Appendix

INDEX TO APPENDICES

APPENDIX A

FIFTH DIVISION
MCFADDEN, P. J.,
RICKMAN and MARKLE, JJ.

March 8, 2019

In the Court of Appeals of Georgia

A18A1865. DANIELS v. THE STATE.

MCFADDEN, Presiding Judge.

After a jury trial, Kareem Daniels was convicted of robbery by force. He appeals, arguing that the trial court erred in not allowing him to impeach the victim with a prior inconsistent statement, that the state knowingly failed to correct false testimony from the victim, and that the admission of black and white photographs instead of the original color versions constituted plain error. But Daniels has failed to show that the trial court abused its discretion in prohibiting cross-examination about a collateral matter, that the testimony in question was actually false, or that the admission of the photographs affected the outcome of the trial. Accordingly, we affirm.

1. *Facts and procedural posture.*

Construed in favor of the verdict, see *Jackson v. Virginia*, 443 U. S. 307 (99 SCt 2781, 61 LE2d 560) (1979), the evidence shows that on September 28, 2012, Lekeidra Taylor was walking to her apartment from a bus stop after work when Daniels drove slowly past her in an SUV. Daniels parked his vehicle in the apartment complex, got out of it, and forced Taylor into the back seat of his vehicle. Taylor pushed Daniels away and got out of the vehicle, but during the struggle Daniels took Taylor's wallet from her. Taylor used her cell phone to take a picture of Daniels holding her wallet and a picture of the license plate on his vehicle. Daniels eventually left the scene in his vehicle and Taylor called 911 to report the incident. Police apprehended Daniels later that evening.

The jury found Daniels guilty of robbery by force and the trial court imposed a 20-year sentence, with five years to be served in confinement and the remainder to be served on probation.[1] Daniels appealed, and this court granted his motion to remand the case to the trial court to consider the admission of photographic evidence and whether the state had knowingly elicited false testimony from the victim. After

[1]The jury also found Daniels guilty of hindering a person making an emergency call and driving with a suspended license, but the trial court set aside those verdicts due to insufficient evidence. The jury returned not guilty verdicts on charges of attempted rape and false imprisonment.

a hearing on remand, the trial court found no errors and denied a new trial. Daniels filed a motion for reconsideration, which was denied, and this appeal followed.

2. *Prior inconsistent statement.*

Daniels contends that the trial court erred in prohibiting him from impeaching the victim with a prior inconsistent statement. We review that ruling for abuse of discretion and find no such abuse. See *Thomas v. State*, 293 Ga. 829, 833 (4) (750 SE2d 297) (2013); *Cruz v. State*, 347 Ga. App. 810, 813 (2) (821 SE2d 44) (2018).

On direct examination, Taylor testified that she had met Daniels several months before the robbery while she was working at a Kroger grocery store. While explaining that at the time of the robbery she no longer worked at Kroger but was working at a hotel, Taylor testified: "I basically left Kroger because I wanted to . . . get into the healthcare field. And when it really wasn't going well for me, I still had my CNA [certified nursing assistant] at that time, I had finished job corp[s] and it was kind of hard to find a CNA job, so I tried looking for other jobs and that's when I went into the [hotel] position[.]" On cross-examination, defense counsel sought to impeach Taylor's testimony that she had left Kroger to get into the healthcare field by asking her if the reason she had left was because she had been caught shoplifting. Taylor replied: "No, I wasn't caught shoplifting."

The state objected to the line of questioning as irrelevant. Outside the presence of the jury, defense counsel produced a statement that Taylor had purportedly written upon resigning from Kroger. Counsel read the following statement into the record:

> I did a transaction for a refund that I put on a gift card that I didn't buy. I didn't receive as a gift. I kept the gift card and used it. I've also used another employee's Kroger card to get his employee discount. Earlier this week, I did another transaction, the same as one month ago and did the same thing. I'm willing to pay back the money that I put on the gift cards and the money that was discounted to me from the employee Kroger card. As of March 31, I will resign from Kroger.

The trial court sustained the state's objection and prohibited use of the statement for further questioning about Taylor's resignation from Kroger, finding that it was irrelevant and collateral to the issues in the case.

(a) *OCGA § 24-6-613 (b).*

"Georgia's new Evidence Code took effect on January 1, 2013, [approximately 10 months] before [Daniels'] trial began. On the issue of admitting extrinsic evidence of a witness's prior inconsistent statement, OCGA § 24-6-613 (b) substantially adopted the language of Federal Rule of Evidence 613 (b)[.]" *Hood v. State*, 299 Ga. 95, 98-99 (2) (786 SE2d 648) (2016).

> Under OCGA § 24-6-613 (b), extrinsic evidence of a witness' prior inconsistent statement may be admitted so long as the witness is first afforded an opportunity to explain or deny the prior inconsistent

> statement and the opposite party is afforded an opportunity to interrogate the witness on the prior inconsistent statement or the interests of justice otherwise require.

Brewner v. State, 302 Ga. 6, 16-17 (V) (804 SE2d 94) (2017) (citation and punctuation omitted).

Because this code section substantially adopted the federal rule, we look for guidance to the decisions of the federal appellate courts, which have "held – as Georgia courts did under our old Evidence Code – that prior inconsistent statements cannot be introduced through extrinsic evidence if they are irrelevant or collateral to the subject matter of the case." *Hood*, supra at 99 (2) (citations omitted). "Thus, although aspects of Georgia's Evidence Code dealing with prior inconsistent statements used to impeach have changed, the principle that such statements may not be introduced to impeach a witness on collateral matters remains intact." Id. (citation omitted). "A matter is collateral if the facts referred to in the statement could not be shown in evidence for any purpose independent of the contradiction." *United States v. Bordeaux*, 570 F3d 1041, 1051 (V) (8th Cir. 2009) (citation and punctuation omitted).

In this case, the trial court correctly ruled that Taylor's resignation from Kroger, including any purported reason for resigning, was a collateral matter since

"the testimony [Daniels] wished to elicit from [Taylor] regarding [the reason she left a job several months prior to the robbery] was irrelevant to the issues to be considered by the trier of fact[.]" *Wynn v. State*, 272 Ga. 861, 862 (2) (535 SE2d 758) (2000). The trial court thus did not abuse its discretion in refusing to allow Daniels to introduce a prior statement to attempt to impeach the victim on a collateral matter. See *United States v. Blackwood*, 456 F2d 526, 531 (2nd Cir. 1972) ("A witness may be impeached by extrinsic proof of a prior inconsistent statement only as to matters which are not collateral, i. e., as to those matters which are relevant to the issues in the case and could be independently proven.") (citations omitted).

(b) *OCGA § 24-6-608 (b).*

Daniels also argues that under OCGA § 24-6-608 (b) the trial court erred in curtailing further cross-examination about Taylor's alleged prior bad acts as shown by her written resignation statement. OCGA § 24-6-608 (b) provides:

> Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's character for truthfulness, other than a conviction of a crime as provided in Code Section 24-6-609, or conduct indicative of the witness's bias toward a party *may not be proved by extrinsic evidence*. Such instances may however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness[.]

(Emphasis supplied.)

Under the plain language of this statute, the trial court properly refused to allow Daniels to use extrinsic evidence of the prior statement for the purpose of attacking Taylor's character for truthfulness. See *Gilmer v. State*, 339 Ga. App. 593, 599 (2) (c) (794 SE2d 653) (2016) (Under OCGA § 24-6-608 (b), "trial counsel clearly would not have been permitted to introduce extrinsic evidence of the [witness'] arrest for perjury[.]"). And "[b]ecause OCGA § 24-6-608 (b) places the decision whether to admit specific instances of conduct within the trial court's discretion, we will reverse the trial court's ruling only on a clear abuse of that discretion." *Gaskin v. State*, 334 Ga. App. 758, 762 (1) (a) (780 SE2d 426) (2015) (citation omitted). Indeed, trial "court judges retain wide latitude to impose reasonable limitations on cross-examination based on concerns about . . . prejudice, confusion of the issues or interrogation that is only marginally relevant." *United States v. Saunders*, 166 F3d 907, 920 (7th Cir. 1999) (citation omitted). Here, we cannot say from the record before us that further inquiry into the reasons why Taylor left her prior job was mandated or "that the trial court abused its discretion in precluding any such cross-examination under the circumstances[.]" *Douglas v. State*, 340 Ga. App. 168, 173 (2) (796 SE2d 893) (2017). See also *Williams v. State*, 332 Ga.

App. 546, 549 (1) (b) (774 SE2d 126) (2015) (no error in trial court prohibiting cross-examination under OCGA § 24-6-608 (b)).

3. *False testimony.*

Daniels claims that his conviction must be reversed because the testimony of Taylor discussed above – that she left her job at Kroger because she wanted to get into the healthcare field and that she was not caught shoplifting – was false and the prosecutor failed to correct it. The claim is without merit.

> A defendant's right to due process is violated when a prosecutor fails to correct the false testimony of a government witness. To obtain a reversal on the grounds that the government failed to correct false testimony, the defendant must establish that: (1) the contested statements were actually false[;] (2) the government knew the statements to be false; and (3) the statements were material. To succeed on [such a] claim, the defendant must establish that the witness committed perjury. Simply showing a memory lapse, unintentional error, or oversight by the witness is insufficient. False testimony is considered material if there is any reasonable likelihood that it could have affected the judgment of the jury.

United States v. Clarke, 442 Fed. Appx. 540, 543-544 (II) (11th Cir. 2011) (citations and punctuation omitted). See also *Napue v. Illinois*, 360 U. S. 264, 269 (79 SCt 1173, 3 LE2d 1217) (1959).

Here, Daniels has not established that Taylor committed perjury. See OCGA § 16-10-70 (a) ("A person to whom a lawful oath or affirmation has been

administered commits the offense of perjury when, in a judicial proceeding, he knowingly and willfully makes a false statement material to the issue or point in question."). Daniels has made no showing that Taylor's testimony on direct examination that she "basically left Kroger because [she] wanted . . . to get into the healthcare field" was actually false. As the trial court recognized, a person may have more than one reason for leaving a job, so even if "her stated reason for leaving Kroger was not the whole truth of the matter, [it was] not necessarily false." While there may be conflicting evidence as to why Taylor left her job at Kroger, as our Supreme Court has explained, "conflicting evidence alone does not support a showing that the [witness] was necessarily being dishonest . . . or that the [s]tate knowingly presented false testimony." *Greene v. State*, 303 Ga. 184, 188 (3) (811 SE2d 333) (2018) (citations omitted).

Likewise, Daniels has not established that Taylor's testimony on cross-examination that she was not caught shoplifting was actually false and rises to the level of perjury. As Daniels conceded at trial, it is undisputed that there was no shoplifting conviction. Moreover, the written resignation statement upon which Daniels bases his claim of shoplifting indicated that Taylor "did a transaction for a refund that [she] put on a gift card that [she] didn't buy [or] receive as a gift. [And

that she] kept the gift card and used it." The statement, however, does not clarify where the card was from or to whom it belonged, how Taylor obtained it, and how it was used. While that statement apparently shows misuse of a gift card, given the lack of specificity about the essential elements required to prove the offense of shoplifting, it cannot be said with certainty that such a crime occurred. See OCGA § 16-8-14 (a) (theft by shoplifting). Even if we assume that the acts in question could form the basis for a shoplifting charge, there is no evidence that any such charge was ever made or that Taylor knew that her conduct might be construed to support such a charge when she denied having been caught shoplifting. Under the circumstances, Daniels has not shown that the testimony was false since there are alternative explanations for the discrepancy. See *Clarke*, supra at 544 (II).

4. *Photographs.*

Daniels claims that the trial court violated the best evidence rule by admitting two black and white photos – one of his license plate and one of him holding the victim's wallet – because the original photos were in color. Daniels did not object to the black and white photos at trial, so we review their admission under the four-pronged test for plain error. See *Gates v. State*, 298 Ga. 324, 326 (3) (781 SE2d 772)

(2016) (evidentiary rulings not objected to at trial are subject to appellate review for plain error).

> Under this four-pronged test, there first must be an error or defect – some sort of deviation from a legal rule – that has not been intentionally relinquished or abandoned, i.e., affirmatively waived, by the appellant. Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. Third, the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the trial court proceedings. Fourth and finally, if the above three prongs are satisfied, the appellate court has the discretion to remedy the error – discretion which ought to be exercised only if the error seriously affects the fairness, integrity or public reputation of judicial proceedings.

Patch v. State, 337 Ga. App. 233, 242 (2) (786 SE2d 882) (2016) (citations and punctuation omitted).

We assume for the sake of argument that Daniels can show that the admission of the black and white duplicates of the original color photos meets the first two prongs of the plain error test. But see OCGA § 24-10-1003 ("A duplicate shall be admissible to the same extent as an original unless: (1) A genuine question is raised as to the authenticity of the original; or (2) A circumstance exists where it would be unfair to admit the duplicate in lieu of the original."); *Pierce v. State*, 302 Ga. 389, 397 (2) (807 SE2d 425) (2017). Nevertheless, he has not satisfied the third prong of the test, requiring that he demonstrate that the error affected the outcome of the trial

court proceedings. *Patch*, supra. See also *Henderson v. State*, 320 Ga. App. 553, 562 (8) (740 SE2d 280) (2013) ("[P]retermitting whether the first, second, or fourth prongs were satisfied, [appellant] failed to satisfy the third.").

In this regard, Daniels makes no argument concerning the photo showing his license plate. Instead, he only argues that he was harmed by the black and white photo of him allegedly holding the wallet. He claims that the color version of that photo shows that the item in question was black and white with some purple on it, whereas Taylor described the wallet to police as black with different colored stars or butterflies on it. He also claims that the color photo supports his theory that the item in question is not the victim's wallet but is his cell phone.

However, contrary to Daniels' arguments, after the evidentiary hearing on remand, the trial court expressly found that "there appears to be no significant difference between the [p]hotograph introduced at trial and the color version thereof; it is simply a copy of the color version." Moreover, the state showed at trial that Daniels' cell phone was plain black with no white or other coloring on it. As noted above, Daniels' own description of the color photo is that it shows him holding an item with white and purple on it, rather than a plain black item, such as his cell phone. So it appears that he actually may have benefitted from the fact that the color photo

was not admitted since it may have undermined his defense that he was holding his cell phone in the picture. "Under such circumstances, we find that [even if] the introduction of [the black and white photos] was erroneous, that error did not likely affect the outcome in [this] case." *White v. State*, ___ Ga. ___ (3) (Case No. S18G0365, decided February 4, 2019) (citations omitted). See also *Smith v. State*, 299 Ga. 424, 431-432 (2) (c) and (d) (788 SE2d 433) (2016) (erroneous introduction of evidence was harmless where aspects of the evidence appeared to have aided the defense). Accordingly, Daniels cannot show that the admission of the photos amounted to plain error affecting substantial rights. See *State v. Kelly*, 290 Ga. 29, 33 (2) (a) (718 SE2d 232) (2011) ("Satisfying all four prongs of [the plain error] standard is difficult, as it should be.") (citations and punctuation omitted).

*Judgment affirmed. Markle, J., concurs and Rickman, J., concurs in Judgment only.**

***THIS OPINION IS PHYSICAL PRECEDENT ONLY, COURT OF APPEALS RULE 33.2 (a)**.

APPENDIX B

Court of Appeals
of the State of Georgia

ATLANTA, March 25, 2019

The Court of Appeals hereby passes the following order

A18A1865. KAREEM DANIELS v. THE STATE.

Upon consideration of the APPELLANT'S Motion for Reconsideration in the above styled case, it is ordered that the motion is hereby DENIED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, March 25, 2019.

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Stephen E. Castlen *, Clerk.*

SUPREME COURT OF GEORGIA
Case No. S19C1070

December 23, 2019

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

KAREEM DANIELS v. THE STATE.

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Court of Appeals Case No. A18A1865

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

, Clerk

APPENDIX D

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	)	
	)	
v.	)	CASE NO: 12SC114801
	)	
KAREEM DANIELS,	)	
	)	
Defendant.	)	

ORDER

This matter comes before the court on remand from the Georgia Court of Appeals. The court is tasked with "determining (1) whether the State violated both the best evidence rule and Brady v. Maryland, 373 U.S. 83 (1963), when it allegedly failed to produce in discovery and tender into evidence color copies of the photograph of Defendant allegedly holding the complaining witness' stolen wallet; and (2) whether the State knowingly elicited false testimony from the complaining witness." Counsel for the State and Defendant Kareem Daniels agree that this court should also determine whether, even if the alleged false testimony was not elicited knowingly, the State nevertheless was under a duty to correct the alleged false testimony of the complaining witness. Should the court find in the affirmative as to any of these issues, a new trial would be warranted.

The background of this case is described in Judge Robert C. I. McBurney's Order Re: Motion for New Trial, filed June 29, 2016.

1. The photograph.

At trial, a jury found Daniels guilty of robbery of Lakeidra Taylor. To support its allegation of robbery against Daniels, the State introduced State's Exhibit 8, a black-and-white print of a photograph purportedly of Daniels holding Taylor's stolen wallet (the "Photograph"). The Photograph was introduced by the State without objection. It is undisputed the State failed to

disclose to defense counsel before trial that a color version of the Photograph existed. When the lead detective was called to testify, he brought with him to the stand a color version of the Photograph. The fact he had the color version of the Photograph was brought out by the prosecutor through direct examination. Defense counsel did not question the detective about the Photograph or the color version thereof. Defense counsel did not raise an objection to the Photograph at any time during the trial.

a. The best evidence rule.

Georgia's best evidence rule is codified at O.C.G.A. § 24-10-1002 and provides as follows: "To prove the contents of a writing, recording, or photograph, the original writing, recording, or photograph shall be required." The Georgia Supreme Court recently confirmed that "[t]he purpose of the best evidence rule is to prevent inaccuracy and fraud when attempting to prove the contents of a writing." Pierce v. State, S17A0828, 2017 Ga. LEXIS 940 at *16 (Ga. Oct. 30, 2017) (quoting United States v. Trotter, 837 F3d 864, 867 (8th Cir. 2016)).

There appears to be no argument that the color version of the Photograph would qualify as an "original" pursuant to OCGA § 24-10-1001(3). There is also no argument that the color version of the Photograph would not have been admitted if tendered.

Daniels now argues that the Photograph should not have been admitted, because it is different from the original: specifically, the Photograph is enlarged and black-and-white. However, there appears to be no significant difference between the Photograph introduced at trial and the color version thereof; it is simply a copy of the color version. While Daniels describes the wallet as "black and white," Taylor testified her wallet was black with "print on it."

OCGA § 24-10-1003 provides: "A duplicate shall be admissible to the same extent as an original unless: (1) A genuine question is raised as to the authenticity of the original; or (2) A

circumstance exists where it would be unfair to admit the duplicate in lieu of the original." Daniels raises no question as to the authenticity of the original. At trial, Taylor testified that the Photograph was taken using her cell phone. She and the detective both testified that Taylor sent the photograph at issue, and others, to the detective via electronic transmission. The detective explained that when he received the electronic version of the Photograph, he printed a copy for his investigative file. The detective further explained that when photographs are faxed to the District Attorney's office, they are sometimes printed in black-and-white. The Photograph introduced at trial is a duplicate "within the meaning of OCGA § 24-10-1003, and admissible to the same extent as the original." Pierce v. State, 2017 Ga. LEXIS 940 at *17.

Accordingly, the State did not violate the best evidence rule when it allegedly failed to produce in discovery and tender into evidence color copies of the Photograph of Daniels allegedly holding Taylor's stolen wallet. For the reasons stated below addressing Daniels' Brady argument, the court finds that even if introduction of the Photograph violated the best evidence rule, any such objection was waived.

b. Brady v. Maryland, 373 U.S. 83 (1963).

The court finds the State did not violate Brady v. Maryland, 373 U.S. 83 (1963), when it introduced the Photograph. The United States Supreme Court held that a prosecution's failure to provide "evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." Brady v. Maryland, 373 U.S. at 87.

> *Brady* does not always require pretrial disclosure of exculpatory evidence, and at least in some circumstances, a prosecuting attorney may satisfy *Brady* by disclosing it at trial. *See, e.g., Burgan v. State*, 258 Ga. 512, 513 (371 SE2d 854) (1988) ("The rule regarding the disclosure of exculpatory material set forth in Brady ... is not violated when the material in question is available to the defendants during trial, pre-trial disclosure of materials

> not being required." (Citation omitted)); *Floyd v. State*, 263 Ga. App. 42, 43 (587 SE2d 203) (2003) ("Assuming, without deciding, that the statement was exculpatory, the state did not suppress the evidence because the prosecutor introduced it at trial, and Floyd had ample opportunity to cross-examine [the witness]."). Moreover, our Court of Appeals has held that a prosecuting attorney may satisfy *Brady* simply by himself introducing at trial the substance of the exculpatory evidence. *See, e.g., Nelson v. State*, 279 Ga. App. 859, 864 (2) (632 SE2d 749) (2006) ("[N]o *Brady* violation occurred because the victims' testimony was introduced at trial and Nelson was given an opportunity to conduct cross-examination."). Whether a disclosure at trial is timely enough to satisfy *Brady* depends on the extent to which the delay in disclosing the exculpatory evidence deprived the defense of a meaningful opportunity to cross-examine the pertinent witness at trial, whether earlier disclosure would have benefitted the defense, and whether the delay deprived the accused of a fair trial or materially prejudiced his defense. *See Burgan*, 258 Ga. at 513-514 (1).

In the Matter of Lee, 301 Ga. 74, 77-78 (2017).

Here, the detective disclosed on the witness stand during direct examination that he had a color version of the Photograph with him and was actually referring to the color version during his testimony. Daniels had ample opportunity to cross-examine the detective about the Photograph, but chose not to do so. Of note, defense counsel asked the detective no questions regarding either version of the Photograph. Daniels has not demonstrated that disclosure of the color version at trial somehow deprived him of a meaningful opportunity to cross-examine the detective. Even were Daniels to argue that he might have asked additional questions of Taylor, he did not attempt to have Taylor recalled at trial. Daniels has not shown how earlier disclosure would have benefitted the defense.

The court finds that the prosecution did not withhold or suppress exculpatory or favorable evidence from Daniels. Instead, the disclosure of such evidence, if any, was delayed until trial. The court further finds that the delay in disclosing the color version of the Photograph did not deprive Daniels of a fair trial or materially prejudiced his defense.

2. The alleged false testimony.

Taylor testified she worked at Kroger when she first met Daniels. At issue are the following questions asked by the prosecution to Taylor about the date of the incident between Daniel and her:

> Q And were you working at Kroger still at that time?
>
> A No.
>
> Q Tell us about the transition to your new job?
>
> A Um, the transition to my new job, I basically left Kroger because I wanted to, um, get into the healthcare field. And when it wasn't really going well for me, I still had my CNA at that time, I had finished job corp and it was kind of hard to find a CNA job, so I tried looking for other jobs and that's when I went into the Doubletree Hotel position that I encountered.

During the hearing, the prosecutor admitted she knew Taylor had been caught stealing from Kroger as an employee and that Taylor left her employ at Kroger because of the theft.

a. Did the State knowingly elicit false testimony?

Having presided over the trial of this matter and taking into account the way the questions were asked and the context in which they were asked, the court does not find that the prosecutor knowingly elicited false testimony from Taylor. Instead, the prosecutor was attempting, although somewhat confusingly, to elicit simply that at the time of the incident, Taylor no longer worked at Kroger. That the question was not completely clear is evidenced by how Taylor had trouble determining precisely how to answer the question.

b. Did the State have a duty to correct the alleged false testimony?

Daniels argues that even if the prosecutor did not knowingly elicit false testimony from Taylor, the State nevertheless was under a duty to correct the alleged false testimony. "'[A] conviction obtained through use of false evidence, known to be such by representatives of the

State, must fall under the Fourteenth Amendment.'" Washington v. Hopson, 299 Ga. 358, 363 (2016) (quoting Napue v. Illinois, 360 U. S. 264, 269 (1959)).

In order for the prosecution to have a duty to correct false testimony, Daniels must show that (1) the contested statements were actually false, (2) the prosecutor knew the statements were false, and (3) the statements were material. See id. The court is not convinced that Taylor's stated reason for leaving Kroger was actually false. Even where a person is caught stealing, she may have other reasons for wanting leave her current employment. Here, Taylor testified that while working at Kroger, she had her nursing assistant certification and wanted to get back into the healthcare field. Certainly, her stated reason for leaving Kroger was not the whole truth of the matter, but her testimony is not necessarily false.

Even if the court were convinced that Taylor's testimony was false, Daniel's must still show that such testimony was material.

> The test of materiality is whether the alleged false statement could have influenced the decision as to the question at issue in the judicial proceeding in which the perjury is alleged to have been committed. The actual effect of a false statement has no bearing on its materiality, and the guilt of one who has falsely sworn does not depend on the result of the proceedings in which it occurred. It is not required that the alleged false statement be material to the main issue, but it is sufficient if it relates to an issue which is only collaterally involved.

Sneiderman v. State, 336 Ga. App. 153, 159 (2016) (citations and punctuation omitted).[1] Other than arguing that the alleged false statement could have affected the jury's determination of Taylor's credibility, Daniels has not shown that the alleged false statement was material. Every statement that can be shown to be false goes to a witness' credibility; in that event, there would be no need for a defendant to show that a statement is material. Nothing about Taylor's reason(s) for leaving ber employment with Kroger were material to, or even collaterally involved with, tbe

[1] Even though this case addresses a charge of perjury, the analysis as to materiality is the same, and the court finds this a particularly helpful discussion of the materiality requirement.

charges against Daniels of (1) robbery by force and intimidation, (2) criminal attempt to commit rape, (3) false imprisonment, (4) hindering person making emergency telephone call, or (5) driving while license suspended. Thus, the prosecutor was under no duty to correct the alleged false testimony.

SO ORDERED, this the 8th day of January, 2018,

WESLEY B. TAILOR, JUDGE
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

the jury at this point where you're living.
A Um, I was living, um, off of -- I can't remember the road. It was in Sandy Springs, Georgia, right around the corner from the Kroger that I used to work at.
Q Okay.
Was that the Dunwoody Crossing Apartments?
A Yes, yeah, yep.
Q And had you been living in the Dunwoody Crossing Apartments back when you first spoke with Mr. Daniels, with the defendant?
A No.
Q So, this is a place that you had recently moved to?
A Yes.
Q And were you working at Kroger still at that time?
A No.
Q Tell us about the transition to your new job?
A Um, the transition to my new job, I basically left Kroger because I wanted to, um, get into the healthcare field. And when it wasn't really going well for me, I still had my CNA at that time, I had finished job corp and it was kind of hard to find a CNA job, so I tried looking for other jobs and that's when I went into the Doubletree Hotel position that I encountered.
Q So, you just mentioned you were working at the Doubletree Hotel.

make a statement?
A Yes.
Q Okay.
Did you go with that same officer?
A I can't remember.
Q And the pictures you gave the officers in the video as well, right?
A Yes.
Q All right. Give me one second.
A Okay.
Q Now, Ms. Taylor --
THE COURT: Are we at a stopping point now?
MS. KURIEN: Is the Court taking a break now?
THE COURT: We're going to take a lunch break. It's 12:30, so if these folks aren't hungry, I am.
MS. KURIEN: Judge, I have about five minutes more of questioning.
THE COURT: Is that it?
MS. KURIEN: Yes.
THE COURT: Why don't we go ahead and do that?
Q Ms. Taylor, when Ms. Khasin talked to you, you said you had transitioned out of your job at Kroger.
A Excuse me.
Q You said that you had transitioned out of your job you were working at Kroger.

A Yes.
Q And now you're working as a CNA.
A Yes.
Q And you said the reason you left is because you wanted to try to get a job as a CNA.
A Yes.
Q Isn't it true that the reason you left was because you were caught shoplifting at Kroger?
A No, I wasn't caught shoplifting.

MS. KHASIN: Objection, Your Honor. I think we need to approach. And maybe this would be a good time for a lunch. We need to discuss this outside the presence of the jury. You could go ahead and let them go to lunch.

THE COURT: Okay. Ladies and gentlemen, I'm going to release you for lunch. You cannot talk about the case while you are at lunch, but please enjoy places we have around here and we'll see you back at 1:30. Deputy DeWitt is going to let you back.

(Whereupon, the jury exits the courtroom at 12:42 p.m.)

THE COURT: All right.

MS. KHASIN: Your Honor, I think it's pretty obvious, but my objection is to Ms. Kurien going

into improper character evidence, talking about something that's completely irrelevant to this case, bringing up a conviction that -- or a police report or a wrongful act that she's provided no discovery on, nothing for discovery. It is wrong in every single way and defense counsel knows that. And it's -- the State vehemently objects to this line of questioning.

THE COURT: Ms. Kurien.

MS. KURIEN: Judge, to respond to Ms. Khasin's objections. Ms. Khasin opened the door in fact perhaps unwillingly, but she did open the door when she asked Ms. Taylor why she left that job at Kroger. Ms. Taylor said it was because she wanted to transition to her job as a CNA and in fact she said she started working at the Doubletree Hotel after she left her job at Kroger. It is in fact impeachment in which we do not need to provide the State with notice. I have a handwritten statement from Ms. Taylor; it's a handwritten statement admitting that she stole gift cards from Kroger. And she said I am -- I did a transaction for a refund that I put on a gift card that I didn't buy. I didn't receive as a gift. I kept the gift card and used it. I've also used another employee's

Kroger card to get his employee discount. Earlier this week, I did another transaction, the same as one month ago and did the same thing. I'm willing to pay back the money that I put on the gift cards and the money that was discounted to me from the employee Kroger card. As of March 31, I will resign from Kroger.

THE COURT: Okay.

MS. KHASIN: Your Honor, I never asked Ms. Taylor why she left her job at Kroger. I asked her whether she was still working at Kroger and she expressed that she was interested in nursing and interested in different fields and that she had in fact left. This is a pure effort to -- to sole show the character of this victim. It has absolutely nothing to do with this case and that piece of paper was never provided to me in discovery. It was never mentioned. I have asked for reciprocal discovery. She has never provided that and it is absolutely impermissible.

MS. KURIEN: And, Judge, the reason it was not provided in discovery is because I had no idea that Ms. Khasin would open the door as to why Ms. Taylor left Kroger. We do not have to provide any discovery when it is used for impeachment and it is

relevant because it was about her character.

THE COURT: That's going to be part of the problem if it's for her character for truthfulness. I could let what you've already done -- here's what we'll do: What you have in is in. I think any additional cross examination regarding that incident and her resignation from Kroger, I will sustain the objection going forward. But, the previous testimony is already in, so.

MS. KHASIN: Your Honor, I would like to ask for a limiting instruction so that the jury does not take any improper inference about the improper line of questioning.

THE COURT: I'm not going do that because I do think it was proper impeachment based on her direct testimony. But, I'm not going to let in anything further based on attempting to use this incident as a character for -- her character for truthfulness, so. This wasn't a felony conviction. It wasn't. So, I'm not going to let in additional testimony about it.

MS. KHASIN: I understand, Your Honor.

MS. KURIEN: Judge, just so the record is clear, the basis for the Court's ruling is that it is not a conviction.

THE COURT: You haven't shown me that it's a conviction.

MS. KURIEN: It is not a conviction.

THE COURT: Right. So, I don't have any other basis upon which to allow you to continue with this line of questioning. I think you've gotten -- I mean, you've gotten what you needed to out of it, so I'm going to let you stop there because otherwise it's just cumulative.

Yes, anything else?

MS. KHASIN: Your Honor, again, we would just like to -- I understand the Court's ruling is that you're not going to give a limiting instruction, but the State's position is that it's improper that she talked about a criminal proceeding. Shoplifting is a criminal act. It is not -- it is not a manner of impeachment. If she had asked is the reason you got terminated because you stole things from your employer, then that would have been a proper impeachment. She's talking about a criminal act. It's improper and I'll note it for the record.

MS. KURIEN: Just to perfect the record, we will submit it is in fact permissible because it is a prior inconsistent statement. Her statement on direct as to why she left Kroger and this is an

inconsistent statement. And also under O.C.G.A. 24-6-608, under character and conduct of a witness, I believe that that statute allows me to ask Ms. Taylor about these circumstances, allows the record to have Ms. Taylor's answers on the record. It does not allow for extrinsic evidence relating to the conduct at issue. And that's in fact, why I would ask when the jury comes in I be allowed to ask the question and Ms. Taylor be allowed to respond because that is in fact where this issue lies. And terminating the question before Ms. Taylor responds on the record before the jury is improper in this case.

MS. KHASIN: If I could respond.

THE COURT: I think this is nothing that is relevant to the matter at hand. It is a completely collateral issue, so I'm not going to allow it in. I believe 608(b) talks about a discretion of the Court. I don't believe this is something that -- based on the testimony that I heard here, I don't believe that it's really probative or even if it is probative, that any further inquiry is unnecessary and it is cumulative and would be probably inappropriate, even under 403. So, I'm going to keep it out, any additional inquiry into it. But,

I'm not going to give any limiting instruction as to the prior. So, that's what I'll do. Unless y'all talk about it and you agree that you want to clarify what it is versus shoplifting versus stealing the gift cards. If y'all agree you want to do that in some fashion, I'll let y'all come to terms to that. And whatever it is you agree on, then we'll do; otherwise, the door is closed on this subject and you'll be moving to your next area of cross examination. That's what we'll do. So, we'll see y'all back here at 1:30.

Anything else?

MS. KHASIN: No.

(Whereupon, a luncheon recess was held at 12:51 p.m.)

A F T E R N O O N S E S S I O N

(Whereupon, the defendant is present and before the Court.)

DEPUTY: Remain seated, court come to order.

THE COURT: All right. Anything else y'all wish to put on the record, either about the last objection or anything else that we had talked about before I call in the jurors?

MS. KHASIN: No, Your Honor.

MS. KURIEN: No, Judge.

THE COURT: Okay. All right. Then, you can bring out the jury.

(Whereupon, the jury enters the courtroom at 1:42 p.m.)

DEPUTY: All jurors are present, Your Honor.

THE COURT: Thank you. Y'all may be seated. You may proceed with your cross examination.

MS. KURIEN: Judge, we don't have any questions.

THE COURT: Do you have any redirect?

MS. KHASIN: I have a very brief redirect.

THE COURT: Okay.

REDIRECT

BY MS. KHASIN:

Q Ms. Taylor, I just want to ask you a couple of questions to follow up on some of the points Ms. Kurien was talking to you about in her cross examination.

A Okay.

Q One of the questions I have for you is about your having seen Mr. Daniels, the defendant, between the time that you had that first phone conversation with him and September 28th, which is the date of the incident. Do you specifically recall having seen him at Kroger?

A No, not specifically seeing him. I may have been in the same area of him but not realizing.

Q When you say you may have been in the same area, do you mean while you were working at Kroger?
A Right.
Q Did you have any conversations that you can recall with him between that phone call and then the date of the incident?
A No.
Q I also want to ask you about the timeframe of the incident when it was all happening kind of in front of the mailboxes and out on the street. Did you see anybody in particular around you, any people in the vicinity of you?
A Not that I can see, no.
Q Okay.

The residences that are actually part of the Dunwoody Crossing Apartments, are they back behind the mailboxes?
A It's almost across from it. It's like if you look across from the mailboxes, the apartment is to the left.
Q Okay.

Are the apartments up on the hill?
A No, they're not on the hill. They're like right before, yeah.
Q At the time that all of this was happening, did you see anybody with their windows open or did you see any faces?

A I did see a window open, but I didn't see any faces or know if anybody was in the apartments.
Q So as far as you know, there wasn't anybody that you saw during the incident around you.
A No.
Q Okay.
I want to talk to you about the video-recorded statement that Ms. Kurien played for all of us during her cross examination. Did I show you a copy of that video?
A No.
Q Have you ever seen a copy of the video?
A No.
Q And all of this -- all these things that happened to you, they happened September 28th of last year, correct, in 2012?
A I believe so.
Q That is over a year ago.
A U-huh.
Q In the past year, have you had an opportunity to see that video ever?
A No.
Q What about the 911 tape, the conversation that you actually had with an operator, have you ever heard that tape?
A No.

Q Now, you and I, we met a couple of times, right, in order to discuss this case in preparation for the trial, right?

A Yes.

Q And when we were talking about the case, did I ever play that video for you?

A No.

Q Did I ever play your recorded statement?

A No.

Q Did I ever tell you what to say when you testify in front of these jurors?

A No.

MS. KHASIN: That's all I have.

MS. KURIEN: No other questions.

THE COURT: You may step down.

(Whereupon, the witness leaves the witness stand.)

THE COURT: Call your next witness.

MS. KHASIN: Your Honor, the State calls Ms. Michelle Allen.

(Whereupon, the witness enters the courtroom and takes the witness stand.)

DEPUTY: Remain standing and face me, please. Raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give in