

# Evidentiary Issues in White Collar Cases

Nicholas B. Wanka  
Assistant Attorney General

# Common Evidentiary Issues

- Admission of Documentary Evidence
  - Business Records
    - Financial
    - Corporate
    - State or Federal Agency
  - Public Records
  - Travel Records
  - Email
- Expert Testimony
  - Handwriting Analysis
  - Financial analysis
- Summary Charts

BUSINESS

# What is a Business Record?

- Minn. R. Evid. 803(6)
- A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, 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, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. A memorandum, report, record, or data compilation prepared for litigation is not admissible under this exception.

# What does that definition really mean?

- Memorandum, report, record or data compilation
- Made at or near the time the information created or received
- Kept by the business in the regular course of business activity
- Not prepared for litigation

# Be Aware of Missing Data

- Minn. R. Evid. 803(7)
- Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

# Common examples of business records

- Bank Records
  - Statements
  - Copies of Checks
- Government Agency Data
  - Health Care Claims and Payment Data
  - Enrollment Forms
- Small Business Financial Records
  - Transaction Logs
  - Receipts

# Test from Case Law

- In exercising discretion, the court should consider four factors:
  - (1) Was the document prepared for presentation in the case being tried?
  - (2) Was the report made by an independent agency or a hired agency?
  - (3) When was the report made?
  - (4) What is the nature of the organization preparing the report?
- *National Tea Co. v. Tyler Refrigeration Co.*, 339 N.W.2d 59, 62 (Minn. 1983).

# What is not a business record?

- Police Reports
- Laboratory reports to identify what is and is not a controlled substance. *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006).
  - Used to aid the State in prosecution for drug crime
- Hospital laboratory report prepared as part of an autopsy. *State v. Weaver*, 733 N.W.2d 793 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007)
  - Laboratory results obtained during course of homicide investigation, relied on by medical examiner to reach conclusion on cause of death, and relayed to jury in lieu of testimony
  - “Information presented in way designed to secure a verdict for the State”
- Water Park Incident Summary Report, admitted to prove what complainant and family members said. *State v. Morocho*, A13-0505, 2014 WL 1125469 (Minn. App. 2014)
  - “The portions of the reports concerning the water park’s handling of the incidents might be admissible, but the portions including hearsay evidence as to what a victim’s family member said would not be admissible.”

# How Do I Admit My Business Records?

- Subpoena Custodian of Records
- Have Custodian review documents in advance of trial
- Lay appropriate foundation
- If you're lucky, and you get along with opposing counsel, don't do any of this and just stipulate to foundation and admissibility

# Can't I just get a certificate?

- Federal Rule of Evidence 902(11) – Self Authenticating Documents
- The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record — and must make the record and certification available for inspection — so that the party has a fair opportunity to challenge them.

# No, You Can't Get A Certificate

- Comment to Minn. R. Evid. 902 (Self Authenticating Documents)
  - Uniform Rule 902(11) adds business records to those writings that are self-authenticating. The Committee considered Rule 902(11) and recommends against adopting it.
  - Under present Minnesota law, the authentication requirement for business records is found in Rule 803(6) (..."all as shown by the testimony of the custodian or other qualified witness,..."). The extensive discovery available in both civil and criminal procedures provides a vehicle for resolving authentication issues before trial. The authentication requirement is generally waived. With respect to the minority of cases in which the parties cannot resolve the issue prior to trial, the committee took the view that a party should have the right to insist upon the proof required by Rule 803(6). For these reasons the committee decided not to recommend that business records be added to the list of self-authenticating documents, and recommends that Uniform Rule 902(11) not be adopted

# What Does the Custodian Need to Testify To?

- In order to lay the foundation for the business records exception, a qualified witness must testify that the business record was kept in the regular course of business and that it was the regular practice of the business to keep such a record.
- The witness must be familiar with how the record is kept.
- *Nat'l Tea Co. v. Tyler Refrigeration Co.*, 339 N.W.2d 59, 61 (Minn. 1983).

# So, who is a custodian of records?

- In order to lay a proper foundation under the business-records exception, “the custodian or other qualified witness who can explain the recordkeeping of his organization is ordinarily essential.” *Nat'l Tea Co. v. Tyler Refrigeration Co.*, 339 N.W.2d 59, 61 (Minn.1983) (quotation omitted).
- But “[t]he phrase ‘other qualified witness’ should be given the broadest interpretation; he need not be an employee of the entity so long as he understands the system.” *Id.* (quotation omitted).
- For example, an accountant could testify regarding a record after examining a company's bookkeeping system. *Id.*
- One business entity may submit records of another business if it can lay foundational requirements. *Id.* at 62.

# Who is a Custodian of Records?

- Someone who understands the system
- Someone who has reviewed both the record keeping system, and the records produced by it that you want to admit
- Someone who can explain the record keeping system, how the records are generated and kept, and what they show
- Need not be a person with a title of “custodian of records”
- We regularly use ordinary bank employees who are familiar with what records are in checking accounts

# Case Law On Who Is A Custodian

- Cost tracer admitted as proof of damages to posters (paper products). Cost tracer was company's method of keeping track of the costs of each job.
- Cost tracer admitted as business record through employee with company for 13 years in production area.
- Employee was not records custodian and not responsible for billing, but had knowledge of company business practices.
- The witness testified that the document was kept in the regular course of Meyers' business, was prepared at the time the costs arose, was updated daily, and that such records were typically kept on all jobs. Given the broad interpretation of the rule, this witness may properly be considered an "other qualified witness" familiar with the record-keeping system. *A & L Coating Specialties Corp. v. Meyers Printing Co.* , 374 N.W.2d 202, 204 (Minn. App. 1985).

# Case Law On Who Is a Custodian

- Tire mismatch results evidence admitted, through expert witness, in product liability case where individual attempted to mount 16 inch tire on 16.5 inch rim and, when tire inflated, an explosive decompression flung the tire into Kohn and injured him.
- Expert testified about results of a study showing that a particular tire, in a mismatch situation, exploded at a lower p.s.i. than that of other tires.
- Expert did not personally conduct the tests, but kept the test results in the regular course of his business. He testified that he was familiar with the test results and how they were conducted.
- *Kohn v. La Manufacture Francaise Des Pneumatiques Michelin*, 476 N.W.2d 184, 188 (Minn.App.1991) (holding that test results were admissible under the business-records exception because an expert could testify that he was familiar with the results of the tests and how the tests were conducted)

# Who is not a qualified custodian?

- Officer testifying that gas station keeps transaction journal in ordinary course of business
  - Court of appeals said transaction journal would qualify as business records
  - But officer did not testify he had knowledge of or familiarity with record keeping system of gas station
  - Can probably be overcome if officer gains knowledge of gas station's record keeping system
  - *State v. Johnson*, No. A12-0160, 2012 WL 6734450 (Minn. App. 2012)

# Just Tell Me What To Ask

- When your employees provide these services, do you require them to complete any documentation?
- What documents?
- Are you familiar with the record keeping process at Canvas Health?
- How?
- Do you keep progress notes in the regular course of your business?
- When are they created and generated?
- By who?
- Were they created in the regular course of Canvas providing ARHMS services?
- Were they created for the purposes of this trial?
- Showing you what has been marked as exhibit \_\_\_\_\_. What are these?
- These were kept in manner you just described?

# Tell me what not to do

1 September, October.

2 Q. Mr. \_\_\_\_\_ in front of you is Exhibit Ten.

3 A. Is what?

4 Q. -- a copy of your Mom's medical records.

5 A. Right.

6 MS. F : We're going to offer Exhibit Ten  
7 as business records, your Honor. Hearsay objection - or  
8 I mean exception.

9 MR. K : Objection.

10 THE COURT: Mr. K ?

11 MR. K. : Objection, they are hearsay and  
12 whether they are hearsay or not, the contents of them  
13 would be double hearsay, so which still would be  
14 inadmissible.

15 THE COURT: I'll allow them. Mr. H ?

16 MR. HI : Your Honor, we'd object as  
17 relevant.

18 THE COURT: How is this helpful, Ms. F. ?

19 MS. F: Your Honor, it establishes the  
20 dates that the went into the hospital and came out of  
21 the hospital. For purposes of payment under the  
22 caregiver agreement.

23 THE COURT: All right. Well, I take it that  
24 can be established otherwise. The hearsay objection is  
25 sustained. While these may be business records, the

foundation required for business records, that is a custodian of the records to testify that the records were readily kept in the course of a business has not testified. Mr. C isn't able to lay foundation for these as business records so the objection is sustained.

MS. F. : Thank you, your Honor.

# Potential Admission Issues

- Authentication
  - Weight vs. admissibility are two separate questions.
  - GET A QUALIFIED CUSTODIAN
- Alterations in documents
  - Usually also goes to weight, not admissibility, but depends on type of record
  - *United States v. Bonallo*, 858 F.2d 1427, 1436 (9th Cir. 1988) (“The fact that it is possible to alter data contained in a computer is plainly insufficient to establish untrustworthiness.”)
  - If it’s some kind of instant message or email conversation, can have one participant authenticate it. *United States v. Gagliardi*, 506 F.3d 140, 151 (2d Cir. 2007) (transcript of instant message conversations that were cut and pasted into word processing documents were sufficiently authenticated by testimony of a participant in the conversation).
    - Assumes for sake of argument this is a business record

# What About The Confrontation Clause?



# What About The Confrontation Clause?

- Business Records Are Not Testimonial
- Testimonial typically equates to “prepared for litigation,” so if it’s testimonial, it’s probably not a business record to begin with
- *Crawford v. Washington*, 541 U.S. 36, 56, 124 S.Ct. 1354, 1367 (2004):
  - “But there is scant evidence that exceptions were invoked to admit testimonial statements against the accused in a criminal case. Most of the hearsay exceptions covered statements that by their nature were not testimonial—for example, business records or statements in furtherance of a conspiracy. We do not infer from these that the Framers thought exceptions would apply even to prior testimony.”
  - Concurring opinion from C.J. Rehnquist: “To its credit, the Court's analysis of ‘testimony’ excludes at least some hearsay exceptions, such as business records and official records.”)

# 8<sup>th</sup> Circuit Treatment of Confrontation Clause Issue

- *United States v. Urqhارت*, 469 F.3d 745, 748 (8th Cir.2006)
  - Conviction for illegal reentry into U.S. after prior deportation
  - Admission of Certificate of Nonexistence of Record (CNR), which said there was no record in Defendant's A-File indicating defendant obtained consent for re-entry into United States
    - Admitted to prove defendant lacked permission to reenter United States
  - "...*Crawford* seemingly excluded business records from the classification of testimonial statements."
  - Relying on rationale in Ninth Circuit opinion in *United States v. Cervantes-Flores*, 421 F.3d 825 (9th Cir. 2005), 8<sup>th</sup> Circuit found no Confrontation Clause violation
  - "CNR certified that a record that the [BICE] would keep in the course of its regularly conducted activities did not exist in the agency's files."
  - 8<sup>th</sup> Circuit: While CNR at the request of Special Agent Ferreira, the underlying subject matter—the absence of a Form 212—existed when the Nebraska State Patrol found Urqhارت on Interstate 80.

# 8<sup>th</sup> Circuit Treatment of Confrontation Clause Issue

- *United States v. Torres-Villalobos*, 487 F.3d 607, 612–13 (8th Cir. 2007).
- Warrants of Deportation are not testimonial
- “Warrants of deportation are produced under circumstances objectively indicating that their primary purpose is to maintain records concerning the movements of aliens and to ensure compliance with orders of deportation, not to prove facts for use in future criminal prosecutions. They are properly characterized as non-testimonial official records that were prepared independent of this litigation.”

# Confrontation Clause at Minnesota Court of Appeals

- *State v. Vonderharr*, 733 N.W.2d 847 (Minn. App. 2007)
- Pretrial prosecution appeal from order requiring state to produce records custodian at trial for foundation testimony regarding DPS records
- State wanted to introduce certified copies of DPS records, to show Defendant had a B-card restriction, without calling custodian
- Trial court required State to subpoena DPS witness to provide foundation
- Court of Appeals reversed, stating:
- “The primary purpose of DPS driver's-license records is to provide current information about the license status of drivers to ensure that only drivers with valid licenses operate motor vehicles in the state.”
- “The mere fact that the DPS records can be used in a criminal prosecution does not mean that they were created for that purpose...the DPS records are not testimonial evidence that implicates the Confrontation Clause of the Sixth Amendment.”
- Decision based on public records exception, not business records exception, but Confrontation Clause analysis applies to business records exception.

# Confrontation Clause at Minnesota Court of Appeals

- *State v. Jackson*, 764 N.W.2d 612 (Minn. App. 2009)
- Firearm Trace report admissible without calling person who prepared it to testify
  - Trace report request made through BCA, and goes to ATF
  - Shows purchaser information for firearm (name, date, etc)
  - Shows recovery information for firearm, including possessor
  - Record does not indicate what happens in between time of purchase and time of recovery
  - Report created many years before litigation began.
- “The firearm-trace report was not created for litigation purposes but instead is a record that is maintained in the normal course of business at the Bureau of Alcohol, Tobacco, and Firearms (ATF). There is also an argument that the firearm-trace report qualifies for the business records exception and therefore, the report is not testimonial under *Crawford*.”
- “Although the data were printed in the form of a report at the request of a police investigator to have on file after appellant's arrest, we conclude that because the information existed notwithstanding the police officer's request for a printed report, the officer's request did not amount to a request to create a report to serve as evidence in a criminal case, unlike the laboratory analysis in *Caulfield*.”

# Confrontation Clause and Business Records

- Bottom line, generally speaking:
  - If non-testimonial, then, per *Crawford* and *Davis v. Washington*, 547 U.S. 813 (2006), admission of business records (hearsay) doesn't implicate confrontation clause.
    - Business records are non-testimonial because they are kept in the ordinary course of business and not prepared for litigation
  - If testimonial, then it is not a business record.
    - Testimonial evidence is “prepared for litigation”
    - Business records cannot be “prepared for litigation”
      - Must be kept in the ordinary course of business.

# Practical considerations For Admitting Business Records

- Voluminous records
  - Do you want them in CD or paper?
  - Have your witness review them immediately before trial, so they aren't flipping through them on witness stand
- Dealing with banks – serving subpoena, not knowing who they are
  - I just put “business records witness” on the witness list and fully inform everyone later, and this hasn't been an issue, but give the Judge and opposing counsel a heads up

# What if a custodian won't testify?

- The old fashioned way – through chain of custody, if you seized it from a defendant's business
  - *United States v. Salcido* , 506 F.3d 729, 733 (9th Cir. 2007) (data from defendant's computer was properly introduced under Rule 901(a) based on "chain of custody")
  - *United States v. Meienberg*, 263 F.3d 1177, 1181 (10th Cir. 2001) (district court correctly found that sufficient evidence existed under Rule 901(a) to admit computer printout of firearms sold through defendant's business).
  - *United States v. Whitaker*, 127 F.3d 595, 601 (7th Cir. 1997) (holding that FBI agent who was present when the defendant's computer was seized appropriately authenticated seized files).

# Is Computer Generated Data a Business Record?

- Yes and No. It's not hearsay, so you don't have a concern about that portion.
- *United States v. Washington*, 498 F.3d 225, 230-31 (4th Cir. 2007) (printed result of computer-based test was not the statement of a person and thus would not be excluded as hearsay)
- *United States v. Salgado*, 250 F.3d 438, 453 (6th Cir. 2001) (applying business records exception to telephone records generated “automatically” by a computer)
- You do need to authenticate them, though.

# Are Emails Business Records?

- It depends.
  - Likely that emails are regularly kept in ordinary course of business through storage system.
  - But, is it a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge?
- Emails can include both hearsay and non-hearsay components in them (i.e. content of email is hearsay, but header and info showing email was sent is not hearsay because it's a computer generated process)
- Then, question becomes: is the hearsay component admissible as a business record?
- You may have better luck admitting emails of the defendant as admissions, and authenticating the emails through the reply doctrine.
  - Emails forwarded by a defendant can be admitted as “adoptive admissions.” *United States v. Safavian*, 435 F. Supp. 2d 36, 43-44 (D.D.C. 2006)
  - *United States v. Siddiqui*, 235 F.3d 1318, 1322-23 (11th Cir. 2000) (email was appropriately authenticated based entirely on circumstantial evidence, including presence of the defendant’s work email address, information within the email with which the defendant was familiar, and use of the defendant’s nickname).

# Can Social Media Evidence Be Business Records?



# What Other Records Come Up In White Collar Cases?

- Public Records
  - Hearsay exception: Minn. R. Evid. 803(8)
  - Self authenticating: Minn. R. Evid. 902(4)
  - Examples:
    - Articles of Incorporation Held by the State
    - DPS records
      - State v. Vonderheer, 733 N.W.2d 847 (Minn. App. 2007)
    - District court file records
      - State v. Romine, 757 N.W.2d 884 (Minn. App. 2008)

# What Other Records Come Up In White Collar Cases?

- Corporate Minutes
  - *Sparta Sportsfabrikk v. Nortur, Inc.*, 407 N.W.2d 128 (Minn. App. 1987)
  - Admissible as business records in certain circumstances
    - Requires usual business records foundation
    - Requires custodian
  - Can be admission by party opponent, when party opponent signs minutes or attends meetings where minutes approved without any objection

# Miscellaneous Other Non-White Collar Records

- School records may be admissible as business records to show a child was absent on a particular day. *Matter of Welfare of L.Z.*, 396 N.W.2d 214 (Minn. 1986).
- Laser speed measuring device Certificate of Testing and Accuracy admissible under business records exception to show Officer's laser device working properly
  - Created in regular course of business to show that laser working properly and accurately measuring speed
  - *State v. Ali*, 679 N.W.2d 359 (Minn. 2004)

# Financial Analysis

- Is it expert or lay testimony?
  - Simple overpayment, in fraud cases, is not expert testimony.
    - “The agency paid out \$15.00 per hour for services that were not provided. I totaled the overpayment for all services not provided and concluded the overpayment amount was \$150,000.00”
  - Forensic accounting analysis , involving tracing of assetts and money, may be expert testimony, depending on how it is done.
  - The sufficiency of the foundation to qualify a witness as an expert is almost entirely within the trial court's discretion. *Jones v. Fleischhacker*, 325 N.W.2d 633, 640 (Minn.1982).
  - Argument that testimony is inadmissible because a better or more qualified expert could be used goes to the weight and not the admissibility of the testimony. *State v. Muller*, 358 N.W.2d 72, 76 (Minn. 1984)
  - Social service department's supervisor to testify as an expert witness on whether Tonga's income and resources disqualified him for public assistance. The supervisor testified to 14 years of experience in public assistance work and demonstrated her familiarity with complex eligibility laws. *Tonga v. State*, No. CO-88-2624, 1989 WL 55435 (Minn. App. 1989)

# Handwriting Analysis

- Expert Testimony under 702.
- Admissible? Probably.
  - *State v. Glidden*, 459 N.W.2d 136, 141 (Minn. App. 1990).
  - *State v. Anderson*, 379 N.W.2d 70, 79 (Minn. 1985).
  - *United States v. Jolivet*, 224 F.3d 902, 906 (8th Cir. 2000).
  - *Pettus v. United States*, 37 A.3d 213, 226 (D.C. 2012).
    - Excellent breakdown of flaws in NRC Report with respect to handwriting.
- But maybe not as settled as we thought?
  - *State v. Hull*, 788 N.W.2d 91 (Minn. 2010)
  - *Hull* dodged the question of whether handwriting analysis is admissible by finding harmless error.
    - In *Hull*, district court denied *Frye* hearing, but conducted *Mack* hearing, and Supreme Court did not rule on whether handwriting analysis is generally accepted

# Summary Charts

- Minn. R. Evid. 1006 allows you to present data in summary charts
  - The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.
- Underlying data forming basis for charts must be admissible
- Person who composed the chart must testify and explain what it is
- The admission of such charts is, of course, addressed to the discretion of the trial court. As a general rule, such charts are admitted in long, complicated cases where they accurately represent the proponent's testimony or theory and where the court determines that such would be an aid to the jury and instructs the jury to use the exhibit only as an aid and not as the evidence itself. *State v. Ruud*, 259 N.W.2d 567 (Minn. 1977).

# Summary Chart Examples

	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1	Recipient Initials	WarrantDate	Provider Name	Final Version Indicator	PCA Name	Date of Service	Procedure Code	Procedure Name	Units Submitted	Units Paid	Reimbursed Amount	PCA Salary	Agency Profit/Overpayment	MFCU Comment
2	Y.F.	7-Oct-14	LIFE HEALTH CARE INC	Y	EDWINA KOMASSA FINEBOY	4/7/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	14	14	\$54.88	\$38.50	\$16.38	No QP On Staff
3	J.H.	7-Oct-14	LIFE HEALTH CARE INC	Y	ERICA ROTONYA MAHALI EDICHA	9/17/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	10	10	\$41.60	\$27.50	\$14.10	No QP On Staff
4	L.M.	7-Oct-14	LIFE HEALTH CARE INC	Y	BETH ANN HATFIELD DE LEANA	9/17/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	12	12	\$49.92	\$33.00	\$16.92	No QP On Staff
5	D.H.	7-Oct-14	LIFE HEALTH CARE INC	Y	BETH ANN HATFIELD DE LEANA	9/17/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	13	13	\$54.08	\$35.75	\$18.33	No QP On Staff
6	R.C.	7-Oct-14	LIFE HEALTH CARE INC	Y	JOSEPH REUBEN DORBOR	9/17/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	16	16	\$66.56	\$44.00	\$22.56	No QP On Staff
7	K.B.	7-Oct-14	LIFE HEALTH CARE INC	Y	CHIQUITA WALMEKA BAPTISTE	9/17/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	19	19	\$79.04	\$52.25	\$26.79	No QP On Staff
8	M.F.	7-Oct-14	LIFE HEALTH CARE INC	Y	MONICA LATRICE RUSSELL	9/17/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	19	19	\$79.04	\$52.25	\$26.79	No QP On Staff
9	M.D.	7-Oct-14	LIFE HEALTH CARE INC	Y	RONALD MASON DAVIS	9/17/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	22	22	\$91.52	\$60.50	\$31.02	No QP On Staff
10	E.J.	7-Oct-14	LIFE HEALTH CARE INC	Y	CHRISTIAN KOTEY SASRAKU	9/17/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	22	22	\$91.52	\$60.50	\$31.02	No QP On Staff
11	E.K.	7-Oct-14	LIFE HEALTH CARE INC	Y	LINDA KARYEE KULEE	9/17/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	24	24	\$99.84	\$66.00	\$33.84	No QP On Staff
12	S.W.	7-Oct-14	LIFE HEALTH CARE INC	Y	DESMOND LVOYD WYER	9/17/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	32	32	\$133.12	\$88.00	\$45.12	No QP On Staff
13	J.H.	7-Oct-14	LIFE HEALTH CARE INC	Y	ERICA ROTONYA MAHALI EDICHA	9/18/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	10	10	\$41.60	\$27.50	\$14.10	No QP On Staff
14	L.M.	7-Oct-14	LIFE HEALTH CARE INC	Y	BETH ANN HATFIELD DE LEANA	9/18/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	12	12	\$49.92	\$33.00	\$16.92	No QP On Staff
15	D.H.	7-Oct-14	LIFE HEALTH CARE INC	Y	BETH ANN HATFIELD DE LEANA	9/18/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	13	13	\$54.08	\$35.75	\$18.33	No QP On Staff
16	R.C.	7-Oct-14	LIFE HEALTH CARE INC	Y	JOSEPH REUBEN DORBOR	9/18/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	16	16	\$66.56	\$44.00	\$22.56	No QP On Staff
17	K.B.	7-Oct-14	LIFE HEALTH CARE INC	Y	CHIQUITA WALMEKA BAPTISTE	9/18/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	19	19	\$79.04	\$52.25	\$26.79	No QP On Staff
18	M.F.	7-Oct-14	LIFE HEALTH CARE INC	Y	MONICA LATRICE RUSSELL	9/18/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	19	19	\$79.04	\$52.25	\$26.79	No QP On Staff
19	M.D.	7-Oct-14	LIFE HEALTH CARE INC	Y	RONALD MASON DAVIS	9/18/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	22	22	\$91.52	\$60.50	\$31.02	No QP On Staff
20	E.J.	7-Oct-14	LIFE HEALTH CARE INC	Y	CHRISTIAN KOTEY SASRAKU	9/18/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	22	22	\$91.52	\$60.50	\$31.02	No QP On Staff
21	E.K.	7-Oct-14	LIFE HEALTH CARE INC	Y	LINDA KARYEE KULEE	9/18/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	24	24	\$99.84	\$66.00	\$33.84	No QP On Staff
22	S.W.	7-Oct-14	LIFE HEALTH CARE INC	Y	DESMOND LVOYD WYER	9/18/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	32	32	\$133.12	\$88.00	\$45.12	No QP On Staff

# Summary Chart Examples

D.H.	4-Nov-14	LIFE HEALTH CARE INC	Y	BETH ANN HATFIELD DE LEANA	10/27/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	13	13	\$54.08	\$35.75	\$18.33	No QP On Staff
R.C.	4-Nov-14	LIFE HEALTH CARE INC	Y	JOSEPH REUBEN DORBOR	10/27/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	16	16	\$66.56	\$44.00	\$22.56	No QP On Staff
M.F.	4-Nov-14	LIFE HEALTH CARE INC	Y	MONICA LATRICE RUSSELL	10/27/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	19	19	\$79.04	\$52.25	\$26.79	No QP On Staff
M.D.	4-Nov-14	LIFE HEALTH CARE INC	Y	RONALD MASON DAVIS	10/27/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	22	22	\$91.52	\$60.50	\$31.02	No QP On Staff
E.J.	4-Nov-14	LIFE HEALTH CARE INC	Y	CHRISTIAN KOTEY SASRAKU	10/27/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	22	22	\$91.52	\$60.50	\$31.02	No QP On Staff
E.K.	4-Nov-14	LIFE HEALTH CARE INC	Y	LINDA KARYEE KULEE	10/27/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	24	24	\$99.84	\$66.00	\$33.84	No QP On Staff
S.W.	4-Nov-14	LIFE HEALTH CARE INC	Y	DESMOND LVOYD WYER	10/27/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	32	32	\$133.12	\$88.00	\$45.12	No QP On Staff
J.H.	4-Nov-14	LIFE HEALTH CARE INC	Y	ERICA ROTONYA MAHALI EDICHA	10/28/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	10	10	\$41.60	\$27.50	\$14.10	No QP On Staff
L.M.	4-Nov-14	LIFE HEALTH CARE INC	Y	BETH ANN HATFIELD DE LEANA	10/28/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	12	12	\$49.92	\$33.00	\$16.92	No QP On Staff
D.H.	4-Nov-14	LIFE HEALTH CARE INC	Y	BETH ANN HATFIELD DE LEANA	10/28/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	13	13	\$54.08	\$35.75	\$18.33	No QP On Staff
M.F.	4-Nov-14	LIFE HEALTH CARE INC	Y	MONICA LATRICE RUSSELL	10/28/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	19	19	\$79.04	\$52.25	\$26.79	No QP On Staff
M.D.	4-Nov-14	LIFE HEALTH CARE INC	Y	RONALD MASON DAVIS	10/28/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	22	22	\$91.52	\$60.50	\$31.02	No QP On Staff
E.J.	4-Nov-14	LIFE HEALTH CARE INC	Y	CHRISTIAN KOTEY SASRAKU	10/28/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	22	22	\$91.52	\$60.50	\$31.02	No QP On Staff
E.K.	4-Nov-14	LIFE HEALTH CARE INC	Y	LINDA KARYEE KULEE	10/28/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	24	24	\$99.84	\$66.00	\$33.84	No QP On Staff
S.W.	4-Nov-14	LIFE HEALTH CARE INC	Y	DESMOND LVOYD WYER	10/28/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	32	32	\$133.12	\$88.00	\$45.12	No QP On Staff
R.C.	4-Nov-14	LIFE HEALTH CARE INC	Y	JOSEPH REUBEN DORBOR	10/28/2014	T1019	PERSONAL CARE SERVICES, 15 MIN	48	48	\$199.68	\$132.00	\$67.68	No QP On Staff
										\$31,327.50	\$20,856.00	\$10,471.50	

# Summary Charts

- *Olson v. State*, No. A04-2314, 2006 WL 44244 (Minn. App. 2006)
- Defendant charged with theft by swindle and diverting corporate property
  - Wrote checks and used company cards for personal purposes
  - Wrote checks to pay off personal credit card balance
- State's forensic accounting expert composed a schedule summarizing methods Defendant used to steal and purchases made
- COA: no error in admitting summary chart
  - The schedule was prepared from Elite's records and is a summary of Elite checks registered as being issued for office supplies/equipment but that were discovered to be written by appellant for personal purchases, e.g., CDs, DVDs, furniture, a game table, TVs, and a camera. Appellant admitted during his testimony that he made these purchases. Appellant also testified that he purchased the DVDs for training purposes, but most of the DVDs purchased were of popular motion pictures that were found at appellant's home. The schedule was an accurate summary, it was helpful to the jury and the jury had access to all of the original exhibits that went into the chart. The district court did not commit reversible error in admitting the schedule as it was titled

# Questions? Concerns?

Restaurant or day care recommendations?

Nicholas.wanka@ag.state.mn.us

651-757-1394