

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEVOHN MARKS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Docket No. 80469

Appeal from a Judgment of Conviction
Following a Jury Trial and Verdict
Eighth Judicial District Court, Clark County
The Honorable Carolyn Ellsworth, District Judge
Case No. C-18-337017-2

**APPELLANT'S APPENDIX
VOL. 7 OF 9**

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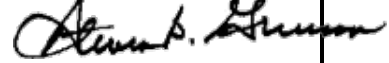
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/s/ Jess Matsuda

Jess Y. Matsuda, Esq.

11-6-20

Date



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
DEVOHN MARKS,)
)
Defendant.)

CASE NO. C-18-337017-2
DEPT NO. V

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

WEDNESDAY, JULY 24, 2019

JURY TRIAL - DAY 6

APPEARANCES:

FOR THE STATE:

NICOLE J. CANNIZZARO, ESQ.
Chief Deputy District Attorney
LINDSEY MOORS, ESQ.
Deputy District Attorney

FOR THE DEFENDANT:

JESS Y. MATSUDA, ESQ.

RECORDED BY: TRISHA GARCIA, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

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1 **LAS VEGAS, CLARK COUNTY, NEVADA, JULY 24, 2019, 1:17 P.M.**

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: All right. Are we on the record?

5 THE COURT RECORDER: We are, Judge.

6 THE COURT: All right. We are on the record in Case
7 Number C337017, State of Nevada versus Devohn Marks. The
8 record will reflect the presence of Mr. Marks with his counsel.
9 The prosecutors are present, as are all officers of the court.
10 We are outside the presence of the jury.

11 Do you have something outside the presence?

12 MS. MOORS: Yes. Good afternoon, Your Honor. So if
13 you recall on one of our exhibits, the video exhibit, we were
14 having a little bit of a difficult time playing it. What I did
15 was I contacted my court exhibits department. They essentially
16 added a separate player onto a new disc. It contains all of
17 the exact same file information, but it has a different type of
18 player that would allow the video to be played correctly. I
19 have confirmed on several laptops that it does work correctly.

20 In speaking with your court clerk, she suggested that
21 we add it as an A next to the exact same one that was
22 previously admitted, and it's my understanding that Mr. Matsuda
23 would also stipulate to this admission because it's the same
24 video that had already been stipulated to. This is just that
25 the player, and then what I would request is prior to the jury

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1 deliberating that we would explain to them how to use the
2 player, or we could explain it to the marshal. Basically you
3 just have to open the player and drag the file to it.

4 THE COURT: Right. And so is that 63 or 64?

5 THE CLERK: 64.

6 THE COURT: 64A.

7 MS. MOORS: Correct.

8 THE COURT: Will be marked, and that will basically
9 take the place of 64. When we send everything back to the
10 jury, and we'll explain that to them as well.

11 Now, we -- since the 64 has already been admitted,
12 that's got to go back, but we'll explain to them that 64A has
13 the proper requirement for them, the program so they can play
14 it. And I'll have the marshal checked out on how to use that
15 so he can be the neutral person that explains to them how you
16 play it --

17 MS. MOORS: Excellent. And it's very simple, and
18 then there -- you know, obviously then with the record of the
19 trial will be both of the discs so that it's obvious, you know,
20 ultimately what was going on.

21 Furthermore, today is our day for our cell phone
22 custodian of records, and we have two individuals that we flew
23 in from out of state.

24 In speaking with Mr. Matsuda, we have agreed to
25 stipulate to the Verizon cell phone records. We have someone

1 from Verizon here to talk about them, but for purposes of
2 authentication, we're going to stipulate to their admission,
3 not that realistically us lay people can understand them, but
4 they will be discussed through this custodian of record as well
5 as our expert on cell phones, Genio Basilotta, from the Las
6 Vegas Metropolitan Police Department who will be testifying
7 tomorrow.

8 THE COURT: Okay. So what exhibit number are we
9 talking about?

10 THE CLERK: Okay. We just marked them, Your Honor,
11 and they're --

12 MS. CANNIZZARO: May I -- may I approach, Your Honor?

13 THE CLERK: Okay.

14 THE COURT: Yes.

15 THE CLERK: Yes.

16 MS. CANNIZZARO: So the Verizon -- the Verizon
17 records would be State's Proposed 67, 68, 69 and --

18 THE CLERK: I'm sorry. Right here.

19 MS. CANNIZZARO: Yes. And then State's Proposed 66
20 and 65. So sorry. 65 through 69.

21 THE COURT: Okay.

22 MS. CANNIZZARO: If that's easier.

23 THE COURT: 65 through 69 are the Verizon records.

24 And, Mr. Matsuda, are you stipulating to the
25 admission of all of those records or just the authenticity?

1 Because there's two prongs obviously. There's authenticity and
2 relevance before anything can be admitted.

3 MR. MATSUDA: Authenticity, yes, Your Honor. My
4 understanding is the State does have an expert to testify as to
5 content and what's -- all of that stuff.

6 THE COURT: Okay. So you're stipulating -- in other
7 words, you're not going to make them jump through the hoops --

8 MR. MATSUDA: Correct.

9 THE COURT: -- of showing that these are business
10 records kept in the ordinary course, et cetera --

11 MR. MATSUDA: Correct.

12 THE COURT: -- through the custodian, but you still
13 want them to lay all of the foundation that we would require.

14 MR. MATSUDA: Yeah --

15 MS. MOORS: Sure.

16 THE COURT: -- to otherwise admit?

17 MR. MATSUDA: Correct.

18 THE COURT: Okay. So that's just clear. The
19 stipulation is to authenticity only.

20 All right. Very good. Anything else outside the
21 presence?

22 MS. MOORS: Nothing further from the State.

23 THE CLERK: And so 64A will be admitted though;
24 correct, Your Honor?

25 THE COURT: 64A is going to be admitted by

1 stipulation.

2 (State's Exhibit Number(s) 64A admitted.)

3 THE COURT: And then 67 through 69 are not admitted
4 yet.

5 You'll still have to move for their admission, but
6 counsel has agreed to waive any objections to authenticity.
7 Technically speaking, you would normally -- you know, it is
8 waived unless you lodge an objection to the authenticity, but
9 it's nice that you put it on the record that way.

10 All right. Let's bring them in.

11 (Jury reconvened at 1:22 p.m.)

12 THE COURT: Thank you. Please be seated.

13 And the record will reflect that we are now within
14 the presence of the jury as well as the alternates. And the
15 State may call its next witness.

16 MS. CANNIZZARO: Thank you, Your Honor. The State
17 calls Michael Bosillo.

18 **MICHAEL BOSILLO**

19 [having been called as a witness and being first duly sworn,
20 testified as follows:]

21 THE CLERK: Please be seated, and state and spell
22 your name for the record.

23 THE WITNESS: Sure. Michael, M-i-c-h-a-e-l.
24 Dominick, D-o-m-i-n-i-c-k. Bosillo, B-o-s-i-l-l-o.

25 THE COURT: You may proceed.

1 MS. CANNIZZARO: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. CANNIZZARO:

4 Q Good afternoon, Mr. Bosillo.

5 A Good afternoon, ma'am.

6 Q May I ask how are you employed?

7 A I'm employed by T-Mobile cell phone company located
8 in Dallas, Texas.

9 Q And what is your position with T-Mobile?

10 A I am a custodian of records testifier.

11 Q And how long have you had that position?

12 A I've had that position going on eight years now.

13 Q You mentioned that you are a custodian of records
14 testifier for the last eight years or so. What did you do
15 before you worked for T-Mobile?

16 A I'm a retired homicide investigator out of Dallas
17 County, Texas.

18 Q And as a custodian of records testifier, can you
19 describe for the members of the jury what your general job
20 duties are.

21 A Yes, ma'am. As such I'm responsible for the care,
22 custody and control of all cell phone records that are
23 generated in the normal course of business. Once T-Mobile
24 receives a legal demand in the form of a court order, search
25 warrant or subpoena duces tecum, we then examine our database,

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1 make sure it's one of our numbers, extract all of the
2 information that's requested, and then we forward it over to
3 our trial team.

4 Our trial team consists of six people, several of
5 which are retired police officers. We review that material for
6 the purpose of helping explain and interpret how the cell phone
7 system works. We aren't engineers, but we've been trained by
8 managers and engineers and things of that nature to get a
9 better understanding so that we can explain it to the jury how
10 the system works and results in the records that we provide.

11 We testify at both the state and federal level
12 throughout the entire country.

13 Q You mentioned that you work as part of a larger team
14 in examining these types of records. Have you had any training
15 or experience to prepare you for that position?

16 A Yes. Before I retired, of course, we began getting
17 involved in cell phone technology for the purposes of
18 investigating homicides. Then after I did retire, I went to
19 work for Metro PCS, and I went to their training for about two
20 and a half, three weeks in Dallas. It involved classroom
21 instructions from managers, general managers, specialists,
22 engineers to get a better understanding of how all the
23 technology works from the ground level up.

24 Since T-Mobile purchased us in 2015, I've been to
25 their law enforcement relations training center three times, on

1 average about a week and a half or two, getting updated
2 information on all the cell phone technology and all the
3 constant changes and what to look for.

4 Q And do you engage in then it sounds like ongoing
5 education with respect to the network, how cell phones work and
6 how those records are ultimately generated?

7 A Exactly.

8 Q And you mentioned that you regularly testify in state
9 and federal court. Approximately how many times have you
10 testified?

11 A 550 or so.

12 Q And as part of that, you mentioned that you're
13 familiar with how these records are generated through T-Mobile.
14 Are you also familiar with how their networks generally
15 operate?

16 A Yes, ma'am.

17 Q Okay. I want to talk a little bit about that. And
18 so based on your training and experience, do you have an
19 understanding of what happens? And can you explain for the
20 jury when a T-Mobile cell phone attempts to do something like
21 make a phone call.

22 A Yes, ma'am. Well, there's three primary components.
23 You have your handset or the phone, which has a relatively weak
24 antenna. The signal is pretty weak. So it has to reach out to
25 the strongest, nearest cell site. Cell site's a large antenna

1 you'll see on the side of the road up on the top of a roof, on
2 the side of a building. The disc-shaped or cone-shaped
3 objects, those are antennas.

4 Once it grabs the -- the big antenna grabs the signal
5 from the little antenna, then it further authenticates the call
6 and processes it. Then it shoots it over to a switch. Now,
7 switch is the gatekeeper. Switch would be -- there's only like
8 55 or 60 switches in the whole country. So one switch will
9 control many, many dozens of towers, and the switch is at least
10 as big as this room if not larger in their capacity.

11 Then once it actually further authenticates the call,
12 then it shoots it out to the strongest nearest cell site or
13 tower. Anytime you hear the word cell site, it means the
14 tower. And which obviously then connects with the adjacent
15 number that you're trying to reach. Keeping in mind this
16 travels at the speed of light, 186,000 miles a second. So it's
17 just extremely difficult to comprehend, but that's exactly what
18 it does.

19 Q So I want to sort of break that down a little bit and
20 talk about each of the things you've discussed in this process
21 of a cell phone making a call. So you mentioned a cell tower.
22 Can you describe what -- what is a cell tower?

23 A A cell tower is basically a transmitter and a
24 transceiver. You'll see on these towers, you know, derricks,
25 if you will, and at the top is the antenna, and then down at

1 the bottom is the transceiver and transmitter, and it receives
2 signals, and it give signals. It's very simple, but obviously
3 a necessary part of the component.

4 Q You mentioned that cell towers will typically both
5 receive and generate signals. How is it that a particular cell
6 phone would choose to connect with a particular cell tower?

7 A They always seek out the strongest, nearest tower
8 keeping in mind T-Mobile plots these cell sites, towers about
9 2, 2 and a half miles apart, a radius of that amount. And the
10 purpose they do that is to optimize coverage, and it's kind of
11 like leapfrog. You'll get to one 2-mile radius. When you're
12 getting near that area, you're getting ready to get out of that
13 range of coverage, then the other adjacent one will pick it up.
14 This way you won't have a dropped call.

15 Q So typically speaking, cell phones are going to seek
16 out the strongest, closest signal from whatever cell tower is
17 nearby?

18 A That's correct.

19 Q You mentioned that there are T-Mobile cell towers
20 throughout -- throughout sort of I guess maybe the United
21 States. Am I understanding that correctly?

22 A Correct.

23 Q And specifically within the Las Vegas valley area,
24 are there also these same types of 2-mile cell towers?

25 A Exactly. That's the standard with T-Mobile. They

1 plot it 2 miles, give or take a half a mile at the very most
2 now depending on variances.

3 This area would have a variance of y'all's mountain
4 range out there. Of course obviously they would have to plot
5 them maybe a little closer because this technology is a -- the
6 range is on sight. You have to be able to see it. So if I
7 want to get to the other side of that wall for instance, I
8 might have a tower here. Say it was a hundred story building.
9 It would put another tower out this way so that this tower
10 could communicate with that one; whereas this one can
11 communicate with the one behind, whereas I couldn't. It's all
12 kind of connected like that.

13 Q And I think you touched on something I want to talk a
14 little bit about next. So what sorts of factors will affect
15 sort of the strength of the signal and whether a cell phone is
16 able to connect with it?

17 A Yes, ma'am. Topography, how dense the population is.
18 Those two, topography, how dense the population is, the
19 variance of the actual tower. Sometimes that -- they're
20 well-kept and maintained. They really are, but every now and
21 then, you know, one will go down or you get like a lightning
22 strike or something like that that would knock that one down,
23 and another one would have to compensate until they got that
24 one up and running.

25 Q So fair to say that the surroundings would affect the

1 ability for a cell phone to connect with a particular tower?

2 A Correct.

3 Q When you talk about these towers being 2 miles or so
4 apart, does that mean that if one were within 2 miles and it
5 went down, if my cell phone is trying to connect to a tower,
6 would it connect to a tower, you know, way across the Vegas
7 valley, or would it still be looking for the closest signal?

8 A No. It's still going to look for the closest one.
9 It's not going to go, like you said, it's not going to go
10 across the valley at all. It'll reach out to one that may be a
11 little different angle, pretty much the same distance. It
12 might even be closer. Keep in mind, if you have a tower that's
13 closer to you and yet the records reflect it is a tower that's,
14 say, a couple hundred yards past that one, well, you know it
15 hit that one because the records reflect the ping. What it
16 means is it'll always go to the stronger one. Ideally they
17 want the stronger one to be the nearer one, but sometimes it
18 just doesn't work that way.

19 Q And so building on that and sort of the inverse of
20 that, if a particular tower is signaling that it's
21 communicating with a cell phone, would you expect for that cell
22 phone to be close to that tower?

23 A Yes.

24 Q Okay. So even though it might not be the closest
25 one, it would still be within a particular distance of that

1 tower?

2 A Right. Typically the 2 miles. And if for some
3 reason it had to go a little further or a little closer, that's
4 the gauged distance.

5 Q So you would expect for that cell phone to be within
6 approximately a 2-mile radius of that particular tower?

7 A Correct.

8 Q You mentioned sort of the pinging from the towers.
9 How do towers record the communications with cell phones?

10 A Once you push the send button, first of all, that
11 signal goes out, and that's when the clock is ticking in terms
12 of duration of the call. Once you pick up a call, that's when
13 your duration of your call, receiving the call begins. So it's
14 all recorded electronically in our database.

15 Q Now, you also mentioned in describing generally how
16 cell phones communicate with towers a switch. Can you describe
17 for the members of the jury what a switch is and its sort of
18 purpose in all of this.

19 A Yes, ma'am. As I was speaking earlier, you know, you
20 got the phone, and you got the tower, and we're gradually
21 getting more powerful, and then you go to the switch. And
22 again the gatekeeper, that's the switch. It handles hundreds
23 of towers, and once you get to that point, then the only thing
24 it has to do now is connect with whatever number you're trying
25 to reach, and it's just constant communication going up to that

1 point and going over to the destination number.

2 Q Now, are you also familiar with a sector?

3 A Yes, ma'am.

4 Q And what are sectors?

5 A Sector is the division within the cell site. Think
6 in terms of the face of o'clock. If you look at that clock and
7 you go in the very dead center where all the hands start, and
8 draw one hand up to the 10 and then go to the center again,
9 draw the secondhand up to the 2 and then draw again a thirdhand
10 down to the 6, you now have three pie shaped pieces of the pie.
11 Because that whole circumference is 360 degrees. You have now
12 divided it into 320-degree pieces of the pie or sectors, and
13 what it does, if you know, okay, a call -- a phone was in that
14 particular cell site, but where was it in that cell site? Then
15 you can determine by the records which sector it hit off of,
16 one, two or three. Sometimes they divide them into as many as
17 six. Generally though that's in a heavily concentrated area.

18 Q So when you're talking about a cell tower or a cell
19 site, it has I think you described 360 degrees of coverage?

20 A Correct.

21 Q That it sort of sends out in that 2-mile radius; is
22 that right?

23 A Yes, ma'am.

24 Q And then the sector divides that into three
25 120-degree areas?

1 A Correct.

2 Q If a cell phone is indicating that it is
3 communicating with a tower from within a particular sector,
4 what does that mean for where that cell phone might be located?

5 A It's going to be -- typically they all start at what
6 they call due north, and remember the example we drew with the
7 10, 2, and 6, that top piece of the pie is Sector 1. And they
8 rotate. The next -- that would be due north. And then the
9 next one would be Sector 2, which would be a southeasterly
10 direction. And then Sector 3 would be a southwesterly
11 direction keeping in mind that beam is 120 degrees, and that's
12 the area of coverage.

13 Q Okay. So if a cell phone was communicating with a
14 tower from within that sector, you would expect for it to be in
15 that particular direction?

16 A Right. And it may not go out of that cell site. It
17 may go from Sector 1 to Sector 2 to Sector 3. We all we
18 monitor are the beginning calls and the ending calls. We don't
19 monitor anything in between. So if the call started in
20 Sector 1, you know that's where the phone was. If the call
21 ended in Sector 3, you know that's where it ended. It stayed
22 within that same tower, but in a different portion of the
23 tower.

24 Q You mentioned that these sectors will have
25 information that's associated with them. So would it be fair

1 to say that that information is recorded within the records
2 kept by T-Mobile?

3 A It is.

4 Q With respect to the sectors, are you familiar with
5 whether they would include a latitude and longitudinal point?

6 A Yes. Yes, they do.

7 Q And what is the purpose of that?

8 A Well, the purpose of the latitude and longitude is to
9 identify location. We provide that latitude and longitude
10 along with the adjacent physical address, but the latitude and
11 longitude, as we all know, that's the precise location of that
12 device.

13 Now, the nearest physical address might be 100 Main
14 Street, and it might be a hundred yards away, 50 yards away,
15 but we give the latitude and longitude to let you know that's
16 where it's specifically at, and then the street and city
17 address to let you know that's where you go because you can
18 tell me what my home latitude and longitude is it wouldn't mean
19 anything to me, but you give me my address, I'll know exactly
20 where it is. So it's kind of a friendly -- customer friendly
21 thing.

22 Q Are you familiar with what a call detail record is?

23 A Yes, ma'am.

24 Q And what is a call detail record?

25 A Call detail record is the information contained on a

1 particular phone, both outgoing, outgoing call is when I call
2 one of you all. And incoming, when one of you all calls me.
3 That's the communication, and these records will provide a
4 series of things in it, like the target number, who they're
5 calling or which number is calling the target number, how long,
6 the date, the time, the tower location as to where all of this
7 actually took place, whether it was completed or not completed,
8 whether it went to voice mail. It's a string of identifiers
9 that tells you pretty much, you know, quite a bit about the
10 actual call.

11 Q Are you also familiar with location area codes?

12 A Yes, ma'am.

13 Q And what are location area codes or LECs?

14 A Location area codes is the area that the engineers
15 determined based on population in order to optimize the
16 coverage, and it's just that. It's the location area code
17 where they'll plot many towers or as many as they need based on
18 the demand, and that's where all these towers are which respond
19 to the switch. The switch will have many area codes as well,
20 but the location area code is one specific area that particular
21 towers are at, and we provide the -- you know, the serial
22 numbers to them and things of that nature. If you wanted to
23 find tower 123, you could find it on the call detail records.

24 Q Each of the towers that we've been talking about you
25 mentioned by way of example, if it were tower 123, all the

1 towers are individually I guess -- I don't know if named is the
2 right word for it -- but all the towers are individually named
3 by T-Mobile or whatever company happens to be using that tower?

4 A Correct. Yeah. They all have a specific number
5 that's unique to that tower. So if you have that number, then
6 you'll have the address obviously. You can go right to it.

7 Q So we're going to talk a little bit about cell phones
8 and communication with the towers. We've been talking about
9 when cell phones are connecting, making calls and things like
10 that. Is a cell phone always connected to a tower?

11 A Yes -- well, not really in the sense of the word.
12 It's always -- it's always attempting and ready to be connected
13 once you pull it up and you dial in a number. In other words,
14 it's not just dead. It's just always reaching. And it's the
15 same with text messages. It's always blinking or charging, if
16 you will, looking for one.

17 Q So fair to say my cell phone currently not using it,
18 but it would be searching out the network?

19 A Exactly.

20 Q With respect to records that are kept by T-Mobile, do
21 you keep records, or does T-Mobile keep records of every one of
22 those sort of outreaches when a phone is not in a call or a
23 text message or when it's just sitting there idle?

24 A No.

25 Q Now, does -- we talked a little bit about phone calls

1 as well. What is the difference between what T-Mobile might
2 track with a phone call and its communication with the towers
3 versus a text message or simply looking over the Internet?

4 A Voice communication utilizes towers, and towers give
5 you the location. So you'll know where that particular phone
6 is based on the information contained in your call detail
7 records.

8 Now, text, it only communicates with the switch. So
9 I might text you. You might text me. You're not going to know
10 where my phone is because I'm just going by the switch, and the
11 switch is the central, the mothership if you will. So you're
12 not going to -- we don't use towers to extend the communication
13 in texting.

14 Q Okay. So would it be fair to say that the
15 communication that is kept with the tower then is different
16 between phone calls and other uses of the phone?

17 A It is.

18 Q Specifically, when a phone is making a phone call,
19 what sort of -- what sort of information would T-Mobile keep
20 track of when it connects with a tower?

21 A Well, it's going to -- when the phone call makes a
22 connection, it's obviously going to connect with that tower,
23 and that tower is going to have a physical location. So you'll
24 now know where that signal has reached by way of going through
25 the circuit and the switch.

1 Q So we've been talking a lot about the cell phone
2 towers and the cell sites. Is that the kind of data that
3 T-Mobile would regularly keep for a phone call let's say?

4 A We do.

5 Q Okay. And for text messages, would you keep that
6 same kind of data?

7 A No. We don't keep that. We just simply let you know
8 it's a text message. It's charged at 60 seconds per message,
9 whether it's a couple of letters or a big long thing. It's
10 just 60 seconds whereas voice communication is actually a time
11 length involved.

12 Q We've been talking a bit about records that are kept
13 by T-Mobile. Does T-Mobile regularly keep records of all of
14 its cell phone customers in the course of its business?

15 A Correct.

16 Q And what are the purposes of those records that are
17 kept?

18 A Really billing purposes more than anything else. You
19 know, T-Mobile is in the business of making money.

20 Q So mostly for billing. Fair to say you would also
21 keep records to make sure the network is working properly?

22 A Oh, exactly. Exactly. If it's not working properly,
23 it's kind of connected to making money because if we're not
24 working properly, we lose customers, and we lose, you know,
25 staff and I lose my job, and that sort of thing. So.

1 Q So fair to say then these records that are kept by
2 T-Mobile are kept in what they would ordinarily do as a cell
3 phone provider company?

4 A Correct.

5 Q And are you familiar with how those records are kept?

6 A Yes, ma'am.

7 Q Is there a database that those records are kept by
8 T-Mobile?

9 A Yes, ma'am. It's in our area very highly secure
10 database.

11 Q And do you have access to those records?

12 A Yes, ma'am.

13 Q Now, were you asked to examine some records related
14 to the case for which you're testifying today?

15 A I am.

16 MS. CANNIZZARO: Permission to approach your clerk,
17 Your Honor?

18 THE COURT: Granted.

19 BY MS. CANNIZZARO:

20 Q And showing what has been marked as State's Proposed
21 70 and 71.

22 MS. CANNIZZARO: Permission to approach the witness,
23 Your Honor?

24 THE COURT: Granted.

25 / / /

1 BY MS. CANNIZZARO:

2 Q Okay. Mr. Bosillo, I am going to show you what has
3 been marked as State's Proposed Exhibit Number 70, this packet
4 of documents, and I will let you take a brief look at that
5 particular item.

6 A Okay. Okay.

7 Q And are you familiar with this particular exhibit?

8 A Yes, ma'am, I am.

9 Q We mentioned earlier that you were asked to take a
10 look at some records with respect to your testimony for today.
11 Does this appear to be a fair and accurate copy of those
12 records?

13 A It does.

14 Q And these are the same records we mentioned that are
15 kept by T-Mobile in the ordinary course of its business?

16 A They are.

17 Q And the same records that you were able to review for
18 your testimony today?

19 A Yes, ma'am.

20 MS. CANNIZZARO: State would move to admit State's
21 Proposed 70 into evidence.

22 THE COURT: Any objection?

23 MR. MATSUDA: None, Your Honor.

24 THE COURT: They'll be admitted.

25 (State's Exhibit Nos. 70 admitted.)

1 BY MS. CANNIZZARO:

2 Q Okay. And, Mr. Bosillo, I'm also going to show you
3 what has been marked as State's Proposed Exhibit 71. If you
4 could take a look at that item.

5 A Yes, ma'am.

6 Q And are you familiar with the records that are
7 contained within State's Proposed Exhibit 71?

8 A I am.

9 Q Similarly, are these the same records that you were
10 asked to take a look at for T-Mobile with respect to your
11 testimony for today?

12 A They are.

13 Q These records appear to have some highlighting on
14 them as well. Is that also part of this particular record that
15 you looked at today?

16 A It is.

17 Q And these are records that are kept in the ordinary
18 course of business of T-Mobile as well?

19 A Yes, ma'am.

20 Q And these are a fair and accurate copy of those same
21 records we've been discussing?

22 A They are.

23 MS. CANNIZZARO: The State would move to admit
24 State's Proposed 71 into evidence.

25 THE COURT: Any objection?

1 MR. MATSUDA: None, Your Honor.

2 THE COURT: It will be admitted.

3 (State's Exhibit Nos. 71 admitted.)

4 MS. CANNIZZARO: Okay. And, Your Honor, permission
5 to publish State's 70.

6 THE COURT: State's 70, granted.

7 MS. CANNIZZARO: State's 70.

8 BY MS. CANNIZZARO:

9 Q Now, Mr. Bosillo, I am going to show you a couple of
10 pages for State's Exhibit Number 70, and it will show up on
11 that screen right in front of you. Give me just a moment. Let
12 me zoom out here. I'm kind of hoping that this print won't be
13 so tiny that we can't read it.

14 So, Mr. Bosillo, you mentioned that you were able to
15 take a look at the records that are part of State's Exhibit 70,
16 and we're looking at the first page of that. This first page,
17 can you describe for the members of the jury what's contained
18 in this first -- this first page.

19 A Yes, ma'am. This first page is what we call
20 subscriber information sheet. As you can see at the very top
21 is the information based on who the agency was and the
22 requester. And then the first sentence is explaining what the
23 document is, being a court order dated December 27, 2018,
24 with -- wanting information on what we call MSISDN. That's
25 mobile station international subscriber directory number.

1 That's the phone number. In this case it's (424)375-1085.
2 Then it breaks it down into four different horizontal columns
3 starting with subscriber. Do you want me to read through it?

4 Q Sure. Yeah. Okay.

5 A Subscriber. Subscriber name is Keyontris [phonetic]
6 McBride at 2068 one half Chestnut lot -- excuse me 2068 one
7 half Chestnut Avenue -- I can't read the rest.

8 Status is active. Subscriber name. Effective May
9 4th, 2015.

10 Q Okay.

11 A That obviously pertains to the person who has the
12 phone.

13 The next is the brand. Obviously T-Mobile U.S.,
14 activation day, May 4, 2015. At the time of this request for
15 the search information, there was no termination date, meaning
16 it was still active. The account is under the subscriber name
17 Keyontris McBride with a specific account Number 949-345-712
18 showing that it became effective, the account, May 4th, 2015,
19 and there was no expiration at the time the search was
20 conducted.

21 The next is IMSI, International Mobile Subscriber
22 Identity. That's a 15-digit number that's provided to everyone
23 that purchases a phone and a phone plan. It's very unique to
24 the individual, the subscriber, very much like a fingerprint.

25 There is no expiration date. None applies. No

1 disconnection reason. Then the MSISDN number, the phone
2 Number (424)375-1085 is the number in question. Status is
3 active. The market, it's in one of those location area codes
4 we spoke of. The name Keyontris -- I think it's Keyontrey
5 [phonetic] S. McBride.

6 Then the SIM. The SIM card number integrated circuit
7 card ID number. And then the IMEI is International Mobile
8 Equipment ID, which is a 15 digit number unique to the phone.
9 But the reason you see all twos means that this particular
10 device was reported either stolen or lost. So we fill it in
11 populated with we don't know what the number is, and they put
12 that in, and it also lets you know that it was either stolen or
13 lost.

14 The service date began as the other two did on
15 May 4th, 2015, and then the filing -- the final one is billing
16 details. Billing name is Keyontrey S. McBride. Date of birth
17 5/8/1988. When we received that as well as the Social Security
18 number, it means it was actually a postpay. We have prepay and
19 postpay. Most of T-Mobile's customers are postpay. We do have
20 some prepay. Most of the prepay stuff is with Metro. With
21 Metro you don't have to provide any identification at all.
22 With postpay you do because we're extending credit.

23 Q Okay.

24 A Excuse me. Then the billing cycle is just a code for
25 the cycle of the -- when you get your bill. And then the

1 billing address of 2068 and a half Chestnut Avenue. Company
2 name McBride. A rate plan and a description. I can't tell you
3 what those letters -- those acronyms are, but it's a specific
4 plan to pay your phone bill.

5 Q And then on page 2, it appears that this is
6 additional details related to the subscriber information.
7 Would that be fair to say?

8 A Yes. It shows that one contact. That's a subsequent
9 phone number that's given at the time they make their purchase
10 if we need to get a hold of them for whatever reason. And then
11 where it says reported, carrier, regular, that means again
12 going back to being postpay.

13 Q Okay. And I know on the first page we were having
14 some trouble reading sort of the final lines. So do you see
15 that on page 3 of State's 70?

16 A Yes. Yes.

17 Q And the same thing, 70, page 4 is just a continuation
18 of that?

19 A Yes, ma'am.

20 Q Extra bar?

21 THE COURT: So it said Long Beach. Is that --

22 MS. CANNIZZARO: Yes.

23 THE COURT: So in other words, it should have been on
24 a piece of paper that's long?

25 THE WITNESS: Long. Yes. Yes, Your Honor.

1 MS. CANNIZZARO: Yes. Yeah.

2 THE COURT: All right. Thanks. I just wanted to
3 clarify.

4 BY MS. CANNIZZARO:

5 Q Now I'm going to -- we're going to move into -- so
6 that -- would it be fair to say that those first four pages
7 identify which phone number we're talking about?

8 A Yes, it does.

9 Q Okay. And now I'm going to show you, starting on
10 page 5 and continuing through the remainder of these records,
11 specifically what or how would you describe the type of records
12 that we're looking at in this particular exhibit? Just sort of
13 an overview?

14 THE COURT: Why don't you just ask --

15 MS. CANNIZZARO: I'm going to try to --

16 THE COURT: Can you see any of this? Because I can't
17 see --

18 MS. CANNIZZARO: I'm going to try to zoom in as we
19 talk about it.

20 THE COURT: Okay.

21 BY MS. CANNIZZARO:

22 Q So just as a general overview, would this be pretty
23 typical of the type of records that are kept by T-Mobile?

24 A Can I lower my chair?

25 Q Yes. You can lower your chair or -- if I need to --

1 that's very low.

2 A Now I'm good to go.

3 Q Okay. And I'm going to try to zoom in as best I can.
4 Let's see. I don't know if that will help. I don't know if
5 that's helping or not. Let's try and zoom in here, and we'll
6 go -- all right. So -- sorry. I'm going to try to make it
7 straighter.

8 MS. CANNIZZARO: Okay. Can you all see that?

9 Okay. Yeah. Okay.

10 BY MS. CANNIZZARO:

11 Q So in the front page of this set of records, there is
12 this little paragraph here that we see part of. And what would
13 you expect to find like in this particular paragraph? What's
14 the purpose of that?

15 A The purpose of that is to let you know what kind of
16 legal demand that we provided these records upon, the request,
17 and it was a court order. And then it gives, of course, the
18 date, the target number and the time frame.

19 Q Okay. And what -- what is the -- do you see you
20 mentioned the target number is there. Do you see that target
21 number in this portion?

22 A Yes, ma'am. It's (424) 375-1085.

23 Q Okay. And so this number right here, when you say
24 target number, would that be the phone number for these
25 records?

1 A Yes, ma'am. We refer to it as target number, but
2 it's the phone number in question.

3 Q Following that target number, this appears to mention
4 the times these records are reflected in coordinated universal
5 time.

6 A Yes. It's what we call UTC, universal time
7 coordinated. It's file stamped in Greenwich, England. We have
8 Greenwich Mean Time. UTC is not a time zone. It's a standard
9 with which the time zones around the world are decided,
10 determined, and they all started in Greenwich. So that's zero.
11 And as you moved to the west, you have to start subtracting one
12 for each time zone. And when you get to the East Coast, you
13 start at four, okay. So you're on the East Coast, that's the
14 Eastern Standard Time. Then you subtract five on Central
15 Standard Time. Six on Mountain Standard Time and seven on
16 Pacific Time. You all are in Pacific time.

17 Q So when we see times on these records, would it be
18 fair to say that that would for the Las Vegas valley mean it
19 would be actually seven hours that you would subtract?

20 A Right. That's the simple answer. If you see a time
21 here, that you're looking at and you want to know what time was
22 it in Las Vegas, just subtract seven. That's all you got to
23 do.

24 Q There also appears to be a time frame as well, and
25 what would that time frame be that this is providing?

1 A That time frame is October 1st, 2018, to
2 November 6, 2018.

3 Q Okay. I want to talk a little bit about each of
4 these columns, and I know we just talked a little bit about --
5 sorry. I'm going to move this the opposite way of your
6 intuition.

7 So this first line here where it says date, October
8 1st, 2018, and then the next column says time, can you
9 describe for the members of the jury what time is truly
10 reflected in this for this particular entry?

11 A It says 8:22 and 50 seconds in the a.m. Subtract
12 seven. It's going to be 1:22:50 seconds.

13 Q So what this is actually reflecting is that
14 difference between the Universal Time and the Pacific Time?

15 A Right. It's time stamped in UTC. So we've got to
16 determine what time it is in you all's zone.

17 Q Okay. So this would actually be a call that's made
18 at 1:22 a.m.?

19 A Excuse me? Yes, ma'am.

20 Q I'll give you a second.

21 This next column here that's marked duration, what
22 does that mean with respect to these records?

23 A That's the time that logged in on a voice
24 communication. This top line is not voice. It's in SMSC, a
25 short message service center or what's commonly referred to ask

1 text message.

2 Now, you'll either see 60 or nothing. Some networks
3 decide they want to put the 60 in. Some say leave it blank.
4 They know that if it's text message they're getting billed for
5 60 seconds. We always used to do that. They've come along the
6 last year or so and they're getting where they're just leaving
7 them -- pretty much leaving it blank.

8 Now, in this one is even a little more unique because
9 it's still a text message, but it's from the voice mail
10 mechanism letting you know you've got a text message. You need
11 to check it. When you see that 129, the system is letting you
12 know, hey, check your voice mail. You've got a message. If
13 you see 122, it means you're now checking your voice mail.
14 You'll see a lot of these different codes.

15 Q So you mentioned earlier that there may be --
16 sometimes there's a number that is reflected in this duration
17 call. And so I'll come down a little bit so we can see where
18 there might be --

19 A Yes. Like, these -- I'm sorry.

20 Q -- a number reflected there. So here which is four
21 lines down on October 1st, we see the Number 60 in that
22 duration column. So again would that be referring to either a
23 text message or something that was within a minute?

24 A Yeah. There's no voice communication. It's purely
25 text message. Anytime you see 60, it means it's a text

1 message.

2 Q You mentioned that that used to be pretty standard to
3 bill it and record it by the company as 60 but that they've
4 moved away from that?

5 A Some of the newer networking has moved away from it,
6 yes, ma'am.

7 Q Okay. So if later in these records there are not,
8 and I'll -- I'll refer to sort of a leader page in here, here
9 on page 107 of 149 in State's 70, we see a lot of this same
10 SMSC that you have mentioned in this column here, but there
11 doesn't appear to be a duration. What would that indicate to
12 you?

13 A Again it's text messaging.

14 Q Okay. Does that indicate any difference in the
15 records or how those text messages are being generated or
16 received?

17 A No, ma'am.

18 Q Because of the 60?

19 A None.

20 Q Okay. The next column here is call type. So what
21 sort of information is being recorded in this particular
22 column?

23 A Call type refers to either text messages or voice
24 communication. You can see here on the second line -- the
25 first was the short message service center, and you see these,

1 the one -- the second one down, it starts off with terminating
2 SMSI, and what that means is it's an incoming call. It's
3 terminated, and you can see the next column over says incoming.
4 It means it was sending you a voice mail. Remember me telling
5 you see the 129. The voice mail is letting you know check your
6 voice mail. You've got a voice mail. It sent something into
7 you. So that's coming into you, terminating into you.

8 Q Okay. For phone calls, what type of information
9 would be contained typically in that particular call?

10 A Well, as far as a phone call, it would be -- any time
11 you see Number 160 or that SMS, on that first line there, Short
12 Message Service, SMS - Short Message Service Center -- all of
13 those are text messages, all of them.

14 Q Okay. When it says direction in this next column,
15 what is that referring to?

16 A Again, incoming, outgoing. I'm going to text one of
17 you all. That means it's going to come in to you terminating.
18 One of you all are going to text me. Mine is going to show
19 originating because I'm sending you the text. You're receiving
20 it.

21 Q Here in this next column where it says calling
22 number, what does that refer to?

23 A Okay. Again, that's the number that's actually
24 making the call in to you. Okay. Again, we use this 129, that
25 first one. It's that voice mail number, the code they use to

1 let you know it's -- you know, you got a text message. So it's
2 actually a number that's calling you in the system. It's still
3 a number.

4 Q In some of these where it says in this Calling Number
5 column, it'll have the same number, the same number as the
6 target number we discussed or the phone number associated with
7 this particular account. What's the reason for that?

8 A The reason for that is, as you can see, the calling
9 number, that's the number making the call or text. Okay. And
10 then you see to the right of it, it won't be anything because
11 it isn't on text messages. Now, on voice mail, there will be.
12 There will be a dial number they'll be calling, but not on text
13 messages because they're using the switch to communicate with
14 you.

15 Q And you're referring to this next column that says
16 Dialed Number?

17 A Yes, ma'am.

18 Q Okay. So we would expect to see that for a phone
19 call, but not necessarily for a text message?

20 A Exactly.

21 Q Okay. Here in this next column where it says Called
22 Number, what is that referring to?

23 A That's the number that's actually being reached.

24 Q Okay. And how about this next column, duration --
25 or, excuse me, Destination Number?

1 A Destination. Usually, again, all these were text
2 messages. So there's nothing in those two D columns, but on
3 phone calls, you would dial the number, okay, and it would mean
4 that's the number I called, and then you've called that number,
5 and that's the destination. The only time the destination is
6 different from the called number, because they're typically the
7 same, I'm going to call the number, that's going to be my
8 destination number. The only time it's different is if you
9 switch your phone to a third number. Say you're going over to
10 your brother's house or something, and I call you, and I've
11 dialed your destination, I've dialed your number, excuse me,
12 but I -- the destination I reached is your brother's number.
13 So you forwarded to that other number.

14 Q This next column, IMSI, what is that recording?

15 A That's referring to the International Mobile
16 Subscriber Identity. That's that fingerprint or I should say
17 maybe a driver's license number on a particular subscriber.
18 It's unique to that subscriber with our company and in our
19 system.

20 Q And then this next column that says IMEI?

21 A Yes.

22 Q What is that?

23 A That's International Mobile Equipment Identity.
24 Again, that's the 15 digit number that's unique to the phone.
25 It's like a fingerprint. One phone, one number.

1 Q This next column for completion code, what is that
2 for?

3 A Completion code is a little deceiving or misleading,
4 I should say, because it doesn't necessarily mean the call was
5 completed. They're talking about the network completing it;
6 the network completed it successfully, and typically that means
7 the call is going to be completed successfully, but sometimes
8 it's not. So you can see a completed successfully column, and
9 over here somewhere it'll say not answered or, yeah, a
10 nonanswer. So that just means the circuitry is working, the
11 networking.

12 Q Service code, what would that indicate to you if
13 there was something in that?

14 A Now, the service code refers to the different things
15 that your voice mail mechanism will do. For instance you'll
16 see two, sometimes three number codes that'll mean anywhere
17 from -- it's all going to voice mail, but it'll let you know,
18 hey, that you tried to call, and I didn't want to answer it.
19 So it went to voice mail. That would mean code 02A. And they
20 usually have a table at the bottom of these to explain what
21 each of them are. Or if your phone is busy and somebody is
22 trying to reach you, the phone automatically throws it to voice
23 mail, and that's I believe Code 29.

24 Q And then this final column here that says switch
25 name, what is that?

1 A Switch name is just that. The switch identifiers,
2 and I'm almost sure VGM 342 is a Vegas switch.

3 Q Okay.

4 MS. CANNIZZARO: Brief indulgence.

5 And, Your Honor, permission to publish State's 71.

6 THE COURT: Granted.

7 BY MS. CANNIZZARO:

8 Q Now, Mr. Bosillo, we also looked at State's Proposed
9 Exhibit Number 71, which I'm going to put on the screen for you
10 as well, and similar to State's 70, there appears to be sort of
11 a paragraph that describes the same items we talked about
12 before, target number, date range and the reason for the
13 production of this particular set of records. Would that be
14 fair to say?

15 A Yes, it would be.

16 Q Okay. And are these records the same records -- a
17 copy of the same records that are produced in State's 70?

18 A They are.

19 Q Okay. There appears to be, and I'll show you -- and
20 I'll kind of show the members of the jury, here on these -- on
21 this set of records, there are highlighted numbers on these
22 records. Is that reflected on here as well where it says
23 calling number and called number?

24 A Yes, ma'am.

25 Q Okay. In particular, this yellow highlight refers to

1 the Number 1 (424) 375-1085?

2 A It does.

3 Q Okay. Now, if we were looking for whether or not
4 this particular phone number or this target number were
5 communicating with another phone number, we would expect to see
6 that other phone number reflected in one of these two columns,
7 the calling number or called number?

8 A Correct.

9 Q So if you're sending text messages between this
10 particular phone number that is a T-Mobile customer and another
11 phone number, that would be reflected in these records?

12 A Yes, ma'am, it would.

13 Q So I'm going to --

14 MS. CANNIZZARO: Court's brief indulgence.

15 BY MS. CANNIZZARO:

16 Q Okay. So I am going to move to page 121 of this set
17 of records which is reflected here in this bottom right-hand
18 corner. Now, up at the top -- well, it might be a little hard
19 to see on this.

20 MS. CANNIZZARO: Court's brief indulgence.

21 BY MS. CANNIZZARO:

22 Q Okay. There we go. At the top of this particular
23 record in front of you -- and can you see the numbers in
24 there --

25 A Yes, ma'am.

1 Q -- okay on that screen. Okay. In this particular
2 top record of here, there also appears to be another number
3 that is highlighted in green. Would that be fair to say?

4 A Yes, ma'am.

5 Q And can you tell the members of the jury what that
6 particular number is?

7 A It's 1 (323) 427-3091.

8 Q 9, 1 or 9, 2?

9 A I'm sorry? Can you --

10 Q Would it be --

11 THE COURT: 3092 is what the exhibit appears to
12 reflect.

13 THE WITNESS: I guess.

14 MS. CANNIZZARO: Yeah. I think it does say 2.

15 And I apologize. This is a little harder to read on
16 the overhead than it is --

17 THE WITNESS: Yeah. Sorry.

18 MS. CANNIZZARO: Oh, that helps maybe a little.

19 BY MS. CANNIZZARO:

20 Q And so throughout this particular set of records,
21 that number, (323)427-3092 is highlighted in green?

22 A That's correct.

23 Q And you can see that reflected in this portion of the
24 top couple of lines on page 121. Would that be fair to say?

25 A Yes, ma'am.

1 Q When we see here in this first call this number, this
2 323 number and in this second column the same subscriber
3 Number (424)375-1085, what specifically is this set of records
4 telling us that occurred between these two particular numbers?
5 And I'll scoot it over a little.

6 A Sure.

7 Q So we can see from the first column.

8 A Well, to begin with, it's text messaging, and it's
9 letting you know that the -- if it's all right, can I just use
10 the last four numbers?

11 Q Absolutely.

12 A 3092 is texting 1085?

13 Q Okay. So this would reflect a text message here
14 where it says SMSC?

15 A Correct.

16 Q And then this would be the number, this first
17 number 3092 is the number that's sending a text message to this
18 number that ends in 1085?

19 A Correct.

20 Q Okay. I want to talk a little bit about page 123,
21 and we'll go down the page to this record here on the 29th of
22 October 2018. Right here where it says 9:18:23, we talked a
23 little bit about the universal time?

24 A Yes, ma'am.

25 Q So what would this be reflected in Pacific Standard

1 Time?

2 A 2:18 and 23 seconds in the a.m.

3 Q Right here in this column that was labeled duration,
4 we see the number 2016. What would that indicate to you?

5 A It's probably about a 30 minute call here or not
6 quite. Maybe 25. Those are in seconds.

7 Q So if we divided that number by 60, that would give
8 us how long that particular phone call was?

9 A Correct.

10 Q Here where it says MOC, what does that mean to you?

11 A Again now that's a call. That's a voice mail.
12 That's the network, a mobile outgoing call.

13 Q Okay. And here where it says outgoing, it says -- I
14 think you referred to it already outgoing call?

15 A Correct.

16 Q And again we see the same target number, 1085 in this
17 column?

18 A Correct.

19 Q And so is this an outgoing call from 1085 to another
20 number?

21 A Correct.

22 Q And then in this next column which is a little
23 different from the record we just looked at for the text
24 message, there appears to be the number (323)427-3092?

25 A Correct.

1 Q And what does that indicate to you?

2 A Well, that means being an outgoing call. This was a
3 divert -- or a transferred to another call. They dialed that
4 number, and it reached that number.

5 Q Okay. And then in the next column, we also see that
6 same -- I'll scoot it over a little bit -- that same number
7 here that ends in 3092. Would that be fair to say?

8 A Correct.

9 Q And so is that the same number that is being called
10 from the 1085 number?

11 A Correct.

12 Q In this next column, again we see the 3092 number.

13 A Yes, ma'am.

14 Q What does that indicate to you?

15 A Again that that number was the number that was not
16 only dialed, called and it was reached.

17 Q Okay. This next column I believe we talked about
18 being the --

19 A MC.

20 Q IMSI number.

21 A Yes.

22 Q And so you see that in this particular column as
23 well. Why is that reflected in this column, but we don't seem
24 to see it in the remaining records?

25 A Well, because it's a phone call. It's a voice

1 communication, and that shows who the subscriber is.

2 Q Okay. And so that indicates that that's a particular
3 phone that's making that call?

4 A Yeah. That particular phone to that particular
5 subscriber number, which is identifiable alongside the IMEI
6 with that particular serial number on the phone.

7 Q Okay. And that would be this next column here with
8 ending in 7790?

9 A Yes, ma'am.

10 Q Okay. In the next column, we see -- it's cut off a
11 bit, but it seems to say completed successfully?

12 A That's correct.

13 Q And which we talked a little bit about that means the
14 network had completed that successfully?

15 A Yes, ma'am.

16 Q And then over here, we see in this last column what
17 would be referred to as a switch name; is that right?

18 A Correct. Correct.

19 Q And would it be fair to say that switch name seems to
20 be a little different than the ones that surround it?

21 A Yes. And that's one of the inland switches, and
22 there are a lot of them on the West Coast. Keeping mind it's
23 not uncommon for a switch to be activated that's in New York
24 and activate something here in Las Vegas because, again, the
25 speed with which all of this works, and since there are just 55

1 or 60.

2 Typically, they try to get them to the same
3 geographic area, but it's certainly not unusual to see
4 something like that.

5 Q This particular line that we have been discussing
6 then would reflect a 2:18 a.m. phone call on the 29th of
7 October between the target number -- oops. Sorry. I'm not
8 trying to make everybody dizzy by moving this around on the
9 Elmo -- from the target number to this 3092 number?

10 A Correct, ma'am.

11 Q Okay.

12 MS. CANNIZZARO: Court's brief indulgence.

13 BY MS. CANNIZZARO:

14 Q And I want to talk just a moment about page 128 of
15 State's 71. And specifically I want to talk about this entry
16 here on October 29th, 2018. We see the number 14:32:05. So
17 what would that indicate the time would be for that particular
18 phone call on Pacific Standard Time?

19 A That would be 7:32:05 in the morning.

20 Q Okay. Again, we don't see that there's a number in
21 the duration for this particular record. Would that be fair to
22 say?

23 A I'm sorry?

24 Q Would that be fair to say there's not a duration
25 number?

1 A Right.

2 Q Okay. And then again we see that MTC, which would
3 indicate a phone call?

4 A Yes, a terminating phone call.

5 Q Okay. And then this here where it says incoming,
6 would that be a phone call that is coming into the target
7 number or a phone call being made by the target number?

8 A No. It's coming into the target number.

9 Q Okay. And again we see this in this next column the
10 number ending in 3092?

11 A Correct.

12 Q And in this next column, it is the number, ending in
13 1085, which is the target number for these records?

14 A Correct.

15 Q And so this would be a phone call from 3092 to 1085?

16 A Yes. Now, we'd have to scroll over to the right and
17 you see there's no entry for duration, which means -- you'll
18 see abnormal completion.

19 Q Okay. And even though -- sorry. So because we don't
20 see that, it wouldn't be -- you would expect to see this over
21 here where it says -- and you say it would say abnormal
22 completion?

23 A Abnormal completion. And the Number 11 adjacent to
24 it, that's one of those voice mail messages, and it's a caller
25 ID presentation. In other words, it's letting you know who's

1 trying to call you or it leaves their number.

2 Q So this is that 3092 number trying to call the target
3 number, but it wasn't picked up, and they didn't have a phone
4 call?

5 A Right. Right.

6 Q Okay.

7 MS. CANNIZZARO: Court's brief indulgence.

8 And, Your Honor, at this point I have no further
9 questions for this witness, and I would pass the witness.

10 THE COURT: Cross.

11 MR. MATSUDA: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. MATSUDA:

14 Q Good afternoon, sir.

15 A How are you, sir?

16 Q I'm good. Thank you.

17 So did I hear correctly; you said you've testified
18 about 550 times?

19 A Yes, sir. Yeah.

20 Q You get to travel around the country giving
21 testimony?

22 A Yes, sir, all over.

23 Q Does T-Mobile pay for that?

24 A They better.

25 Q Sounds nice.

1 Okay. Now, the State went over with you charts and
2 graphs and all kinds of data; right?

3 A Yes. Yes.

4 Q Now, does T-Mobile record what's actually said during
5 these conversations?

6 A No, sir.

7 Q Okay. That would be illegal?

8 A You need a wiretap for that.

9 Q Okay. These text messages, does T-Mobile store the
10 content of those text messages?

11 A No, sir.

12 Q Okay. So all we know are numbers that communicate
13 between each other?

14 A Correct.

15 Q Okay. Can you unequivocally state who sent messages
16 to one another?

17 A Oh, no, sir.

18 Q Okay. So it's just numbers?

19 A Numbers, phone to phone.

20 MR. MATSUDA: Thank you, sir.

21 Nothing further, Your Honor.

22 THE COURT: I have one question about that.

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: So if there was a wiretap, can -- is it
25 possible to get text messages, or isn't that kept at all?

1 THE WITNESS: No, it's just not kept, Your Honor.

2 Now Metro did for the longest time, and but now --
3 because I started with them, but over the years they've kind of
4 weaned off there. I think now the latest -- if you don't get a
5 court order within seven days, they're gone, and it's because
6 T-Mobile has rarely done it. It's because, they've explained
7 it to me, the engineering, it's just so voluminous with the
8 world we live in with all the texting. It would just burn up
9 all the systems, you know. So they just don't.

10 THE COURT: Any questions from counsel as a result of
11 my question? Which was idle curiosity actually. Sorry. But
12 while I have him here.

13 MS. CANNIZZARO: I do have one, just one brief
14 question, Your Honor.

15 FOLLOW-UP EXAMINATION

16 BY MS. CANNIZZARO:

17 Q And I just wanted to clarify. So for text messages,
18 the records that we showed, would that be the extent of the
19 records that are kept by T-Mobile with respect to the text
20 messages?

21 A With respect to text messages, yes, ma'am.

22 Q So the content of the text messages isn't something
23 that is kept in the course of business for T-Mobile?

24 A No. We don't keep text messages.

25 MS. CANNIZZARO: Okay. I just wanted to clarify.

1 Nothing further, Your Honor.

2 THE COURT: Questions from the jury?

3 All right. I don't see any hands.

4 May the witness be excused?

5 MS. CANNIZZARO: Yes, Your Honor.

6 THE COURT: Thank you so much for traveling to Las
7 Vegas and for your testimony.

8 THE WITNESS: Thank you, Your Honor. I appreciate
9 it.

10 THE COURT: How is my jury doing? Do you need a
11 break? Are you okay? I'm seeing no hands.

12 All right. We'll press on.

13 You may call your next witness.

14 MS. MOORS: Court's indulgence, Your Honor, for just
15 one moment.

16 (Pause in the proceedings.)

17 MS. MOORS: Your Honor, can we approach?

18 THE COURT: Yes.

19 (Conference at the bench not recorded.)

20 THE COURT: All right. Ladies and gentlemen,
21 actually, we're going to take a five-minute recess, which the
22 lawyers need, but I need because I've got to get my coughing
23 fit, which is about to happen, under control. And so, ladies
24 and gentlemen, we're going to take a 5-, 10-minute recess.
25 Sometimes just lining you up takes that long; right?

1 So during this recess, it is your duty not to
2 converse among yourselves or with anyone else on any subject
3 connected with the trial; or to read, watch or listen to any
4 report of or commentary on the trial by any person connected
5 with the trial, or by any medium of information, including
6 without limitation, newspaper, television, radio or Internet.
7 You are not to form or express an opinion on any subject
8 connected with this case until it's finally submitted to you.

9 And no experimentation on your phone regarding text
10 messaging or looking up on the Internet, you know, things about
11 how the cell phones and towers work, none of that. Okay.
12 Thank you.

13 (Jury recessed at 2:31 p.m.)

14 THE COURT: All right. The record will reflect the
15 jury is out of the courtroom, and we are still -- we are
16 outside the presence of the jury at this point.

17 Let's document that last bench conference, which was
18 just to request a five-minute break so that the prosecutors
19 could confer with their next witness to make sure she's on the
20 same page as far as what documents she's going to be shown to
21 testify on.

22 MS. MOORS: That's correct, Your Honor. Thank you.

23 MR. MATSUDA: That's correct, Your Honor.

24 THE COURT: Thank you. All right. We'll be in
25 recess.

1 (Proceedings recessed at 2:32 p.m., until 2:44 p.m.)

2 (Pause in the proceedings.)

3 (Jury reconvened at 2:53 p.m.)

4 THE COURT: Thank you. Please be seated. And the
5 record will reflect that we are in the presence of the jury as
6 well as the alternates. The defendant is present with his
7 counsel. Prosecutors are present, as are all officers of the
8 court.

9 And you may call your next witness.

10 MS. CANNIZZARO: Thank you, Your Honor.

11 The State calls Ana Diaz.

12 **ANA DIAZ**

13 [having been called as a witness and being first duly sworn,
14 testified as follows:]

15 THE CLERK: Please be seated and state and spell your
16 name for the record.

17 THE WITNESS: Thank you. It is Ana Diaz. A-n-a,
18 D-i-a-z.

19 THE COURT: You may proceed.

20 MS. CANNIZZARO: Thank you, Your Honor.

21 **DIRECT EXAMINATION**

22 BY MS. CANNIZZARO:

23 Q Good afternoon, Ms. Diaz. How are you currently
24 employed?

25 A I am a Verizon wireless custodian of records.

1 Q And how long have you had that position with Verizon?

2 A 24 years.

3 Q Did you say 23?

4 A 24.

5 Q 24. Okay. And you mentioned that you are a
6 custodian of records. Did you always hold that particular
7 position?

8 A No.

9 Q What positions have you held with Verizon?

10 A I have been a supervisor for the executive office an
11 analyst for -- a regular analyst. I'm a senior analyst now.

12 Q So currently you also serve as a senior analyst then?

13 A Yes.

14 Q And as a custodian of records and senior analyst for
15 Verizon, what are your typical job duties?

16 A I certify that records are true and accurate copies
17 of business records for Verizon.

18 Q Fair to say then that Verizon keeps certain records
19 with respect to its customers?

20 A Yes.

21 Q And specifically what types of records does Verizon
22 keep?

23 A Bill copies, text messaging records, address changes,
24 just multiple.

25 Q And with respect so it sounds like they keep a number

1 of records for the purpose of the business of Verizon providing
2 wireless --

3 A Correct.

4 Q -- would that be fair to say?

5 And as part of that, you're familiar with those
6 specific records that Verizon keeps?

7 A Yes.

8 Q And you mentioned -- you mentioned earlier that
9 there's some records that are kept for billing purposes and
10 also for, like, text message information and things like that.
11 Those are all things that Verizon would keep as part of their
12 course of business?

13 A Correct.

14 Q When we talk about information relating to text
15 messages or cell phones, aside from the billing, what
16 specifically does Verizon keep with respect to cell phone
17 records?

18 A They keep date, time -- where the text was processed
19 through, multiple things.

20 Q Okay. Does Verizon keep these all in one specific,
21 you know, database?

22 A I don't know where exactly it is that they keep them,
23 but they are pulled from the switches.

24 Q Okay. From the switches you said?

25 A Uh-huh.

1 Q Okay. And so Verizon then keeps those as records
2 with their business?

3 A Correct.

4 Q Okay. And do you have access to those particular
5 records?

6 A Not directly. I do receive them after our subpoena
7 compliance team extracts that information.

8 Q So you wouldn't be pulling the specific records, but
9 you would have access to records if you're asked to take a look
10 at them?

11 A Yes.

12 Q And as a custodian of records, is that part of your
13 job duties?

14 A It is.

15 Q When you're provided with those particular records,
16 you mentioned that you would review them; is that right?

17 A That is correct.

18 Q Okay. And what specifically are you reviewing them
19 for?

20 A I am reviewing to ensure that the records that were
21 provided under subpoenas match the records that we provided to
22 the -- that they are the exact same records.

23 Q Okay. So you're basically verifying those particular
24 records as records of Verizon?

25 A Correct.

1 Q Okay. Now, you talked about you keep a number of
2 sets of data with respect to cell phones. Are you also
3 familiar with whether or not Verizon keeps any records related
4 to cell towers and their interaction with individual cell phone
5 customers?

6 A Yes.

7 Q And is that a typical record that Verizon would keep?

8 A Yes.

9 Q With respect to the cell towers, are you aware of
10 whether Verizon also keeps records of where its cell towers are
11 located?

12 A Yes, I -- they do keep record of that.

13 Q Okay. And that would that be a type of record that
14 you would review as a custodian of records?

15 A Yes.

16 Q A record for where cell towers are located, would
17 that be specific to a particular geographical location?

18 A Correct.

19 Q And then you mentioned earlier that you would keep
20 data from switches as well. What do you mean by that?

21 A I do not have the exact location, but I have the area
22 they're in.

23 Q So the switch is sort of a broader location then?

24 A Yes.

25 Q And is that also a record that is kept by Verizon?

1 A Yes.

2 Q With respect to the cell tower data and the switch
3 data, are you familiar with whether or not Verizon keeps any
4 records related to the locations of when those cell towers are
5 accessed?

6 A Yes.

7 Q Would that be something that would be included in a
8 record that you would verify?

9 A No.

10 Q Okay. Would that be included in a record that you
11 would produce as a custodian of records?

12 A Yes.

13 Q Specifically, when you're talking about being a
14 custodian of records, do you usually have a cell phone number
15 or a customer that you are looking for a particular record for?

16 A Yes.

17 Q And would that usually be a Verizon customer?

18 A Yes.

19 Q Are you aware of whether Verizon keeps records of
20 numbers that the Verizon customer or a number that you're
21 looking at is communicating with?

22 A They do keep records, yes.

23 Q And would that be part of the same types of records
24 that you review?

25 A Yes.

1 Q With respect to those particular communications,
2 would Verizon also keep records of where those communications
3 are taking place in relation to a cell tower or a switch?

4 A Yes.

5 Q Okay. And specifically, were you asked to review
6 records from Verizon in preparation for your testimony today?

7 A I was.

8 Q You mentioned that you actually are employed as a
9 custodian of records for Verizon; is that right?

10 A That is correct.

11 Q And have you ever testified in court before about
12 records?

13 A I have.

14 Q About approximately how many times?

15 A I would say over a hundred.

16 Q And is that in both state and federal court or just
17 one or the other?

18 A Both.

19 Q When you're verifying those records, are you able to
20 in fact while you're doing that verification interact with
21 Verizon and the company itself to insure those records are
22 accurate?

23 A Yes.

24 Q And do you have any training or experience that
25 allows you to look at those records in order to perform that

1 verification?

2 A I do.

3 Q And what would that be?

4 A We receive special training year over year as a
5 refresher, and then as well as being a supervisor for executive
6 office, I would do audits on -- what I actually do now. So we
7 would audit to make sure that the custodian of record is
8 verifying the information correct.

9 Q So you're very familiar then it would seem with how
10 these records are generated?

11 A Yes.

12 Q And you have specific training and experience with
13 Verizon that allows you to do that?

14 A Yes.

15 MS. CANNIZZARO: Okay. Permission to approach your
16 clerk?

17 THE COURT: Granted.

18 MS. CANNIZZARO: Okay. And showing defense what has
19 been -- showing, Your Honor -- showing defense what has been
20 marked as State's Proposed Exhibit 65, 67, 68 and 69.

21 Permission to approach the witness, Your Honor.

22 THE COURT: Granted.

23 BY MS. CANNIZZARO:

24 Q And, Ms. Diaz, I am going to show you very briefly
25 what has been marked as State's Proposed Exhibits 65. Do

1 you -- and 65, 67, 68 and 69.

2 MS. CANNIZZARO: And, Your Honor, I believe that
3 these records have been in part stipulated by the defense.

4 THE COURT: Correct.

5 MR. MATSUDA: That is correct, Your Honor.

6 THE COURT: Concerning authentication; is that
7 correct?

8 MR. MATSUDA: Correct, Your Honor.

9 THE COURT: All right. So what that means, ladies
10 and gentlemen, is that the lawyers have agreed between
11 themselves, and so you may take that as a fact that the records
12 are authentic records of Verizon, that company.

13 BY MS. CANNIZZARO:

14 Q And, Ms. Diaz, we did earlier take a look at State's
15 Exhibit 65, which is a disc in front of you. Does that appear
16 to be the same disc that we looked at earlier?

17 A Yes.

18 Q Okay. And was this a fair and accurate record of the
19 records that are kept by Verizon?

20 A It is.

21 Q And is it a fair and accurate record of the records
22 that were reviewed by yourself in preparation for your
23 testimony today?

24 A They are.

25 Q And with respect to State's Exhibit 67, is that also

1 a document that you were able to take a look at today?

2 A Yes.

3 Q And is this a fair and accurate copy of the same
4 records that you reviewed in preparation for your testimony
5 today?

6 A It is.

7 Q And then State's Exhibit 68, is this also a document
8 that you were able to review in preparation for your testimony
9 today?

10 A It is.

11 Q And is this a fair and accurate copy of the
12 document -- part of the documents that you reviewed in
13 preparation?

14 A It is.

15 Q And then with respect to State's Exhibit Number 69,
16 is this also a record that you reviewed in preparation for your
17 testimony today?

18 A Yes.

19 Q And is it a fair and accurate copy of part of the
20 records that you reviewed in preparation for your testimony
21 today?

22 A Yes.

23 MS. CANNIZZARO: Okay. And, Your Honor, the State
24 would move to publish State's 65 at this point.

25 THE COURT: Well, you need to -- they haven't been

1 admitted as evidence yet --

2 MS. CANNIZZARO: Your Honor, and --

3 THE COURT: -- are you moving to admit?

4 MS. CANNIZZARO: -- so we would move to admit State's
5 65, 67, 68 and 69.

6 THE COURT: Any objection?

7 MR. MATSUDA: None, Your Honor.

8 THE COURT: Those will be admitted.

9 (State's Exhibit Number(s) 65, 67-69 admitted.)

10 MS. CANNIZZARO: And permission to publish State's
11 65, Your Honor?

12 THE COURT: Granted.

13 MS. CANNIZZARO: Court's brief indulgence.

14 While that is warming up, Your Honor, instead of
15 publishing 65, may I move to publish State's 67?

16 THE COURT: Of course. Yes.

17 MS. CANNIZZARO: Thank you, Your Honor.

18 BY MS. CANNIZZARO:

19 Q So, Ms. Diaz, in front of you right there is a
20 monitor, and I am going to -- and what you will see in front of
21 you is State's 67, which you looked at just a few moments ago
22 with me. What is depicted in State's 67? Can you describe
23 this record for us.

24 A It is a billing account -- or subscriber information.
25 It has the account number for the billing records, the name of

1 the person who is on the account or is the owner of the
2 account, the address, and that's all I can see there.

3 Q Okay. And it's zoomed out. So we'll move -- we'll
4 move over this way.

5 A Okay. So address, State, ZIP code and then the last
6 name again.

7 Q And that is on the first page of State's 67. On
8 page 2 of State's 67, there appears to be some of the same
9 additional information. What are we looking at on this portion
10 of State's 67?

11 A This is the account -- there's an account owner.
12 Then there's an account contact person. The person who owns
13 the account is also the contact for the account. So it's under
14 Devohn L. I don't see the rest of the -- I don't think the
15 information was up. The address as well.

16 Q Okay. So this is a -- would it be fair to say this
17 is a continued set of information from page 1?

18 A Yes.

19 Q Okay. So you would expect to see the remainder of
20 that information. I know you mentioned you couldn't see it on
21 page 1, and this is page 1?

22 A Correct. There it is.

23 Q So when you say last name, you're seeing the last
24 name then?

25 A There it is.

1 Q Would that last name be Marks then?

2 A It is.

3 Q Okay. And then we'll move to the final page of
4 State's 67. What are we looking at in this particular page?

5 A This is the date that the mobile telephone number was
6 activated and then the date that it was disconnected. As well
7 as it tells you if it's a -- that is a postpaid account.

8 Q And by a postpaid account, what do you mean by that?

9 A There's prepaid accounts, and then there's postpaid
10 accounts. Prepaid accounts, they pay on a monthly basis. The
11 postpaid accounts receive an actual bill, and they pay when
12 their bill is due.

13 Q So for postpaid versus prepaid accounts, is there a
14 different process that Verizon uses when signing up those types
15 of customers?

16 A There is.

17 Q What's the difference between the two?

18 A Credit check.

19 Q A credit check?

20 A Yes. There's a credit check that is done on postpaid
21 accounts. Prepaid accounts do not receive a bill, and they're
22 noncontract, and there is no credit check.

23 Q So for postpaid accounts, there would be a credit
24 check associated with that?

25 A Yes.

1 Q You mentioned that for the prepaid accounts there
2 isn't because there's not a contract. Is there a contract for
3 postpaid accounts?

4 A There is equipment -- device payment agreements that
5 they have. So they do sign an agreement if they are purchasing
6 a phone.

7 Q And what about for coverage and usage of the phone?

8 A Coverage and usage, they receive billing statements;
9 prepaid customers do not receive billing statements.

10 Q Okay. Does Verizon then, I would assume, do a
11 different verification for postpaid accounts?

12 A There is no verification.

13 Q It's just the credit check?

14 A Correct.

15 Q Okay. And then the receipt of the billing
16 statements?

17 A Yes.

18 Q Got it. I'm going to show for you --

19 MS. CANNIZZARO: And, Your Honor, permission to
20 publish State's 68?

21 THE COURT: That's granted.

22 MS. CANNIZZARO: Thank you, Your Honor.

23 BY MS. CANNIZZARO:

24 Q Okay. Okay. So, Ms. Diaz, we're looking at State's
25 68 up here on this particular -- on this particular screen in

1 front of you, and I just want to talk a little bit about the
2 types of information that is included in this particular
3 record. So here in this column it says search to value. What
4 specifically are we talking about with respect to what would
5 you expect to find in this particular column? What kind of
6 data is kept by Verizon?

7 A That is the mobile number. We call it the target
8 number of the account. That was the number that was given to
9 us to search for information.

10 Q Okay. So this would be the specific customer number
11 for which Verizon has records?

12 A Correct.

13 Q Okay. And that would be (323)427-3092?

14 A Yes.

15 Q Okay. This next column where it says record open,
16 date and time, what does that column include?

17 A That is the date that the -- that was recorded for
18 this action and the time and then what type of -- I don't know
19 if you call it a time zone, but it's GMT time.

20 Q Okay. And so by GMT time, does that refer to
21 Greenwich Mean Time?

22 A Yes.

23 Q And here where it says GMT minus 7, what does that
24 mean with respect to the time that's reflected here in this
25 column?

1 A It's exact time.

2 Q So this would be in Pacific Standard Time?

3 A Correct.

4 Q This record, this top record here where it says
5 10/27/2018, 07:28:19, would that be then 7:28 in the morning?

6 A 7:28 with 19 seconds, yes.

7 Q Okay. In this next column where it says record open,
8 and there is a date, what is that reflecting?

9 A Let's see here.

10 Q Sorry. Here.

11 A Can you scoot it a little bit over.

12 Let's see here. I have it.

13 Q And would it refresh your recollection to take a look
14 at some of your notes?

15 A Yes. I always bring my notes just to make sure I do
16 not miss anything.

17 Is this a FDRIP record?

18 MR. MATSUDA: And, Your Honor, at this point I'm
19 going to have to object. She's looking through some notes. I
20 don't even know what those are.

21 THE WITNESS: Oh, no, they're not notes.

22 THE COURT: So, first of all, you don't get to ask
23 the prosecutor questions.

24 THE WITNESS: Oh, sorry.

25 THE COURT: Or the defense.

1 THE WITNESS: I'm sorry.

2 THE COURT: They get to ask you questions.

3 Would you like to approach and look at her notes?

4 MR. MATSUDA: Sure.

5 THE COURT: You can both look if you need to.

6 MS. CANNIZZARO: Yeah. Thank you.

7 MR. MATSUDA: Thank you, Your Honor.

8 THE WITNESS: Can you -- I can't see. I'm sorry.

9 MS. CANNIZZARO: Sure. I don't know if it might be
10 better then to make it a little less bright. It might be
11 better. Court's brief indulgence.

12 THE COURT: Would it help for you to see the document
13 in front of you?

14 MS. CANNIZZARO: Versus --

15 THE WITNESS: Yes. It's --

16 THE COURT: And then you can bring it back to the
17 screen.

18 MS. CANNIZZARO: Absolutely.

19 Permission to approach, Your Honor?

20 THE COURT: Granted.

21 MS. CANNIZZARO: Thank you, Your Honor.

22 BY MS. CANNIZZARO:

23 Q And I apologize. It's a little hard to see with this
24 white paper on that -- on that Elmo or overhead screen. And so
25 I believe my question was when we see here it says record open

1 in this column here, this first, what -- what kind of
2 information would you expect to find in this column?

3 A It's -- it's the same thing, but in a different time
4 zone.

5 Q Okay. So we had talked about Greenwich Mean Time.
6 Is that what would be reflected in this particular column?

7 A No.

8 Q Okay. What's reflected in this particular column?

9 A It's in military time.

10 Q Okay.

11 A But -- so.

12 Q So just another version of the exact same --

13 A Correct.

14 Q -- information in that second column. Okay.

15 And I want to move a little further on down towards
16 this column here, and I don't know -- and I can certainly
17 approach for members of the jury. Sorry. So we were talking
18 about this particular column, which is another version of the
19 date and time. And my next question is going to refer to these
20 numbers here where it says called number. What information
21 would be contained in that particular column?

22 A That is the -- that is the number that the target
23 number dialed.

24 Q Okay. So these would be phone calls?

25 A Yes.

1 Q Okay. And you said these would be numbers that the
2 target number dialed?

3 A Correct.

4 Q So were these only numbers that are outgoing?

5 A I would need to -- let's see here. Yes.

6 MS. CANNIZZARO: Okay. Okay. And, Your Honor,
7 permission to publish State's 69?

8 BY MS. CANNIZZARO:

9 Q So we'll move to the next item.

10 THE COURT: Granted.

11 MS. CANNIZZARO: Thank you, Your Honor.

12 BY MS. CANNIZZARO:

13 Q And, Ms. Diaz, what kind -- this might be better then
14 to --

15 MS. CANNIZZARO: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes.

18 MS. CANNIZZARO: Thank you.

19 BY MS. CANNIZZARO:

20 Q Sorry, Ms. Diaz. I'm going to show you State's
21 Exhibit 69. What type of record are we looking at in this
22 record?

23 A We have a -- the switch, the mobile number or the
24 target number that the records were pulled for, the dialed
25 digits, the call direction. In this instance it's 5 and 3s.

1 The time that the call was placed and then there's a seizure
2 time, which is in seconds. The first serving cell site, the
3 last serving cell site and then the calling party number.

4 Q Okay. So this is information then that would relate
5 to the switches?

6 A Correct.

7 MS. CANNIZZARO: Okay. And, Your Honor, permission
8 to publish her notes for the jury.

9 THE COURT: Granted.

10 BY MS. CANNIZZARO:

11 Q And so, Ms. Diaz, and I'm kind of -- hopefully this
12 is the last paper one. We have the network element name which
13 you mentioned were the switches, and then there are numbers
14 that are associated with that: Call direction, the time and
15 date and the calling party number that you mentioned.

16 A Correct.

17 Q And the calling --

18 This is not intuitive on how you move this.

19 -- the calling party number over here in this last
20 column?

21 A That is correct.

22 Q And so this is a document that would show who the
23 information relating to the various switches interacting with
24 the Verizon network?

25 A Correct.

1 MS. CANNIZZARO: And, Your Honor, permission to
2 publish State's 65.

3 THE COURT: Granted.

4 BY MS. CANNIZZARO:

5 Q So we'll open up this first file, and you should be
6 able to see that in front of you as well. We mentioned that we
7 just looked at the switch information on the actual printout.
8 Is that fair to say?

9 A Correct.

10 Q And that was on State's Exhibit 69. Is this another
11 electronic version of that same record?

12 A It is.

13 Q Okay. And we'll open up the second file on there,
14 which is labeled FDR results. And, Ms. Diaz, are you familiar
15 with this particular record as well?

16 A Yes.

17 Q And what sort of information is contained in this
18 record?

19 A These are IP addresses for Internet activity that the
20 phone had.

21 Q So would this be a record that's kept when a phone is
22 let's say searching the Internet?

23 A Correct.

24 Q With searching the Internet and the records that are
25 kept by Verizon, does Verizon keep location data for Internet

1 searches of cell phone -- with cell phones?

2 A No.

3 Q So that's not the type of information that would be
4 in these records?

5 A No.

6 Q We'll go to the next record which is labeled TDR 2
7 results.

8 And, Ms. Diaz, are you also familiar with this
9 particular record?

10 A Yes.

11 Q And what specifically is contained in this record?

12 A It's IP information, and it's date, time, the start
13 time and the stop time, the target number or mobile number, how
14 many megabytes the session used and the EDCI is used to
15 identify which switch and tower the target utilized during the
16 transaction.

17 Q Okay. So this is also -- it would be Internet
18 information?

19 A Correct.

20 Q Okay. And we'll go to the next record on this
21 exhibit labeled copy of Las Vegas LEA.

22 Ms. Diaz, are you familiar with this particular
23 record?

24 A I am.

25 Q And what is the type of information that would be

1 reflected in this particular record?

2 A This has switch information, cell tower information,
3 city information, the exact address of the tower. Yes. And
4 then the azimuth antenna information and then the vendor of the
5 switch.

6 Q So are these -- we talked a little bit about switches
7 and cell towers. Is this a document that would reflect where
8 Verizon cell towers are located?

9 A Yes.

10 Q And again I think earlier we talked about this being
11 geographical in nature. Is that fair to say?

12 A Correct.

13 Q Okay. And so that would be reflected in this
14 particular record?

15 A Yes.

16 Q Okay. We'll move on to the next record.

17 THE COURT: And is that -- does that record scroll
18 down? Is it many pages or --

19 MS. CANNIZZARO: It does. Yes.

20 THE COURT: Okay.

21 BY MS. CANNIZZARO:

22 Q So now we'll open the record labeled device. And,
23 Ms. Diaz, are you familiar with this particular record as well?

24 A Yes.

25 Q And what sort of information is kept in this

1 particular record?

2 A This usually has the mobile number or the target
3 number and then the IE -- IMEI, which is -- it's like a serial
4 number for the phone.

5 Q And so that is just -- that's just a record that
6 relates to the particular device?

7 A I'm just nervous.

8 Q And these columns appear to be a little truncated.
9 So if you expand them out, you would expect to see that
10 information you've just described?

11 A Correct. And this one actually has a date that that
12 specific phone was activated.

13 Q Okay. We'll move on to the next record. It's
14 labeled historical on this exhibit. And, Ms. Diaz, are you
15 familiar with this particular record as well?

16 A Yes.

17 Q And again we can see that these -- the columns in
18 this record -- it's an Excel spreadsheet -- are a little
19 truncated. So you would need to expand them to see all the
20 information; is that fair?

21 A Correct.

22 Q Okay. And what sort of information is kept in this
23 particular record for historical?

24 A This is picture messaging information.

25 Q So assume you were to send a picture, this is the

1 type of record that might be generated?

2 A Correct.

3 Q Okay. Does Verizon keep the actual pictures that are
4 sent?

5 A They are only kept three to five days after they are
6 sent.

7 Q And after that, what does Verizon do with them?

8 A They are purged.

9 Q Okay. So you wouldn't have access to those
10 particular pictures?

11 A No.

12 Q Okay. And we'll go to the last item on this -- on
13 this exhibit, which is labeled text.

14 And, Ms. Diaz, are you familiar with this particular
15 record?

16 A Yes.

17 Q And in this particular record that's labeled text,
18 what sort of information would you expect to find in this kind
19 of record?

20 A The target number, the time and date that the message
21 was sent, delivered; where it originated; if it was incoming,
22 outgoing. And it doesn't have any minutes. That's all.

23 Q So would this be text message information then?

24 A Correct.

25 Q Okay. And again, I think we see that the columns

1 have been sort of made smaller, and so if we expanded those, we
2 would expect to see that information for numbers and associated
3 contacts?

4 A [No audible response.]

5 Q Is that yes?

6 A Yes.

7 Q Okay.

8 THE COURT: And we -- so is it going to have the --
9 both numbers, the number that is sending the text and the
10 number that it's sent to?

11 THE WITNESS: If she can open it, we can see or
12 expand.

13 THE COURT: Okay. I see.

14 BY MS. CANNIZZARO:

15 Q And as we expand out these columns, you can see the
16 text messages that are being sent between numbers and dates
17 that that would occur. Would that be fair to say?

18 A That is correct.

19 MS. CANNIZZARO: Okay. Thank you, Your Honor.

20 BY MS. CANNIZZARO:

21 Q And, Ms. Diaz, Verizon actually produced at least one
22 other record with that; is that correct?

23 A Yes.

24 MS. CANNIZZARO: Okay. And, Your Honor, I'm showing
25 defense what's been marked as State's Proposed 72.

1 THE COURT: All right.

2 MS. CANNIZZARO: Permission to publish for
3 identification purposes.

4 THE COURT: Any objection?

5 MS. CANNIZZARO: And I believe --

6 MR. MATSUDA: Oh, I'm sorry. No objection.

7 THE COURT: Any objection? No.

8 MR. MATSUDA: None.

9 THE COURT: All right. Permission granted.

10 BY MS. CANNIZZARO:

11 Q And there appears to be one additional file on
12 State's Proposed 72. And, Ms. Diaz, I'm going to ask you to
13 take a look at that screen. Do you recognize this particular
14 record?

15 A Yes.

16 Q And is this also a fair and accurate record that was
17 produced by Verizon in preparation for your testimony today?

18 A It is.

19 MS. CANNIZZARO: The State would move to admit
20 State's Proposed 72 into evidence.

21 THE COURT: Any objection?

22 MR. MATSUDA: None, Your Honor.

23 THE COURT: All right. It's admitted.

24 (State's Exhibit Number(s) 72 admitted.)

25 MS. CANNIZZARO: Thank you, Your Honor.

1 BY MS. CANNIZZARO:

2 Q And, Ms. Diaz --

3 MS. CANNIZZARO: And, Your Honor, permission to
4 publish for the purposes of testimony?

5 THE COURT: Granted.

6 MS. CANNIZZARO: Thank you, Your Honor.

7 BY MS. CANNIZZARO:

8 Q Ms. Diaz, this record that is in front of you, do you
9 recognize the information kept in this particular record?

10 A Yes.

11 Q And what type of information would be kept in this
12 record that's labeled Southwest?

13 A The mobile number that -- the serial number IMEI for
14 the phone itself. Let's see here.

15 Q Well, let me -- let me stop you there and ask you a
16 question. Would this be the type of record that would keep
17 location data for the cell phones?

18 A Yes.

19 Q Okay. And so would that also be reflected in this
20 particular record then?

21 A It is.

22 MS. CANNIZZARO: And, Your Honor, with that I would
23 pass the witness.

24 THE COURT: Cross.

25 MR. MATSUDA: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MATSUDA:

Q Good afternoon, Ms. Diaz.

A Good afternoon.

Q How are you doing?

A Good.

Q Okay. So I'm just going to follow up and ask some questions that the State just asked you.

Now, I'm showing you what has been marked as State's 67. Okay. On the third page of State's 67 --

(Pause in the proceedings.)

BY MR. MATSUDA:

Q So this is State's 67, and it says, effective date, disconnect date; correct?

A Correct.

Q I'm assuming that's kind of self-explanatory. June 21st would be the date someone activated this number; correct?

A That is correct.

Q Okay. And October 29th would be the date they disconnected the number?

A That is correct.

Q Okay. Now, how does one disconnect the number?

A There's multiple ways. You can call in dialing 6-1-1 and request it over the phone. You can disconnect it on line

1 through your Verizon account if you have set on that. Those
2 are the only ways.

3 Q Okay. So and you can call from any number on this
4 one?

5 A Correct.

6 Q Okay. And what kind of information do you need to
7 disconnect a number?

8 A When someone calls to access an account, we need --
9 there's a pin that is set up for the account, the last four of
10 your social. And then, of course, the number that needs to be
11 disconnected.

12 Q And when -- the disconnect date, there's no time
13 associated with that; correct?

14 A No.

15 Q Okay. So it's just that day?

16 A Correct.

17 Q Okay. Now, from the information that you saw
18 regarding this number, it shows who activated the account?

19 A Correct.

20 Q Okay. Does it show any users on the account?

21 A I did not see any of that information here.

22 Q Okay. Can Verizon tell who's using a phone?

23 A No.

24 Q Okay. So all we can associate a number with is
25 someone who activated it? Does that make sense? Is that a

1 good question?

2

3 A (No audible response.)

4 Q Let me withdraw that question. I think I confused
5 myself.

6 When someone activates a number and it goes on
7 someone's name, is there any way to tell who uses that number?

8 A No.

9 Q Okay. It's just the name that's associated with that
10 number is what your records show?

11 A Correct.

12 Q You can't identify who actually used that number?

13 A That is correct.

14 Q Okay. You don't know who sent a text message?

15 A No.

16 Q You don't know who was actually making a call from
17 the number?

18 A No.

19 MR. MATSUDA: Okay. Thank you, Ms. Diaz.

20 Nothing further, Your Honor.

21 THE COURT: Redirect?

22 MS. CANNIZZARO: Nothing further from the State, Your
23 Honor.

24 THE COURT: I have a question. So if someone does
25 disconnect their account, you know, disconnect the phone, once

1 they disconnect it, can they make any more calls?

2 THE WITNESS: 9-1-1.

3 THE COURT: Okay. So any calls on the record that
4 are on the record were made before the disconnect?

5 THE WITNESS: Correct.

6 THE COURT: So at least in that way you can tell the
7 time?

8 THE WITNESS: Yes.

9 THE COURT: Okay. Any questions as a result of my
10 questions?

11 MS. CANNIZZARO: No, Your Honor.

12 MR. MATSUDA: None, Your Honor.

13 THE COURT: Questions of the jury?

14 May the witness be excused?

15 THE CLERK: Your Honor.

16 MS. CANNIZZARO: Yes, Your Honor.

17 THE COURT: Oh, do we have -- did we have a question?

18 THE CLERK: Your Honor, we're having typical
19 technical difficulties with JAVS.

20 THE COURT RECORDER: The keyboard is not typing.

21 THE COURT: Oh.

22 THE COURT RECORDER: So just one second.

23 THE COURT: But the witness may still be excused. I
24 don't think we need to --

25 Yeah. Thank you.

1 Okay. We've got to pause so we can fix the technical
2 difficulties.

3 (Pause in the proceedings.)

4 THE COURT RECORDER: I'm going to try to go off the
5 record and go back on.

6 THE COURT: Okay.

7 (Off the record.)

8 (Pause in the proceedings.)

9 THE COURT: All right. We're back on the record
10 after we did a hard restart of the JAVS system. Nobody moved
11 out of the courtroom. So we're all still here.

12 And call your next witness.

13 MS. MOORS: Thank you, Your Honor. The State calls
14 Detective Dave Miller.

15 THE COURT: Thank you.

16 **DAVID MILLER**

17 [having been called as a witness and being first duly sworn,
18 testified as follows:]

19 THE CLERK: Please be seated and state and spell your
20 name for the record, please.

21 THE WITNESS: My name is David Miller. D-a-v-i-d,
22 M-i-l-l-e-r.

23 THE COURT: You may proceed.

24 MS. MOORS: Thank you.

25 / / /

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DIRECT EXAMINATION

BY MS. MOORS:

Q Good afternoon, Detective. Can you tell the members of the jury how you're employed.

A I am a detective with the Las Vegas Metropolitan Police Department.

Q And how long have you worked for Metro?

A For 19 years.

Q Can you describe for me the various duties that you have had while working for Metro?

A My first five years I was in the patrol division. My last 14 years I've been a robbery detective, specifically investigating kidnaps for ransom and actual business robberies and robberies to citizens.

Q Okay. So essentially what you're telling us is that Metro in terms of detectives is kind of divided by crime?

A That's correct.

Q So you've been in the robbery area for 14 years?

A Yes, ma'am.

Q Now, is there any sort of geographical demarcation? Like do you also cover certain geographic areas or everywhere in Las Vegas?

A Well, I do cover everywhere in the valley, but specifically I focus on the Bolden Area Command and Northwest Area Command, which is basically everything north of Charleston

1 and west of the I-15.

2 Q So I want to direct your attention, sir, to October
3 29th of 2018. At that point in time, were you also working
4 as a robbery detective?

5 A Yes, ma'am.

6 Q Did you have occasion to get called to a robbery at
7 the Torrey Pines Pub?

8 A Yes, ma'am.

9 Q And when would you have ultimately arrived at that
10 location?

11 A I believe it was probably around shortly after
12 6:00 a.m.

13 Q Okay. Was it your understanding the robbery had
14 occurred around 5:15 in the morning?

15 A Yes, ma'am.

16 Q So when you ultimately get assigned to a location, at
17 that very moment are you going to be the case agent, or how --
18 who decides who is essentially the lead detective?

19 A We sort of know just as a squad. When we work
20 together, we know what areas we're responsible for and things
21 of that nature. So, yes, going into that, I knew I would be
22 handling that investigation.

23 Q So from the inception this was your case to handle?

24 A Yes, ma'am.

25 Q So when you got to the location, what's the first

1 thing that you do?

2 A We contact the patrol officers. By the time we got
3 there, this particular case, patrol officers in uniform are
4 already there. The scene had been secured. Witnesses had
5 already been identified, and basically we chat with the
6 officers and kind of get an idea for what they know, what
7 they've seen.

8 Q And then would it also be customary for you to speak
9 with the victims?

10 A Yes.

11 Q Is that something that you would have liked -- are
12 there other detectives on scene with you?

13 A Yeah. In a case like this, there were multiple
14 victims. You know, it was kind of a -- it was static at the
15 time that we got there. Everything was calmed down, but
16 there's multiple people involved. There's multiple
17 responsibilities, to include looking, identifying if there's is
18 video surveillance, looking at that video surveillance and
19 chatting with each victim and finding out what happened.

20 Q In terms of the information that you were provided,
21 did you have any idea in terms of descriptors of the robbers?

22 A Yes. It was limited because they were completely
23 masked and gloved up. We only knew basically that we thought
24 we were looking for two black males.

25 Q So when you get there, did you -- which victim

1 specifically did you speak with?

2 A With Antwaine Johnson.

3 Q And why did you speak with Antwaine Johnson?

4 A The officers had indicated based on what their
5 preliminary investigation that there were a couple reasons to
6 be suspicious about Antwaine's behavior that morning. He was a
7 patron in the bar and considered a victim, but they thought
8 some things were suspicious. So I went ahead and took a look
9 at some video surveillance, and I agreed that there were some
10 suspicious things going on there, and I wanted to speak with
11 him.

12 Q Okay. Let's talk about that video surveillance. I'm
13 assuming when you deal with robberies oftentimes you're dealing
14 with video surveillance?

15 A Yes.

16 Q And is that something that if it's available might be
17 one of the first things you would review?

18 A Yeah. When possible we're very interested in it as
19 long as the scene is contained and everything.

20 Q Sure. Making sure everyone is safe?

21 A Yeah.

22 MS. MOORS: Okay. Permission to approach your clerk?

23 THE COURT: Granted.

24 MS. MOORS: Thank you.

25 / / /

1 BY MS. MOORS:

2 Q Okay. So I'm going to go ahead and show you some of
3 this video surveillance that you would have reviewed on that
4 date; specifically I'm going to show you State's Proposed
5 Exhibit -- or actually State's Admitted Exhibit 64. And when
6 this loads, we're ultimately going to show you the first view
7 on this disc, but when you were ultimately there, were there
8 quite a few, I guess, several camera angles that you had a
9 chance to look at?

10 A Yeah. I looked at several that morning, and
11 obviously as the investigation developed I would go over it
12 many more times in more detail.

13 Q Okay. So, like I said, we're specifically showing
14 you this first one, once it decides to load, and it looks like
15 up in the left-hand corner we see a time stamp of 10/29/18. It
16 says Mon, presumably for Monday, and then 5:06:06. Is that
17 fair to say?

18 A Yes, ma'am.

19 Q And if we can go ahead and fast-forward it to 5:13.

20 THE COURT: Is this disc 64 or 64A?

21 MS. MOORS: This is actually -- this is actually 64,
22 Your Honor. So thank you for pointing that out.

23 I think I should make a record in front of the jury
24 that ultimately we had some problems yesterday with videos in
25 terms of their playing, and so what we did was is we made an

1 exact copy of that video. I'm going to get rid of this video,
2 and it's going to be labeled 64A. It has been stipulated to by
3 both parties and admitted, and that's what I should have been
4 showing currently, and I apologize for that, but that will
5 essentially have a correct viewer on it so that we don't have
6 any troubles viewing any of the data.

7 THE COURT: All right. And it's my understanding the
8 difference between 64 and 64A is that you added a player that
9 is compatible with this particular system so you can view them.

10 MS. MOORS: That is correct, Your Honor.

11 THE COURT: Because, ladies and gentlemen of the
12 jury, because those exhibits, both 64 and 64A were admitted,
13 you will have both available to you, but the reason we did 64A
14 is so that if you want to play those in the jury deliberation
15 room, you'll be able to do it without technical difficulties
16 using 64A. Yeah. 64A.

17 MS. MOORS: And, Your Honor, I just happened to
18 notice something, if we could approach?

19 THE COURT: Okay.

20 (Conference at the bench not recorded.)

21 THE COURT: Okay. So, ladies and gentlemen, so
22 actually -- so it's still 64A. That's the one you're going
23 to -- it replaces not 64, but 63. Because the 63 disc was the
24 one that wasn't playing right. So make a note of that, that
25 the one you're going to want to look at if you don't want to

1 have technical difficulties is that 64A.

2 But everything that gets marked once it's marked and
3 admitted, it can't get unadmitted. So.

4 MS. MOORS: All right. Correct. So essentially I am
5 going to reopen that video that I just had open that is
6 correctly marked as disc 64, and we're going to get back to
7 where we were. I apologize.

8 THE COURT: 64 or is 64A?

9 MS. MOORS: This is 64.

10 THE COURT: Okay.

11 MS. MOORS: The correct 64 in all its glory.

12 THE COURT: All right.

13 BY MS. MOORS:

14 Q Okay. So if we can go a little farther forward to
15 5:13 -- actually, let's go to 5:12:30. And so it's playing
16 right now. It says 5:12:26. If we could pause it at 5:12:30.

17 So I'm assuming this is a fair representation of
18 these various video surveillance angles that you had observed;
19 is that correct?

20 A Yes, ma'am.

21 Q All right. Now, in this video, what do we see in the
22 lower right-hand corner?

23 A This is Antwaine sitting at a slot machine. Antwaine
24 Johnson.

25 Q Okay. So to be clear, this is the person who was, I

1 guess, ultimately coming across as a victim, but you had
2 potential reason to think that he was involved?

3 A Correct.

4 Q And so for this reason, when you were reviewing these
5 videos, did you kind of pay extra attention to what he was
6 doing?

7 A Yes.

8 Q All right. And if we can go ahead and play the
9 video.

10 Now, upon first glance did you think that he was
11 playing video poker?

12 A Yes.

13 Q Did you later learn that he actually wasn't playing
14 video poker?

15 A Correct.

16 Q How did you learn that?

17 A Bob Bonner, the owner of the business who is more
18 familiar with these machines than I am, of course, would
19 explain to me, and he would actually show me. I went down
20 there and physically watched him show me this, that he was just
21 going screen to screen to screen. He was actually not playing
22 the machine.

23 Q Okay. So he was essentially just hitting buttons,
24 making things happen on the screen, but not actually playing?

25 A Right.

1 Q And now is it fair to say that at 5:13:24 he appears
2 to be getting up?

3 A Yes.

4 Q And does it look like he's further hitting buttons?

5 A Yes.

6 Q And he appears to then exit the screen; is that fair
7 to say?

8 A It is.

9 Q We can go ahead and stop that. Were you able to
10 observe other video surveillance that showed the route
11 essentially that this Antwaine exited the bar?

12 A Yes.

13 Q And in viewing that, did you find anything about that
14 odd?

15 A Yes.

16 Q What did you find to be odd?

17 A The manner in which he -- well, a couple things. For
18 one, the door that he chose to exit, and Number 2, the manner
19 in which he exited the door. It kind of appeared that he held
20 the door open longer than necessary intentionally.

21 Q Okay. So the first one you said was the door in
22 which he chose to exit. Why was that sort of something you
23 might notice?

24 A Frankly, whenever we have a bar robbery such as this,
25 or not just a bar, any type of establishment where the business

1 is completely locked, and the only way in is to be buzzed in,
2 electronically by someone that works inside the business, one
3 of our first questions always is to take a look at who opened
4 that door because in this particular case, this was one of
5 those businesses. The front doors were locked and secured with
6 an electronic lock, and the door he chose to go out of was on
7 the southeast corner of the business, a side door, and so that
8 immediately struck me as odd that he would be choosing not the
9 front doors of the business that most people come through, but
10 a side door.

11 Q Okay. So let's talk about the video you saw of him
12 exiting. You said that he appeared to maybe hold the door open
13 longer than necessary.

14 A Yes, ma'am.

15 Q If we can go to -- and for the record, we actually
16 need to switch the disc to Exhibit 64A that replaces 63. We're
17 going to go ahead and play the one that's entitled Chapter 12.

18 All right. If we can go ahead and pause that.

19 Is this the view that you were discussing that showed
20 the exit route of Antwaine?

21 A Yes. You're looking at the door and that -- as soon
22 as it comes back up. You're looking at the -- on the far upper
23 right-hand side of that screen, you're looking at the side
24 exit. That's the far southeast corner of the bar.

25 Q Okay. So just to go back in terms of what I was

1 asking you before, the video surveillance we just looked at
2 that showed Antwaine leaving the bar, it looks like he got up I
3 want to say around 5:13:26. Was that about right?

4 A 5:13:13 I think he got up and kind of started
5 moseying that way. He got a bottle of water on the way.

6 Q So if we can go to 5:13 on this view. Wait, this is
7 fine.

8 So right now we're at 5:12:32. Would we expect then
9 to see Antwaine sort of within the next minute or so?

10 A Uh-huh. Within about, yeah. I think at 5:13 --
11 5:14:03 I think is when the suspects actually come in. So we
12 have just a little bit of time here.

13 Q All right. You have a great memory.

14 A So right now he's basically standing up right now,
15 and he's walking past the bartender, and he stops there for a
16 moment to get a bottle of water.

17 Q Okay. So is this something that we're not able to
18 see on this view --

19 A Yes.

20 Q -- but you're telling us --

21 A Yes. It's up on the far left-hand side of the
22 screen. He'll walk into view here in just a second. There he
23 is right there getting the bottle of water. You can see the
24 bartender -- that's the bartender right there, the legs.

25 Q And to be clear, what we're discussing is we saw

1 some, I guess, legs in the center left-hand side --

2 A Yeah.

3 Q -- of the screen?

4 A That was the bartender, and she's getting him a
5 bottle of water, and that's his legs, and now he's walking
6 towards us.

7 Q And then when you say "his," we're talking about
8 Antwaine Johnson; correct?

9 A Yes. I'm sorry. Antwaine Johnson.

10 Q All right. If we can pause that right there. I
11 think you actually said it exactly correct. It's 5:14:03.
12 What did you find interesting about what we just saw?

13 A A couple things. Number 1, I'm not saying you have
14 to play it back, but if you play it back, he doesn't just pop
15 the door open and go. He pops the door open actually reaches
16 back and actually pauses to hold it open. From an
17 investigative standpoint, it's noticeable, and it's suspicious.
18 Not to mention, as I said before, it's that specific side door
19 at that specific time, and it just so happened there were
20 specific people waiting right outside that door at that exact
21 moment.

22 The second thing is which we'll probably go into here
23 more in a second, but you see he's down on the ground. They
24 put them down on the ground right there, and approximately from
25 where he is underneath that table to where the rest of the

1 robbery occurs is maybe 15, 20 yards a little further than from
2 here to the back of the courtroom, probably further than that.

3 And he's really out of view of the suspects and
4 everybody at that point. He's left unsupervised, and as what
5 will happen -- as the progression of the robbery goes on is the
6 victims are all very, very tightly kept under guard. Two of
7 the victims are males, and they are pistol whipped, and they
8 are robbed. Their wallets are stolen. All of this occurring
9 while they are paying no attention to him at all as though he
10 is not a threat and --

11 Q Let me stop you for a second there and ask you this:
12 What physical differences did you notice between Antwaine
13 Johnson and the other four victims?

14 A Well, I -- I mean no offense by this, but all these
15 victims are sitting at bars. They're up there gambling. One
16 is 70 years old. One is 75 years old, and one is a pretty
17 heavysset 50 year old. For all I know, they know judo. I don't
18 know, but they don't look like a significant threat, and
19 whereas Antwaine was up on his feet walking, walking out of the
20 bar. He is -- I think he was 30 at the time and thin and trim.
21 I would just say from common sense standpoint, he looked like
22 the more significant threat if there was a threat inside that
23 bar.

24 Q Okay. Let's talk about when you said that the
25 robbery -- and we've seen some of the video, and we will see it

1 again. You said that these two individuals that were armed
2 sort of kept the patrons of the bar under sort of a close grip.
3 Is there a term, working as a robbery detective, that you would
4 refer to for this type of robbery?

5 A Yeah. We would call it like a takeover-style
6 robbery. It was a very aggressive -- no one was unsupervised
7 there other than Antwaine Johnson for any moment of time. They
8 were bouncing all around guns out, hitting people, robbing
9 people. Yeah, we would call that a takeover-style robbery.

10 Q And so that would be a customary term and a type of
11 robbery that you've seen as a robbery detective?

12 A Yes.

13 Q Okay. So what I would like to do next, actually, is
14 watch the very next video clip. I believe it's entitled
15 Chapter 13, and it's going to show us the outside of the bar
16 outside of the side exit.

17 And if we could fast-forward to 5:12:30. And the
18 disc actually works today, just labeled wrong. Oh. Getting
19 ahead of ourselves.

20 (Pause in the proceedings.)

21 BY MS. MOORS:

22 Q So, essentially, I didn't explain this previously,
23 but we added a player that is a way to play it to make it work.
24 So we have to open the player first, and then ultimately drag
25 this file into it. So that was something that I wanted to make

1 the jury aware of as well when it comes time for deliberation,
2 but that --

3 THE COURT: Why don't we use this as a training time.
4 Show the jury.

5 MS. MOORS: So essentially we open that player. It
6 is now open. We will take this Chapter 13 and drag it to the
7 player.

8 THE WITNESS: May I help if it helps?

9 MS. MOORS: It's fine. No. We got it.

10 THE WITNESS: Okay.

11 MS. MOORS: All right. So that's that same view.
12 We're just using a different player to play it for whatever
13 reason.

14 So if we can fast-forward to 5:12:30. Perfect.
15 5:12:40.

16 BY MS. MOORS:

17 Q All right. So around 5:12:50 or 51:00, if we can
18 pause it real quick, what do we start to see in the upper
19 left-hand corner?

20 A Those are the two suspects jumping the wall, of the
21 neighboring apartment complex.

22 Q Okay. And to be clear, we're talking about this side
23 door; right, and this is the door that Antwaine Johnson
24 ultimately leaves out of?

25 A Yes. The side door in this picture, the door that

1 Antwaine exits is actually the very far top right of your
2 screen.

3 Q Okay. And at a later point in time, did you also
4 come to learn that this white vehicle towards the top of the
5 screen belonged to Antwaine Johnson?

6 A Yes. That white car with the sunroof is Antwaine
7 Johnson's Monte Carlo.

8 Q Okay. So remind me again. Now, we were just looking
9 at the video of Antwaine inside. And at about what time did he
10 get up from that poker machine that he wasn't playing?

11 A He got up at 5:13:13.

12 Q 5:13:13. And we see them leaving or coming over this
13 wall at 5:12:50; is that fair?

14 A Right.

15 Q So 23 seconds after --

16 A Yes, right now.

17 Q -- Antwaine gets up from that machine?

18 A Correct.

19 Q All right. If we can continue playing it.

20 And so at this point, at 5:13:07, we see these two
21 individuals hiding behind Antwaine's vehicle; is that correct?

22 A Correct.

23 Q All right. So now we -- it looks like ultimately
24 these two individuals have brought Antwaine into them; is that
25 correct? And I stopped it at 5:14:15.

1 A Yes.

2 Q Was there anything else that you noticed when you saw
3 this video angle that you thought was interesting?

4 A Yeah. They -- these guys didn't even try the door.
5 They didn't even try to see if maybe the door was unlocked.
6 They -- it was as though they knew that's a locked door, and
7 they knew to be waiting for that door to open, and it did 23
8 seconds later or so.

9 Q Okay. So fair to say at this point in time your --
10 your interest in Antwaine as a potential suspect is certainly
11 piqued?

12 A Yes.

13 Q When you spoke with him, did you talk to him about
14 text messages?

15 A I did.

16 Q And ultimately did he tell you that he -- you know,
17 did he let you see his phone?

18 A Yes, he did.

19 Q And when you looked at his phone, what did you see
20 was the last text message that was sent?

21 A 3:28 a.m.

22 Q On this particular date?

23 A On that same date, yes.

24 Q Okay. And did you essentially -- did he indicate to
25 you that that was the last text message he had sent on that

1 date?

2 A He insisted that it was the last text he had sent,
3 yes.

4 Q Okay. So throughout the entire time of speaking with
5 him, did he ever admit any involvement in the robbery?

6 A No, he did not.

7 Q Did you make him aware that you would be seeking a
8 pen register for his phone?

9 A I don't know if I used the word pen register, but I
10 told him we would be checking his records.

11 Q Okay. And I'm going to go a little out of order, but
12 ultimately did you get what's referred to as a pen register for
13 his phone?

14 A I did.

15 Q When did you get that?

16 A Just days later. I don't remember the exact date,
17 but just days later.

18 Q Does November 6th sound correct?

19 A Yes.

20 Q And can you tell the members of the jury what a pen
21 register is.

22 A A pen register basically, depending on what dates we
23 request -- in this case we requested for a month back, and then
24 I think for the first two weeks into November. So that will
25 give me all the records of his incoming and outgoing texts and

1 calls, but it will also give me live incoming stuff all the way
2 up to the date that we request, which in this case I wanted two
3 weeks past.

4 MS. MOORS: Okay. Permission to approach your clerk?

5 THE COURT: Granted.

6 BY MS. MOORS:

7 Q Now, when you were speaking with Antwaine, did he
8 tell you what his phone number was?

9 A Yes.

10 MS. MOORS: And for the record, I am looking at
11 State's Admitted Exhibit 70.

12 Permission to publish?

13 THE COURT: Granted.

14 BY MS. MOORS:

15 Q So I am showing you, sir, what is -- I think it has
16 your name at the top actually. It says agency, police request
17 or Dave Miller; is that right?

18 A Yes.

19 Q And your name is Dave Miller?

20 A Yes.

21 Q And it looks like in the middle we see it says
22 subscriber details, subscriber name, a Keyontrey S. McBride; is
23 that right?

24 A Yes.

25 Q And then if I go down a little further, I see the

1 phone number --

2 A MSIS DN and number (424)375-1085. Right there.

3 Q Okay. So that number, is that the number that
4 Antwaine Johnson told you was his phone number?

5 A Yes.

6 Q And did you actually get to look at that phone?

7 A Yes.

8 Q Specifically, did you actually -- were you able to
9 text with that phone later on this date, on October 29th?

10 A I did text with him a few times, yes.

11 Q So you were texting with Antwaine on October 29th;
12 correct?

13 A Yes.

14 Q And this is after the robbery has occurred?

15 A Correct.

16 Q And it's with this phone number; correct?

17 A Correct.

18 Q So regardless of the name on here being Keyontrey,
19 this was the phone number you understood to be Antwaine
20 Johnson's phone; correct?

21 A Yes. Through our experience, it's not uncommon at
22 all to have different names on numbers that we are looking
23 into.

24 Q Okay. And then obviously this exhibit is really big.
25 Do you remember ultimately getting a document of this size?

1 A Yes.

2 Q Would this be sort of what you would expect to get in
3 terms of phone records for over a month?

4 A Yes. And for the record, we don't get that in paper
5 format. We get that digitally so --

6 Q Okay.

7 A Yeah.

8 Q Fair enough. So once you have the phone records --
9 well, I guess let me ask you this. What other leads did you
10 have to pursue in terms of who had committed this crime?

11 A At that particular moment, up until we got these
12 phone records, nothing.

13 Q So once you get the phone records, do you then make
14 contact with Antwaine again?

15 A Ultimately, yes.

16 Q Okay. And is he made aware essentially that you have
17 the phone records?

18 A Yes.

19 Q Now, in terms of reviewing the records, what were you
20 looking for?

21 A Well, I was looking for that key time of 3:28 a.m.
22 where I saw his last text when I actually looked physically at
23 his phone, and I was very curious to see if there were going to
24 be any deleted texts or phone calls after the 3:28 a.m. time.

25 Q Okay. So essentially if I have a cell phone and I

1 have some text messages on my cell phone, and if I delete them,
2 there would still be a record that those messages were sent?

3 A Yes.

4 Q And so once you got these records and you looked at
5 that time frame, specifically from the 3:18 to when you would
6 have met with him some time in the early morning on October
7 29th, what did you see?

8 A I saw there where approximately 117, 118 I believe,
9 somewhere right in there, text messages that were not on his
10 phone, and they are all to the same phone number. These calls
11 occurred between 3:28 a.m. and the exact minute -- a minute
12 before the robbery, 5:12 a.m. I believe.

13 Q Okay. And you said they were all to the same phone
14 number.

15 A Yes, to and from.

16 Q So let's talk about this phone number.
17 Specifically -- I am not going to try to find it in this
18 document, but was it your understanding that number was
19 (323) 427-3092?

20 A Yes.

21 Q And ultimately were you able to determine that that
22 phone number belonged to a Devohn Marks?

23 A Yes.

24 Q Okay. I saw you just move your head. Do you see
25 Devohn Marks in court here today?

1 A I do, yeah.

2 Q Could you please point to where he's seated and
3 identify an article of clothing that he's wearing.

4 A Right in front of me, the nice white shirt and blue
5 tie I think it is.

6 MS. MOORS: Your Honor, may the record reflect
7 identification of the defendant?

8 THE COURT: It will.

9 MS. MOORS: Thank you.

10 BY MS. MOORS:

11 Q Okay. So once you figure this out, do you then go
12 back and look because I think you said you got the entire month
13 of October; is that right?

14 A Yes.

15 Q Of these records for Antwaine Johnson. Do you go
16 back and look to see how many times there's contact between
17 Devohn Marks and Antwaine Johnson in the month of October?

18 A Yes.

19 MR. MATSUDA: I'm going to object, Your Honor. If we
20 can approach real quick?

21 THE COURT: Okay.

22 (Conference at the bench not recorded.)

23 MS. MOORS: All right. I will go ahead and rephrase
24 my question.

25 / / /

1 BY MS. MOORS:

2 Q In looking at these cell phone records that we had
3 discussed, they were records for Antwaine Johnson; is that
4 correct?

5 A Yes.

6 Q And we had discussed this other number that you saw
7 sort of a lot of, and that was the number (323)427-3092; is
8 that correct?

9 A Yes.

10 Q And that was the number that you determined to be
11 associated with as the number for Devohn Marks; correct?

12 A Yes.

13 Q And how many times did you notice contact between
14 Antwaine Johnson and the phone number that was known to be the
15 phone number of Devohn Marks?

16 A 1,222 times.

17 Q And that was in the month of October; correct?

18 A Correct.

19 Q So the month immediately proceeding the robbery?

20 A Correct.

21 Q So once ultimately you have this information, did
22 you -- I guess at some point were charges submitted with
23 regards to Antwaine Johnson?

24 A I'm so sorry. Did I --

25 Q That's okay. Were charges ultimately submitted to

1 the DA's office for approval with regards to Antwaine Johnson
2 being involved in this robbery?

3 A Yes.

4 Q And after that fact, did you ultimately speak with
5 Antwaine Johnson and his attorney in what we would call a
6 proffer?

7 A That is correct.

8 Q Could you tell the members of the jury what a proffer
9 is.

10 A It's basically an arranged agreement to get together
11 with the defense attorney, the defendant and along with the
12 investigator in this case, myself, and along with a member of
13 the Clark County District Attorney's office. In this case it
14 was John Giordani.

15 Q Okay. And during the course of a proffer, is it sort
16 of customary practice that our office has agreed, you know,
17 whatever you tell us we're not going to file any charges. This
18 is sort of just an information gathering point?

19 A It is an information gathering. That's correct.
20 Yes.

21 Q And is it something that you might customarily do as
22 a robbery detective to try to get information from say one
23 defendant with regards to another defendant?

24 A Exactly. Yes.

25 Q How many proffers would you say that you have done in

1 the course of your employment?

2 A I don't know. Maybe 10. I don't -- I'm not exactly
3 sure. I've never thought to keep track of that.

4 Q That's okay. So you ultimately are there. You speak
5 with Antwaine. And at some point would it be fair to say that
6 he changed his story with regards to the robbery?

7 A Yes.

8 Q And did he ultimately essentially kind of give a full
9 confession to what his level of involvement was?

10 A That is correct.

11 Q Now, at this point you were able to determine this
12 phone number as belonging to Devohn Marks, and you then, based
13 on that were you able to locate a photograph of Devohn Marks?

14 A Yes, I was.

15 Q What did you do with that photograph?

16 A I put it into a photo lineup. That way it's mixing
17 his picture among the pictures of five other males that sort of
18 have a similar appearance, and I showed that to Antwaine to see
19 if he could identify -- make an identification of anyone
20 really.

21 Q All right. Let me ask you this. When you're making
22 a photo lineup, is that something that you do, or is it a
23 computer program, or how do you make one?

24 A Yes. Yes. It's not a computer program. We have a
25 database, and I use that database to mix his picture among the

1 pictures of five other people that have a similar appearance.

2 Q Okay. So it wouldn't be, you know, say one black
3 male and then three Asian females and one Hispanic male?

4 A Correct. That wouldn't be really fair at all. So we
5 try to make it as fair as possible.

6 Q Now, let me ask you this. Why, if essentially you
7 get this full confession from Antwaine Johnson, did -- well, I
8 guess the question is did he give you a name of the people that
9 were involved with him?

10 A He gave me one name.

11 Q And what name was that?

12 A Chill.

13 Q All right. So fair to say that might be more of a
14 nickname?

15 A Correct.

16 Q And based on that, that's why you did the photo
17 lineup?

18 A Yes. Just to make sure he -- he also provided me,
19 without giving me a name, he provided me, for instance, an
20 address. Some things that were matching up to Devohn Marks,
21 but nevertheless I wanted to see if he could actually make an
22 identification or not.

23 Q Okay. Now, ultimately you're able to show him this
24 photo lineup; is that right?

25 A That is right.

1 Q And what was the result of showing him this photo
2 lineup?

3 A He picked Devohn Marks's picture.

4 Q Okay. And did he indicate that that was the person
5 he had been in contact with in the months -- or the month
6 leading up to the robbery?

7 A That is correct.

8 Q Did he also indicate that that was the person he had
9 been texting with from 3:18 in the morning until the robbery
10 occurred?

11 A That is correct.

12 Q And what about the -- obviously there are two masked
13 robbers in this video. What information did you learn about
14 the other individual?

15 A We didn't know who the other individual was exactly.
16 He vaguely described a thin, black male. He indicated that he
17 had seen him before at Devohn's, but he didn't have a name, and
18 he really didn't have a lot of information on that individual.
19 It sounded like he knew Chill, Devohn, better than he knew this
20 other individual.

21 Q So you said he a couple of times. Are we still
22 talking about Antwaine?

23 A Antwaine. I'm sorry. Yes.

24 Q That's okay. So based on that, and any other work
25 that you did, did you have an idea of who you thought that

1 second person might be?

2 A I ultimately have some ideas. I have an idea, but we
3 couldn't develop enough probable cause to make any arrests or
4 charge anyone.

5 Q Okay. Well, let me ask you this. Did you have
6 enough of an idea that you created another photo lineup?

7 A Yes.

8 Q And this had a person that you thought might be
9 involved in that photo lineup?

10 A Correct.

11 Q Did you show that to Antwaine?

12 A I did.

13 Q And what was the result of showing that to him?

14 A He could not make an identification.

15 Q Okay. And so obviously then based on that no charges
16 were filed against that person?

17 A That is correct.

18 Q So I want to talk a little more about you said you
19 went back to the pub at a later point and you spoke with Bob
20 Bonner, the owner; is that right?

21 A Yes, ma'am.

22 Q And that video that we first saw that showed Antwaine
23 in the lower right-hand corner where he, I guess, wasn't
24 playing video poker, did you learn anything else also about
25 that location?

1 A Yes.

2 Q What did you learn?

3 A Bob Bonner actually sat me down in that very machine,
4 and he was directing my attention. What was dead in front of
5 you, if you're sitting at that machine, right up above the --
6 hanging from the bar is a video surveillance monitor, and on
7 that video surveillance monitor is actually the camera showing
8 outside that side door. In other words, when we were looking
9 at video a moment ago showing that outside camera when the
10 suspects jumped that wall and hid behind Antwaine's car, it was
11 that camera view. So in fact, anyone sitting there looking at
12 that monitor would see the suspects jump, would see the
13 suspects hiding behind Antwaine's car and would have been
14 ready. Anyone seeing that would know they're there.

15 Q Okay. Now, let me also ask you this. You -- I think
16 you had said previously you referred to this as a
17 takeover-style robbery. Is there a name that you would use in
18 your investigation for Antwaine's involvement?

19 A I'm drawing a blank. Yeah. I mean, we considered
20 him a victim at first but ultimately we determined he was a
21 suspect. I mean, I would personally call it -- like in my
22 report, I call that like posing. Basically he's like the
23 inside guy, kind of providing inside information.

24 Q Is that something that you, say, see in other types
25 of robberies?

1 A Oh, yes.

2 Q And so what you're essentially saying is you might
3 have someone on the inside trying to get information and not
4 being part of the robbery but yet, like, providing that
5 information to other robbers?

6 A Yeah. It's very common. That's kind of what I was
7 referring to earlier. Whenever we have a business robbery like
8 this where the doors are locked, one of our very first
9 questions is who opened that door, and quite often that is the
10 inside guy.

11 Q And is that something that you might have referred to
12 in your report as casing?

13 A Oh, yes, for sure. Yeah. That's basically what
14 they're doing. Yeah.

15 Q Okay. And so, I mean, I guess what does casing mean?

16 A Checking things out. Kind of getting information and
17 trying to figure out -- for instance, it would behoove a
18 suspect coming into any business to have some intel, to know
19 how many people they're going to be dealing with. Are they
20 going to be dealing with armed people? Is there even anything
21 of value inside? Things of that nature and, yeah, you'll see
22 casing in burglaries and robberies and anything like that.

23 Q Now, in this particular case, obviously it was a
24 robbery of a bar, but was it your understanding that some of
25 the individual patrons were robbed as well?

1 A Two of them were, yes.

2 Q And what were they robbed of?

3 A Their wallets and everything inside their wallets.

4 Q Now, is that say something that you always see in a
5 commercial or like a bar-type robbery?

6 A No, not always. I mean, well, often -- often
7 actually suspects come in, and they just target the bar, you
8 know, the employee at any business itself and, you know, they
9 want money from the cash register for instance. That's
10 normally the main target of most robberies I go to.

11 Q Okay. Now, once you got this information that this
12 phone number was determined to be Devohn Marks's phone number,
13 did anything about the name sound familiar to you?

14 A It did.

15 Q And what did you do based on that?

16 A I recognized the name. I couldn't immediately place
17 it. I did a little research and refreshed my memory.

18 Q Okay. And was that ultimately a name that was
19 involved in a robbery you also investigated in 2011?

20 A No. I was involved in the investigation, yes, and it
21 was from February of 2011. Yes.

22 Q And ultimately that previous robbery also involved
23 the robbery of a bar?

24 A It did. Fred's Tavern.

25 Q And it involved casing, someone going in ahead of

1 time?

2 A It did.

3 Q And it also involved actual robbery of items that
4 were particularly on the people within the bar?

5 A That's my recollection, yeah.

6 MS. MOORS: Okay. Court's indulgence.

7 BY MS. MOORS:

8 Q Now, I want to talk back again about these records
9 that you got for Antwaine Johnson. We talked about the contact
10 between him and the number associated with Devohn Marks. We
11 talked about it through the month of October, and we talked
12 about it through the time leading up to the robbery. In
13 reviewing these records, did you also see another contact or an
14 attempted contact after the robbery?

15 A There were -- yes. The answer is yes.

16 Q Okay. And so that would have been specifically on
17 July 29th of 2018, at some point after 5:15?

18 A I think you just said July. October.

19 THE COURT: Yeah. You said July.

20 THE WITNESS: Yeah.

21 MS. MOORS: I didn't mean that.

22 THE WITNESS: So one more time with the question --

23 BY MS. MOORS:

24 Q Yeah. Well, obviously I have no idea what I'm
25 talking about. Okay. Was there a time in looking at these

1 records that you saw that Antwaine Johnson had either contacted
2 or attempted to contact the number associated with Devohn Marks
3 after the robbery?

4 A Yes. I saw three text messages between the time of
5 the robbery, so around 3:14, 3:15, and the time that the police
6 first arrived, which was 3:19. So just within minutes I saw
7 three more text messages between those two numbers. Also
8 messages that were not on Antwaine's phone when I looked at it
9 physically, and --

10 Q Can I stop you for one second?

11 A Yes.

12 Q I think you said 3:13 to 3:19. Did you mean 5?

13 A I did. Yes. Five -- I think it was around 5:15.
14 The actual text messages might have been exactly 5:17 and 5:18,
15 during those two minutes. And those were three text messages
16 between the two. Those numbers were not physically in
17 Antwaine's phone but did show up on the records, and then I
18 believe around 7:30 a.m., somewhere in there, that morning I
19 saw that there was an attempted phone call between the two, and
20 I think that was it.

21 Q Okay. And to be clear, none of that showed on
22 Antwaine's phone when you first made contact with him at the
23 pub on October 29th?

24 A No, ma'am.

25 MS. MOORS: Okay. Court's indulgence.

1 BY MS. MOORS:

2 Q All right. So just a little more clarification. I
3 got ahead of myself.

4 We talked a little bit about a proffer. Let me ask
5 you this: So you have this conversation with someone that's
6 suspected of being involved in the crime. In this instance
7 it's Antwaine. Are there any promises made at the time of the
8 proffer for special treatment or anything that he might receive
9 for speaking with you and the district attorney just about
10 information?

11 A No. There is no promises. No.

12 Q Okay. So it's essentially just a time for you guys
13 to be able to speak freely without someone worrying about being
14 charged with a crime, but it also doesn't guarantee anything
15 for that person you spoke with?

16 A No, it doesn't.

17 Q Okay. Now, let me ask you this. Say I go in for a
18 proffer with you, and I tell you all of these things, are you
19 going to go out and make an arrest based on just what I tell
20 you?

21 A No.

22 Q Why is that?

23 A Well, we want to substantiate things that are said.
24 We want to see if what they're saying is actually truthful.
25 And so no, we don't just take that one -- that one thing. We

1 have to develop it.

2 Q Okay. So fair to say the proffer might help lead
3 your investigation to find further corroborating evidence?

4 A Right. That's right.

5 Q And at that point, once you had all this information,
6 that's when you would have ultimately submitted charges against
7 Devohn Marks?

8 A That is correct.

9 MS. MOORS: Okay. Court's indulgence.

10 I have no further questions for this witness.

11 THE COURT: Cross.

12 CROSS-EXAMINATION

13 BY MR. MATSUDA:

14 Q Good afternoon, Detective.

15 A Hi.

16 Q How are you doing today?

17 A I'm okay. Thank you.

18 Q Okay. Case agent? Were you the case agent on this?

19 A Yes, sir.

20 Q Okay. So as the case agent, you kind of lead the
21 investigation?

22 A Yes, sir.

23 Q You lead -- how many detectives were ultimately on
24 the case?

25 A Well, see that morning my sergeant came out there I

1 think. Two or three other detectives came out there. So maybe
2 four, maybe four or five.

3 Q Okay. And as the case agent, you kind of direct
4 which detectives to do what kind of thing?

5 A Yes, sir.

6 Q Okay. How long did it take you to actually
7 physically arrive at the bar that night -- or I'm sorry, that
8 morning?

9 A Again, I only remember that it was probably sometime
10 shortly after 6:00 a.m.

11 Q Okay. And you had an opportunity to speak to
12 Mr. Johnson; correct?

13 A Yes, sir.

14 Q And initially he denied any involvement; right?

15 A Correct.

16 Q Okay. So he gave you a story that he was just one of
17 the victims at the bar?

18 A That's correct.

19 Q And that ultimately turned out to be a lie?

20 A Correct.

21 Q Through your investigation?

22 A Yes.

23 Q Okay. How many times did you have a chance to speak
24 to Mr. Johnson?

25 A That morning?

1 Q That morning and then thereafter.

2 A Altogether including the proffer; is that what you're
3 asking?

4 Q Well, let's go preproffer. How many times do you
5 think you spoke to Mr. Johnson?

6 A Oh. Maybe -- maybe three times maybe.

7 Q Okay. And of those three times, did he maintain that
8 same story?

9 A Yes.

10 Q That he had no involvement?

11 A [No audible response.]

12 Q That he was just the victim?

13 A [No audible response.]

14 Q And he didn't know anyone involved?

15 A [No audible response.]

16 Q Are those yeses? I'm sorry.

17 A Yes. Oh, yes. I'm sorry. Yeah. Yes.

18 Q Okay. And we're just recording things --

19 A Yes.

20 Q -- so we have to do it verbally.

21 A Yes.

22 Q Okay. So at those three meetings, he held to the
23 same story. It wasn't me. I wasn't involved. Right?

24 A Well, we didn't go into the story again.

25 Q Okay.

1 A But he never -- the story never changed. When I say
2 I contacted -- we were in contact a couple more times. As I
3 already mentioned, we texted a few times that morning. You
4 know, plus I spoke to him during that interview. We never
5 really went into that again at that time if that's what you're
6 asking.

7 Q Okay. Did he ever personally reach out to you
8 because he had his cell phone number; correct?

9 A Yes. I don't recall him ever reaching out to me.

10 Q Okay. He didn't say, you know what, I've got to get
11 something off my chest?

12 A Oh, no, sir.

13 Q I am -- you know, I'm involved in this?

14 A No, sir.

15 Q He never said that. Okay. It was -- and then you
16 set up a proffer, and you told the ladies and gentlemen of the
17 jury what a proffer is; right? It's someplace where a district
18 attorney, Mr. Johnson's attorney, Mr. Johnson himself,
19 basically in a room and kind of talk about some facts?

20 A That's correct.

21 Q Some fact-finding; right?

22 A Yes.

23 Q Okay. At that time, nothing is promised in terms of
24 leniency or any kind of deals; right?

25 A No.

1 Q Okay. Do you have any say in a deal that someone
2 gets?

3 A I never have before.

4 Q Okay. And it's more or less up to the district
5 attorney and private attorney or the defendant's attorney?

6 A I guess that's how it works.

7 Q To negotiate something. Okay. Now, in investigating
8 this robbery -- and you saw the videos. You spoke to
9 Mr. Johnson, and you spoke to other victims. How were the two
10 suspects, the two that barged in, how were they dressed?

11 A All dark clothing.

12 Q Okay. Was any part of their body showing?

13 A I don't believe so.

14 Q Okay. So that means from head to toe they have long
15 pants on, shoes, long sleeves; correct? I believe they're
16 wearing a hoodie.

17 A Yeah, that's correct.

18 Q Okay. Do you know if they're wearing gloves?

19 A Yes, they were.

20 Q Okay. And something on their face?

21 A Right. I don't know if skin was visible like through
22 eyeholes, but I can only tell you they were covered pretty much
23 from head to toe.

24 Q Okay. So completely -- no identifying marks on their
25 bodies?

1 A Not that anyone could see or told me about.

2 Q Okay. And Mr. Johnson's statement basically saying
3 the same thing. These guys were all masked up; right?

4 A On the morning when he was acting like a victim?

5 Q Correct.

6 A Yeah. Yes. He just said they were black males
7 covered up.

8 Q Right. Okay. Now, the text messages, the pen
9 registry and the text messages that you were speaking of on
10 direct with the DA, Mr. Johnson said he was texting someone;
11 correct?

12 A No. He said he wasn't texting anyone.

13 Q Well, post proffer. I should clarify.

14 A Oh, I'm sorry. Yes.

15 Q So he admitted at some point that he was texting his
16 coconspirators; right?

17 A Well, a coconspirator.

18 Q A -- I'm sorry.

19 A He said he was texting with Chill.

20 Q A coconspirator. So ultimately Mr. Johnson is
21 indicted for this robbery; correct?

22 A Yes.

23 Q And he's indicted for his involvement; correct?

24 A Yes.

25 Q Okay. And part of his -- after the proffer, he says

1 that I was involved, and I was texting someone, one person?

2 A Yes.

3 Q Correct? And through your investigation, you find a
4 number that has been associated with Mr. Marks; correct?

5 A Yes.

6 Q Okay. And Mr. Johnson is -- his testimony is he was
7 texting Mr. Marks, and that's his side of the story?

8 A He knew him as Chill, but, yes.

9 Q Chill. Okay. Now, when you reviewed the phone
10 records --

11 And I'm assuming you have?

12 A Yes.

13 Q -- and you saw that there was, in fact, some
14 communication between two sets of numbers; is that correct?

15 A Correct.

16 Q One being associated with Mr. Johnson; correct?

17 A Yes.

18 Q And the other to Mr. Marks?

19 A Yes.

20 Q Okay. Now, this sounds like a obvious question, but
21 can you unequivocally state who was on the other end of those
22 messages?

23 A I know that I saw Antwaine's phone and spoke with him
24 about his phone --

25 Q Right.

1 A -- and texted with Antwaine via that number. As to
2 Devohn Marks, I can only tell you that number is associated
3 with him and what Antwaine told me who he was texting and that
4 the phone does come back, in fact, to Devohn Marks.

5 Q Okay. And that -- okay. So it's -- a lot of it is
6 based on what Mr. Johnson --

7 A I'm sorry --

8 Oh, yeah. Yeah. Go ahead. I'm sorry.

9 Q Okay. I'm just saying a lot of it is based on what
10 Mr. Johnson is saying or who he was texting -- on who he was
11 texting?

12 A It wasn't just what he was saying. Like I said, also
13 the phone records, the phone number was connected to Devohn
14 Marks, and also the records that we ultimately pulled further
15 confirmed that.

16 Q Right. But again you cannot unequivocally state who
17 was actually sending the messages absent what Mr. Johnson is
18 saying?

19 A I was not present during each text; correct.

20 Q Okay. So you didn't see someone physically shoot the
21 text out and say --

22 A I did not.

23 Q Okay.

24 A No, sir.

25 Q Now --

1 MR. MATSUDA: Court's indulgence.

2 BY MR. MATSUDA:

3 Q And, Mr. Miller -- Detective Miller, you were -- were
4 you an officer back in 2011?

5 A Yes. I worked for the police department in 2011.
6 Yes.

7 Q You had not made detective yet?

8 A No. I was a detective. Yes.

9 Q Okay. So the 2011 case referring to Mr. Marks, that
10 2011 case, Fred's Tavern, were you a detective on that case?

11 A Yes, I was part of that.

12 Q Okay. So you recall that case in some detail?

13 A I wouldn't say some detail. I know a little bit
14 about it. Again, it was 2011.

15 Q Right.

16 A I just remembered his name and the names of the
17 defendants involved in that.

18 Q Okay. And do you know what Mr. Marks's role in that
19 robbery in 2011 was?

20 A Yes.

21 Q Okay. And what -- what do you recall was his role?

22 A He was sort of the inside man. He went inside the
23 business and basically looked around the business to gather
24 intel, left the business and then was the getaway driver.

25 Q Okay. Now, when you were investigating this case,

1 the Torrey Pines Pub, did you cross-reference the 2011 case?
2 Because once you found out that there was a number that was
3 associated with Mr. Marks, how did you -- did it ring any bells
4 or --

5 A I'm so sorry. That's a confusing question. I'm
6 sorry. I'm just trying to --

7 Q I'm sorry. The way I asked it was bad.

8 When -- because you were the case agent on this
9 Torrey Pines Pub case and you saw a name that popped up that
10 was Mr. Marks, did it automatically job or jar some kind of
11 memory from that 2011 case?

12 A No, not at --

13 Q Okay.

14 A No. It actually just jarred my memory, the name
15 jarred my memory. And when I looked into the name, that's when
16 I discovered why it jarred my memory.

17 Q Okay. So -- and so you didn't remember anything
18 specific about the 2011 case?

19 A No. I just recognized the name at first. And, like
20 I said, once I did a little research, I figured out why I
21 remembered the name.

22 MR. MATSUDA: Okay. Thank you, Detective.

23 Nothing further, Your Honor.

24 THE COURT: Redirect?

25 MS. MOORS: Yes.

REDIRECT EXAMINATION

BY MS. MOORS:

Q So I know we talked about a lot about Antwaine's records. I neglected to ask you, did you ultimately get some phone records belonging to Devohn Marks?

A Yes.

MS. MOORS: And if I could approach your clerk?

THE COURT: Granted.

BY MS. MOORS:

Q Detective, I'm showing you what has previously been admitted as State's Exhibit 67, and it's essentially -- I'm kind of going slowly across the screen. It is a two-page document -- three-page where we see some identifying information, and I think on there we saw the name Devohn and Marks at two different locations; is that correct?

A That's correct.

Q Man, this is really hard.

Is this one of the records that you would have received regarding Devohn's cell phone?

A Regarding phone number (323) 427-3092 I think it is.

Q Okay. And so once you got Devohn's records and you had Antwaine's records, you sort of looked at both of them to see if they contained the same information with regards to those two numbers contacting each other?

A Yes.

1 Q And did they appear to maintain the same information?

2 A Yes. To my recollection, there was like -- the only
3 discrepancy I could find is I saw 100 -- I want to say 118 on
4 one and 117 contacts on the other. Like, I was off by one
5 digit, and I couldn't figure out why. But, yes, virtually the
6 same.

7 Q Okay. So sort of two halves of the record of the
8 contact between these two numbers?

9 A Yes.

10 Q Okay. Now, I want to talk a little more about this
11 robbery from 2011. If I'm understanding what you told
12 Mr. Matsuda correctly, is that once you found Devohn Marks's
13 name with regard to this phone number, the name sounded
14 familiar; is that right?

15 A It did, yes.

16 Q Fair to say you deal with a lot of names in your job?

17 A Yes.

18 Q And so based on that, you looked further. You
19 ultimately saw that there was a robbery that you had some
20 involvement with in 2011?

21 A That's correct.

22 Q Okay. And Mr. Matsuda asked you what Devohn Marks's
23 involvement was, and I think you said he was the getaway
24 driver; is that right?

25 A That is correct.

1 Q And I think you said he was the inside guy?

2 A Yes.

3 Q And that would be sort of someone who's casing the
4 joint?

5 A That's what he did, yes.

6 Q And in terms of that prior robbery, was it your
7 understanding -- because you said you recognized the other
8 codefendants' names; is that right?

9 A Yes.

10 Q So was it your understanding that they had also been
11 arrested as well?

12 A Correct.

13 Q And so when they -- was it also your understanding
14 that when they robbed the place they had -- they did not cover
15 their face so that they could be identified later?

16 A That's correct.

17 Q And now fast-forward to 2018 when you're dealing with
18 the Torrey Pines Pub robbery, it involved casing as well;
19 right?

20 A Yes.

21 Q So Antwaine would have been the caser?

22 A That's correct.

23 Q And ultimately the two individuals that robbed though
24 at this point had covered their face; correct?

25 A That is correct.

1 Q Okay. Mr. Matsuda asked you about the phone number
2 that we have been discussing, and I think he said you learned
3 it was associated with Devohn Marks; correct?

4 A Correct.

5 Q Was it your understanding that on the date you
6 received this information it was still currently associated
7 with Devohn Marks?

8 A Correct.

9 Q So not just was but is?

10 A Yes.

11 Q Okay. And then just really quickly, when Mr. Matsuda
12 was asking you about the several times that you had contacted
13 Antwaine, you know, he didn't come forward and confess his
14 involvement or anything like that; is that right?

15 A Say that one more time.

16 Q I guess the question is Mr. Matsuda was asking you,
17 you know, you didn't get any, like, text messages or contact
18 from him volunteering information until he knew he was in
19 trouble?

20 A Right. He didn't. Yeah.

21 Q Okay. And fair to say that that was once you had
22 these cell phone records for Antwaine; and once he was
23 indicted, he essentially then wanted to discuss a proffer?

24 A That's correct.

25 Q Let me ask you this: Is that unusual in your

1 experience as a detective, that once someone is confronted with
2 evidence that they might give you the true story?

3 A That's super common.

4 MS. MOORS: I have no further questions for this
5 witness.

6 THE COURT: Recross?

7 MR. MATSUDA: Yes. I'm sorry.

8 RECROSS-EXAMINATION

9 BY MR. MATSUDA:

10 Q Detective, in the course of your investigation, did
11 you develop any other suspects?

12 A Yes.

13 Q How many other suspects did you?

14 A One primary and one other that I looked into.

15 Q Okay. Outside of Mr. Johnson and Mr. Marks?

16 A That's correct.

17 Q One primary and one other?

18 A Yes.

19 Q Okay. And -- okay. The third unidentified suspect
20 that Mr. Johnson didn't know, did you have anything on him?

21 A I'm so sorry. Again, that's kind of confusing. The
22 third --

23 Q Is -- yeah. The third unidentified suspect because
24 there's Mr. Johnson, and there's two people that run in;
25 correct?

1 A Okay. So we had Mr. Johnson.

2 Q Correct.

3 A We -- we had Chill, who we've identified as Devohn --

4 Q The --

5 A -- and the third --

6 Q The unidentified person.

7 A Okay.

8 Q Okay. Because you're --

9 A So that's the third person you're talking about?

10 Q -- alleging that one of them is Mr. Marks. The third
11 unidentified person; right?

12 A Okay.

13 Q Was he one of the primary suspects?

14 A Yes. It's who I believed to be the suspect, but we
15 didn't have enough probable cause to ultimately charge him.

16 Q Okay. And --

17 A Not yet.

18 Q Mr. Johnson could not identify him?

19 A No, he could not.

20 Q Okay. And he said he did not recognize him in a
21 photo lineup?

22 A That's correct.

23 Q He didn't know his name?

24 A He didn't.

25 Q He couldn't provide any information?

1 A Just the description and where he hung out, and that
2 was it.

3 MR. MATSUDA: Okay. Thank you, Detective.

4 MS. MOORS: I have no further questions for this
5 witness.

6 THE COURT: Questions from the jury?

7 No. No questions.

8 Okay. May this witness be excused?

9 MS. MOORS: Yes, Your Honor. I would just request
10 that he be made available for rebuttal if the State does put on
11 a rebuttal case.

12 THE COURT: All right. Thank you.

13 So you'll remain on call in case they need you later.

14 THE WITNESS: Have a good day.

15 THE COURT: Thank you.

16 And do you have any further witnesses to call?

17 MS. MOORS: Your Honor, if we could approach?

18 THE COURT: Yes.

19 (Conference at the bench not recorded.)

20 THE COURT: Okay. So, ladies and gentlemen, there is
21 another witness who's scheduled to testify tomorrow, and even
22 if that person was here, his testimony is anticipated to take
23 longer than 15 minutes. So the lawyers and I are going to use
24 this time to work on jury instructions, and you won't be needed
25 for that. So you're going to get a 15 minute early out. I

1 don't want to spoil you too much.

2 Ladies and gentlemen, we're going to take an
3 overnight recess.

4 During this recess it is your duty not to converse
5 among yourselves or with anyone else on any subject connected
6 with the trial; or to read, watch or listen to any report of or
7 commentary on the trial by any person connected with the trial,
8 or by any medium of information, including without limitation,
9 newspaper, television, radio or Internet. You are not to form
10 or express an opinion on any subject connected with this case
11 until it's finally submitted to you.

12 And as always, my normal admonishment, don't do any
13 research into anything that you might have heard and became
14 curious about. You have to -- if you had any questions, they
15 should have been asked of the witnesses on the stand. So no
16 independent research or experimentation.

17 I'll see you tomorrow -- oh, I need to tell you when.
18 1:30.

19 (Jury recessed for the evening at 4:47 p.m.)

20 THE COURT: All right. The record will reflect that
21 the jury has departed the courtroom. We do need to memorialize
22 the one bench conference.

23 Mr. Matsuda objected, asked to approach the bench.
24 He was objecting to the question that was posed by the
25 prosecutor about -- that basically was something to the effect

1 of how many text messages did you count that were exchanged
2 between Mr. Johnson and Mr. Marks, and so the objection was
3 that essentially that that assumed facts not in evidence
4 because it didn't -- all we could say was that it was between
5 the phone number associated with Mr. Marks.

6 We discussed it for long enough that we were all
7 pretty confident that the jury would have forgotten the
8 original question, and so it was going to need to be rephrased
9 anyway. And so I asked if the prosecutor just wanted to
10 rephrase the question.

11 Which is kind of what you did anyway; right? And I
12 think you even it prefaced it as with let me rephrase the
13 question. So while you technically didn't withdraw -- or the
14 objection wasn't withdrawn at the bench, the objection was
15 made, and you were arguing against it, you eventually just kind
16 of conceded to rephrase the question.

17 Is that an adequate summarization of our conference?

18 MS. MOORS: That is correct, Your Honor.

19 MR. MATSUDA: Yes, Your Honor.

20 THE COURT: Okay. All right. And so --

21 THE CLERK: There was also the 64A.

22 THE COURT: And then, yes, there was the approach
23 about the confusion about the labeling of the discs.

24 MS. MOORS: And, Your Honor, I can make a record as
25 to what happened. So when I had originally given the first two

1 discs to your reporter -- or recorder -- or your clerk -- I
2 apologize -- to label, they got labeled out of order such that
3 video Number 1 became 64, whereas video Number 2 became 63. So
4 in my explanation to her, I think I said the second one, and so
5 she went with that where they had previously been in an
6 out-of-order order, and so that was my fault. I apologize.

7 But essentially, yes, 64A now replaces 63. And 64 is
8 good.

9 THE COURT: Correct. And so everything will go to
10 the jury, but I think we explained it to them sufficiently that
11 they'll get it, and they'll know, of course, if they have any
12 questions they can send out a note.

13 MS. MOORS: Yes, Your Honor. And we also explained
14 how to use the player that is the benefit of 64A is that it had
15 a separate player in which to play this Chapter 13 that was
16 giving us trouble at yesterday's court date.

17 THE COURT: Correct. And then --

18 THE CLERK: The other was just right before this.

19 THE COURT: Right. And then the last approach was
20 just about scheduling because you indicated to me that you
21 didn't have a witness left and that the witness that was left
22 was going to take longer because that witness could be the
23 person from Metro who's going to -- and by that I mean Las
24 Vegas Metropolitan Police Department, who would testify about
25 cell phone tower information.

1 MS. MOORS: Yes, Your Honor.

2 THE COURT: Is that correct?

3 Okay. And do you agree that that was our conference,
4 Mr. Matsuda?

5 MR. MATSUDA: Yes, Your Honor. Yes.

6 THE COURT: All right. Anything else outside the
7 presence?

8 MS. MOORS: Nothing from the State, Your Honor.

9 I had provided copies of cited and uncited jury
10 instructions. It's my understanding we're going to go through
11 those. I know Your Honor had indicated that you were hoping to
12 finish tomorrow. It's my understanding that we might be
13 putting on a rebuttal case, and if that is the case, then we
14 would not be prepared to close tomorrow, and I just wanted to
15 make the Court aware.

16 THE COURT: All right. Well, I want you to try
17 because, like I say, I want to get this case done. So --
18 because I have plans that are going to be interrupted if it
19 goes into the afternoon of Friday.

20 MS. MOORS: And I would -- I just have to say, Your
21 Honor, that we had originally scheduled for 9:30 to 5:00 --

22 THE COURT: I understand.

23 MS. MOORS: -- so that's what we were planning on.

24 THE COURT: I understand.

25 MS. MOORS: So we will try.

1 THE COURT: I'm just saying -- I'm just saying that
2 don't be, you know, thinking that you can leisurely work your
3 way and have a long time. We're going to do our best, but I'm
4 here for you. All right.

5 And so, let's see. The other thing I just wanted to
6 let you know is I have been already, you know, this morning, as
7 soon as I got the -- which I didn't have them because sadly the
8 jury instructions this morning, although I was here very early,
9 were emailed to my clerk, who didn't see them until --

10 THE CLERK: Two hours later because I wasn't logged
11 into my computer.

12 THE COURT: Because she wasn't looking during our
13 calendar.

14 But I used my lunch to work on them as well as the
15 couple of little breaks. Every time we had a little break, I
16 was working on the jury instructions. So I have been doing
17 that for you. So it's not like we're starting from scratch.

18 MS. CANNIZZARO: Okay.

19 THE COURT: So let's do that now.

20 MS. CANNIZZARO: Okay.

21 / / /

22 / / /

23 / / /

24 / / /

25 THE COURT: And, Ms. Jody, you can get Mr. Marks out

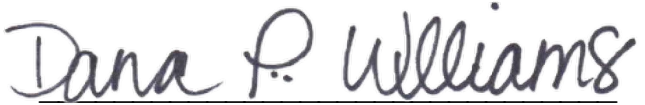
1 in time for dinner.

2 All right. Thank you. Court's in recess.

3 (Proceedings recessed for the evening at 4:53 p.m.)

4 -oOo-

5 ATTEST: I do hereby certify that I have truly and correctly
6 transcribed the audio/video proceedings in the above-entitled
7 case.

8 
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10 Dana L. Williams
11 Transcriber
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