of error, appellant argues that "[t]he trial court erred by allowing cell phone records to be admitted into evidence without being properly authenticated in violation of the Confrontation Clause." The standard of review when determining the admissibility of evidence is abuse of discretion. *State v. Heinish* (1990), 50 Ohio St.3d 231, 553 N.E.2d 1026; *State v. Sibert* (1994), 98 Ohio App.3d 412, 648 N.E.2d 861. To constitute an abuse of discretion, the ruling must be unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

{¶ 26} "It is axiomatic that any evidentiary material must be properly authenticated; that is, identified as what it purports to be." *State v. Braxton*, Cuyahoga App. No. 91881, 2009-Ohio-2724, ¶31, citing Evid.R. 901(A). Hearsay is inadmissible subject to certain exceptions. Evid.R. 802. These exceptions are set forth in Evid.R. 803 and 804. Evid.R. 803(6) excludes "[a] memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as

shown by the testimony of the custodian or other qualified witness or as provided by Rule 901(B)(10), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness."

{¶ 27} In this case, the trial court admitted cell phone records despite the fact that no custodian of records or any other representative of the cell phone companies was called to testify that the records were what the state claimed. Assuming arguendo that these records were inadmissible and violative of appellant's right to confront the witnesses against him, any error on the part of the trial court in this regard was harmless. Crim.R. 52(A); *State v. Moton* (Mar. 18, 1993), Cuyahoga App. No. 62097. Any error will be deemed harmless if it did not affect the accused's "substantial rights." Otherwise stated, the accused has a constitutional guarantee to a trial free from prejudicial error, not necessarily one free of all error. Before constitutional error can be considered harmless, we must be able to "declare a belief that it was harmless beyond a reasonable doubt." *Chapman v. California* (1967), 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705. Where there is no reasonable possibility that the unlawful testimony contributed to a conviction, the error is harmless and therefore will not be grounds for reversal. *State v. Lytle* (1976), 48 Ohio St.2d 391, 358 N.E.2d 623, paragraph three of the syllabus, vacated on other grounds in (1978), 438 U.S. 910, 98 S.Ct. 3135, 57 L.Ed.2d 1154.

{¶ 28} Appellant relies on *In re D.K.*, 185 Ohio App.3d 355, 2009-Ohio-6347, 924 N.E.2d 370, to support his proposition that the cell phone records were inadmissible. In *D.K.*, a high school principal testified that he reviewed the defendant's disciplinary records and found that he was suspended in junior high for behavior similar to that for which he was being accused. Id. at ¶16. The court found this evidence to be inadmissible due to the defendant's inability to cross-examine the preparer of his disciplinary records and the principal's lack of personal knowledge of the defendant's disciplinary history. Id. at ¶23-24. The court in *D.K.* went on to note, however, that "[b]ecause such inadmissible evidence was the only evidence admitted to prove the necessary element of habitual disobedience, there was insufficient evidence presented to establish an offense under R.C. 2151.022(A), as charged." Id. at ¶26. In this case, the cell phone records were not the only evidence used to establish the necessary elements of the crimes charged. As such, this case is clearly distinguishable from *D.K.*

{¶ 29} Appellant has failed to demonstrate, and the record fails to show, that appellant's substantial rights were affected by his inability to cross-examine the custodian of records for the various cell phone companies at issue. See *Moton*, supra. In fact, appellant's counsel rigorously cross-examined Detective Veverka, the detective who introduced the cell phone records. Through this cross-examination, appellant's counsel was able

to point out various loopholes in Detective Veverka's analysis of these cell phone records and what they purported to prove. In fact, appellant's counsel proved that, at the time when Hill testified that he and appellant were driving around together, appellant's cell phone was inexplicably placing phone calls to Hill's cell phone.

{¶ 30} Unfortunately for appellant, this rigorous cross-examination had little effect in light of the considerable evidence against him. Considering Hill's devastating testimony against appellant, we cannot find that the admission of the cell phone records contributed to appellant's conviction. See *State v. Swaby*, Summit App. No. 24528, 2009-Ohio-3690 (finding an error in admitting evidence violative of the Confrontation Clause to be harmless in light of the evidence against the defendant). For these reasons, appellant's first assignment of error is overruled.

Speedy Trial

{¶ 31} In his second assignment of error, appellant argues that his conviction cannot stand because the trial court violated his statutory right to a speedy trial. When determining whether an offender's right to a speedy trial has been violated, an appellate court must simply calculate the days chargeable to the state and determine if the offender was tried within the time constraints set forth in R.C. 2945.71. *State v. Andrews*, Cuyahoga App. No. 92695, 2010-Ohio-3499, ¶43. A person charged with a felony must be

brought to trial within 270 days of his arrest. R.C. 2945.71(C)(2). Each day that the offender is held in jail in lieu of bond is to be counted as three days. R.C. 2945.71(E). Because appellant remained in jail during the pendency of his proceedings, the three-for-one count provision applies, and the trial court was required to bring him to trial within 90 days.[5]

{¶ 32} Appellant was arrested on January 26, 2009, and thus his speedy trial time began to run on January 27. *State v. Steiner* (1991), 71 Ohio App.3d 249, 250-251, 593 N.E.2d 368 (date of arrest not included when determining whether there is a speedy trial violation). His speedy trial time ran from January 27 until February 24, 2009, when appellant filed his motion for discovery, which constitutes a tolling event. At this point, 28 days were chargeable to the state.

{¶ 33} Appellant's speedy trial time was tolled until March 18, 2009 when the state responded to appellant's discovery requests. The time was tolled again, however, on April 8, 2009 when appellant requested a continuance of a pretrial. This added another 21 days chargeable to the

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[5]Although appellant's trial counsel did not make a motion to dismiss based on a speedy trial violation, appellant himself notified the court that he thought his speedy trial time had elapsed. The trial judge mentioned that appellant was on probation at the time of his arrest and relied on this information in holding that the three-for-one count provision did not apply to appellant. After carefully reviewing the record in this case, we are left with no evidence that shows that appellant was held in jail in lieu of bond on additional charges or his probation violation. As such, we must apply the triple-count provision to this case. *State v. McDonald*, 153 Ohio App.3d 679, 2003-Ohio-4342, 795 N.E.2d 701, ¶35.

state, for a total of 49 days. The time remained tolled until April 17, 2009, when appellant was reindicted in CR-523219. Time then continued to run until April 28, 2009, when appellant's counsel filed a new motion for discovery. By this point, another 11 days had elapsed, for a total of 60 days.

{¶ 34} Before the state responded to appellant's renewed discovery request, appellant filed a motion to suppress on May 5, 2009, which tolled his speedy trial time for a reasonable period. *State v. Hogan* (Oct. 9, 1997), Cuyahoga App. No. 71337. In this case, the trial court did not rule on appellant's motion before trial began on July 27, 2009. Our calculations show that a total of 83 days elapsed between when appellant's motion to suppress was filed and when trial began. While there is no set rule to determine what constitutes a "reasonable time" in order to rule on a motion to suppress, 83 days seems unreasonable in a factually simplistic case such as this one.

{¶ 35} We need not determine what constitutes a "reasonable time" to rule on the motion to suppress in this case because other events occurred that tolled appellant's speedy trial time. On June 16, 2009, yet another pretrial was continued at appellant's request. This pretrial was rescheduled for June 29, 2009.[6] Even assuming that the speedy trial time ran from June 29, 2009

[6]The trial court's docket reveals that the June 29 pretrial was not held because appellant's trial counsel was unavailable, but it also noted that the trial date remained scheduled for July 27, 2009.

until the trial began on July 27, only another 29 days had elapsed, for a maximum total of 89 days. Since the trial court brought appellant to trial within the time constraints of R.C. 2945.71, appellant's second assignment of error is overruled.

Manifest Weight of the Evidence

{¶ 36} Appellant next argues that his conviction was against the manifest weight of the evidence. When reviewing a manifest weight claim, "[t]he [appellate] court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of victims and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

{¶ 37} Appellant argues that Hill's testimony was unreliable and self-serving and should not have been relied upon by the jury. In attempting to discredit Hill's testimony, appellant relies on the fact that Hill identified appellant as the man carrying the Uzi when all of the victims identified Peet, the man in the red jacket, as the individual carrying that weapon. Hill was vigorously cross-examined on this issue. Hill adamantly testified that appellant was the man he saw carrying the Uzi, but admitted that it was

dark and appellant and Peet could have exchanged guns prior to entering the Parkview house.[7]

{¶ 38} Hill was extensively cross-examined on the fact that he provided inconsistent statements to the police and did not admit his involvement in the robbery until his DNA was identified on a latex glove discovered at the scene. He was also rigorously cross-examined on all loopholes in his testimony and anything he said that could be considered inconsistent with the victims' testimony. The jury heard ample evidence that called Hill's credibility into question. Despite this evidence, the jury chose to believe Hill and find appellant guilty of murder, kidnapping, aggravated robbery, and aggravated burglary.

{¶ 39} Because Hill's version of events was strikingly similar to the events as described by the victims, and appellant was found in the vehicle with items that had been stolen during the robbery, we cannot find that the jury lost its way in finding appellant guilty. Appellant's third assignment of error is overruled.

Improper Prosecutorial Statements

{¶ 40} In his fourth and final assignment of error, appellant argues that he was prejudiced by an improper comment made by the state during its

[7]Even if Hill were wrong about which gun appellant was carrying when the robbery occurred, such a mistake is immaterial to whether appellant could be found guilty of the crimes charged.

closing argument. We must first determine if the prosecutor's statements were improper. *State v. Flowers*, Cuyahoga App. No. 91864, 2009-Ohio-4876, ¶31. If the comments were improper, we must determine whether they prejudicially affected appellant's substantial rights. Id.

{¶ 41} During his closing argument, appellant's counsel heavily discussed the cell phone records and how they did not align with the version of events provided by Hill. Appellant's position was that it was Sparks, not appellant, who robbed the Parkview address with Hill, Davis, and Peet. He argued that Hill testified untruthfully to protect Sparks, with whom Hill had been friends for several years.

{¶ 42} In her closing argument, the prosecutor made the following statements:

{¶ 43} "Hood, DNA on the door, back door, DNA on the cigar tip in the front. What separates him from * * * Sparks? You know, Sparks, Hill's good buddy, the one that he spends 20 hours a week with or whatever, why isn't his DNA in that car?

{¶ 44} "His name is in the report. They tested it. You find in there where anything comes back to Sparks. Anything. Nada. Nothing. You're not going to get away from it. He's responsible. He's involved. If you think for one second that we just went on the word of Hill as it relates to Sparks, the stuff had to be corroborated."

{¶ 45} Appellant argues that these comments were improper, and thus he is entitled to a new trial. Assuming arguendo that these statements were improper, appellant has pointed to no evidence to show that they were violative of his substantial rights. The record does not support the conclusion that, without these statements, appellant would have been acquitted. In addition, the trial court instructed the jury that opening and closing arguments do not constitute evidence and are not to be relied on in rendering a decision. As such, appellant's fourth and final assignment of error is overruled.

Conclusion

{¶ 46} A careful review of the record in this case reveals that 1) any error in admitting the cell phone records without the testimony of the custodian of records was harmless at best, 2) appellant's right to a speedy trial was not violated, 3) appellant's conviction was not against the manifest weight of the evidence, and 4) appellant failed to show that he was prejudiced by the allegedly improper statements made by the prosecution during closing argument.

{¶ 47} Appellant's assignments of error are overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

JAMES J. SWEENEY, J., CONCURS;
MARY EILEEN KILBANE, P.J., DISSENTS (WITH SEPARATE OPINION)

MARY EILEEN KILBANE, P.J., DISSENTING:

{¶ 48} I respectfully dissent. I would hold that the trial court's admission of unauthenticated cell phone records violated Evid.R. 803(6) and is not harmless error. The record demonstrates that neither the custodian of the cell phone records nor any other qualified individual testified as required by Evid.R. 803(6). Thus, the trial court should have excluded the officer's testimony as well as the records themselves. See, e.g., *State v. Jordan* (June 1, 1989), 8th Dist. No. 55450. While *Jordan* held that the admission of certain unauthenticated business records and subsequent police testimony about those records was harmless error in light of the defendant's

incriminating pretrial statements that potentially rendered the admission of the records moot, here, unlike *Jordan*, there is no evidence that Hood made any incriminating pretrial statements. I would therefore hold that Hood's constitutional right to confrontation was violated when he could not cross-examine a records custodian, a person that could adequately explain the cell phone's significance to his possible whereabouts, instead of Detective Veverka, about the nature of the records.

{¶ 49} While under oath, Detective Veverka repeatedly admitted that he did not prepare the phone records, that he was not qualified to testify about how they were prepared, and that he had little knowledge of the specifics behind the records, including being able to tell Hood's location at given points on the night of the alleged crimes.

{¶ 50} Thus, regardless of whether Hood was able to cross-examine the detective, Hood still was not able to cross-examine someone who regularly kept the records in the course of business or someone who could authenticate them under Evid.R. 803(6). The records themselves provided a timeline that proved crucial to Hood's whereabouts and to his ultimate conviction. I would hold that the failure to properly authenticate the records and produce the records custodian violated Hood's right to confrontation.