

Office of Paula S. O'Neil
Clerk & Comptroller
Pasco County, Florida

ON APPEAL TO THE DISTRICT COURT OF APPEALS OF FLORIDA
SECOND DISTRICT

Shannon Stephen

Appellant

VS.

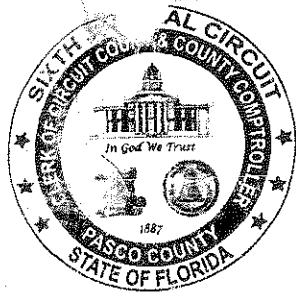
State of Florida

Appellee

Case: 06-1591CFAWS

Appeal: 10-4018

Supplemental
Transcript of Record on Appeal
Volume XVIII



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ON APPEAL TO THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

Shannon Stephen,
Appellant,

vs.

State of Florida,
Appellee.

FIRST SUPPLEMENTAL

Transcript of Record in the case of State of Florida, Plaintiff(s) vs. Shannon Stephen, Defendant(s). Circuit Criminal Number(s) 06-1591CFAWS in the Circuit Court of Pasco County, Florida, prepared for use on the District Court of Appeals, Second District.

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Presiding Judge: Honorable Shawn Crane

SHANNON STEPHEN
VS.
STATE OF FLORIDA
CT.CR.NO. 06-1591
APPEAL NO. 10-4018
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PROCEEDINGS: JURY TRIAL VOLUME V HELD MAY 26, 2010

814-1013

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY
CASE NO. CRC06-01591CFAWS-3

STATE OF FLORIDA, :
 :
 Plaintiff, :
 -VS- :
 :
 SHANNON L. STEPHEN, :
 :
 Defendant. :

PROCEEDINGS: JURY TRIAL

BEFORE: HONORABLE SHAWN CRANE
Circuit Judge
Sixth Judicial Circuit

DATE: May 26, 2010

PLACE TAKEN: Pasco County Government Center
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New Port Richey, FL 34654

REPORTED BY: Maria A. Fortner, RPR
Notary Public
State of Florida at Large

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2 OPEN COURT:

3 BY MR. FOOTE:

4 Q. Did you have an opportunity to review the
5 sworn statement you gave to Corporal Michael Styers?

6 A. Yes.

7 Q. Was that statement regarding your concern for
8 Joe in this statement?

9 A. No. That statement ended, any questions, when
10 we left the bar.

11 Q. My question was, is the statement that you
12 told this jury in this statement that you gave to
13 Corporal Michael Styers?

14 A. No. That statement ended when we left the
15 bar. That's all the questions that he asked. It didn't
16 go anything passed that.

17 Q. Do you recall your deposition of
18 September 1st, 2006?

19 A. No.

20 Q. You don't recall sitting in a room with me,
21 Mr. Rosario and the court reporter?

22 A. I remember sitting there with you. I don't
23 remember what date and what time.

24 Q. Okay.

25 A. It's been a long time.

1 Q. Do you think that you gave that same statement
2 in your sworn deposition when all of us were in that
3 room with regard to the emergency regarding Joe Dalzell?

4 A. I don't remember.

5 Q. Would looking at that transcript refresh your
6 recollection?

7 A. It may.

8 MR. FOOTE: May I approach the witness, Judge?

9 THE COURT: You may.

10 BY MR. FOOTE:

11 Q. I'm showing you your sworn deposition
12 transcript of September 1st, 2006. I'm going to ask you
13 to look through that.

14 A. I see nobody asked why I thought Joe called
15 me.

16 MR. FOOTE: May I approach, Judge?

17 THE COURT: You may.

18 BY MR. FOOTE:

19 Q. Your testimony is you were never asked that
20 question?

21 A. Pardon me?

22 Q. You were never asked that question?

23 A. I didn't see it.

24 MR. ROSARIO: Objection.

25 THE COURT: I'm sorry?

1 MR. ROSARIO: The question is, you were never
2 asked that question?

3 THE COURT: In this deposition?

4 MR. ROSARIO: In this deposition.

5 THE COURT: All right. Sustained as to the
6 form.

7 BY MR. FOOTE:

8 Q. You were present at a previous hearing where
9 we were talking --

10 A. Yes.

11 Q. -- about the same subject, and we went through
12 actually phone records at that time?

13 A. Yes.

14 Q. Do you recall that questioning?

15 A. Pardon me?

16 Q. Do you recall that subject with those
17 questions, that we were looking at phone records?

18 A. Yes.

19 Q. Isn't it true that you never said that that
20 was the reason those phone calls weren't made at that
21 time?

22 A. I don't remember anyone ever asking me why I
23 thought Joe called me.

24 MR. FOOTE: May I have a moment, Judge?

25 THE COURT: You may.

1 BY MR. FOOTE:

2 Q. All the calls that you made were in response
3 to the call that you received from Joe Dalzell, the one
4 that you missed, is that your testimony?

5 A. All of the calls I made?

6 Q. The immediate ones starting at 1:21, 1:22,
7 1:23, where you made a number of calls was because you
8 were concerned about Joe Dalzell?

9 A. Well, if Joe called me that night, I would
10 have been concerned why he called me. I didn't speak to
11 him. I was concerned.

12 Q. Okay.

13 MR. FOOTE: Judge, may I have the witness step
14 down, please?

15 THE COURT: The witness may stand down to
16 review the exhibit.

17 MR. FOOTE: For the record, referring to
18 Defendant's Exhibit 8 for identification.

19 BY MR. FOOTE:

20 Q. Sir, do you recognize that large document?

21 A. Yes.

22 Q. And what is it?

23 A. It looks like a copy of a cell bill.

24 Q. Whose cell phone?

25 A. Mine.

1 Q. So that's a copy of your cell phone from when?

2 A. March 25th through 5:40 a.m. March 26th.

3 Q. Okay. So the billing period is between
4 March 26th and April 21st?

5 A. Yes.

6 Q. And you received the bill, I guess, or it went
7 out on April 22nd, 2006?

8 A. Yes.

9 Q. And you've seen this document before?

10 A. Yes.

11 Q. In original small version and now this bigger
12 version?

13 A. Yes.

14 Q. Okay. I'm just going to ask you a couple of
15 questions, and I'm going to ask you to place some
16 stickies, and I'll give these to you.

17 If you can indicate just on the left side of the
18 phone call and the number when you called your wife,
19 Kara Wallace, on the evening of March 26th, 2006, the
20 very first call. While you're looking, do you know your
21 wife's cell phone number?

22 A. I don't remember her cell phone number at the
23 time.

24 Q. Okay. Do you recall at what time you made
25 that call?

1 A. No.

2 Q. In fact, at 1:09, you actually called your
3 wife, as you've testified earlier?

4 A. Okay.

5 Q. Right? 417-9406?

6 A. Yes.

7 Q. If you can put a yellow sticky next to that,
8 please.

9 Okay. And as you testified, at that time you were
10 calling your wife to let her know you were home?

11 A. I was home, yes.

12 Q. All right. Anything else that you remember?

13 A. "I'm home. Give me a call."

14 Q. Was it a calm call? There was no emergency?
15 Nothing was going on?

16 A. Correct.

17 Q. Okay. Okay. The next calls, there are a
18 number of calls to 271-5544. Do you recall whose number
19 that is?

20 A. I think that would be Joe's.

21 Q. Joe Dalzell. And what time is the first call
22 coming through?

23 A. 1:21.

24 Q. All right. Can you put a red sticky next to
25 those calls.

1 A. A lot of voicemails.

2 Q. There is one more there, too. Can you count
3 up those red dots for me?

4 A. Thirteen.

5 Q. Okay. So there are at least 13 calls starting
6 at 1:21 a.m., 1:22, 1:23, 1:25, 1:26 and 1:33?

7 A. Yes.

8 Q. Okay. These are calls that you are actually
9 making to Joe?

10 A. I don't know. Does it say that?

11 Q. Well, it says incoming, correct?

12 A. Yes.

13 Q. And these are numbers that you called, right?

14 A. Yes.

15 Q. All right. So at least 13, 14 calls that
16 you're making to Joe in that time period, correct?

17 A. Yes, sir.

18 Q. All right. Now, you're not connecting with
19 Joe on the telephone?

20 A. Apparently not, no.

21 Q. Is it your testimony that you were leaving
22 voicemails?

23 A. No.

24 Q. You had just said a lot of voicemails or a lot
25 of phone calls?

1 A. Yes, sir. Unreached calls. Unconnected
2 calls. If I called and he didn't answer, I'd hang up
3 and try and call back.

4 Q. Okay. So when you say voicemail, you don't
5 mean you actually leave a voicemail?

6 A. Right.

7 Q. You might hear his voicemail?

8 A. It went to his voicemail.

9 Q. Okay. So you never spoke with him during this
10 time?

11 A. No, it doesn't look like it.

12 Q. Okay. And the reason that you made these
13 calls, as you've testified to this jury, is because you
14 were concerned that Joe may have had a flat tire or an
15 accident or something like that, correct?

16 A. Yes.

17 Q. Can you put this green sticky next to where
18 Joe called you and as you missed the call?

19 A. He may have called my home phone. I don't see
20 it on here. I don't know.

21 Q. I'm sorry?

22 A. He might have called my home phone. I don't
23 know.

24 Q. He might have had called your home phone?

25 A. Yeah.

1 Q. Okay. Do you know your home phone number?

2 A. I honestly don't remember what my home phone
3 number was at that point.

4 Q. In that same sworn statement that you gave --

5 A. There's one up here, isn't there? No, that's
6 not it.

7 Q. That's earlier in the evening at 8:30. We're
8 just starting from 1:09, when you first call your wife
9 to let her know that you're home.

10 A. Right.

11 Q. And immediately after that we got 13 or 14
12 calls to Joe that you don't get through on?

13 A. Right.

14 Q. Your testimony is that you were calling that
15 many times because you were concerned about Joe?

16 A. Yes.

17 Q. Okay. I asked you to place the green sticky
18 next to where it came in, that call?

19 A. I had said I don't see it.

20 Q. It's not on this record?

21 A. Right.

22 Q. All right. Then you stated that he may have
23 called your house number?

24 A. Yes.

25 Q. Did he or you don't know?

1 A. I don't remember.

2 Q. All right. And you don't remember your house
3 phone number?

4 A. I don't have that number any longer.

5 Q. At the time does (727)236-3398 sound familiar?

6 A. Yes.

7 Q. Okay. So that would have been your home phone
8 number?

9 A. It is.

10 Q. All right. So you would agree with me there
11 is no incoming call from Joe that you missed on these
12 cell phones records?

13 MR. ROSARIO: Objection. May we approach?

14 THE COURT: You may.

15 MR. FOOTE: You want the witness to remain
16 here?

17 THE COURT: Yes.

18 BENCH CONFERENCE:

19 MR. ROSARIO: For that statement to be
20 correct, "You would agree with me on this cell
21 phone bill there is no record of a missed voicemail
22 call to your voicemail," there is a record that
23 exists that Defense counsel is aware that shows
24 that Joe Dalzell did call his cell phone and did
25 reach his voicemail. You know that record exists.

1 It's misleading to the jury.

2 MR. FOOTE: There's nothing misleading. I'm
3 trying my case, and if you have other evidence, I
4 guess you will put that evidence on.

5 MR. ROSARIO: I understand that.

6 THE COURT: So the objection is as to the form
7 of the question?

8 MR. ROSARIO: The form of the question. It's
9 misleading to the jury. On this bill it does not
10 show the voicemail messages.

11 THE COURT: All right. That's something you
12 can address on redirect.

13 MR. FOOTE: All right.

14 BY MR. FOOTE:

15 Q. So you would agree that the number
16 (727)236-3398 was your home phone number at that time?

17 A. Yes.

18 Q. And that Joe may have called that number?

19 A. Yes.

20 Q. And you actually made two phone calls to your
21 wife. Do you know what time those were?

22 A. That I called her?

23 Q. Correct. The first one I guess is 417-9406.
24 When would be the next time that you called her?

25 A. Well, that shows incoming, doesn't it?

1 Q. No. The numbers that are on here are the
2 numbers that are actually dialed. If it says incoming,
3 then would you agree that that's calls that are coming
4 in?

5 A. Yes.

6 Q. All right. So the next time you actually
7 attempt to contact your wife is what time?

8 A. 1:45.

9 Q. Around 1:45. So right there?

10 A. Yes.

11 Q. All right. You can have a seat. Thank you,
12 sir.

13 So the first time that you actually talk to Joe
14 Dalzell, he relates to you that Shannon had killed two
15 people?

16 A. Yes.

17 Q. So that wasn't a voicemail or anything like
18 that? You actually had a conversation with Joe?

19 A. I believe that was a conversation.

20 Q. And during the call, you were on the phone
21 with Joe about a minute or two?

22 A. Yes.

23 Q. And from what you understood, Joe was down at
24 the scene of Grand and 54?

25 A. Yes.

1 Q. So it's your testimony it's at that time you
2 got in your truck and you drove down to Grand and 54?

3 A. Yes.

4 Q. And it took you about ten minutes to get
5 there?

6 A. I think a little longer than ten minutes.

7 Q. Longer than ten minutes?

8 A. Yeah.

9 Q. And when you get to the scene, do you see
10 Shannon Stephen?

11 A. I believe I remember being told he was in the
12 police car.

13 Q. Correct. And you weren't able to ID him
14 inside of the police car?

15 A. Right.

16 Q. And you stayed at that scene at Grand and 54
17 for about 10 to 15 minutes?

18 A. Yes.

19 Q. And then you went home?

20 A. Yes.

21 Q. And it's your testimony to the jury that you
22 didn't talk to any law enforcement because you didn't
23 want to rat out your friend?

24 A. Yes.

25 Q. And on that evening -- we just looked at your

1 cell phones records -- there was not one call to Shannon
2 Stephen to make sure he got home safely, correct?

3 A. No.

4 Q. But you were concerned with his driving when
5 he left the Seven's Bar?

6 A. Yes.

7 Q. You stayed at the scene for 10 to 15 minutes.
8 You said that you were aware that Joe was asking the
9 police when can they move the car so he can leave. You
10 left pretty much at the same time?

11 A. Yes.

12 Q. And from your recollection, were you standing
13 with Joe at that time?

14 A. Well, some of the time. He was back and forth
15 between his vehicle, the police, and where I was.

16 Q. So did you observe Joe actually talking to the
17 police at that point?

18 A. No, I didn't.

19 Q. And you didn't talk to the police. Did you
20 give him your name?

21 A. No.

22 Q. You left the scene and you went back to your
23 house?

24 A. Yes.

25 Q. And you were sitting making coffee?

1 A. I was back at my house, yes.

2 Q. Do you recall previously stating you were home
3 making coffee?

4 A. Yeah, I'm pretty sure I had coffee that night.

5 Q. I'm sorry?

6 A. I'm pretty sure I had coffee that night.

7 Q. And then you call your wife, Kara?

8 A. Yes, sir.

9 Q. All right. And you never saw your wife, Kara,
10 at the scene of that accident at Grand and 54?

11 A. No, I didn't.

12 Q. But you are aware that Kara went to the scene?

13 A. Yes.

14 Q. She went on her own?

15 A. Yes.

16 Q. After she left her job?

17 A. Yes.

18 Q. All right. And you spoke to Kara seven to
19 nine times over the next two to three hours?

20 A. Yes.

21 Q. And she remained at that scene?

22 A. Yes.

23 Q. You didn't come back to the scene?

24 A. No, I didn't.

25 Q. And she was relating to you what was going on?

1 They got Shannon out of the car --

2 MR. ROSARIO: Objection. Hearsay.

3 THE COURT: Sustained.

4 BY MR. FOOTE:

5 Q. You received updates with regard to what was
6 going on?

7 MR. ROSARIO: Objection. It calls for
8 hearsay.

9 THE COURT: Sustained.

10 MR. FOOTE: May I have a moment, Judge?

11 THE COURT: You may.

12 BY MR. FOOTE:

13 Q. Now, the State Attorney asked you about
14 Mr. Stephen's appearance that was different. You said
15 his hair was different, he's wearing glasses. Is your
16 appearance different today from back then?

17 A. Maybe a little more gray.

18 Q. Would you agree that your hair is a little
19 shorter and a little grayer?

20 A. A little more grayer, same style.

21 Q. Same style?

22 A. Same style. Maybe less hair.

23 MR. FOOTE: May I have a moment, Judge?

24 THE COURT: You may.

25

1 BY MR. FOOTE:

2 Q. You were asked a question I guess at a
3 previous hearing with regard to during the years that
4 you and Shannon have been best friends, as you testified
5 earlier, people say you guys look related?

6 MR. ROSARIO: Objection. Hearsay.

7 THE COURT: I'll sustain as to the form of the
8 question.

9 BY MR. FOOTE:

10 Q. Okay. Do you believe you and Shannon Stephen
11 look similar?

12 A. We're similar built.

13 Q. Have you been mistaken for cousins before?

14 A. I don't know if we were mistaken for cousins,
15 no.

16 Q. Okay.

17 MR. FOOTE: That's all I have, Judge.

18 THE COURT: All right. Redirect?

19 REDIRECT EXAMINATION

20 BY MR. ROSARIO:

21 Q. Back on March 26th, 2006, the defendant was
22 how much heavier than you approximately?

23 A. Probably 15 to 20 pounds or more.

24 Q. And he had a goatee? Different hairstyle?

25 A. Same hair --

1 MR. FOOTE: Asked and answered, Judge.

2 THE COURT: Overruled.

3 THE WITNESS: Same hairstyle now, more brown.

4 No mustache or beard -- or I'm sorry. He had a
5 mustache and beard. He always did.

6 BY MR. ROSARIO:

7 Q. And the Defense counsel made a statement,
8 well, you found out that Mr. Stephen had killed two
9 people and you never tried to call him. What sense
10 would it be to call somebody that you knew was in
11 custody?

12 A. There wouldn't be.

13 Q. Now, on your cell phone bill, are you aware on
14 your cell phone bill as to whether they put on your cell
15 phone bill --

16 THE COURT: Mr. Rosario, are you simply
17 referring to an exhibit there?

18 MR. ROSARIO: Oh, I'm sorry. I'm referring to
19 Defense Exhibit --

20 THE COURT: H.

21 MR. FOOTE: U.

22 MR. ROSARIO: U?

23 THE COURT: It's U. Okay.

24 MR. ROSARIO: U.

25 MR. FOOTE: It's for identification.

1 BY MR. ROSARIO:

2 Q. Are you aware as to whether or not Sprint puts
3 on here phone calls that went to your voicemail or
4 unanswered phone calls?

5 MR. FOOTE: Objection. Calls for speculation.

6 THE COURT: Overruled. I think the question
7 is does he know.

8 THE WITNESS: I'm not aware.

9 BY MR. ROSARIO:

10 Q. Now, you're also aware that since this trial
11 began, that additional Sprint records have been
12 recovered, aren't you?

13 A. No.

14 Q. You weren't?

15 A. Oh, I'm sorry. Yes.

16 Q. And would looking at those refresh your
17 recollection as to whether Joe Dalzell called you and
18 left a voicemail?

19 A. It may.

20 MR. ROSARIO: May I approach the witness, Your
21 Honor?

22 THE COURT: You may.

23 MR. FOOTE: Judge, may we approach?

24 THE COURT: You may.

25

1 BENCH CONFERENCE:

2 MR. FOOTE: Judge, I anticipate that this is
3 the Viador report and that this would be the
4 improper witness to start testifying about the
5 Viador report. He didn't receive this.

6 This was made in anticipation of litigation at
7 the request of the office of the State Attorney.
8 So for this witness to get into the complicated
9 Viador report at this point, I think there is no
10 proper foundation for this witness to actually
11 start talking about the facts.

12 THE COURT: Well, I think that's an issue.
13 The issue is how does that refresh this person's
14 recollection? He's already testified he received a
15 phone call, right?

16 MR. ROSARIO: Okay. He testified that he
17 received a phone call from Mr. Joe Dalzell, it was
18 a missed call.

19 THE COURT: Okay.

20 MR. ROSARIO: I'll rephrase. I'll bring this
21 in through my next witness.

22 OPEN COURT:

23 BY MR. ROSARIO:

24 Q. Now, Defense counsel brought out this exhibit,
25 this phone bill, and showed it to you.

1 A. Uh-huh.

2 Q. But your prior testimony was that you believed
3 you got a missed phone call, something that might have
4 gone to your voicemail?

5 A. Yes.

6 Q. From Joe Dalzell?

7 A. Yes.

8 Q. That alerted you that he had called?

9 A. Yes.

10 Q. And then you had called him?

11 A. Yes.

12 MR. FOOTE: Objection. Leading.

13 THE COURT: Sustained.

14 BY MR. ROSARIO:

15 Q. And tell the jury when you called whether you
16 left a voicemail or whether you just hung up and dialed
17 again?

18 MR. FOOTE: Objection. Asked and answered.

19 THE COURT: Overruled.

20 THE WITNESS: If I called and it went straight
21 to his voicemail, I automatically hung up and tried
22 to recall him right away.

23 BY MR. ROSARIO:

24 Q. And on this cell phone record, do you recall
25 how many voicemails you left with your wife, Kara?

1 A. No, I don't.

2 Q. Could it have been as many as three?

3 A. Yes.

4 Q. And your testimony today is, is that when you
5 left that voicemail with Kara, the first one at 1:09 in
6 the morning, where were you?

7 A. I was at my house.

8 Q. And that's located where?

9 A. 5250 --

10 MR. FOOTE: Objection. Asked and answered.

11 THE COURT: Overruled.

12 THE WITNESS: 5250 Sagamore Court, New Port
13 Richey, Florida.

14 BY MR. ROSARIO:

15 Q. When you started calling Joe Dalzell after
16 receiving the missed call, where were you when you made
17 that phone call?

18 A. Still at my house.

19 Q. Was there a time when you drove over to Grand
20 and 54?

21 A. Yes.

22 MR. FOOTE: Objection. Asked and answered.

23 THE COURT: Sustained.

24 MR. ROSARIO: Your Honor, that's all I have of
25 this witness. Thank you.

1 MR. FOOTE: Judge, just one brief question.

2 THE COURT: Only as to new matters raised on
3 redirect.

4 MR. FOOTE: Yes, Your Honor.

5 RE-CROSS-EXAMINATION

6 BY MR. FOOTE:

7 Q. The State Attorney asked you with regard to
8 calling Shannon Stephen, your best friend at that time
9 of 16 years.

10 THE COURT: Approach.

11 BENCH CONFERENCE:

12 THE COURT: All right. This does not sound
13 like a new matter raised. What is the question?

14 MR. FOOTE: He just asked him about calling
15 his friend and says, "How can you call someone in
16 custody?" I'm just going through the contact that
17 he hasn't had with him in the last four years.

18 THE COURT: But is that a new matter that's
19 been raised?

20 MR. FOOTE: No. It's within the scope --

21 THE COURT: You've already asked him that
22 question, haven't you?

23 MR. FOOTE: Yes, but he gave an excuse as to
24 why. This is right direct to --

25 THE COURT: I understand. But merely because

1 they've asked a question on redirect does not mean
2 it's a new matter.

3 MR. FOOTE: Do you want it to be a new matter?

4 THE COURT: It can only be as to new matters
5 raised on redirect.

6 MR. FOOTE: Correct.

7 THE COURT: That's what recross is. Recross
8 is not I get to cross again about matters on
9 redirect. It has to be new matters raised for the
10 first time on redirect. That's what the case law
11 says.

12 MR. FOOTE: I understand that, Judge. What he
13 did was --

14 THE COURT: But haven't you already asked him
15 about whether or not he's called his friend since
16 this happened?

17 MR. FOOTE: He said, no. Then Mr. Rosario
18 redirected him. And his answer was, the reason why
19 is because you can't call someone in custody. That
20 was the testimony. And I'm just going into that
21 new answer that I just got on redirect.

22 THE COURT: All right. Once again I'll give
23 you some leeway. But I just had some concern,
24 because previously the matters raised on recross
25 were not necessarily new, it was just more cross.

1 MR. ROSARIO: Judge, I'd like to argue this a
2 little bit. Mr. Foote actually asked a very
3 argumentative question.

4 THE COURT: Well, I understand the way it was
5 being phrased, and obviously it's not going to be
6 an argumentative question or a compound question.
7 I'll allow you to ask specifically about that
8 issue. So I'll overrule -- well, there's no
9 objection, but I understand now where you were
10 going.

11 MR. FOOTE: Actually I'm going to withdraw
12 that question and ask one other.

13 THE COURT: Okay.

14 OPEN COURT:

15 BY MR. FOOTE:

16 Q. With regard to the question that the State
17 asked you about Mr. Shannon Stephen's appearance back in
18 2006, it's your testimony that he was 15 to 20 pounds
19 heavier?

20 A. Maybe.

21 Q. Okay. What was your weight back then?

22 A. About 170, 175.

23 MR. FOOTE: Thank you. That's all I have,
24 Judge.

25 THE COURT: All right. May this witness be

1 excused? Do you wish this witness to remain within
2 the call of the Court?

3 MR. FOOTE: Remain.

4 THE COURT: Okay. Sir, please stand down.
5 Please remain within the call of the Court. Thank
6 you. And once again the rule has been invoked, so
7 please do not discuss your testimony with anyone.

8 THE WITNESS: Yes, sir.

9 THE COURT: Let me see -- this can be off the
10 record -- counsel at the bench.

11 (Thereupon a discussion was held off the record.)

12 THE COURT: Members of the jury, this seems to
13 be an appropriate time to take our afternoon lunch
14 break. What I'm going to ask you to do is, they
15 will escort you once again downstairs. If you want
16 to leave the building, you can. If you want to
17 remain in the building, you can.

18 Just be very careful, if you remain in the
19 building, about people discussing the case in your
20 presence, and all the things we talked about
21 before. Please remember that you are not to
22 discuss the case amongst yourselves and you're
23 certainly not to discuss it with anyone else.

24 I'll ask you to report back to the central
25 jury room. Be there a little bit before 1:00.

1 It's 11:55 now. So if you can get there a little
2 bit before 1:00, so hopefully we can start up right
3 at 1:00 o'clock here for the afternoon session.

4 So at this point in time I will ask the deputy
5 to escort you downstairs, and then once again
6 you're going to meet back downstairs in the central
7 jury room. Okay. All right. Thank you.

8 JURY ABSENT:

9 THE BAILIFF: Jurors are out of the presence
10 of the Court, Your Honor.

11 THE COURT: Thank you. The jury being outside
12 of the presence of the Court, is there anything we
13 need to take up before we go downstairs?

14 MR. FOOTE: No, Your Honor.

15 MR. ROSARIO: No, sir.

16 THE COURT: All right. We'll see you back at
17 1:00.

18 RECESS TAKEN:

19 THE COURT: All right. Thank you very much.
20 Are we ready to return the jury?

21 MR. ROSARIO: Yes, Judge.

22 THE COURT: Okay. And I know both Mr. Foote
23 and Mr. Rosario know who the next witness is.

24 MR. ROSARIO: Dan Jensen. Judge, while we're
25 waiting on the jury, Mr. Foote and I were

1 discussing the possible schedule. Is there a time
2 tonight when you would like to try to finish?

3 THE COURT: I mean I can't answer that.

4 MR. ROSARIO: Okay.

5 THE COURT: I mean unless you can tell me with
6 perhaps a little more accuracy than you have so far
7 today how long every witness is going to take.

8 MR. ROSARIO: Well, Mr. Foote and I can kind
9 of rough it out. There's a possibility that we
10 will be able to get through maybe four or five more
11 witnesses today, and then I would be able to finish
12 my case in chief first thing tomorrow morning with
13 I think the three witnesses if we can go as late as
14 6:00 o'clock.

15 THE COURT: And are you able to agree with
16 that, Mr. Foote? Do you think that's a pretty good
17 rough kind of estimate?

18 MR. FOOTE: Based on the number of witnesses
19 that he told me he intends to call, yes.

20 THE COURT: And then how long do you think
21 that you would be?

22 MR. FOOTE: Depending on the witnesses he's
23 going to call. If he doesn't call certain
24 witnesses, then I can estimate my number as to what
25 they may be, because some of them are State

1 witnesses.

2 THE COURT: Because I know you talked earlier
3 about one, maybe two people being called.

4 MR. FOOTE: Mr. Rosario said he may call
5 certain people, he's not sure. As we're getting
6 closer now, I believe he's indicating he may not
7 call those people. So those people are going to be
8 added onto mine. Probably at least three, three
9 add-ons and maybe two for me. So maybe a total of
10 five for the Defense's case.

11 THE COURT: This is getting into the estimated
12 time, and I'm not sure you even want to get into
13 the estimated time.

14 MR. ROSARIO: All right. If it's okay with
15 the Court, we'll address it later.

16 THE COURT: I think that's all we can do.

17 MR. ROSARIO: Okay.

18 THE COURT: Return the jury.

19 JURY PRESENT:

20 THE BAILIFF: Your Honor, the jury is present
21 and seated in the courtroom.

22 THE COURT: Thank you very much. Good
23 afternoon. I hope everybody had a good lunch.

24 THE JURY PANEL: Yes.

25 THE COURT: Excellent. Did anything happen

1 over lunch I need to know about?

2 THE JURY PANEL: No.

3 THE COURT: No? Thank you very much.

4 All right. State?

5 MR. ROSARIO: The State would call Dan Jensen.

6 DAN JENSEN,

7 a witness herein, being first duly sworn, was
8 examined and testified as follows:

9 THE COURT: You may inquire.

10 DIRECT EXAMINATION

11 BY MR. ROSARIO:

12 Q. Would you please state your name for the
13 record.

14 A. Dan Jensen.

15 Q. Mr. Jensen, how are you employed?

16 A. I'm a records custodian for Sprint Nextel.

17 Q. And that's the cell phone company?

18 A. Yes, it is.

19 Q. How long have you been a records custodian for
20 Sprint Nextel?

21 A. Approximately four years.

22 Q. And where are you based?

23 A. Our office is located in Kansas City, Kansas.

24 Q. And can you just tell the jury what your job
25 description is as a records custodian with Sprint.

1 A. We respond to legal demands, such as
2 subpoenas, search warrants and court orders, looking for
3 information on customers of ours or other network
4 information, and from time to time I testify in court to
5 those phone records.

6 Q. And can you tell the jury about your
7 qualifications to do what you do.

8 A. I have a Bachelor's Degree in Criminal
9 Justice. When I first started with Sprint, I was an
10 electronics surveillance technician where I worked with
11 law enforcement on a 24/7 basis responding to emergency
12 or exigent circumstances such as kidnappings or hostage
13 situations where they would have needed cell phone
14 information such as GPS information or other realtime
15 surveillance activities.

16 From there, in my current position for the last
17 four years, I've had approximately 80 to 90 hours in
18 what's called Sprint University, which is an internal
19 program for Sprint employees regarding topics such as
20 radio frequency and in both technologies that both the
21 Sprint network and Nextel network uses. I've also had
22 several outside vender-type courses and training
23 experiences throughout my experience with Sprint.

24 Q. And have you ever been qualified to testify as
25 an expert in a court of law?

1 A. Yes.

2 Q. Do you have any idea as to how many times?

3 A. I would estimate 25 to 30.

4 Q. And you've testified in cell phone technology,
5 radio frequency technology?

6 A. Yes.

7 MR. ROSARIO: Your Honor, may I approach the
8 bench?

9 THE COURT: You may.

10 BENCH CONFERENCE:

11 MR. ROSARIO: Judge, at this time I believe
12 I've asked enough predicate questions to allow this
13 witness to render an opinion.

14 THE COURT: All right.

15 MR. FOOTE: And, Judge, we would object to
16 that. I'm not even sure what he's going to testify
17 to, as to what the area is. He's established he's
18 a records custodian for Sprint. That purpose would
19 be to certify that the records that the State
20 intends to introduce are authenticated.

21 I assume that they would fit in under the
22 business records exception under hearsay. Anything
23 further than that I think -- I don't even know what
24 he's going to testify to, to be honest with you.
25 So I don't know what he wants to certify him as an

1 expert in.

2 THE COURT: If we were tendering, you would
3 tender him as an expert in what?

4 MR. ROSARIO: I would tender him in as an
5 expert in cell phone technology and cell phone
6 radio frequency. Although I can tell you, Judge,
7 I'm not intending to ask an opinion in the area. I
8 just came up here and was going to give him an
9 opportunity to voir dire at this point. I'm going
10 to use him mostly as a fact witness.

11 THE COURT: And what do you mean by that?

12 MR. ROSARIO: I'm going to put the records in
13 and I'm going to have him testify as to what is on
14 the records, what the records mean, and what cell
15 towers are and stuff like that. Mostly fact
16 information.

17 MR. FOOTE: Judge, my understanding is that
18 the next witness Youssouf Mohamed is an RF
19 engineer.

20 MR. ROSARIO: Right.

21 MR. FOOTE: Retained by the State of Florida
22 who is also from Sprint. I think he's going to get
23 into some technical details. I believe that
24 witness may be qualified to testify with regard to
25 cellular technology and some of the details that we

1 may get into. For this witness to give any other
2 opinions with regard to locations and things like
3 that would be beyond the scope of his knowledge.

4 MR. ROSARIO: I don't believe it's beyond the
5 scope of his knowledge. However, I intend to use
6 the other witness for that. Again, like I did the
7 first time around, I came up because I was --

8 THE COURT: Well, Mr. Foote has indicated that
9 he believes that the other gentleman has the
10 sufficient qualifications to talk specifically
11 about I think it's the cell towers and their
12 locations. Are you going to have both people try
13 to testify about that?

14 MR. ROSARIO: No, no. I'm using this witness
15 mostly as a fact witness.

16 THE COURT: By a fact witness, it's not the
17 intricate workings of these towers?

18 MR. ROSARIO: No, no. Basic working of a cell
19 phone, how it's connected to a cell tower, and
20 stuff like that. Very basic information.

21 THE COURT: Okay. Is the other fellow going
22 to do that as well or no?

23 MR. ROSARIO: I'm going to do the more
24 specific information through the second person.

25 THE COURT: But can he also do the more basic

1 information?

2 MR. ROSARIO: Yes. He can do the more basic.
3 I was going to have this witness tell us how a cell
4 phone works, that it connects to a cell tower.

5 THE COURT: Well, he's been qualified as an
6 expert I guess in that field in the past. In a
7 very I guess basic general sense, do you have an
8 objection to that?

9 MR. FOOTE: Only because I don't want to keep
10 running back up to the bench. I don't know what
11 he's prepared to say, but if we veer off into,
12 okay, it connects to a tower, then that's that.

13 Mr. Mohamed I believe -- not that I'm
14 qualifying him as an expert -- but he has
15 sufficient knowledge with regard to the exact --
16 he's from Tampa, he worked on the actual network.

17 MR. ROSARIO: He optimizes systems.

18 MR. FOOTE: I think he may be more appropriate
19 to talk about that detail. It could be cumulative
20 as well.

21 THE COURT: I will allow, for lack of a better
22 phrase, certainly with the proper predicates -- and
23 I don't think there's really any objection to the
24 business records kind of issue -- a very basic cell
25 phone discussion, as long as that's not going to

1 overlap with the other fellow. If the other fellow
2 is going to go there, it's going to be duplicitous,
3 and there is an objection.

4 MR. ROSARIO: Okay.

5 MR. FOOTE: And, Judge, while we're up here,
6 let me ask if the State is intending to introduce
7 the call data report or Viador report through this
8 witness?

9 MR. ROSARIO: Yes, I am going to move the call
10 data report into evidence. I've made eight copies,
11 one for each one of the jurors, and one for the
12 Defense counsel. I forgot to make one for myself.
13 I'm going to be referring to it and having this
14 witness explain when these phone calls were made
15 and how long these phone calls were.

16 MR. FOOTE: Well, as far as that particular
17 document, if we're going into bills or any type of
18 a document that has come from Sprint, if it fits
19 the business record exception, I would have no
20 objection.

21 But I am, for the record, going to object to
22 this Viador or CD report in that it was not made at
23 the time or near the time of the occurrence of the
24 activities that he's purported to testify about,
25 that it was created in anticipation of litigation,

1 that it was created on an Excel spreadsheet program
2 that it's not regularly stored in.

3 Certain data was excised out of it for the
4 purposes of this trial. For example, I believe
5 that the first call is going to start at 1:09 and
6 end at whatever time the State instructed them to
7 put the report together.

8 With regard to that, we would object to the
9 Viador itself in that that was prepared two years
10 after the first trial and for purposes of today.

11 So I think it's just focusing on particular
12 material and that that is not stored or kept in the
13 regular course of business.

14 THE COURT: All right.

15 MR. ROSARIO: Judge, I'm going to lay the
16 predicate. This is something that is kept in the
17 normal course of business. They accessed the raw
18 data that they've had stored there from 2006. I
19 can lay the predicates pursuant to Ehrhardt as well
20 as the case law.

21 THE COURT: Well, I guess we'll cross that
22 bridge when we come to it.

23 MR. ROSARIO: Yes, sir.

24 OPEN COURT:

25 MR. ROSARIO: May I proceed, Your Honor?

1 THE COURT: You may.

2 BY MR. ROSARIO:

3 Q. Have you testified in court as to cell phone
4 records in the past?

5 A. Yes.

6 Q. And could you tell the jury how Sprint --
7 well, let's start with how a cell phone works. Can you
8 tell the jury how a cell phone works in very basic
9 terminology.

10 A. Once you power up your cell phone, you'll go
11 through a registration process where the phone is
12 authenticated to use the network, in this case the
13 Sprint network.

14 Once the user has been authenticated, then the
15 phone goes into what's called just an idle mode to where
16 it's just listening to a cell site in the area,
17 listening for any incoming calls basically or a text
18 message, for example.

19 The user also has the ability at that point to make
20 an outgoing call, to dial either seven or ten digits on
21 the key pad and place an outgoing call and try to reach
22 someone else. So that's the basic high level example of
23 a cell phone.

24 Q. If I were to dial seven digits, do I have to
25 press another button after I dial the seven digits?

1 A. You have to press either a send or a talk
2 button letting the phone know to send which calls that
3 are origination messages through the network. It's
4 basically the start of the call setup process.

5 Q. And if I were to make a phone call and dial a
6 phone, what would the phone do as far as sending out a
7 signal?

8 A. It would send out an origination message to
9 the sector and cell site serving that phone. And what I
10 mean by that is most of our cell sites have sectors or
11 sides. You may have seen them on top of a tower. They
12 look like a triangle sometimes.

13 Those different sides of that triangle are called
14 sectors. And so one sector on a cell site would receive
15 that origination message and then the network would
16 start the call setup process.

17 At that point our network would dial out to another
18 phone network if the phone number does not belong to us,
19 say it's a landline, for instance, and try and reach out
20 to that phone to make that phone ring to where on the
21 other end hopefully someone will pick it up or maybe
22 answer by a voicemail system.

23 Q. So it would send a signal to a tower, the
24 tower would send a signal somewhere else, to the
25 designation phone?

1 A. Once it reaches a tower, it is then no longer
2 a wireless signal. It then travels over a wire line
3 system to what's called a phone switch, and then off to
4 the public network, and then off to the carrier of the
5 phone number that is owned by that person.

6 Q. Now, could you tell the jury how Sprint
7 records phone records for billing purposes and for
8 maintenance purposes?

9 A. We record every phone call that comes onto our
10 network. We record several things: The calling party
11 or the phone number that's actually placing the call on
12 our network; the phone number that's being called for
13 that particular call; and then also the date and the
14 time that the call was placed, the start time and the
15 end time; and we record the duration or how long that
16 call lasted for.

17 We record which phone switch actually handled that
18 call, and we also record the sector and the cell site
19 that the phone used when the call first came onto our
20 network, and we record the sector and cell site that the
21 phone was using when the call ended from our network.

22 Q. Now, those records, are they kept in the
23 normal course of business with Sprint?

24 A. Yes.

25 Q. Can you tell the jury how they are kept in the

1 normal course of business with Sprint. Where are they
2 sent, the records, billing and/or archived?

3 A. They are kept on our system for every call at
4 a central location in Lee Summit, Missouri. They're
5 stored all electronically and they are also stored on a
6 backup system, on a tape system.

7 And from there they're used for many purposes,
8 billing our customers is number one. We also use that
9 for maintenance or trouble-shooting on the network. If
10 a customer has issues or dropped calls, we can use this
11 information to see and look on the network, there may be
12 a problem.

13 Q. And when these phone calls are made, say I
14 make a phone call right now, would that information be
15 recorded in your system, your server or your backup at
16 or near the time when I placed the call?

17 A. Yes.

18 Q. And the information is stored at a server
19 located where?

20 A. Again, that's physically located in Lee
21 Summit, Missouri.

22 Q. Now, you mentioned that there is a server and
23 there is a backup system.

24 A. Yes.

25 Q. Did you mention that?

1 A. Yes.

2 Q. And again can you tell the jury what the
3 server's main purpose is.

4 A. Well, the process is similar for both, except
5 the servers are an online database to where we can
6 access them remotely from a computer. And then there is
7 a backup system, which is a tape system, which is used
8 in case at any time the online system goes down or for
9 any backup reasons we would need to get into that data.

10 Q. Now, when a cell phone bill goes out to a
11 person who has their cell phone, does it go out there
12 with the cell site information and the cell tower
13 information or does it go out with just the basic
14 billing information?

15 A. It goes out with just a very high level
16 billing information.

17 Q. But as far as the cell site and tower
18 information, that is saved and recorded onto the system?

19 A. Yes.

20 Q. And that also is kept for what purpose?

21 A. Again, billing reasons would be the first. We
22 have to be able to properly bill our customers for time
23 used, and then also trouble shooting on the network for
24 maintenance. Any problems that may arise, we have to
25 look into them.

1 Q. All these records are kept in the normal
2 course of business?

3 A. Yes.

4 Q. And are these records accurate?

5 A. Yes.

6 Q. Are you one of the people who works for Sprint
7 that know about these records, custodian of these
8 records, and can testify to these records?

9 A. Yes.

10 Q. Can you tell the jury what a CDR report is?

11 A. CDR, which stands for Call Detail Record, or
12 Call Detail Report. This is just the report of a
13 phone's incoming and outgoing calls, which contain the
14 information that I spoke of earlier, the outgoing phone
15 information, incoming phone information, date, time,
16 duration, and other network information that was used
17 for that call.

18 Q. And that would contain more information than
19 would be on a normal cell phone bill?

20 A. Yes.

21 Q. And those records are kept in the normal
22 course of business?

23 A. Yes.

24 Q. And, again, they're made at the same time when
25 the call is made? They're all entered at the same time?

1 A. Yes.

2 Q. At or near the time when the occurrence may
3 have occurred?

4 A. Yes, they are.

5 Q. And say I wanted to go back to March 26th,
6 2006, and look at cell site information that is on the
7 tape backup, how would I go about doing that?

8 A. Well, you would make a request through my
9 group, at Legal Compliance, and you would have to send
10 either a search warrant or a court order signed by a
11 judge asking for that specific information, the phone
12 number, the dates, date range, and what exactly you're
13 looking for.

14 At that point a criminal case analyst from my group
15 would look into that information and make the request
16 through the CDR archive team. Because it is an old
17 request, going back over four years, you would have to
18 go to the tape backup system, and it would have to be
19 pulled by someone else. It's no longer on the online
20 database.

21 Q. Where is the tape backup system located?

22 A. Lee Summit, Missouri.

23 Q. And tell us a little bit about the tape backup
24 system. I've seen on television these big computer
25 rooms with arms and robots and stuff. Can you tell us

1 about that?

2 A. That's similar to what it looks like. There's
3 several of them, but they're just huge, giant boxes
4 basically with hundreds of tapes in them. And you have
5 to go into each box and have to actually physically --
6 not in person, but mechanically pull each tape and
7 record or download the data from that taped system onto
8 a large spreadsheet of some sort to able to show all the
9 calls.

10 Q. So once this request is made and the raw data
11 is pulled from -- where did you say that the main
12 facility is?

13 A. It's all located in Lee Summit, Missouri.

14 Q. Lee Summit. Okay. So the raw data is pulled
15 from there. Where is the raw data sent once it's been
16 pulled?

17 A. It would be sent to the requester, which in
18 this case it would be me. I'm the main point of contact
19 for my group for any type of record search off the tape
20 backup system.

21 Q. And for the cell phone (727)642-1236, did you
22 do a call data report?

23 A. Yes.

24 Q. Did you get the raw data brought back to you
25 and you compiled it yourself to come up with a

1 spreadsheet?

2 A. Yes.

3 MR. ROSARIO: Judge, may we approach?

4 THE COURT: You may.

5 BENCH CONFERENCE:

6 MR. ROSARIO: Judge, I'm about to move in
7 State's Exhibit 24. This is a certified business
8 record on the part of Sprint. It's done by Dan
9 Jensen. Included in this -- and I don't know
10 whether we need to put this or not -- this is the
11 raw data I was just referring to and this is a
12 compilation that he created. This raw data is
13 distilled down based upon our request that this is
14 what it is, and I'm going to be moving that into
15 evidence.

16 THE COURT: All right.

17 MR. FOOTE: Judge, if the Court recalls, I
18 think during one of our many hearings or maybe
19 continuances, that the raw data, as I showed the
20 Court before, was in this weird format of
21 approximately 30 to 40 pages. So I was inquiring
22 of the State that the CD has much more data than
23 the actual report that's actually going to be shown
24 to this jury.

25 My only objection is that certain material has

1 been picked to be highlighted and that this person
2 will testify that that is the record that is kept
3 in the normal course of business. That's my own
4 only objection to that, Judge.

5 THE COURT: As far as that goes, I think they
6 can select certain parts out of, you know, this
7 incredible massive data for a certain day and for
8 certain phones. So I don't think that that's
9 necessarily a problem.

10 And I think just for purposes of maintaining a
11 record, it may not be a bad idea to have that CD
12 entered. Now, these folks aren't going to be able
13 to use it or view it.

14 MR. FOOTE: Right.

15 THE COURT: So if you'd like, we can have it
16 kind of put in separately just so they don't get
17 the idea that they want to sit and look at that,
18 you know, try to get a computer and look at that.
19 I'm just talking about as far as someone
20 maintaining custody of that, it may not be bad to
21 have that with the clerk just in case it ever
22 becomes an issue in the future.

23 MR. FOOTE: I agree. If the Court is
24 inclined, then, to allow this in, I would just ask
25 for further foundation as to who requested the

1 material, for what dates, what are the start dates,
2 what are the cutoff dates.

3 MR. ROSARIO: Well, no, I'm going there with
4 that.

5 MR. FOOTE: Okay. And then, while we're up
6 here, I think this is the actual raw data that
7 actually prints out, and on cross-examination I
8 will utilize the raw data in its printed form.

9 MR. ROSARIO: That's fine. I don't have a
10 problem.

11 THE COURT: That's up to you if you want to
12 utilize that.

13 MR. ROSARIO: Judge, what I did do is I took
14 the opportunity -- I didn't copy the raw data, I
15 copied this, and I have seven copies for the jury,
16 one for the Defense. I don't have one for me or
17 you. I don't know if we want to run up and get a
18 copy of that real quick.

19 THE COURT: Well, that's handy.

20 MR. ROSARIO: If it's okay. When I move it
21 into evidence, when I publish it, I'd like to just
22 hand out the printout.

23 THE COURT: I don't think there's a problem
24 with that once it's entered.

25 MR. ROSARIO: Right. They're going to get the

1 original at the end.

2 MR. FOOTE: Which original?

3 MR. ROSARIO: This whole thing.

4 THE COURT: It will be handed to them, then
5 they'll be taken back. It's kind of like you with
6 a transcript.

7 MR. ROSARIO: Right.

8 THE COURT: You read it to them, you take it
9 back, then there's only one that goes back.

10 MR. FOOTE: Well, my question would be --

11 THE COURT: But that's a direct copy of that.

12 MR. ROSARIO: I have a direct copy of this.

13 MR. FOOTE: Well, to my knowledge, the two
14 reports were actually made by Mr. Jensen just
15 before this trial.

16 MR. ROSARIO: This is the one that was created
17 by Mr. Jensen.

18 MR. FOOTE: Okay. If that is the one that was
19 created by Mr. Jensen, then we'll go by the one
20 that was made by Mr. Jensen.

21 MR. ROSARIO: Okay.

22 THE COURT: Once again do you want us to
23 remove that disk and just have the clerk take that
24 separately?

25 MR. FOOTE: Yes.

1 THE COURT: But that won't go back to the
2 jury.

3 MR. FOOTE: Oh, it won't go back?

4 THE COURT: Uh-huh.

5 MR. FOOTE: But it will stay together for now,
6 because I'm going to refer to it.

7 THE COURT: I just don't want the jury at some
8 point asking us for a computer with a disk in it or
9 something.

10 MR. FOOTE: Well, that's part of my argument.
11 The State has decided that they think it's relevant
12 what is on that disk. They believe that that
13 information that they requested, that that's
14 relevant information that's on the disk, even
15 though they can't probably review it. My issue is
16 that there's more data that's on there.

17 THE COURT: And I understand your argument,
18 but I mean --

19 MR. FOOTE: I don't think it should go back to
20 the jury, but I think they should see the disk
21 exists.

22 THE COURT: Well, that's okay if you want to
23 do that or if you want to ask on cross whether a
24 disk exists, that it's got all kinds of information
25 on it, and whatever you want to ask, that's fine.

1 MR. FOOTE: Is there's an instruction that we
2 don't have a program to run that in the back?

3 MR. ROSARIO: I'm going to get into the fact
4 the raw data is all in binary.

5 MR. FOOTE: Well, they'll see it.

6 MR. ROSARIO: Right. It's all in binary, it's
7 on this disk, and it's not accessible by the
8 average person.

9 THE COURT: Okay. That could be covered,
10 then.

11 MR. FOOTE: Okay.

12 OPEN COURT:

13 MR. ROSARIO: Judge, may I approach the
14 witness?

15 THE COURT: You may.

16 BY MR. ROSARIO:

17 Q. Mr. Jensen, did you create a certification and
18 a record of the CDR?

19 A. Yes.

20 MR. ROSARIO: Your Honor, I'm showing the
21 witness what's previously been marked as State's 24
22 for identification.

23 BY MR. ROSARIO:

24 Q. Do you recognize that?

25 A. Yes, I do.

1 Q. Is that the CDR that you compiled?

2 A. Yes.

3 MR. ROSARIO: Your Honor, I'd move for
4 admission of State's Exhibit 24.

5 THE COURT: Twenty-four or 23?

6 MR. ROSARIO: It's 24 for me, it's 23 for the
7 exhibit.

8 THE COURT: Okay. So it will be State's
9 Exhibit Number 23. Other than our previous
10 discussion, anything else, Mr. Foote?

11 MR. FOOTE: Judge, I'll rely on my previous
12 argument.

13 THE COURT: All right. That will be so
14 received.

15 MR. ROSARIO: Judge, I would ask to publish
16 copies of the data report to the jury?

17 THE COURT: All right. Deputy Flanagan will
18 assist with that.

19 BY MR. ROSARIO:

20 Q. Now, Mr. Jensen, in the packet that you
21 created, you stated that the people pull the raw data
22 from the computers and that the raw data is sent to you.
23 In what form is it sent to you?

24 A. It's sent in a much larger format than this
25 with about 80 to 90 columns worth of data.

1 Q. And is it in easy to read English, or is it in
2 a different code?

3 A. It's a lot of scientific notations, because
4 some of the columns are so large, so it's not easily
5 readable by just looking at it.

6 Q. So when you receive this information, you have
7 to follow some type of rules to put it in the form that
8 we now see today?

9 A. Yes.

10 Q. Can you tell the jury about that.

11 A. I'm basically formatting the data. I'm
12 cutting out a lot of the information and widening these
13 columns to make sure they're readable, and then putting
14 them in order, chronological order as far as date,
15 starting with the earliest call to the latest call.

16 Q. And as part of your request by the State
17 Attorney's Office, this was requested I guess originally
18 back in 2008. Do you know the first person that
19 actually worked with this, his name?

20 A. Yes.

21 Q. What was his name?

22 A. Gaven Pinchback.

23 Q. And did he stay with Sprint or did he move on?

24 A. He has since moved on.

25 Q. After he moved on, were you assigned to this

1 case?

2 A. Yes.

3 Q. And did you recrunch these numbers at the
4 request of the State Attorney's Office?

5 A. Yes.

6 Q. And this call data report, is it a true and
7 accurate representation of the timeframe that the State
8 Attorney's Office requested it; is that correct?

9 A. Yes.

10 Q. And when we're looking at the call data report
11 at the top, what is the target number or the number that
12 was requested?

13 A. (727) 642-1236.

14 Q. And so this is the information for that cell
15 phone?

16 A. Yes.

17 Q. And that cell phone, we requested a time
18 period from 1:00 o'clock to 2:00 o'clock that morning or
19 later?

20 A. It appears to be at 1:00 a.m. on that morning
21 to approximately 5:40 a.m. that same day.

22 Q. And we're talking about the date of
23 March 26th, 2006?

24 A. Yes.

25 Q. After 1:00 o'clock in the morning, the first

1 phone call that was registered on the call data report,
2 where would that be located on this report?

3 A. The very first two lines actually represent
4 the first call.

5 Q. Let's go through it a little bit. Go across
6 the top. I guess across the top it's called cells or
7 are they called rows?

8 A. Columns.

9 Q. Columns. Okay. Let's go across the columns.
10 Column number one is what?

11 A. It's listed as the calling number. And this
12 will tell me the phone number that is actually beginning
13 a phone call, the phone number that's starting the call.

14 Q. And column number two?

15 A. Is the called number. And this is the actual
16 phone number that the phone call was connected to for
17 each call.

18 Q. And column number three?

19 A. This is labeled as dialed digits, and this
20 with the phone switch on our network interpreted as
21 being called.

22 Q. What is column number four?

23 A. Number four is labeled MR number sign, which
24 stands for Mobile Roll Number, and this will tell me
25 whether the subscriber was placing an outgoing call or

1 was receiving an incoming call or it was a routed call.

2 A routed call can mean one of two things; one, that
3 the call came onto the Sprint network and the phone call
4 was not answered for whatever reason when the call was
5 routed into the customer's voicemail platform so the
6 calling party can leave a message if they wish; or,
7 number two, the call was routed from one phone switch,
8 which is the network element on our network, to another
9 phone switch on our network to help complete the call.

10 Q. And down at the bottom there is a little index
11 for the MR number, zero is outgoing. What is three?

12 A. A three would be that the mobile roll was
13 undetermined.

14 Q. Here it says call from voicemail?

15 A. That is one of the options that can occur for
16 that.

17 Q. So I believe we're over at column number five
18 now?

19 A. Yes. Column number five is the start date,
20 and this will tell me the date and the time that the
21 call first came onto the Sprint network.

22 Q. And the next column?

23 A. The next column is labeled as end date, and
24 this is the date and the time that the call ended from
25 our network.

1 Q. And the next column which -- am at seven or
2 eight here? Column seven?

3 A. Yes. Column seven is listed duration. This
4 will tell me how long the call lasted, and this is
5 always listed in seconds.

6 Q. And column number eight?

7 A. This is labeled as a repoll, and this will
8 give me a number, and this will tell me which phone
9 switch on the Sprint network actually handled that call.

10 Q. Can you tell me a little bit about what that
11 means.

12 A. A phone switch, again as I stated earlier, is
13 just a network element. It makes the physical
14 connection between several cell sites and other phone
15 switches on our network. It also connects to what's
16 called the public switch telephone network, which is
17 just the public network.

18 So it makes connections between several other
19 network elements on the Sprint network and also connects
20 to the public network so in case a call was going off of
21 our network onto say a landline phone or a home phone,
22 it would be routed onto the public network and sent to
23 that home phone carrier's network to help relieve the
24 call.

25 Q. And they're all listed as 606, is that the

1 Tampa switch?

2 A. Yes, it is.

3 Q. The next column over that is like a first
4 cell. What is that?

5 A. This is the column that will tell me the
6 sector and the cell site that was used when the first
7 call came onto the Sprint network.

8 Q. When you refer to sector, what are you talking
9 about?

10 A. Well, we talked about it earlier, but, again,
11 if you go back -- remember when I talked about cell
12 towers? Sometimes you may see they look like a triangle
13 on top of a tower. Those different sides of that
14 triangle are referred to sectors. So sometimes they're
15 broken up into three sectors or maybe two sectors on the
16 cell side, and we can show which sector took on that
17 call when the call first came onto our network.

18 MR. ROSARIO: May I have a moment, Judge?

19 THE COURT: You may. Can I see counsel up
20 here at the bench.

21 MR. ROSARIO: Yes, Judge.

22 BENCH CONFERENCE:

23 THE COURT: That thing you all are talking
24 about, is that that thing at the bottom?

25 MR. ROSARIO: I'll readdress it.

1 THE COURT: Yes. I don't have that either.

2 MR. ROSARIO: Right. I have an earlier copy
3 that had that on there. My copy has it on there.
4 No one else does, so I'll go back and clarify it.

5 MR. FOOTE: Well, I think we're going to want
6 to refer to it.

7 MR. ROSARIO: Okay. Give me a moment.

8 THE COURT: Well, we may be able to handle
9 that another way. Is there any objection if we
10 allow, as part of their notes, the jury to keep
11 their copy of this? Because I think some of them,
12 though it's hard to tell, I know they're all
13 looking at them and some of them may be marking on
14 them or making notes.

15 MR. FOOTE: Or they can give them to us later
16 and we'll give them the ones with one, two and
17 three on them.

18 THE COURT: Or just let them write on the
19 bottom.

20 MR. FOOTE: I'd like them to see the actual
21 print that says one, two, three on the
22 descriptions. They can keep them, they can keep
23 writing on them, but I think it's important.

24 THE COURT: Okay. So, in other words, let
25 them write on them and let them keep them, but if

1 we need to put in the other ones with the one, two
2 three, we can do that?

3 MR. ROSARIO: Right.

4 MR. FOOTE: Is that what you're saying?

5 MR. ROSARIO: I have no problem with that.

6 THE COURT: So they'll kind of I guess have
7 two sets.

8 MR. FOOTE: I know I'm going to have questions
9 on that, Eric.

10 MR. ROSARIO: That's fine.

11 MR. FOOTE: I don't even have the ones that
12 have the one, two and three on it. So that's why I
13 want to see one that has it on there.

14 THE COURT: Okay. Well, if you want to do
15 that, that's fine.

16 OPEN COURT:

17 MR. ROSARIO: Judge, may I have a moment?

18 THE COURT: You may.

19 BY MR. ROSARIO:

20 Q. Mr. Jensen, I referred to earlier that Gavin
21 Pinchback had initially done this work for you and then
22 you redid it?

23 A. Yes.

24 Q. On the paperwork that I've handed to you that
25 is in evidence and that the Court has referred to, I was

1 referring to down at the bottom MR number, outgoing,
2 incoming, routed call, call from voicemail. That's not
3 on the one that you redid.

4 MR. ROSARIO: Your Honor, I'm showing the
5 witness what's previously been marked as State's
6 Exhibit 25.

7 THE COURT: Twenty-five for ID.

8 BY MR. ROSARIO:

9 Q. Does this appear to be a certification of the
10 records from Sprint?

11 A. Yes.

12 Q. And included in that is all the information
13 that we were just referring to?

14 A. The same information with some official pages.

15 Q. And at the bottom it has the MR number
16 outgoing call zero is equal to what?

17 A. Zero is outgoing call number one with an
18 incoming call, number two is a routed call, and number
19 three is officially an undetermined mobile roll or one
20 of the thing that it can mean is a call out of the
21 voicemail.

22 MR. ROSARIO: Your Honor, I move for admission
23 of State's Exhibit 25.

24 THE COURT: All right. Any objection?

25 MR. FOOTE: With the line of previous

1 arguments, Judge.

2 THE COURT: All right. It will be so
3 received.

4 BY MR. ROSARIO:

5 Q. The other documentation in there included
6 where the repoll sites were, the actual addresses of
7 where the cell towers are?

8 A. Yes.

9 Q. And I believe a key for understanding these
10 Viador reports?

11 A. That's correct.

12 Q. When you reran these numbers when you got the
13 raw data, these two pages here that we're talking here
14 that the jury already has, came out to be the same as
15 the first data for Mr. Pinchback?

16 A. Yes.

17 Q. Now, I believe I left off with the first cell.
18 It refers to the sector and the tower that the cell
19 phone connected to?

20 A. Yes.

21 Q. Can you tell us how many sectors does a cell
22 tower have?

23 A. Typically on a Sprint network you're going to
24 have a three-sector cell site.

25 Q. And that would be sector one, sector two and

1 sector three.

2 A. Referred to as that and sometimes referred to
3 as Alpha, Beta and Gamma.

4 Q. On this report, when you're looking at the
5 first cell on the very first one, the very first two
6 would be for what?

7 A. The very first digit --

8 Q. First digit.

9 A. -- in that column will refer to the sector of
10 the cell site. In this case the number 2 is the very
11 first number, and this will tell me it's the Sector Two
12 or the Beta side of that cell site.

13 Q. So the cell tower has three sides, it's
14 connecting to Sector Two of that cell tower?

15 A. Yes.

16 Q. And the last three numbers will refer to what?

17 A. They refer to the actual cell site number, in
18 this case Cell Site Number 121.

19 Q. Now, directing your attention to the record,
20 the first call made was at what time?

21 A. 1:09:48 seconds, or 1:09 a.m.

22 Q. And was that a phone call where someone picked
23 up or spoke to or did that go to voicemail?

24 A. That was an outgoing call placed by our
25 subscriber.

1 Q. I'm sorry. I'm looking up at column two, the
2 1:09 phone call, right before the one, there's a 11-727,
3 what does that usually refer to?

4 A. I'm sorry. Yes, the 11 being before the
5 ten-digit phone number, and the call number refers to
6 that call going into voicemail.

7 Q. So it was an outgoing from 642-1236?

8 A. Correct.

9 Q. To what number?

10 A. (727)417-9406.

11 Q. And was there a conversation held there or did
12 that go to a voice message?

13 A. That went into a voicemail box.

14 Q. And that occurred at what time in the morning?

15 A. 1:09 a.m.

16 Q. And it ended at what time?

17 A. 1:11 a.m.

18 Q. And how long did that conversation or that
19 voice message last?

20 A. The entire call lasted for 72 seconds.

21 Q. And it connected to and finished at what cell
22 tower and what cell sector?

23 A. Cell Site 121 on Sector Two.

24 Q. Now, the next row below that, all the numbers,
25 everything is exactly the same except for under MR

1 there's a zero there. What does that mean?

2 A. Zero would indicate that it's an outgoing call
3 placed by our subscriber.

4 Q. So since both numbers are exactly the same
5 10948, 10948, it double recorded the outgoing call and
6 then there's also what, the notation of?

7 A. The notation of the incoming call.

8 Q. So those first two lines are actually one
9 phone call?

10 A. Correct.

11 Q. Going down to the next set of phone calls,
12 lines 4 and 5, can you please tell me who the calling
13 number or what the calling number was on those two?

14 A. Phone number (727)271-5544.

15 Q. And was that a conversation or did that go to
16 a voicemail?

17 A. That went into a voicemail.

18 Q. And whose voicemail did it go into?

19 A. Phone number (727)642-1236.

20 Q. Our target number?

21 A. Yes.

22 Q. And that's shown by the number 2 in the MR?

23 A. Yes.

24 Q. And what time did that phone call come in?

25 A. 1:20:48 seconds a.m.

1 Q. And what is the duration of that phone call?

2 A. Thirty-five seconds.

3 Q. The next one down, number four, can you tell
4 us a little bit about that phone call?

5 A. That phone call again came from the same phone
6 number (727)271-5544, and was called to (727)642-1236.

7 Q. At what time?

8 A. At 1:21 and 30 seconds a.m.

9 Q. And how long did that phone call last?

10 A. Thirteen seconds.

11 Q. Now, going down after that there is one, two,
12 three, four, five, six, seven, eight, nine, ten phone
13 calls below it. What is the phone number, the calling
14 number on the next ten phone calls?

15 A. (727)642-1236.

16 Q. And what number is it calling?

17 A. (727)271-5544.

18 Q. Okay. When did the first call start?

19 A. At 1:21:55 seconds a.m.

20 Q. The duration of each of those ten phone calls,
21 can you please tell the jury.

22 A. Starting with the one I just mentioned, the
23 first duration is 11 seconds, and then another phone
24 call is 7 seconds, 9 seconds, 24 seconds, 11 seconds, 7
25 seconds, 6 seconds, 7 seconds, 7 seconds, 10 seconds,

1 and 6 seconds.

2 Q. Now, on the Sprint bill that this target
3 number got, how would that show up on the bill, that
4 6-second phone call, would that show up as 6 seconds or
5 1 minute?

6 A. It should always be rounded up to the nearest
7 minute.

8 Q. All ten of those phone calls, what cell tower
9 and what sector did those phone calls start at?

10 A. Cell Site Number 121, and the sector was
11 Sector Two.

12 Q. And that was also the last cell, same?

13 A. Yes.

14 Q. Now, going to the next line down, I guess I
15 believe it's number 11, can you please tell us about
16 those next two lines there. It appears that the same
17 phone number was dialed, calling in number dialed. Tell
18 us about that.

19 A. Yes. The next call the phone number is
20 (727)642-1236 calls itself, which appears to be calling
21 itself when in actuality it's actually calling to check
22 voicemail. So when you call and check your voicemail,
23 on the report it will show up as you're calling
24 yourself. And that's how it appears here, and also I
25 can tell by the 11, and before the phone number and the

1 called number.

2 Q. And that checking of the cell phone voicemail
3 took how long?

4 A. Twenty-seven seconds.

5 Q. Again it bounced off the same cell tower and
6 sector?

7 A. Yes.

8 Q. 2-121?

9 A. Yes.

10 Q. Now, in between the voicemail that was left up
11 at 1:21:23, all the way down to where it looks like the
12 voicemail was checked at 1:25:31, does it appear that
13 the voicemail was checked by the subscriber or the
14 person using this phone?

15 A. No.

16 Q. Going down again below that voicemail call,
17 does it appear that the caller called that 271-5544
18 number again?

19 A. Yes.

20 Q. And how long was that call?

21 A. Seven seconds.

22 Q. What time did that occur at?

23 A. 1:23:6 seconds a.m.

24 Q. And what cell tower and sector did it connect
25 to and end at?

1 A. It connected to Cell Site 121 on Sector Two
2 for both the start and the end of the call.

3 Q. There's one that says the duration of 170.
4 Can you please tell the jury about that one. What is
5 the caller number and the called number?

6 A. Phone number (727)642-1236 made a call to
7 phone number (727)271-5544 on March 26th of 2006, at
8 1:26:43 seconds a.m. That call lasted for 170 seconds
9 and registered off Cell Site Number 121 for both the
10 start and the end of the call, the same sector, Sector
11 Number Two.

12 Q. And then the next one down the duration was
13 how many seconds?

14 A. 222 seconds.

15 Q. Well, let me stop you right there. The times
16 that these calls are recorded, does Sprint set their own
17 clocks as far as when these things occur?

18 A. Yes.

19 Q. Is there a uniform standard among cell phone
20 companies that use atomic clocks or does everyone set
21 their own times?

22 A. I can only speak for my cellphone company, but
23 I know of no other universal time clock that all of us
24 use. I can only speak for Sprint Nextel.

25 Q. So Verizon's times are not necessarily the

1 same as Sprint's times?

2 A. Correct.

3 Q. Or T-Mobile or any of the others?

4 A. Yes.

5 Q. That phone call that lasted 222 seconds, can
6 you tell us where the sector it originated from?

7 A. Sector Number Two.

8 Q. And that's on what cell tower?

9 A. Cell Site 121.

10 Q. And then where was the last cell site?

11 A. The last cell site was the same as before,
12 121.

13 Q. What about the sector?

14 A. The sector did change to Sector Number Three.

15 Q. So that would be moving from one side of the
16 antenna or tower to another side of the tower?

17 A. Yes.

18 Q. The phone calls after that, it looks like
19 there's a phone call coming in from 271-5544 at 1:43 in
20 the morning. What cell site did the subscriber cell
21 phone connect to when that phone call came in?

22 A. Cell Site 119.

23 Q. And what sector?

24 A. Sector One.

25 Q. So that would indicate the cell phone was near

1 a different cell tower?

2 A. According to this record, the phone used just
3 utilized another cell site for that call.

4 Q. And down below there it looks like there's
5 repeated calls again. We have the MRs, we have a 1
6 there. What would the 1 be?

7 A. The number 1?

8 Q. Right.

9 A. The number 1 for this report would indicate an
10 incoming call to our subscriber.

11 Q. Okay. And below that there is a number 2?

12 A. Yes.

13 Q. And that would indicate a routed call?

14 A. Yes.

15 Q. And below it looks like the numbers are
16 completely doubled up there. There's a 2 and a 0 on the
17 one below that. Does that indicate whether it was a
18 voicemail or not?

19 A. Yes, it does.

20 Q. And it was called from and called to?

21 A. Yes. The calling to, the outgoing portion and
22 the incoming portion.

23 Q. So the number that was called, the calling
24 number was 642-1236. And the called number was?

25 A. (727)417-9406.

1 Q. So the subscriber would have been calling to
2 that other phone and leaving a message?

3 A. Correct.

4 Q. And that was at 1:45:22 in the morning?

5 A. Yes.

6 Q. There is another doubled call there, it looks
7 like at 2:09:35. Can you tell the jury about that.

8 A. Phone number (727)642-1236 placed an outgoing
9 call to phone number to (727)417-9406 on March 26th of
10 2006, at 2:09:35 seconds a.m. The connection lasted for
11 65 seconds, utilized a Tampa, Florida phone switch, and
12 used Cell Site Number 119, Sector One, and ending on
13 Cell Site 119, Sector Two.

14 MR. ROSARIO: May I have a moment, Judge?

15 THE COURT: You may.

16 BY MR. ROSARIO:

17 Q. On the cell records, the fourth and fifth
18 lines down, the voice message that was sent from
19 271-5544, that doesn't reflect a first or last cell, is
20 there any reason why?

21 A. Based on this record, I can't tell you a
22 hundred percent why. There's just not enough
23 information for me to tell you that.

24 Q. But we do know when the cell phone was
25 actually used by a person, that it was bouncing off Cell

1 Tower 121 from 1:09 in the morning until 1:33 in the
2 morning?

3 A. Yes.

4 MR. ROSARIO: Your Honor, that's all I have
5 for this witness.

6 THE COURT: All right. Cross?

7 CROSS-EXAMINATION

8 BY MR. FOOTE:

9 Q. Good afternoon, Mr. Jensen.

10 A. Good afternoon.

11 Q. I'm Ken Foote, I think we spoke before over
12 the phone?

13 A. Yes, we did.

14 Q. Okay. Now, you work for Sprint. Particularly
15 you fly around to talk about the records at different
16 places?

17 A. Yes.

18 Q. So that's your job is to come and go into
19 court and answer different types of subpoenas?

20 A. Yes. That's the majority of my time spent
21 there.

22 Q. And actually you charge a fee or Sprint
23 charges a fee for you to do that; is that correct?

24 A. Only when expert testimony is required.

25 Q. And is that what you're doing here today?

1 A. No.

2 Q. So Sprint paid for you to just come down on
3 your own and the State of Florida had paid no money?

4 A. No.

5 Q. No, they did not?

6 A. They did not.

7 Q. With the compilation of these records and
8 these requests, the State of Florida doesn't pay you any
9 money?

10 A. No.

11 Q. All this was a free service?

12 A. It's free with the proper legal request.

13 Q. And you're in from Kansas?

14 A. I work in Kansas. I actually live in
15 Missouri.

16 Q. And you flew down to be here today?

17 A. I flew down two days ago.

18 Q. It's your testimony that Sprint paid for that,
19 not the State of Florida?

20 A. Sprint did not pay for any travel.

21 Q. And housing as well?

22 A. I'm sorry?

23 Q. And housing while you're here?

24 A. No. They did not pay for anything.

25 Q. All right. Let's talk about these records

1 that were compiled. Before you got the records, they
2 were being compiled back in 2008 or so, the request?

3 A. I believe that's around that time period, yes.

4 Q. Okay. Is it your testimony that there was no
5 charge for research or pulling up this raw data at all?
6 This is a free service?

7 A. For these actual records, I don't remember at
8 this time. This was a couple years ago and I do many
9 trials. Again, it wasn't my original case.

10 Q. Okay. Well, I'm just wondering, would you
11 know, is that a different department that is held, as
12 far as the billing is concerned, whether or not this has
13 any expense connected to the compilation and the pulling
14 up of this information?

15 A. It is supposed to be.

16 Q. What is supposed to be?

17 A. It is supposed to be a charge to compile for
18 this particular case, not a regular case.

19 Q. I understand. I'm only talking about this
20 particular case. This particular data and the type of
21 data, is there a charge incurred?

22 A. There should be.

23 Q. Okay. And this is not data that's regularly
24 you just type up into a computer, pull it up and just
25 press print; is that right?

1 A. Again, if we're just talking about these
2 actual records --

3 Q. I'm only going to talk about the case that
4 we're here about.

5 A. Okay. These specific records, not the types
6 of records, but this specific set of records, because of
7 how long they go back, then, yes, it is a more detailed
8 and drawn out process to get these records.

9 Q. In fact, there's an hourly fee that's charged
10 to the requester for individuals to go and search these
11 big archives; isn't that right?

12 A. Yes.

13 Q. And there had been two companies, Sprint has
14 had internal people that have done that, but Sprint had
15 contractors like IBM and others to actually pull this
16 raw data up?

17 A. Yes.

18 Q. Have you seen the raw data before?

19 A. Yes.

20 MR. FOOTE: Judge, may I approach?

21 THE COURT: You may.

22 BY MR. FOOTE:

23 Q. I'm showing you what's been previously marked
24 Defendant's Exhibit W for identification. I ask you to
25 take a look at some of those documents and tell me if

1 they look familiar or you recognize them?

2 A. Yes, they are familiar.

3 Q. And what is that?

4 A. This is the raw data that I would receive for
5 this type of request.

6 Q. Okay. And everything that's in this raw data,
7 I mean it's just letters, numbers, all kinds of zeros
8 and types of information, you couldn't readily just read
9 this and interpret it by looking at it?

10 A. Correct.

11 Q. So as a result of that, the information then
12 is put into an Excel spreadsheet, which is what we're
13 all looking at today?

14 A. Correct.

15 Q. And Excel is a program by Microsoft that we
16 pretty much have on our regular computers?

17 A. Yes. Microsoft Excel.

18 Q. Now, you're the person that actually puts that
19 information in or someone from your office, they put it
20 into the cells and labeled them calling number and dial
21 digits and all that?

22 A. Yes. I made the conversion myself.

23 Q. And previous to that Mr. Pinchback did a
24 separate conversion?

25 A. Yes.

1 Q. Okay. And prior to you coming today, you just
2 did one yourself?

3 A. Yes.

4 Q. Now, would you agree with me that there are
5 discrepancies between -- we'll call this a Viador report
6 so we understand. The discrepancies between this Viador
7 report --

8 MR. ROSARIO: Judge, I'm going to object and
9 ask the witness be allowed to use the terminology
10 he's used to.

11 THE COURT: I'll sustain the objection as to
12 the form. If the witness feels comfortable using
13 that, he can. I think we need to be consistent
14 with how we refer to documents.

15 BY MR. FOOTE:

16 Q. Are you familiar with the term "Viador"?

17 A. Yes.

18 Q. What's Viador?

19 A. Viador is an old software program that we
20 would use to pull call detail records.

21 Q. And did Sprint use Viador reports?

22 A. We used the program Viador, yes.

23 Q. Okay. I'm going to refer to what's already
24 been entered into evidence as State's Number 24, that
25 you previously testified from. Does it actually say,

1 "Key to Understanding Viador Reports"?

2 A. Yes.

3 Q. Is this a Viador report or not?

4 A. No.

5 Q. So this key is to understanding something
6 else?

7 A. No. You can still use that same key to
8 understand these records.

9 MR. FOOTE: Okay. May I approach, Judge?

10 THE COURT: You may.

11 BY THE COURT:

12 Q. I'm going to show you that document, it came
13 from Sprint, it has Sprint all over it, it's State's 24,
14 and I'd ask you to look at this particular page titled,
15 "Key to Understanding Viador Report." Did that come
16 from your company?

17 A. Yes.

18 Q. Okay. Is that the instructions that pretty
19 much tell us how to read this document?

20 A. Yes.

21 Q. Okay. At some point did Sprint call this
22 Viador report?

23 A. Yes.

24 Q. And did it come out of software that, as you
25 previously stated, you used to use before?

1 A. No.

2 Q. Okay. The Viador software, is that still in
3 use today?

4 A. No.

5 Q. Okay. Was it at some time?

6 A. Yes.

7 Q. Okay. Do you know when that was?

8 A. I don't know the exact dates of when we used
9 that.

10 Q. Okay. Well, back in 2006, is it safe to say
11 it was used back then?

12 A. Yes.

13 Q. Is that why it's called Viador today or in the
14 report?

15 A. That's why it's labeled that at that time,
16 yes.

17 MR. FOOTE: May I approach, Judge?

18 THE COURT: Yes.

19 BY MR. FOOTE:

20 Q. And at some point, whenever the date, Sprint
21 stopped using this type of software for the storage of
22 this information?

23 A. We stopped using this software for the
24 retrieval of information.

25 Q. For retrieval of information?

1 A. Yes.

2 Q. And the information that is stored here, now
3 the purpose of this, this is not a GPS geographic
4 locating report, is it?

5 A. That's correct.

6 Q. Okay. The purpose of this primarily is not to
7 use this to locate people or anything like that; isn't
8 that right?

9 A. Correct.

10 Q. The primary purpose for this for Sprint
11 primarily is billing purposes, correct?

12 A. Yes.

13 Q. Because Sprint is in business to make money,
14 correct?

15 A. That's one of the reasons.

16 Q. Okay. And Sprint obviously wants to charge
17 for every phone call that's made so that they can get
18 paid?

19 A. We like to have a record of every phone call
20 on our network, being our billing is one of them.

21 Q. So you can accurately charge your customers
22 for phone calls they make?

23 A. Correct.

24 Q. All right. Earlier the State Attorney asked
25 you something about if a call says seven seconds or

1 eight seconds or twelve seconds, you said, yeah, but
2 normally on the bill we'll round it up to a minute;
3 isn't that right?

4 A. That's correct.

5 Q. Because that's a billing unit? Even if the
6 person only uses it for seven seconds, Sprint charges
7 for a minute, right?

8 A. That is the understanding I have with billing.

9 Q. Okay. Now, would you agree with me that there
10 may be discrepancies between this data record and the
11 customer's bill?

12 A. Discrepancies meaning there may be -- there's
13 going to be more information on a call detail bill than
14 a bill, yes.

15 Q. Well, not if there's more information. Would
16 there be discrepancies? And I understand that a phone
17 bill won't say anything about towers and all this
18 detailed information, but when I say discrepancies,
19 calls that might be on someone's bill that are not on
20 this detail record, or visa versa, calls that are on
21 this record but not on the customer's bill?

22 A. There may be instances where it shows up on
23 one but not the other.

24 Q. Okay. From your training and experience and
25 from testifying and reviewing these records, how often

1 is it one or the other? Is it usually that the person
2 has a number on the bill they charge for? Or is it the
3 other way around, that Sprint didn't charge them for a
4 certain number and they got a free call?

5 A. Except that they're going to have more
6 information on a call detail report than it would be on
7 the bill.

8 Q. Well, maybe you didn't understand my question.
9 When you say more information, are you talking about the
10 cell tower information?

11 A. I'm talking about the cell tower information
12 and actual calls itself.

13 Q. Okay. I guess my point is this, are there
14 phone calls that are on this report that Sprint doesn't
15 bill the customer for?

16 A. There may be, yes.

17 Q. Have you seen that before?

18 A. Yes.

19 Q. Have you seen it the other way around where a
20 customer actually gets phone calls and is not billed for
21 it, it's not on their bill?

22 A. Maybe I don't understand the question.

23 Q. I'll.

24 A. Okay.

25 Q. If there are phone numbers on here and it's

1 telling us that phone calls are being made and someone
2 talks for a hundred seconds, are there times when the
3 customer gets their bill that that's not on there, they
4 haven't been billed by Sprint?

5 A. I don't know.

6 Q. Have you ever seen that before?

7 A. Not that I can remember, no.

8 Q. Is it safe to say that Sprint has sufficient
9 technology in place to make sure that they capture every
10 call that they can so they can bill every customer that
11 they can properly?

12 A. I would agree with that.

13 Q. Okay. With regard to this particular report,
14 the State asked you about the times. What were the
15 range of times that you were asked to print up on your
16 Excel spreadsheet as to the starting time and then
17 roughly the ending time?

18 A. I don't remember the exact start time. I can
19 just tell you what I have here in front of me.

20 Q. Well, you would have provided whatever the
21 State requested for?

22 A. Yes.

23 Q. So if it starts here at 1:09 in the morning,
24 is it safe to say that was the requested time?

25 A. I deal with hundreds of cases every week. I

1 don't remember the exact start time and end time that
2 was requested without looking at the actual warrant or
3 court order.

4 Q. Do you have any other data with you or that
5 you're prepared to testify about that shows us what was
6 happening just before 1:09?

7 A. No. Not with me.

8 Q. Does it exist?

9 A. It may.

10 Q. Now, do you believe or is it your opinion that
11 these call data records that are put into this
12 spreadsheet are accurate?

13 A. I have no reason to believe why there's any
14 inaccuracies.

15 Q. Any inaccuracies whatsoever?

16 A. Not to my knowledge.

17 Q. And is it safe to say that all the numbers on
18 here -- the State asked you a lot of questions about
19 calls being placed and voicemails and how long the calls
20 were. For example, let's look at line three and four.
21 Line three and four -- and I guess we can locate that
22 easily -- we go all the way to the right where it says
23 "Cell Tower", it's says "Zero". Do you see those calls?

24 A. Yes.

25 Q. Now, you testified earlier that you didn't

1 have enough information to be able to tell us what's
2 going on in those calls?

3 A. I can tell you some basics about each call.

4 Q. Okay. Well, let's specifically go to cell
5 tower locations, because I believe that you were talking
6 about cell tower locations, and you're pretty much going
7 to say the phone or handset was here or there. Can you
8 do that on those two calls there?

9 A. No.

10 Q. Okay. Did a tower actually -- was it actually
11 utilized?

12 A. According to this record, no.

13 Q. Call number three says the duration was 35
14 seconds. Was there a call for 35 seconds that no tower
15 picked up?

16 A. According to this record, yes.

17 Q. Is that possible?

18 A. Yes.

19 Q. So the phone can complete a call without even
20 connecting to any phone tower?

21 A. No. This is an incoming call to our
22 subscriber.

23 Q. Okay.

24 A. And calls come onto our network where
25 sometimes the subscriber's phone cannot be found. For

1 example, the phone's power is down, the battery is dead,
2 it's out of the coverage area or a network has no idea
3 where a phone is, then we can't page a cell site to page
4 out the phone.

5 In that case the call would then be sent to the
6 customer's voicemail platform. If you've ever made a
7 phone call and you don't hear any ringing and it goes
8 straight to voicemail, the network can't find the phone.
9 If the network can't find the phone, we don't have a
10 cell site to send it to. And so this could be an
11 instance of what happened there.

12 Q. Okay. So when the phone actually goes
13 straight to voicemail, you can actually leave a
14 voicemail, right?

15 A. Yes.

16 Q. How is that voicemail stored? Is it stored at
17 another location?

18 A. Yes.

19 Q. How does it get from the handset to where the
20 information is stored if you can't find it on the
21 network?

22 A. It never reaches out to the phone to begin
23 with.

24 Q. Well, I guess my question is, the phone is
25 actually a radio, isn't it?

1 A. A very high tech radio.

2 Q. A high tech radio. And it's wireless?

3 A. Yes.

4 Q. And it's using wireless waves?

5 A. Radio frequency energy, yes.

6 Q. At some point, in the example you just gave,
7 if you go straight to voicemail, it goes to voicemail,
8 that wireless device has to connect to something to
9 store that voicemail; isn't that right?

10 A. No.

11 Q. Where is the voicemail stored, in the handset?

12 A. No, it's not stored in the handset. It would
13 be stored at a remote location somewhere on the network
14 on a voicemail platform.

15 Q. How does the phone that's not connected by any
16 line actually go to that remote location if it cannot be
17 located on your network?

18 A. Earlier under direct we talked about how it
19 looks like you're calling yourself when you check your
20 voicemail, that's when you actually listen to your
21 voicemail.

22 When you check your voicemail on almost every cell
23 phone, you call the network. The network realizes that
24 you're calling to check your voicemail because you're
25 calling your cell. At that point you're sent into your

1 own voicemail platform and there you enter in sometimes
2 a password of some sort and there you listen to your
3 messages.

4 You're not listening to anything on your phone.
5 You're listening to a voicemail recording on our
6 network. So that's when you actually make a connection
7 to our network to listen to a voicemail.

8 Q. How do you connect to your network? How does
9 a handset connect to your network?

10 A. You place an outgoing call -- we can go into
11 detail if you want to.

12 Q. No. I just want to know -- like I have a cell
13 phone right here. Okay. If I dialed this phone and it
14 went straight to voicemail, is it connecting somewhere
15 outside of this room or building for me to be able to go
16 and get my voicemail?

17 A. Yes.

18 Q. What is it connecting to, a tower somewhere?

19 A. It's connecting to a transmitting and
20 receiving antenna.

21 Q. Is that the same thing as a cell tower?

22 A. Yes.

23 Q. All right. So you would agree with me that
24 even though the person might just get voicemail, if any
25 activity is going on on this phone, outside of playing a

1 game or something, if it's going on your network, it has
2 to connect to some outside cell tower, right?

3 A. No.

4 Q. And maybe you can forgive me, I might not
5 understand the technology. So if you can explain.

6 A. The call we're looking at, the third call, is
7 an incoming call to the Sprint network. The phone
8 number (727)271-5544 is placing the call. That phone is
9 connecting to a cell site somewhere.

10 Q. Okay.

11 A. But this report won't show it because this
12 report is only for one phone number, and that's not the
13 phone number we're looking at.

14 Q. Okay.

15 A. So the 5544 number connects to a cell site.
16 The phone number 1236, this is the report for that phone
17 number, and this report does not show a cell site for
18 that number. So the network could not find the cell
19 phone ending in 1236, and that's why there is no cell
20 site.

21 Q. So the phone number that's actually calling
22 into the number of this report is someone else's phone?

23 A. It's a different phone, yes.

24 Q. So someone else is calling in, right? And so
25 the tower that that person is using cannot be located?

1 A. Not in this report, because this report is not
2 looking at that phone number, it's looking at a
3 different phone number, the 1236 number.

4 Q. Okay. Well, if you go down, there are
5 different numbers that are actually coming in that are
6 not from this report or the author of this report or a
7 target number on this report, there is cell tower
8 locations?

9 A. Yes.

10 Q. Can you explain that.

11 A. All of the cell site locations and first cell
12 and last cell, every single one is for one phone number
13 only and that's (727)642-1236. This report does not
14 show any cell site location information for any other
15 number other than the 1236 number.

16 Q. All right. Would it be a fair statement that
17 the phone calls that have the zeros on them, that means
18 that the call came to the network but never really got
19 to the telephone?

20 A. All I can say from that, based on this report,
21 is that our network could not find the phone to page it
22 and that's why there is no cell site information.

23 Q. So does that mean that the phone call was not
24 completed?

25 A. The definition of a completed call can vary.

1 In this instance a completed call, depending on what you
2 define it as, yes or no -- yes and no.

3 Q. Yes and no?

4 A. Yes or no. I apologize.

5 Q. Do you know what a voice trunk is?

6 A. Yes.

7 Q. What's that?

8 A. A voice trunk is the actual hardline that the
9 phone switch -- this is where the circuit switch is
10 actually connected and this is the actual line or voice
11 that travels over that.

12 Q. Okay. So when you see zeros, that means --

13 THE COURT: And if I could, to make sure we're
14 clear on this, I see zeros in the first cell and
15 last cell column, not zeros in the MR column.

16 MR. FOOTE: That is correct. And I'm still
17 focusing on the third and the fourth call where the
18 first and last cells indicate zeros.

19 BY MR. FOOTE:

20 Q. With regard to that, does that mean that it
21 may not have necessarily gotten to the phone, the signal
22 may not necessarily have gotten to the phone from the
23 tower?

24 A. No. It means when the call comes onto the
25 network, the first thing it's going to do is go to the

1 home phone storage of our user. At that point it checks
2 over what's called an SS7 network, Signaling System 7.

3 Then it checks what's called an HLR, a Home
4 Location Registry. The HLR is just a giant master
5 database of all the phones on our network. And that HLR
6 will know where that phone call needs to be sent.

7 For instance, if the phone is in Los Angeles, it
8 will know this phone last registered off the phone
9 switch in Los Angeles and I need to send that call
10 there.

11 The HLR at this point says I have nowhere to send
12 this phone, it's not registered on our network at this
13 time, so I can't send it to a phone switch and then down
14 to a cell site and then to the phone.

15 At that point the HLR, since it has nowhere to send
16 the phone call, it goes into a secondary treatment. And
17 on our network, a secondary treatment would be to send
18 that call to the voicemail platform so that way the
19 person calling could leave a message if they wish.

20 Q. I understand. So in order to get to the
21 voicemail platform, there is some tower in use to
22 connect to the wireless handset, would you agree with
23 that?

24 A. Only for the outgoing portion of this call,
25 the 5544. Whether it's a cell phone or a landline, I

1 don't know, but our network recorded that phone number
2 trying to reach one of our subscribers. And on the
3 third or fourth line the HLR said basically I have
4 nowhere to send this call, so I'm not going to send it
5 anywhere but to the voicemail; so no cell site was
6 utilized for the Sprint subscriber 1236 for those two
7 calls.

8 Q. Is that something that doesn't occur
9 frequently?

10 A. That occurs all the time.

11 Q. But on this particular report, we see it maybe
12 once, twice, three times?

13 A. I see that a total of three times, yes.

14 Q. Okay. With regard to a report like this, if
15 it shows two phone numbers called at the same time for
16 the same duration of time but two different towers, what
17 does that mean?

18 A. It may mean a few different things depending
19 on what happened during that call. Are you looking at a
20 specific one?

21 Q. No. I think there are a couple. But just in
22 general, first, what could be some of the reasons?

23 A. It depends on who's calling who. Is it the
24 Sprint subscriber placing a call?

25 Q. Yes.

1 A. Maybe you could point me to one, I can take a
2 look at it.

3 Q. At 2:13 -- and I'll just go to the time. At
4 2:13:26 on March 26th, 2006. It's at 2:13 a.m. and 26
5 seconds.

6 A. Okay.

7 Q. Both the durations were 427, but the cell
8 tower is in the third -- well, the first and last cell,
9 the last columns are different towers but it appears
10 that the numbers are occurring at the same time.

11 A. Yes. On that call at 2:13 and 26 seconds,
12 phone number (727)417-9406 placed a call to the target
13 phone (727)642-1236. And the 9406 number, right now I
14 don't know, I would have to check, but it appears to me
15 that the 9406 number is another Sprint phone or a phone
16 that utilizes the Sprint network as its primary network.
17 And the reason why we have two different cell sites,
18 it's reporting a cell site for one phone and a cell site
19 for another phone.

20 Q. So does this report, then, include other phone
21 numbers besides the target phone number we've been
22 talking about?

23 A. I would want to check on the 9406 number, but
24 in this instance it appears it does.

25 Q. So we see two different cell tower locations

1 according to this report?

2 A. Yes.

3 Q. For the exact same date, time, call, duration,
4 everything is exactly the same except that there's two
5 different towers; isn't that right?

6 A. That and the mobile roll number is different,
7 it's with a 0 and a 1.

8 Q. Okay. Now, you would agree with me, is it a
9 fair statement that there were instances where a phone
10 call can be handled by two different cell towers
11 simultaneously?

12 A. Yes.

13 Q. Would that be an example of the two phone
14 calls we just looked at that have the two separate
15 towers?

16 A. Yes.

17 Q. So two towers can actually handle a phone
18 call?

19 A. Yes.

20 Q. You would agree with me, is it a fair
21 statement that this report does not accurately pinpoint
22 geographically where either a person is or even a
23 handset?

24 A. Correct.

25 Q. A handset being a mobile phone?

1 A. Correct.

2 Q. So this report does not do that?

3 A. It does not.

4 Q. Is it also a fair statement that back in 2006,
5 that the technology that existed for cell phones has
6 improved up until 2010?

7 A. There are improvements on the network, yes.

8 Q. Well, I'm talking for us customers that go and
9 buy phones now, almost everyone has GPS on their phone?

10 A. Sure.

11 Q. That wasn't readily available on every phone
12 back in 2006; is that a fair statement?

13 A. I would agree with that, yes.

14 Q. I mean part of that is, every time we see a
15 commercial, there's a new improved phone and they want
16 you to buy one because this is the best one, and within
17 three months they come out with another best one?

18 A. Yes.

19 Q. Okay. And with regard to a handset or an
20 actual mobile home, you can't determine if that handset
21 is south, east, west or north of a particular tower;
22 isn't that true?

23 A. In certain instances you can.

24 Q. But not a hundred percent?

25 A. Correct.

1 Q. In fact, a person who has a handset can be
2 south of a particular cell tower and it register on the
3 northern side of it; isn't that true?

4 MR. ROSARIO: I'm going to object. This is
5 beyond the scope of the testimony.

6 THE COURT: Overruled.

7 MR. ROSARIO: May I approach?

8 THE COURT: You may.

9 BENCH CONFERENCE:

10 MR. ROSARIO: Defense counsel specifically
11 limited me on this witness.

12 THE COURT: Well, I want to know where you are
13 going first.

14 MR. ROSARIO: He has specifically limited me
15 on being able to qualify him as a person that can
16 testify in this manner and how cell towers work and
17 now he's going into it.

18 THE COURT: I think by virtue of his
19 questions, he has now accepted this person as an
20 expert in this area. I mean I think that's what's
21 happened.

22 MR. FOOTE: Pretty much. Because on the
23 direct testimony, besides getting up -- we had went
24 through deposition testimony before. That was my
25 earlier objection. He's already gotten into the

1 HLR numbers and switches and all of that.

2 MR. ROSARIO: So will you be stipulating on
3 the record that he's qualified as an expert?

4 MR. FOOTE: No. It's not required in Florida.

5 THE COURT: Well, I think once again, by
6 virtue of his questions, he's accepted him. The
7 expansion of his expertise has occurred on cross
8 and not on direct.

9 MR. ROSARIO: Okay.

10 OPEN COURT.

11 BY MR. FOOTE:

12 Q. Let me repeat that question. You would agree
13 that a person holding a handset could actually be
14 geographically south of a tower, it's registering south
15 of a tower -- or the person could be south of a tower,
16 but it will register as showing the person on the
17 northern side of that tower?

18 A. I would agree that there is a very small
19 possibility that that may happen.

20 Q. Do you have a degree of percentages?

21 A. I would have to look at the individual tower
22 to get a better idea.

23 Q. But that is a possibility?

24 A. A very slight possibility.

25 Q. Okay. Well, we talked about this before on a

1 previous occasion, we asked the same question, you said
2 that that can happen.

3 A. It is a possibility.

4 Q. Okay. Would you agree that radio frequency,
5 what we're talking about here, radio frequency, although
6 technical, is not a hundred percent science?

7 A. I would agree with that.

8 Q. And because we looked at the report that was
9 created today, which is what we're talking about,
10 particularly with the first and last cell information,
11 even if you know a cell tower, a cell sector, you don't
12 necessarily know the geographic location of a handset?

13 A. Not exactly, no.

14 Q. In fact, there may be instances when a person
15 may be southwest of a particular sector but it uses
16 another sector on that tower; isn't that true?

17 A. Southwest of a cell site but using a sector on
18 that same cell site?

19 Q. No. Let's say we have a tower -- and you
20 talked about Sectors Number One, Number Two, Number
21 Three, it's like a triangle.

22 A. Yes.

23 Q. Okay. There are instances where a person can
24 be in a different geographic location but is registering
25 on a different sector of that tower?

1 A. Are you asking kind of the same thing from the
2 question before, being south of the tower and using a
3 north space?

4 Q. No. I'm just asking about sectors now.
5 Actually, let me ask you this first: The sectors of a
6 tower are basically just antennas; isn't that correct?

7 A. The sector we refer to is which direction the
8 antenna is facing.

9 Q. Which direction the antenna is facing. And my
10 point with regard to particular sectors, that different
11 sectors can break up different phone calls in different
12 locations? It doesn't have to be right in front of that
13 tower; isn't that right?

14 A. That's correct.

15 Q. Now, the State of Florida wanted you to
16 testify that a particular call occurred at a particular
17 time in a particular direction. Isn't it true that you
18 can't do that with these records?

19 A. I can show that a call occurred at a specific
20 time on a date. But what do you mean by direction?

21 Q. A particular call occurred and a person was
22 over here as opposed to over here, isn't it true that
23 you can't do that with these records?

24 A. I cannot give an exact location of that
25 handset, no.

1 Q. Are you familiar with the term
2 "triangulation"?

3 A. Yes.

4 Q. Okay. And sometimes we see that in law
5 enforcement or maybe movies, but when you want to track
6 someone, maybe like an Amber alert, when you said before
7 a kidnapping or something like that.

8 A. Yes.

9 Q. If you receive a court order to actually
10 triangulate someone's location, what are you actually
11 doing?

12 A. Well, triangulation can mean a lot of
13 different things in my world.

14 Q. In a simplified lay person's version?

15 A. If we were asked to triangulate, we don't
16 triangulate in the means of what most people think
17 about. There's a possibility where we can triangulate,
18 which means getting a measurement of a cell phone or a
19 mobile device from three separate cell sites.

20 Q. Okay.

21 A. But you can't always do that because the cell
22 phone isn't always using three cell sites. It sometimes
23 maybe only using one. It can be using four. So it
24 depends on the situation of what is going on during that
25 call or during that connection to our network. It also

1 depends on how far back they want to go and other
2 factors can come into play.

3 Q. Okay. Would it be fair to say that the most
4 accurate way to pinpoint a particular phone is live
5 satellite tracking by GPS?

6 MR. ROSARIO: Objection. Relevance.

7 THE COURT: Overruled.

8 MR. ROSARIO: Judge, then the form of the
9 question. Date. Year.

10 THE COURT: That will be sustained as to the
11 form.

12 BY MR. FOOTE:

13 Q. With regard to the year 2006, would you agree
14 that the most accurate way to pinpoint a handset that
15 may be GPS capable would be from live tracking, if
16 you're going to pinpoint that location in live or
17 realtime?

18 A. That would be the best way in 2006, that we
19 would be able to do that.

20 Q. Okay. And that's where these records were
21 generated from 2006?

22 A. Correct.

23 MR. FOOTE: May I have a moment, Judge?

24 THE COURT: You may.

25

1 BY MR. FOOTE:

2 Q. Just one more question. You had testified on
3 direct with regard to a person checking a voicemail, and
4 if I can direct your attention to the call that occurred
5 at 1:25 and 31 seconds on March 26, 2006.

6 A. Okay.

7 Q. You indicated earlier that a person from
8 checking their voicemail, they're not calling
9 themselves, they're checking their own voicemail; is
10 that right?

11 A. Yes.

12 Q. And that doesn't necessarily mean or you can't
13 tell from these records that an actual voicemail was
14 left to check? That just means the person is checking
15 to see if they have any?

16 A. Correct.

17 MR. FOOTE: That's all I have at this time,
18 Judge. Thank you, sir.

19 THE COURT: All right. Redirect?

20 REDIRECT EXAMINATION

21 BY MR. ROSARIO:

22 Q. Mr. Jensen, just to clarify. On Lines 4 and
23 5, there are zeros in the first cell and the last cell,
24 and you stated that one of the possibilities is the
25 phone power is down; isn't that correct?

1 A. Yes.

2 Q. Twenty-five seconds after that phone call,
3 that last phone call came in, the cell community found
4 the phone; is that correct? The HLR I think it's
5 called?

6 A. Yes.

7 Q. So that phone was in the area of Sector 2-121
8 at 1:21:55?

9 A. Yes.

10 Q. The Defense attorney was asking you about GPS
11 and triangulation. Cell towers --

12 MR. ROSARIO: Your Honor, I'm showing the
13 witness what's previously been marked as State's
14 Exhibit 26, and I'd move for admission of State's
15 Exhibit 26.

16 MR. FOOTE: Without objection.

17 THE COURT: Be received without objection.

18 MR. ROSARIO: May I have the easel?

19 BY MR. ROSARIO:

20 Q. Defense counsel spoke a lot about sectors and
21 directionals.

22 MR. ROSARIO: Judge, would he be allowed to
23 stand down?

24 THE COURT: The witness may stand down and
25 utilize the exhibit.

1 BY MR. ROSARIO:

2 Q. Mr. Jensen, would you explain to the jury what
3 State's Exhibit 26 is?

4 A. This is an example of a three-sector cell
5 site. Again, this is a general example. This is not
6 the way all our cell sites are set up. This is just a
7 visualization to help try and help people understand
8 what it is when we talk about a cell site.

9 Right over here we just have the side view of a
10 cell site on a tower. These antennas can be mounted on
11 a variety of things, larger towers, water tanks, the
12 sides of buildings, the tops of buildings. The black
13 bars right here are indicating the antennas. So this is
14 just an example of a cell tower.

15 This diagram here would be, if you're looking
16 straight down on it, this is the three sides that I
17 spoke about are the triangle shape that some people are
18 familiar with when they're on a tower.

19 Each one here represents a side or a sector that we
20 talked about earlier. Each of these boxes here
21 represent an antenna -- again this is an example -- of
22 the transmitting antenna, and this would be a receiving
23 antenna for each sector.

24 And here we have them labeled Alpha, Beta and Gamma
25 so when we talk about the sides, we can kind of give a

1 little example of what we're talking about.

2 Q. So if I were standing over here looking on the
3 down version, and I utilize my cell phone on this side
4 of the cell tower, what sector would pick up my phone
5 call?

6 A. I would expect that this side would be the one
7 that actually picks up your phone call.

8 Q. It would be unusual, very unusual I believe
9 your testimony was from cross-examination, for it to be
10 picked up by Alpha or Gamma sector?

11 A. On the unusual portion it was described as
12 being south of the tower using a north base. In that
13 case I would expect that to be unusual. I wouldn't
14 expect that to happen. But if the phone, in this
15 example, is southeast of the cell site, I would not
16 expect it to use the north side or the southwest side of
17 that cell site.

18 Q. Thank you. Defense counsel was asking about
19 GPS. Can you tell the jury about GPS tracking. Is that
20 something that can be done years later or is that
21 something that has to be done realtime, live, right now?

22 A. Any time you get a request for GPS
23 information, it has to be done in a realtime situation.
24 Sprint Nextel does not carry or contain any historical
25 GPS information about any mobile device.

1 Q. And triangulation, that would also
2 realistically require more data than exists; is that
3 correct? Let me rephrase. For triangulation, with the
4 records that we have, is there enough information to do
5 triangulation?

6 A. No.

7 Q. But the data that we do have, it is reliable
8 in telling us at what cell tower and site that the phone
9 was utilized, correct?

10 MR. FOOTE: Objection. Leading.

11 THE COURT: Sustained as to the form.

12 BY MR. ROSARIO:

13 Q. The records that you provided, how would you
14 characterize them? As accurate? Reliable?

15 MR. FOOTE: Objection. Asked and answered.

16 THE COURT: Overruled.

17 THE WITNESS: I would have described them as
18 both accurate and reliable.

19 BY MR. ROSARIO:

20 Q. And as you spoke a moment ago, if I were to
21 use a cell phone and I'm in the broadcasting area of
22 Sector Two, the phone is most likely to connect with
23 Sector Two, correct?

24 A. Correct.

25 Q. So when these cell phone records show that

1 they are connected to Sector Two, the odds are more
2 likely that he was in the area of Sector Two, the
3 broadcast range of that cell tower?

4 MR. FOOTE: Objection. Leading.

5 THE COURT: Sustained as to the form of the
6 question.

7 BY MR. ROSARIO:

8 Q. Is it more likely than not that he was within
9 the area of Sector Two?

10 A. Well, according to these records, the phone
11 was in the area of Sector Two.

12 Q. Now, he mentioned the phone call at 2:13:26,
13 there appears to be two cell towers being utilized at
14 the same time. What if the owner of the other cell
15 phone is the same person, what if one family owns both
16 phones, would that be a reason why both phones are on
17 there?

18 A. That could be a reason, yes.

19 Q. You said you would have to check to see if
20 this other phone number, the 417-9406, was a Sprint
21 provider phone?

22 A. Yes.

23 Q. And if that phone was a Sprint provider phone
24 that was being held by a person, you're connecting the
25 information from the person who is using it in one spot

1 and the information who is using it from the other
2 Sprint provider at the other spot?

3 A. Yes.

4 Q. So it's not as if one phone is bouncing around
5 to all these different towers? You're actually getting
6 information from the person closest to the phone to the
7 cell tower and then the other person where they're
8 closest to the tower?

9 A. Yes.

10 MR. ROSARIO: May I have a moment, Judge?

11 THE COURT: You may.

12 BY MR. ROSARIO:

13 Q. So hypothetically speaking, if a husband and
14 wife own Sprint cell phones and one of them activates
15 their phone and calls the other, on a CDR archive record
16 we could pick up where both cell phones are at that time
17 period?

18 A. We can pick up the cell site information for
19 both phones.

20 Q. So at 2:13 in the morning, the one that
21 Defense counsel is referring to, we're picking up the
22 location of 417-9406, and we're also picking up the
23 location of 642-1236?

24 A. Yes.

25 Q. And where is 9406? What cell tower is it

1 connecting off of?

2 A. 119.

3 Q. And where is 1236?

4 A. South site 121.

5 MR. ROSARIO: Thank you. I have nothing
6 further, Judge.

7 MR. FOOTE: Briefly?

8 THE COURT: You may.

9 RE-CROSS-EXAMINATION

10 BY MR. FOOTE:

11 Q. Mr. Jensen, so that we clarify, this call data
12 report that we're all looking at is for a target number
13 of (727)462-1236, would you agree with that?

14 A. Yes.

15 Q. Okay. And you were only asked to look for
16 information with regard to that target number?

17 A. Yes.

18 Q. Previously your testimony on direct and maybe
19 with myself on cross, you're saying that the information
20 that these records are supposed to contain are for that
21 target number, correct?

22 A. Yes.

23 Q. Would it be unusual to have other people's
24 phone numbers or other target numbers on this one
25 report?

1 A. No.

2 Q. It would not be unusual?

3 A. Not for this exact type of report, no.

4 Q. So there can be other people's phone
5 information on this particular report?

6 A. Yes.

7 Q. Even though that was the target number that
8 we've been talking about?

9 A. Yes.

10 Q. Okay. And previously you said that the
11 primary purpose -- because obviously we're focusing on
12 cell towers, would you agree that the State of Florida
13 wants you to pinpoint a location of a particular call at
14 a particular time? Is that what you've been asked to
15 come to testify about?

16 MR. ROSARIO: I'm going to object. Asked and
17 answered.

18 MR. FOOTE: Judge, this was redirect.

19 THE COURT: I'm going to overrule that
20 objection.

21 MR. ROSARIO: Form of the question, Judge.

22 THE COURT: I'll sustain it as to the form of
23 the question as far as the time of the call you're
24 referring to.

25

1 BY MR. FOOTE:

2 Q. Okay. A general question. Were you requested
3 to testify as to geographic locations regarding cell
4 towers from these records?

5 A. I was asked to testify as far as the cell
6 towers that were used and the cell site locations that
7 were used by the phone.

8 Q. The State of Florida didn't retain you and fly
9 you in to ask about the phone number regarding billing;
10 is that right?

11 A. No. That's correct.

12 Q. So we've been focusing on cell towers and
13 locations?

14 A. As well as the whole record, incoming and
15 outgoing calls, date and time.

16 Q. Okay. And you testified earlier that the
17 primary purpose of these records are for billing
18 purposes and this is not the best tool to use for
19 geographic location; is that right?

20 A. It's not the best, no.

21 Q. And we talked earlier. Do you recall the
22 deposition that we conducted together with Mr. Rosario
23 present?

24 A. Yes, I do.

25 Q. Okay. And we spoke, you were on the

1 telephone?

2 A. Yes.

3 Q. And we went over all the records that you
4 would be looking at; do you recall that?

5 A. Yes.

6 Q. And you stated that you did have a copy of
7 that CDR or Viador report?

8 MR. ROSARIO: I'm going to object. This is
9 beyond the scope of redirect.

10 THE COURT: Approach.

11 MR. FOOTE: May I approach?

12 BENCH CONFERENCE:

13 THE COURT: The objection is beyond the scope
14 of redirect for recross.

15 MR. FOOTE: And I'm going directly into the
16 redirect questions where Mr. Rosario pulled out the
17 diagram, had the witness step down, and said that
18 person is located on this side or this side or this
19 side, which directly contradicts the testimony he
20 gave in deposition where he said with the records
21 that we are using here today he cannot do that.

22 MR. ROSARIO: No. I disagree. I did not
23 bring that question, I said if. Mr. Foote created
24 the expert and I posed a hypothetical that if a
25 person was ever on this side of the tower, he would

1 say this is likely.

2 THE COURT: Well, I'm going to allow the
3 question, but I don't believe that he ever
4 geographically pinpointed where anyone was.

5 MR. FOOTE: He did, Judge. And if we need a
6 read-back, we can do that. This is a very
7 important part of my case. He stepped down and was
8 giving a hypothetical about the phone, that it
9 would be unusual for a phone to be on the other
10 side.

11 THE COURT: Go ahead. I mean he answered that
12 question two or three or four or five times, then
13 you asked the same question two or three or four or
14 five different ways.

15 MR. FOOTE: Correct.

16 THE COURT: And he indicated that it would be
17 unusual if someone was on the south end of the cell
18 site to bounce off the north end of the south
19 tower.

20 MR. FOOTE: That was the response to the
21 State's question, not to my question.

22 THE COURT: Well, I believe that a response to
23 your question as well.

24 MR. FOOTE: No, Judge, he did not use the word
25 unusual. He said it's possible it can happen.

1 It's when Mr. Rosario came up, he said, would that
2 be unusual, and then he adopted his question.

3 THE COURT: Do you remember when you asked him
4 about percentages?

5 MR. FOOTE: Yes.

6 THE COURT: He said he couldn't give a
7 percentage. He said it would be very unusual. And
8 you said, can you give a percentage? And he said,
9 no, I can't. Do you not recall that?

10 MR. FOOTE: I recall the percentage question,
11 but not about it being unusual. That was the
12 question.

13 THE COURT: Well, that's why you asked for a
14 percentage. You said it would be very unusual.
15 I'm going to let you do it, but you've already done
16 it once. I'll give you some leeway to do it again.

17 MR. FOOTE: Because on redirect all of a
18 sudden we got into the possibilities saying a phone
19 is here, here or here.

20 THE COURT: Well, like I said, I think this
21 has been covered. It was covered in cross, it was
22 covered in direct, it was covered in redirect.
23 I'll give you some leeway to talk about it now.

24 MR. FOOTE: Just one question.

25 THE COURT: I'll allow it.

1 MR. FOOTE: Thank you.

2 OPEN COURT:

3 BY MR. FOOTE:

4 Q. We were talking about the deposition, and it
5 occurred on October 9th, 2009, you were by telephone,
6 and so that we were all straight, you went over and said
7 what documents you have sitting in front of you. Do you
8 recall that?

9 A. Yes.

10 Q. One of those documents is the one we've all
11 been looking at today, the CDR or Viador report?

12 A. Yes.

13 Q. And you were looking at that report, correct?

14 A. Yes.

15 Q. Do you recall me asking you a question, I
16 said, "Maybe you were just coming into the case, but if
17 the State of Florida intends to have you testify that a
18 particular call that occurred at a particular time with
19 this target number ending in 1236 occurred in a
20 particular direction --

21 MR. ROSARIO: I'm going to object. This is
22 improper impeachment.

23 THE COURT: Overruled. Well, sustained as to
24 the form. I'm going to actually sustain it as to
25 form. I believe you can ask the question and then

1 if it's -- well, approach.

2 BENCH CONFERENCE:

3 THE COURT: I believe it is improper
4 impeachment the way you're approaching it. You can
5 ask the question. If he denies it, then you can
6 impeach him.

7 MR. FOOTE: Well, I wanted to track the
8 language.

9 THE COURT: Well, you can ask the question
10 without referring to the depo.

11 MR. FOOTE: I can cite page and line.

12 THE COURT: I know, but you said, remember the
13 depo, remember you sat there, remember you had
14 everything before you.

15 MR. FOOTE: That we talked about before.
16 Okay. I'll just ask a general question.

17 THE COURT: I think you can put it in context
18 and then ask the question. If he denies it, then
19 you impeach him.

20 MR. FOOTE: Okay. Fine.

21 OPEN COURT:

22 BY MR. FOOTE:

23 Q. Mr. Jensen, if the State of Florida has
24 brought you here to testify that a particular call
25 occurred at a particular time at a particular direction,

1 given the records that we have here today that have been
2 entered into evidence and that we've all seen today, are
3 you able to testify to that location?

4 A. I cannot testify to the exact location of a
5 handset from these records.

6 Q. Okay. And even a particular direction?

7 A. Not the direction from the tower, no.

8 Q. Okay. So on redirect Mr. Rosario had you step
9 down and you pointed to a tower and he gave you a
10 hypothetical about sectors and said, if you were
11 standing over here, this would be the sector that would
12 pick up the call?

13 A. I said this would be the one that I would
14 expect to pick it up.

15 Q. Okay. Well, is that an opinion or is that a
16 fact?

17 A. That would be an opinion based on my training
18 and experience.

19 Q. Okay. But with the records that we have here,
20 you cannot say that?

21 MR. ROSARIO: Objection. Asked and answered.

22 THE COURT: Sustained.

23 BY MR. FOOTE:

24 Q. Based on the records that we have, okay, you
25 cannot tell the direction?

1 MR. ROSARIO: Objection again. Asked and
2 answered.

3 THE COURT: I'll allow one more question for
4 this, Mr. Foote. Go ahead.

5 BY MR. FOOTE:

6 Q. When you say that you expect that it would go
7 that way, are you relying on these records?

8 A. When I was using the example, the example was
9 given, here's the cell site, here's the direction of the
10 antennas, and here is the example of where the handset
11 was, what antenna would you expect the handset to use?
12 That's the answer I was giving. From this, I would need
13 more information as far as what you're asking.

14 Q. With regard to particular directions, times
15 and calls?

16 A. I can tell you the sector that was used from
17 this record, but I can't tell you where the phone was,
18 an exact location.

19 Q. Exact location and general direction as well?

20 MR. ROSARIO: Objection. Asked and answered.

21 MR. FOOTE: Judge, he's clarifying his answer.

22 THE COURT: Overruled.

23 BY MR. FOOTE:

24 Q. You said not a pinpoint location. Okay.

25 A. Right.

1 Q. I understand you cannot do that. But even a
2 general direction, from these records?

3 A. From this record right now, no.

4 MR. FOOTE: Thank you, sir. I have nothing
5 further.

6 THE COURT: May this witness be excused or do
7 you wish this witness to remain within the call of
8 the Court?

9 MR. ROSARIO: He may be excused, Judge.

10 MR. FOOTE: He may be excused.

11 THE COURT: All right. Sir, you may step
12 down. You are excused.

13 All right. Members of the jury, this is
14 probably a good opportunity for us to take our
15 afternoon break. It is now 3:06. What we'll do
16 is, let's take about 15 or 20 minutes, unless
17 people want to step outside. Deputy Flanagan will
18 probably wind up escorting you all downstairs if
19 you wish to get anything from the snack bar.

20 THE BAILIFF: I called her. She's going to
21 stay open in case they wanted to get coffee.

22 THE COURT: Remember the admonitions I gave
23 you earlier. All right. We'll stand in recess.

24 JURY ABSENT:

25 THE BAILIFF: Your Honor, the jury is out of

1 the presence of the Court.

2 THE COURT: We'll stand in recess.

3 RECESS TAKEN:

4 THE COURT: All right. Are we ready to return
5 the jury?

6 MR. SARABIA: Judge, Mr. Rosario is coming
7 right in.

8 THE COURT: All right. Let's go ahead and
9 return the jury. They're slowly making their way
10 up here. Yes, bring them out.

11 THE BAILIFF: The jury is entering the
12 courtroom.

13 JURY PRESENT:

14 THE COURT: Thank you.

15 MR. ROSARIO: Judge, may we approach?

16 BENCH CONFERENCE:

17 THE COURT: Is there any reason you-all don't
18 have these discussions during our break? You wait
19 until literally the jury is walking in before
20 you-all have these discussions? Is there a reason
21 for that?

22 MR. FOOTE: We were coming to the bench even
23 though you said bring the jury in.

24 THE COURT: Well, the problem is it doesn't
25 appear that you-all have talked about these things

1 while we're on break. It appears to me that you
2 talked about these things as you literally were
3 actually walking to the bench.

4 We were just on break for 20 minutes and
5 apparently you did not discuss these things. Just
6 as we start to bring the jury in, you then start
7 talking about these things and start approaching
8 the bench. Is there a reason why you don't address
9 this during our breaks?

10 MR. FOOTE: They're not conflicts, Judge.
11 Sometimes just good ideas come up and we agree and
12 then we come to bring it to your attention.

13 THE COURT: Well, then I stand corrected.
14 What is our good idea for this afternoon?

15 MR. FOOTE: For judicial economy the next
16 expert that's going to testify I anticipate he's
17 going to use some documents that he generated to
18 testify. It's a map, it's in a cell tower
19 location; however it's not to scale, there are no
20 distances on there.

21 Since we've agreed to allow the Court to take
22 judicial notice of the Google maps, we were going
23 to ask the Court to put in two coordinates to see
24 what the distance is so that when the State is
25 using that document we know what the distance is

1 and I don't have to object that it's not to scale.
2 So we were going to try to do that.

3 MR. ROSARIO: Now, I have actually plotted all
4 these cell towers on my computer. The problem is
5 the distance is calculated by road mileage and not
6 by as the crow flies.

7 MR. FOOTE: Not on Google Earth. On Google
8 directions it does. On Google Earth it will tell
9 you the distance.

10 THE COURT: Google Earth and not Google maps?

11 MR. FOOTE: Correct. Do you have the latest
12 version?

13 THE COURT: I don't believe I have any version
14 on here. Presumably I have to download Google
15 Earth Live.

16 MR. FOOTE: Let's do regular Google and see
17 what it says.

18 MR. ROSARIO: Well, why don't we go ahead and
19 get started with the witness. I'll have Brian
20 working on it while we're doing this, and then
21 we'll just go through it, and hopefully by the end
22 of it we'll know the distance from site one to site
23 two.

24 MR. FOOTE: Will that be prior to him
25 utilizing those demonstratives, because that's

1 going to be part of the question?

2 THE COURT: I suspect Mr. Sarabia will be far
3 quicker doing this than I am.

4 MR. FOOTE: I don't mind that. I just don't
5 want to get into an objection with regard to the
6 witness not knowing the distances, which I think is
7 going to be critical.

8 THE COURT: Well, I mean I'm sure at some
9 point in time, based on what you're familiarity
10 with this Google Earth thing is, he's going to be
11 able to come up with a distance or at least an
12 approximate distance.

13 MR. FOOTE: Well, what I'm saying is, I've
14 only talked to him during deposition, he did not
15 know the distances -- he was kind of familiar with
16 the area, but he's primarily in Tampa -- not unless
17 he's been updated and he has the distances. Is he
18 prepared to testify?

19 MR. ROSARIO: I don't know whether he is.

20 MR. FOOTE: I don't want to get in the middle
21 of where we're talking about towers when he doesn't
22 know the distances.

23 THE COURT: Well, why don't you start getting
24 into that. Mr. Sarabia, do your best computer
25 looking and see if you can come up with that, and

1 then if we get to that point where we need to have
2 a pause, we'll pause, and I guess I'll stare at
3 Mr. Sarabia like Final Jeopardy and the sound of
4 the music and wait for him to come up with an
5 answer.

6 MR. FOOTE: In the demonstrative pretty much
7 what we're asking for is the furthest tower to the
8 left and furthest to the right, which is 208 and
9 then 121.

10 MR. ROSARIO: Okay.

11 OPEN COURT:

12 THE COURT: All right. State?

13 MR. ROSARIO: Judge, at this time the State
14 would call Youssouf Mohamed.

15 May I approach the clerk, Judge?

16 THE COURT: You may.

17 YOUSSOUF MOHAMED,

18 a witness herein, being first duly sworn, was
19 examined and testified as follows:

20 THE COURT: You may inquire.

21 DIRECT EXAMINATION

22 BY MR. ROSARIO:

23 Q. Would you state your name for the record.

24 A. Yousouf Mohamed.

25 Q. Mr. Mohamed, how are you employed?

1 A. I've been employed by Sprint for ten years.

2 Q. And what do you for Sprint?

3 A. Well, actually I maintain and optimize the
4 cell sites for Pasco County, Polk, Manatee, Sarasota and
5 Highlands County, I maintain the cell sites for Sprint
6 PCS.

7 Q. Mr. Mohamed, can you pull that microphone
8 closer to you.

9 A. Okay. Desoto, Hardee and Highlands County, I
10 maintain and optimize the cell towers for Sprint PCS.

11 Q. Would you do me a favor, when you speak,
12 either speak into the microphone looking at me or over
13 to the jury.

14 And you've been doing that for ten years. Can you
15 tell us what type of training and education you've had
16 to do this job?

17 A. I have a Bachelor's of Science in Electronic
18 Engineering Technology from Denver, Colorado. And I
19 have RF1 which is Radio Frequency 1, Radio Frequency 2,
20 video CDMA, and that's CDMA training by Sprint PCS.

21 Q. CDMA?

22 A. Yes. That's the network they're using, the
23 technology they're using. Sprint is using the CDMA
24 technology.

25 Q. And are you up-to-date on the most recent

1 technology in cell phone technology?

2 A. Yes. Every year they give us training for any
3 new technology that comes up that we have to use at
4 work.

5 Q. And you stated that you optimize and maintain
6 the cell sites for Pasco County, Florida?

7 A. Yes, sir.

8 Q. And can you please tell the jury what you do
9 by optimizing and maintaining cell sites in Pasco
10 County, Florida?

11 A. We make sure that the cell sites are
12 up-to-date and have no issues. We make sure that they
13 don't have drop calls. We make sure they calibrate
14 whatever they intend the cell site to cover, and if we
15 have any issues, we'll investigate and try to solve it
16 right away.

17 Q. And in your training and experience, you've
18 been doing this for ten years?

19 A. With Sprint, yes.

20 MR. ROSARIO: Your Honor, may I approach the
21 witness?

22 THE COURT: You may.

23 MR. ROSARIO: I'm sorry. May I approach the
24 Court with counsel?

25 THE COURT: You may.

1 BENCH CONFERENCE:

2 MR. ROSARIO: Your Honor, at this time I
3 believe I've asked enough predicate questions to
4 allow this witness to render opinions on the
5 performance of cell site towers particularly in
6 Pasco County, Florida, and the radio frequencies
7 involved with that.

8 MR. FOOTE: To do what?

9 MR. ROSARIO: Just to render opinions.

10 THE COURT: He is tendering but not tendering
11 in front of the jury.

12 MR. FOOTE: As a person that can give
13 opinions?

14 MR. ROSARIO: On cell phones.

15 MR. FOOTE: As an expert?

16 MR. ROSARIO: Yes, as an expert.

17 THE COURT: Right. There's either expert
18 opinions or lay opinions. He wouldn't be giving a
19 lay opinion as to the operation of the cell towers,
20 so it would have to be by expert.

21 MR. FOOTE: I have no objection to him being
22 qualified as an expert.

23 MR. ROSARIO: Thank you.

24 MR. FOOTE: In?

25 MR. ROSARIO: Cell site technology and radio

1 frequency engineering.

2 MR. FOOTE: Yes.

3 OPEN COURT:

4 BY MR. ROSARIO:

5 Q. And in your job, you routinely deal with cell
6 site technology and radio frequency engineering?

7 A. Yes, I do.

8 Q. Now, you stated that you optimize and maintain
9 the cell sites in Pasco County, Florida. I'd like to
10 narrow that down a little bit towards the area between
11 Little Road and Grand Boulevard. Are there Sprint cell
12 towers in that area?

13 A. Yes, sir.

14 Q. Are those cell towers that you optimize and
15 maintain?

16 A. Yes, sir.

17 Q. Can you please tell the jury how you optimize
18 a cell tower.

19 A. Okay. We make sure that cell tower --

20 Q. Can I ask you to slow down just a little bit.

21 A. Okay. We optimize the cell tower -- every
22 morning, you know, we have a tool that tell us -- you
23 know, we pull the information of all these towers, and
24 we pull this data from this tool, and we look if they
25 have any kind of issues in each site tower, the cell

1 towers. If we have an issue, we will investigate what
2 kind of issues they have, and if we need to send a field
3 tech to investigate that site, we investigate it.

4 Q. And are reports generated based upon these
5 optimization tools that you're talking about daily?

6 A. Yes.

7 Q. What are those reports called?

8 A. The tool is FALCON.

9 Q. It's called FALCON?

10 A. FALCON, yeah. What it does, it will extract
11 all the information from the switch and give us that
12 information so we can see if there is an issue with the
13 towers.

14 Q. Are you acquainted with what's called an BBH
15 report?

16 A. Yes. That's a Bouncing Busy Hourly report.
17 We use it to look at --

18 Q. Bouncing Busy --

19 A. Bouncing Busy Hourly report.

20 Q. -- Hourly report?

21 A. Yes. That shows you the busiest tower for
22 that date, that tower area.

23 Q. Is that a record kept in the normal course of
24 business with Sprint?

25 A. Yes.

1 Q. Are you a custodian of that record?

2 A. Yes, I am. Every morning when I go to the
3 office, the first thing I pull is I pull those data
4 forms using the FALCON tool from the switch.

5 Q. So you pull the BBH?

6 A. The BBH and the 24-hour data.

7 Q. The 24-hour data. Those are the two reports
8 that you pull?

9 A. Yes, sir.

10 MR. ROSARIO: Your Honor, may I approach the
11 witness?

12 THE COURT: You may.

13 MR. ROSARIO: Your Honor, I'm showing what's
14 previously been marked as State's Exhibit 29.

15 BY MR. ROSARIO:

16 Q. Do you recognize that?

17 THE COURT: I'm sorry. Is that 29 for
18 identification?

19 MR. ROSARIO: For identification purposes.

20 THE WITNESS: Yes. This is the 24-hour
21 report.

22 BY MR. ROSARIO:

23 Q. That is the 24-hour report?

24 A. Yes.

25 MR. ROSARIO: And I'm showing the witness

1 what's previously been marked as 30.

2 BY MR. ROSARIO:

3 Q. Do you recognize that?

4 A. Yes. This is the Bouncing Busy Hourly reports
5 for the three days.

6 Q. And so Number 30 is what we call the BBH,
7 Bouncing Busy Hourly for the dates of what?

8 A. From the date of March 25, 2006, March 26,
9 2006, and March 27, 2006.

10 MR. ROSARIO: Your Honor, I move for admission
11 of State's Exhibit 30.

12 MR. FOOTE: No objection.

13 THE COURT: Okay. Be received without
14 objection. And that's the 24-hour report; is that
15 correct?

16 MR. ROSARIO: No. I believe that was the BBH.

17 THE COURT: Okay. That's the BBH. Okay.

18 BY MR. ROSARIO:

19 Q. Referring to State's Exhibit 29, this is the
20 24-hour report?

21 A. This is the 24-report for the cell tower
22 that's serving the area in question, and that's for the
23 dates March 25, 2006, March 26, 2006, and March 27,
24 2006.

25 MR. ROSARIO: Your Honor, I move for admission

1 as State's Exhibit 29.

2 THE COURT: All right. Any objection?

3 MR. FOOTE: Judge, one moment. No objection.

4 THE COURT: It will be received without
5 objection.

6 BY MR. ROSARIO:

7 Q. So you stated that every morning you pull
8 these two reports?

9 A. Yes.

10 Q. And I believe you told us -- well, let's go
11 through with what the BBH report is. Can you please
12 tell us what information is recorded on the BBH report
13 and what it means and what the importance of it is?

14 A. The BBH, the Bouncing --

15 Q. Please slow down.

16 A. The Bouncing Busy Hour report tell us the
17 busiest hour for that day and it will tell us the
18 section. There it says Erlang, and that tells if the
19 capacity is full for that day.

20 Q. If the capacity is full?

21 A. The capacity for that day. We look at the
22 capacity for the site, or to improve the capacity, we
23 look at that data.

24 MR. ROSARIO: Your Honor, may I approach
25 witness?

1 THE COURT: You may.

2 BY MR. ROSARIO:

3 Q. I'm showing you what's previously been
4 admitted as State's in evidence 26. That's the BBH
5 report, correct?

6 A. Yes, sir.

7 Q. Now, on the left-hand side of the report, what
8 is on that side?

9 A. Okay. The date, the site name, and there is a
10 BTS name that is usually used on the switch. There is
11 the time -- the sector name, and there's a time, and the
12 Erlang. The Erlang shows the capacity.

13 Q. Can you please explain to the jury what an
14 Erlang is?

15 A. An Erlang is the radio frequency term to get
16 whether we need more capacity for that site. That's the
17 measuring tool to tell us, you know, if we need more
18 capacity for that site.

19 Q. And as we go across on the columns going
20 across, we've gone to the Erlangs.

21 A. Yes.

22 Q. What else is going across the top?

23 A. The Erlangs, and that's the minutes of use,
24 the minutes that's used that day, how many minutes that
25 sector is using. Then the call attempt in that

1 particular sector. Then the access failure in that
2 particular sector, and there is a percentage of the
3 access failure in that particular sector.

4 And then we have equipment block, if there is an
5 issue with equipment in that particular sector. Then we
6 have is a drop calls, a number of drop calls in that
7 particular sector. Then we have the access, the access
8 call in that particular sector. Then we have a
9 percentage of the drop call in that particular sector.

10 Q. Let's just go over that a little bit more.
11 Block calls, equipment block calls, can you tell the
12 jury what that is?

13 A. Equipment block calls is when you have any
14 kind of equipment issue on that site, on a particular
15 site. If you have any kind of issue, what it does, it
16 will block or attempt to let the call come in. If it
17 fails, then automatically the switch report it as a
18 block call. So in that case, if we have more like that,
19 you know, right away we will dispatch a field tech to go
20 look at the equipment.

21 Q. And as a matter of fact, on March 25th, 2006,
22 on Cell Tower 119, how many equipment blocks were there?

23 A. There are 29 block calls. In that period of
24 an hour we have 1,322 call activity in that sector
25 within the one period involved between noon and

1 1:00 p.m., and we have 29 calls blocked.

2 Q. So this BBH report will tell you how these
3 cell towers in this area are working and if there is
4 anything that you would notice that you need to go out
5 and fix?

6 A. Yes, sir.

7 MR. ROSARIO: Your Honor, may I approach the
8 witness?

9 THE COURT: You may.

10 BY MR. ROSARIO:

11 Q. The 24-hour report that's previously been put
12 in as State's Exhibit 27, can you please basically go
13 over that with the jury.

14 A. It's the same thing. We have the dates, and
15 the cascade, and the BTS number, and the sector.

16 Q. The PTS number?

17 A. BTS.

18 Q. What is a BTS number.

19 A. A BTS number is the number we use in the
20 switch to define the sites.

21 Q. The cell tower?

22 A. The cell tower identification, yes, we use it
23 with the switch.

24 Q. And then the sector?

25 A. The sector is the sector -- the eight sites,

1 they have three sectors, and we have numbering one
2 through three to identify the sectors.

3 Q. And then on this 24-hour report, it also has
4 the total Erlangs?

5 A. The total Erlangs, yes.

6 Q. The total setup attempts?

7 A. Yes. The total minutes of use, how many
8 minutes used at that particular sector.

9 Q. Access failure?

10 A. The access failure, drop calls, equipment
11 blocks.

12 Q. And this is another report that's normally
13 generated and you look at to see whether the cell towers
14 were working properly?

15 A. Yes, sir.

16 Q. And these are again for the dates of
17 March 25th, 26th and 27th of 2006?

18 A. Yes, sir.

19 Q. Do you have a copy of that in your paperwork?

20 A. Yes, sir.

21 MR. ROSARIO: May I have a moment, Judge?

22 THE COURT: You may.

23 MR. FOOTE: May I approach, Judge?

24 THE COURT: You may.

25 MR. FOOTE: May I approach, Judge?

1 THE COURT: You may.

2 BENCH CONFERENCE:

3 MR. FOOTE: We're good.

4 MR. ROSARIO: He's good.

5 THE COURT: Anybody under the age candidly of
6 25 is far better at computers than some of us old
7 ones.

8 MR. ROSARIO: Judge, the information we have
9 is between Cell Tower 208 and 121 is 4.2 miles.
10 And we have no objection to the Court taking
11 judicial notice of that distance.

12 THE COURT: Are you going to stipulate to
13 that?

14 MR. FOOTE: Yes. Once he shows the diagram so
15 that everyone one can know what the furthest
16 distance east and the furthest distance west with
17 regard to the towers will be.

18 MR. ROSARIO: Right. What I will do is I was
19 about to go to my maps next, and I'm going to say
20 the distance between Towers 208 and 121 is 4.42
21 miles.

22 THE COURT: Well, it needs to be stipulated to
23 because what you say is not necessarily evidence.

24 MR. ROSARIO: I will say we'll stipulate.

25 THE COURT: So it needs to be indicated to the

1 jury that based upon a stipulation between the
2 parties this distance is the 4.42 miles.

3 MR. ROSARIO: Okay.

4 MR. FOOTE: And I don't have any objection if
5 he wants to write them on the top or whatever so
6 that we remember.

7 MR. ROSARIO: Okay.

8 OPEN COURT:

9 THE COURT: Members of the jury, once again in
10 just a moment you're going to receive a stipulation
11 between the parties. Remember a stipulation is an
12 agreement as to a fact between the parties and
13 there need be no further evidence to establish the
14 stipulated fact.

15 MR. ROSARIO: Yes, Judge, the Defense and the
16 State have stipulated that the distance between
17 Cell Towers 208 and 121 is 4.42 miles according to
18 Google maps.

19 THE COURT: 208 and 121?

20 MR. ROSARIO: Yes, Judge.

21 THE COURT: 4.42 miles. All right. Thank
22 you.

23 BY MR. ROSARIO:

24 Q. Now, I know I started with these reports, and
25 what I'd like to go to is the maps so it's a little bit

1 easier to understand.

2 A. Okay.

3 Q. You optimize and maintain the towers in the
4 New Port Richey area?

5 A. Yes, sir.

6 MR. ROSARIO: Your Honor, may the witness step
7 down?

8 THE COURT: The witness may stand down to
9 utilize the exhibit.

10 MR. ROSARIO: Judge, at this time I'd like to
11 move into admission State's Exhibits 27 and 28.
12 The first one is cell towers with the addresses of
13 the cell towers located on them, and the second one
14 is the cell towers with a coverage map.

15 MR. FOOTE: Without objection, Your Honor.

16 THE COURT: All right. They will be received
17 without objection. However, I think their number
18 is going to be different.

19 THE CLERK: It will be 28 and 29.

20 THE COURT: Numbers 28 and 29.

21 THE CLERK: Your 27 will be 28?

22 MR. ROSARIO: Will be 28?

23 THE COURT: Correct. You already have 27.

24 That was renumbered as the 24-hour report.

25 MR. ROSARIO: Your Honor, may the witness step

1 down?

2 THE COURT: The witness may stand down.

3 MR. ROSARIO: Your Honor, I'm putting before
4 the witness State's Exhibit 28.

5 BY MR. ROSARIO:

6 Q. Mr. Mohamed, do you recognize this map?

7 A. Yes, I do.

8 Q. Did you create this map?

9 A. Yes. We have a tool called Planet that
10 propagated this map for us.

11 Q. The tool is a computer software program?

12 A. Yes, sir.

13 Q. And it propagated this for you?

14 A. Yes.

15 Q. It's not as if you hand-punched this in? It's
16 what the computer printed out?

17 A. Yes, sir. The only thing I did was I put the
18 addresses on the map.

19 Q. Okay. And as you've heard, that there is a
20 stipulation between the State and the Defense that
21 between Cell Tower 121 and 208 is 4.42 miles.

22 A. Okay.

23 Q. Does that sound correct?

24 A. That's correct.

25 Q. Okay. Let me switch to our next map, State's

1 29. Can you please show the jury on State's 29 where
2 Cell Tower 121?

3 A. Right here.

4 Q. Can you show the jury where Cell Tower 120 is?

5 A. Right here.

6 Q. Cell Tower 119?

7 A. Right here.

8 Q. Cell Tower 208?

9 A. Right here.

10 Q. Cell Tower 214?

11 A. Right here.

12 Q. And so when I say that it's 4.42 miles, it
13 would be between which two towers?

14 A. This tower and this tower.

15 Q. Okay. And Cell Tower 121 is located where?

16 A. It's located at 5000 Little Road.

17 Q. And Cell Tower 120 is located where?

18 A. Ridge Road.

19 Q. And Cell Tower 119?

20 A. Grand Boulevard.

21 Q. And Cell Tower 208?

22 A. Floramar Terrace in New Port Richey.

23 Q. And then finally Cell Tower 214 is?

24 A. Baker Road. It's located at 6115 Baker Road.

25 Q. Okay. And you maintain all of these towers?

1 A. Yes, sir.

2 MR. ROSARIO: Your Honor, I've placed before
3 the witness State's Exhibit 25. This is the
4 diagram that's previously been entered into
5 evidence.

6 BY MR. ROSARIO:

7 Q. Do you recognize this type of diagram?

8 A. Yes, sir.

9 Q. This type of diagram, can you please explain
10 to the jury how this cell tower works in relation to the
11 maps that we're talking about?

12 A. Okay. This is the tower, and this is the
13 antennas on the tower, and the direction they are
14 facing. Usually in Sprint we use -- Sector One usually
15 is facing north.

16 THE COURT: Mr. Rosario, perhaps it would be
17 advantageous if you can somehow utilize the
18 microphone on the podium there to assist our court
19 reporter.

20 MR. ROSARIO: Yes, Judge.

21 THE WITNESS: Usually the one facing north we
22 use as number one, Sector One. And the one using
23 the southeast is Sector Two. And the one using
24 southwest is Sector Three. And each tower, they
25 have two antennas, one is the transmitter and one

1 is the receiver.

2 BY MR. ROSARIO:

3 Q. Now, if we go back over to Cell Tower 121, and
4 apply that to what we know here, Cell Tower 121, the
5 sector facing north would be what number?

6 A. This is Number One, Sector One.

7 Q. And the sector facing southeast would be?

8 A. Number Two.

9 Q. And the sector facing southwest?

10 A. Is Sector Three.

11 Q. And would that be similar with Cell Tower 214?

12 A. Yes, sir.

13 Q. 120?

14 A. Yes, sir.

15 Q. 119?

16 A. 119 there is a little bit of a difference. It
17 is shooting 10 degree to the north.

18 Q. Why is that?

19 A. To make more coverage in this area.

20 Q. So the whole concept of cell towers is you
21 want coverage. To cover what?

22 A. To cover the area that we want to be covered.

23 Q. Cell Tower 208?

24 A. 208 is different because this is zero degree.
25 Sector One is 90 degree. And this is 120, and this is

1 330 degree.

2 Q. Why is that?

3 A. Because this is to achieve the coverage you
4 want to achieve in that area.

5 Q. Thank you. One moment, Mr. Mohamed.

6 Now, do you drive these roads yourself and use any
7 instruments to make sure the towers are working?

8 THE COURT: Mr. Rosario, you're not utilizing
9 the microphone now.

10 MR. ROSARIO: I am sorry. Basically because I
11 boom my voice. I'm sorry.

12 BY MR. ROSARIO:

13 Q. Do you drive these roads yourself and utilize
14 any tool?

15 A. Yes. We have a tool that collects the rate
16 time data. Whenever we have an issue, we go out and
17 drive and collect data and file that data, and if
18 there's an issue with the network, we will study that
19 data and resolve the issue.

20 Q. Do you have these cell towers optimized to a
21 point where there is coverage and they won't cause
22 conflicts with each other?

23 A. Yes.

24 Q. Tell the jury about that.

25 A. What we do is we try to take the area and make

1 sure that there is no interference. We want to have the
2 same and not overlap each other so we have the accurate
3 coverage in the area.

4 Q. So do you want them completely overlapping
5 each other or just budding up against each other at some
6 point?

7 A. It depends how you want to cover it. This
8 area Port Richey area, we look at that dense area, so we
9 want them to overlap a little more. And when you go
10 farther in the rural area, you don't want them to be
11 overlap that way so you can get more coverage. So we
12 just overlap them a little bit so they can hang down for
13 once they get to the other sector.

14 Q. So Cell Tower 121, tell us about Cell Tower
15 121.

16 A. Cell Tower 121, if you look at the other
17 areas --

18 Q. You're going to have to slow down a little
19 bit.

20 A. Okay. Sorry. Cell Tower 121, if you look at
21 the color, this is what we call the coverage value.
22 That shows you the footprint each sector is covering
23 that's colored. Sector One is covering this green area,
24 and the Sector Two is covering this white area, the
25 other covers you can see is covering this area.

1 Q. The darker green color?

2 A. Yes, sir.

3 Q. Now, there's more white up here. Is Sector
4 121 covering up there as well?

5 A. No. Actually there is a site right there to
6 the north of that that's covering that.

7 Q. So there's another cell tower up here?

8 A. Yes, sir.

9 Q. So Cell Tower 121 is covering the area here
10 that is shown on this map?

11 A. Yes. This white and green and dark area here.

12 Q. And then when you get down towards Cell Tower
13 121, what happens when get to the Alpha sector of 121
14 versus the Gamma sector of -- I'm sorry -- the Alpha
15 sector of 120 compared to the Gamma Sector of 121?

16 A. Yes. As you can see, this sector, this color
17 is coverage of the footprint. You see that red color,
18 that's what it covers, this sector is covering this
19 area. And what happens is if you're driving here on
20 this sector driving to the north, you end up in this
21 sector.

22 Q. So if I were connected and I'm driving down
23 State Road 54, and I'm connected to Cell Tower 121, and
24 I turn north on Little Road, I'm going to connect to --

25 A. Yeah, once you're driving in this sector, as

1 soon as you make that -- as soon as you hit this
2 boundary, you hand off to this side.

3 Q. So as soon as you go from the red area, you
4 hand off to the green area?

5 A. To the green area, yes.

6 Q. Okay. And is that the same for Cell Towers
7 119 and 208 and 214?

8 A. All of them are the same.

9 Q. So when you look at the coverage map, you can
10 see the way they -- the colors mean something?

11 A. The colors means just to see the coverage
12 boundary for each sector.

13 Q. Okay. So Sector Two, Sector Two of Tower 121
14 is located where?

15 A. Sector Two is right here. You see the white
16 there.

17 Q. That would also be called the Beta sector?

18 A. The Beta sector, yes, sir.

19 Q. And this cell tower antenna, it is optimized
20 to cover about what distance?

21 A. This sector is divided. It has -- you know,
22 it's out there. I believe it's located at 5BB, that
23 means the tower will cover more area. So because of the
24 second -- the next cell tower we have is farther south,
25 so we will achieve more coverage from the south.

1 Q. So about how far in miles is this cell tower
2 covering before it's picked up by the next cell tower?

3 A. I probably would say is 2.5 to 3 miles.

4 Q. So from the antenna 2.5 to 3 miles --

5 A. Is coming into this area.

6 Q. Out this way?

7 A. Yes, sir.

8 Q. Okay. And Cell Tower 208.

9 A. Yes, sir.

10 Q. You said this is the Alpha sector because it's
11 rearranged?

12 A. Yes, sir.

13 Q. Is Cell Tower 208 actually mounted on a roof
14 of a structure?

15 A. Yes. It's a rooftop.

16 Q. And its Alpha sector, how far is it optimized
17 for?

18 A. It's optimized to cover up to -- the Alpha
19 sector is optimized to cover the red coverage, it's
20 optimized to cover that area. So the Gamma sector of
21 214 would pick up the rest of it because this a little
22 taller than the site.

23 Q. I'm sorry?

24 A. This is the height, this a little taller than
25 the Alpha sector that is there.

1 Q. So 208 is only covering this red area here of
2 the Alpha sector, Sector One?

3 A. Yes, sir.

4 Q. Okay. And then 214 is covering this bigger
5 greener area?

6 A. Yes, sir.

7 Q. And Cell Tower 119, the Alpha sector, what
8 color is that?

9 A. That's a white color.

10 Q. It seems like a much smaller distance than,
11 say, Sector Two of 121?

12 A. Because they are very close by. So the sector
13 of the Alpha sector of 208 will be stronger, so it will
14 pick it up.

15 Q. So if I were driving down Grand Boulevard
16 around Dahlia Avenue, and I utilized my cell phone, what
17 is the most likely cell tower it would hit?

18 A. Probably here on 208.

19 Q. If I were using my cell phone from a residence
20 over on Sagamore Court, what would be the most likely
21 cell tower it would hit?

22 A. In the area of 121 Beta, Sector Two.

23 Q. Sector Two?

24 A. Sector Two, yes, sir.

25 Q. Thank you. Please take your seat.

1 On March 26th, 2006, were all of these cell towers
2 working operationally correct?

3 A. According to the data I have in front of me,
4 yes.

5 Q. I know we talked about access failures on the
6 25th. Were there any access failures on the 26th at
7 all?

8 A. Yeah, we have a few of them, but most of them
9 they are below one percent.

10 Q. Below one percent?

11 A. Yes, sir.

12 Q. How about equipment blocks?

13 A. Zero. None.

14 Q. None of the 26th?

15 A. Yes.

16 Q. All right. So let's refer to Tower 119,
17 Sector One, what was its busiest hour?

18 A. The busiest hour is from 7:00 p.m. to 8:00
19 p.m.

20 Q. So that would be Sector 119?

21 A. Yes, sir.

22 Q. And Cell Tower 208, on March 26th, 2006, what
23 was its busiest hour in Sector One, the area that we
24 talked about?

25 A. The Alpha sector of Cell Tower 208, the

1 busiest hours is from 7:00 p.m. to 8:00 p.m.

2 Q. And on Cell Tower 120, what was the busiest
3 hour on sector Alpha or Sector One?

4 A. The busiest hour for Tower 121, the Alpha
5 sector or Sector One is from 8:00 p.m. to 9:00 p.m.

6 Q. Cell Tower 214, in the Gamma sector, Sector
7 Three, what was the busiest hour?

8 A. The busiest hour for Cell Site 214, the Gamma
9 sector, Sector Three is from 7:00 p.m. to 8:00 p.m.

10 Q. Sector 121 in Sector Two, the Beta Sector,
11 what was its busiest hour?

12 A. Site 121, Sector Two, the busiest hours is
13 from 8:00 p.m. to 9:00 p.m.

14 Q. Now, March 26th, 2006, was the day of a
15 celebration we had here called Chasco Fiesta. Do any of
16 your records indicate whatsoever that there was a higher
17 volume of calls at 1:00 o'clock in the morning on any of
18 these cell towers?

19 A. No.

20 Q. The highest amount of calls made during those
21 times were the ones you've just related?

22 A. Yes, sir.

23 Q. So at 1:00 o'clock in the morning, based upon
24 the data that you have here, you have nothing to show
25 that these cell towers would have been swamped with

1 calls?

2 A. No.

3 Q. These records, if 1:00 o'clock in the morning
4 was the high time or the maximum amount of calls, these
5 records would show it?

6 A. Yes, sir.

7 Q. The Erlangs that we were talking about, did
8 the Erlangs on any of these cell towers ever reach
9 maximum capacity so that a cell tower would have to hand
10 it off to another cell tower or anything like that?

11 A. No.

12 Q. So all cell towers were operating at 1:00
13 o'clock in the morning to a reasonable degree of radio
14 frequency engineering probability optimally?

15 A. Yes, sir.

16 Q. The percentage of dropped calls for the 24
17 hours of March 26th, 2006, was that less than
18 one percent?

19 A. Yes. All of them are one percent except 119,
20 Beta, it's 1. -- well, when you've got the low data,
21 that's only 66 dropped calls, but when you look at the
22 percentage it's 1.4 percent.

23 Q. If something were to go wrong with one these
24 towers at 1:00 o'clock in the morning, would these
25 numbers spike?

1 A. Yes. If there is any site down there, for
2 example, if let's say Site 121 is down and Site 124, the
3 Beta Sector is trying to handle the call when that site
4 is down, it would drop the call.

5 Q. Hypothetically, if I were to pick up my cell
6 phone and use it on March 26th, 2006, on Grand
7 Boulevard, between Grand Boulevard and Madison Street,
8 which cell tower would be the most likely cell tower to
9 pick up my phone call?

10 A. The closest site is 208, the Alpha sector of
11 Site 208.

12 Q. And if I were on that date to pick up my cell
13 phone and make a phone call from Sagamore Court at
14 1:00 o'clock in the morning, what cell tower, what site
15 and what sector would that cell phone call most likely
16 hit?

17 A. That cell tower would hit Site 121, the Beta
18 sector.

19 Q. In your experience is there any probability to
20 a reasonable degree of engineering probability that
21 would say that if I made a phone call over by 208, it
22 would register over on Sector Two of 121?

23 A. No.

24 Q. Have you reviewed the cell phone CDR records
25 for target number (727)642-1236?

1 A. Yes, sir.

2 MR. ROSARIO: Your Honor, I'm also showing the
3 witness what's previously been marked as State's
4 Evidence 23.

5 BY MR. ROSARIO:

6 Q. I believe this is a condensed version of the
7 records.

8 A. Okay. Yes.

9 Q. At 1:09 in the morning, that cell phone
10 connected to what cell tower?

11 A. The cell phone that have the number
12 (727)642-1236 at 1:09 a.m. in the morning, the day of
13 March 26th, 2006, is connected to Site 121, Sector Two.

14 Q. Am I pointing into the correct area?

15 A. Yes, sir.

16 Q. That cell phone connected to Cell Tower 121
17 the entire evening up until from 1:09 to 1:33 in the
18 morning?

19 A. Could you repeat that question.

20 Q. In your reviewing of the records, that cell
21 phone, target number 642-1236, that cell phone between
22 1:09:48 and 126.43 connected to Sector Two, 121?

23 A. Yes, sir.

24 Q. And then at 1:33:49, it moved over into sector
25 what?

1 A. The Gamma sector.

2 Q. The 3-121?

3 A. Yes.

4 Q. The Gamma sector?

5 A. Correct.

6 Q. And then at 1:43 in the morning, where was
7 that cell phone?

8 A. At 1:43 in the morning, the cell phone is at
9 119, Alpha.

10 Q. Am I pointing to the correct area?

11 A. Yes, sir.

12 Q. Now, you cannot say that that cell phone was
13 exactly at a certain point inside this sector; is that
14 correct?

15 A. No, I cannot say. I cannot say that
16 sector is -- that device is served by that sector,
17 Sector 121, Beta.

18 Q. The 2-121?

19 A. Yeah, 2-121.

20 Q. So you can say that that cell phone was served
21 by this sector here as outlined in the map?

22 A. Yes, sir.

23 Q. You're not trying to say that that cell phone
24 was exactly at this particular point or that particular
25 point?

1 A. No.

2 Q. It was definitely within that sector?

3 A. Yes, sir.

4 Q. In your optimization and your working with
5 these cell towers, is it probable, to a reasonable
6 degree of radio frequency engineering, that a phone call
7 could be from over in this area and register over in the
8 2-121 zone?

9 MR. FOOTE: Objection. Asked and answered.

10 THE COURT: Overruled.

11 BY MR. ROSARIO:

12 Q. And register over in the 2-121 zone?

13 A. No.

14 MR. ROSARIO: I have nothing further.

15 THE COURT: All right. Cross?

16 MR. FOOTE: Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. FOOTE:

19 Q. Good afternoon, Mr. Mohamed. How are you?

20 A. Good. How are you?

21 Q. Okay. You testified earlier with regard to
22 your training and experience, you've been doing this for
23 about ten years with Sprint?

24 A. Yes, sir.

25 Q. Is it Ericsson and Sprint?

1 A. Just Ericsson -- I'm sorry. Just Sprint, but
2 I start -- September 21st I went to Ericsson.

3 Q. So you're currently with Ericsson now?

4 A. Yes, sir. Doing the same thing. We
5 provide -- Sprint outsource their engineering department
6 to Ericsson, but still Sprint is our client, we do the
7 same thing.

8 Q. I understand. And over those ten years,
9 you've been dealing with cell towers and engineering?

10 A. Yes, sir.

11 Q. Okay. And how many times have you actually
12 come to court like this and testified?

13 A. This is the first time.

14 Q. This is the first time?

15 A. Yes.

16 Q. Okay. First of all, the information that you
17 relied on to generate these documents, you generated
18 these documents for court here today, right?

19 A. Yes, sir.

20 Q. You didn't keep these in your office and bring
21 them with you? You made them for court today?

22 A. Well, we have them in the file. The only
23 thing is I just pulled that out and highlighted -- I
24 just pulled out the area and just brought it here.

25 Q. But you actually choose the colors?

1 A. No. The colors have been there for a while.

2 Q. But the different colors actually are just
3 used differently so you can show different coverage
4 areas?

5 A. Yes.

6 Q. And the coverage area with a map like that, a
7 coverage area is not necessarily a power setting for the
8 tower?

9 A. Well, actually what happen is, before you
10 propagate this, you propagate using the tool you have,
11 and when you go out and collect the data trying to get
12 the correct data, and you bring your count and you would
13 tune the software you have, the tool you have, you tune
14 it too much exactly what you see outside and then reword
15 it and retune the tool and then you will get it.

16 Q. Okay. Just to clarify in terms of the jury,
17 there's a difference between the coverage area and then
18 how you actually set the power settings on the tower?

19 A. Using the same type of antenna, using the same
20 type of output on that antenna, output when you do the
21 coverage plan.

22 Q. Is the coverage plan something that we as lay
23 persons, not as engineers, but we see those commercials
24 where AT&T puts one up and then Sprint puts one up, and
25 then you both say you got more coverage?

1 A. Yes.

2 Q. That has nothing to do with power settings on
3 the tower? That just shows the area that's covered by
4 their providers?

5 A. Not necessarily. You see, what happens is,
6 there is a threshold we use. The threshold they use --
7 I don't know what threshold the other carrier use, but
8 the Sprint use a threshold. You see on the map this
9 white color, black color, then it shows yellow. For
10 Sprint, for example, they using -- you'll get the
11 coverage on the road, while you're driving that's the
12 coverage you're going to get.

13 Q. Okay. And you would agree with me that this
14 technology is not perfect?

15 A. Well, this is how you look at it.

16 Q. Well, for example, you just said driving down
17 the road there are times when you get drop calls, block
18 calls?

19 A. Yes, sir.

20 Q. Usually when it's a very important call, it
21 gets dropped?

22 A. Yes.

23 Q. And you've got to call the person back?

24 A. Yes.

25 Q. Okay. And sometimes you have to drive for a

1 little distance until the bars, one, two, three, four,
2 that's the other company that talks about how many bars
3 you get?

4 A. Yes.

5 Q. Do those bars indicate signal strength in the
6 area that the handset can pick up?

7 A. Well, looking as the Ericsson engineer, I
8 don't look at the bar. I look at the -- there is a code
9 that we assign a number, we assign to each sector, and
10 we call them PILP, P-i-l-p, and what it does it will
11 tell you exactly what power that has.

12 It tells you if you see negative three, that you
13 have the best coverage. If you see negative 15, you
14 don't have the best coverage. But just looking at that,
15 you cannot -- you know, it depends on the bar. The bar
16 is just there for the client I guess to look at.

17 Q. All right. And all I want to do is simplify
18 it a little bit for regular terms. When we as lay
19 persons see those bars, sometimes we get in a certain
20 area, we have five bars?

21 A. Yes, sir.

22 Q. And as we get in some areas, it drops down to
23 one?

24 A. Yes, sir.

25 Q. And sometimes it will say no service?

1 A. Yes, sir.

2 Q. Are those areas where there's actually no
3 coverage or signal coming from a tower?

4 A. Yes. The coverage is coming from the tower,
5 yes.

6 Q. But is that where there's no coverage, when we
7 have no service?

8 A. Well, it depends what area you are. If you
9 are in a rural area and it's quiet and in the evening,
10 nighttime, you know, when the capacity is very low on
11 those networks, I mean you can go far even though you
12 have one bar, you can still make a call. Sometimes you
13 see no bars and still you can make a call. But when you
14 get in a dense area and there is a lot of noise created
15 by the cell tower, you might drop a call or you might
16 get access for the area.

17 Q. Okay. Well, for example, in this area, the
18 New Port Richey area, okay, I have a Sprint phone, when
19 I get up to Little Road or Denton or so, for about five
20 minutes I never have service. What doesn't that mean?

21 A. You don't have service, that means --

22 Q. I mean I know the block, the exact area. What
23 does that actually mean in radio frequency?

24 A. When it say you don't have service, you know,
25 if you're driving in that area and it says you have no

1 service, that means there's some issue with that sector
2 serving that area. Maybe a certain sector is down,
3 especially when you have a very bad storm, and we might
4 lose a tower, whatever.

5 Q. So what does it mean when it's there I mean
6 for months, it's continuance?

7 A. You have it for months?

8 Q. Correct.

9 A. And you don't report to it Sprint?

10 Q. I try not to. No, I don't call Sprint.

11 A. Well, you have to. Because unless you tell
12 us, there is no way we are finding it, it's going to be
13 very hard exactly where you dropped the call.

14 Q. Okay. Well, you were just asked questions by
15 the State about these two reports you have there, that
16 you actually can look at certain things and tell that
17 there's an issue.

18 A. Yes. Probably the drop call we have is
19 one percent. Probably we have, you know, the drop back
20 here, reported here, maybe that's one of yours.

21 Q. Okay. Now, you reviewed some records in
22 preparation for your testimony here today?

23 A. Yes, sir.

24 Q. The call data report?

25 A. Yes, sir.

1 Q. Okay. And you didn't create that report?

2 A. No. It was sent to me by Sprint corporate
3 security.

4 Q. Up in Kansas?

5 A. Kansas City, yes.

6 Q. And you would agree with me that that data
7 that was sent to you was not primarily used for
8 geographic location, it's primarily for billing
9 purposes?

10 A. Yeah, they use it for billing purposes.

11 Q. So that Sprint knows how it charges customers
12 on their phone bill?

13 A. Yes.

14 Q. Would you agree with me that this type of
15 document and the records you use are not the best
16 records to use for geographically locating someone like
17 GPS?

18 A. Yes. Well, they have the latitude and
19 longitude that tells you exactly where the location is,
20 and it tells you the tower also that it lists.

21 Q. Correct.

22 A. So by looking at that, you know, it tells you
23 the sector, the tower, the sector, and the latitude of
24 that sector, that's the tower, so from there you can
25 plot it anywhere you want it.

1 Q. I understand. But my question is you have
2 better technology to be able to locate a particular
3 handset?

4 A. Yes. They do have GPS nowadays.

5 Q. Okay. And that wasn't necessarily available
6 in 2006 widespread?

7 A. Yes. That's true.

8 Q. Okay. You testified from the two documents
9 there, the BBH and the 24-hour report?

10 A. The 24-report.

11 Q. Okay. There is no specific breakdown as to
12 what was occurring let's say from midnight to 1:00 a.m.
13 on March 26th, 2006?

14 A. No.

15 Q. So that's just a general 24-hour report?

16 A. Yes, sir.

17 Q. And pretty much on the BBH, the Bouncing Busy
18 Hour, is that the one that tells you where the most
19 calls are, the highest volume?

20 A. The busiest hour of the day for that site.

21 Q. So pretty much that report tells you what the
22 busiest hour of the day for Sprint usage was in your
23 area, right?

24 A. Yes.

25 Q. Okay. It had nothing to do with 1:09 in the

1 morning when this accident occurred?

2 A. No.

3 Q. Okay. Would you agree with me that with
4 regard to the maximum range of towers, how far they can
5 go up, the signal strength varies depending on if it's
6 day or night? Would you agree with that? Signal
7 strength?

8 A. The signal strength is going to be part of
9 whether it's day or night, but the thing you will have
10 is if the sites are busy or not. If the capacity there
11 and the floor noise goes up, then you will have -- it's
12 not the same when it's very quiet.

13 Q. Well, would you agree with me that at
14 nighttime the signal would go farther?

15 A. Well, you can make a call better than the
16 daytime.

17 Q. Because the signal goes farther?

18 A. No. Because there is no -- the noise flow is
19 very low.

20 Q. Okay. Do you remember when we sat in a room
21 together, Mr. Rosario was there and the court reporter,
22 not as many people?

23 A. I do.

24 Q. And I had asked you a question in your
25 deposition, "What is the maximum range that any of the

1 towers can reach as far as picking up a signal?" And
2 your answer was, "It depends on the day and time. If
3 it's nighttime, it's very quiet --"

4 MR. ROSARIO: Judge, I'm going to object to
5 the form of the impeachment.

6 THE COURT: Overruled.

7 BY MR. FOOTE:

8 Q. When I asked about the maximum range that any
9 of the towers can reach as far as picking up a signal,
10 the answer was, "It depends on the day and the time. If
11 it is nighttime, it is very quiet, the signal goes far"?

12 A. Yeah. Because if it's quiet, you can make a
13 call there, that means it goes far -- it's not go far,
14 but it's very quiet, so you have the ability to make the
15 call.

16 Q. Okay.

17 A. Better than daytime when there's noise.

18 Q. And with regard to the call data records that
19 you reviewed prior to coming, do you know whose records
20 those are?

21 A. No.

22 Q. You don't know whose records those are?

23 A. No.

24 Q. And how many different call data records that
25 were target numbers were you asked to review? Just the

1 one?

2 A. Yes, just the one.

3 Q. Is it your opinion that the data that is on
4 this record, the call data record is accurate?

5 A. Yes. To my knowledge, yes.

6 Q. Okay. And would it be usual for there to be
7 data with regard to calls on this document that are
8 different from the customer's phone bill?

9 A. I don't know. I didn't see a customer phone
10 bill. So I don't know.

11 Q. Okay. Have you seen that before?

12 A. No.

13 Q. So from your training and experience, would
14 that be unusual that there would be calls on the call
15 data report but not on someone's phone bill?

16 A. It could be, because I don't know with the
17 billing department what kind of tool they have to
18 process to send for the billing purposes. So I don't
19 know. It's very hard for me to answer that question.

20 Q. Would it be fair to say that Sprint has good
21 technology to be able to log in every call so they can
22 bill, right?

23 A. The data I was provided is the real data that
24 came from the switch. That data I'm a hundred percent
25 sure is accurate. But once it went to the billing

1 department, how they manipulate that data to generate
2 the billing system, I don't know what kind of tool they
3 use. So it's very hard for me to answer that question.

4 Q. Do you have a copy of the call data record?

5 A. Yes, sir.

6 Q. If you just refer to it real quick. And you
7 probably can get to where I want to go to by looking at
8 the cell site locations on the CDR.

9 A. I'm looking at the first page. I don't know
10 if we have the same page.

11 MR. FOOTE: And, Judge, for the record, I'm
12 referring to State's Exhibit 24 that's already in
13 evidence. Judge, may I approach the witness?

14 THE COURT: You may.

15 BY MR. FOOTE:

16 Q. I'll just show you the one that's in evidence.
17 Do you recognize that?

18 A. Yes, I recognize that data.

19 Q. Okay. The third and the fourth row down where
20 the cell site information is indicates zeros?

21 A. Yes.

22 Q. Do you know why?

23 A. That's what happens when the phone, the cell
24 phone, the handset device is roaming.

25 Q. So this is in roaming mode?

1 A. Yes. In roaming mode, yes.

2 Q. So you're unable to tell where the phone is?

3 A. Yeah. Because --

4 Q. Let me ask the question. Are you unable to
5 tell where the handset is when it's in roaming mode?

6 A. Well, because it's a different provider, so
7 it's very hard for me to see it.

8 Q. So would that necessarily mean that the phone
9 is not within a Sprint network?

10 A. Yes. When you see a zero here, it's out of
11 the Sprint network. So if it is -- maybe you are
12 indoors and you don't have air coverage that comes into
13 your house, so whatever coverage is available, the
14 carrier that Sprint have agreement with, they will have
15 that roaming network.

16 Q. So that can be affected by being indoors?

17 A. Yes. Most probably it's indoors, yes.

18 Q. So if you're indoors, it would register zero?

19 A. No. If you don't get the signal in your
20 house. I mean the signal is moving inside. If you are
21 in the living room and making a call, let's say if you
22 walk to the bedroom, it might not have the coverage. So
23 what happens in that period of time, instead of losing
24 the coverage, whatever carrier is available there, you
25 start roaming from their network.

1 Q. So if you're inside the house near Cell Tower
2 214, and you go into a room, does it drop or does it
3 automatically find someone else's network?

4 A. Well, for example, if Sprint has some kind of
5 agreement with Verizon or AT&T, and if that coverage is
6 stored there, it goes to that network instead of
7 dropping. For example, if there is a carrier provider
8 signal there but they don't have the agreement with that
9 carrier, you drop the call.

10 Q. Okay. So this radio frequency technology,
11 although you configure it and maintain it, that's
12 probably one of your jobs is to make sure these things
13 are working right, right?

14 A. Yes, sir.

15 Q. But sometimes they don't work right; is that
16 right?

17 A. Yes. Sometimes, yes.

18 Q. And a lot of different things affect these
19 signals, like trees?

20 A. Yes.

21 Q. Buildings can affect these signals?

22 A. Yes.

23 Q. Sometimes even the weather can affect it as
24 you said earlier?

25 A. Yes.

1 Q. And if you were to request to actually locate
2 a handset so you can give a geographic location, what
3 technology would you prefer? What would you use as an
4 RF engineer? Would it be billing records?

5 A. To pinpoint --

6 MR. ROSARIO: Judge, I'm going to object as to
7 the relevance of this date.

8 THE COURT: I'll sustain as to the form. I
9 mean are you talking now or in 2006?

10 MR. FOOTE: Well, I'll start now.

11 THE COURT: Okay.

12 BY MR. FOOTE:

13 Q. Either one, today or 2006, if you were
14 requested to pinpoint a location for a particular
15 handset, what type of tool would you use as an RF
16 engineer? Would you use billing records to do that or
17 is there some other technology that you would use?

18 A. I mean if you give me the sector, the sites
19 and the sector and the latitude of that sector, I
20 prefer. But nowadays you have the GPS, and GPS is the
21 best way to locate, to pinpoint, so I prefer GPS.

22 Q. It's more exact?

23 A. To be more exact, yes.

24 Q. And outside of the one set of call data report
25 that you were provided, the one set that we're looking

1 at with the zeros on it, you were not provided any more
2 reports for any other witnesses in this case?

3 A. No.

4 Q. Just one target number?

5 A. Yes.

6 Q. And do you know who Shannon Stephen is?

7 A. No.

8 MR. FOOTE: That's all I have, Judge.

9 THE COURT: Redirect.

10 REDIRECT EXAMINATION

11 BY MR. ROSARIO:

12 Q. According to Defense attorney's questioning of
13 you, you kept using the word "noise", and I don't think
14 we ever got the definition of noise. To me that's just
15 a lot of noise in the room. Can you define what you're
16 talking about when you say noise in radio frequency
17 engineering terms?

18 A. Well, the CDMA technology used by Sprint PCS,
19 what it does is they use a code. If I make a call, the
20 only person who will identify me is the person I call.
21 But, let's say, for example, there is a room, there is a
22 lot of people in that room and they are talking, say
23 everybody is talking to each other, but to me and the
24 person I'm talking to, those are the two people who
25 understand each other, but the next person next to me

1 will never understand me, so we call that noise.

2 So whenever the people start talking too much, if
3 you want the person you are talking to to understand
4 you, you raise your voice because there is too much
5 noise. But when there is no noise, nobody is talking
6 and only you are talking, of course, there is no noise,
7 so you understand each other better.

8 Q. So in your training and experience, at
9 nighttime are there more calls, more noise, or less
10 calls at nighttime?

11 A. Less noise.

12 Q. And Defense attorney came up here and pointed
13 out these zeros here.

14 A. Yes.

15 Q. And what did you say, that maybe he's inside
16 his house and didn't have coverage?

17 A. Maybe, you know, he make a call and maybe, you
18 know -- the zeros doesn't show you the sector. For that
19 missed coverage sector it will start roaming to the
20 other carrier and it came back to Sprint.

21 Q. And then if you look at the next line down, I
22 guess it's 25 seconds later that cell phone is located
23 again?

24 A. Yes. It came back again.

25 Q. And so hypothetically-speaking, if I had my

1 cell phone and I left it in the bathroom and I have no
2 coverage in the bathroom and then 25 seconds later I
3 pick up my cell phone and went out in my living room and
4 I had coverage, I'm still there?

5 A. Yes, sir.

6 Q. Sprint just didn't notice it because there was
7 no coverage in the bathroom?

8 A. Yes.

9 Q. And the Defense attorney couched this question
10 and I didn't quite understand it. He said that if you
11 were requested by someone to pinpoint a cell phone, you
12 wouldn't want to do it one way or the other. GPS, can
13 that be done archivally or does that have to be done
14 realtime?

15 A. GPS is realtime.

16 Q. And back in 2006, you used the best records
17 that you could get, correct?

18 A. Yes, sir.

19 Q. And based upon what you see is --

20 A. That's the best that they had.

21 Q. What you've testified to?

22 A. Yes.

23 MR. ROSARIO: I have nothing further, Judge.

24 THE COURT: All right. Anything else from
25 this witness?

1 MR. FOOTE: Just briefly.

2 RE-CROSS-EXAMINATION

3 BY MR. FOOTE:

4 Q. You would utilize the best records you could
5 get, but they're not necessarily accurate; isn't that
6 true?

7 A. Well, the data I received from the Sprint
8 corporate security is the best. I mean they got it from
9 the switch, and I depend on that switch data to do my
10 job daily. So that's the data I get and that I'll
11 testify that it's accurate.

12 Q. Based on what you were given?

13 A. Yes.

14 Q. Okay. Would you agree that if you were given
15 inaccurate information --

16 MR. ROSARIO: Judge, I'm going to object.

17 This is beyond the scope of redirect.

18 THE COURT: I'll overrule that objection.

19 BY MR. FOOTE:

20 Q. Would you agree with me that -- and, of
21 course, you didn't compile these records, the call data
22 records?

23 A. No. The Sprint company sent it to me.

24 Q. Is it fair to say that -- not because it's
25 your fault -- if someone were to give you something that

1 were inaccurate, that could affect your opinion
2 regarding the records?

3 A. Of course, yes.

4 Q. And with regard to the question regarding
5 noise, that doesn't affect the coverage areas --

6 A. No, it doesn't.

7 Q. -- when you have noise?

8 A. No. Noise is usually when you have a capacity
9 issue. I mean if you have a lot of people using at the
10 same time that sector, maybe the capacity will go up.

11 Q. Now, with regard to when you said the noise,
12 that doesn't affect range, does it? Does it affect the
13 range of the towers?

14 A. No.

15 Q. All right. Are these maps that you drew up
16 accurate for 2006 or for today?

17 A. Since 2006, that's accurate. Because we
18 didn't make any significant change regarding the
19 antennas, the heights, and the top of the sectors. We
20 didn't make a significant change. We didn't make any
21 change on those cells. So whenever you see 2006, the
22 coverage is still the same.

23 Q. Okay. But you had stated the range does not
24 change in the evening?

25 A. The range doesn't change in the evening, but

1 when it's very quiet, it's very easy to make a call.

2 Q. So depending on the amount of calls, that's
3 the noise that you were speaking about?

4 A. Yes.

5 Q. Okay. And at some point you configured the
6 actual range of the towers? You do that yourself?

7 A. Yes. The coverages.

8 Q. And the maximum range is up to five or
9 six miles?

10 A. It depends how high the tower is.

11 Q. And the 121 tower is a pretty high tower;
12 isn't it?

13 A. Yes.

14 Q. The one on Little Road?

15 A. Yes. Yes, it's 180 feet.

16 Q. It's like 18 stories high?

17 A. 180 feet, yes.

18 Q. Right. So is it fair to say the higher it is,
19 the wider the range?

20 A. The wider the range. But it depends how you
21 control the power. We control the power. The antenna
22 we have on all those towers are what they call the --
23 you can down-set them to control the power. If you
24 don't want them to be, you know, propagating beyond the
25 area you don't want them, you can down-set the antenna

1 so you can pull them back.

2 Q. How often do you do that?

3 A. Whenever it's necessary. For example, if I
4 build a new tower between those sites, in the middle,
5 I'll go ahead and control them.

6 Q. Okay. But you testified just a few minutes
7 ago that it's pretty much the same?

8 A. Yeah, the same, yes. But, you know, when you
9 said, you know, you can't control them right now. I
10 mean right now they are the same the way they are.
11 Nothing changed since 2006.

12 Q. So the power sittings from 2006 are the same?

13 A. Yes.

14 Q. Of today?

15 A. Yes.

16 Q. 2010?

17 A. Yes.

18 Q. So you haven't up or down those power
19 settings?

20 A. Correct.

21 Q. And at one point you said that these towers,
22 the 121, the maximum range would be five or six miles
23 and it can actually go to ten miles?

24 MR. ROSARIO: Judge, I'm going to again
25 object.

1 THE COURT: Approach.

2 BENCH CONFERENCE:

3 MR. ROSARIO: It's beyond the scope of
4 redirect.

5 MR. FOOTE: Judge, we're talking about the
6 range of the towers.

7 THE COURT: Once again this recross is not the
8 opportunity for you to reask questions that, A,
9 could have been asked on cross or, B, were asked on
10 cross.

11 Now, what is new about this testimony that you
12 did not have, did not anticipate or did not come
13 out during -- well, what is new about this
14 testimony that came out on redirect?

15 MR. FOOTE: He was talking about noise and how
16 it affects the signals on the towers.

17 THE COURT: Well, that's not what you were
18 asking about. All that about noise came out. Now
19 you're going back into the height of the tower, the
20 range of the tower. How is that new as to matters
21 that came up on redirect?

22 MR. FOOTE: It goes to the signal strength and
23 why the phone would pick up a call and not pick up
24 a call.

25 THE COURT: How is that new as to matters

1 raised on redirect? That's my question.

2 MR. FOOTE: Because that is the matter that
3 was raised on redirect with regard to the
4 explanation of noise and whether the range can
5 change from night to day.

6 THE COURT: You've already asked those
7 questions. How does that last question you asked,
8 how is that new as to matters raised on redirect?

9 MR. FOOTE: Because the witness answered the
10 State's question with regard to my original
11 questions, and based on his answers with regard to
12 the variances in range, particularly Tower 121,
13 that's what I'm asking about, the power settings
14 and the range and whether or not the noise that
15 were talking about affects it. That was directly
16 asked by Mr. Rosario on redirect.

17 THE COURT: Okay. And how is that new from
18 what was covered on direct, cross and redirect?

19 MR. FOOTE: I don't understand the Court's
20 question.

21 THE COURT: Recross is limited to new matters
22 raised on redirect, new matters, new issues that
23 were brought forth on redirect.

24 Recross is within the discretion of the Court.
25 The case law says that obviously I have a great

1 deal of discretion. It is not meant to just rehash
2 your cross. It is meant to address new matters
3 raised on redirect.

4 That's all I'm asking. How is this new? If
5 it is new, you can explain it to me. As I've done
6 pretty much for the entire two days, I'll let you
7 do it.

8 MR. FOOTE: Based upon the State's redirect,
9 which can be seen as rehabilitation of some either
10 impeachment or a different answer that was given
11 before.

12 THE COURT: Well, merely because it
13 readdresses things doesn't mean that --

14 MR. FOOTE: If a different answer comes out or
15 if it's not clarified, Judge, that's all I'm doing.

16 THE COURT: But you're using the word
17 "clarify". There are cases when lawyers have
18 argued, "Judge, I'm clarifying," and the appellate
19 courts have found that that argument, "I'm merely
20 clarifying," is insufficient.

21 I mean how much further are you going? Are we
22 going to redo the whole cross again?

23 MR. FOOTE: I haven't done that before. I'm
24 just asking a couple of questions to clarify. This
25 testimony is technical in nature, it is difficult

1 to understand the witness, so all I'm doing is
2 trying to get an understanding of what he answered
3 on redirect. That's all I'm asking. I'm not going
4 for a half an hour.

5 THE COURT: And you're saying we're not going
6 to redo the entire cross?

7 MR. FOOTE: No.

8 THE COURT: Once again I'll give Mr. Foote
9 some leeway with regard to this and I'll overrule
10 your objection.

11 OPEN COURT:

12 BY MR. FOOTE:

13 Q. With regard to Tower 121, you just testified
14 it's about 180 feet?

15 A. Yes, sir.

16 Q. And that's a high tower?

17 A. Yes.

18 Q. The higher the tower, that affects the range?

19 A. Yes.

20 Q. Okay. And the range of these towers are
21 different?

22 A. Yes.

23 Q. Okay. You stated 208 was on top of a
24 building?

25 A. Yes.

1 Q. Is that a lower one?

2 A. Yes. It's 95 feet.

3 Q. So 180-foot tower, a little higher, pushes out
4 a stronger signal?

5 A. Yes. It depends. For example, if you see
6 121, that's the Gamma sector, and the Beta sector, the
7 coverage boundaries is different. The Gamma sector, the
8 coverage boundary there is -- the site below is into
9 the -- site 119 and 120 get in there, so it will be more
10 powerful, the signal will be more stronger when you get
11 farther but there is no sites.

12 For example, the Beta Sector doesn't have a site
13 near to it, so it will cover more area, try to cover
14 more area. But if there is a site close by to it, the
15 other side will pick up, and you see the coverage
16 boundary area, it will shrink.

17 Q. Okay. Based on that, then, when you're saying
18 the coverage versus the power settings, there's some
19 green areas here that have red dots in them, does that
20 mean that 120 is actually --

21 A. Is getting near.

22 Q. So you can pick up in another cell tower's
23 range?

24 A. Yes. Whatever that cell tower doesn't get,
25 you know, it looks also the different direction. Maybe

1 when you're coming from this side of the building or
2 something is blocking you but this guy have a clear shot
3 to that area.

4 Q. Okay. So it's not an exact block anywhere?

5 A. No.

6 Q. You can pick up in different little areas?

7 A. Yes.

8 MR. FOOTE: Thank you. I have nothing
9 further, Judge.

10 THE COURT: All right. May this witness be
11 excused or do you wish for this witness to remain
12 within the call of the Court?

13 MR. FOOTE: He may be excused.

14 MR. ROSARIO: Within the call of the Court,
15 Judge, but he can leave the building.

16 THE COURT: Okay. Sir, you may step down.
17 You may leave the building. Please remember you
18 are a witness in the case. Do not discuss your
19 testimony with anyone. And you just need to be
20 within a phone call distance of the State. All
21 right?

22 THE WITNESS: Thank you.

23 THE COURT: Thank you very much, sir. We need
24 to take a break. Our court reporter needs a break.

25 Members of the jury, we're going to take a

1 short break. It's probably going to be about 10 or
2 15 minutes. So let Deputy Flanagan escort you
3 downstairs again and then we'll come back and
4 reconvene. Remember, stay down there. Remember
5 the admonitions I gave you earlier. And we'll see
6 you back here in a few minutes.

7 THE BAILIFF: Your Honor, the jury is out of
8 the hearing of the Court.

9 JURY ABSENT:

10 RECESS TAKEN:

11 THE COURT: All right. We're attempting to
12 decide logistically how to proceed from here on
13 out. Mr. Foote has requested time to speak with a
14 potential witness that he wishes to call, that he's
15 had some difficulty with, at 6:00 o'clock. It is
16 now 5:06.

17 Mr. Rosario has requested that we continue on
18 because he has a witness who has waited -- and
19 wishes to go back up north and apparently has
20 waited to go back up north -- to testify here
21 today.

22 I guess this witness is going to take more
23 than 45 minutes or an hour, so the issue becomes
24 how we proceed from here on out.

25 Did you wish to put anything else on the

1 record, either Mr. Foote or Mr. Rosario, about your
2 respective positions you find yourselves?

3 MR. FOOTE: Judge, I would like to have the
4 witnesses, particularly this one, who is critical
5 to my defense, on behalf of my client who's
6 standing trial here. I don't want to inconvenience
7 any other witnesses, but I would think it will
8 probably take precedence that I would have the
9 witness there.

10 There's a risk that the witness -- since we've
11 been trying to confirm his presence since Monday
12 when I brought it up to the Court's attention, I
13 would like to handle that directly. I don't want a
14 3.850 if that were to become necessary. So I would
15 like to handle that directly.

16 Now, I'm not saying that we break right now;
17 however, I don't know how far the Court wants to go
18 tonight, 6:00 or 6:30, but I brought it up to the
19 Court's attention so that --

20 THE COURT: Well, and I guess that's an issue.
21 Is there any way that this meeting can be pushed to
22 a little bit later? Is there any way that someone
23 else could handle this meeting for you? Is there
24 any indication that this meeting is going to be
25 just a few minutes and we need to take just a few

1 minutes break? I guess these are some of the
2 answers I need in making my decision.

3 MR. FOOTE: I have to get to Odessa. The
4 witness has no cell phone. The witness has no
5 house phone. So whatever arrangement that he had
6 contacted us in, I'm almost obliged to meet him at
7 that particular location. Or the Court can issue
8 an order and pick him up in a squad car and that
9 would simplify things, too, but I'd rather not go
10 that way.

11 It's Wednesday, it's going to be Thursday.
12 I've been attempting, at the Court's direction, to
13 try to find this witness in lieu of reading in
14 testimony. That's also going to affect the State's
15 case, because I believe they have a rebuttal
16 witness who we addressed they want to video
17 conference because she has to fly in.

18 THE COURT: I believe you objected to that.

19 MR. FOOTE: Excuse me?

20 THE COURT: I believe you objected to that.

21 MR. FOOTE: I did, Judge, but I'm saying that
22 they have flight arrangements. I've been told that
23 they made --

24 MR. ROSARIO: That's been resolved.

25 MR. FOOTE: Okay. That's my issue, Judge. So

1 I will follow the ruling of the Court with regard
2 to timing and scheduling. I don't know how far we
3 anticipate on going, 6:00 or 7:00 o'clock, I don't
4 know.

5 THE COURT: Well, I mean that's my point. I
6 mean let's say we were going to be done at 6:00 or
7 7:00 o'clock or so and this person could get on the
8 road and get moving back to where they need to go,
9 the issue -- you know, and that's the point I'm
10 making.

11 I mean for the arrangements to be made with a
12 witness that says, yes, I'll meet you at 5:00, when
13 we knew we were going to have to maybe go later a
14 few nights -- I'm sorry -- at 6:00, you know,
15 that's difficult. I mean I'm not sure why that
16 time was picked as opposed to later.

17 MR. FOOTE: The time was almost dictated to me
18 at this point, Judge, without the use of a court
19 order. So without pushing another day of 24 hours
20 of not hearing from this individual, I would like
21 to get to the individual, that's all. But
22 obviously if we're going to push on, I have no
23 problem with moving on.

24 THE COURT: What says the State as far as this
25 other gentleman's issue with regard to staying or

1 going?

2 MR. ROSARIO: I can speak with him about being
3 the first witness tomorrow, Judge. I can put on a
4 shorter witness if you'd like. All I know is when
5 I go outside I'm getting mean looks from him
6 because I promised him yesterday and here he is
7 today. I haven't had a chance to talk to him at
8 all about the rest of it.

9 THE COURT: Well, why don't you go out and do
10 that. We'll stand in recess for a few minutes to
11 give you an opportunity to do that. We'll stand in
12 recess.

13 THE BAILIFF: All rise.

14 RECESS TAKEN:

15 THE COURT: Thank you. What is our status?

16 MR. ROSARIO: Judge, I have three witnesses
17 available to me at this point, two of them will be
18 quick and one will be long. Mr. Dalzell stated
19 that it's not a problem for him to stay until
20 tomorrow to be the first witness.

21 I would prefer to push on and get as much
22 testimony on as I can today, but I will defer to
23 the Court and Defense counsel because I don't want
24 to do this again in three years.

25 THE COURT: And the witness that's going to be

1 short, how short is short?

2 MR. ROSARIO: Frank Figliozzi I think I have
3 maybe five minutes of direct examination of him;
4 and Anthony Palese I have 15 minutes, he's a
5 maintenance officer.

6 THE COURT: Well, the problem is if Mr. Foote
7 is supposed to be meeting this witness at 6:00
8 o'clock, then we're going to need to be in effect
9 breaking now.

10 MR. ROSARIO: Yes.

11 THE COURT: It's 5:22.

12 MR. ROSARIO: I can call Frank Figliozzi,
13 that's fine. It all sets up fine with me for the
14 rest of the people tomorrow. I can call one more
15 person, that's fine.

16 MR. FOOTE: And, Judge, I'll go forward and if
17 necessary I'll just have somebody meet and hold my
18 witness where he is until I get there to the best
19 of their ability.

20 THE COURT: Well, do you think if we do this
21 fast witness, that that's going to be a problem?

22 MR. FOOTE: I just question what the word
23 "fast" means. But you've been here a couple of
24 days, so if the direct is five minutes, which I
25 doubt.

1 MR. ROSARIO: It will be quick.

2 THE COURT: And who is it of?

3 MR. ROSARIO: Frank Figliozzi.

4 THE COURT: And from what you know of your
5 cross of this gentleman, Mr. Foote, is it going to
6 be fast or not?

7 MR. FOOTE: It will be a little more than five
8 minutes, Judge.

9 THE COURT: And do you mean a little more like
10 it's going to be 20 minutes or it's going to be
11 pretty quick? I mean just give me your best guess,
12 that's all I'm asking.

13 MR. FOOTE: I never know what they're going to
14 say on the stand, and that's why we have to get
15 into this, you know, whether it's impeachment or
16 things changed. That's the only issue. If
17 everything goes perfectly, I'm thinking 15 minutes
18 or so.

19 THE COURT: Well, once again that pushes us
20 beyond where we need to be for this other issue.

21 All right. Mr. Rosario, this is what we're
22 going to do. I'm going to wind up sending the jury
23 home. You're going to have to talk to those folks,
24 we're going to try to put them on tomorrow morning.
25 If they're going to be quick, they're going to be

1 quick. If they're not, they're not. As you
2 indicated, you know, you don't want to be doing
3 this again.

4 MR. FOOTE: If necessary.

5 THE COURT: Well, I understand. It becomes a
6 nonissue obviously the other way.

7 MR. FOOTE: Right.

8 THE COURT: I mean that goes without saying.

9 MR. FOOTE: Right.

10 THE COURT: So that's kind of where we find
11 ourselves. So let's return the jury.

12 MR. ROSARIO: Judge, may I have one moment to
13 release my witnesses until tomorrow?

14 THE COURT: Sure. All right. You can return
15 the jury, please.

16 THE BAILIFF: The jury is now entering the
17 courtroom, Your Honor.

18 JURY PRESENT:

19 THE BAILIFF: The jurors are all present and
20 seated in the courtroom, Your Honor.

21 THE COURT: All right. Thank you very much.

22 Members of the jury, once again I want to take
23 this opportunity to thank you for your attention.
24 Don't follow your pads yet. That's being very
25 optimistic.

1 I want to take this opportunity to thank you
2 for your time and your attention today.
3 Unfortunately we're in a position where we really
4 need to break for the day.

5 I'm going to ask you to once again remember my
6 admonitions. Please don't speak to anyone, don't
7 allow anyone to speak with you. Please do not read
8 the newspapers or go on the Internet or anything
9 like that with regard to the case.

10 We will see you back here tomorrow morning at
11 the same time, at about 8:15 if we could. I do
12 have a couple of emergency things I have to handle
13 tomorrow morning. Our clerk tells me that that
14 should not take too long. So hopefully we're going
15 to be able to start sometime between 8:30 and 8:45.

16 And once again if you-all would please
17 remember my admonition. You'll be escorted out
18 once again today. And I want to thank you once
19 again for your attention throughout the course of
20 this day. We'll see you tomorrow. Thank you very
21 much.

22 Once again, I guess I should ask you, did
23 anything happen when you all were downstairs that I
24 need to know about?

25 THE JURY PANEL: No, sir.

1 THE COURT: Great. Thank you.

2 THE BAILIFF: The jury is out of the presence
3 of the court, Your Honor.

4 JURY ABSENT:

5 THE COURT: All right. Anything that needs to
6 come before the Court before we break for the
7 evening and to give Mr. Foote time to contact this
8 witness?

9 MR. ROSARIO: No, sir.

10 MR. FOOTE: Judge, I would anticipate, then,
11 based on the State's scheduling, that they should
12 probably be resting their case tomorrow?

13 MR. ROSARIO: Yes. I intend to rest tomorrow.

14 MR. FOOTE: And if we're going to start up
15 with the Defense's case, I just want you to know
16 beforehand that the witnesses that we would need
17 would be Corporal Styers, Sergeant Glenny and Kara
18 Wallace.

19 MR. ROSARIO: You want them around 1:00
20 o'clock?

21 MR. FOOTE: Whenever you anticipate that you
22 would rest.

23 THE COURT: All right. The Court will stand
24 in recess until 8:30 tomorrow morning.

25 (HEARING CONCLUDED.)

1 STATE OF FLORIDA)

2 COUNTY OF PASCO)

3

4 I, Maria A. Fortner, Registered Professional
5 Reporter, certify that I was authorized to and did
6 stenographically report the foregoing proceedings, pages
1 through 1013, and that the transcript is a true and
complete record of my stenographic notes.

7

8 I FURTHER CERTIFY that I am not a relative,
9 employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
10 attorney or counsel connected with the action, nor am I
financially interested in this action.

11

12 Dated this 11th day of December, 2011.

13

14

15

16 _____
MARIA A. FORTNER, RPR
Notary Public State of Florida
17 My Commission Expires 04-27-2015

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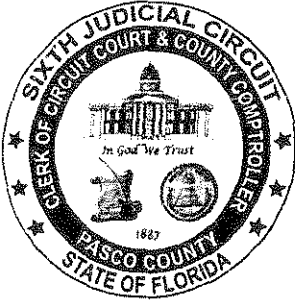
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*Office of Paula S. O'Neil
Clerk & Comptroller
Pasco County, Florida*

STATE OF FLORIDA }
 {
COUNTY OF PASCO }

I, Paula S. O'Neil, Clerk & Comptroller of Circuit Court for the County of Pasco, State of Florida, do hereby certify that the foregoing pages 328-1444 & 1-1085 & 1-1735, inclusive, contain a correct Supplemental Transcript of the Record in the case of State Of Florida, Plaintiff(s) vs. Shannon Stephen, Defendant(s), being Case Number(s) 06-1591, Circuit Criminal, and a true and correct recital and copy of all such papers and proceedings in said cause as appears from the records and files of my office that have been directed to be included in the record by the directions furnished to me.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 4 day of February, 2013.

By: Brenda MCBel
Deputy Clerk

