

**VOLUME II OF III**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

**Nov 22 2024**

**SC Court of Appeals**

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TOYA DANIELLE STEWARD,

APPELLANT

APPELLATE CASE NO. 2024-000331

RECORD ON APPEAL

KATHRINE H. HUDGINS  
Senior Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

MARK FARTHING  
Senior Assistant Deputy Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201  
(803)734-4117

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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## Argument of Counsel

1       were gaps in her comp -- timeline. There were  
2       inconsistencies.

3               **THE COURT:** Those aren't statements.

4               **MS. SAVAS:** Correct. I'm just trying to...

5               That she saw the vehicles in the front  
6       driveway. She was at the house for hours.

7               She knew Chris was in the house that day,  
8       because Frank told her.

9               **THE COURT:** Why is that relevant?

10              **MS. SAVAS:** Intent.

11              **THE COURT:** How does that go to intent,  
12       knowing Chris was in the house?

13              **MS. SAVAS:** Someone was in the home. She was  
14       aware that people were in the home.

15              **THE COURT:** We already know that from the  
16       testimony of Mr. Jason Simmons, correct?

17              **MS. SAVAS:** It's imperative that she says  
18       that she believed Chris was in the home for the  
19       state's case in chief, Your Honor.

20              **THE COURT:** To what elements?

21              **MS. SAVAS:** To what?

22              **THE COURT:** To what element?

23              **MS. SAVAS:** The intent.

24              **THE COURT:** Is that an element of the --

25              **MS. SAVAS:** To the attempted murder -- to the

1        attempted murder, that she knew people were there.  
2        She knew Chris was there. She could believe Jason  
3        was there. Your Honor, she made that statement.  
4        We believe -- the state believes the statement can  
5        come in just as all the rest. She even sent in  
6        messages asking about Chris's well-being after  
7        this.

8                **THE COURT:** That's not my question. What  
9        else would you be --

10               **MS. SAVAS:** State of mind.

11               **THE COURT:** What other -- what other  
12        question -- what other information from this  
13        statement would you be seeking to elicit?

14               **MS. SAVAS:** I might bring out where she  
15        worked, just because she said it. But that's  
16        pretty much it. Oh, and that she -- I -- I think  
17        I expressed to the Court earlier that she admits  
18        to being there multiple times that day.

19               **THE COURT:** Are there any objections to that  
20        line of inquiry if the statements come in?

21               **MR. D'ANGELO:** Yes, Your Honor. So --

22               **THE COURT:** What's the basis of the  
23        objection?

24               **MR. D'ANGELO:** So the basis of the objection  
25        would be my -- my argument on -- and I can go

1 point by point. So that he knew Chris was in the  
2 house, because Frank told her. And I would object  
3 under relevance and hearsay. In regards --

4 **THE COURT:** It's not hearsay. It would be an  
5 admission against interests, in other words, a  
6 consciousness of wrongdoing. Knowing that someone  
7 else was in the residence and that you set a fire,  
8 that would go directly to the element of specific  
9 intent, which the state is required to prove.

10 **MR. D'ANGELO:** Correct.

11 **THE COURT:** Being a generalized statement, it  
12 would be an admission against interest. It's a  
13 statement of a party proponent. It's not hearsay,

14 **MR. D'ANGELO:** To that, I would state it  
15 doesn't go to interest, Your Honor, as Chris is  
16 not the victim of the attempted murder.

17 **THE COURT:** It goes to intent, which is a  
18 consciousness that "I'm doing something wrong."

19 **MR. D'ANGELO:** Understand, Your Honor.

20 **THE COURT:** It doesn't matter who was in  
21 house; a human being was in the house. And it is  
22 relevant. It is probative. It makes the fact or  
23 issue of consequence more or less probable, as  
24 articulated by the Court of Appeals most recently  
25 in the last three weeks. It goes to consciousness



1 of guilt.

2 MR. D'ANGELO: Understood, Your Honor.

3 Again, to the -- any reference --

4 THE COURT: So go to the next statement. I  
5 need to know in general what are your objections  
6 to this line of questioning?

7 MR. D'ANGELO: Yes, Your Honor. In regards  
8 to the timeline, the gaps in timeline, that she  
9 had been there multiple times that day, again,  
10 Your Honor, I don't necessarily have a specific --

11 THE COURT: Wouldn't that lengthwise be an  
12 admission against interest?

13 MR. D'ANGELO: Understood, Your Honor. And  
14 again, I don't necessarily have a specific  
15 objection to that. Again, my -- my just objection  
16 would be, again, that none of it should come in  
17 from my previous argument.

18 THE COURT: We're past that. If it comes  
19 in -- and that's why I asked a very specific  
20 question, which is I asked Ms. Savas, of this  
21 statement, because it's lengthy and all of it  
22 would not come in, because at some point, it  
23 ~~becomes cumulative and it then defeats the purpose~~  
24 of it coming in. The only reason a statement  
25 would come in would be as exceptions or would fit

1       within exceptions of the hearsay rule, which are  
2       admissions against interest. It would appear that  
3       the things -- and to motive and specific intent.  
4       So it would appear that the line of questions that  
5       Ms. Savas -- or would want to elicit from this  
6       officer, go to all those elements. And that's why  
7       I asked her specifically what is it that she would  
8       want to ask? Because this whole statement would  
9       not come in it. Some of it is just -- just  
10      isn't -- it's generalized conversation and isn't  
11      relevant.

12             I would -- if I were to let any portions of  
13      it in, I'm concerned about the last 10 minutes of  
14      it. Because I think it moves into a -- it shifts  
15      into a different place in the last 10 minutes.  
16      I -- I certainly -- but prior to the last 10  
17      minutes, it's -- it's a different sort of an  
18      analysis. But the last 10 minutes, I think that  
19      would be the demarcation lines, and she's talking  
20      to the officer.

21             When he starts saying, you know -- and I  
22      believe is -- at some point, and I'm paraphrasing.  
23      I'm -- I'm not saying his exact verbiage from the  
24      recording, which is -- and -- and to his credit.  
25      He said he had already made up his mind that what

1 she was saying was inconsistent, and that she had  
2 started the fire.

3 So -- and that she was a woman scorned. And  
4 by that point, she started saying, "I need to talk  
5 to somebody who has my best interests at heart."  
6 Again, paraphrasing. Not exact verbiage, "I need  
7 to talk to a lawyer."

8 And the last 10 minutes of that interview,  
9 that's where the demarcation line is in my mind of  
10 where it turned from a simple interrogation, which  
11 they're entitled to do without Mirandizing her  
12 into it shifts into where she should have been  
13 Mirandized. When you start making statements that  
14 are clearly designed to inculcate me, then you  
15 need to Mirandize me. Because then I need to know  
16 that what I'm saying can be used against me.

17 Now having said that, your client has had  
18 multiple interactions with the system. And she  
19 clearly knows when to assert her rights. So to  
20 represent to this Court that she didn't know or  
21 somehow she was scared or timid is disingenuous.  
22 I think we've all heard her tone on that tape.  
~~23 She was not scared. She was not frightened. She~~  
24 was not intimidated. She was in her own home.  
25 And she felt she had command of that conversation.

## Argument of Counsel

1           So while under some circumstances that  
2           argument may carry some weight, it does not in  
3           this circumstance. It's not even remotely  
4           analogous. So at some point -- she knows how to  
5           invoke her rights. She -- and I'm not -- I don't  
6           mean this in any pejorative sense. So please  
7           don't interpret it that way.

8           Once you -- if you've ever been arrested,  
9           you've heard your rights. I mean, I have spoken  
10          to elementary school kids in kindergarten. They  
11          know the Fifth Amendment rights. They can recite  
12          them to me and recite them better than I can. I  
13          have the right to remain silent. They think it's  
14          funny. I think it's kind of sad that a  
15          kindergarten child needs -- knows what Fifth  
16          Amendment rights are and how to assert on them,  
17          and how -- and that they can say them to me.

18          But nonetheless, I think everybody has  
19          watched enough police shows to know what Fifth  
20          Amendment rights are. And unfortunately, our  
21          younger population has seen members of their  
22          family arrested, and have heard rights given to  
23          their family members. And again, it's such a sad  
24          commentary on us as a society. But nonetheless,  
25          it's the reality we live in.

1           So I don't believe for a moment that she  
2           didn't know what her rights were. Now is that  
3           dispositive of whether he should have given them  
4           to her? No. But clearly, at some point, that  
5           conversation shifts, their interaction shifts.  
6           And it's right about the last 10 minutes of that  
7           interview where she begins to sense that I'm not  
8           convincing him, I'm clearly a suspect in this,  
9           and -- and I need to maybe talk to a lawyer. And  
10          he clearly says to her, "Yeah. You're about  
11          right. I do -- I don't believe anything you're  
12          telling me. I believe you set this house on  
13          fire."

14          And so in my estimation, even if I were to  
15          let any other part of it in, that last 10 minutes  
16          is off limits. Because at that point, she should  
17          have been Mirandized. She should have been told  
18          you have the -- because he already knew at that  
19          point he was going to do a debriefing. He was  
20          going to call the agent in charge or whomever.

21          And they were probably at that point --  
22          really based on Mr. Simmons' assertion as well --  
23          ~~and I mean, both Mr. Simmonses that especially~~  
24          based on Mr. Jason Simmons's, I would imagine,  
25          statements at the scene that she was in the house.

## Argument of Counsel

1       She had broken into the house. That he heard this  
2       liquid being poured -- poured in the house, after  
3       which he experienced a fire in his house where he  
4       had to jump through a window. She was already  
5       identified as a suspect.

6               But to their credit, they can't just go off  
7       of one person's word and go arrest somebody. They  
8       have to investigate. So I do find it credible  
9       that his testimony that he was dispatched, he --  
10      he and Detective Chief -- Cheeks, was Sinke or --  
11      if I'm mispronouncing her maiden name, I  
12      apologize -- that they were of comparable rank,  
13      that she was not his supervisor at the time, that  
14      he was told by someone else to go talk to what was  
15      potentially a witness to this incident and to get  
16      some information so that they could make a  
17      fully-informed decision about an arrest. But at  
18      some point, that conversation shifts. And she  
19      should have been Mirandized.

20             So anything 10 minutes -- the last 10 minutes  
21      in is off limits. But I need to think a few  
22      moments about the rest of it. And if you give me  
23      about two seconds --

24             Sir, you can stand if you'd like to stretch  
25      your legs. You need to take a comfort break or

1 anything?

2 THE WITNESS: I'm good, ma'am. Thank you.

3 THE COURT: You good? You need some water?

4 THE WITNESS: I'm fine. Thank you.

5 THE COURT: Okay. You're welcome.

6 (Pause in proceeding.)

7 MS. SAVAS: Your Honor, may we take a comfort  
8 break?

9 THE COURT: Very quickly --

10 MS. SAVAS: Thank you, Judge.

11 THE COURT: -- 'cause I'm about to rule.

12 MS. SAVAS: Yes, Judge.

13 (A recess is taken.)

14 THE COURT: The defense has interposed an  
15 objection to the statements by Detective --

16 Detective Muirheid, is that -- did I  
17 pronounce your name correctly?

18 THE WITNESS: Perfect, ma'am.

19 THE COURT: I guess my mama's phonics  
20 training kind of paid off.

21 THE WITNESS: There you go.

22 THE COURT: -- Detective Muirheid testimony  
23 ~~regarding certain statements purportedly made by~~  
24 Ms. Steward to him during the course of an  
25 investigative interview. And the Court would rule

## Ruling of the Court

1 as follows: Miranda mandates that prosecutions --  
2 that a prosecution may not use statements, whether  
3 inculpatory or exculpatory, stemming from a  
4 custodial interrogation of a defendant unless they  
5 are able to demonstrate use of procedural  
6 safeguards effective to secure a defendant's  
7 privilege against self-incrimination, citing  
8 United States Constitution Amendment 5 and State  
9 versus -- as well as South Carolina -- South  
10 Carolina Constitution and citing *State versus*  
11 *Daniels*, which is found at 439 SC 500, which is a  
12 2023 Court of Appeals decision.

13 Prior to any questioning, a person taken into  
14 custody or otherwise deprived of freedom of action  
15 in any significant way must be warned that he has  
16 a right to remain silent, that any statement he  
17 does make may be used as evidence against him, and  
18 that he has a right to presence -- has a right to  
19 the presence of an attorney, either retained or  
20 appointed, again citing United States Constitution  
21 Amendments 5 and 6 and *State vs. Daniels*.

22 The Court is required to engage in two  
23 discrete -- discrete inquiries to determine  
24 ultimately if a person is in custody for Miranda  
25 purposes. First, what were the circumstances



1       surrounding the interrogation? And second, given  
2       those circumstances, would a reasonable person  
3       have felt that he or she was not at liberty to  
4       terminate the interrogation and leave?

5       Although no single factor dictates whether a  
6       seizure has occurred, the courts have identified  
7       certain probative factors including the time and  
8       place of the encounter; the number of officers  
9       present, and whether there were uniformed -- and  
10      whether those officers were uniformed; the length  
11      of the detention; whether the officer moved the  
12      person to a different location or isolated him  
13      from others; the use or absence of physical  
14      restraints; the statements made by the -- by the  
15      police; whether the officer informed the person he  
16      was free to leave; whether the officer indicated  
17      to the person that he was suspected of a crime;  
18      whether the officer retained the person's  
19      documents; exhibited threatening behavior or  
20      physical contact; and whether the suspect was  
21      released at the end of the encounter; citing *State*  
22      *versus Spears*, which is a South Carolina Supreme  
23      ~~Court 2020 opinion, as well as *State versus Hill*,~~  
24      which is a Court of Appeals 2018 court of appeals  
25      decision.

## Ruling of the Court

1           If suspects believe that he was not free to  
2           leave during an interrogation, was entitled to  
3           (inaudible) when determining whether the suspect  
4           was in custody for Miranda purposes. The inquiry  
5           to be engaged in by the Court is objective,  
6           centering on whether one in a suspect's position  
7           would have believed he was free to stop the  
8           questioning and depart, again citing *State versus*  
9           *Hill*.

10           Not every questioning at the police station  
11           is custodial for Miranda purposes, even if the  
12           police view the person questioned as a suspect.  
13           And citing *Oregon versus Mathiason*, police  
14           officer -- police officers are not required to  
15           administer Miranda warnings to every person whom  
16           they question, nor is the requirement of warnings  
17           to be imposed simply because questioning takes  
18           place in a police house or station, or because the  
19           person questioned is one whom the police suspect.  
20           And *Mathiason* is cited universally in precedent  
21           regarding that holding and concept.

22           Turning to the present case, it is  
23           uncontroverted that Ms. Steward told the officer  
24           that she did not wish to accompany him to the  
25           station, and that she voluntarily preferred to

1 speak with the detective at her residence. The  
2 officer's testimony is credible that if he had  
3 been asked to leave, he would have left her  
4 residence. The defense argues that Ms. Steward  
5 was in custody by virtue of his questioning;  
6 however, precedent does not support that  
7 proposition, specifically citing *Oregon versus*  
8 *Mathiason*, where the Supreme Court of the United  
9 States has held that a police officers are not  
10 required to administer Miranda warnings to  
11 everyone whom they question nor is the requirement  
12 of warnings to be imposed simply because  
13 questioning takes place at a police station, or  
14 because the person questioned is one whom the  
15 police suspect. And our Court of Appeals has  
16 reiterated that holding in *State versus Hill*.

17 There is no indication that the questioning  
18 in this case took place in a context where  
19 Ms. Steward's ability to depart from her home was  
20 restricted in any way. She voluntarily invited  
21 the detective into her home. She was immediately  
22 informed that her participation in the questioning  
23 was voluntary. In fact, she states to the to  
24 the detective that she knows that she's not under  
25 arrest and that she doesn't have to speak with

## Ruling of the Court

1           him, which belies any argument that she was being  
2           held involuntarily or against her will.

3           And I find the officer's testimony credible  
4           that he was the only person present, that  
5           initially there was a Mount Pleasant police  
6           officer present, but he went back to his  
7           additional duties once he was only -- his only  
8           purpose on the scene was having identified  
9           Ms. Steward's vehicle as the one in question. And  
10          once that was -- once he arrived, that that  
11          officer relinquished any responsibility and left  
12          the scene. I also find credible his testimony  
13          that he did a protective sweep of her residence,  
14          which is standard protocol, once she requested  
15          that they remain in her home for their colloquy.

16          So I find credible, and it's uncontradicted  
17          in the record, that the only two people present  
18          for this questioning was Detective Muirheid and  
19          Ms. Steward. And again, there's no indication  
20          that the questioning took place in a context where  
21          her ability to depart her home was restricted in  
22          any way. And again, she voluntarily invited the  
23          detective into her home.

24          She -- and I find credible his testimony and  
25          his exact testimony was that if she had asked

1 him -- if she had said "I don't want to speak to  
2 you," he simply would have left without a  
3 statement. And they would have continued to  
4 investigate the case. There's no indication in  
5 the record that he would have bullied his way into  
6 her home or somehow demanded entry into her  
7 residence. The record is simply devoid of any  
8 testimony that would support that proposition.

9 And specifically relating to the Court's  
10 previous observation, which is that she knew she  
11 was not under arrest and that she was speaking to  
12 him voluntarily, the exact colloquy is at 25:22 of  
13 that statement. And it states specifically, "I  
14 appreciate you. And I -- and just to be clear, I  
15 did ask before I started recording to go to the  
16 station with me. You asked if you were under  
17 arrest. And I told you no. You said that you did  
18 not feel comfortable going to the station and that  
19 you would speak with me here. Is that accurate?"  
20 To which Ms. Steward replies it is accurate.

21 Detective Muirheid goes on to say, "So you  
22 understand that you are not under arrest. And I  
23 ~~do appreciate you talking to me. But I just want~~  
24 you to know that you do not have to speak with me.  
25 However, it is super helpful for you -- super

## Ruling of the Court

1 helpful for me to get a timeline."

2 And then they go on right after that to speak  
3 about -- because he already said that his  
4 cousin -- and tying into that conversation without  
5 me repeating everything verbatim, she responds to  
6 the fact that she had already been told that this  
7 house was on fire and there was an -- an  
8 indication or a statement that Mr. Simmon's cousin  
9 had already said that he had -- he had seen her at  
10 the location. And her response was, "That's what  
11 he told me. And that's what he texted me."

12 Detective Muirheid says, "Right. I mean,  
13 you're a smart person. That's the reason we're  
14 here, to follow up on that and kind of see where  
15 you were today. So getting a timeline for you is  
16 huge. And being able to go to the places that you  
17 were at and speak to the people is huge. So I  
18 just want to go back over that."

19 Significantly, there's no indication that  
20 Ms. Steward's statements were involuntary and that  
21 the conditions under which she made the statements  
22 were unconstitutionally coercive. There's nothing  
23 in the record that indicates that Ms. Steward's  
24 tone of voice or intonation -- there is nothing in  
25 Ms. Steward's tone of voice or intonation that she

1 is feeling threatened, coerced, or involuntarily  
2 speaking to the officer.

3 And because this was not recorded by video, I  
4 only have their voices to go on the intonation of  
5 their voices and how they're interacting and  
6 speaking with one another. Her tone is normal.  
7 It is if she's just telling her side of the story  
8 or telling a story. And there's no indication --  
9 and I'll go back to this part of where I've  
10 already made an observation regarding the last 10  
11 minutes of their colloquy. But there's no  
12 indication to support the state's indication that  
13 somehow she was talking over him, or that she was  
14 being antagonistic or overly aggressive.

15 It is very conversational tone. She seems  
16 very at ease. They're having a normal  
17 conversation, like when you're telling a story to  
18 someone. And so there's no indication in her tone  
19 that she's threatened, coerced, or that she is  
20 somehow having an involuntary course of  
21 conversation with the detective.

22 And as I've already indicated, for the  
23 ~~record, at no point prior to the last 10 minutes~~  
24 of the statement did she express a desire for her  
25 interview to be terminated or that the detective

## Ruling of the Court

1       should leave her home. It is clear at this point,  
2       however objectively, that the officer and  
3       Ms. Steward are engaged in terminating their  
4       interaction. And that, more specifically, is  
5       40 -- is at 43.18 of the statement, where he says  
6       to her, "You lie like a child." At 44:08, where  
7       she says, "I should be talking to somebody that  
8       has my best interest at heart." And at 44:50, he  
9       says, "Do you want to stop speaking to me?" And  
10      her response is yes.

11           So clearly, as I've already observed for the  
12      record, the last 10 minutes in my estimation is  
13      off limits. Because at some point, that is when  
14      the conversation between the two of them shifted  
15      from a mere interrogation to a cause -- more of  
16      a -- while it was not custodial, I think very  
17      clearly at that point it became more of a  
18      situation where statements were being sought to  
19      inculpate her and where her Miranda warnings  
20      should have been given. However, as -- again, as  
21      I've indicated, that's when the communication  
22      becomes combative, when the conversation becomes  
23      accusatory. And it is only at that point that the  
24      two start talking over each other.

25           As I've previously observed, halfway through



1       the interview, Detective Muirheid relays to  
2       Ms. Steward that she's not in custody, which she  
3       clearly acknowledges. And that statement  
4       indicates that she was free to leave or terminate  
5       their interaction at any time and to have the  
6       officer leave her home. She clearly manifested an  
7       intention to be in a situation where she felt  
8       comfortable, which was her residence, clearly  
9       manifested an intention that she did not want to  
10      accompany him to the station.

11             I would note that the questioning took place  
12      over 47 minutes and 26 seconds, which in light of  
13      case law is not a particularly lengthy period of  
14      time. I would also note that she was not  
15      handcuffed. There's no indication of threats or  
16      intimidation. She suffered no denial of creature  
17      conference [phonetic], as she was in her own  
18      residence. And again, she seemed comfortable and  
19      at ease during the duration of the interview until  
20      that demarcation period that I've already noted.

21             There are no statements made by the detective  
22      that I can discern from the recording that equate  
23      ~~to intimidating, threatening or forcing her to~~  
24      allow the officer to remain -- well, to enter her  
25      residence, to remain -- or to remain for

## Ruling of the Court

1           questioning.

2           And again, as I've already observed, the last  
3           10 minutes, the tone of the interview changed and  
4           clearly Miranda warning should have been given at  
5           that time out of an abundance of caution as the  
6           questioning went beyond the interview stage and  
7           began to seek inculpatory statements from  
8           Ms. Steward.

9           Under the totality of the circumstances and  
10          looking at the circumstances objectively, it is  
11          clear that Ms. Steward was not in custody or  
12          otherwise deprived of her freedom of action in any  
13          significant way during her February 8, 2020  
14          interview. Accordingly, Miranda warnings were not  
15          required and the statements the state seeks to  
16          introduce are admissible to the extent they're  
17          relevant and probative on the issues before the  
18          court. The motion is denied.

19          Now, I need to know, however, to the extent  
20          that, Ms. Savas, the statements that she has  
21          indicated she intends to seek from this witness,  
22          they are provocative; they are relevant; they are  
23          relevant to the extent that they make an issue of  
24          consequence more or less probable, which means the  
25          elements the state has to prove in this case, one

1 of which is intent. They don't have to prove  
2 motive. But motive is certainly probative on the  
3 issues of consequence in this case. And the --  
4 the majority of these statements would be  
5 categorized as statements against interests. So  
6 they would not be hearsay. They would be an  
7 exception to the hearsay rule.

8 Some of them simply don't -- I mean,  
9 they're -- they're not in and of themselves  
10 inculpatory. And Mr. D'Angelo has conceded that  
11 he would not object to those, that being her  
12 biographical information, her phone number. That  
13 would be based on our original conversation  
14 regarding this matter that he didn't have a  
15 problem with her phone number, that she knows the  
16 defendant, she knows where they lived, their  
17 relationship status, her Instagram name, that he  
18 was cheating on her, that she knew Frank's  
19 Instagram and his phone number, and that they were  
20 calling and texting one another.

21 But I would expect you to make  
22 contemporaneous objections regarding relevance as  
23 ~~the testimony is elicited, Mr. D'Angelo. Because~~  
24 I don't -- I don't really have a context for it at  
25 this moment.

## Ruling of the Court

1           **MR. D'ANGELO:** Understand, Your Honor.

2           **THE COURT:** So you would have to make a  
3 contemporaneous objection to which I will rule on  
4 contemporaneously. If I need an argument, I'll  
5 excuse the jury for that purpose.

6           All right. Everybody ready to go forward?

7           **MS. SAVAS:** Yeah. Yes, ma'am.

8           **THE COURT:** Sir, are you sure you don't need  
9 break? You good? Now you need one?

10          **THE WITNESS:** Now, I'm embarrassed.

11          **THE COURT:** No. No, you shouldn't be at all.  
12 You're like me. When I ask -- my secretary says,  
13 "Are you hungry?"

14          And I go, "No, no. Let's work through what  
15 we got to." And then when I got to go back to  
16 court, I'm like now I'm starving.

17          **THE WITNESS:** Fifteen minutes ago, I was  
18 fine. Now, I --

19          **THE COURT:** That's okay. Why don't you go  
20 ahead and --

21          **THE WITNESS:** -- I need to use the restroom.

22          **THE COURT:** Yes, sir. Go right ahead.

23          **THE WITNESS:** Thank you.

24          **THE COURT:** Just don't discuss your testimony  
25 with anyone while you do that. And then as soon

1 as you return, we'll resume.

2 After Detective Muirheid, who will be  
3 testifying after him?

4 **MS. SAVAS:** After that, Judge, we would call  
5 Paul McManigal to do the cell phones.

6 **THE COURT:** You don't have any other? I'm  
7 just not really that fond of having the jury wait  
8 now another extended period to deal with matters  
9 of law. And you don't have any guarantee I'm  
10 gonna rule right away. Because I wasn't gonna  
11 rule right away on this. I was gonna take some  
12 time to think, in which case you would have had to  
13 go forward. You would not have had the luxury of  
14 waiting.

15 So you can't assume that I'm going to hear  
16 McManigal and make a ruling. So you need to be  
17 prepared to go forward in the event that I'm not.  
18 And I think there's a better way to use our time.  
19 And I understand strategically you may want to  
20 move in a particular way, but I'm the one on the  
21 back end of this conversation that gets the  
22 complaints from jurors for waiting. And I'm just  
23 ~~not inclined to have them wait any extended period~~  
24 of time when it's not necessary when we can  
25 proceed with other witnesses and deal with matters

## Ruling of the Court

1 of law in a more efficient way.

2 **MS. SAVAS:** Yes, Your Honor. I understand  
3 that.

4 **THE COURT:** 'Cause now they've been waiting  
5 since 9:30. It's 11 o'clock.

6 **MS. SAVAS:** Yes, sir.

7 **THE COURT:** No, no. A shrug is not -- no,  
8 ma'am. Their time is valuable.

9 **MS. SAVAS:** No -- I -- yes, Your Honor. I  
10 understand.

11 **THE COURT:** Uh-huh.

12 **MS. SAVAS:** That there's things that I would  
13 need to elicit from the other victims that would  
14 only come in through these witnesses.

15 **THE COURT:** No. You're calling McManigal to  
16 corroborate their testimony. Their testimony is  
17 not contingent on what he says. You want his cell  
18 phone data to corroborate what they're gonna  
19 testify to. You have witnesses that received  
20 stuff on their own phones. They can testify to  
21 that. You want him to corroborate her -- where  
22 she was, what she was doing, where her phone was,  
23 etc.

24 **MS. SAVAS:** There are specific pieces of  
25 evidence from -- that we retrieved, in full

1 disclosure, Your Honor, from her cell phone  
2 that --

3 **THE COURT:** You're not going to be able to  
4 ask those witnesses about that.

5 **MS. SAVAS:** If -- if it was received from  
6 that witness, then I could --

7 **THE COURT:** If it was --

8 **MS. SAVAS:** -- admit it through them. I just  
9 would not know the Court's -- the objection of the  
10 foundation. If they received something on their  
11 telephone, they can testify about what they  
12 received on their telephone if it's an admission  
13 against interest.

14 You don't need him to -- I'm -- I'm -- I'm  
15 just giving you a heads-up. There's no guarantee  
16 I'm gonna rule right after I hear what he has to  
17 say. And I'm not going to have the jury -- and I  
18 do not have to feel that I'm in a pressure cooker  
19 to rule.

20 **MS. SAVAS:** I understand, Your Honor.

21 **THE COURT:** Yeah. Because sometimes I need  
22 to think about things. And I think that's a  
23 ~~reasonable position to take.~~

24 **MS. SAVAS:** Yes, ma'am.

25 **THE COURT:** Yeah. So I'm just giving you a

## Ruling of the Court

1 heads-up.

2 MS. SAVAS: Your Honor?

3 THE COURT: Uh-huh.

4 MS. SAVAS: Based upon that, we could switch  
5 the order of one of our witnesses before the cell  
6 phone expert to allow those items in through that  
7 exception.

8 THE COURT: Are we ready to go forward with  
9 Detective Muirheid?

10 MS. SAVAS: Yes, Your Honor.

11 THE COURT: Please bring in the --  
12 Anything before we proceed, Mr. D'Angelo?

13 MR. D'ANGELO: No, Your Honor.

14 THE COURT: Please get the jury.

15 THE BAILIFF: Yes, Your Honor.

16 THE COURT: Thank you.

17 And he'll need to be sworn in the presence of  
18 the jury. Thank you, ma'am. Appreciate it.

19 MS. SAVAS: Judge?

20 THE COURT: Yes, ma'am.

21 MS. SAVAS: In regards to a witness prior  
22 to -- another witness prior to the cell phone, it  
23 would be related to jail calls. But we have her  
24 available.

25 (The jury enters the courtroom at 11:40 a.m.)



1           **THE BAILIFF:** All jurors are present,  
2           Your Honor.

3           **THE COURT:** You may be seated.

4           Ladies and gentlemen, we appreciate your  
5           patience. We had to take up a matter of law this  
6           morning that was unexpected so that we can move  
7           through the testimony uninterrupted. Again, we do  
8           appreciate your patience.

9           The state may proceed.

10          **MS. SAVAS:** Thank you, Your Honor. May it  
11          please the Court.

12          **THE COURT:** Yes, ma'am.

13          **MS. SAVAS:** The state calls Detective Will  
14          Muirheid.

15          **THE COURT:** Please swear the witness.

16                   **CARL "WILL" MUIRHEID**  
17          having first been duly sworn, testifies as follows:

18          **THE WITNESS:** Yes, ma'am. I do.

19          **THE CLERK:** Please be seated.

20          **THE WITNESS:** Thank you.

21          **THE CLERK:** Please state your full name,  
22          spelling your last name into the microphone.

23          ~~**THE WITNESS:** Yes, ma'am. My full name is~~

24          Carl W. Muirheid. My last name is spelled

25          M-u-i-r-h-e-i-d. I go by the name "Will."

Carl "Will" Muirheid - Direct Examination by Ms. Savas

1           **THE COURT:** You may proceed.

2           **MS. SAVAS:** Thank you, Your Honor.

3           **THE COURT:** You're welcome.

4                   **DIRECT EXAMINATION**

5           **BY MS. SAVAS:**

6           **Q**     Good afternoon, detective.

7           **A**     We're getting there, yes.

8           **Q**     Yeah. We are. It's been a day.

9                   Detective Muirheid, where do you work?

10          **A**     I work for the Charleston County Sheriff's  
11     Office.

12          **Q**     And what is your current position there?

13          **A**     I am a detective in our investigations  
14     division.

15          **Q**     Okay.

16                   And how long have you been a detective?

17          **A**     We're coming in on 13 years.

18          **Q**     And what are some of your responsibilities as  
19     a detective?

20          **A**     Mainly, I investigate the homicides that  
21     occur in Charleston County, any -- any crimes involving  
22     persons of a felony nature, armed robberies, attempted  
23     murders, assaults, very -- what I would -- not that all  
24     kinds aren't serious, especially for the victim. But  
25     what -- what I would classify as serious and heinous

1 crimes.

2 Q So major cases?

3 A Sure.

4 Q And what was your position before becoming  
5 detective? What's your law enforcement background?

6 A I -- I worked in patrol at Mount Pleasant  
7 Police Department for several years. Then I came over  
8 to Charleston County Sheriff's Office. I worked patrol  
9 there. And then I was put into the investigative  
10 division.

11 Q And have you had special training as far as  
12 being an investigator and detective --

13 A Yes.

14 Q -- over the years? Okay.

15 What was your position back on  
16 February 8, 2020?

17 A The same as today. I was a detective that  
18 was working major cases.

19 Q And were you working that day?

20 A Technically, no. Because I believe it was on  
21 a Saturday. But we -- we have what's called a call-out  
22 schedule. And I responded after hours to a -- to a  
23 ~~call that required an investigator.~~

24 Q Okay.

25 And were you involved in this case?

Carl "Will" Muirheid - Direct Examination by Ms. Savas

1           **A**     Yes.

2           **Q**     How did you become involved?

3           **A**     I received -- normally what happens is a --  
4     and in this case, you'll have a sergeant that is in  
5     charge of that call-out team. And they'll make  
6     notifications and give you your directions from there.  
7     I was directed to respond to the defendant, Ms. Toya  
8     Steward's, residence at [REDACTED] Road in Mount  
9     Pleasant. I do not recall the actual apartment number.  
10    But it was an apartment complex. I responded there.

11          **Q**     Okay.

12                 And Detective Muirheid, when you responded,  
13    who -- were you briefed as to why you were sent over  
14    there?

15          **A**     Yes.

16          **Q**     And what was it regarding?

17          **A**     It was regarding a potential arson. A  
18    witness, I believe his name was Jason Simmons had  
19    reportedly witnessed the defendant, Ms. Steward, take  
20    part in an arson there at his residence, somewhere in  
21    West Ashley.

22          **Q**     And do you recall about what time you  
23    arrived?

24          **A**     It would have been around -- it would have  
25    been around 8 p.m.

1           Q     On that Saturday, the February 8 --

2           A     Yeah. It was February 8.

3           Q     And was anyone there when you arrived? What  
4     did --

5           A     Yes.

6           Q     -- you see outside?

7           A     When I arrived into -- into the parking lot,  
8     I was directed to a -- a dark color -- it may have been  
9     black. It was -- it was obviously nighttime. A Chevy  
10    Equinox that was registered to the defendant,  
11    Ms. Steward, was just further confirmed that she lived  
12    in that apartment complex.

13                Because it was in a -- even though Charleston  
14    County encompasses Mount Pleasant, specifically that's  
15    Mount Pleasant jurisdiction. So they were over there  
16    as -- as maybe to help us out a little bit. So there  
17    was a Mount Pleasant Police Department patrol officer  
18    that was there as well. And -- and I met with him  
19    briefly. I don't even remember his name.

20          Q     Was he outside by the car?

21          A     Yes.

22          Q     And it was just one officer?

23          A     Yes.

24          Q     And did you notice anything about the  
25    vehicle?

1           **A**     Yeah. When we -- we looked in the windows,  
2     what I would consider a plain view -- I didn't open any  
3     doors or anything like that. But I -- I saw what was,  
4     I believe, a container of lighter fluid, which given  
5     the brief that I was given, I thought that that maybe  
6     have something to do with the case.

7           **Q**     And was her vehicle information relayed to  
8     you from --

9           **A**     Yes. Who it was --

10          **Q**     -- the investigators?

11          **A**     Who it was relayed from specifically, I don't  
12     know. But it was told to me there was a tag -- a  
13     South Carolina license plate registration tag number.  
14     I don't recall that off the top of my head. But -- but  
15     that information was all confirmed.

16          **Q**     And Detective Muirheid, if I were to show you  
17     your report, would it refresh your recollection to --  
18     for the license tag?

19          **A**     Any documentation you can give me from four  
20     years ago would -- would help me.

21                     Yes. It is NUX703.

22          **Q**     And in that report, is her specific address  
23     also notated where you arrived, including apartment  
24     number?

25          **A**     Yes. It says [REDACTED] Road,

1 Apartment 7-E, as an "echo," which is in Mount  
2 Pleasant.

3 Q And Detective Muirheid, what did you do after  
4 you located her vehicle?

5 A Went to her residence, knocked on the door,  
6 and made contact with Ms. Steward.

7 Q Okay.

8 And did the Mount Pleasant officer go with  
9 you?

10 A Yes. He went to the door with me.

11 Q Okay.

12 And Detective Muirheid, were you in a uniform  
13 that day?

14 A No.

15 Q What -- what were you wearing?

16 A I would have -- in February, I would've been  
17 wearing a jacket and slacks, because we have a standard  
18 call-out uniform. Well, they call it a uniform.  
19 Basically slacks and a -- and a -- and a polo shirt.

20 Q Okay.

21 Detective Muirheid, do you have a body cam  
22 that day?

23 A No.

24 Q Okay.

25 And what happened when y'all went to her door

1 at her apartment?

2           **A**     She answered the door. I introduced myself.  
3 I explained to her the reason I was there and asked to  
4 speak with her. I asked for her to come back to the  
5 station with me, our offices. Because our interview  
6 rooms are equipped with audio and video recording.  
7 Obviously, in that situation right there, what we'll  
8 call in the field, I didn't have actual video  
9 recording.

10                   I always like to try to get both if I can.  
11 Because I just think it provides more context for  
12 situations like this, where the jury can see facial  
13 expressions and things of that nature.

14           **Q**     And did she agree to go with you to the  
15 headquarters?

16           **A**     She declined.

17           **Q**     Okay.

18                   But did she freely let you in her home?

19           **A**     Yes, yes. We had our -- we did the interview  
20 there, like I said, what I call in the field at her  
21 residence.

22           **Q**     And was the Mount Pleasant officer there  
23 still when you began to speak with her?

24           **A**     No, no. I -- I -- I did a protective sweep  
25 of the residence, something I would do anytime, just



1 for my safety to make sure no one else is in the  
2 residence. No one else was there. So once I felt  
3 comfortable with her, she was comfortable with me, I  
4 just went ahead and had him leave so that he could go  
5 continue his patrol function.

6 Q And protective sweep, are you opening drawers  
7 and rummaging through her things?

8 A No. I'm looking for people to make sure I  
9 don't get a bad surprise.

10 Q Okay. So you're just looking for people.  
11 And you sent the officer home once you both  
12 were comfortable?

13 A I -- I sent him back to finish his patrol  
14 duties.

15 Q Okay.

16 When you spoke with her, did you have her  
17 restrained in any way?

18 A No.

19 Q Okay.

20 Was she detained in any way?

21 A No.

22 Q So she freely allowed you in her home?

23 ~~A She was very cooperative, yes.~~

24 Q Okay.

25 And at that time, did she agree to having the

1 conversation with you?

2 A Yes.

3 Q And did she agree to it being recorded?

4 A Yes.

5 Q Okay.

6 And that was just you and her talking. Do

7 you remember where you were at in her apartment?

8 A We were -- we were sitting at a table.

9 Q Uh-huh.

10 A I don't -- it's an apartment, a standard  
11 apartment. We were sitting at a table there. And I  
12 had my audio recorder. And that's how I recorded the  
13 conversation.

14 Q Okay.

15 Detective Muirheid, did you force her to  
16 speak with you?

17 A No.

18 Q Okay.

19 Detective Muirheid, did you when you spoke  
20 with her give her Miranda warnings?

21 A No. It wasn't -- based on the information I  
22 had, it wasn't required at that time. She wasn't under  
23 arrest. I was just sent there to basically get a  
24 timeline and find out if she had anything to do with  
25 it.

1           **Q**     And do you often speak with people just  
2 consensually where you don't have to give Miranda  
3 warnings?

4           **A**     Every day.

5           **Q**     Okay.

6                   Detective Muirheid, did you learn information  
7 about her personally or biographical information when  
8 speaking with her?

9           **A**     Yes.

10          **Q**     Did she give you her full name, first and  
11 last?

12          **A**     Toya Steward.

13          **Q**     Okay.

14                   Did she give you a date of birth?

15          **A**     Yes. And I think -- I think I'm gonna  
16 remember this. It's [REDACTED] [REDACTED].

17          **Q**     Yes, sir. Okay.

18                   And did she give you her phone number?

19          **A**     She did give me her phone number. But the  
20 only woman's phone number that I know is my wife's.

21          **Q**     Okay.

22          **A**     So I did not memorize that number.

23 ~~**Q**     If I show you a just brief transcript of your~~  
24 statement, would you be able to provide that?

25          **A**     Yes, yes.

1           Q     Okay.

2           A     Yes.   The phone number here from the  
3 transcript of the interview is 843-568-2765.

4           Q     Thank you, detective.

5           A     Yes, ma'am.

6           Q     Detective, did she -- did you speak to her  
7 about the victims in this case?

8           A     Yes.

9           Q     And did she -- did you ask her if she knew  
10 them?

11          A     Yes, I did.

12          Q     Did she say she knew Jason Simmons?

13          A     Yes.

14          Q     Did she say she knew Frank Simmons?

15          A     Yes.

16          Q     Did she discuss the nature of her  
17 relationship with Frank Simmons with you?

18          A     She did.   She described her relationship as  
19 they were boyfriend and girlfriend.   And as current as  
20 at the time we were talking, they had become estranged  
21 that morning of February 8.

22          Q     Did she also indicate if it was a process of  
23 a breakup coming on that came to a head that day?

24          A     Yeah.   If -- if I remember, it was kind of  
25 like several weeks of just things going on where she

1 had mentioned he would -- she would write something  
2 in -- in text messages to him. And he would just take  
3 it the wrong way and go off. It was just kind of  
4 evolving into just flaming out, I guess.

5 Q Okay.

6 Did she mention being upset with Frank?

7 A Yes. Several times.

8 Q Several times?

9 A Yes.

10 Q Did she mention she was mad at Frank?

11 A Yes. Specifically, the word "pissed" was  
12 actually used.

13 Q Okay.

14 Was she also visibly upset when she was  
15 talking to you about Frank?

16 A Yeah, I could tell she was upset.

17 Q Do you recall about how many times she said  
18 she was upset with Frank?

19 A How many times? I -- I -- I wouldn't --

20 Q During the conversation.

21 A I wouldn't want to put a number on it.

22 Because -- but I mean, it was a lot to the point where

23 ~~the sentiment was that she was mad at Frank, and I~~

24 guess we'll probably get into the reason why and maybe

25 rightfully so, enough that I knew that she was mad at

1 Frank.

2 Q And did she indicate why she was mad at Frank  
3 to you?

4 A Specifically from that day, she -- she was  
5 supposed to go over to Mr. Simmons' residence and do  
6 some sort of vehicle work. She took the day off, which  
7 is a -- was a big deal for her. Because she -- I think  
8 she's a manager at a pizza place there in Mount  
9 Pleasant. So it was a chore to find someone to work  
10 for. So she went to the residence. When she was at  
11 that residence, she saw Frank's car, Jason Simmons, who  
12 I believe is his cousin and lives there, his truck, but  
13 did not see Frank's truck there. So she -- she wanted  
14 to get this work done on her vehicle. So she went to  
15 the door. Knocked on the door. No one answered. So  
16 she started to get aggravated that he wasn't there.

17 And during that time, if -- if I remember  
18 correctly, I may have something switched in and out.  
19 But we can fix that with the transcript. She -- she  
20 received some sort of Instagram message from -- from a  
21 woman that I don't believe she specifically knew,  
22 basically letting her know that Frank was with her. So  
23 she found out all in this 10-minute period, I guess,  
24 that she was going over there to get her car fixed.  
25 She took off from work. He wasn't there. And now,

1 surprise, there's another woman that is potentially  
2 involved. So, yeah, you know, I -- I can see someone  
3 being upset for that.

4 Q So she said she was upset over Instagram.  
5 Did she say what her Instagram handle was?

6 A I believe it was Toya Steward, just her name,  
7 I believe.

8 Q If I show you a transcription to refresh  
9 your --

10 A Yeah. Sorry.

11 Q That's okay.

12 A Sorry.

13 Q That's okay.

14 A Toya Stafford. And Stafford is spelled  
15 S-t-a-f-f-o-r-d.

16 Q And did she say whether she knew Frank's  
17 Instagram handle?

18 A Yes, she did.

19 Q And what was that?

20 A Because I'm looking at the transcript,  
21 FrankSimmons6.

22 Q Okay.

23 ~~And do you recall the name of the female she~~  
24 was mentioning about the other Instagram?

25 A I be -- I believe it was a Destiny Brees.

1           Q     Okay.

2                     And when she was talking about the Instagram  
3     and finding out about Destiny, did she say how she felt  
4     about that?

5           A     She -- she was mad.   She -- she was mad.

6           Q     Okay.

7           A     I mean, obviously.

8           Q     And did she say whether she thought Frank was  
9     cheating on her?

10          A     Yes.   She did.   She thought Frank was  
11     cheating on her.

12          Q     Did she say whether she -- so that morning,  
13     she saw Frank's Instagram?

14          A     Yeah.   At the time, I didn't have Instagram.  
15     I do now.   Because I have -- I have children.   But  
16     anyway -- but anyway, at the time -- so I wasn't really  
17     sure how it worked.   But -- so I guess she got up.   She  
18     saw -- I guess he had a new Instagram.   And she  
19     commented on a post about him being handsome.   And then  
20     she found out that, I guess, she was blocked and the --  
21     the actual post was somehow deleted.   Even today, I  
22     couldn't tell you how that's done.

23          Q     Okay.

24          A     But supposedly that's what happened.   And  
25     then it got into some messages with the -- with the



1     Destiny -- it -- was it Brees? Is it Destiny Brees  
2     from the transcript? Okay. Destiny Brees.

3             Q     Okay.

4                     And so she said she found that out this that  
5     morning.

6             A     Yes.

7             Q     And I'm gonna go back. So you said that she  
8     had told you she went to Frank's house. So she knew  
9     where Frank lives?

10            A     Yes.

11            Q     And then she went to his house that morning.  
12     Did she say about what time she arrived there?

13            A     9:00, 9:30.

14            Q     Okay.

15                     And did she mention how far it was between  
16     her house and his house?

17            A     If I remember specifically, it was 21 minutes  
18     without traffic.

19            Q     Okay.

20                     And did she say whether she had a key to his  
21     house?

22            A     She does not have a key. She -- she told me  
23     ~~she did not have a key to his house.~~

24            Q     And did she admit to being at the defendant's  
25     house just once or multiple times that day?

1           **A**     She told me that she was at the house twice  
2     that day.

3           **Q**     And did she say how long she stayed the first  
4     time between 9:30, and did she give a time when she  
5     about left?

6           **A**     It -- it -- it wasn't super specific to me.  
7     But between 9:30 and 12:00 was my understanding of what  
8     she told me of how long she was at that residence.

9           **Q**     Was she sort of bouncing around times? Is  
10    that why you say it that way?

11          **A**     Yeah, yeah. It was -- it was kind of hard  
12    for me to -- to get a -- a specific like timeline, like  
13    A, B, C, D. Just -- and that's not uncommon. But just  
14    because, you know, she was kind of jumping around.

15          **Q**     Okay.

16                 And did she say Frank -- whether Frank knew  
17    she was there that day, that morning?

18          **A**     Yes. Frank knew she was there. And that was  
19    told to me because she basically sent -- she sent a  
20    picture him of her in front of his residence.

21          **Q**     And did she say whether she knocked on the  
22    door.

23          **A**     She said she knocked on the side door.

24          **Q**     Okay.

25                 And did anyone answer her?

1           **A**     No. No one answered.

2           **Q**     Did she say whether she saw vehicles that  
3 day?

4           **A**     Yes.

5           **Q**     And was she able to identify those vehicles?

6           **A**     It was Jason's car. Excuse -- excuse me,  
7 Jason's truck, Frank's car, Frank being her boyfriend.

8           **Q**     And did she indicate whether she thought  
9 Frank was home?

10          **A**     She thought Frank was home. She parked  
11 behind Frank's truck or -- excuse me, car.

12          **Q**     Did she say why she thought Frank was home?

13          **A**     Because they had an arranged meeting to -- to  
14 be there for the vehicle to get fixed. That was my  
15 understanding.

16          **Q**     In your conversation with her, did she ever  
17 say if she gave anything to Frank throughout the  
18 relationship?

19          **A**     Yeah. Yeah. There was, I guess we'll call  
20 them gifts, like a -- substantial gifts: Laptop,  
21 washer and dryer.

22          **Q**     And Detective Muirheid, did she say whether  
23 ~~she called Frank that day?~~

24          **A**     Yes. She did call Frank that day.

25          **Q**     And did she mention whether she texted Frank

1     that day?

2           **A**     She -- she -- it was my understanding that  
3     she called and texted Frank throughout the day.

4           **Q**     Throughout the day.

5                   And did she ever tell you when she left the  
6     house the first time? You said about noon?

7           **A**     Yeah. 9:30, 12-ish. She was there 9:30 to  
8     12-is. So that was kind of part of the -- some of the  
9     question. But around 12.

10          **Q**     And did she say where she went after she left  
11     Frank's house the first time?

12          **A**     If I remember correct, after she left the  
13     first time, she went to back to where she worked, which  
14     was -- is called Matt's Pizza -- I don't know if it's  
15     still Matt's Pizza -- in Mount Pleasant off Highway 41.

16          **Q**     Okay.

17                   Did she say where she went after that?

18          **A**     Then it was to like get cigarettes or  
19     something like that. And then to her home.

20          **Q**     In Mount Pleasant?

21          **A**     In Mount Pleasant, where I was with her.

22          **Q**     And when did she tell you she returned to  
23     Frank's house that day?

24          **A**     It would have been around 5 p.m.

25          **Q**     So between noon and five, she said she was

1 either at her work or at her house or getting  
2 cigarettes?

3 A Yes.

4 Q Okay.

5 And why did she say she went back over at  
6 about 5 p.m.?

7 A She received a call from Frank, Frank  
8 accusing her of setting her -- setting his house on  
9 fire. She advised that because of his -- his past  
10 transgressions and the lying that he was doing, that  
11 she felt like he was lying about his home being on  
12 fire. So she decided to go over to -- in West Ashley  
13 from Mount Pleasant, 21-minute drive without traffic,  
14 to -- to see if he was telling the truth that the house  
15 was actually on fire.

16 Q So she went back to see the house on fire.  
17 And did she say what she saw?

18 A She -- if I remember correctly, she said that  
19 she didn't even go on the road, but could see it from  
20 like a parallel road. She could see fire trucks and  
21 police, you know, first responders and every -- and  
22 everybody there.

23 ~~Q Did she mention whether she knew anyone else~~  
24 was home during that day?

25 A So it's my -- my understanding, because of

1 the -- my limited activity on this case, that Mr. Frank  
2 has a son named Chris. Chris was home at the residence  
3 for sure during the first time she went over there.  
4 And that's known because when she sends over the  
5 picture, you know, "Hey. I'm at your house. Where are  
6 you?" She gets a response back, "My son Chris is  
7 there. You need to leave."

8 Q And did she express to you whether she  
9 believed he was in the house that day?

10 A Yes, she believed he was there.

11 Q So she admitted to being at the house  
12 multiple times that day?

13 A Yes.

14 Q And she didn't -- she admitted to not having  
15 a key?

16 A Yes.

17 Q And she admitted being very mad and pissed at  
18 Frank?

19 A Yes.

20 Q And that she was texting and calling him  
21 throughout the day?

22 A Yes.

23 Q And she admitted to banging on the side door  
24 when she got there that morning?

25 A Yes.

1           Q     And she admitted to being there for hours in  
2 front of their house until she left around noon?

3           A     Yeah. 9:30 to 12:00, that was my  
4 understanding.

5           Q     She admitted she was mad at Frank because  
6 they broke up that morning?

7           A     Yes.

8           Q     And that she discovered this other girl on  
9 Instagram, and that upset her?

10          A     Yes.

11          Q     And she admitted to going back to watch the  
12 fire burn at the house?

13          A     Yes. She -- she --

14          Q     To see the fire -- see if the house was on  
15 fire?

16          A     Yes.

17          Q     And after you talked with her, what did you  
18 do?

19          A     Well, after I spoke with her, the case  
20 agent --

21          Q     Well, let me -- I'm sorry to interrupt. So  
22 how did the conversation end? Once she told you all  
23 ~~this information, did -- did the conversation have an~~  
24 endpoint? What happened?

25               MR. D'ANGELO: Objection. Relevance.

Carl "Will" Muirheid - Direct Examination by Ms. Savas

1           **THE COURT:** Sustained.

2           **MR. D'ANGELO:** Thank you.

3           **THE COURT:** I've already ruled regarding  
4           that.

5           **MS. SAVAS:** Okay.

6           **THE COURT:** (Inaudible).

7           **MS. SAVAS:** Yes, ma'am.

8           **BY MS. SAVAS:**

9           **Q**     Okay.

10                 So after your conversation ended -- oh, I  
11           see.

12                 After your conversation ended, what did you  
13           do?

14           **A**     Recording stopped.

15           **Q**     Uh-huh.

16           **A**     I contacted the case agent who it was my  
17           understanding was that the scene, the actual scene of  
18           the arson? Who is now a sergeant, Sergeant Cheek. And  
19           advised her of the information that was related to me.  
20           I related to her. Based on what she had at the scene,  
21           she advised me that -- to go ahead and place  
22           Ms. Steward under arrest, which I did.

23                 After Ms. Steward was placed under arrest, I  
24           did seize her phone. Part of that was she -- she was  
25           very cooperative still and gave me the pin number to



1     that phone so that we could conduct a search warrant at  
2     a -- at a later date if that was done or directed by  
3     the case agent.

4           **Q**     And did anything happen with her vehicle?

5           **A**     Yes, yes. But if we go back to the beginning  
6     where I said I saw what I believe to be lighter fluid,  
7     that information was also passed on.

8                    So once she was taken to -- to CID and  
9     custody -- CID being our headquarters, I was advised to  
10    go back to the -- her residence, the parking lot, and  
11    accompany a tow truck back. So I basically followed  
12    the tow truck back. That vehicle was secured to have a  
13    search warrant later.

14          **Q**     Okay.

15                    Did you do anything else after you -- after  
16    that in this case?

17          **A**     No. That was it. This was a easy one for  
18    me.

19          **Q**     Okay, Detective Muirheid. Thank you. Please  
20    answer any questions the defense may have.

21                    **THE COURT:** You may proceed.

22                    **MR. D'ANGELO:** Thank you, Your Honor.

23                    ~~**THE COURT:** You're welcome.~~

24                    **MR. D'ANGELO:** May it please the Court?

25                    **THE COURT:** Yes, sir.

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

**CROSS-EXAMINATION**

**BY MR. D'ANGELO:**

**Q** All right, Detective. Well, I think I can  
officially say good afternoon.

**A** Good afternoon.

**Q** All right.

So as you stated on direct, you were involved  
in this case because a call had gone out that they were  
needing a detective in Mount Pleasant, right?

**A** Yes.

**Q** All right.

Again, this -- this isn't your case, right?

**A** No. I'm not the case agent.

**Q** Okay.

And again, you -- you were on your day off on  
Saturday?

**A** Yes. We both were.

**Q** Okay.

And so you just kind of -- you kind of were  
the one that had, I guess, drew the straw to respond to  
this.

**A** Yeah. Back then, once a month, we were on  
call for a week, and that it was my time --

**Q** Okay.

**A** -- it was my turn.

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1           Q     Okay.

2                     So you had -- you had a brief conversation  
3 with -- with Sergeant Cheek about kind of the -- the  
4 quick broad strokes of what had happened, right?

5           A     Yes.

6           Q     Yeah.

7                     You -- you had fairly limited information  
8 provided. Is that fair to say?

9           A     Yes, that's fair.

10          Q     Yeah.

11                     You were told about a gentleman Frank  
12 Simmons, right?

13          A     Yes.

14          Q     That -- that his house had -- had burned  
15 down, correct?

16          A     Yes.

17          Q     You were told that it was a suspected arson,  
18 right?

19          A     Yes.

20          Q     And that there was a witness who had  
21 identified Toya Steward as -- as being the person that  
22 was seen at the scene, correct?

23          A     Yes.

24          Q     Yeah.

25                     So again, fair. Not -- not a whole lot of

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1 information that's being provided to you, correct?

2 A Correct.

3 Q Okay.

4 So you were asked to try to locate

5 Ms. Simmons -- Ms. Steward, right?

6 A Correct.

7 Q And try to get a timeline of -- of her  
8 whereabouts that day?

9 A Yes.

10 Q Okay.

11 And again, as you stated on direct, you were  
12 able to locate Ms. Steward, right?

13 A Correct.

14 Q You arrived at her apartment building? There  
15 was a -- there was another Mount Pleasant police  
16 officer that was there?

17 A Yes.

18 Q Right. Okay.

19 Met -- met him in the parking lot, right?

20 A Yes.

21 Q Right.

22 And as you talked about, he was standing at  
23 her vehicle, right?

24 A Yes.

25 Q Okay.

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1                   And again, in plain view, y'all were just  
2 kind of inspecting to see what you could see in the  
3 vehicle, right?

4           **A**     Yes.

5           **Q**     Anything that might be helpful to the  
6 investigation, correct?

7           **A**     Sure. Yes.

8           **Q**     And you've been a detective, I think you had  
9 said like 13 years at that point?

10          **A**     Thirteen years. Well, now. Not at that  
11 point. That was four years ago.

12          **Q**     Okay.

13                   But again, you had been trained in --

14          **A**     Long enough.

15          **Q**     Yeah. Certainly. Trained in trying to note  
16 anything of importance, right?

17          **A**     Sure. Yes. Tried.

18          **Q**     And you had -- and you had seen a bottle of  
19 lighter fluid that was in the back of the car?

20          **A**     Yeah, what I thought was lighter fluid, yes.

21          **Q**     Right.

22                   And you documented that in your report,

23 ~~correct?~~

24          **A**     Yes, I believe I did.

25          **Q**     Yeah.

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1                   And in this case, you prepared a brief report  
2                   for this, right?

3           **A**     Yes.

4           **Q**     Because as an officer, y'all are trained in  
5                   the importance of preparing reports, correct?

6           **A**     Try to document as much as we can.

7           **Q**     Exactly. Because as you know, time moves on  
8                   on resolving a case, correct?

9           **A**     Yes.

10          **Q**     It can take a while, case in point, until we  
11                   actually get into court on a case, right?

12          **A**     Yes.

13          **Q**     Now, so you want to document as much  
14                   information that you have at the time when you have  
15                   that information?

16          **A**     Yes.

17          **Q**     Yeah. People remember things closer in time  
18                   to the events that happened?

19          **A**     Yes.

20          **Q**     And again, that's why you documented that you  
21                   saw the lighter fluid?

22          **A**     Yes.

23          **Q**     Because in a potential, you're working off of  
24                   this as a potential arson case. That's an important  
25                   piece of information to put down.

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1           **A**     It could be yes.

2           **Q**     Certainly.

3                   Well, you -- you now know, though, that the  
4 start of the fire was gasoline, not lighter fluid.

5           **A**     I knew that the other day. I found out the  
6 other day during prep for this trial. I didn't know  
7 until then.

8           **Q**     Right.

9                   Because, again, this -- this hasn't been your  
10 case that you've been investigating.

11          **A**     I'm not solely responsible for this case, no,  
12 sir.

13          **Q**     Right.

14          **A**     The case agent is.

15          **Q**     In your report, you didn't note that there  
16 were any golf clubs in the back of the car, right? You  
17 didn't put anything in your report of notice -- noting  
18 a laptop in the car?

19          **A**     No, sir.

20          **Q**     You had the opportunity to -- to speak with  
21 Toya, right?

22          **A**     Yes.

23 ~~**Q**     Y'all knocked on her door. And she answered,~~  
24 correct?

25          **A**     Correct.

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

- 1           Q     You asked if you could talk with her, right?
- 2           A     Yes.
- 3           Q     And again, as you stated on direct, she --
- 4     she was very willing to speak with y'all, right?
- 5           A     Yes.
- 6           Q     She invited you into her house, correct?
- 7           A     Yes, sir.
- 8           Q     Certainly for officer safety, you requested
- 9     if -- if y'all could look around to do a protective
- 10    sweep, right?
- 11          A     Yes.
- 12          Q     Purpose, again, just making sure officer
- 13    safety. No one else is in the home, right?
- 14          A     Correct.
- 15          Q     And again, she -- she offered -- she allowed
- 16    y'all to walk through the house, see if anyone else was
- 17    there.
- 18          A     When you say y'all, I -- I don't remember him
- 19    walking through there with me. I remember me doing
- 20    that. But he could have.
- 21          Q     Certainly. Well, and let's -- and to be
- 22    clear, she allowed you to -- to walk through the home
- 23    to -- to -- to make sure no one was there, right?
- 24          A     Yes, sir. She did.
- 25          Q     Okay. And then, she sat down with you and --



Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1 and had a conversation, right?

2 A Yes.

3 Q Okay.

4 You noted in your report, as you were walking  
5 through the home, that you didn't notice any chemical  
6 smells that you would have normally associate with a  
7 fire accelerate, correct?

8 A I did not -- I did not -- I did not smell  
9 anything like gasoline.

10 Q Correct.

11 And -- and that was interesting. Because  
12 again, normally you would expect to smell those in a --  
13 associated with a fire accelerant case, correct?

14 A Not -- not -- no, not necessarily. Not that  
15 situation. I mean, at the -- at the place where it  
16 happened, yeah, I would. But you know, hours later at  
17 her residence, no. I mean, I -- I wouldn't say that's  
18 just a gimme.

19 Q But you would normally associate smells,  
20 certain chemical smells with fire accelerate, correct?

21 A Yeah. If I would have smelled gasoline in  
22 her residence, that definitely would have --

23 ~~Q Put up some red flags, right?~~

24 A Yeah.

25 Q And you would have noted whether you had

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1 smelled that in your report, correct?

2 A Yeah. I would have noted that.

3 Q And here you actually noted in the report  
4 that you didn't smell anything like I did, right?

5 A I didn't.

6 Q Okay.

7 Because, again, you're -- you're trying to be  
8 as helpful as possible to -- at that time it was  
9 Detective Sinke, correct?

10 A Yes.

11 Q Right. You're trying to gather as much  
12 helpful information for her?

13 A Yes.

14 Q You sat across from the -- across from the  
15 table with her, right?

16 A When Mr. -- yes, sir. I did.

17 Q Okay.

18 You actually asked her if you could -- if you  
19 could see her hands and arms, right?

20 A I don't remember that.

21 Q You didn't notice that she had any burns to  
22 her hands or arms, right?

23 A I didn't note that she did. I think if she  
24 did, I would have noted that.

25 Q Certainly. Right.

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1           **A**     So I'm going to say the absence of that, I  
2     didn't notice, so she didn't.

3           **Q**     Exactly. Had you noticed something like  
4     that, you would have put it in your report?

5           **A**     Yeah.

6           **Q**     Right.

7           **A**     Yes, sir. That's fair.

8           **Q**     As you stated on the direct, Toya -- Toya was  
9     very forthcoming about -- about her relationship with  
10    Frank, correct?

11          **A**     Yes.

12          **Q**     She stated that over the last couple of  
13    weeks, there had been some ups and downs, right?

14          **A**     Yes.

15          **Q**     But that they had made plans for that  
16    Saturday morning for her to work on her -- work on her  
17    vehicle, right?

18          **A**     It was my understanding he was going to have  
19    a friend help do some work on a vehicle, yes.

20          **Q**     So that's, again, why she had headed over to  
21    the house around 9:30 that morning, correct?

22          **A**     That is what she told me. Yes, sir.

23          **Q**     ~~And she told you that as she was headed over,~~  
24    or before she had headed over that morning, she had  
25    made a comment on his Instagram account -- Frank

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1 Simmons's Instagram account, right?

2 A I believe that was the timeframe before.

3 Q Okay.

4 A I believe.

5 Q She had made a comment of "My baby. You so  
6 handsome" on his picture that he had posted? That's  
7 what she told you, right?

8 A Yeah. Something about being handsome. Yes.

9 Q And as you said on direct, that set off the  
10 chain of reaction of having another woman, Destiny  
11 Brees, reach out to Toya, right?

12 A Yeah, I -- I believe based on what she was  
13 telling me, yeah. That's how I understood it.

14 Q Essentially, this woman saying, you know,  
15 "What -- what are you talking about? He's my man."  
16 Right?

17 A I believe that was the sentiment.  
18 Specifically, I don't know.

19 Q Yeah.

20 And -- and again, Toya was -- Toya showed you  
21 her Instagram account, right?

22 A I do recall from listening in prep for this  
23 that she did -- that -- there, again, it wasn't visual.  
24 But she did show me some -- some sort of screenshots.  
25 What exactly? I don't know. I don't know

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1 specifically.

2 Q Right. When then you were even explaining to  
3 her at the time of "I don't exactly know how Instagram  
4 works," right?

5 A There you go.

6 Q Yeah. So she was -- she was sitting down  
7 trying to try to show you how the pages worked, right?

8 A Yes, she was very cooperative.

9 Q She showed you -- she showed you her -- her  
10 Instagram handle or her name on Instagram, right?

11 A I believe so.

12 Q All right.

13 And you docu- -- you documented that. She  
14 was trying to find you Frank's Instagram page, correct?

15 A Okay. Yes.

16 Q And as you said on direct, it appeared she  
17 was -- she was blocked at that point. So she wasn't  
18 able to provide you with this.

19 A That's -- that's what she told me. Whether  
20 she was blocked or not, I don't know.

21 Q Sure. But that -- but that's what she was  
22 telling you?

23 ~~A That's what she told me, yeah.~~

24 Q Yeah. And she was trying to find the page  
25 for you.

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1           A     Yeah. I believed her.

2           Q     She just couldn't.

3           A     Yeah.

4           Q     Yeah.

5           A     For sure.

6           Q     She showed you, again, the page and Instagram  
7 name of this woman, Destiny Brees, right?

8           A     I believe so.

9           Q     And again, you were trying -- you -- you were  
10 trying to get that information from Toya, right?

11          A     I was just accepting information that she was  
12 providing, yes.

13          Q     But you -- and you were documenting, correct?

14          A     I don't -- I don't -- I mean, yeah. I think  
15 I documented her name.

16          Q     Well -- because again, you are trying to get  
17 as much information from Toya as you can, right?

18          A     Yes.

19          Q     As much potential helpful information as out  
20 there, you're trying to get it?

21          A     I'm trying to get as close to the truth as I  
22 can get.

23          Q     Exactly.

24                 And again, Toya was freely speaking with you  
25 and -- and showing you these messages, right?

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1           A     Yes.

2           Q     And you yourself stated, "It looks like he's  
3     cheating on you with her and cheating on her with you,"  
4     right?

5           A     Yes.

6           Q     And that's essentially what this fight was  
7     about, correct?

8           A     That I believe, yes.

9           Q     Okay.

10          A     Based on the context of our conversation --

11          Q     Sure.

12          A     -- (inaudible).

13          Q     Let's talk a little bit, detective, about the  
14     timeline. So again, that -- that was your primary  
15     purpose, right, was to try to get this timeline for  
16     Detective Sinke, correct?

17          A     Yeah. That's fair.

18          Q     And you -- and you've told her that, that  
19     trying to get this timeline is going to be super  
20     helpful in our case, right?

21          A     Gonna be super helpful, yes.

22          Q     And again, to be clear, she wasn't under  
23     arrest at this point, right?

24          A     No.

25          Q     You haven't told her, "Look, Toya, you're --

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1     you're the suspect in this case," right?  You haven't  
2     told her that?

3           **A**     I -- I didn't think I had to tell her just  
4     based on the information she told me about pretty much  
5     knowing that --

6           **Q**     Sure.

7           **A**     -- she already was.

8           **Q**     Again, you're freely having a conversation  
9     with her, right?

10          **A**     It's a consensual conversation.

11          **Q**     Yeah.  You haven't pulled out a pair of  
12     handcuffs and have her cuffed at her table or anything?

13          **A**     No.

14          **Q**     You're -- you're making it clear that you're  
15     just trying to gather as much information as you can?

16          **A**     Yes.

17          **Q**     And again, she's trying to be helpful, right?

18          **A**     I think that's fair.

19          **Q**     She's -- she's trying to provide --

20          **A**     She was cooperative.  She -- she answered my  
21     questions.

22          **Q**     Yeah.  And she was trying to provide you a  
23     timeline of her day, right?

24          **A**     Yes.

25          **Q**     And you said she was -- she was kind of



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1 jumping around a bit as you're talking to her, right?

2 A Yes.

3 Q She was struggling a little bit to remember  
4 some specific times.

5 A I don't -- I don't know if she wasn't  
6 remembering them or just jumping around. But there's a  
7 struggle. But again, like I said, that's not super  
8 uncommon.

9 Q Okay.

10 She stated that roughly between 9:30 a.m. and  
11 12 p.m. that afternoon that she'd been at Frank's  
12 house, correct?

13 A That is -- that is how I understood it for  
14 what she told me.

15 Q She -- she was texting Frank, right?

16 A Yes.

17 Q Okay.

18 She stated that she had gone back to her  
19 place of employment in Mount Pleasant, right?

20 A That's how I remember it, yes.

21 Q Okay.

22 And that she had spoken with several people  
23 ~~once she was back at work, correct?~~

24 A Yeah. Through -- throughout her statement  
25 there, she gave several names of people that --

Carl "Will" Muirheid - Cross-Examination by Mr.  
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1 Q Okay.

2 A -- that she told me she spoke with.

3 Q And she stated, and you talked a little on  
4 direct, eventually, she has a conversation with Frank,  
5 where she finds out that his house burned down,  
6 correct?

7 A Yes.

8 Q And she told you that's -- that's why she  
9 ends up going back to Frank's house to see if it was  
10 true, right?

11 A That's what she told me, yes.

12 Q She told you, well, you've been lying all day  
13 to her clearly about things. She -- she couldn't trust  
14 if that was true, right?

15 A That was -- that was the message she passed  
16 onto me.

17 Q Because she said when she had left his house,  
18 the house was not burned down. So that's why she was  
19 going back to see what had happened?

20 A I don't remember her specifically telling me  
21 the house wasn't burned down. But I do remember her  
22 telling me she went there to see if he was telling the  
23 truth.

24 Q And she drove by -- she was saying there's a  
25 highway that kind of goes by -- by Frank's house. And

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1 as she was driving by she saw the smoke, correct?

2 A I don't remember if she said she saw the  
3 smoke. I thought she said she saw the -- the first  
4 responders and stuff. But that would be in the  
5 transcript. So I'm not saying this to mislead  
6 anything. I just don't remember that.

7 Q Yeah.

8 And she said she saw -- she saw the fire  
9 trucks and the first responders in the front yard,  
10 right? And at that point, she -- she realized the  
11 house clearly was on fire, correct?

12 A I -- I'm assuming that's what she believed,  
13 yes.

14 Q And she told you at that point, then she went  
15 back home, right?

16 A Yes.

17 Q Okay.

18 And she actually told you, it wasn't five  
19 o'clock that she said she went back to the house. She  
20 said it was about 4:00, 430 that she went back to the  
21 house. Do you remember that?

22 A Again, if it's in the transcript, and -- and  
23 ~~you show me, I'd love to look at that.~~

24 Q And would taking a look at that help -- help  
25 you remember exactly?

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1           **A**     Absolutely.

2           **MR. D'ANGELO:**   May I approach, Your Honor?

3           **THE WITNESS:**   Yeah.   Do you want me to read  
4           this?

5           **BY MR. D'ANGELO:**

6           **Q**     No.

7           **A**     What -- I'm seeing is -- obviously, this is a  
8           transcript from the conversation.   It says -- I made a  
9           comment about 4 p.m., she went back to the house.   And  
10          her response was 4:30.   And then I said something to  
11          the effect of "I'll make note of that."

12          **Q**     And again, she's -- she's trying to remember  
13          these times, correct?

14          **A**     Yes.

15          **Q**     And again, you say -- you characterize she  
16          was trying to be helpful and cooperative?

17          **A**     Yes.

18          **Q**     One of the things you were asking for were,  
19          in trying to establish this timeline, you were asking  
20          Toya for names of people that she had spoken with,  
21          right?

22          **A**     Yes.

23          **Q**     Because again, if you're trying to establish  
24          a timeline of where someone had been, coming up with  
25          locations and names would be super helpful, right?

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1           **A**     It can be helpful.

2           **Q**     Yeah.

3                   And as a good detective, you know the  
4 importance of trying to establish where someone's been  
5 throughout the day, correct?

6           **A**     Yeah. And there's lots of ways to do that,  
7 yes.

8           **Q**     It's a -- it's a -- one of the ways that you  
9 can corroborate someone's story. Is that fair?

10          **A**     Yeah, absolutely.

11          **Q**     And she provided you several names of people  
12 that she had spoken with that day, right?

13          **A**     Yes.

14          **Q**     Okay.

15                   She provided you with the name of outside --

16          **MS. SAVAS:** Objection, Your Honor. Outside  
17 the scope of direct.

18          **THE COURT:** I'm going to give you some  
19 latitude.

20          **MR. D'ANGELO:** Thank you, Your Honor.

21          **BY MR. D'ANGELO:**

22          **Q**     And again, she stated that she had left  
23 ~~Frank's house at 12, right?~~

24          **A**     That's my understanding.

25          **Q**     And -- and she had told you that she went

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1 back to her work?

2 A Yes.

3 Q She stated that once back at work, she had  
4 spoken with Mike Nikonchuk, he was a driver that worked  
5 there.

6 A I -- I remember that last name.

7 Q Because she had you spell -- or she --

8 A I remember that last name.

9 Q You had to have her spell out that name for  
10 you, right?

11 A Yes.

12 Q She told you the name of John Thomas, another  
13 driver that was at the store that she spoke with?

14 A Okay.

15 Q She had spoken -- do you recall Lil Donna,  
16 again, was another name of a person she spoke with at  
17 the store?

18 A Okay.

19 Q She told you that on the phone, she had  
20 spoken with -- well, again, at the store a Joanne?

21 A All right.

22 Q She had told you she had spoken with a Kathy.  
23 Does that sound right?

24 A Yes, if it's in the transcript, for sure.

25 Q And again, she's trying to provide you with

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1 names of people that -- that she had interact with that  
2 day, correct?

3 A Yes.

4 Q And again, that's easy information to be able  
5 to get from someone, correct?

6 A Easy information to get from someone?

7 Q Sure. Right?

8 A Oh, yeah. If tell the truth, especially.

9 Q And that's incredibly important information  
10 for a jury to be able to have, correct?

11 A Who -- who the people are? It can be, yeah.  
12 It can also not be that important too, though.

13 Q But at that point, you don't know, right?  
14 You're just investigating. You're just trying to give  
15 Detective Sinke as much information, whether -- you  
16 don't know if it's important. But you're trying to  
17 give her as much information as you can, right?

18 A Yeah. I'm trying to give her something to --  
19 to work with. And she can work her investigation as  
20 she sees fit and follow the evidence from there.

21 Q Okay.

22 As we stated, at the start of your

23 ~~conversation with Toya, again, you are working off of~~  
24 limited information about what really happened that  
25 day. Is that fair?

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

- 1           **A**     Yes.
- 2           **Q**     She provided you her whereabouts?
- 3           **A**     Yes.
- 4           **Q**     She provided you details about the arguments  
5     about what had happened, correct?
- 6           **A**     Correct.
- 7           **Q**     She provided you names of people that she had  
8     interacted with throughout that day?
- 9           **A**     Yes.
- 10          **Q**     Based on your years as a detective, though,  
11     you didn't necessarily believe her account of -- of  
12     the -- the story. Did you?
- 13          **A**     I didn't believe her.
- 14          **Q**     Because as a detective, you know that in an  
15     investigation, there's going to be certain evidence  
16     that's there, right?
- 17          **A**     Yeah. Yes.
- 18          **Q**     So, for example, on a crime -- in a crime  
19     that takes place on a Saturday afternoon in a  
20     residential area, you would expect to see witnesses,  
21     right?
- 22          **A**     When you say the word "expect," that throws  
23     the whole thing off. Hope? Yes. Expect? No. I --  
24     it's almost the opposite. You -- you almost expect not  
25     to have it. That -- that's been my experience. And



Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1 that may be anecdotal. But that's my experience.

2 Q You're hoping to find witnesses, right?

3 A Sure. Hoping. Yeah. Absolutely.

4 Q Because it's logical to assume that there  
5 might be someone who saw, right?

6 MS. SAVAS: Objection. Hypothetical; outside  
7 of the scope of the direct; and his personal  
8 knowledge in this case is limited to the interview  
9 of the defendant.

10 THE COURT: Overruled. It's based on his  
11 rational perception, his years of experience,  
12 speaking about what he does within the scope of  
13 his duties as a detective.

14 You may answer the question, sir. Do you  
15 need it repeated?

16 THE WITNESS: No, ma'am. I'm -- I'm good.  
17 Thank you, though.

18 THE COURT: You may answer the question.

19 THE WITNESS: So I do -- I do think it is  
20 logical to think during the middle of the day that  
21 you are going to have people that may have seen  
22 something. However, I also know from working  
23 ~~these cases, based on if you're there alone,~~  
24 manpower issues, what you have going on, don't  
25 have going on, you -- you're going to prioritize

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1           the way you do things. So yeah. You would hope  
2           that you're going to have those type of things  
3           happen. And sometimes what will even happen,  
4           which makes it great is when you're on the scene,  
5           they'll come to you and say, "Hey, this is what I  
6           saw," because this -- this was out of the  
7           ordinary.

8           I don't know. But you're asking my opinion.  
9           I don't know if that happened on this case or  
10          didn't happen. I -- I can only hope that going  
11          forward until I retire that I do have witnesses  
12          that come up and talk to me.

13       **BY MR. D'ANGELO:**

14           Q       Right. And you know as a detective, it's  
15           important to go out and try to find those witnesses,  
16           right?

17           A       As you can, you should -- you should  
18           definitely try to find witnesses.

19           Q       'Cause those people don't always come up to  
20           you, right?

21           A       Nope.

22           Q       That's why you got to make the effort to go  
23           out and try to find those witnesses, correct?

24           A       Yes. Sometimes you do.

25           Q       Yeah.

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1           You know in cases that people have cell  
2 phones, right?

3           **A**     Yes.

4           **Q**     So there's historical cell tower data --

5           **MS. SAVAS:** Objection, Your Honor.

6           **THE COURT:** Basis? (Inaudible).

7           **MS. SAVAS:** It'll be a matter of law before  
8 the Court, Your Honor, based upon defense's  
9 motions.

10           **THE COURT:** You need to state it from the  
11 scope of this witness's knowledge. You're asking  
12 him questions -- he's not the investigating  
13 officer. You need to move on.

14           **MR. D'ANGELO:** Understood, Your Honor.

15           **THE COURT:** Objection sustained.

16           **BY MR. D'ANGELO:**

17           **Q**     Again, going out and trying to find  
18 witnesses, that's easy information to get, right?

19           **MS. SAVAS:** Objection. Speculation.

20           **THE COURT:** Sustained. (Inaudible) previous  
21 instructions, Mr. D'Angelo.

22           **MR. D'ANGELO:** Understood, Your Honor.

23           ~~**THE COURT:** You need foundation for that~~  
24 question. You failed to establish that.

25           **BY MR. D'ANGELO:**

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1           Q     Eventually, you were done questioning  
2     Ms. Steward, right?

3           A     Yes.

4           Q     You had a conversation with Detective Sinke  
5     following that conversation, right?

6           A     Yes.

7           Q     Okay.

8                     You -- you relayed to her kind of the  
9     timeline that you had --

10          A     Yes.

11          Q     -- right?

12                    You relayed her the -- the names and  
13     locations that Toya had provided, right?

14          A     I don't specifically know that I relayed  
15     things that were that fine. But I definitely gave her  
16     like a macro level of information to -- to make a  
17     decision if she could.

18          Q     Sure.

19                    You would have provided her everything that  
20     you thought was important that she can make her  
21     decision, right?

22          A     I think that's fair.

23          Q     And then again, you prepared ultimately a  
24     report in this case, right?

25          A     Yes.

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1           Q     A report that she could have to review?

2           A     Yes.

3           Q     Okay.

4                     And at that point, you were instructed to  
5 take Toya Steward into custody, correct?

6           A     Correct.

7           Q     All right.

8                     And you took -- you took Toya to Leeds Avenue  
9 at the jail, right?

10          A     I think I took her to the -- to our offices  
11 first.

12          Q     Okay.

13          A     I -- I believe that.

14          Q     Okay.

15                     And what she was currently wearing at that  
16 time, that -- that's the clothes that she wore to the  
17 jail, right?

18          A     Yeah. Oh, yeah, yeah, yeah. She didn't  
19 change into anything, no.

20          Q     Correct.

21                     You didn't collect any shoes from her home,  
22 right?

23          A     Me? No.

24          Q     Okay.

25                     You did collect, however, her cell phone,

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1 right?

2 A Yes.

3 Q Okay.

4 What did you -- where did you take that cell  
5 phone?

6 A Well, once I take a cell phone from -- from  
7 anybody, it's secured. Like I said, she gave me the  
8 pin number. I don't necessarily remember if I was the  
9 person that logged that in. But obviously, there'll be  
10 documentation of that. Or if I gave that to  
11 Sergeant Cheek for her to log that in.

12 But what happens is, it goes from there, and  
13 then it gets logged into our evidence, which is  
14 secured. And then, you know, it was my understanding  
15 that a search warrant was going to be executed on that  
16 at a later date.

17 Q And that -- and that was logged in at the  
18 sheriff's office, correct?

19 A Yes.

20 Q Okay. And that's -- and you would have --  
21 and you would have taken it directly to there on Leeds  
22 Ave., right, the cell phone?

23 A Yes. I mean, normally, unless something came  
24 up that I don't remember.

25 Q Right.

Carl "Will" Muirheid - Cross-Examination by Mr.  
D'Angelo

1                   And that -- and you would have documented  
2 something in your report if it had --

3           **A**     Not necessarily. Sometimes -- I mean, no,  
4 not necessarily.

5           **Q**     That phone wouldn't have been any --

6           **A**     If I thought it was something  
7 inconsequential, I wouldn't. If it had something to do  
8 with the case, yeah. But like, for instance, if my  
9 wife said, "Will, I need you to come home right away,"  
10 I might go home. And -- as long as I know that that  
11 piece of evidence is secure in my vehicle, deal with  
12 what I got to deal with at home, and then bring it  
13 back. I wouldn't necessarily put that in a report.  
14 That's what I'm saying.

15          **Q**     That phone wouldn't have been anywhere up  
16 near Ashley Phosphate Road, right?

17          **A**     Not that -- I don't -- I don't recall me  
18 being anywhere near Ashley Phosphate Road that day --

19          **Q**     You wouldn't have transported it --

20          **A**     -- except for maybe to drive home.

21          **Q**     You wouldn't have transported it there?

22          **A**     Not on -- not on purpose, no. Not knowingly.

23          **Q**     Toya -- Toya Steward spoke freely with you,  
24 right?

25          **A**     Yes.

Carl "Will" Muirheid - Redirect Examination by  
Ms. Savas

1           Q     She tried to answer the questions that you  
2 asked her, right?

3           A     Yes.

4           MR. D'ANGELO: Brief moment, Your Honor.

5           (Pause.)

6           Nothing further, Your Honor.

7           THE COURT: Any redirect?

8           MS. SAVAS: Yes, Your Honor. Thank you.

9           THE COURT: You're welcome.

10                   REDIRECT EXAMINATION

11           BY MS. SAVAS:

12           Q     Detective Muirheid, regarding the cell phone,  
13 to the best of your knowledge, was it secured into  
14 evidence according to protocol by yourself?

15           A     To -- yes, to the best of my knowledge. Yes.

16           Q     And in regards to what the defense was saying  
17 a moment ago about wouldn't it be helpful to have  
18 witnesses and investigations, is a 911 caller and an  
19 eyewitness a good witness to have an investigation?  
20 Are those --

21           A     I'd probably put that at the top of my list  
22 as good witnesses.

23           Q     How about a victim?

24           A     Victims are good too.

25           Q     How about an eyewitness?



Carl "Will" Muirheid - Redirect Examination by  
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1           **A**     Direct evidence is as good as well.

2           **Q**     So those make for good cases, don't they,  
3     sir?

4           **A**     They have in my experience.

5           **Q**     Okay.

6                     And Detective Muirheid, was it your job to  
7     strip-search the defendant?

8           **A**     No.

9           **Q**     Would it be your job to look her body over  
10    for any burns or anything on her that wouldn't require  
11    apparent medical attention?

12          **A**     Yeah. No.

13          **Q**     Okay.

14                    Detective Muirheid, when you said that she  
15    wanted to freely speak to her -- or she wanted to  
16    freely speak to you, did it appear like she had  
17    something to say?

18          **A**     Yeah.

19          **Q**     Did she want to get her side of the story out  
20    there?

21          **A**     Yes.

22          **Q**     And we're talking about the timeline. Did  
23    ~~she tell you specifically where she was between 130 and~~  
24    two o'clock that day?

25          **A**     No. And -- and again, she -- she jumped

Carl "Will" Muirheid - Redirect Examination by  
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1 around. And there was some things to clarify. And --  
2 and even in the situation where he had me talk about  
3 the 4:30, I'm almost certain that I remember another  
4 time that we went back to that. And she actually said,  
5 it was actually closer to five.

6 Q So would it be inconsistencies she said  
7 throughout her timeline?

8 A They were -- they were inconsistent enough to  
9 me that I felt like on the day that it happened and  
10 given everything, that it would have been a little what  
11 I'll say for lack of -- a bit tighter, like more --  
12 more consistent.

13 Q So she could tell --

14 A Like I was then able to follow it better.

15 Q Sure. So she was hard to follow.

16 So she could clearly tell you she was there  
17 about 9:30 banging on the door, right?

18 A Yes.

19 Q And she could clearly tell you that she was  
20 at her house in the evening when you arrived, right?

21 A Yes.

22 Q But all the stuff in between was not clear?

23 A To me, it was not clear.

24 Q And when Mr. D'Angelo was talking about  
25 specific people and naming all these folks that work at

Carl "Will" Muirheid - Redirect Examination by  
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1 the pizza joint with her, did she say she physically  
2 saw them that day?

3 A Some of them -- and again, going off memory.  
4 Some of them, I think she may have saw at the pizza  
5 place. And then some, I think, were over the phone.

6 Q Over the phone.

7 So did she also say John Thomas, the driver,  
8 was at the store around when she said noon-ish?

9 A If -- if that's in the transcript then --

10 Q Okay.

11 A I'm sorry.

12 Q And then did she say all those other people  
13 possibly could have been over the phone like you  
14 mentioned?

15 A That was how I -- I remember understanding  
16 it.

17 Q If I show you a transcript, can I refresh  
18 your memory? If she's talking about -- you can see  
19 this line. Did she said whether she physically saw  
20 this person or was she just talking on the phone?

21 A Talked on the phone.

22 Q Talked on the phone. Okay.

23 ~~And did she give you a time when she went to~~  
24 that store that day?

25 A Specifically, I don't remember.

Carl "Will" Muirheid - Redirect Examination by  
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1           Q     If I show you a transcript right here.

2           A     "Okay. And they were all at the store and  
3 they saw you there at noon?"

4           Q     At noon.

5                     But did she say whether she was at the -- and  
6 did she say how long she was at the store? Do you  
7 recall, if show you your transcript?

8           A     Yeah.

9           Q     Okay.

10          A     About 20 minutes.

11          Q     Twenty minutes. That would put her about  
12 12:20 she left the store, did not see those people that  
13 were not at the store. She may have talked to folks on  
14 the phone. Do you recall what time she said -- what  
15 she did after that after she left the store?

16          A     I think she said something about going to get  
17 cigarettes or something to that effect.

18          Q     And did she -- do you recall what time she  
19 said she went to get cigarettes?

20          A     You know you're going to have to show me the  
21 transcript. I'm sorry.

22          Q     Okay.

23                     I'll show you the page.

24          A     Apologize to everyone --

25          Q     That's okay.

Carl "Will" Muirheid - Redirect Examination by  
Ms. Savas

1           **A**     -- for that. I'm glad that I recorded it.

2                   About one or two.

3           **Q**     Could she give you an exact location of where  
4 she was about one or two?

5           **A**     No.

6           **Q**     But did you ask?

7           **A**     Yeah.

8           **Q**     'Cause you want to know exactly where she was  
9 at specific times, correct?

10          **A**     I mean, yeah. Because I mean -- it obviously  
11 helps to find the truth. And if she wasn't involved,  
12 then easy enough to be dealt with.

13          **Q**     So Detective Muirheid, throughout the  
14 conversation, did the defendant say she was mad at  
15 Frank for breaking up with her that day?

16          **A**     I don't know that specifically for breaking  
17 up with. But she was mad. And she definitely -- that  
18 was known.

19          **Q**     And she did admit to going to his house that  
20 morning?

21          **A**     She admitted to going to his house twice:  
22 That morning and later that afternoon.

23          **Q**     ~~And she admitted to messaging and calling him~~  
24 that day?

25          **A**     Throughout the day.

Carl "Will" Muirheid - Redirect Examination by  
Ms. Savas

1           **Q**     And unfortunately, she just couldn't give you  
2     a clear timeline of the entire gap of that -- between  
3     morning and before the evening, right?

4           **A**     It was not clear to me.

5           **MS. SAVAS:**   Nothing further.

6           **THE COURT:**   Any objection to this witness  
7     being excused?

8           **MR. D'ANGELO:**   Your Honor, I would request  
9     a --

10          **THE COURT:**   Only if they don't object. It is  
11     cross -- it is direct, cross, redirect. They have  
12     the burden of proof. If you're asking for leave  
13     to ask additional questions, they're gonna have to  
14     consent to it.

15          **MR. D'ANGELO:**   Absolutely.

16          **THE COURT:**   Do you have any objection to his  
17     request for recross?

18          **MS. SAVAS:**   Yes, Your Honor. I would object  
19     to him --

20          **THE COURT:**   Mr. Foreman, ladies and  
21     gentlemen, I have a brief matter of law to take  
22     up. During the break, please do not discuss the  
23     case. Thank you. We appreciate your patience.

24     (The jury exits the courtroom at 12:43 p.m.)

25          **THE COURT:**   You may take your seats. You may

1 take your seats.

2 What is the basis of your request,  
3 Mr. D'Angelo?

4 **MR. D'ANGELO:** I just want for clarification  
5 to the jury --

6 **THE COURT:** Procedurally, you need to be able  
7 to give me some basis that you're entitled to it.  
8 The rules are very clear. You get direct, cross  
9 redirect. They have the burden of proof. They  
10 get the last say. There is some case law that  
11 says discretionary. But I'm (inaudible) strict  
12 instructions when it comes to the rules.  
13 (inaudible) that never ends.

14 **MR. D'ANGELO:** I understand, Your Honor. Two  
15 points that I would just make, she asked on  
16 redirect: Who did you see at the store? He only  
17 provided one name.

18 In the transcript, he specifically asks: So  
19 who was at the store?

20 **THE COURT:** That was not her question. I  
21 think you heard it differently than I did.

22 **MR. D'ANGELO:** Your Honor, there are four  
23 ~~people that she gives names of who she saw at the~~  
24 store.

25 **THE COURT:** And you went through those. And

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1           you opened the door. Because I made a notation  
2           myself when you started asking the question. So  
3           when you opened the door, she got to rehabilitate  
4           her witness on that issue.

5           **MR. D'ANGELO:** I understand, Your Honor. But  
6           the testimony that was presented to the jury  
7           indicated that only one named person was actually  
8           seen at the store. The rest were on phone.  
9           That's just not correct. There was Rachel seen at  
10          the store, Mike seen at the store --

11          **THE COURT:** Well, then, why didn't you ask  
12          him that when you asked him on your  
13          cross-examination.

14          **MR. D'ANGELO:** I did, Your Honor. And he  
15          stated at that time that those names were seen.

16          **THE COURT:** That was not his testimony.

17          **MR. D'ANGELO:** His testimony -- I -- again,  
18          Your Honor, I know you take copious notes.

19          **THE COURT:** I listen. I get to listen  
20          objectively. Y'all listen as adversaries. Y'all  
21          hear things sometimes that don't happen. And I  
22          don't mean that in any pejorative sense. It's  
23          just that I think it's sometimes because we're so  
24          caught up in advocating, we think we hear things a  
25          certain way that they really -- and it goes both



1           ways. I'm not directing that at you.

2           **MR. D'ANGELO:** Understood, Your Honor. But  
3           you went through a whole list of names -- you went  
4           through a whole list of names that she gave him.  
5           You never specifically asked whether she saw them  
6           or not.

7           She asked on redirect -- she went back  
8           through the list that you elicited and said  
9           because he says, and I'm paraphrasing, that her  
10          testimony is inconsistent. She jumped around. It  
11          was hard to follow. And based on his  
12          recollection, there's some people that physically  
13          she may have seen; some she may not have seen.  
14          But he was left with the impression that some of  
15          these people she talked to on the phone; some of  
16          them she actually saw in person.

17          But you never asked him any questions. I  
18          just looked back at my notes. You went through a  
19          whole litany of people that she said -- you said,  
20          "Didn't she provide you with this name? Didn't  
21          she find you with that name? Didn't she provide  
22          you with this name?" as -- to say that she was  
23          consistent in her statement. I don't recall you  
24          ever asking about whether she physically saw them  
25          or not. Now, I might be wrong.

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1           Yeah. My clerk and I are on the same page.  
2           You didn't ask those questions. Because our  
3           reflections in the video -- well, in the recorded  
4           statement, she doesn't ever say she saw them in  
5           person.

6           **MR. D'ANGELO:** Understood, Your Honor.

7           **THE COURT:** But it's still a discretionary  
8           call. And I need to have some basis for you to be  
9           able to recross. And I just have to -- basically  
10          what I'm hearing is, you want a second bite of the  
11          apple to ask what you didn't ask on cross. You  
12          asked certain questions on cross. My notation in  
13          my notes was that you opened the door about  
14          certain things. And she's entitled to  
15          rehabilitate her witness under the rules. And she  
16          gets the last second. She has the burden of  
17          proof.

18          **MR. D'ANGELO:** I understood, Your Honor.  
19          Just it was that point. And the second was  
20          that --

21          **THE COURT:** I think you can argue those  
22          inconsistencies if you'd like. But the other  
23          problem that y'all have created by making  
24          reference to a transcript, I have not admitted  
25          this entire statement. And you both continue to

1       make references to a statement that the jury is  
2       going to ask for that they're not gonna get. So I  
3       just need y'all to understand you're creating a  
4       real -- a real bad Pandora's Box rabbit hole for  
5       yourselves. Because they're not getting a  
6       tran- -- even if they were to get the statement,  
7       they would get it because it would say what it  
8       said. They would not be getting a transcript.

9               So you really should have couched it in,  
10       "Would you like to see something to refresh your  
11       memory?" Should never have made reference to a  
12       statement -- transcript. Because now it gives  
13       this jury the impression that there's some  
14       official something that they should be able to see  
15       what was said. And no such thing exists.

16              All right. Is there anything else we need to  
17       take up before we break for lunch from the state?

18              **MS. SAVAS:** No, Your Honor.

19              **THE COURT:** How long -- which witness is it  
20       in -- from the defense, Mr. D'Angelo --

21              And I assumed that you stuck by your  
22       objection to recross, Ms. Savas?

23              **MS. SAVAS:** Yes, Your Honor.

24              **THE COURT:** And what was your basis for that?

25              **MS. SAVAS:** That we wouldn't have the last

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1           remarks, Judge.

2           **THE COURT:** Now, my question is, Which  
3           witness, again, is it that deals with the cell  
4           phone data?

5           **MS. BLAZER:** Paul McManigal.

6           **THE COURT:** And how long -- and what's the  
7           basis of your objection? That's the spoliation  
8           argument that you were making about Mr. McManigal?

9           **MS. BLAZER:** Yes, ma'am, Your Honor. There  
10          are actually two.

11          **THE COURT:** So do I actually need to hear  
12          just argument on that? Or do I actually need to  
13          hear from Mr. McManigal?

14          **MS. BLAZER:** No. I think you need to hear  
15          from Mr. McManigal.

16          **THE COURT:** To what extent do I need to hear  
17          from him? And on what issue?

18          **MS. BLAZER:** To describe for the record  
19          the -- the process he follows to both extract data  
20          from, interpret data from, and then delete a copy  
21          of data from --

22          **THE COURT:** Why do I need to hear that in  
23          camera? Your argument is a legal one. I don't  
24          think there's any mystery as to what they do when  
25          they extract data and when they analyze it. I

1 think it's pretty standardized. And they-all use  
2 the same. Because basically, what you're now  
3 asking me to do is hear his testimony twice.

4 **MS. BLAZER:** I -- I agree that it would be  
5 very unfortunate and duplicative to have to go  
6 through some of the stuff twice.

7 **THE COURT:** No. I'm trying to figure out why  
8 we need to hear his testimony to make a decision  
9 on a legal argument.

10 **MS. BLAZER:** Because I believe that he is  
11 going to establish that in fact, the Cellebrite  
12 report is not the phone. The Cellebrite report is  
13 not the complete contents of the phone.

14 **THE COURT:** Is that the state's position that  
15 it is?

16 **MS. SAVAS:** That's -- continues to be what  
17 has been represented to me.

18 **THE COURT:** Is that your position, Ms. Savas?

19 **MS. SAVAS:** No, Your Honor. The Cellebrite  
20 report is not the phone. I've never said it  
21 wasn't the phone.

22 **MS. BLAZER:** But it's been represented as  
23 ~~though it is the totality of --- it represents all~~  
24 the totality of the -- of the data on the phone,  
25 which it does not.

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1           **THE COURT:** But that's still -- your argument  
2 is that he somehow spoliated this evidence --

3           **MS. BLAZER:** It's actually not against --  
4 that's the thing.

5           **THE COURT:** So what is your argument?

6           **MS. BLAZER:** There -- it's -- it's a -- it's  
7 a perfect storm argument. Because there is a  
8 policy in place in the Charleston County Sheriff's  
9 Office with regard to how they deal with  
10 electronic evidence. And this clearly falls under  
11 that ambit.

12           And what that policy states is that, in  
13 essence, either you keep the device, you make a  
14 copy, you run your tests. If you've kept the  
15 device, you can delete the copy. If you're giving  
16 the device back, you keep the copy. But there was  
17 no communication, apparently, between either  
18 Detect -- Sergeant Cheeks and Mr. McManigal --  
19 Deputy McManigal or -- and that is what I believe.  
20 I don't believe that this was intentional by  
21 Deputy McManigal. Nor do I actually think it was  
22 intentional by Deputy Sinke. I think the problem  
23 is -- and the court directed my attention very  
24 thoughtfully and helpfully to -- to focus the  
25 argument on the fact that there was no malice.

1 But that is not the only issue. There is a  
2 further issue, which is that in the absence of  
3 malice, it's my obligation to convince the Court  
4 that there was likely exculpatory information that  
5 was not preserved. And that is what I intend to  
6 do.

7 **THE COURT:** That is not the subject of  
8 inquiry. The inquiry is whether you also had  
9 access to it. It's a seminal issue, not whether  
10 it was exculpatory or not. The issue is whether  
11 you likewise had access to the same information  
12 for which you could have analyzed. And that's  
13 really the seminal issue. The issue is not --

14 **MS. BLAZER:** And -- and --

15 **THE COURT:** -- whether they somehow -- I  
16 don't know that they -- I'm going far afield of  
17 what I'm asking.

18 **MS. BLAZER:** Yes, ma'am.

19 **THE COURT:** It's close to lunch, and I need  
20 to let my jury go.

21 Do you likewise feel that Ms. -- that Officer  
22 McManigal needs to give testimony on this issue,  
23 Ms. Savas?

24 **MS. SAVAS:** Your Honor, I -- it would depend  
25 upon if the Court needed any further inquiry. But

1 we outlined it in our --

2 **THE COURT:** Here's the issue. Y'all agreed  
3 on the facts, which is that he downloaded this  
4 phone, that due to space issues it's there SOP to  
5 delete it because that raw data really -- and I  
6 know this, because I've just heard him testify a  
7 lot of times and I've heard his testimony. That  
8 the raw data, whatever it is, is a really no use  
9 to them. They don't keep it, because it takes up  
10 space. And then they use that they put that into  
11 another program that analyzes it. And from that  
12 they then go from there.

13 Is there any -- I guess I'm trying to figure  
14 out if you-all have stipulated to the facts? In  
15 which case, all I would need to hear is argument.  
16 If you have not stipulated to the facts and  
17 there's some contention as to what actually took  
18 place? In other words, that somehow he -- is  
19 there some argument about how he got the phone?

20 And it's my understanding that the person  
21 that downloads the phone and gives this data is  
22 never the person to analyze it. Their sole  
23 function is to download it. But did that happen  
24 differently in this case?

25 **MS. SAVAS:** He did everything --



1           **THE COURT:** Okay.

2           **MS. SAVAS:** -- is what he told us.

3           **THE COURT:** So that -- so I guess I'm trying  
4 to figure out is there some real -- we would need  
5 testimony if there is some disagreement about the  
6 facts or the continuum as to how this took place.  
7 If there's no disagreement about how this took  
8 place, it's a legal issue for the court to  
9 determine.

10          **MS. SAVAS:** The only issue that I think we  
11 disagree on is that he did not break the phone.  
12 We've never heard the phone was broken, or the  
13 screen, until they're brief. And I don't even  
14 know what the phone -- they haven't even showed us  
15 the phone. They've never showed me proof it  
16 broke.

17          **THE COURT:** So they need to have his  
18 testimony that documents when he got the phone,  
19 how the phone came into his possession, what he  
20 did with the phone --

21          **MS. SAVAS:** Sure.

22          **THE COURT:** We don't need to know his  
23 ~~analysis of the contents. Because I don't think~~  
24 that's relevant today or dispositive to the issue.  
25 So would you-all agree that that's the extent of

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1 testimony that we would need from Mr. McManigal?  
2 From the state?

3 **MS. SAVAS:** Yes, sir. I think that's pretty  
4 limited into what --

5 **THE COURT:** And from the defense?

6 **MS. BLAZER:** Just a moment, Your Honor. It's  
7 very good question.

8 **THE COURT:** And how long would that take?

9 **MS. BLAZER:** If that's the scope of his --

10 **THE COURT:** I think that's all I need to  
11 hear --

12 **MS. BLAZER:** -- in camera testimony --

13 **THE COURT:** -- to make a decision. Cause her  
14 movements with that phone, all of that's relevant  
15 and it's probative. Text messages, relevant;  
16 probative. They're admissions against interest  
17 that go to their interaction that day.

18 **MR. D'ANGELO:** And to that point, Your Honor,  
19 if that --

20 **THE COURT:** Although I hadn't seen them. I'd  
21 have to -- you know, I'd have to look at him and  
22 make sure they're not -- like how you doing and  
23 all that.

24 **MR. D'ANGELO:** And to that point, Your Honor,  
25 I would just say so that -- as Ms. Blazer

1 indicated, there's kind of the secondary motion.

2 **THE COURT:** I'll deal with relevance and all  
3 that later.

4 **MR. D'ANGELO:** Okay.

5 **THE COURT:** You'll have to object to that  
6 contemporaneously. I'm not listening to all that.  
7 I'm not hearing this twice.

8 **MR. D'ANGELO:** Okay.

9 I just wanted to make sure Your Honor knew  
10 that --

11 **THE COURT:** And I would assume you-all have  
12 the text messages for me to look at that should  
13 have been provided to me in advance that so I  
14 could have looked at them.

15 **MS. SAVAS:** They're in your packet I gave you  
16 Monday morning, Judge, with the call logs and all  
17 the data -- all of Paul McManigal's exhibits we  
18 seek to admit, we provided to --

19 **THE COURT:** And I don't mean that. What I'm  
20 saying in -- in --

21 **MS. SAVAS:** Yes.

22 **THE COURT:** -- in short is, I'm not the  
23 ~~finder of fact. I am not going to parse out and~~  
24 determine and make findings of fact about each and  
25 every text message. What is before the Court is

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1       whether they are admissible. Once I determine  
2       they're admissible, I think we-all know in good  
3       faith what is an admission against interest, what  
4       deals with consciousness of guilt, and what may  
5       place her in the vicinity of this incident. All  
6       of that's relevant. So to that extent, I would  
7       expect you-all to review those text messages and  
8       determine which ones of those fit into that  
9       category, so that we're not having an extended and  
10      protracted discussion about every single one of  
11      these text messages. Cause it just isn't  
12      necessary.

13           Now, I will look at the messages again during  
14      lunch. And then I'll be in a better position  
15      to -- because I read all this stuff while I had a  
16      jury out last week. (inaudible) I was tired. But  
17      I read it. But it's kind of hard, you know, when  
18      you're reading things and you have to -- you know,  
19      use your attention is sort of split.

20           But what we're talking about, which is the  
21      legal issue about whether they come in or not, and  
22      establishing a record for that. And now beyond  
23      that, I can tell you that -- and I'll give you  
24      some guidance. Anything that deals with  
25      consciousness of guilt, puts her in the vicinity

1 of this incident, or their interaction or her  
2 knowledge that goes to motive or attempt, it's  
3 gonna come in.

4 **MS. BLAZER:** May I ask a clarifying question?

5 **THE COURT:** Sure.

6 **MS. BLAZER:** So then, assuming -- let's  
7 assume that the whole phone comes in subject to --

8 **THE COURT:** Well, the whole phone's not going  
9 to come in.

10 **MS. BLAZER:** Right. But in terms of  
11 there's -- if the Court is not going to suppress  
12 the phone in toto, let's just -- let's just move  
13 past that issue for the moment.

14 **THE COURT:** Uh-huh.

15 **MS. BLAZER:** And if we're going to go through  
16 a data-point-by-data-point analysis of, you know,  
17 relevance 401, 402, 403, 404, right, if we're  
18 going to do that, my understanding of the  
19 Court's -- of the Court's posture --

20 **THE COURT:** My understanding is that y'all  
21 object to anything from the phone coming in. And  
22 I think that --

23 ~~**MS. BLAZER:** Right. But I'm assuming that~~  
24 ~~you're telling me --~~

25 **THE COURT:** That's not a particularly

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1           sustainable position.

2           **MS. BLAZER:** Right. And I'm -- I'm starting  
3           from the assumption that you're not buying what  
4           I'm selling there. So -- so moving on from there,  
5           when you talk about the --

6           **THE COURT:** I haven't heard them yet. I  
7           haven't -- I haven't made a decision. But I --  
8           I --

9           **MS. BLAZER:** But I'm picking up what you're  
10          putting down, where -- where you're leaning. And  
11          so I'm trying to be -- I'm trying to think ahead.

12          **THE COURT:** A lot of that would go to how  
13          much weight they give this testimony.

14          **MS. BLAZER:** And I understand that. And I  
15          guess that's -- that's exactly, you're going  
16          exactly where I am, which is that our -- our  
17          biggest concern is that, and why I think a little  
18          bit of in camera testimony would be helpful only  
19          to assess at the moment of introduction whether or  
20          not certain specific things are going to be  
21          admissible is the fact that the phone itself does  
22          not regularly record the location data. It  
23          records it in a very idiosyncratic way. So every  
24          call that is made that day does not have location  
25          data associated with it. So -- in the phone.

1           **THE COURT:** Those are things that you would  
2           explore on cross-examination. That doesn't make  
3           the statement inadmissible. Either they can --  
4           either the expert can tell us -- Mr. McManigal,  
5           I -- I assume they're gonna try and qualify him as  
6           an expert -- that the phone transmitted a message.  
7           And the phone may be off for whatever reason.  
8           Phones are off for lots of reasons.

9           I mean, when I say "off," I don't mean turned  
10          off. I mean, that the time may be off.

11          **MS. BLAZER:** Oh, I see.

12          **THE COURT:** The tower that was used may not  
13          have been, you know, (inaudible).

14          **MS. BLAZER:** Right. It's more that there's  
15          no tower data at all.

16          **THE COURT:** Then I think that's an issue for  
17          cross-examination. Because we'll know what the  
18          message receiving and the message following it  
19          that -- we know that the message didn't just fall  
20          out of the sky -- out of the blue and call  
21          (inaudible).

22          **MS. BLAZER:** Right. And so that -- and that,  
23          ~~I agree completely. And that's exactly the~~  
24          problem. There is copious data in the phone  
25          throughout the day. But the two pieces of data in

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1 the phone that are tied to locations. There are  
2 only two pieces of data tied to locations that we  
3 are disputing the state's ability to -- to bring  
4 in --

5 **THE COURT:** Which are?

6 **MS. BLAZER:** -- to bring in. Which is an --  
7 a 1:24 location three, and a three -- I believe,  
8 3:02 or 3:03 location. Because in between 1:24  
9 and 3:03, despite the fact that there are numerous  
10 calls, numerous texts, and numerous --

11 **THE COURT:** I guess I need to find out  
12 because I have two big, thick pages of Cellebrite  
13 information. And I thought that was my -- my  
14 memory. Are you seeking to admit all these  
15 statements?

16 **MS. SAVAS:** If that's the text message --  
17 Your Honor, we narrowed them --

18 **THE COURT:** I have the SMS messages. There  
19 are 146 of them.

20 **MS. SAVAS:** Yes. We narrowed them down.  
21 There are so many messages in that time?

22 **THE COURT:** So what would you -- because I  
23 wasn't provided with the narrowed-down list.

24 **MS. SAVAS:** Yeah. That's the narrowed-down  
25 list from just that day.



1           **THE COURT:** 146 messages?

2           **MS. SAVAS:** Yes, ma'am.

3           **THE COURT:** And you seek to introduce all  
4 these messages?

5           **MS. SAVAS:** Your Honor, we seek to admit them  
6 into evidence. Because it is strictly  
7 conversations between the defendant and victim.  
8 So we narrowed it down to that. We narrowed it  
9 down between the time of the incident and the day.  
10 So although it is a lot, and I agree, she sent a  
11 lot. And we believe this is critical to the  
12 state's case in chief to show the motive, to show  
13 the intent, to show her state of mind, the  
14 consciousness of guilt. We will not -- I can  
15 assure, Your Honor, read them all aloud --

16           **THE COURT:** My question is: Are you asking  
17 to admit all 146 of these text messages?

18           **MS. SAVAS:** Yes. But we won't have Paul read  
19 them all, Judge, just for the sake of time. We do  
20 seek to admit them. There are a few that we find  
21 to be critical for the --

22           **THE COURT:** Then you need to identify which  
23 ~~ones you deem critical so that Mr. D'Angelo can be~~  
24 aware of what we're saying is true.

25           **MS. SAVAS:** They have -- they have those,

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1 Judge. We are seeking to admit all of --

2 THE COURT: (Inaudible).

3 MS. SAVAS: No, Your Honor. I'm saying --

4 THE COURT: Maybe I'm missing what you're  
5 saying. You said there are only a few critical  
6 that you would want him to read. I need to know  
7 what those are.

8 MS. SAVAS: I would want him to read them  
9 after we admit that into evidence. I would like  
10 the entire text message. It's important that  
11 it --

12 THE COURT: I got that part.

13 MS. SAVAS: Yes, ma'am.

14 THE COURT: I still need to know --

15 MS. SAVAS: You want to know the second ones?

16 THE COURT: I'd like to know which ones you  
17 say are critical.

18 MS. SAVAS: We have a list for that, Your  
19 Honor, we can provide.

20 THE COURT: 'Cause I don't have that.

21 MS. SAVAS: No, Your Honor.

22 THE COURT: And does Mr. D'Angelo have that.

23 MS. SAVAS: No, Your Honor. We haven't --

24 THE COURT: I think you need to provide him  
25 with that.

1           **MS. SAVAS:** Yes, ma'am.

2           **MS. SAVAS:** And we have also the call logs  
3 presented and the data. We narrowed everything  
4 down to the date of between the victim and  
5 defendant. So it's not admitting everything. As  
6 Your Honor did say, we won't admit the entire  
7 phone. We'll have Paul ID it and then admit these  
8 other pieces as exhibits to go along with the  
9 relevancy and the probative value.

10          **THE COURT:** Yeah. We're dealing with two  
11 different things. And I'm not --

12          **MS. SAVAS:** Yes, ma'am.

13          **THE COURT:** -- going to mix apples and  
14 oranges.

15          **MS. SAVAS:** Yes, ma'am.

16          **THE COURT:** We'll need a clear record. I've  
17 got to deal with things in their order. It's like  
18 an onion that's being peeled. The first issue is  
19 whether they're admissible at all or not, which  
20 deals with their argument that is based in science  
21 to some extent, that -- well, really not. It  
22 deals with the procedure. And whether it is one  
23 ~~that is most appropriate under the circumstances~~  
24 as it was employed by the person who analyzed this  
25 telephone.

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1           And then we move to the whole issue of each  
2           individual text message, each individual location,  
3           how that was determined, and whether in fact it is  
4           relevant and probative. Okay. So I need you to  
5           give him a list, as well as me, of what you intend  
6           to specifically elicit from this witness out of  
7           146 messages.

8           And then we have also an extraction report  
9           that deals with the IG posts and the responses,  
10          and also (inaudible) of the home. I don't know  
11          whose phone this from. I have no idea.

12          **MS. SAVAS:** Oh. Those are from the  
13          defendant's phone, Judge. Those are just the MMS  
14          messages. They were submitted in the report  
15          because they were photographs instead of texts.  
16          It was just a different style. So we just had him  
17          divide everything out.

18          **THE COURT:** And then we have a call log.

19          **MS. SAVAS:** Yes.

20          **THE COURT:** I need to know of what -- there  
21          are 127 calls.

22          **MS. SAVAS:** Yes, Your Honor. We would seek  
23          to admit that entire call log into evidence. I  
24          don't --

25          **THE COURT:** Are the -- all the calls in?

1           **MS. SAVAS:** Those are all between the victim  
2           and the defendant from that day, Judge. We're  
3           only having him just read five to pinpoint. But  
4           we do seek to admit all of those reports in their  
5           entirety.

6           **THE COURT:** And then the geofencing?

7           **MS. SAVAS:** There's only six.

8           **THE COURT:** Oh. This is the one that talks  
9           about how many steps were taken and all of that  
10          from the telephone. They record all that.

11          **MS. SAVAS:** Yes, Judge.

12          **THE COURT:** Okay.

13          How long do we need to take Mr. McManigal's  
14          testimony?

15          **MS. SAVAS:** For the in camera or for the  
16          entirety of his testimony?

17          **THE COURT:** For the in camera.

18          **MS. SAVAS:** In camera, if it's just to speak  
19          about the process in which he extracted, maybe 10  
20          minutes, if we're not going to get into everything  
21          else. Also, Judge, I'm not sure in your packet,  
22          we did provide a defense. We have a timeline that  
23          ~~Paul made as demonstrative that we very much~~  
24          narrowed all that information down.

25          **THE COURT:** Did you provide that to

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1 Mr. D'Angelo?

2 MS. SAVAS: Yes, ma'am.

3 THE COURT: You said it's just for  
4 demonstrative purposes, correct?

5 MS. SAVAS: Yes, Your Honor. And I wanted to  
6 make sure everyone had it just so there wasn't,  
7 you know --

8 THE COURT: We don't.

9 MS. SAVAS: What?

10 THE COURT: We don't have it.

11 MS. SAVAS: Yes. I have an extra,  
12 Your Honor. I don't know if --

13 THE COURT: That will be helpful.

14 MS. SAVAS: -- finalized at that time.

15 THE COURT: How long is your  
16 cross-examination of Mr. McManigal?

17 MS. BLAZER: Based on the limitation that the  
18 Court has imposed, probably --

19 THE COURT: Well, don't state it that way.  
20 What I have said was really -- it would be refined  
21 to what is relevant. I'm not going to hear his  
22 entire testimony. The purpose of your  
23 objection -- in camera hearings are not for  
24 discovery.

25 MS. BLAZER: Oh, I -- I -- I know everything

1 I need to know.

2 **THE COURT:** They are limited -- they're for a  
3 limited purpose, which is the basis of your  
4 objection.

5 **MR. D'ANGELO:** No. I will not be fishing.

6 **THE COURT:** I think that we-all would agree  
7 that any questioning would be limited to the  
8 nature of your objection.

9 **MS. BLAZER:** And given the limitation that --  
10 of 10 minutes that's been described, I -- I --

11 **THE COURT:** Well, I don't know. I mean,  
12 she's given me an estimate.

13 **MS. BLAZER:** Right. And I --

14 **THE COURT:** I'm trying to figure out --

15 **MS. BLAZER:** And I'm saying I --

16 **THE COURT:** -- how long I need to let my jury  
17 go for lunch, because I'm not gonna have them  
18 sitting in that room while we're doing that. Do  
19 you have a witness you can call before we deal  
20 with Mr. McManigal? Or was he your next witness?

21 **MS. SAVAS:** He was my next witness. But as  
22 Your Court indicated, I could put in a jail call  
23 ~~right now. I have that.~~

24 **THE COURT:** But they object to those too,  
25 don't they?

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1           **MS. BLAZER:** Huh?

2           **THE COURT:** Y'all object to the jail calls as  
3 well, don't you?

4           **MS. SAVAS:** They -- I asked for stipulation.

5           **THE COURT:** Or do y'all not.

6           **MS. BLAZER:** We are -- I think our only  
7 objection was to the truncation of one of the --

8           **MS. SAVAS:** That was not the way that I --

9           **THE COURT:** Is that something y'all --

10          **MS. SAVAS:** Seek to admit.

11          **THE COURT:** We got a different -- we had one  
12 disc.

13          **MS. SAVAS:** Right, right.

14          **THE COURT:** And then we got a different one  
15 yesterday.

16          **MS. BLAZER:** And it's still -- the second  
17 truncation, we still object to. It's actually --

18          **THE COURT:** Then we got to deal with that.

19          **MS. SAVAS:** That's not --

20          **THE COURT:** Well, y'all can't talk about that  
21 and include what you say should be included?

22          **MS. SAVAS:** I'd love to.

23          **THE COURT:** Y'all can't work that out?

24          **MS. SAVAS:** I do not seek to admit that part  
25 of the jail call, Your Honor. But the jail



1 call --

2 THE COURT: Well, I'm confused now. Because  
3 I got a -- I got one, the excerpts. And then you  
4 took that back and you gave me another one.

5 MS. SAVAS: Yes, ma'am.

6 THE COURT: So I'm trying to figure out what  
7 do you have.

8 MS. SAVAS: They have a separate one that  
9 they wanted. They have an extension --

10 THE COURT: Have y'all listened to the one  
11 that Ms. Savas gave you on yesterday?

12 MR. D'ANGELO: I did, Your Honor.

13 THE COURT: And so are y'all not in agreement  
14 with those?

15 MR. D'ANGELO: Where it is clipped --

16 THE COURT: Uh-huh.

17 MR. D'ANGELO: -- under the rule of  
18 completeness, I think it just -- it doesn't really  
19 make sense. If you back it up another 60 seconds  
20 and listen to what Frank is saying, it puts into  
21 context the four-second clip of Toya --

22 THE COURT: Which call is that?

23 ~~MR. D'ANGELO: I believe it's the third call,~~  
24 Your Honor.

25 MS. BLAZER: March 7.

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1           **MR. D'ANGELO:** March 7. It's a very short  
2 clip. All -- all we're just asking is that the  
3 clip just include what Frank says to then give  
4 context to what Toya stated. So we don't -- we  
5 don't have the ability -- the way on get --

6           **THE COURT:** I have the entire.

7           **MS. SAVAS:** That -- Your Honor, to clarify.  
8 They are speaking about a part of the clip I did  
9 not submit.

10          **THE COURT:** I got that. But for --

11          **MS. SAVAS:** They don't have that.

12          **THE COURT:** -- appellate purposes, we need  
13 the whole disc. No, you ain't got to provide me  
14 with it.

15          **MS. SAVAS:** Oh. You want the entire --

16          **THE COURT:** I need --

17          **MS. SAVAS:** I gave you snippets, redacted  
18 versions, Judge.

19          **THE COURT:** I got that. But I need to have  
20 the whole disc.

21          **MS. SAVAS:** Oh, okay. I got it. When we  
22 spoke, I thought you said you only wanted redacted  
23 versions.

24          **THE COURT:** No. I wanted -- I wanted both  
25 things. I wanted the redacted version that you

1           see to introduce. But for appeal, for a Court's  
2           exhibit, you need the whole disc of the phone  
3           call. Because otherwise, how can they judge what  
4           decision I made without hearing what I need to  
5           hear. So how can I make a decision about what  
6           Mr. D'Angelo is saying if I can't hear the context  
7           of the whole --

8           **MS. SAVAS:** We can -- we can give the three  
9           entire jail call -- the entirety of those calls.  
10          We can do that on -- on lunch. We've got  
11          (inaudible) right now, Your Honor.

12          **THE COURT:** But you're only -- I understand  
13          you're only seeking to introduce those clips.

14          **MS. SAVAS:** Yes.

15          **THE COURT:** But I have no way of judging --

16          **MS. SAVAS:** My apologies.

17          **THE COURT:** -- what they're saying without my  
18          ability to hear it --

19          **MS. SAVAS:** Yes.

20          **THE COURT:** -- all. And neither does the  
21          appellate court. Because they need to be able to  
22          hear it all. That's why you make the entire  
23          thing

24          **MS. SAVAS:** As a court exhibit. Yes, ma'am.  
25          We can do that.

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1           And then those would be coming in through a  
2           different witness. The witness I have for the  
3           jail calls, there's another phone call. The  
4           dis-labeled female voice, that's who we're using  
5           Melissa High, from All Cannon Detention Center to  
6           input that one jail call.

7           **THE COURT:** Is it safe to say we need about  
8           30 to 40 minutes to deal with -- how many  
9           witnesses do we have left until -- that need to be  
10          called?

11          **MS. SAVAS:** Four.

12          **THE COURT:** And does the defense intend to --  
13          to -- to call any witnesses?

14          **MR. D'ANGELO:** At this time, Your Honor, I'm  
15          just not sure.

16          **THE COURT:** Well, I need to know an estimate  
17          worst-case for planning. I'm not asking --

18          **MR. D'ANGELO:** Worst -- worst -- understood,  
19          Your Honor. Worst-case, two witnesses.

20          **THE COURT:** I'm thinking by the time I send  
21          the jury to lunch and bring them back, by the time  
22          we eat lunch, it's going to be like -- cause it's  
23          almost 1:15 now. And by the time we do that, it  
24          will be three o'clock that I'd be bringing them  
25          back. I just -- and then if it takes longer, then

1           they're gonna be frustrated.

2           Do we think we can finish all the testimony  
3           that's outstanding tomorrow? I need to be able to  
4           have a closing argument --

5           **MS. SAVAS:** Oh, yes, Your Honor.

6           **THE COURT:** -- and instruction on Friday  
7           morning.

8           **MS. SAVAS:** Yes.

9           **THE COURT:** I'm just trying -- I'm just  
10          trying to figure out --

11          **MS. SAVAS:** For us.

12          **THE COURT:** -- whether I need to send them  
13          home for the day and let's just knock out the rest  
14          of this stuff and go eat lunch and come back. Or  
15          whether -- I just don't like them sitting in that  
16          room with no windows. It's just frustrating.

17          **MS. SAVAS:** Yeah.

18          **THE COURT:** What do y'all think?

19          **MR. D'ANGELO:** From -- from our perspective,  
20          I think that makes a lot of sense, Your Honor.

21          **MS. SAVAS:** And I -- and I have those  
22          witnesses here if you want to do those hearings  
23          today.

24          **THE COURT:** I think we need to do -- deal  
25          with all of it --

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1           **MS. SAVAS:** Yes, ma'am.

2           **THE COURT:** -- and just be done with it.

3           **MS. SAVAS:** Yes.

4           **THE COURT:** I think that's a better use of  
5 our time. Is there any exception from the state?

6           **MS. SAVAS:** No, Your Honor.

7           **THE COURT:** Any exception from the defense?

8           **MS. SAVAS:** No, Your Honor.

9           **THE COURT:** Please get the jury for me.

10          **MS. SAVAS:** Your Honor, may I approach with a  
11 timeline for a call.

12          **THE COURT:** Give me a second. I need to send  
13 the jury to lunch.

14          **MS. SAVAS:** Oh.

15          **THE COURT:** And then I'll let y'all know that  
16 we're going to lunch. And then you can do  
17 whatever else you need to do.

18          (The jury enters the courtroom at 1:13 p.m.)

19          **THE COURT:** You may --

20          **THE BAILIFF:** All jurors are present,  
21 Your Honor.

22          **THE COURT:** Thank you.

23                You may be seated.

24                Ladies and gentlemen, I'm going to excuse you  
25 for the remainder of the day. I apologize.

1       Lawyers and I were discussing scheduling and some  
2       other matters. We have some matters of law that  
3       will probably take us the remainder of the day  
4       after lunch. I did not think it fortuitous to  
5       send you-all to lunch and bring you back here like  
6       3:30, quarter to 4:00. That just really didn't  
7       make any sense, especially if what we were having  
8       to work our way through took longer. I just did  
9       not relish the idea of you-all sitting in that  
10      jury room as we tried to work through these  
11      issues.

12             And so I felt it a bet- -- and so does  
13      counsel, a better use of our time to let you-all  
14      go on about your day for the remainder of the day  
15      and us work through the remainder of those  
16      matters. So that hopefully on Thursday, we can  
17      just go through testimony without having to stop  
18      and start.

19             So we have appreciated your time. Please  
20      know we do not take it for granted. During this  
21      break, please do not discuss the case in any  
22      manner whatsoever. Please don't do any  
23      ~~independent research on the internet or make any~~  
24      comments on any social networking sites. And  
25      please avoid any contact with anyone in or about

1 the courthouse.

2 If you would leave your notepads in your  
3 seats, we'll secure them during the break. And  
4 we'll resume Thursday morning at 9:30. Have a  
5 good rest of the afternoon.

6 (The jury exits the courtroom at 1:15 p.m.)

7 **THE COURT:** Y'all may be seated.

8 We are well beyond the lunch recess. We're  
9 going to break until 2:30. And I'll see you-all  
10 at that time.

11 **MS. SAVAS:** May I approach?

12 **THE COURT:** Yes, ma'am. If you would give  
13 that to my clerk, I'd appreciate it.

14 **MS. SAVAS:** (Inaudible).

15 **THE COURT:** Thank you. I appreciate it.

16 **MS. SAVAS:** Yes, ma'am.

17 (A recess is taken.)

18 **THE COURT:** The state ready to proceed?

19 **MS. SAVAS:** Yes, Your Honor. The state -- we  
20 left the itemized line numbers for the text  
21 messages. We don't have a way to create a second  
22 report. We had just simply highlighted on our  
23 exhibit that we admitted, or we seek to admit. My  
24 investigator is coming with the jail tape.  
25 Apparently it takes as long -- it's minute by



1 minute, so -- to burn that DV- -- that disc. But  
2 he is coming. He's on his way over to give that  
3 to Your Honor for completeness.

4 **MS. BLAZER:** And I can confirm that, Judge.  
5 Because the only -- the way we all get it from the  
6 jail is in such a way as the only way to make a  
7 copy of it is to sit and let it play and make a  
8 video of it playing on your computer, which if the  
9 Court wants to let the jail know how problematic  
10 that is.

11 **THE COURT:** Nah. Not my lane. Not my lane.  
12 That is their lane. They can do it however they  
13 feel they need to. I'm sure they have a con- --  
14 contract with somebody that performs those  
15 services.

16 Did you give a copy of what you just referred  
17 to to my clerk and staff?

18 **MS. SAVAS:** I'm sorry. To who?

19 **THE COURT:** To my clerk. Did you give --

20 **MS. SAVAS:** It's right here on the bar,  
21 Judge.

22 **THE COURT:** Oh, I see.

23 **MS. SAVAS:** I have another copy if you'd like  
24 two for Your Honor.

25 **THE COURT:** This right here?

## Motions

1           **MS. SAVAS:** Yes, ma'am. I just couldn't  
2 reach any further.

3           **THE COURT:** That's fine.

4           **MS. SAVAS:** Okay.

5           **THE COURT:** Okay.

6 And you've got a copy of this, Mr. D'Angelo?

7           **MR. D'ANGELO:** I apologize.

8           **THE COURT:** I said you got a copy of the text  
9 messages they would be seeking.

10           **MR. D'ANGELO:** Yes, Your Honor. That's --  
11 that's actually what I'm looking at right now.

12           **THE COURT:** Okay.

13           **MR. D'ANGELO:** Sorry.

14           **THE COURT:** No. Of course.

15 All right. Are we ready to proceed from the  
16 state?

17           **MS. SAVAS:** Yes, Your Honor.

18           **THE COURT:** And the defense?

19           **MS. BLAZER:** Yes, Your Honor.

20           **THE COURT:** All right.

21 Call your witness.

22           **MS. SAVAS:** The state calls Paul McManigal.

23           **THE COURT:** Sir, if you would come to the  
24 stand and be sworn.

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

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**PAUL MCMANIGAL**

having first been duly sworn, testifies as follows:

**THE WITNESS:** I do.

**THE CLERK:** Please be seated.

And please state your full name, spelling  
your last name.

**THE WITNESS:** Paul David McManigal.  
M-c-m-a-n-i-g-a-l.

**THE COURT:** You may proceed.

**MS. FRIES:** Thank you, Your Honor.

**DIRECT EXAMINATION**

**BY MS. FRIES:**

**Q** Good afternon, Mr. McManigal.

How -- what's your expertise?

**A** I'm a digital forensic examiner assigned to  
the United States Secret Service at the Charleston  
County Sheriff's Office.

**Q** And how long have you been in that position?

**A** Since 2010.

**Q** How many phones have you examined?

**A** I probably average about 500 devices a year.  
So about 5000.

~~**Q** And did you review a phone in this case?~~

**A** I have.

**Q** And what phone did you review?

1           A     I was given an Apple iPhone XR.

2           Q     And what date did you receive the phone?

3           A     I received it on February 12, 2020.

4           Q     And who did you receive the phone from?

5           A     I received it from Evidence. It was  
6 initially taken by Detective Muirheid.

7           Q     Okay.

8                     And do you know what an internal chain of  
9 custody is?

10          A     I do.

11          Q     And was one done in this case?

12          A     It was.

13          Q     And if I show you a copy of that, would that  
14 help refresh your recollection of --

15          A     Sure.

16          Q     -- the date submitted? Okay.

17                     So who submitted the phone?

18          A     Detective Muirheid submitted the phone into  
19 evidence.

20          Q     And if the phone was inoperable when you  
21 received it, would there be a note of this from the  
22 sheriff's office?

23          A     There'd be a note in my system, yes.

24          Q     And can you please explain what cellphone  
25 data extraction is?

1           **A**     So cell phone data extraction is essentially  
2 gathering the electronic data within a cell phone and  
3 then processing it so that it can be put into a report  
4 that's readable by a standard user.

5           **Q**     Okay.

6                   And is there a software that's associated  
7 with that? Can you kind of break down how it's --

8           **A**     So the primary software I use is from a  
9 company called Cellebrite. They create a program  
10 called Physical Analyzer. I also use two other tools  
11 to extract the data from the device. One of those is  
12 Cellebrite Premium. The other one is called Graykey.

13                   And in this case, I used Graykey to extract  
14 the binary data from the phone, imported into  
15 Cellebrite Physical Analyzer. And then exported as a  
16 report as a UFDR file.

17           **Q**     And what's binary data?

18           **A**     Binary data is essentially the zeros and ones  
19 that are stored on a computer storage media. It's not  
20 readable by a user until it's actually parsed out in  
21 another program.

22           **Q**     And what happens to that binary data once you  
23 have your readable report?

24           **A**     Once the UFDR report is completed, I  
25 typically will delete that binary data.

1           Q     And why do you do that?

2           A     So essentially, I don't have the space to  
3     store it. Binary data is extremely large files, that  
4     requires an extreme amount of storage. And with the  
5     amount of devices I process, I simply do not possess  
6     the capability to store all binary files.

7           Q     Okay.

8                 So you only delete the binary data because of  
9     storage constraints, correct?

10          A     That's correct.

11          Q     So it's not deliberately or negligently  
12     deleted by you --

13          A     It isn't.

14          Q     -- on purpose. And it's not maliciously  
15     deleted?

16          A     It is not malicious.

17          Q     And is the binary data done to withhold  
18     evidence in this case?

19          A     No.

20          Q     Is it deleted?

21          A     Okay.

22          Q     Do you delete binary data every time you  
23     examine a phone?

24          A     I do unless it is specifically requested that  
25     the phone needs to be returned. In which case, I will

1 then create the binary file again.

2 Q And is Graykey, the predominant program that  
3 you've used in the last four years?

4 A It is the one I use primarily for iPhones.

5 Q And what sort of extraction are you able to  
6 complete with Graykey?

7 A Graykey has several different levels of  
8 extractions it can perform. The highest level it does  
9 is called the full file system extraction, which is  
10 what I received in this case.

11 Q And is there any way that extracted data can  
12 be altered?

13 A Not and still be usable, no.

14 Q And were you provided a passcode for the  
15 phone that you examined?

16 A I was.

17 Q Did you still have to use Graykey even though  
18 you were provided that passcode?

19 A I still use Graykey to extract the binary  
20 data. Graykey oftentimes is used to bypass pins or  
21 crack pins. But it also is used to collect the binary  
22 data after the phone has been entered.

23 Q Okay.

24 And then following the extraction on this  
25 phone, did you -- did you compile the data into that

1     readable report?

2           **A**     I did. I pulled the binary file into the  
3     Cellebrite Physical Analyzer and then export it as a --  
4     what we call a portable case report or a UFDR report.

5           **Q**     And is that just a report to use to read and  
6     interpret the data?

7           **A**     Correct. It takes that binary data and --  
8     and parses all of it out into different categories like  
9     text calls and phone calls and images and makes it  
10    readable, which is why I maintain that file.

11          **Q**     So how do you know that the data that -- how  
12    do you know the data is not altered or manipulated from  
13    going from that extraction to when it's put into that  
14    readable report?

15          **A**     It's pulled straight from the binary file,  
16    goes straight into Physical Analyzer. All of that data  
17    is exported straight to UFF -- U Fed R -- UFDR.  
18    Sometimes we call it U Fed Reader.

19          **Q**     Okay.

20                 And in this case, did your full file system  
21    extraction include calls, messages, locations, device  
22    events and device activities?

23          **A**     It did.

24          **Q**     Okay.

25                 And is there a policy from the Charleston



1 County Sheriff's office regarding the binary data?

2 A There is Section 15-4 in electronic evidence.

3 Q And what is the summary of that policy?

4 A Policy, it explains how funds should be  
5 collected. And -- and also other electronic devices  
6 like computers, the process for collecting them; the  
7 process for entering them into evidence; the process  
8 for requesting examination; how the examination should  
9 be completed, for instance, collecting the binary  
10 stream and transporting that to a portable case file;  
11 and then putting the phone back into evidence.

12 Q Okay.

13 And does it say anything specifically about  
14 deleting binary data?

15 A It states that once the examination is  
16 completed on the device, then the device itself should  
17 be stored as evidence. If the device cannot be stored  
18 as evidence, then the binary file needs to be retained.

19 Q And --

20 A In this case, I placed the phone directly  
21 back into evidence with a sticker on it, stating that  
22 it needed to be retained.

23 Q Okay.

24 So you were in compliance with that policy?

25 A Yes.

1           Q     And what did you do with the phone after --  
2     so after examining it, you put it into storage. What  
3     was the condition of the phone when you returned it?

4           A     It was the same as when I received it.

5           Q     And would you -- was it operable?

6           A     It was operable, yes. I would not have been  
7     able to get a file without it being operable.

8           Q     Okay.

9                     So if it -- if it was damaged in any type of  
10    way, you would notate that, the cellphone itself?

11          A     I would if it -- if it affected the operation  
12    of the phone.

13          Q     Okay.

14                     Does doing an extraction damage the phone or  
15    render it inoperable?

16          A     It does not.

17          Q     And again, if it was, you would make note of  
18    it? Or else you would you wouldn't be able to do the  
19    extraction if it was --

20          A     That's correct.

21          Q     Okay.

22                     And can you go through the -- the chain of  
23    custody and just explain for us when it was submitted,  
24    when you took possession of the phone, and then when it  
25    was released?

1           **A**     So Detective Muirheid entered it into the  
2 evidence system on February 9, 2020, which I believe  
3 was a Saturday. It was checked in by the evidence  
4 technicians on February 12, 2020, at which time I  
5 received custody of it.

6           I completed the examination on  
7 February 13, 2020, and placed the phone directly back  
8 into evidence on the same day. On February 19, 2020,  
9 it was released back to the owner.

10          **Q**     Okay.

11                 If someone deletes data on the phone, would  
12 that show on the extraction report?

13          **A**     It -- it can.

14          **Q**     Okay.

15                 And how -- are there any -- can you see all  
16 of the deleted information on a phone?

17          **A**     No.

18          **Q**     And why not?

19          **A**     Well, so first of all, it has to be data that  
20 the software is able to recover, meaning it's not been  
21 overwritten or erased. So several times, we can find  
22 information in the SQL database files that are in the  
23 binary file or actually in the UFDR report as well.  
24 But other times, it's erased permanently and it can't  
25 be recovered.

1           **Q**     Thank you.

2           **THE COURT:**   I'm sorry.

3                 Could you repeat the last question and  
4           answer?

5           **BY MS. FRIES:**

6           **Q**     Yeah.   So were there any -- can calls or  
7           any -- anything on the phone be deleted and would it  
8           show everything that's been deleted on the extraction  
9           report?

10          **A**     So it -- it can show some things that were  
11          deleted as long as they have not been overwritten or  
12          erased.   So if certain things have been deleted, then  
13          the software will be able to find those things and it  
14          will mark it as having been deleted but recovered.  
15          Other items cannot be recovered once they're deleted,  
16          because they're erased by the software.

17          **Q**     So the user can delete information and not --  
18          or delete calls and text messages and not can be  
19          over -- overwritten; is that right?

20          **A**     It -- it can be either overwritten.   Because  
21          once a file is deleted, that space on the memory is  
22          listed as free space.   So it will be there until it's  
23          either overwritten or erased, which the operating  
24          system itself is -- will go through and erase blocks  
25          that have been deleted.

1           Q     And the user is doing that, correct? The  
2 user would -- would initiate the deletion for -- in  
3 most cases, there are some background processes that  
4 will also clean up files when they're not used. But as  
5 far as call logs and text messages and things like  
6 that, that needs to be deleted by the user.

7           Q     And is there something called garbage  
8 collection that is relevant in the deletion of --

9           A     Yes, garbage collection is a general term. I  
10 believe now it's called trim. But what that does is,  
11 the way data is stored on a cell phone is you have  
12 blocks, pages, and cells. And blocks are large  
13 locations, kind of like a -- a binder, like a  
14 loose-leaf binder. Inside those blocks are pages. And  
15 pages are like the different pages inside of the  
16 binder. And then inside those pages are cells. That  
17 would be the writing that's on the pages.

18                 So when the operating system goes through and  
19 delete files, it can only delete by the block. So if  
20 there is a block that contains some deleted pages, and  
21 some standard -- still usable pages, it tries to  
22 consolidate the usable pages into another block so it  
23 ~~can erase the block with all of the other data. So in~~  
24 that case, the operating system would actually erase  
25 entire blocks of data.

1           Q     And in this case, were you able to see on the  
2 report if calls were deleted?

3           A     Calls were deleted, yes.

4           Q     And those would have been deleted by the user  
5 of the phone, correct?

6           A     Correct.

7           MS. FRIES: I have nothing further.

8           THE COURT: Any questions for the witness?

9           MS. BLAZER: Yes, Your Honor.

10          THE COURT: You may proceed.

11          MS. BLAZER: May it please the Court?

12          THE COURT: Uh-huh.

13                   CROSS-EXAMINATION

14          BY MS. BLAZER:

15           Q     Good afternoon.

16           A     Good afternoon.

17           Q     How are you?

18           A     Doing well. How are you?

19           Q     I am reasonably well for a Wednesday? It is  
20 Wednesday, yeah? Okay.

21                   The phone was taken into -- checked into  
22 evidence on 2/9/2020, just after midnight. Does --

23           A     Correct.

24           Q     -- that sound right?

25           A     Yes.

1           **Q**     And so there are device events that occur on  
2     that phone between 2/9/2020 and your assessment of it  
3     on 2/13; is that correct?

4           **A**     Correct.

5           **Q**     And that is because the phone was not in  
6     airplane mode and was not -- so it was continuing to  
7     receive network traffic because it was not off or in  
8     airplane mode; is that right?

9           **A**     I do not remember if it was off. But it was  
10    not in airplane mode.

11          **Q**     Okay.

12                 Was it in a Faraday bag?

13          **A**     It was not.

14          **Q**     Okay.

15                 And so until -- so it just sat in an -- in an  
16    "On" position, able to accept information from the  
17    network carrier to the extent that it was receiving  
18    signals, until you took it and -- and -- and began your  
19    evaluation, correct?

20          **A**     That is correct.

21          **Q**     And although relatively minor, you would  
22    agree with me that everything that happens on a phone  
23    ~~alters the data structure of that phone, because it~~  
24    it writes a new -- a new entry in the -- in the data of  
25    the phone every time there's a network call that comes

1 in, every time there's a text message that comes in?

2 A That is correct.

3 Q Okay. One second.

4 You made a Graykey copy, which you did not  
5 have to break into the phone for, correct?

6 A That is correct.

7 Q And sometimes Graykey does help you do that.  
8 But you didn't need to do that here.

9 A That's correct.

10 Q And that's because somewhere in Detective  
11 Muirheid's notes, he had actually provided you the  
12 password that was provided to him.

13 A I was provided with a six-digit PIN.

14 Q And it -- and it was the right one?

15 A It was.

16 Q Okay.

17 And so Graykey makes what you described as  
18 that binary copy, the zeros and ones, that if you and I  
19 saw it all printed out, it'd probably fill up this room  
20 and we wouldn't be able to interpret it --

21 A That's correct.

22 Q -- right?

23 It's a -- are we calling that a logical copy?  
24 Or -- because I know there's -- we call them different  
25 things?



1           **A**     Right.

2                    So you have file system, logical and  
3     physical.

4           **Q**     Uh-huh.

5           **A**     And with Graykey, they call it a full file  
6     system. But that's as close to a physical as you can  
7     get.

8           **Q**     Right.

9                    So it's the closest thing to an actual --  
10    putting it through the -- the phone equivalent of a  
11    Xerox machine and going here it is?

12          **A**     Correct.

13          **Q**     But because you can't read that, you have to  
14    put it in another system. And Cellebrite is the  
15    industry standard for doing that?

16          **A**     Correct.

17          **Q**     And that is what you used here. But you  
18    would agree with me that Cellebrite has been developed  
19    to assist law enforcement. That was its primary  
20    purpose.

21          **A**     I don't know if that's how it's got its  
22    start. But that is exactly what they cater to now.

23          **Q**     Yeah.

24                    And they cater to what is most likely to be  
25    helpful to law enforcement?

1           **A**     I believe so.

2           **Q**     I mean, it makes sense.

3           **A**     Yes.

4           **Q**     You know, there's actionable information on  
5 phones that exist in some parts of the phone that are  
6 distinct from needing to know somebody's Candy Crush  
7 history, right?

8           **A**     That is -- this is correct.

9           **Q**     So Cellebrite focuses on what law enforcement  
10 has directed it to in terms of what is important?

11          **A**     Repeat the question, please.

12          **Q**     Well, over --

13               **MS. SAVAS:** Objection. Objection.  
14 Speculation.

15               **THE COURT:** Repeat the question, please.

16               **MS. SAVAS:** My question was, Cellebrite, over  
17 time, has developed in order to seek out  
18 information that law enforcement has said is  
19 likely to be valuable.

20               **THE COURT:** That's a fair question. He uses  
21 the -- he uses the software all the time. He  
22 should be able to answer that question.

23               Do you understand?

24               **THE WITNESS:** I -- I -- I -- I believe I do,  
25 Your Honor.

1           **THE COURT:** Okay.

2           **THE WITNESS:** So --

3           **THE COURT:** Answer it to the best of your  
4 ability. If you need it restated, let us know.

5           **THE WITNESS:** Yes, Your Honor.

6           So my belief is that they don't just cater to  
7 what law enforcement wants, they -- they try their  
8 best to make sure they get all of the information  
9 they can from the phone, even if it is Candy  
10 Crush.

11 **BY MS. BLAZER:**

12           **Q** Right.

13           But you'd agree with me that there are  
14 certain kinds of apps that are either less important or  
15 more encrypted, that Cellebrite has either not tried or  
16 had a hard time getting access to?

17           **A** I believe that law enforcement believes that  
18 certain things are more important than others. But as  
19 far as Cellebrite is concerned, they never know what's  
20 going to be important.

21           **Q** Uh-huh.

22           **A** So they just try to make sure they are able  
23 ~~to access everything they can.~~

24           **Q** But there's been concern that Cellebrite  
25 couldn't get to apps, like Signal or Telegraph that are

1 end-to-end encrypted?

2 A Correct.

3 Q And they don't publish a -- a -- a document  
4 for people like me to see that shows every app they can  
5 interpret data from. But would you agree with me that  
6 as we sit here today, or at least as -- as it was in  
7 2020, they weren't interpreting data from, say, Marco  
8 Polo?

9 A So I believe what you're getting at is the  
10 apps that come out. They're -- they're --

11 Q Uh-huh.

12 A -- constantly new apps coming out.

13 Q Yeah. Yeah.

14 A And so when new apps come out, Cellebrite  
15 might not be able to parse that information right away.

16 Q Uh-huh. Right.

17 A It'll take them time to develop the ability  
18 to parse that information, yes.

19 Q So if -- if in 2020, you got a phone where  
20 there was a lot of communication back and forth on an  
21 app like Marco Polo, you wouldn't have gotten access to  
22 that information, because Cellebrite would not then be  
23 interpreting it out into the -- through the Physical  
24 Analyzer to the report that you get?

25 A That is correct.

1           Q     Okay.

2                     It doesn't mean that the information isn't in  
3     the binary file.  It means that Cellebrite is either  
4     not looking for it or not interpreting it?

5           A     Cellebrite was unable to parse it, correct.

6           Q     Because the binary file is as close to an  
7     exact copy as we can get?

8           A     That's correct.

9           Q     Okay.

10                    And in this case, my understanding -- because  
11     we -- we reached out through counsel, and I think they  
12     reached out to you, to ask if you did any kind of  
13     limitations on your Cellebrite extraction.  And you --  
14     you said, "No, I didn't do any limitations at all."

15           A     The UFDR report is as complete as it can be,  
16     yes.

17           Q     Okay.

18                    So you didn't -- you didn't tag it to say  
19     only get me the stuff from this day or that day?

20           A     No.  I -- I -- I exported everything that was  
21     parsed out.

22           Q     And where is -- is there a mechanism when  
23     ~~you're doing the actual export to make --- to reflect~~  
24     the parameters that you used to make that extraction?

25           A     I'm sorry.  Say that again.

1           Q     So let's say you get a judge who says you  
2     can -- I'm giving you a search warrant, but it's only  
3     for these two days, you have to limit your extraction,  
4     right?

5           A     That's correct.

6           Q     So where is that limitation reflected if you  
7     do have to -- if -- if such a limitation is imposed on  
8     you, where's the evidence in the extraction of what  
9     that limitation is?

10          A     So every report I do is unredacted in any  
11     way, unless it's specifically specified, which is a  
12     rare occasion. And in those cases, that will be in the  
13     notes section on the very first page of the UFDR.

14          Q     So that would be something you would manually  
15     enter into the notes section on the UFDR?

16          A     That's correct.

17          Q     Got it. Okay.

18                 And you didn't enter any notes like that  
19     here?

20          A     That's correct.

21          Q     And that's what leads you to believe I didn't  
22     take -- I didn't -- I made no limitations here.

23          A     That is correct.

24          Q     So Ms. Fries went through with you -- do you  
25     still have the property release form in front of you?

1           **A**     Yes.

2           **Q**     I'm sorry. Not the property release form.  
3 But the property chain of custody form. You testified  
4 that you had put a sticky note on the phone saying this  
5 needs to be maintained in evidence?

6           **A**     On the phone's container.

7           **Q**     And -- and you put -- and you're the last  
8 person before 2/19 to have made any deposit into --  
9 back into evidence. And so you would expect that the  
10 next person who went and pulled it out of evidence  
11 would have seen that sticky note?

12          **A**     As well as the detective who retrieved the  
13 UFDR report.

14          **Q**     Okay.

15          **A**     'Cause I also put it on the report itself.

16          **Q**     Okay.

17                 So you actually made two different notes.

18          **A**     Correct.

19          **Q**     To say either, keep it or I'm gonna have to  
20 make another copy?

21          **A**     Correct.

22          **Q**     Right.

23 ~~Because it --- you would agree with me that~~  
24 the UFDR is an interpretive document, not the copy of  
25 the phone itself?

1           **A**     The UFDR is not as interpretive. I would not  
2     use that word.

3           **Q**     Okay?

4           **A**     It is a slightly smaller version of the  
5     actual binary file in the fact that it contains all of  
6     the data that it could parse.

7           **Q**     But not all the data.

8           **A**     You could still pull that UFDR into other  
9     versions of Physical Analyzer or Cellebrite Reader.

10          **Q**     But -- but whatever it was not able to read  
11     is not preserved --

12          **A**     That's correct.

13          **Q**     -- as part of the binary?

14          **A**     That's correct. The part that was not able  
15     to be able to be parsed out in 2020 was not included.

16          **Q**     And because things like Cellebrite changed  
17     over time, they get better and better and better, four  
18     years later, it -- you either might want to rerun on  
19     the existing phone or on the original binary to see if  
20     you could get new data today?

21          **A**     Correct.

22          **Q**     But you can't do that here?

23          **A**     Only with the UFDR.

24          **Q**     Right.

25                 You -- you can't go back to the original



1 binary and find new stuff that Cellebrite was not able  
2 to get back in 2020?

3 A Correct.

4 Q So you -- you testified on direct that there  
5 appears to be -- there appeared to be phone calls in --  
6 in what you do have that appear to have been deleted?

7 A Correct.

8 Q And there appear to be, by my count -- you  
9 tell me if you counted more -- at least on the -- on  
10 the important day here, February 8, I counted six calls  
11 that Cellebrite lists as having been deleted by the  
12 user. Or actually Cellebrite doesn't say they're  
13 deleted by the user. It just says deleted, right?

14 A Correct. I believe on the call log I had  
15 seven total.

16 Q You had seven?

17 A Correct.

18 Q Okay.

19 I have them between 8:53 and 9:30 a.m. Does  
20 that track with what you have?

21 A In front of me, I only have the call log  
22 between the defendant and another subject.

23 Q I see?

24 A For that one, I only show four.

25 Q Okay.

1           But you -- so you would agree with me that if  
2           there were six or there were seven, the others that  
3           were deleted were not with the alleged victim?

4           **A**     Correct.

5           **Q**     Okay.

6           And the report does not designate them as  
7           having been user deleted. It just reports them as  
8           deleted?

9           **A**     As deleted, correct.

10          **Q**     Uh-huh.

11          And there is not -- and correct me if I'm  
12          wrong. I don't see a user event that says the user  
13          deleted --

14          **A**     No.

15          **Q**     -- the call?

16          And is it -- is it not true that the phones  
17          do not maintain endless call record data?

18          **A**     There is -- it is a finite point. On modern  
19          phones, though, it's so extreme that few phones ever  
20          reach that point.

21          **Q**     Do you know what the limitation was on an  
22          iPhone XR back in 2020?

23          **A**     I know that it can contain up to 10,000.

24          **Q**     Up to 10,000?

25          **A**     And maybe more than that. But I know it can

1 contain at least 10,000.

2 Q Uh-huh. Uh-huh.

3 And once -- but -- but you would also agree  
4 with me that there are things that phones or individual  
5 apps on phones, so it might be the phone operating  
6 system or the -- or the software designer's choice in a  
7 specific app, to designate certain material to  
8 automatically flag it for deletion, either because of  
9 age or size or other user preferences?

10 A There is no third-party app I know of that  
11 is -- will automatically delete call --

12 Q Calls.

13 A -- logs.

14 Q Right.

15 But just generally speaking, if we're just  
16 trying to understand basically how deletion works, some  
17 things are automatic and some things are intentional?

18 A Correct.

19 Q Okay.

20 And I think -- I think you explained this on  
21 direct. But I want to make sure that my understanding  
22 is -- because you were talking about trim and garbage.

23 ~~And that's --- that's actually new to me. I was~~  
24 programming computers back when it was COBOL, so like  
25 I'm not caught up.

1           So the way it works, as I understand it,  
2   regardless of whether we're talking blocks and pages  
3   and -- is when something is set to be deleted, it is  
4   placed into unallocated space; is that right? It's  
5   labeled as unallocated.

6           **A**    So there's a difference between unallocated  
7   and slack space --

8           **Q**    Okay.

9           **A**    -- and things like that.

10          **Q**    Okay.

11          **A**    So it's labeled as -- as free space.

12          **Q**    Free space. Okay.

13                So -- which doesn't mean that it immediately  
14   disappears into the ether, which is why you can  
15   retrieve deleted things?

16          **A**    Correct.

17          **Q**    And so either somebody has to make a further  
18   effort to free that space and make it blank, or the  
19   information has to be overwritten by some other process  
20   on the -- on the phone?

21          **A**    So as -- as far as deleting data  
22   originally --

23          **Q**    Uh-huh.

24          **A**    -- that has to happen with an intentional  
25   process --

1           Q     Uh-huh.

2           A     -- either by the user or by software.

3           Q     Right.

4           A     But the background once an item is deleted,  
5 that is usually handled by the operating system.

6           Q     Okay.

7                     You've had a chance to go back -- you're  
8 aware of what some of the issues are here. And you've  
9 had a chance to go back and look at the UFDR and review  
10 the Cellebrite. Would you agree with me that there  
11 appears to be no called data whatsoever in the phone --  
12 from the actual telephone before February 8?

13          A     Correct.

14          Q     And you don't show deletions of calls before  
15 February 8 either?

16          A     That's correct.

17          Q     And when it was brought to your attention  
18 that these calls were -- that there was no call data,  
19 did you have anything you could check against like cell  
20 phone records or anything else, to see if there was  
21 some sort of issue?

22          A     I did not.

23          Q     So the phone is in evidence as of mid--  
24 mid -- midnight 09 on the ninth? Yeah.

25          A     Correct.

1           Q     And there's location data in the phone that's  
2     pinging somewhere off of Ashley Phosphate Road on the  
3     ninth?

4           A     I'm not specifically aware of that. But  
5     it -- very possibly, yes.

6           Q     Okay.

7                     So -- and that -- that doesn't mean it wasn't  
8     in evidence. That doesn't mean it was somewhere on  
9     Ashley Phosphate Road, right?

10          A     Correct.

11          Q     And because that's not where the phone was.  
12     The phone was at Leeds Avenue?

13          A     Correct.

14          Q     Help me understand some things about location  
15     data in a phone, if you will. I counted eight --  
16     eight -- well, I didn't count. It counted for me.  
17     87,586 timeline activities in -- in the UFDR?

18          A     Timeline?

19          Q     Yeah.

20          A     Or location?

21          Q     Total -- I mean like -- no. Total timeline  
22     activities.

23          A     Okay.

24          Q     Does that track?

25          A     I can verify.

1           Q     Okay.

2           A     So I believe you said 87,586. That's what I  
3 have.

4           Q     Okay.

5                     And I then filtered it and saw that of that  
6 87,586, 7863 had location data of some kind associated  
7 with them. Does that track?

8           A     If you say it's correct, I'm not gonna argue.

9           Q     Okay.

10                    But the locations could include map searches,  
11 could include website cookies that companies like  
12 Google and Facebook use, to make sure that they show me  
13 local ads?

14          A     Correct.

15          Q     Could include cell towers?

16          A     Correct.

17          Q     Could include connections to a wireless  
18 device?

19          A     Correct.

20          Q     So when we go back and we look at the -- the  
21 calls that that you have on February 8, not all of them  
22 have location data associated with them; is that  
23 correct?

24          A     That's correct.

25          Q     How many of them have location data

1 associated with them?

2 A The call log?

3 Q Uh-huh.

4 A (Reviews document.)

5 Seems to be about 20.

6 Q Okay.

7 Out of how many total calls?

8 A That's out of 465.

9 Q Okay.

10 And -- and the fact that there's only  
11 location data associated with a -- a small proportion  
12 of the calls is not because the user deleted the  
13 location data, right?

14 A That's correct. Location data typically is  
15 background.

16 Q And it's -- and it's probably not  
17 idiosyncratic. But I -- I don't as a user know when or  
18 how the phone is deciding to save the location data or  
19 not. Do you?

20 A No. It's actually quite random?

21 Q Is it?

22 A Yes.

23 Q By design?

24 A According to Cellebrite, yes.

25 Q I genuinely did not know the answer. And I



1 appreciate you for telling me.

2 **MS. BLAZER:** Beg the Court's indulgence just  
3 a moment. (Pause.)

4 I have nothing further. Thank you,  
5 Your Honor.

6 **THE COURT:** Any redirect?

7 **MS. FRIES:** Yes, Your Honor.

8 **REDIRECT EXAMINATION**

9 **BY MS. FRIES:**

10 **Q** How is location data stored on the phone?

11 **A** It's stored in a database called Location  
12 Services.

13 **Q** And how do we know that these are reliable  
14 locations that show up on the phone.

15 **A** So with the device locations, it's going to  
16 show up. It'll tell you how the data was collected for  
17 the GPS versus cell tower versus Wi-Fi. And in cases  
18 of GPS, those are accurate to within about five meters.

19 **Q** Okay.

20 And can a person turn on and off their  
21 location services?

22 **A** They can.

23 ~~**Q** And were you able to determine whether the~~  
24 ~~user of this phone turned off their location services?~~

25 **A** There is no log event for turning on or off

1 location services. No.

2 Q Could -- if location services were turned  
3 off, could that explain a gap in time between  
4 locations?

5 A That is possible.

6 Q And could that be the reason why it might not  
7 show up on an extraction report?

8 A It's one reason it's possible.

9 Q Okay.

10 And did you -- just to confirm, did you do a  
11 full extraction without limitations?

12 A I did.

13 Q And how accurate -- how accurate is the  
14 extraction from the phone?

15 A Very accurate.

16 Q And in 2020 when you did the extraction, is  
17 it a -- is it -- was it as complete as it possibly  
18 could be?

19 A It was.

20 Q And even if Cellebrite couldn't pull every  
21 app on the market today, was it -- was the extraction  
22 as complete as it could be?

23 A It was.

24 Q And did you get authority to release the  
25 phone?

1           **A**     I did not.

2           **Q**     And if someone has the physical phone now,  
3 could they do their own extraction?

4           **A**     They could.

5           **Q**     And the defendant ever bring you back the  
6 phone to have it re-dumped or re-extracted?

7           **A**     No.

8           **Q**     And did you lead -- did you delete the phone  
9 calls or any data on this -- on this phone?

10          **A**     I did not.

11          **Q**     Is it possible that the user deleted the  
12 calls prior to February 8?

13          **A**     It is.

14          **Q**     And were there calls that showed as deleted  
15 on February 8 that you were able to recover?

16          **A**     The first four calls on that date are listed  
17 as deleted.

18                 **MS. FRIES:** I have no further questions.

19                 **THE COURT:** Mr. McManigal, what can be done  
20 with the UFDR report? Is that the right acronym?  
21 Did I use the right acronym?

22                 **THE WITNESS:** Yes, ma'am. What I created  
23 ~~from the binary file is a UFDR report.~~

24                 **THE COURT:** And what can be done with that  
25 report?

1           **THE WITNESS:** Pretty much anything that can  
2           be done with the binary with the exception of  
3           gathering the -- the -- the apps that were not  
4           able to be parsed in 2020.

5           **THE COURT:** So any analytical testing could  
6           be run on that UFDR report --

7           **THE WITNESS:** With the --

8           **THE COURT:** -- regarding the phone?

9           **THE WITNESS:** Correct. With -- with the  
10          exception of the data that could not be processed  
11          in 2020.

12          **THE COURT:** And you still have the UFDR,  
13          correct?

14          **THE WITNESS:** Yes, ma'am.

15          **THE COURT:** And you provided that to the  
16          state?

17          **THE WITNESS:** I did.

18          **THE COURT:** And you-all provided that to the  
19          defense?

20          **MS. SAVAS:** Yes, Your Honor.

21          **THE COURT:** Are there any questions as a  
22          result of the Court's questions from the state?

23          **MS. FRIES:** No, Your Honor.

24          **THE COURT:** From the defense?

25          **MS. BLAZER:** No, Your Honor.

1           **THE COURT:** All right.

2           I'll be glad to hear any arguments.

3           **MS. BLAZER:** Thank you, Your Honor.

4           **THE COURT:** Uh-huh.

5           And we appreciate your patience,

6           Mr. McManigal.

7           **THE WITNESS:** Yes, Your Honor.

8           **MS. BLAZER:** I think -- let's start from the  
9           premise that there is nothing untoward that was --  
10          that I'm suggesting was done by Mr. McManigal. I  
11          think he did everything the way he was supposed to  
12          do it and the way that it was being done in 2012.

13          Having said that, he made it clear to the  
14          Court that not once but twice, did he make a note  
15          that the appropriate management of this device was  
16          to maintain it in evidence, and if not, to make  
17          a -- a new binary copy. If -- you know, the  
18          reason that they get rid of the binary copies  
19          makes perfect sense.

20          **THE COURT:** Isn't that a mischaracterization  
21          of his testimony? What he said was, he returned  
22          it with a note that it was not to be returned,  
23          that it was to be retained, and nobody's called  
24          the witness to tell us how or what release -- why  
25          the phone was released. For all I know, your

1 client could have demanded her phone back and they  
2 could have released it to her. I have no idea.  
3 The record is devoid of any testimony on that  
4 point.

5 The only testimony that I have to consider at  
6 this point and what Mr. McManigal testified to is  
7 when he returned the phone to evidence, he put a  
8 sticky on it that the phone was not to be  
9 returned. Therefore, in his mind, there was no  
10 necessity to create another file because the phone  
11 was supposed to be returned.

12 **MS. BLAZER:** I agree with that.

13 **THE COURT:** Not only did he put it on the  
14 phone, but he also put a notation on the report.  
15 So what is -- the missing link is how did she get  
16 the phone back? I have no idea.

17 **MS. BLAZER:** Well, he testified, Judge,  
18 that --

19 **THE COURT:** And he can't be held accountable  
20 for that. Because he did everything within his  
21 power.

22 **MS. BLAZER:** No, no. I -- and I'm not -- I  
23 agree with you 100 percent. I am not holding him  
24 accountable to it. And he testified that it was  
25 released to Ms. Steward on 2/19/2020.

1           **THE COURT:** Yeah. But I don't know who it  
2           was -- who -- who authorized that. I don't know  
3           how it took place. And I'm not gonna make any  
4           assumptions about how it took place. It would  
5           have to be a witness to tell me what happened. I  
6           don't know if she called the officer and asked for  
7           her phone back; I don't know if her lawyer asked  
8           for her phone back.

9           **MS. BLAZER:** I can call the witness who gave  
10          it back to her. She's in the courtroom.

11          **THE COURT:** Who's that?

12          **MS. BLAZER:** Detective Sinke, now Cheek.

13          **MS. SAVAS:** Just for correction.

14          Detective -- Sergeant Cheek did not give her the  
15          phone back.

16          **THE COURT:** Who gave her -- how -- well then,  
17          we need to -- I need to know how she got her phone  
18          back.

19          **MS. SAVAS:** It was submit -- no, she  
20          authorized the release. Noah Jamison was the one  
21          that gave the phone back. That's the  
22          authorization form. The last line there is Noah  
23          Jamison. ~~As outlined in the state's brief, that~~  
24          was written and submitted to the Court and defense  
25          on Monday.

1           **THE COURT:** I'm sorry. Say that one more  
2 time.

3           **MS. SAVAS:** On that chain of property release  
4 authorization form, Sergeant Cheek authorized the  
5 release. Evidence technician Noah Jamison was the  
6 one who gave it to the defendant. And that was  
7 submitted --

8           **THE COURT:** Yeah. But the question was who  
9 authorized it, and why?

10          **MS. SAVAS:** Right. I'm sorry. I thought she  
11 said that Sergeant Cheek gave her the phone back.  
12 Sergeant Cheek did not give her the phone back.  
13 She simply authorized it.

14          **THE COURT:** Yeah. But why was her -- the  
15 whole point was, Why was her phone given back to  
16 her? And who -- and -- and why was it not --

17          **MS. SAVAS:** If I may, she would have asked  
18 for it back. They don't just turn back evidence.

19          **THE COURT:** So if Ms. Steward asked for her  
20 phone back, they gave it back to her because they  
21 felt like the purpose had been accomplished, which  
22 was the phone being analyzed.

23          **MS. SAVAS:** Yes, Your Honor.

24          **THE COURT:** The -- the analyzing was complete  
25 by then. And those timestamps and are dated, and



1           it was submitted to defense. The defendant went  
2           in picked up the phone on 2/19. Mr. McManigal --  
3           McManigal did his extraction and report on 213.  
4           So it was done to the best of their knowledge.

5           And the defendant picked up the phone the  
6           same day she got her car back. Her car was also  
7           released from custody. So when a defendant  
8           requests their property back and the law  
9           enforcement has finished processing and doing  
10          their evidence collection, they can return it at  
11          the request of the defendant themselves.

12          And she signed and dated that. And she  
13          provided her driver's license. So she physically  
14          was the one who went and got it back. They would  
15          not have called her at least -- I would never --  
16          they would not have called her to pick up her  
17          things back, Judge.

18          They --

19          **THE COURT:** Yes, ma'am. You may proceed.

20          **MS. BLAZER:** Your Honor, I'm at this 17  
21          years. And the only times my clients are ever  
22          returned to their property before a case is over  
23          is when the property has no evidentiary value.

24          **THE COURT:** I've had several cases in the  
25          last few weeks where people asked for their

## Argument of Counsel

1           property back.

2           **MS. BLAZER:** People ask for their property  
3 back all the time. I request it all the time.  
4 And I'm told it's still in evidence.

5           **THE COURT:** I don't know that it's  
6 dispositive one way or the other.

7           **MS. BLAZER:** It -- it may not be. But I  
8 think that -- that -- if there is evidence of a  
9 crime, which is the -- which is what is purported  
10 by the state's effort to introduce evidence  
11 obtained from this phone is based on, you do not  
12 return the evidence of a crime to a person who is  
13 not a technical expert, who is a mere layperson,  
14 who does not understand the proper method of  
15 preserving it, who by the way when she received it  
16 back on 2/19, was only seven days -- or nine days  
17 away from being rearrested in this case and  
18 spending several months in jail. She didn't  
19 actually take the phone -- and she had the phone  
20 still in her possession when they came to arrest  
21 her a second time.

22           So the idea that -- that this -- please let  
23 me be clear. I am making no derisive statement  
24 toward the work that Mr. McManigal did. I think  
25 he did everything according to policy. But

1           somewhere along the way, the person who authorized  
2           its release should have made him aware that she  
3           was going to release it so that he could have made  
4           a binary copy of it so that we would have --

5           **THE COURT:** I don't know that that's  
6           necessary. He says that the UFDR, you can run all  
7           the tests you need to. You have that.

8           **MS. BLAZER:** You can run all of the tests you  
9           need on the data it extracted back in 2020. But  
10          as he testified, Cellebrite learns more and more  
11          and more every day.

12          **THE COURT:** Yeah. But I don't think that's  
13          the standard. I don't think he's bound to a  
14          standard four years from now --

15          **MS. BLAZER:** That's when he exactly --

16          **THE COURT:** -- from when they decide to try a  
17          case.

18          **MS. BLAZER:** I think that's exactly the  
19          reason that --

20          **THE COURT:** You'd have to find me some case  
21          law that says that. Because I don't have any that  
22          does. And I don't think he's held to a standard.

23          ~~If that's the case, an investigation would never~~  
24          end. You'd always be looking for something new  
25          based on some new development, either in science

1 or in some other technology. And I just don't --

2 MS. BLAZER: I think we do that all the time,  
3 Judge.

4 THE COURT: We do. But that's not the  
5 standard.

6 MS. BLAZER: I -- it's not the standard --

7 THE COURT: For example, when I'm sent stuff  
8 and they asked me to destroy it, it gets  
9 destroyed.

10 MS. BLAZER: Yes.

11 THE COURT: You don't have to hold on to  
12 stuff forever.

13 MS. BLAZER: Right.

14 THE COURT: Yeah.

15 MS. BLAZER: Because the case is over.

16 THE COURT: Sometimes.

17 MS. BLAZER: 'Cause the case is over.

18 THE COURT: There's some things they hold --  
19 there are things -- and I'm not just talking about  
20 the clerk's office. I'm talking about police.

21 MS. BLAZER: Right.

22 THE COURT: They can't hold -- they don't  
23 have the room to hold onto stuff forever.

24 MS. BLAZER: Absolutely.

25 THE COURT: They destroy guns. They destroy

1 all kinds of stuff --

2 MS. BLAZER: Yeah.

3 THE COURT: -- after so many years.

4 MS. BLAZER: But here's the thing. The rules  
5 provide us the opportunity to test --

6 THE COURT: Were your experts able to test  
7 the UFD- -- the data that was in the UFDR.

8 MS. BLAZER: Our expert is able to read the  
9 same report that Mr. McManigal --

10 THE COURT: That's not what Mr. McManigal  
11 said. He said you're able to run tests on that,  
12 that it is in a data format.

13 MS. BLAZER: He's able to run tests on it.  
14 But Cellebrite is a privately-held company that  
15 does not deal with private parties the way that it  
16 deals with law enforcement. We can't get the same  
17 testing equipment that he has. So the only way  
18 for me to have my person do a new test and a new  
19 extraction is to get that binary file. Because he  
20 doesn't even have the same access to Cellebrite  
21 that law enforcement has. We do -- we do what we  
22 can with what we have. 'Cause Cellebrite, doesn't  
23 have to work with us that they know where their  
24 bread and butter is. They work with law  
25 enforcement.

1           So for me to be able to test this phone, I  
2           have to be able to get that binary file back to my  
3           expert, who's been able to do nothing. Because  
4           all he could do is --

5           **THE COURT:** Which your traded in and she  
6           could have retained, correct?

7           **MS. BLAZER:** Which my client traded in after  
8           she had had spent five months in jail -- four  
9           months.

10          **THE COURT:** I don't know that that makes a  
11          difference --

12          **MS. BLAZER:** I think it makes a huge  
13          difference --

14          **THE COURT:** -- where she was.

15          **MS. BLAZER:** -- Judge.

16          **THE COURT:** The fact is she owned a phone and  
17          she traded it in, correct?

18          **MS. BLAZER:** She believed -- she had every --  
19          -- every right to believe --

20          **THE COURT:** She had every right to trade her  
21          phone. I'm not saying she didn't have to trade  
22          her phone in.

23          **MS. BLAZER:** She had every right to believe  
24          that an investigation into her was going to have  
25          maintained evidence in a way -- in accordance with

1 policy 15-04 that Mr. McManigal told us Charleston  
2 County Sheriff's Office has --

3 **THE COURT:** What is it exactly that you think  
4 you would have found on this phone?

5 **MS. BLAZER:** I think there might have been  
6 additional location data that we could have  
7 extracted.

8 **THE COURT:** Maybe? I need something  
9 definitive, not that you maybe could have, should  
10 have, might have.

11 **MS. BLAZER:** That's not possible, Judge.

12 **THE COURT:** I need to --

13 **MS. BLAZER:** I'm not able to do that.

14 **THE COURT:** Well, it's your burden.

15 **MS. BLAZER:** I -- I actually --

16 **THE COURT:** It's your requirement. It has to  
17 rise above what you think might have, could have,  
18 should have, maybe, might have been there.

19 **MS. BLAZER:** Well --

20 **THE COURT:** As we know, phones are not exact  
21 devices. And he just testified that there's no  
22 guarantee that it would have been found anyway,  
23 ~~because the phone randomly decides what it's going~~  
24 ~~to record in terms of locations.~~

25 **MS. BLAZER:** You're right about that, Judge.

1           **THE COURT:** And the standard is whether you  
2           had access and you could have determined the same  
3           information from the data. And so that's what I'm  
4           trying to figure out in terms of your argument is  
5           what is there different that you would have gotten  
6           from this binary data that you do not have from  
7           the UFDR, which you can -- your expert can use to  
8           run tests on.

9           **MS. BLAZER:** I'll give you one specific  
10          example that possibly could be different. Okay?

11          I believe that when we hear testimony from  
12          Mr. Simmons, he's going to acknowledge that he  
13          communicated regularly with Ms. Steward in an app  
14          that was not regularly captured by Cellebrite at  
15          that time. Mr. McManigal acknowledged that  
16          Cellebrite wasn't getting -- grabbing information  
17          from an app called Marco Polo at that time. But  
18          they were communicating via Marco Polo at that  
19          time. And Marco Polo does have some location data  
20          associated with it. And so if we were able to go  
21          back into that binary file now, we might be able  
22          to extract that data. We -- it's lost to us.  
23          It's lost the state and to us.

24          **THE COURT:** Yeah. But what would be -- based  
25          on what I have tangibly right here in front of me,



1           what -- what would be different in these  
2           conversations on Marco Polo than what we have --  
3           there might be location -- there might be new  
4           location data. Because again the state is -- is  
5           seeking to rely -- they submitted to you a  
6           proposed demonstrative that seems to rely on two  
7           pieces of location data that in my mind are  
8           cherry-picked, because they -- one's at 1:25 and  
9           one's at 3:03 that purport to be the totality of  
10          the location data that the phone collected. But  
11          we don't know that to be true.

12                 And so if the Court is inclined to allow the  
13          phone in because you're not persuaded by my  
14          argument, I understand that. But --

15                 **THE COURT:** I just think your argument is  
16          speculative in nature. It's not scientifically  
17          based. You have a UFDR report that you can run  
18          tests on. There's no guarantee that Cellebrite  
19          would have found anything different on this phone  
20          other than the binary data that was collected and  
21          analyzed.

22                 Of course, that -- well, and I did in  
23          ~~opposite order. The binary data that was~~  
24          downloaded and then analyzed is just speculative.  
25          Your entire argument that somehow there may have

1       been -- might have, could have been something else  
2       on this phone that was not picked up. And the  
3       witness has already testified that what was  
4       collected was accurate. There's no way for it to  
5       have -- be hypothecated. If it was, it would not  
6       be in any sort of format that you would be able to  
7       use.

8               And I guess I'm just trying to get at the  
9       heart -- I understand these text messages are  
10      extremely damaging.

11             **MS. BLAZER:** Some of them.

12             **THE COURT:** They're very -- oh, no. All of  
13      them are very damaging. They're damaging.  
14      Because they go to her state of mind. They go to  
15      this interaction between the two of them. And the  
16      fact that this thing continued to escalate and  
17      escalate and escalate -- escalate. They're very  
18      damaging, or you wouldn't be fighting against them  
19      coming in. I don't know what his testimony is  
20      going to be about for location and otherwise.

21             **MS. BLAZER:** I will tell you that my -- my  
22      biggest complaint about the entire phone is the  
23      location data.

24             **THE COURT:** I think the officer would testify  
25      the location data is not specific. Well, I --

1       that's not the word I want to use -- that location  
2       data is subject to a lot of factors. You -- you  
3       have not argued anything to me that tells me  
4       this -- that if you had the phone right now, that  
5       there would be anything different that was  
6       collected from this phone that didn't -- that he  
7       wasn't able to collect. Because you asked some  
8       very specific questions about whether Cellebrite  
9       had advanced, and some other things.

10       And it's my understanding just based on  
11       another case -- has nothing to do with this --  
12       really what the new stuff with Cellebrite picks up  
13       stuff that's been deleted, and that they're able  
14       to recover.

15       **MS. BLAZER:** It's more than that. And I  
16       think Mr. McManigal acknowledged that every day  
17       Cellebrite is -- is trying to learn more and more  
18       about --

19       **THE COURT:** But that's like all technology,  
20       isn't it?

21       **MS. BLAZER:** Yes. But if -- if it was  
22       absolutely not recovering information from an app  
23       like Marco Polo on that day, but either Cellebrite  
24       or my expert analyzer would be able to do it  
25       today, we have been prevented from being able to

1 bring that forward and -- and challenge the --

2 THE COURT: But that's not the standard, is  
3 it?

4 MS. BLAZER: Judge, I think that if -- if we  
5 were talking about blood evidence, we wouldn't be  
6 having this debate.

7 THE COURT: I don't know. Because blood  
8 evidence breaks down. It don't last forever.

9 MS. BLAZER: It doesn't last forever.

10 THE COURT: So even if they had kept it in  
11 the lab, and they've kept it under protocols and  
12 the chain had been observed, there's no guarantee  
13 your expert would have been able to retest.

14 MS. BLAZER: Very true. But if -- if a  
15 sergeant authorized it to just be released, we'd  
16 have a different conversation.

17 THE COURT: I don't think it's analogous.  
18 Because blood evidence would never be released.

19 MS. BLAZER: Neither would this.

20 THE COURT: Phones -- phones are different.

21 MS. BLAZER: He told us --

22 THE COURT: Phones and personalty [phonetic]  
23 in your cars and your cars, all that's different.  
24 They don't have -- they don't -- you know, it  
25 depends on which agency you're dealing with as to

1           whether your stuff gets returned or not. It  
2           depends on the agent that's -- the person who's  
3           supervising the investigation. It just -- it's a  
4           lot of moving parts and a lot of variables.

5           **MS. BLAZER:** You're right.

6           **THE COURT:** And blood evidence is not  
7           something that would ever be returned. Another  
8           sample, if it could be maintained. Because  
9           always -- because samples aren't always big enough  
10          for what they're testing not to be destroyed. So  
11          sometimes in testing, a blood sample to extract  
12          DNA is completely destroyed.

13          **MS. BLAZER:** You're right.

14          **THE COURT:** There's nothing left for you --

15          **MS. BLAZER:** You're right.

16          **THE COURT:** -- to test. So -- but even let's  
17          just say for argument's sake it's a huge thing,  
18          and they only take a -- a small part of it, and  
19          they test it, and they maintain the rest of it.  
20          As we know with anything biological, it breaks  
21          down. So there's no guarantee anything would be  
22          left anyway, depending on how many years we're  
23          talking about. But something like that is never  
24          gonna be released to the average layperson. They  
25          have no use for it.

1           Even if it were a piece of clothing --  
2           clothing, there would be no use for it. Because  
3           it would have been destroyed during the course of  
4           testing. It -- it just -- that's not an  
5           analogous -- it's just not analogous. I can't  
6           imagine under any circumstances that blood  
7           evidence DNA would be returned to somebody, nor --  
8           it's a little morose that somebody would even ask  
9           for it to be returned.

10           **MS. BLAZER:** Well, of course.

11           **THE COURT:** Yeah.

12           **MS. BLAZER:** But I just -- I refrain on  
13           Charleston County Sheriff's Office policy that  
14           Mr. McManigal testified to, and that I believe I'm  
15           accurately stating. Once the forensic examination  
16           is complete, the original computer media, which in  
17           this case is a phone, will be secured in the  
18           evidence compound. If the original computer media  
19           cannot be retained, then the forensic image  
20           created by CFE -- by the CFE, will be secured in  
21           the evidence compound.

22           It's an either/or. Either you give the phone  
23           back and you save the binary or you keep the phone  
24           in evidence and you delete the binary. It  
25           makes -- it's a great policy. It makes perfect

1           sense. It's just not what happened here.

2           **THE COURT:** So I need to know what the crux  
3           of your argument is, and why you feel based in  
4           case law, that this evidence is inadmissible.

5           **MS. BLAZER:** Because I believe that there  
6           would be exculpatory evidence that could be  
7           obtained.

8           **THE COURT:** And what proof do you have that  
9           there would be exculpatory evidence on the phone?  
10          Not that there might or could be. But what  
11          definitively do you have to present to the Court  
12          that there may be -- that there is exculpatory  
13          evidence on this phone that was not discovered  
14          when the phone binary data was downloaded, in  
15          essence, a clone of that binary data, which was  
16          then fed into an analyzer, which produced a report  
17          that you have within your possession?

18          **MS. BLAZER:** Absent the ability to  
19          investigate -- to inspect the item, I'm not able  
20          to provide you with what you're asking.

21          **THE COURT:** Anything further?

22          **MS. BLAZER:** No, ma'am.

23          ~~**THE COURT:** The state -- would the state like~~  
24          to respond?

25          **MS. SAVAS:** Just briefly, Your Honor.

## Argument of Counsel

1           In addition to what the state had submitted  
2           written motion on the record on Monday afternoon,  
3           we would just reiterate all of those points.  
4           Just -- it is the state's position that policy was  
5           not broken by Detective McManigal. There's been  
6           no complaint made to the sheriff's office about  
7           policy being broken. There is no --

8           **THE COURT:** I think they concede he didn't  
9           break policy.

10          **MS. SAVAS:** Okay.

11          **THE COURT:** He followed policy. What they're  
12          saying is, they don't understand why the phone was  
13          returned to her -- their client --

14          **MS. SAVAS:** Yes.

15          **THE COURT:** -- without the binary -- without  
16          him at least being notified that he needed to make  
17          another copy of --

18          **MS. SAVAS:** Correct.

19          **THE COURT:** -- the binary file.

20          **MS. SAVAS:** Correct, Your Honor. And it is  
21          almost -- I don't want to say disingenuous.  
22          Because I think the defense is making their  
23          beliefs and their arguments. But as Ms. Blazer  
24          stated, they often ask for this. You actually get  
25          it back. And now you're complaining that you got



1           it back. And then your own client destroyed that  
2           evidence.

3           Moreover, she deleted the evidence on her  
4           phone prior to law enforcement's arrival. The  
5           deletions were shown and explained by Detective  
6           McManigal. She herself deleted and destroyed the  
7           evidence, which is her prerogative to delete  
8           whatever she wants off her phone. But you cannot  
9           come into a court of law and then accuse the state  
10          and government of spoliation and withholding  
11          evidence when you yourself actually did that act.

12          You're asking for call log information that  
13          did not exist because she deleted phone calls.  
14          And if there were apps that were not able to be  
15          picked up at Cellebrite at that time, we must go  
16          back as Your Honor stated, at 2020, at the time of  
17          the investigation. Detective McManigal used all  
18          of the technology available to him and his  
19          forensic analysis and it completed -- completed a  
20          full and accurate report, as reflected in the  
21          discovery process provided to the defense.

22          If the defense wanted to do this process,  
23          ~~they could have done it. Their client, the~~  
24          defendant, asked for her phone back and her car.  
25          It was released to her. They then retained

## Argument of Counsel

1           counsel. They have not sought to get this out.

2           It was not until I reminded defense that  
3           their client had the phone. They didn't even ask  
4           her if she had the phone -- or I can't speak to  
5           that. I will say that. They didn't see the chain  
6           of custody that was submitted in the discovery two  
7           years prior. They did nothing to find out where  
8           the phone was located. Otherwise, we wouldn't  
9           have part of these arguments that the defense has  
10          made on the record.

11          Your Honor, the test in the case law is State  
12          verse Reeves. The defense relied on that in their  
13          brief inaccurately. State verse Reeves proves the  
14          point of the government here. There has been no  
15          misconduct as they mentioned. No bad faith. And  
16          there's been no flaw in his report that they have  
17          been able to articulate or provide evidence to  
18          this court.

19          There was no evidence that Marco Polo was  
20          used. There's no evidence that she was talking on  
21          it. There was no evidence that Mr. Simmons was  
22          talking on it at this point in time. So Your  
23          Honor, they cannot even provide with substantiated  
24          and verified information to the Court that  
25          Mr. McManigal's report is flawed in any way.

1           If they want to do an extraction, they can.  
2           If they want an expert to -- to read his report  
3           again, they can.

4           Mr. McManigal, I asked him with respect to  
5           defense when we're going through this a few weeks  
6           ago, could you rerun your exact report in  
7           Cellebrite? I offered to do that for defense. He  
8           said he could; nothing new would come from it.  
9           Ms. Blazer stated she had the most updated version  
10          of Cellebrite Reader so she could re-input that  
11          into her computer, which she did. And there was  
12          no difference between the two files the state  
13          provided and Ms. Blazer's own interpretation from  
14          the updated Cellebrite Reader herself. So she  
15          does have access to Cellebrite. She said it. And  
16          she ran it. And it is the same report.

17          Your Honor, there -- it is the state's  
18          position, and they respectfully request the Court  
19          to deny the defense motion, based off of the --  
20          the lack of evidence to show that anything was  
21          done in bad faith by the government, that anything  
22          is actually missing. The report was complete, as  
23          the detective have testified, at 2020. The phone  
24          was given back to the defendant. It is in her  
25          possession since that day. And what they do or do

1 not do with it is on their own prerogative.

2 And the state respectfully requests that the  
3 Court here deny the defense motion based on all  
4 the foregoing reasons.

5 **THE COURT:** Anything further?

6 **MS. BLAZER:** No, Your Honor.

7 **THE COURT:** Ms. Savas, if you would ask the  
8 witness for the location questions, please.

9 **MS. SAVAS:** Yes, Your Honor.

10 **THE COURT:** What you would be seeking to  
11 elicit from him regarding her location.

12 **MS. SAVAS:** Yes, Your Honor. Is it okay for  
13 Mr. Fries?

14 **THE COURT:** That he would have gleamed from  
15 the phone.

16 Oh, I'm sorry. Whoever was questioning the  
17 witness.

18 **MS. SAVAS:** That's fine.

19 **THE COURT:** I apologize.

20 **MS. SAVAS:** No. You're -- you're fine,  
21 Judge.

22 **CONT. REDIRECT EXAMINATION**

23 **BY MS. FRIES:**

24 **Q** Did you extract location data from this phone  
25 as part of your report?

Paul McManigal - Cont. Redirect Examination by  
Ms. Fries

1           **A**     I did.

2           **Q**     And can you explain again how location data  
3 is stored?

4           **A**     Yeah. So iPhones have a central database  
5 that they store location data, a separate API that  
6 collects that location data. And rather than each  
7 individual app having have its own version of GPS built  
8 in, Apple requires all apps to go through the location  
9 services that's built into iOS.

10                   So when an app wants a location, it will  
11 reach out to the location services API that's built  
12 into the operating system, and grab that data from  
13 there to use in their app. All that data is stored in  
14 a database called location services. And that was  
15 recovered in this case.

16           **Q**     Okay.

17                   And how reliable are these locations that are  
18 pulled from the apps?

19           **A**     Well, it does vary a little bit depending on  
20 whether it was collected from cell tower data or GPS  
21 data or other methods. In this case, the locations I  
22 referenced are all from GPS data, which is accurate  
23 within five meters.

24           **Q**     Okay.

25                   And cell phones are GPS devices?

Paul McManigal - Cont. Redirect Examination by  
Ms. Fries

1           **A**     Correct.

2           **Q**     And are there sometimes gaps in locations or  
3     between locations when looking at the data?

4           **A**     Yes.

5           **Q**     And why is that?

6           **A**     Because the way Location Services API stores  
7     the databases, there really is no rhyme or reason as to  
8     when or why it will store something in the database.  
9     That -- that's been investigated by Cellebrite experts,  
10    Ian Whiffin for one, who has shown that there is no  
11    rhyme or reason to when and where or why locations are  
12    stored in the location services database.

13          **Q**     Can a person turn their phone into airplane  
14    mode?

15          **A**     They can.

16          **Q**     And would that, would turning the phone in  
17    airplane mode, would that turn location services off?

18          **A**     It would.

19          **Q**     And in this case, were you able to determine  
20    if airplane mode was on?

21          **A**     In this case, airplane mode was off.

22          **Q**     Okay.

23                 And can a person turn their location services  
24    on and off?

25          **A**     Yes, they can.

Paul McManigal - Cont. Redirect Examination by  
Ms. Fries

1           **Q**     In this case, were you able to determine if  
2     the user of the phone turned their location services  
3     off?

4           **A**     No. There's no log that records that  
5     particular event.

6           **Q**     Okay.

7                     And if the user turned their location off,  
8     could that explain a gap in location data?

9           **A**     Yes.

10          **Q**     And that would appear on the extraction  
11     report as a gap?

12          **A**     Yes.

13                   **MS. FRIES:** That's all the questions I have,  
14     Judge.

15                   **THE COURT:** No, I mean specifically. I want  
16     to know what the -- what the locations are  
17     you're --

18                   **MS. FRIES:** Okay.

19                   **THE COURT:** -- trying to elicit from him.

20                   **MS. FRIES:** Yeah. Beg the Court's --

21                   **THE COURT:** 'Cause you already asked the  
22     questions you just asked in your questions on  
23     direct.

24     **BY MS. FRIES:**

25           **Q**     All right.

Paul McManigal - Cont. Redirect Examination by  
Ms. Fries

1           In this case, did you make a location data  
2       report for specific times on February 8, 2020?

3           **A**     I did.

4           **Q**     Now, I'm going to show you what's been marked  
5       as State's -- what's been pre-marked for identification  
6       purposes as State's Exhibit 71. Do you recognize that?

7           **A**     I do.

8           **Q**     And how do you recognize that?

9           **A**     This is the location services records that I  
10       exported for February 8.

11          **Q**     Okay.

12                   And does that accurately reflect what was a  
13       part of your original extraction report?

14          **A**     It does. It's just a snippet from it.

15                   **MS. FRIES:** Okay.

16                   Your Honor, would you like me to seek to  
17       admit it or just --

18                   **THE COURT:** (Inaudible).

19                   **MS. FRIES:** Okay.

20                   **THE COURT:** I need you to elicit the  
21       testimony. I'm trying to see if they have an  
22       exception to it.

23       **BY MS. FRIES:**

24          **Q**     Okay.

25                   I'm now going to show you Exhibit 71. Okay.



Paul McManigal - Cont. Redirect Examination by  
Ms. Fries

1                   Looking at Box 1, what is the time  
2 information on that?

3           **A**       The timestamp is February 8, 2020, at 9:31  
4 a.m. Location listed is [REDACTED] Avenue, Charleston.

5           **Q**       Okay.

6                   And what's the end time?

7           **A**       End time is February 8, 2020, at 9:31 p.m. as  
8 well.

9           **Q**       Okay. And what about Box No. 2?

10          **A**       Box No. 2 is at the same location, showing on  
11 February 8, 2020, from nine -- at 9:58 a.m.

12          **Q**       Okay.

13                  And is the end time around the same?

14          **A**       The end time is also 9:58 a.m.

15          **Q**       Okay.

16                  And Box No. 3?

17          **A**       Box No. 3 shows the location at [REDACTED]  
18 [REDACTED] Road in Mount Pleasant. And that date is  
19 February 8, 2020, at 12:24 p.m. And the end time is  
20 just a few seconds later.

21          **Q**       And Box No. 4?

22          **A**       Box No. 4 shows a location at [REDACTED]  
23 ~~Avenue in Charleston on February 8, 2020, at 1:15 p.m.~~  
24 with the end date a few seconds later.

25          **Q**       All right.

1 And the next box, Box No. 5?

2 A Box No. 5 shows [REDACTED] Avenue in  
3 Charleston on February 8, 2020, at 1:24 p.m. ending at  
4 1:25 p.m.

5 Q And the last box, six?

6 A Box No. 6 is [REDACTED] Road in Mount  
7 Pleasant on February 8, 2020, at 3:03 p.m., ending just  
8 a few seconds later.

9 MS. FRIES: That's all, Your Honor.

10 THE COURT: Any questions on  
11 cross-examination (inaudible)?

12 MS. BLAZER: Yes, Your Honor.

13 THE COURT: You may proceed.

14 MS. BLAZER: Thank you.

15 THE COURT: You're welcome.

16 **RECROSS-EXAMINATION**

17 **BY MS. BLAZER:**

18 Q So if I understood your earlier testimony,  
19 the individual apps that collect this data, pass it  
20 back to an API, that is the only place where it's  
21 stored?

22 A Correct.

23 Q Okay.

24 And so from what you've completed as this GPS  
25 extraction report, we don't know what activity on the

1 phone -- do we know what activity on the phone from  
2 this report is associated with these locations?

3 A We do not.

4 Q Okay.

5 So we don't know if that's a text message, a  
6 telephone call, a health app? We don't -- we don't  
7 know.

8 A That's correct.

9 Q And are these six locations the only  
10 locations that were recorded by the API on February 8?

11 A On February 8, yes.

12 Q Okay. But there -- there is -- these are the  
13 only GPS locations from February 8?

14 A These are the only locations period in the  
15 Location Services API.

16 Q But there is other location data in the  
17 phone, isn't there? There's location data from  
18 Facebook. There's location data from Instagram.

19 A I -- I -- I apologize. Sorry.

20 This is the condensed version that we created  
21 for this trial.

22 Q Right.

23 ~~A On February 8, there were many, many~~  
24 locations.

25 Q Right.

1                   So these are just the six GPS locations that  
2     you've -- that -- that were selected by the state to  
3     present to the jury?

4           **A**     That is correct.

5           **Q**     Okay.

6                   But not -- there -- I think actually, when we  
7     talked before, you told me there was something like 400  
8     location --

9           **A**     There -- there are --

10          **Q**     -- entries?

11          **A**     -- many more GPS locations.

12          **Q**     Uh-huh.

13          **A**     On February 8, locations total is 1107.

14          **Q**     Oh, okay. But some of them are --

15          **A**     Not sure exactly how many of those were GPS  
16     locations versus cell towers. But this is what I  
17     was --

18          **Q**     But you were only asked to produce the GPS  
19     locations?

20          **A**     Correct. I was told these are the pertinent  
21     locations that needed to be exported.

22          **Q**     Okay.

23                   So you were not asked to produce cell towers?

24          **A**     Correct.

25          **Q**     But there are cell -- some cell tower

1 locations that are in the phone?

2 A Correct.

3 Q So not every cell tower that was likely  
4 connected to that day?

5 A Correct.

6 Q Right. Because the -- the phone, like you  
7 said, has this idiosyncratic collection method, whereas  
8 say the cell phone provider is tracking it for every  
9 single call; is that right?

10 A Sorry. Say that again.

11 Q So the phone is not tracking the cell  
12 tower -- is that state -- retaining information about  
13 what cell tower was connected to for every single call,  
14 correct?

15 A Correct.

16 Q But for a period of time, the cell provider  
17 does collect that and retain it?

18 A The cell provider, yes.

19 Q Okay.

20 But that's not what's here.

21 A Correct. This is not the cell tower data  
22 report.

23 ~~Q But it -- but cell tower data does exist~~  
24 or did exist at some time for every single one of those  
25 telephone calls that was made that day?

1           **A**     I would expect so.

2           **Q**     And every single SMS or MMS that was sent  
3 that day, as long as they weren't connecting to Wi-Fi.

4           **A**     I'm not as familiar with call tower logs.  
5 But I believe that's the way they work.

6           **MS. BLAZER:**   Okay.

7                   One moment, Your Honor.   (Pause.)

8                   I think -- I think that's it.   Thank you,  
9 Your Honor.

10          **THE COURT:**   Any redirect?

11          **MS. FRIES:**   No, Your Honor.

12          **THE COURT:**   Is there any objection to the  
13 cell -- to the GPS location coordinates?

14          **MS. BLAZER:**   Yes, sir.

15          **THE COURT:**   And what's the basis of the  
16 objection?

17          **MS. BLAZER:**   The basis of the objection is  
18 that they cherry-picked six locations out of 1087  
19 that the witnesses testified were already  
20 idiosyncratically maintained by the phone, when a  
21 better source of evidence, a more complete, a  
22 more -- a not misleading source of evidence  
23 existed and was readily available to stay.   They  
24 simply sought not -- didn't seek to get it.

25          **THE COURT:**   What are you referring to?

1           **MS. BLAZER:** Cell tower data.

2           **THE COURT:** Cell phone data is not accurate.  
3           If you or I were right -- downtown right now and  
4           the powers (inaudible) it can bounce the tower in  
5           West Ashley.

6           **MS. BLAZER:** That is --

7           **THE COURT:** It can bounce anywhere. That  
8           doesn't mean that's where you are. GPS is  
9           (inaudible).

10          **MS. BLAZER:** GPS is more accurate. But in  
11          terms of the sheer volume of telephone calls that  
12          day, it -- it would have been more appropriate to  
13          enter into -- because we-all -- we've all been in  
14          trials where we do the cell tower interpolation,  
15          where we -- it's -- it's been good -- it's been  
16          good enough for government work plenty of times  
17          before to go through the cell tower data to try to  
18          track where somebody was.

19          **THE COURT:** That was before it was -- that  
20          was before it developed to where it is now with  
21          the GPS coordinates. I haven't heard cell phone  
22          data testimony in a long time, not since they can  
23          pinpoint it with GPS.

24          **MS. BLAZER:** When -- when the telephone does  
25          not store the GPS information to cherry-pick the

1       six things that it randomly stored is incredibly  
2       misleading.

3               **THE COURT:** Is there anything that prohibits  
4       you -- did you not receive the raw data on this  
5       such that your expert could have determined all  
6       the other places she was from GPS location data?

7               **MS. BLAZER:** No. He just testified it  
8       doesn't exist in the phone.

9               **THE COURT:** No. That's not -- that was not  
10       his testimony. He said the phone randomly reports  
11       it.

12              **MS. BLAZER:** Right.

13              **THE COURT:** They have tried to figure out why  
14       that is.

15              **MS. BLAZER:** Right.

16              **THE COURT:** There is no explanation.

17              **MS. BLAZER:** Right.

18              **THE COURT:** He did not say it does not exist.  
19       He did not say there were not other locations that  
20       existed or he would not have been able to give us  
21       the 1107 total.

22              **MS. BLAZER:** I think I must have misspoken on  
23       this.

24              **THE COURT:** And I may have understood you.  
25       So go ahead.



1           **MS. BLAZER:** Yeah.

2           So what I'm suggesting, the phone did record  
3           1000 locations.

4           **THE COURT:** Uh-huh. Is there anything  
5           that -- you have that, correct?

6           **MS. BLAZER:** I have all of that.

7           **THE COURT:** Okay.

8           So what prohibits you from asking him about  
9           it?

10          **MS. BLAZER:** Oh, nothing. I can ask him  
11          about all of that.

12          **THE COURT:** Uh-huh.

13          **MS. BLAZER:** The problem is that many, many,  
14          many of the entries in the phone have no location  
15          data associated with them. And they are -- they  
16          happen at times both before and in between the  
17          location times that the -- that the government  
18          seeks to introduce as though these are the only  
19          places that this person ever was. And -- and it's  
20          misleading.

21          **THE COURT:** That's not how I understood the  
22          testimony that she had elicited about how it's  
23          stored and how random it is.

24          What the state's response?

25          **MS. SAVAS:** Thank you, Your Honor.

1           First, Your Honor, the state is not  
2           necessarily cherry-picking extractions. We are  
3           simply seeking to admit through evidence to prove  
4           our case in chief some GPS locations that we want.  
5           Under Rule 1006, it allows for summaries of data  
6           like that to be submitted when it is so volume --  
7           I'm not gonna say it right --

8           **THE COURT:** Voluminous.

9           **MS. SAVAS:** Voluminous. Thank you.  
10          Voluminous. And that is what we are doing here.  
11          It's not necessary to prove every GPS location. I  
12          think he said there was 1000s of them for the  
13          entirety. It also does not prevent the defense  
14          from cross-examination to bring that out. That is  
15          also a matter for closing argument.

16          More importantly, there -- I think it's  
17          confusing two issues. You have to do a separate  
18          search warrant for a cell phone provider to get  
19          cell tower data. Detective McManigal performed a  
20          search warrant based on the extraction of this  
21          file and the reader. Detective McManigal would  
22          not even be the one to testify to regarding  
23          cellphone tower data. Again, that would be  
24          argumentative for the defense to say in closing  
25          this -- the government didn't do one more thing

1       that they could have done. Simply because  
2       something was not done does not give rise to not  
3       admit into evidence something the detectives did  
4       do.

5               There is no rule. There's no case law.  
6       There's no rationale to say because the  
7       investigator didn't do all these other things, you  
8       can't let in your evidence that you actually did  
9       do. So I think it's confusing the issues to say  
10      simply because no cellphone tower data is there,  
11      then, you know, you can't bring in your GPS  
12      location.

13             Furthermore, as the Court had said, GPS  
14      location is far more accurate. I don't like cell  
15      phone tower data. It is. It's a giant coordinate  
16      that shows I'm on the entire peninsula. That's  
17      not helpful for me when I want someone to be at an  
18      exact street address. The GPS location that is  
19      brought out in these exhibits, it shows longitude  
20      and latitude and can convert that into an exact  
21      address. So it is very specific, which gives the  
22      defense even more to go off of to either  
23      ~~contradict or whatever they want to do with that~~  
24      evidence.

25             It is the state's case to put up. The

1 defense can put in any evidence they want, if they  
2 seek to admit that, whether through  
3 cross-examination, their own witnesses, whatever  
4 it may be. They don't have to. But they have  
5 received a complete file. So the burden does not  
6 necessarily shift. The state provided them with  
7 all that information.

8 It's misleading to say they're not -- they  
9 received all the GPS data available. I just don't  
10 need to admit it. And I don't -- well, I'm not  
11 going to speak for the Court. But I don't think  
12 the Court would be inclined to admit an entire  
13 cell phone dump full of data. There is no  
14 difference between allowing a few messages that  
15 are relevant versus everything that may not be  
16 relevant. We don't need to know where she was  
17 days or weeks or months prior. That's not  
18 relevant here, Your Honor. And it's the state's  
19 prerogative to put in what they believe to be  
20 relevant evidence under Rule 403.

21 Also, two years ago, when the defense first  
22 wanted to bring an expert, the state informed the  
23 defense that we don't have that cell phone tower.  
24 They would have to then do a subpoena and get  
25 their own witness to do that. And I do not

1 believe that they did do that cell tower  
2 information. So they could send their own  
3 subpoenas and request them if they wanted. They  
4 have not done so in this case. Simply because law  
5 enforcement, again, does not do something does not  
6 mean none of the other evidence gets in.

7 So I think it is confusing. It's two  
8 separate issues. It's two separate search  
9 warrants, which further proves that it is very  
10 different from what Mr. McManigal is testifying  
11 to. GPS location from the Cellebrite Reader is  
12 not the same, nor is it the same process to get  
13 cell phone tower data. Therefore, it is  
14 misleading and inaccurate to render a decision on  
15 GPS location based off of something else.

16 **THE COURT:** Anything further from the  
17 defense?

18 **MS. BLAZER:** Your Honor, I only want to  
19 correct something that I feel confident is just a  
20 misstatement, that was inadvertent by Ms. Savas.  
21 In fact, as was provided to her, in spite of the  
22 fact that it was not required under Rule 5,  
23 ~~earlier this week, we did send exactly that~~  
24 subpoena to Verizon Wireless, and received back  
25 the response that the cell tower data that we saw

1 no longer existed.

2 THE COURT: Well, yeah. 'Cause this was four  
3 years from now.

4 MS. BLAZER: It was actually two years ago  
5 that we asked.

6 THE COURT: Yeah. But they don't --

7 MS. BLAZER: Right. But it's -- it's --

8 THE COURT: It's a very short time.

9 MS. BLAZER: It's just inaccurate to say --

10 THE COURT: Yes, it is.

11 MS. BLAZER: -- that we did not make an  
12 effort to do that.

13 THE COURT: It's a very short term that they  
14 keep it. It's not a long --

15 MS. BLAZER: Correct. Shorter than the time  
16 that when we even got retained, but we still made  
17 the effort.

18 THE COURT: Yeah. And I don't want to be  
19 misunderstood. There's -- and Ms. Savas is  
20 correct. We're talking about apples and oranges.  
21 Geofencing is a whole different category versus  
22 data extracted from the phone and analyzed. And  
23 there are times and there are cases where you have  
24 both. You have somebody come in and testify to  
25 geofencing, which is the whole calculations and

1       the cones and all that without me getting into the  
2       minutiae. And then they correlate that to the  
3       person's phone.

4               Most times, though, geofencing is used when  
5       they can't find a phone, when they gotta go to a  
6       phone company, and get somebody's number, and they  
7       can put them into the vicinity. More often than  
8       not, that's when geofencing is used. But there  
9       are times when geofencing and GPS are used  
10      correspondingly, I guess is the word I'm looking.  
11      So I don't want to be misunderstood on that point.

12              But the bottom line is: We're talking about  
13      GPS locations that were extracted from her phone,  
14      not geofencing. So those are two very different  
15      categories of data, for lack of a better word.  
16      And two different folk that would be testifying to  
17      it. And two different search warrants that you  
18      would have to use to get.

19              Because to get the geofencing, you have to  
20      get an order pursuant to the Federal Close Storage  
21      Act to get it. And, frankly, cell phone companies  
22      do not keep that data for long. Because they will  
23      ~~tell you that millions of people per minute use a~~  
24      tower. There is no way in the world they can keep  
25      that infor- -- it's just too much to store. They

1       just don't have the capacity to do it. And they  
2       don't do it. Because they don't see any purpose  
3       in it at least from their perspective. Because  
4       they're not in law enforcement. They just don't.  
5       Just from a practical business standpoint, they  
6       just don't have the capacity to keep all that  
7       data.

8               What else through this witness would you be  
9       seeking to elicit, Ms. Savas or Ms. Fries?

10       **MS. SAVAS:** Your Honor, we --

11       **THE COURT:** 'Cause we have the GPS. I have  
12       the text messages. I have the phone calls.

13               I assume that the defense's objection is the  
14       same regarding the phone calls, Ms. Blazer?

15       **MS. BLAZER:** I -- I -- I apologize. I was  
16       consulting with counsel.

17       **THE COURT:** That's okay. I said I assume --  
18       I said, I have the text messages, which I've  
19       already heard about. I've had the GPS, which I've  
20       already heard about. And I assume the state was  
21       seeking to introduce the multiple phone calls that  
22       went between Mr. Simmons and Ms. Steward on --  
23       within that timeframe as well. And is there an  
24       exception to the use of those phone call logs?  
25       And would it be the same as the text message



1 argument?

2 MR. D'ANGELO: Yes, it would, Your Honor.

3 THE COURT: Okay.

4 MR. D'ANGELO: And again, as -- as we had  
5 discussed earlier, again, I just don't have --  
6 with the voicemails, I just don't have the times  
7 and locations that these voicemails have.

8 THE COURT: Does it really matter where they  
9 were when it took place? The point is, they will  
10 be offering it to show they had a bunch of phone  
11 calls back and forth. Some were answered; some  
12 weren't answered. I think it really goes to the  
13 interaction between the two of them. So are you  
14 telling me you have an objection to how the phone  
15 calls were collected? Is that what you're saying  
16 to me?

17 MR. D'ANGELO: No, Your Honor.

18 THE COURT: Okay.

19 So what's the basis -- what would be the  
20 basis of the objection to the phone calls?

21 MR. D'ANGELO: Well, again, just establishing  
22 that those voicemails were made on that day, on  
23 2/8/20.

24 THE COURT: Your phone records when you make  
25 phone calls. They record whether they were

## Argument of Counsel: Voicemails

1           answered. They record how long they are in  
2           duration.

3           **MR. D'ANGELO:** Correct.

4           Again, as -- as we kind of discussed earlier  
5           this morning, all I have is just a file, an audio  
6           file that plays --

7           **THE COURT:** No. I've got a phone extraction  
8           report that has every single phone call; when it  
9           was placed; how long it took; whether it was  
10          answered; who called who; whether it wasn't  
11          answered.

12          **MR. D'ANGELO:** I apol- -- Your Honor, you're  
13          talking about the call log.

14          **THE COURT:** Yeah.

15          **MR. D'ANGELO:** I am so --

16          **THE COURT:** I'm sorry.

17          **MR. D'ANGELO:** That was my --

18          **THE COURT:** Oh, I'm sorry if I wasn't clear.

19          **MR. D'ANGELO:** That was my -- that's probably  
20          my fault, Your Honor. I thought you were  
21          discussing the voicemails.

22          **THE COURT:** No. I'm referring to the phone  
23          call log.

24          **MR. D'ANGELO:** Correct. Correct.

25          **THE COURT:** No exception.

1           **MR. D'ANGELO:** Other than, again, the same  
2 argument.

3           **THE COURT:** Now, are you-all going to be  
4 seeking, Ms. Fries, to use -- I assume this is the  
5 device report that just says phone call -- who the  
6 phone belongs to and all that kind of stuff,  
7 right?

8           **MS. FRIES:** The preliminary report, yes.

9           **THE COURT:** Is that -- are y'all gonna be  
10 seeking that information from Mr. McManigal?

11           **MS. FRIES:** Yes. It shows that -- the  
12 owner's phone, the e-mail addresses.

13           **THE COURT:** Are there any exception to that?  
14 I assume there is none?

15           **MR. D'ANGELO:** No, Your Honor.

16           **THE COURT:** What number is this preliminary  
17 device report? What number is that? These are my  
18 copies, right?

19           **MS. FRIES:** Yes, Judge. It's Exhibit 75.

20           **THE COURT:** Okay.

21           And then what number is the coordinates, the  
22 GPS coordinates?

23           **MS. FRIES:** 71.

24           **THE COURT:** What number are the call logs?

25           **MS. FRIES:** They are Exhibit 68.

1           **THE COURT:** And what number are the text  
2 messages?

3           **MS. FRIES:** 69.

4           **THE COURT:** And then I have something else,  
5 which I assume is -- this has all of the steps she  
6 took on the phone, which we know your phones  
7 record just about everything you do. So I have  
8 one that says Activities and Device Events.

9           **MS. FRIES:** Correct.

10          **THE COURT:** And what -- what -- are you  
11 planning to use this device events report?

12          **MS. FRIES:** Yes.

13          **THE COURT:** And for what purpose?

14          **MS. FRIES:** It shows the events. It shows  
15 unplugged and plugged in. It corresponds with --

16          **THE COURT:** No, that's not the one I'm  
17 looking at. I'm looking at the one that says  
18 Activities.

19          **MS. FRIES:** Yes, Your Honor. We're -- we are  
20 trying to --

21          **THE COURT:** And for what purpose would you be  
22 seeking to use this information?

23          **MS. FRIES:** Intent, motive. It shows --

24          **THE COURT:** My question is more specific than  
25 that.

1           **MS. FRIES:** Oh, okay.

2           **THE COURT:** How would you be presenting this?  
3 I mean, what would you -- what would you be  
4 asking?

5           **MS. FRIES:** There is a timeframe where she  
6 takes numerous amounts of steps within a 10-minute  
7 period. It is shortly before the fire is called.  
8 So we are -- you know and then there's no activity  
9 within 20 or so minutes after that. So we are  
10 intending to seek it for that -- to admit it for  
11 that purpose.

12           **THE COURT:** And is there any exception to the  
13 use of that information?

14           **MS. BLAZER:** Other than that which has been  
15 previously stated, no, Your Honor.

16           **THE COURT:** But you don't have any good faith  
17 representation --

18           **MS. BLAZER:** No, no. Only as to our  
19 previous --

20           **THE COURT:** -- that this isn't accurate --

21           **MS. BLAZER:** Nope, nope --

22           **THE COURT:** -- an accurate representation of  
23 the steps recorded by --

24           **MS. BLAZER:** I have plenty of  
25 cross-examination about it, but nothing that's --

1           **THE COURT:** And what number is that?

2           **MS. FRIES:** That is 73.

3           **THE COURT:** And then what number is device  
4 events, which is listed as six device events?

5           **MS. FRIES:** That's 72?

6           **THE COURT:** Is there any exception to that  
7 report, which shows the time the phone was plugged  
8 in and when it was unplugged?

9           **MR. D'ANGELO:** No, Your Honor. Again, just  
10 all the same previous arguments, but nothing in  
11 addition.

12           **THE COURT:** And then I also have extraction  
13 report instant messages, three. Are you-all  
14 seeking to use that?

15           **MS. FRIES:** Yes, Your Honor.

16           **THE COURT:** And this on Instagram, the  
17 messages they were sending to one another or she  
18 sent to him?

19           **MS. FRIES:** She sent the messages directly to  
20 him. And it's via text. And it's on the incident  
21 date at important times throughout the day. And  
22 they are multimedia.

23           **THE COURT:** Well, one of them shows she sent  
24 him a picture. Are you suggesting that on this  
25 first one, he -- she was sending him a picture of

1 his house?

2 MS. FRIES: Correct. I believe it's at 9:30.

3 THE COURT: And then she sent him a picture  
4 of a picture he had on Instagram where he worked  
5 out or something?

6 MS. FRIES: Correct. They are screenshots  
7 that she sent from her phone to him.

8 THE COURT: And what was the other  
9 screenshot, this third one that I can't make out?  
10 What is that supposed to be?

11 MS. FRIES: It is a screenshot that she sent  
12 to Frank, the victim, at around 2:01 p.m.

13 THE COURT: What does it say?

14 MS. FRIES: It is just a --

15 THE COURT: This writing is tiny. I can't  
16 tell.

17 MS. FRIES: It's just a screenshot that --  
18 from Destiny to her of --

19 THE COURT: What does it say? Oh, I'm sorry.  
20 I have an enlarged one.

21 MS. FRIES: Yeah. There's an enlarged photo.

22 THE COURT: So I have a copy of the house.

23 MS. FRIES: Yes.

24 THE COURT: Picture of the house. A copy  
25 with four likes where he apparently has worked

1 out. And he says, "Workout was crazy today. I  
2 got mad at it." And then she sends a message,  
3 "Work it out, babe," with a heart.

4 And then "This is an attempt from her to get  
5 back with me. It's not going to work. I will  
6 take care of that. This girl is definitely a  
7 fatal attraction and is saying I used her and  
8 that -- all that S. But I didn't ask for anything  
9 that she gave. I have my own and don't want her.  
10 And she's very upset. Don't let her mess up  
11 what's going on with you and I. Understand she is  
12 bitter because I don't want her."

13 So you're saying that this Destiny person  
14 sent this to Ms. Steward, and then Ms. Steward  
15 sent it to Mr. Simmons?

16 **MS. FRIES:** Yes, that's correct.

17 **THE COURT:** Is there any exception to these  
18 instant messages or screenshots?

19 **MR. D'ANGELO:** No, Your Honor. Nothing  
20 additional at this besides what's previously been  
21 argued.

22 **THE COURT:** And what number of those?

23 **MS. FRIES:** So the extraction report of the  
24 multimedia messages?

25 **THE COURT:** Instant messages three, what



1 number is that?

2 MS. FRIES: 70.

3 THE COURT: And then I was handed up  
4 something else, which is -- what is this exactly?

5 MS. FRIES: That is a timeline that  
6 Mr. McManigal --

7 THE COURT: This is what you wanted to use  
8 demonstratively?

9 MS. FRIES: Correct.

10 THE COURT: Is there any exception to the  
11 demonstrative aid the state wants to use with  
12 their witness?

13 MS. BLAZER: Your Honor, we -- we received it  
14 this morning and have not been able to thoroughly  
15 review it just yet. I have sent it to our expert  
16 for him to review to determine we have exception  
17 to it. I would ask for a little more time to --  
18 to --

19 THE COURT: I'll give you a little more time.  
20 But it's unlikely I'm gonna restrict them in a  
21 demonstrative aid.

22 MS. BLAZER: Yeah. My only concern --

23 ~~THE COURT: 'Cause it's not coming in as~~  
24 evidence.

25 MS. BLAZER: Right. My only concern would be

1       if there's anything that would -- that I think is  
2       inaccurate or would be confusing. And I'm having  
3       my expert help me to figure that out.

4               **THE COURT:** For purposes of  
5       cross-examination, I assume.

6               **MS. BLAZER:** And Your Honor, I don't know if  
7       it's for their close or their (inaudible). I  
8       don't know what they intend --

9               **THE COURT:** Well, they can use a  
10       demonstrative aid in closing if they wanted to.  
11       But it's not evidence. It's my understanding they  
12       want to use this with their witness solely to  
13       eliminate his testimony or to make it more  
14       understandable. But it's not -- they're not  
15       seeking to admit it, nor would a demonstrative aid  
16       come in as evidence.

17               Am I incorrect in what you-all told me? Is  
18       that purpose for which you want to use the  
19       timeline? I'm using "timeline." That's not  
20       necessarily your word.

21               **MS. FRIES:** We -- we were planning to seek to  
22       admit it.

23               **THE COURT:** It's a demonstrative aid, which I  
24       don't have problem with you using it as a  
25       demonstrative aid.

1           **MS. FRIES:** Yes, Your Honor.

2           **THE COURT:** But I don't think it would come  
3 in as evidence.

4           Do we need Mr. McManigal for anything else  
5 from the state? Anything -- any -- do we need any  
6 other testimony from him today --

7           **MS. FRIES:** No, Your Honor.

8           **THE COURT:** -- on the motion?

9           **MS. FRIES:** No, ma'am.

10          **THE COURT:** Mr. McManigal, have a good day.  
11 We'll see you tomorrow morning.

12          **THE WITNESS:** Yes, ma'am. Thank you very  
13 much.

14          **THE COURT:** You're welcome. We appreciate  
15 your patience.

16          **MS. SAVAS:** Your Honor, if I may, I also the  
17 jail calls ready for you.

18          **THE COURT:** Perfect.

19          **MS. SAVAS:** May I approach?

20          **THE COURT:** We're going to take those up in  
21 just a second.

22          **MS. SAVAS:** They have all of the jail calls.

23          **THE COURT:** Thank you.

24               All right.

25               Now the defense has made a motion to exclude

## Argument of Counsel: Voicemails

1 any testimony from Mr. McManigal concerning the  
2 download of Ms. Steward's phone. But let me ask  
3 another preliminary question.

4 Mr. D'Angelo, you got a copy of this list,  
5 right, which is the exact text messages that the  
6 state would be asking Mr. -- I'm sorry.

7 **MR. D'ANGELO:** It's been a long week,  
8 Your Honor.

9 **THE COURT:** No, I was just -- it's been a  
10 long year.

11 **MS. SAVAS:** You're just getting started.

12 **THE COURT:** No. It's been a long -- no. My  
13 year didn't just get started. My year started  
14 last year way around January. Well, my year has  
15 been one -- my last three years have been one  
16 ongoing year. And I'm not complaining. So please  
17 don't interpret it that way.

18 One -- these numbers that she has provided  
19 you -- you've seen this list.

20 **MR. D'ANGELO:** So I got it when we got back  
21 from lunch, Your Honor.

22 **THE COURT:** Have you had a chance to review  
23 it?

24 **MR. D'ANGELO:** I made it to No. 83 --

25 **THE COURT:** Okay.

1           **MR. D'ANGELO:** -- before we had to get going.

2           **THE COURT:** Okay.

3           I would imagine some of these really  
4           helped -- I mean, some of the ones they're  
5           listing, I would imagine you'd want in.

6           **MR. D'ANGELO:** Yes, Your Honor. I mean,  
7           there's -- there's a number --

8           **THE COURT:** And some of them that they don't  
9           list, I would imagine you want in.

10          **MR. D'ANGELO:** There's a number here that --  
11          I mean, really, I -- again, I've made it up to 83.

12          **THE COURT:** A lot of them is where she's  
13          saying she didn't do it.

14          **MR. D'ANGELO:** Right. There's two that I've  
15          seen so far that I would have an issue. But the  
16          rest --

17          **THE COURT:** Which ones?

18          **MR. D'ANGELO:** The first one, 66, Your Honor.  
19          She's discussing that she has a tattoo of his name  
20          on his -- on her neck relevance. Relevance.

21          **THE COURT:** It's relevant. Yeah. All of  
22          these messages are relevant. I just don't know  
23          that you want them to go through all of them one  
24          by one. But they are probative. They're  
25          probative of her state of mind. They're probative

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1 of where she says she is. Most of them include  
2 clear admissions against interest. It goes to her  
3 motive. It goes to her intent. It goes to  
4 absence of mistake. It goes to a lot of things.  
5 It's damaging. And -- and I would assume that's  
6 why y'all are fighting so hard to keep it out,  
7 which is your job, and I'm not criticizing you for  
8 it. Because that's what advocacy is.

9 So No. 66 deals with the tattoo. And then  
10 what other ones did you find problematic?

11 **MR. D'ANGELO:** The only other one at that  
12 point I had flagged was just 34. It was just her  
13 just saying, "I'm not playing." Just kind of  
14 context.

15 **THE COURT:** I think when you read it in the  
16 full context of these messages, it all makes  
17 sense.

18 **MR. D'ANGELO:** But again, those were the only  
19 two at that point, I had flagged.

20 **THE COURT:** Because there are other ones near  
21 the end, which where she says, "I'm mad at you.  
22 But I would never burn down your house." I'm  
23 paraphrasing.

24 **MR. D'ANGELO:** Certainly. And I've listened.

25 **THE COURT:** "You know that I would never --

1       you know I would hurt myself before I would hurt  
2       you. I would never do that to your child." All  
3       of these things to me, frankly, are self-serving.  
4       But if they don't have a problem with them coming  
5       in, I don't have a problem with them coming in.

6               And I would imagine that they benefit your  
7       client. And that you would not have an objection  
8       to those.

9               **MR. D'ANGELO:** Yes, Your Honor.

10              **THE COURT:** But I'm just asking.

11              **MR. D'ANGELO:** Right.

12              And again, as I stated, I made it from up to  
13       No. 30 -- excuse me.

14              **THE COURT:** No. I've read them all. So I'm  
15       not just talking about this list; I'm talking  
16       about all of them. Because she's seeking to admit  
17       all of them. These are just the ones -- right.  
18       And that's one, two, three --

19              **MR. D'ANGELO:** Yeah. I -- I don't have an  
20       issue here.

21              **THE COURT:** They're 28 of them. And forgive  
22       me if my math is off. I was counting fast.

23              ~~**MR. D'ANGELO:** You know better than me,~~  
24       Your Honor.

25              **THE COURT:** Anyway, they're 20 -- 28 of them,

1       according to my quick count, that they would  
2       actually want Mr. McManigal to read, or that they  
3       would want to highlight for the -- publish for the  
4       jury.

5               But that's -- but in total, there are 120 --  
6       look at my writ- -- there are 146 of them. Some  
7       of them again, as I've indicated, are  
8       self-serving. And I would imagine they are  
9       declarations of innocence, although that's not the  
10      standard, you know, whether the state's met their  
11      burden of proof. But certainly I'm at a loss as  
12      to how those would be prejudicial to your client.  
13      And quite frankly, they might be beneficial to  
14      her. So I'm trying to figure out if you object to  
15      those.

16             **MR. D'ANGELO:** No, Your Honor.

17             **THE COURT:** Okay.

18             I just wanted clarity for that.

19             All right. The defense has made a motion,  
20      which covers the incident messages -- well, the  
21      entire download of Ms. Steward's phone, which  
22      would include an extraction report -- I'm gonna  
23      try to go in the number order of the numbers that  
24      they're listed from -- the least number to the  
25      greatest number. 68 is the telephone calls



1           between Ms. Steward and Mr. Simmons, which  
2           consists of 127 phone calls, that would begin at  
3           2/8/2020, 8:53 and 11 seconds, and would conclude  
4           at 2/82020, 9:26:20. Some of which -- four at the  
5           very beginning were deleted from Ms. Steward's  
6           phone, but were able to be resuscitated, for lack  
7           of a better word, recaptured, by the analysis of  
8           the phone from the binary data. The -- and they  
9           show -- the log clearly shows which phone calls  
10          were answered, which ones were not answered, who  
11          made the calls, and to whom the calls were made.

12                 And then No. 70, which is screenshots from  
13          Ms. Steward's phone to Mr. Simmons's phone.

14                 And then No. 71, which is the GPS  
15          coordinates, which consists of six locations,  
16          ranging from being in the area of [REDACTED]  
17          Avenue, 2/8/2020, 9:31:29, and then ending with  
18          her being at [REDACTED] Road, Mount  
19          Pleasant, at 2/8/2020, 3:03:18 -- well, 3:03 and  
20          00, ending at 3:03:18.

21                 And then No. 72, which would indicate when  
22          the phone was plugged in, I assume to be charged  
23          or otherwise, or when it was unplugged. And that  
24          begins at 2/8/2020 at 1:15 and 57 seconds. And it  
25          has end times for each of these, whether it's

1 plugged in or unplugged, with six events, ending  
2 with 2/8/2020, 3:18 and six seconds, and  
3 concluding at 3:20 and 13 seconds.

4 And then No. 73, which is the steps that were  
5 recorded by her device, even including climbing  
6 stairs, which I would have to assume correlates  
7 with the rifle range address on the GPS, which it  
8 does at 3:07 and three seconds and concluding at  
9 3:07 and six seconds. And it says flight one  
10 floor of flight -- one flight of stairs. I would  
11 have to assume based on -- on this -- what is  
12 created in this report. And that correlates with  
13 the last event with her being at Rifle Range Road  
14 in Mount Pleasant at 3:03 -- ending at 3:03:18 on  
15 2/8/2020. And then the stair of the flights  
16 climbed at 2/8/2023 at 3:07:03 and ending at  
17 3:07:06.

18 And then No. 75, which I assume the defense  
19 has no objection to, which is simply the ownership  
20 data of the telephone.

21 And I see you shaking your head, Ms. Blazer,  
22 so I can assume you have no objection to that.

23 **MR. D'ANGELO:** That's correct, Your Honor.

24 **THE COURT:** Okay.

25 Now, as I indicated before, this onion has a

1 lot of layers. And so I'm going to try to go  
2 through each of one of them methodically so that  
3 we don't miss anything. And I think I already  
4 said this. But No. 69 is 146 text messages, which  
5 begin on 2/8/2020 at 8:41 and 37 seconds and  
6 conclude with 2/8/2020, 7:54 and 09 seconds.

7 **MS. SAVAS:** Judge, if I may.

8 **THE COURT:** Yes.

9 **MS. SAVAS:** We spoke with Mr. -- or Detective  
10 McManigal earlier today. He was unable to create  
11 a condensed report. We're going to see if we can  
12 get that.

13 **THE COURT:** Okay.

14 **MS. SAVAS:** And we would substitute that in  
15 for Item No. 69. We will not have any additional  
16 messages put in. But we may have some removed as  
17 to what Your Honor was saying about ones we want  
18 in it.

19 **THE COURT:** So well -- well, let me -- well,  
20 then, I need to be clear. Because when you handed  
21 me this document with 146 text messages, you told  
22 me you wanted the whole document in.

23 **MS. SAVAS:** Yes.

24 **THE COURT:** But you were only going to have  
25 him testify about these that you had listed on

1           this sheet.

2           **MS. SAVAS:** Yes, Your Honor. And I will say  
3           that's what I thought at that moment. But in  
4           clarity, I do agree that we can condense this to  
5           just what we're going to put in through Detective  
6           McManigal.

7           **THE COURT:** So you're saying you're going to  
8           try to condense it to just this list?

9           **MS. SAVAS:** Possibly less.

10          **THE COURT:** Okay.

11          **MS. SAVAS:** But I will not include anything  
12          that we have not already discussed here today or  
13          provided to the Court. It might be a condensed  
14          list. Rather than the entire day, he will just  
15          speak to how many texts were sent that day. But  
16          we will further --

17          **THE COURT:** Let me ask: If the texts come  
18          in, do y'all want them all. Or do y'all want to  
19          (inaudible)?

20          **MR. D'ANGELO:** I'd say --

21          **THE COURT:** If the texts come in, they're all  
22          going to come in.

23          **MS. SAVAS:** Rather than individual messages.

24          **THE COURT:** Out of context, the rule is --  
25          this is a continuum. It's like res gestae. It's

1       like -- it's like when they begin till it goes  
2       where it's going. And I think to sort of pick out  
3       one message here, one message there, it can tend  
4       to be very misleading. I think if you're going to  
5       read the text messages, you need to say what they  
6       see what they were saying to one another. And  
7       some of it ain't too flattering to Mr. Simmons  
8       and -- and his verbiage. But it is what it is.

9       I'm sure that these people isn't the first  
10      time they have heard a cuss word, nor uttered one.  
11      I just -- you know, I doubt -- I doubt in this  
12      current state of the world that we live in than  
13      any of these words would shock them or wouldn't --  
14      or they would not have ever heard them.

15      So I think if it's going to come in, it's  
16      going to come in. Because it's very -- it would  
17      be very misleading to sort of pick out -- like to  
18      have her say something, but not know what he said  
19      in response.

20               **MS. SAVAS:** That's fine.

21               **THE COURT:** Or to -- yeah.

22               **MS. SAVAS:** Okay.

23               ~~**THE COURT:** That's the only fair way.~~

24               **MS. SAVAS:** We just may condense our version  
25      of what we elicit through Mr. McManigal.

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1           **THE COURT:** And that's fine.

2           **MS. SAVAS:** Okay, Judge.

3           **THE COURT:** You can do that. You don't  
4 have -- I mean, I'm -- I'm not gonna --

5           **MS. SAVAS:** Yes, ma'am.

6           **THE COURT:** You know, hamstringing you --

7           **MS. SAVAS:** Okay.

8           **THE COURT:** -- in how you want to present it.

9           **MS. SAVAS:** Yeah.

10          **THE COURT:** I mean, it's up to you. But I  
11 think it could be -- you know, evidence has to be  
12 relevant for it to be admissible. And one of  
13 those key prongs is, you know, you can't -- you  
14 know, and -- and as I've already, you know,  
15 observed, y'all are advocates. You're supposed to  
16 advocate. The beauty of what I get to do is I get  
17 to be completely objective. I don't have a side.  
18 So I have to look at it in a very balanced way.

19               And the Court is the gatekeeper. I have to  
20 make sure that the finder -- finders of fact hear  
21 what they need to hear in a balanced fashion such  
22 that they are able to make correct judgments about  
23 believability, credibility, what happened, what  
24 didn't happen. Because as you hear me when I  
25 instruct them, there's no way to correct an

1       erroneous determination of facts made by a trial  
2       jury.

3               When it goes up on appeal, it's about legal  
4       issues. It's not about factual findings. And you  
5       will read over and over again in the appellate  
6       decisions that immaculate deference is given to  
7       the finder of fact. Because they were there.  
8       They heard the witnesses. They heard testimony.  
9       They made their judgments.

10              And so when you start talking about text  
11       messages, especially of this kind, it's not like  
12       they talked to each other at nine o'clock and then  
13       they didn't talk to each other again until  
14       midnight. This was like a wave. And it was  
15       continuous communication from that morning all the  
16       way to whenever it ended. And I think in fairness  
17       so that the jury is not misled or confused --  
18       that's a better word.

19              So that -- so that they aren't -- I guess you  
20       know I've been dealing with jury so long now.  
21       Y'all have -- we got little -- we have Inspector  
22       Gadgets on the jury. They really -- I'm just  
23       telling you.

24              So I think so different. See, I think from  
25       the end to the beginning. I don't think from the

1           beginning. I'm not reactionary. I don't think  
2           from the beginning. I don't think from A to Z. I  
3           think from Z to A. Because see, I already know  
4           what I'm gonna -- know what I'm gonna get. I  
5           already know, "Well, what where are the text  
6           messages that they had? Well, when did they start  
7           talking to each other, Your Honor? Well, when did  
8           they stop talking? Can we" -- see those --  
9           because people -- when you tell people --

10           **MS. SAVAS:** Yeah.

11           **THE COURT:** And I really -- I know it sounds  
12           comical. But if y'all can see like the notes I  
13           get, it -- it is -- I had -- I had a juror two  
14           weeks ago tell the bailiff, they don't understand  
15           why they can't be in here for matters of law  
16           because they need to be able to understand. They  
17           need to hear everything I'm hearing. And they  
18           need to know what I'm saying about it. That is  
19           exactly what a juror told the bailiff. So --  
20           which tickled me to no end. But it gave me a lot  
21           of insight into how jurors think.

22           Because they watch a lot of television. And  
23           in their mind, what we believe -- you know, when I  
24           say you are the finders of the fact, I'm a lawyer.  
25           I think like a lawyer. Jurors don't think like



1 lawyers. They think, "Well, if I'm going to find  
2 the facts, I need to know all the facts." They  
3 don't -- you know, they don't know the rules of  
4 evidence. They don't know that there's certain  
5 things you cannot hear. There's certain things I  
6 prohibit you from hearing.

7 So again, my funny example is, when I say to  
8 a jury, "Well, you know, we have a matter of law  
9 to discuss. And I've told you ahead of time,  
10 there's some stuff you can't hear. Because I  
11 don't want you to be prejudiced." And she taps  
12 the bailiff and says, "Listen, I need you to tell  
13 the judge that I want to be in there when they  
14 discuss matters." She tapped him. She was like,  
15 "I need to be in there when they're talking about  
16 matters a law. Because I need to know what the  
17 judge is hearing. And I need to know what she's  
18 saying."

19 So yeah. But -- but -- so their -- their --  
20 their common understanding of what we mean -- you  
21 know, we know what we mean as lawyers. They have  
22 a whole different perspective. So you have to be  
23 ~~so very careful in how things are presented to~~  
24 them. Because in their mind, it has to be  
25 logical. And if it is not logical to me as an

## Argument of Counsel: Voicemails

1        everyday person and it doesn't make sense -- let  
2        me tell you. They pull out whiteboards back  
3        there. They have their markers. They ask for  
4        them. They be in there doing diagrams. All kind  
5        of -- let me tell you. They got their sleeves  
6        rolled up. They, you know -- yes.

7                So you know, and I only get a glimpse when  
8        I'm walking by when they're get ready to send a  
9        note, and I see this big old whiteboard, and I see  
10       all these markers. I'm like what in the world.  
11       You know, but -- which is good. And it heartens  
12       me. Because that means they're talking about  
13       things. They're analyzing it. They're applying  
14       logic to it. And they're taking their role very  
15       seriously.

16               But in that role when they start doing stuff,  
17       and it don't make sense, they'll be like this  
18       don't make sense; we're missing a piece of this  
19       puzzle, and we want to know what it is. And  
20       that's what's gonna happen if you only get parts  
21       of these text messages. Because they're gonna be  
22       like, "Listen, I want to know what he -- we have  
23       the text message that he said at 2/8/2020, 8:54  
24       and 11 seconds. We need to know what was said at  
25       8:54 and 12 seconds." And they will send you

1 notes like that.

2 So I just think in terms of completeness, in  
3 terms of just avoiding -- I can't imagine any  
4 prejudice to the state in the entirety of those  
5 text messages coming in. So I'm sorry I belabored  
6 that point. But I just needed y'all to understand  
7 what I experience.

8 **MS. SAVAS:** Yes, Your Honor.

9 **THE COURT:** And that --

10 **MS. SAVAS:** I understand.

11 **THE COURT:** -- you know, that I'm not being  
12 illogical when I say that. It's just been -- and  
13 it's been a continuum of years of development, you  
14 know, for jurors to just accept what you said.  
15 But now --

16 **MS. SAVAS:** They don't.

17 **THE COURT:** They send out five-part notes  
18 about facts with subparts. And yeah. So -- so we  
19 don't think like lawyers -- I mean, they don't  
20 think like we do so. And they don't know the  
21 rules of evidence. So I think that that is  
22 important.

23 ~~So in any event, getting back to the matter~~  
24 at hand, which is the admissibility of the data  
25 that was extracted from Ms. Steward's phone. The

## Ruling of the Court

1 objection that has been interposed is one based  
2 basically, in essence, in spoliation. And I never  
3 say that word correctly. But I struggle with it.  
4 But nonetheless, that is, in essence, what the  
5 basis of the objection is.

6 And our Supreme Court has been very clear in  
7 terms of analyzing that issue. And they have --  
8 they have held in -- in many cases that -- that  
9 the issue that -- I'll start over.

10 The Supreme Court has stated the following on  
11 the issue of preservation of evidence: That the  
12 state does not have an absolute duty to preserve  
13 potentially useful evidence that might exonerate a  
14 defendant. To establish a due process violation,  
15 a defendant must demonstrate, first, that the  
16 state destroyed the evidence in bad faith, or that  
17 the evidence possessed an exculpatory value  
18 apparent before the evidence was destroyed. And  
19 the defendant cannot obtain other evidence of  
20 comparable value by other means, stating *State*  
21 *versus Bland*, which cited *State versus Cheeseboro*.

22 And that really is the crux of this Court's  
23 analysis. And that's why -- when I ask questions,  
24 I know sometimes I -- like I -- I emphasis I  
25 really don't have a side. But I really -- I think

## Ruling of the Court

1           that it is only fair to you-all that when you send  
2           me stuff that I actually read it, that I've try to  
3           digest it even though I don't have the same point  
4           of reference that you-all have. Because you have  
5           been living with this a lot longer than me. So I  
6           have to have sort of a learning curve when I  
7           get -- when I get into it. Sometimes the  
8           lightbulb comes on quicker than others.

9           But if I ask a question, it's because I've  
10          already reviewed what you've submitted to me, I've  
11          looked at the case law, and I'm trying to really  
12          do the analysis that's -- that our appellate  
13          courts have required. And in essence, what I hear  
14          Ms. Blazer saying is that there's new technology,  
15          the meta -- the data is not available for us to do  
16          testing on the old phone with new technology, to  
17          maybe see if some new stuff might exist, or we  
18          might be able to extract some new stuff from the  
19          phone.

20          And while laudable, and while something that  
21          I certainly would never distract them or  
22          discourage them from doing, that really is not the  
23          barometer. ~~Because if it were, we will be in this~~  
24          never-ending cycle. As we know technology, as  
25          soon as you buy a computer, your computer's

## Ruling of the Court

1        outdated. That's why iPhone got -- what? -- eight  
2        versions this year? Or was it eight versions last  
3        year until they ran into the -- to the -- to the  
4        trademark thing with the Chinese people. I can't  
5        remember.

6                I just know they had about -- before --  
7        within the span of like two months, they had five  
8        new phones. I mean, it's because -- and part of  
9        it is a mousetrap. Everybody -- you know, techies  
10       that want the newest thing. They want the newest  
11       device. I think the newest thing now is these  
12       glasses or whatever that cost \$3,800 or whatever,  
13       that they've come up with that people apparently  
14       are buying and pre-ordering, that's like the  
15       Jetsons, is what I've heard the description, that  
16       literally -- it's a virtual reality AI headset  
17       that's close to \$4,000. And people are buying  
18       them.

19               But I just use that as an indicator of how  
20       quickly things evolve and -- and how quickly they  
21       become outdated. But that really is not the  
22       barometer. And certainly because of COVID, things  
23       were delayed. I don't think anybody probably  
24       would have anticipated that 2020 warrants would --  
25       would now be being heard in 2024. And I don't

1 think that's anybody's fault. No one could have  
2 anticipated the pandemic. Nobody could have  
3 anticipated that the world would be shut down, and  
4 that we would go from what we -- you know, our  
5 regular routines to what I refuse to call the new  
6 normal, because it was not normal.

7 And so here we are four years later, trying  
8 this case. And so I have to look at the testimony  
9 of Ms. -- of -- and I always want to call him  
10 Mr. McManigal. It's Detective McManigal. And  
11 he -- I have -- you know, I've had the ability to  
12 have heard his testimony on multiple occasions.  
13 And his testimony today was no different than how  
14 I've always heard him testify.

15 He's straightforward. He is -- he doesn't  
16 pull any punches. If there's something that's not  
17 beneficial to what he's done, he's gonna -- he's  
18 gonna say it. He's gonna say, "Well, you know, I  
19 didn't have it" or "I did have it." And my  
20 experience in listening to his testimony today has  
21 been no different.

22 He clearly has an expertise in downloading  
23 ~~these phones. Sometimes they have somebody else~~  
24 download the phone, and then he process --  
25 processes the information. But in this instance,

## Ruling of the Court

1       he testified as to the chain of custody. He  
2       testified that he got the phone on the 12th from  
3       the evidence custodian. And then at that point,  
4       he got the binary data, which was immediately  
5       placed into the Cellebrite. In other words, it  
6       goes from one device to the other into the  
7       Cellebrite, it was imported into the Cellebrite  
8       analyzer. And it created that binary data. It  
9       creates a UFDR report.

10       And then he also testified that once it goes  
11       into the analyzer, it breaks data down into  
12       several categories. And without belaboring the  
13       point, because we were all here. We-all heard his  
14       testimony, which I think was quite thorough, both  
15       as a result of the direct and cross-examination,  
16       regarding his findings in this case. And he  
17       testified, and I find credible, that he followed  
18       the city's policy, or his agency's policy, which  
19       is, we just don't have the space to keep this  
20       copious data. And what I did was, once I did my  
21       analysis, I put a note on the phone for it to be  
22       maintained in evidence. My words, not his.

23       And he also put it in the report. So that if  
24       it were returned, if it was to be of any  
25       additional -- if he ever were to need any



1 additional analysis of it, he would need the  
2 actual physical phone.

3 Now, what is uncontested is that at  
4 Ms. Steward's request, and at the authorization of  
5 the case agent, her phone, and her car were  
6 returned to her. And I would assume and have to  
7 assume, based on the argument of the state and  
8 based on my experience, that they felt that they  
9 had maximized any evidentiary value of anything  
10 that was on the telephone. And so they saw  
11 returning it to her as an accommodation, and no  
12 harm, no foul. She asked for her phone; it was  
13 returned to her.

14 And so there's also some other things -- and  
15 I'm sort of jumping around. And I apologize --  
16 that he testified to. One of which is that an  
17 owner has to initiate a deletion on the phone,  
18 that there is no software that automatically  
19 deletes information, and that if it were deleted,  
20 that it would be unusable to him in terms of the  
21 information. And his exact testimony was that the  
22 download cannot be modified. If it is modified,  
23 ~~then it's not usable.~~

24 And that he used Graykey, even though he had  
25 a password for her phone. And that he -- the UFDR

## Ruling of the Court

1 report was created, which makes the data readable.  
2 And it breaks it down into categories, that being  
3 whether it's text messages, phone calls, pictures,  
4 etc., and this other information we have regarding  
5 the steps she took, her location, and other  
6 things. Because in its binary form, it is not  
7 readable. You cannot analyze it. So you need  
8 this additional software for the purpose of  
9 analyzing that data.

10 That he followed the electronic evidence  
11 policy, which is at Section 15.4, which deals with  
12 how it's collected, how it's stored, how is  
13 examined, and how that examined evidence -- how  
14 that collected evidence is to be analyzed or  
15 evaluated. And that once his examination is  
16 completed, it's return to evidence and the binary  
17 format is not retained. Because it was his  
18 assumption, and that's my extrapolation from his  
19 testimony, that he assumed based on the notes he  
20 placed on it that it would have been retained.  
21 And therefore, there was no need for him to create  
22 an additional binary form of the phone -- or the  
23 binary data from the phone. My words, not his.

24 And that -- and I find him credible that when  
25 he put it back in evidence, the phone was in the

1 same condition as he received it, and it was  
2 operable; that if it were not operable, he would  
3 not have been able to extract the file from it;  
4 that he cannot make an extraction from a damaged  
5 phone or phone that is inoperable.

6 Now, what is -- the courts are very clear,  
7 and I've already articulated what the standard is,  
8 which is, one, I would have to find -- in order  
9 to -- in order to exclude the evidence, I would  
10 have to find that the state destroyed the evidence  
11 in bad faith. There is no evidence of that.

12 The evidence is that the phone was copied.  
13 The binary data was analyzed. The phone was  
14 returned to evidence with a note. And at the  
15 request of Ms. Steward, and with the consent of  
16 the case agent, her phone was returned to her. So  
17 the fact that the phone is no longer available is  
18 not -- was not in any prerogative of the state.

19 Ms. Steward made the independent decision,  
20 and it's not critical of her, to trade her phone  
21 and to get another phone. So the fact that the  
22 phone no longer exists is not any evidence that  
23 ~~the state acted in bad faith. And in addition to~~  
24 that, the fact that they no longer have that  
25 binary data is not an indication that he acted in

## Ruling of the Court

1 bad faith. Because he followed the policy.

2 The other prong is that the evidence possess  
3 an exculpatory value apparent before the evidence  
4 was destroyed. And there's just simply -- there's  
5 argument, there's some speculation about what  
6 might, could, may have been found on the phone.  
7 But there really has been nothing presented to  
8 this Court that the binary data from this  
9 telephone possess any exculpatory value to her  
10 that was apparent. And here's the key word: That  
11 was apparent before the evidence was destroyed.

12 And that presupposes that the state is the  
13 party that destroyed the evidence. And that  
14 simply did not happen. And his testimony does not  
15 indicate that there was any exculpatory value  
16 apparently him before the phone was returned to  
17 evidence. And his testimony is that what was  
18 taken from the phone was accurate, that it had not  
19 been hypothecated in any way, and that it was the  
20 most current information that could have been  
21 accurate -- and his words were that the extraction  
22 was without limitations, that the extraction was  
23 accurate, and that it was accurate and as complete  
24 as possible; and that the only deletions he was  
25 able to discern were the four calls that were

1 deleted from 2/8/20. But he was able to recover  
2 those deleted phone calls.

3 And the other prong is that the defendant  
4 cannot obtain other evidence of comparable value  
5 by other means. And that element likewise has not  
6 been met. Again, not casting any aspersions on  
7 Ms. Steward. If she had kept her phone, certainly  
8 they would have been able to extract the binary  
9 data from the telephone. But even more  
10 importantly, Mr. -- Mr. McManigal -- Detective  
11 McManigal testified that what he pulled from the  
12 phone was accurate, that it was complete as  
13 possible, and that he provided the U -- UFDR data  
14 to the defense such that -- and everybody concedes  
15 that other tests can be run on that report and  
16 data obtained from it.

17 So there's no evidence -- there's been some  
18 speculation, some speculative comments -- and  
19 again, not casting aspersions on anyone. It's  
20 Ms. Steward's job -- her lawyers' jobs as  
21 advocates, to make these arguments. But there  
22 simply is nothing that rises above speculation  
23 ~~that there would have been anything further gained~~  
24 from this telephone.

25 His testimony regarding the locations is --

## Ruling of the Court

1       and I find credible -- that there's no reason or  
2       rhyme as to why the time -- why the time and place  
3       is recorded on a phone or the locations on a phone  
4       or where it stores it. And that they've tried to  
5       figure that out. And that there really just  
6       simply is no answer as to how this works, and that  
7       it's not something that's deliberate. It's not  
8       something that they have any control of.

9       So there's no indication in the record that  
10      somehow other locations would have been located  
11      that rises above speculation, such that there was  
12      anything of further exculpatory value that would  
13      have been found on this phone, or that any other  
14      data other than what may, maybe, maybe could have  
15      been found with a new Cellebrite data -- new  
16      Cellebrite -- the advances that have been made in  
17      Cellebrite -- Cellebrite technology. So there  
18      really is nothing concrete in the record that  
19      would lead this court to believe that there's some  
20      other evidence that would have been found from  
21      this binary data that rises above speculation.

22      And certainly, as I've already indicated, the  
23      UFDR report is available, and clearly has been of  
24      some benefit. Because Ms. Steward and her counsel  
25      has been able to utilize the evidence that has

## Ruling of the Court

1       been provided for purposes of their own evaluative  
2       needs. And as I've already observed, the defense  
3       has made no attempt to argue that the state  
4       destroyed the phone records in bad faith.

5             In fact, Ms. Blazer reiterated that she does  
6       not believe Detective McManigal acted in any  
7       willful manner regarding the download of the data  
8       from this phone. And the question is whether the  
9       defense has demonstrated, which I've already gone  
10      through, whether the phone records possess an  
11      exculpatory value apparent before it was lost, and  
12      whether the defense could not obtain other  
13      evidence of comparable value by other means. And  
14      unless those two requirements have been satisfied,  
15      then there is a failure to have established a due  
16      process violation.

17            And the Court finds that there has been a  
18      failure to establish a due process violation.  
19      One, they have not proven to this Court's  
20      satisfaction that the phone records possess an  
21      exculpatory value that was apparent before it was  
22      lost, or that it was even lost. Because that  
23      presupposes, as I've already said, that the state  
24      would have been at some -- had some active role in  
25      it being destroyed or lost. And that simply is

## Ruling of the Court

1       just not the case. And whether the defense could  
2       not obtain other evidence of comparable value by  
3       other means.

4               And as I've already noted, they have the UFDR  
5       report, which is a synthesis basically of that  
6       binary information that certainly -- and I asked  
7       the detective that question. He said you can run  
8       tests on it, and that it is available.

9               And the discussion about whether Cellebrite  
10      would have picked up these private conversations  
11      in other apps, it's really speculative at best.  
12      I'm not certain -- there's been no testimony from  
13      anyone that has proven to this Court through  
14      Detective McManigal or anyone else that the  
15      advances in Cellebrite would have found this  
16      information. Because the question was asked in a  
17      very generalized format to him. And he responded  
18      in a generalized format. So there was nothing  
19      specific that indicated that somehow he would have  
20      found it.

21              And I'm not even -- you know, I don't know.  
22      Because most of these apps now are encrypted. So  
23      I don't even know if anything would have been  
24      found. But the bottom line is: The argument was,  
25      We want to see if maybe we could have found



1 something else. And there just hasn't been  
2 anything concrete that's been provided to the  
3 Court.

4 So there's been a failure by the defense to  
5 establish that they cannot obtain other evidence  
6 of comparable value by other means. And the  
7 Court's decision is based on the following case  
8 precedent: State versus Bland, State -- reciting  
9 State versus Cheeseboro; State versus Henley;  
10 state versus Mabe [phonetic]; and State versus  
11 Mabe.

12 So the objection is overruled. The  
13 information extracted from the phone will come in.  
14 And dealing -- that means I'm looking at each  
15 exhibit. And I'll start with 69, which are the  
16 text messages. I think I've already said if one  
17 comes in, they-all come in. And that is at the --  
18 at the defense behest after the state indicated it  
19 was only going to introduce this list that was  
20 provided on today.

21 The call log of 127 calls between the  
22 parties, I think is clearly relevant and probative  
23 ~~on their interaction on that day. The sheer~~  
24 magnitude of the number of calls and their  
25 interaction. Any objections would go to weight,

## Ruling of the Court

1 not admissibility.

2 As well as the screenshots from her phone,  
3 they clearly are corroborative of testimony that  
4 has already come into the record, that being her  
5 being at the residence such that she took a  
6 picture and sent it to him, the Instagram  
7 exchanges, as well as the Instagram exchange with  
8 the -- with Ms. Destiny Brees and her interaction  
9 with Mr. Simmons.

10 And certainly the geo location, the GPS  
11 locations are relevant. And they are probative.  
12 They are accurate. There's no indication that the  
13 GPS extraction would have been anything other than  
14 accurate regarding her locations, that being in  
15 the vicinity or being at [REDACTED] Avenue,  
16 Charleston 29414, and then -- at various times,  
17 and then back at her apartment in Mount Pleasant.

18 There's no objection to 73, which is the  
19 device reporting the number of steps she took, as  
20 well as the plug in status of the phone as well  
21 as -- and that's No. 72; and then No. 75, which is  
22 the ownership information regarding the telephone.

23 So 69, 68, and 70 would come in. Court would  
24 note the exception for the record.

25 Is there any additional argument regarding

1 the admissibility on relevance or probative value  
2 of those items, Mr. D'Angelo or Ms. Blazer?

3 **MR. D'ANGELO:** No, Your Honor.

4 **THE COURT:** Any additional argument from the  
5 state regarding the purpose for which you are  
6 seeking to admit the documents?

7 **MS. SAVAS:** No, Your Honor.

8 **THE COURT:** Okay.

9 And again, for the record, the Court would  
10 find -- and I -- we sort of talked about this  
11 errantly throughout our conversation. But I would  
12 find that these -- these -- and I'm referring --  
13 excuse me, to Number 69, which is the SMS text  
14 messages, 146 of them. The call log, which  
15 includes 127 phone calls, which is No. 68.

16 The screenshots, which are State's 70, as  
17 well as the GPS coordinates, which are State's 71,  
18 are all relevant. They're probative. They --  
19 their probative value is not substantially  
20 outweighed by potential prejudice to the  
21 defendant. They make issues of consequence in  
22 this case more or less probable, as well as  
23 ~~corroborate testimony that has already come into~~  
24 the record.

25 Regarding the alleged facts and circumstances

## Argument of Counsel: Jail Calls

1 of this case and the issues that have been raised  
2 by the defense clearly go to the weight to be  
3 accorded to this testimony. And they certainly  
4 are free through the process of cross-examination  
5 to thoroughly inquire into those matters.

6 All right. Now, what's the objection to the  
7 jail calls?

8 And then, of course, I don't know what number  
9 this time -- what number was this timeline marked?

10 **MS. FRIES:** 74, Your Honor.

11 **THE COURT:** I've already ruled that that  
12 would be used for demonstrative purposes only.  
13 And I assume the defense has no objection to them  
14 being used for demonstrative -- the timeline being  
15 used for demonstrative purposes.

16 **MS. BLAZER:** Right. Subject to just give me  
17 just a little bit more time to make sure I'm --

18 **THE COURT:** Oh, absolutely.

19 **MS. BLAZER:** -- I'm comfortable with the --  
20 with the visualization that's been done.

21 **THE COURT:** And I certainly will afford you  
22 that opportunity.

23 Now, jail calls. Play them for me, please,  
24 the ones that you want to use, so that we can all  
25 listen to them together.

1           Do you need a break? Go right ahead while  
2           she's finding that. My court reporter needs a  
3           quick break while you find that disc with those  
4           calls on it.

5           **MS. SAVAS:** Yes, I have them.

6           (A recess is taken.)

7           **THE COURT:** Ms. Savas, you ready to play the  
8           phone calls, so we can all listen to them  
9           together?

10          You ready, Ms. Savas, to play the calls?

11          **MS. SAVAS:** Yes, ma'am.

12          This is Exhibit 79.

13          **THE COURT:** And also I needed for clarity 85,  
14          which is the full interview with Detective  
15          Muirheid. Do y'all want to have that marked as a  
16          court's exhibit since the actual interview is not  
17          coming into evidence?

18          **MR. D'ANGELO:** Yes, Your Honor. I think we  
19          probably need to.

20          **THE COURT:** Okay.

21          We probably need a little envelope so it  
22          doesn't get scratched. But I'll leave it in this  
23          pocket you gave me until we...

24          Yeah. I'll leave it at this little envelope  
25          protector that you gave me until you can bring in

## Argument of Counsel: Jail Calls

1 another envelope. Because I don't want it to get  
2 scratched.

3 And then 85 will be marked as -- I believe we  
4 can mark it as state's exhibit ID only or marked  
5 as a court's exhibit, whichever one y'all prefer.

6 MR. D'ANGELO: Probably --

7 THE COURT: Probably easier -- huh?

8 MR. D'ANGELO: I -- I was gonna suggest  
9 court's exhibit, Your Honor. But whatever --

10 THE COURT: Any way is fine.

11 MR. D'ANGELO: Whatever you use normally.

12 THE COURT: Any way is fine.

13 MR. D'ANGELO: Okay.

14 THE COURT: The only reason I suggested 85 is  
15 because they had already marked 85 on it. And  
16 then we could just mark it for ID only.

17 MR. D'ANGELO: Make -- makes sense.

18 THE COURT: And then, we'll -- did you  
19 already put it up there?

20 MS. SAVAS: It's already up there, Judge. Oh,  
21 wait. What's 85?

22 THE COURT: Eighty-five. You already marked  
23 it -- pre-marked it. And then it's up there?

24 MS. SAVAS: What is -- what's --

25 THE COURT: It is the full interview with

1           Detective Muirheid.

2           **MS. SAVAS:** (Inaudible).

3           **THE COURT:** That's all right.

4           **MS. SAVAS:** Seventy-four. Eighty-five is up  
5 here marked as state's exhibit. I could do it  
6 only on it.

7           **THE COURT:** The court reporter will do --  
8 yeah.

9           You have 85? Just put ID next to it. And  
10 then it will be marked for ID only. And then it  
11 will not go back to the jury. That's number 85,  
12 state's.

13           All right. Now let's listen to these phone  
14 calls and see if there's any exception to them.  
15 And we'll go from there.  
16 (Exhibit is played.)

17           **THE COURT:** So originally, we got one that  
18 had more calls on it. But the one that we got  
19 most currently is the one with No. 79, which is  
20 jail calls with Mr. Simmons. And then No. 83,  
21 which is the phone call with a female.

22           **MS. SAVAS:** Okay. Okay. Okay. Okay. Okay.

23           ~~Sorry, Your Honor. There's something mislabeled~~  
24 in my set.

25           (Exhibit is played.)

## Argument of Counsel: Jail Calls

1           **MS. SAVAS:** That's the introduction for that  
2           one. And then this is the substance.

3           (Exhibit is played.)

4           **MS. SAVAS:** This is the one from March 5, the  
5           introduction.

6           (Exhibit is played.)

7           **MS. SAVAS:** This is the substance of the  
8           March 5 call.

9           (Exhibit is played.)

10          **MS. SAVAS:** This is March 7.

11          (Exhibit is played.)

12          **MS. SAVAS:** And then the last phone call,  
13          February 8.

14          (Exhibit is played.)

15          **THE COURT:** Now, is there any -- is that all  
16          the phone calls?

17          **MS. SAVAS:** Those are all the jail calls,  
18          Your Honor.

19          **THE COURT:** Well, you know what I mean.  
20          Yeah. Those are the phone -- I mean that's what  
21          we're talking about, the jail phones.

22          **MS. SAVAS:** Yes, Your Honor.

23          **THE COURT:** Those would be the excerpts you  
24          would be seeking to introduce?

25          **MS. SAVAS:** Yes, Your Honor.



1           **THE COURT:** For what purpose would you be  
2 seeking to introduce the first one? I'm at a  
3 loss. I really didn't hear anything on it.

4           **MS. SAVAS:** In that first one, she says that  
5 she has his stuff, which refers to the items that  
6 she took out of the house that day, the laptop and  
7 some other items.

8           **THE COURT:** How do we know that? Did she say  
9 that?

10          **MS. SAVAS:** She told the -- Detective  
11 Muirheid that she's aware of those gifts.

12          **THE COURT:** That's not my question.

13          **MS. SAVAS:** Well, he will be --

14          **THE COURT:** Yeah. The phone calls, they're  
15 self-authenticating. They say what they say.  
16 Does she actually say in that message: "I have  
17 your laptop. I have your this. I have your  
18 that"?

19                "I have your stuff" could mean a lot of  
20 things. He could have --

21          **MS. SAVAS:** She -- she did say in there --

22          **THE COURT:** -- left clothes at her house. He  
23 could -- I'm not --

24          **MS. SAVAS:** She did say in there the word  
25 "laptop."

1           **THE COURT:** Yeah. I couldn't hear that. And  
2 maybe it's because y'all were having technical  
3 challenges playing it. But I --

4           **MS. SAVAS:** I can replay it.

5           **THE COURT:** -- didn't hear that.

6           **MS. SAVAS:** You want me to replay it, Judge?

7           **THE COURT:** Yes, that would be helpful.

8           **MS. SAVAS:** Yes, ma'am.

9           (Exhibit is played.)

10          **THE COURT:** Okay.

11               Now, for what purpose are you seeking to  
12 introduce? Because you said there were two calls,  
13 but they're more like three clips, are they not?

14          **MS. SAVAS:** Yes. We have the introduction  
15 for all of them to show she put the pin in.

16          **THE COURT:** Uh-huh.

17          **MS. SAVAS:** They wanted to play that. That  
18 first clip we just heard was, she has his stuff.  
19 They talked about the computer that was taken that  
20 day when she went inside the home.

21               The third one is where she apologizes. She  
22 says, "I'm sorry."

23          **THE COURT:** Yeah. But you skipped from  
24 one -- you skipped over two. Did you not play  
25 three calls? Did I miss them?

1           **MS. SAVAS:** I just played -- oh. I'm sorry.

2           I -- I did play three calls.

3           **THE COURT:** Yeah. I thought you played more  
4           like four.

5           **MS. SAVAS:** I -- one of them -- yeah. Sorry.  
6           They were replaying. The first one --

7           **THE COURT:** Because this disc just says that  
8           I have two calls, 79 and 83.

9           **MS. SAVAS:** Oh, Judge. I'm sorry. Those are  
10          the exhibit numbers. We put those jail calls --  
11          Exhibit 79 were conversations --

12          **THE COURT:** So there are actually four calls?

13          **MS. SAVAS:** Yes, Your Honor.

14          **THE COURT:** Okay.

15          **MS. SAVAS:** Exhibit 79 are all the phone  
16          calls with Mr. Simmons.

17          **THE COURT:** Okay.

18          **MS. SAVAS:** Exhibit 83 are phone calls with  
19          another female, we would seek to admit that, for  
20          Melissa High at the jail. I'm sorry for the  
21          last --

22          **THE COURT:** Okay.

23          ~~So I need to know each call one by one for~~  
24          what purpose would you be seeking to introduce  
25          them?

## Argument of Counsel: Jail Calls

1           **MS. SAVAS:** Yes, Your Honor.

2           **THE COURT:** What dates they took place and  
3           who they purport to be with?

4           **MS. SAVAS:** Yes, Your Honor. The first one  
5           was March 1, 2020, at 20:06 hours. The defendant  
6           was speaking with the victim, Frank Simmons. In  
7           the first clip, she said that she has his stuff  
8           and was talking about it being at her house. She  
9           then made mention of the computer that was taken  
10          the day that she went into the home.

11          The second clip on that same call was she was  
12          apologizing.

13          **THE COURT:** What date -- oh, that's from the  
14          same call, 20:06?

15          **MS. SAVAS:** Yes, ma'am.

16          **THE COURT:** Uh-huh.

17          **MS. SAVAS:** The second jail call was from  
18          March 5, 2020. Began at 14:80.

19          **THE COURT:** Wait a minute. I'm confused.

20          **MS. SAVAS:** Oh.

21          **THE COURT:** When -- the call that you just  
22          referred to, that's Call 2, where you say she  
23          apologized?

24          **MS. SAVAS:** Call 1. It's all on the same  
25          call. I just did two clips of the same call.

1           **THE COURT:** Okay.

2           Now I'm clear. All right.

3           **MS. SAVAS:** Sorry.

4           **THE COURT:** You may continue. That's okay.

5           **MS. SAVAS:** March 5, 2020, at 14:18 hours,  
6 they -- it is between the defendant and the victim  
7 Frank Simmons. Frank is talking about what Jason  
8 said. They're talking about the fire and the  
9 incident. She then it admits that she went in  
10 through the side door and discusses it being  
11 locked. That's important for the element of  
12 burglary.

13           The next call was on March 7, 2020, at 14:05  
14 hours. That's between the defendant and the  
15 victim Frank Simmons, where she then says in an  
16 apologetic manner that she took it all away, which  
17 we believe would go towards consciousness of  
18 guilt.

19           The fourth call, which we would seek through  
20 Melissa High was February 8, 2020, at 23:03 hours.  
21 She was speaking with a female. I believe it was,  
22 it was her daughter or sister? Her daughter.

23           ~~And she was discussing her location where she~~  
24 was around the time of the fire. She says, "I was  
25 in West Ashley." Or begins to say that, then

## Argument of Counsel: Jail Calls

1       corrects herself that she was in Mount Pleasant,  
2       which would go to consciousness of guilt and  
3       opportunity and motive.

4               **THE COURT:** Is there any exception to these  
5       calls. And if so, what is the basis?

6               **MR. D'ANGELO:** Yes, Your Honor. So the third  
7       phone call -- again, this is March 7.

8               **THE COURT:** I need to deal with them in  
9       order. I need to deal with them the way she  
10      played them, which will be -- the first call will  
11      be 3/1/2020 at 20:06 with Mr. Simmons. Do you  
12      have any exception to that call?

13              **MR. D'ANGELO:** No, Your Honor.

14              **THE COURT:** Okay.

15              So that one's without objection. Then,  
16      two -- the second call is 3/5/2020 with  
17      Mr. Simmons. Do you have any exception to that  
18      excerpt?

19              **MR. D'ANGELO:** No, Your Honor.

20              **THE COURT:** And then the third is 3/7/2020 at  
21      14:05 with Mr. Simmons. Do you have any exception  
22      to that?

23              **MR. D'ANGELO:** Yes. Yes, Your Honor.

24              **THE COURT:** And what's the objection?

25              **MR. D'ANGELO:** The objection -- again, from

1           what I could hear, she said, I -- I took it all  
2           away. I had no right to do that. It kills me  
3           every day. I -- I don't -- I don't think we  
4           have -- it means exactly what the solicitor is  
5           saying that it means, that it's showing her guilt  
6           and remorse. I don't think we have context of  
7           what she's talking about, Your Honor.

8           **THE COURT:** Are you saying you want more of  
9           the call played -- is that what you're saying? --  
10          for context?

11          **MR. D'ANGELO:** Yes, Your Honor. I think --

12          **THE COURT:** What part of it would you want  
13          played?

14          **MR. D'ANGELO:** I think if you were to start  
15          the call at 10 minutes, 44 seconds. It has  
16          Frank -- Frank is speaking. And it is explaining,  
17          I think, for a better context, what they are  
18          talking about.

19          **THE COURT:** And what is -- what are they  
20          talking about?

21          **MR. D'ANGELO:** From my interpretation,  
22          they're talking about their relationship.

23          **THE COURT:** Uh-huh.

24          **MR. D'ANGELO:** He's talking about how he had  
25          struggled opening his heart to Toya because in

1 past relationships, there had been struggles.  
2 Again, Your Honor, for the -- and for the record,  
3 I'm paraphrasing here.

4 **THE COURT:** Uh-huh.

5 **MR. D'ANGELO:** He could see that Toya was  
6 trying to be there, that she had given him so  
7 much. And I think what she's then responding  
8 is -- and -- and I took it away. Again, how I  
9 take it -- it seems more, again, they're kind of  
10 talking about the context of their emotional  
11 relationship.

12 Again, I just think having the context of  
13 that --

14 **THE COURT:** And how would she have taken it  
15 away, except by her own actions. That's where  
16 I'm -- you're losing me.

17 **MR. D'ANGELO:** Well, I -- I think --

18 **THE COURT:** (Inaudible) taken it away by just  
19 getting on his nerves.

20 **MR. D'ANGELO:** Well, I certainly think the  
21 way she acted that day of breaking up with him, of  
22 the communication with him, going to his house --

23 **THE COURT:** She didn't break up with him; he  
24 broke up with her.

25 **MR. D'ANGELO:** Certainly.



1           **THE COURT:** In these text messages.

2           **MR. D'ANGELO:** Certainly. But again, I think  
3 the actions that she took of how she was messaging  
4 him, going to the house. Your Honor, again, I --  
5 I think it's more of talking, again, kind of  
6 the -- the emotional connection that they had. I  
7 just think context is important.

8           **THE COURT:** So you would want from 10:44 to  
9 14:05 played?

10          **MR. D'ANGELO:** Yes, Your Honor.

11          **THE COURT:** Well, I know it's beyond 14:05.

12          **MR. D'ANGELO:** I do.

13          **THE COURT:** How far does it go? Is it from  
14 14:05 to what time?

15          **MR. D'ANGELO:** I -- I thought it was 1044.

16          **THE COURT:** No. I'm talking what -- what  
17 Ms. Savas just played. She said it started at  
18 14:05. So I need to know when that ends,  
19 (inaudible) on 3/7 of 2020.

20          **MS. SAVAS:** I think it's 14:48.

21          **MR. D'ANGELO:** 14:48.

22          **THE COURT:** What's the -- what is the time?

23 ~~It ends at 14:48?~~

24          **MS. BLAZER:** That's my recollection.

25          **THE COURT:** So you're asking that from 10:44

## Argument of Counsel: Jail Calls

1 to 14:48 be played. Does the state have any  
2 exception to that?

3 **MR. D'ANGELO:** Yes, Your Honor. The state  
4 does not believe we need all of that. That's four  
5 minutes of jail call. Frank himself can put it  
6 into context when he brings it in. They can ask  
7 on cross-examination to further clarify. I'm not  
8 just going to play it absent anything. But I do  
9 not believe that the state should be required to  
10 play additional pieces of evidence that they do  
11 not want regarding the jail --

12 **THE COURT:** Yeah. But you got to put it in  
13 context. If she's saying anything I took it all  
14 away, I think --

15 **MS. SAVAS:** I'll have Frank testify to that  
16 conversation in context.

17 **THE COURT:** Yeah. But the texts speaks for  
18 itself. He don't get to annotate the  
19 conversation. He can say what he thought he  
20 meant. He can't say what he thought she meant.

21 **MS. SAVAS:** Exactly --

22 **THE COURT:** Well, he could say what he  
23 thought she meant, but --

24 **MS. SAVAS:** It's their conversation.

25 **THE COURT:** It is their conversation. But

1       guess what? Tapes, videos, all that's  
2       self-authenticating. It means what it means. The  
3       jury has the ability as a finder of fact to draw  
4       whatever conclusions they want to from it. They  
5       don't have to have it explained to them. And they  
6       don't have to accept somebody's explanation.

7               So when you are playing something, and you're  
8       claiming because it's an admission against  
9       interest, it needs to be in this context. You  
10      can't just take one statement and not know what  
11      was the catalyst to that statement?

12             **MS. SAVAS:** Yes.

13             **THE COURT:** So I'm gonna have to listen to it  
14      all from 10:44 to 14:48 and see what would put it  
15      in context.

16             **MR. D'ANGELO:** And I'll -- and I'll just say,  
17      my memory -- and I apologize because I don't have  
18      the computer clip. I don't think it was the full.  
19      I don't think it was the full four minutes. I  
20      think I really only backed it up. 10:44, I  
21      thought, was only about 60 seconds prior to where  
22      the clip had started.

23             ~~**THE COURT:** So maybe y'all need to look.~~

24             Because what Ms. Savas told me was that the clip  
25      begins at 14:05 she wants to play.

## Argument of Counsel: Jail Calls

1           **MR. D'ANGELO:** Okay.

2           **THE COURT:** Is that the correct timeframe,  
3           Ms. Savas?

4           **MR. D'ANGELO:** Because I -- I remember  
5           looking and seeing it was 10 --

6           **MS. SAVAS:** Oh.

7           **MR. D'ANGELO:** -- 44 --

8           **MS. SAVAS:** Oh.

9           **MR. D'ANGELO:** -- that I had wanted to play.

10          **MS. SAVAS:** I'm sorry.

11          **THE COURT:** That's okay.

12          **MS. SAVAS:** 14:05 is when that specific jail  
13          call started. My timestamp starts at 11:39. I'm  
14          sorry.

15          **THE COURT:** That's okay. 11:39. And when  
16          does it conclude?

17          **MR. D'ANGELO:** That's what -- that's what I  
18          had.

19          **MS. SAVAS:** I'm sorry. I had it written  
20          down.

21          **THE COURT:** That's okay.

22          **MS. SAVAS:** Oh, Lord have mercy. It goes to  
23          11:47.

24          **THE COURT:** So when are you asking that --

25          **MR. D'ANGELO:** And that --

1           **THE COURT:** You're asking for it to start  
2           at --

3           **MR. D'ANGELO:** 10:44. And then go to 11:47,  
4           Your Honor.

5           **THE COURT:** All right.

6           **MR. D'ANGELO:** And that -- that's more of  
7           what I was remembering in my mind, that it was  
8           more of only about the 60-second clip. But again,  
9           I should have written down where it ended.

10          **THE COURT:** That's okay.

11                   And then do you have any exception to the  
12           clip from 2/8/2020 where she's speaking to the  
13           female that we -- that it has been at 20:23, where  
14           I believe I heard somebody say it was with her  
15           daughter.

16          **MR. D'ANGELO:** That's correct, Your Honor.  
17           And no, I do not.

18          **THE COURT:** Okay.

19                   So the only thing we're haggling about then  
20           is that third phone call from 3/7 of 2020?

21          **MR. D'ANGELO:** Yes, ma'am.

22          **THE COURT:** You got it pulled up to 10:44?

23           (Pause.)

24                   Do you have the ability to play it from  
25           10:44?

## Argument of Counsel: Jail Calls

1 MS. SAVAS: I think --

2 MR. D'ANGELO: (Inaudible) e-mail.

3 MS. SAVAS: It was in an e-mail?

4 MR. D'ANGELO: Yep.

5 MS. SAVAS: From you?

6 MR. D'ANGELO: Yep.

7 THE COURT: Because we're gonna -- we're the  
8 only people that can hear it up here.

9 MS. SAVAS: Oh, yes. Okay. Yes, ma'am. I  
10 have it in an e-mail.

11 THE COURT: Yeah. Go ahead and play it.

12 (Pause in proceeding.)

13 MS. SAVAS: I have the full one. I can --

14 THE COURT: Well, you can go to 10:44 in the  
15 full one if you need to. We can play it. But you  
16 just -- you wouldn't be able to hear it.

17 MS. SAVAS: Yes, ma'am.

18 This is 10:06. So I'm just trying to get to  
19 the -- what time you --

20 THE COURT: 10:44.

21 MR. D'ANGELO: 10:44:45.

22 THE COURT: You said 10:44 and 45?

23 MR. D'ANGELO: Oh, I was just --

24 THE COURT: Oh. Oh, I gotcha. I see what  
25 you're saying. Yeah. 10:44 to 11:47.

1           **MS. SAVAS:** Okay. Here's 10:40.

2           (Exhibit is played.)

3           **THE COURT:** So you don't have any exception  
4 as long as the entire clip is played in its -- in  
5 its context?

6           **MR. D'ANGELO:** Context. No, Your Honor.

7           **THE COURT:** I don't have a problem with that.  
8 I think it puts it in context and explains -- it  
9 gives context to the statement. And then it's up  
10 to y'all to argue whether it's an admission  
11 against interest. You can say she was saying she  
12 was sorry for whatever.

13           And you can say she was saying she was sorry  
14 for whatever. All right.

15           So we've -- we've dealt with all the jail  
16 calls?

17           **MR. D'ANGELO:** Yes.

18           **THE COURT:** So then you need to do a disc  
19 that has all of them on one disc. So that when  
20 it's sent back as evidence, the jury can play --

21           **MS. SAVAS:** One?

22           **THE COURT:** -- it in one continuous --

23           **MS. SAVAS:** Okay.

24           **THE COURT:** Well, they won't be able to play  
25 it in one continuous. You're gonna have to click

## Argument of Counsel: Jail Calls

1 on each file. But you know what I'm saying.

2 MS. SAVAS: So we'll have all the jail calls  
3 on one disc.

4 THE COURT: Uh-huh.

5 MS. SAVAS: And then we'll go ahead and  
6 modify it with the length the defendant wants.

7 THE COURT: Exactly.

8 So do you want -- let's see what I got here.  
9 This is the full interview that'll be marked as 85  
10 ID. If you want -- let's see. I had 79, 83. I  
11 think just to make things simpler, just create one  
12 disc that has everything -- all the calls on it.

13 Now, do we need to deal with these voicemails  
14 as well, since I assume at some point Mr. Simmons  
15 is gonna testify?

16 MS. SAVAS: The voicemails, Judge?

17 THE COURT: Yeah. The voicemails. That's  
18 what they're listed as on here.

19 MS. SAVAS: Those are voicemails, yes. From  
20 Mr. Simmons's phone that the defendant left on the  
21 day of the incident.

22 THE COURT: Do you-all have any exception to  
23 these voicemails? And if so, what's the basis of  
24 it? And I have these marked as 12A and 13A.

25 MR. D'ANGELO: So Your Honor --



1           **THE COURT:** Oh, and 14A. I'm sorry. And  
2 they're State's 80, 81, and 82.

3           **MR. D'ANGELO:** And this is the argument that  
4 I erroneously was making to the Court earlier.  
5 Again, I'm just verifying what day and time these  
6 calls came. Because in the file that I have, it  
7 doesn't specify which time and what day these  
8 voicemails come from. I just have a folder that  
9 has a number of voicemail audio files.

10          **THE COURT:** Ms. Savas?

11          **MS. SAVAS:** Yes, Your Honor. We do not have  
12 a cell phone record report that shows the date and  
13 timestamps. Mr. Simmons sent them to us in that  
14 exact format that we sent to defense, that came  
15 off of his phone that he will testify to were the  
16 day of the incident. And they correspond to  
17 similarly-sent text messages and her call log,  
18 which indicates which phone calls were answered  
19 and sort of the length of the calls.

20               He would testify to having a -- receiving  
21 voicemails about certain topics at a certain point  
22 in that day from the defendant's phone. They will  
23 ~~also be corroborated with the call logs, like I~~  
24 said. But we do believe under Rule 901(b) (6)  
25 regarding the voicemails, he would be the person.

## Argument of Counsel: Jail Calls

1 And it would be self-identifying to bring that in  
2 as evidence. And he would be able to lay that  
3 proper foundation through him.

4 **THE COURT:** Mr. D'Angelo, is there any  
5 further argument?

6 **MR. D'ANGELO:** And -- nothing further.  
7 Again, I don't doubt who is on the phone --

8 **THE COURT:** Uh-huh.

9 **MR. D'ANGELO:** -- just without knowing what  
10 time and -- and when this happened. Again, as --  
11 as we've heard testimony, the relationship was up  
12 and down. So this is not the first time that they  
13 had had texts and calls about breaking up and  
14 wanting items back. So they -- they had the  
15 ability to get Mr. Simmons's phone. They had the  
16 ability to be able to prove exactly where these  
17 voicemails came from. They didn't.

18 I just feel -- again, it's not the argument  
19 that I don't know whose voice it is. I just can't  
20 establish what time and date these came from.

21 **THE COURT:** Yes, ma'am.

22 **MS. SAVAS:** Mr. Simmons does not have that  
23 phone anymore. So we were not able to obtain it,  
24 Your Honor. But in the voicemail specifically,  
25 she talks about being blocked on the Instagram and

1           going --

2           **THE COURT:** Why don't you play them for me?

3           Let's --

4           **MS. SAVAS:** Yes, ma'am.

5           **THE COURT:** -- listen to them.

6           **MS. SAVAS:** And -- and in our --

7           **THE COURT:** That would be 80, 81, and 82,  
8           correct?

9           **MS. SAVAS:** What is it?

10          **THE COURT:** So we can all listen to them  
11          together.

12          **MS. SAVAS:** Yes.

13          **THE COURT:** 'Cause I've listened to them.  
14          But let's listen to them.

15          **MS. SAVAS:** Yes, ma'am. And -- and in  
16          regards to Mr. D'Angelo's statement, there are  
17          things she says in her statement that she learned  
18          that day about Destiny, which is a voicemail and  
19          the Instagram, which further proves it was from  
20          that day. This is Exhibit 80. This is the first  
21          voicemail.

22          (Exhibit is played.)

23          ~~**MS. SAVAS:** And the second phone call -- or~~  
24          voicemail.

25          (Exhibit is played.)

## Ruling of the Court

1           **THE COURT:** That's the -- that's the three  
2           voicemails, right? Oh, there's more? Oh, yeah.  
3           There is.

4           (Exhibit continues to play.)

5           **THE COURT:** For what purpose -- I understand  
6           why you might want to admit one and two. But what  
7           would be the purpose of the third voicemail?

8           **MS. SAVAS:** It's the last one when there was  
9           that pause and then she talked again. She says  
10          "I'm going -- I'm gonna go back into the house."

11          **THE COURT:** Okay. All right. Let's see --  
12          is there anything more regarding your objection?  
13          And how did y'all come to get these voicemails,  
14          Ms. Savas?

15          **MS. SAVAS:** The victim had e-mailed them to  
16          me years ago at the early start of this case. And  
17          I had then sent them over in discovery. But it  
18          was -- it was by e-mail.

19          **THE COURT:** As long as he can -- as long as  
20          the state can establish the foundation -- well,  
21          yeah. It's, again, layers.

22          As long as the state can establish the  
23          foundation through Mr. Simmons, in other words,  
24          that he received these phone messages, the date  
25          and time that he recalls receiving them or, you

1 know, the general vicinity. I don't think he has  
2 to say exactly what time he got them. He can say  
3 what date he got them or when he recalls receiving  
4 them. And then he can authenticate that he  
5 received them from her, and that it's her voice.

6 You know, recordings are self-authenticating.  
7 They say what they say. She clearly -- and the  
8 first two are almost exactly the same verbiage of  
9 text messages that she left for him. Almost word  
10 for word.

11 The one about Destiny, the third one, is sort  
12 of, you know, is a little muddled, muffled. I  
13 think they-all come in subject to the objection.  
14 Of course, and I'll note it for the record, and  
15 it's overruled, I don't think they have to have  
16 the envelope information of the telephone calls.  
17 You-all can cross-examine him as to, you know, the  
18 veracity of his statements, in other words that he  
19 received them on that day. It's kind of hard  
20 to -- to belie that fact when I -- they are almost  
21 word for word, the text messages. The first two  
22 ones, almost word for word to the text messages  
23 ~~she left him, which I -- without belaboring the~~  
24 hour, they're almost word -- when I listened --  
25 when I heard them, I was like I've -- I've heard

1           this before, because I read those text messages.  
2           They're almost exact -- they're almost exact  
3           verbiage. The third one is not the exact  
4           verbiage. But I don't think it has to be.

5           But any objections you-all have would go to  
6           weight, not admissibility. They're clearly  
7           relevant. They're probative. Any probative value  
8           they have -- any prejudicial effect they have are  
9           outweighed by their probative value. They -- they  
10          establish several things. One of which is her  
11          state of mind. They establish intent. And  
12          they -- they established where she was in relation  
13          to this residence at the time of this purported  
14          incident. They come in.

15          All right. Is there anything else we need to  
16          cover before we-all go home and get some  
17          nourishment?

18          **MS. SAVAS:** Just, Your Honor, Exhibit 77 they  
19          objected to. It's an e-mail that the defendant  
20          had sent the victim. I don't know if you wanted  
21          to address this at that time as well.

22          **THE COURT:** Do I have a copy that?

23          **MS. SAVAS:** You should. If not, I can give  
24          you one.

25          **THE COURT:** Yeah.

1           **MS. SAVAS:** Okay. I'm sorry, Your Honor.

2           **THE COURT:** That's all right.

3           **MS. SAVAS:** I'm sorry.

4           **THE COURT:** Y'all have a copy of this?

5           **MR. D'ANGELO:** Yes, Your Honor.

6           **THE COURT:** Okay. This says from Toya

7           Capers, [REDACTED]@gmail.com to

8           [REDACTED]@yahoo.com. This is (inaudible)

9           dated February 18, 2020.

10           Tell me -- let's see. This purportedly  
11           happened the eighth. Why would this e-mail be --  
12           what? For what purpose would you-all be seeking  
13           to admit this e-mail?

14           **MS. SAVAS:** Your Honor, it would be -- I --  
15           you have my copy.

16           **THE COURT:** Is this your only --

17           **MS. SAVAS:** Oh, wait.

18           **THE COURT:** -- copy?

19           **MS. SAVAS:** I can grab one up here, Judge.

20           It's okay.

21           **THE COURT:** The document.

22           **MS. SAVAS:** I'm sorry. Yes.

23           ~~Your Honor, this was sent to the victim from~~  
24           the defendant shortly after the fire. And in it,  
25           she makes statements. She talks about going into

1 the home.

2 **THE COURT:** Where is that at exactly?

3 **MS. SAVAS:** In the second paragraph towards  
4 the -- the -- the third one up, it says, "I was  
5 totally gone that day. It felt like it doesn't  
6 even matter what it felt. It just hurt so bad.  
7 That's the mind frame I was in that day."

8 **THE COURT:** You said the third line from the  
9 bottom or the third line from the --

10 **MS. SAVAS:** Bottom of the second paragraph.  
11 Sorry.

12 **THE COURT:** That's okay.

13 **MS. SAVAS:** "I didn't break in your home.  
14 The sidebar was locked at the bottom, but not all  
15 the way closed. It wasn't glass that he heard.  
16 He heard my keys. I hit the top of the door glass  
17 with my keys really hard. It didn't break. But  
18 it was loud. But I did not let your house on  
19 fire. Really I couldn't. I swear I didn't."

20 So she does talk about breaking into the home  
21 that day, Your Honor.

22 **THE COURT:** Well, she says, "I didn't break  
23 into your home because the side door was locked at  
24 the bottom but not all the way closed." Which you  
25 know, that would be a layperson's understanding of



1           breaking in. Because an entry into a house,  
2           however slight, does not require the actual  
3           breaking of glass, breaking of a lock or anything.  
4           It just requires an authorized entry into the  
5           house without permission. So I guess to some  
6           extent, this would be an admission.

7           So -- well, let me start from the beginning.  
8           Are you seeking to enter this entire e-mail or  
9           just portions of it?

10          **MS. SAVAS:** Yeah. I -- I could just seek to  
11          admit that part. I could get the rest of this  
12          redacted.

13          **THE COURT:** What else would you be seeking to  
14          admit from this e-mail? Who's TP?

15          **MS. SAVAS:** I think it's her daughter.

16          **THE COURT:** Huh?

17          **MS. SAVAS:** I -- I believe it's her daughter.

18          **THE COURT:** Well, no. It says, "I'm not  
19          asking for help at this time. I just don't want  
20          TP to find me again."

21          **MS. SAVAS:** It's her daughter, Your Honor.  
22          The second line in the second paragraph, "The pain  
23          came. ~~Your girl started texting on the Gram.~~  
24          Sending your texts to her to me about me."  
25          (Pause in proceeding.)

1           **THE COURT:** So you're not seeking -- so are  
2           you seeking to admit the entire e-mail or just  
3           portions of it?

4           **MS. SAVAS:** Your Honor, I would just do those  
5           portions. And I can have my secretary redact the  
6           other parts of it.

7           **THE COURT:** Is there any objection to the  
8           portions of the e-mail that Ms. Savas is seeking  
9           to introduce?

10          **MR. D'ANGELO:** Yes, Your Honor.

11          **THE COURT:** Tell me --

12          **MR. D'ANGELO:** The state is seeking.

13          **THE COURT:** Tell me what the objection is.

14          **MR. D'ANGELO:** The state is seeking to  
15          introduce the e-mail. The rule of completeness, I  
16          think the entire e-mail should come in.

17          **THE COURT:** You have an exception to the  
18          entire e-mail coming in, Ms. Savas?

19          **MS. SAVAS:** I just think parts aren't  
20          relevant, Your Honor.

21          **THE COURT:** Well, it's kind of --

22          **MS. SAVAS:** And I think the rule of  
23          complete --

24          **THE COURT:** You -- you really kind of don't  
25          understand the context when you just pull out

1           certain portions of it.

2           **MS. SAVAS:** And I do think she kind of jumps  
3           around in her conversation. She talks about --  
4           like at the last paragraph is completely  
5           irrelevant about her childhood and her daughter.  
6           So I think the parts that I seek to admit are  
7           complete in the context in which they're saying  
8           similar to the jail calls. It gives the whole few  
9           sentences and then the first part about the  
10          Instagram. But there's some of this that's not  
11          relevant. And I don't think -- it's not a two-way  
12          conversation. So these are just very specific  
13          statements --

14          **THE COURT:** Yeah. But you're asking to admit  
15          the parts of the e-mail. And I have to make sure  
16          that the parts that you seek to admit are not  
17          misleading in anywhere -- or -- or can cause  
18          confusion in the jury's mind. And the statements  
19          need to be taken in context, even if they are  
20          exceptions to the hearsay rule.

21          **MS. SAVAS:** Yes, Your Honor. I mean, she's  
22          in a second paragraph talking about a whole other  
23          ~~day, being at Walmart and other women that~~  
24          well, he wasn't looking at. I mean, it's just not  
25          relevant, Judge. And the specific part about the

1       going in the home was just at the end of that  
2       paragraph. And then this specific part about the  
3       Instagram was just one sentence. I do not see any  
4       other parts of the e-mail that speak to those  
5       matters.

6               It just would be almost confusing and  
7       misleading, just having all of her complete, you  
8       know, two weeks later, this entire thing. It just  
9       is not relevant. And I, you know, can't explain  
10      away all of these other statements that she's  
11      making. I just don't think they're relevant.

12             And -- and the -- the rule that we seek to --  
13      for the hearsay exception is specifically about  
14      the admission of guilt, which is what those few  
15      lines are. The rest of this e-mail is not that.  
16      The rest of this e-mail talks about her other  
17      things in June and all these other, you know,  
18      irrelevant times, Your Honor, that are not about  
19      the day of.

20             **THE COURT:** Yes, sir.

21             **MR. D'ANGELO:** Again, kind of -- as Your  
22      Honor was talking, I think if we were to give this  
23      e-mail and we start chopping it up with black  
24      boxes all over it, our jury is going to be  
25      wondering, "Well, what is there? What are they

1 not showing me? Why can I see that portion of  
2 it?"

3 If we're trying to make an argument, which --  
4 and correct me if I'm wrong. But I think the  
5 state's trying to make this argument of, again,  
6 this is her motive her state of mind. If we're  
7 trying to pull portions of this that's -- some of  
8 it's talking about her state of mind, I think we  
9 need the state of mind of the entire e-mail to  
10 understand what she was saying.

11 Again, I think if we start chopping things up  
12 and black boxes and taking things out of context,  
13 it's -- certainly under 403, I think it's just  
14 going to very much confuse the jury. So I think  
15 if the state wants it, they can have it. But we  
16 don't get to pick and choose and chop -- chop an  
17 e-mail all up.

18 **THE COURT:** Well, this is my -- oh, go ahead.  
19 I'm sorry.

20 **MS. SAVAS:** Oh, no. I'll just say that's  
21 exactly what we get to do to protect anything else  
22 coming in, is having it in full context of the  
23 ~~statements that are being made. And, you know,~~  
24 that's just something that they could explain as  
25 far as the redactions. But there -- there's no

1 rule that says you cannot put redacted materials  
2 in. Most of the things we do put in our --

3 **THE COURT:** And I agree. He just said, they  
4 don't have any burden of proof. They don't have  
5 to explain anything.

6 **MS. SAVAS:** Right.

7 **THE COURT:** Yeah.

8 I need -- this is my first time seeing it. I  
9 need to read it.

10 **MS. SAVAS:** Yes, ma'am.

11 **THE COURT:** And I have to admit, it's 5:59.  
12 I'm a little hungry. So I need to read it with a  
13 fresh mind. My clerk was making a copy, so you  
14 can have your copy back. And then -- and then  
15 I'll have it to read once I've had a little  
16 nourishment. And then I can look at it with a  
17 clean -- with a clearer eye.

18 All right. Is there anything else we need to  
19 take up that's going to impede us going straight  
20 through the testimony tomorrow?

21 **MS. SAVAS:** Just, Your Honor, the defense did  
22 just agree to No. 78, which was a map, coming in.

23 **THE COURT:** Okay.

24 **MS. SAVAS:** We did not do that the first day  
25 because it's sort of mixed in with other things

1           that they did not want to.

2           **THE COURT:** Is that correct, Mr. D'Angelo?

3           **MR. D'ANGELO:** That's correct, Your Honor.

4           **THE COURT:** So 20 -- 78 will come in without  
5           objection.

6           (State Exhibit No. 78 is marked for identification  
7           and admitted into the record.)

8           **MS. SAVAS:** And then 84 is just the phone  
9           dump.

10          **MR. D'ANGELO:** Yeah.

11          **THE COURT:** Well, they had for ID only, it  
12          looks like.

13          **MS. SAVAS:** Yes, ma'am.

14          That's everything, then, Your Honor.

15          **THE COURT:** All right.

16          Is there anything else we need to address so  
17          that we can move full steam ahead tomorrow, from  
18          the state?

19          **MS. SAVAS:** No, Your Honor.

20          **THE COURT:** From the defense?

21          **MS. BLAZER:** The only thing I would observe,  
22          Your Honor, is that we did provide records to the  
23          state. I -- I cannot represent whether I will  
24          seek to elicit cross -- testimony about those  
25          records on cross. Which records are you referring

1 to?

2 **THE COURT:** They are records from Verizon  
3 Wireless. They have not been provided to the  
4 court. I'm happy to provide them to you.

5 **THE COURT:** What are they -- what are they --

6 **MS. BLAZER:** They're call logs.

7 **THE COURT:** From Verizon?

8 **MS. BLAZER:** Uh-huh.

9 **THE COURT:** On who's phone?

10 **MS. BLAZER:** On Ms. Steward's phone.

11 **THE COURT:** Okay.

12 So y'all have them?

13 **MS. SAVAS:** Those are the items she just gave  
14 us during this trial that I said that if they seek  
15 to admit these, I would believe this would be a  
16 violation of reciprocal discovery. Because she  
17 said that they had them years ago. She just gave  
18 them to me in a giant zip drive. And there's no  
19 one that's going to be able to authenticate call  
20 logs from Verizon.

21 **THE COURT:** Did she get them pursuant to a  
22 subpoena?

23 **MS. SAVAS:** Did who?

24 **THE COURT:** Ms. Blazer.

25 **MS. SAVAS:** I don't know how she got them.



1           They just had them on Monday.

2           **MS. BLAZER:** Well, actually, it's quite clear  
3           in what we provided, they were subject to  
4           subpoena. I am not seeking to admit them into  
5           evidence. I may seek to ask an expert, their  
6           expert, about their contents. And I believe under  
7           the combined expert rules and 901 that that is  
8           perfectly within his ability to make.

9           **THE COURT:** What I'm going to do, because I  
10          have no clue of what those records are and what  
11          they show, we'll just take it up in camera.

12          **MS. BLAZER:** Okay. I just -- I did -- you  
13          had said, are we going to impede the flow of -- of  
14          testimony --

15          **THE COURT:** No. I mean, we'll have to take  
16          it up in camera. Because witness isn't here.

17          **MS. BLAZER:** Right.

18          **THE COURT:** And you didn't ask him about  
19          them. And I don't know.

20          **MS. BLAZER:** Right. Because I don't know  
21          what they're going to elicit.

22          **THE COURT:** And they may well be duplicates  
23          of what you already have from the phone.

24          **MS. SAVAS:** I haven't had a chance to  
25          complete review the file as a joint --

1           **THE COURT:** Here's the bottom line: If  
2 Verizon has the records and they were phone calls,  
3 they should be on her phone, right? If I make a  
4 phone call on my phone, Verizon is gonna have  
5 those call logs if they're subpoenaed. If  
6 somebody downloads (inaudible), they're going to  
7 have the phone calls are made, right?

8           **MS. SAVAS:** I don't know, Your Honor. I  
9 can't do that. And I don't know why Ms. Blazer  
10 didn't bring that up hours ago when we had Paul  
11 McManigal here for hours. Again, they're  
12 ambushing the state. They're putting us in this  
13 position to do this. He's had this expert  
14 apparently for years; failed to disclose it. I  
15 asked them in our evidence review meeting weeks  
16 ago about this.

17           And then they provide it to me Monday when I  
18 put in our own exhibits that I have been  
19 diligently giving them throughout the course of  
20 the four years. I do not think Mr. McGann --  
21 McGann -- McManigal could even speak to Verizon.  
22 It's nothing he even grabbed. He is a forensic  
23 analysis for Cellebrite. Ms. Blazer  
24 cross-examined him for almost an hour today.

25           And I will firmly believe, Judge, I think

1           that's a violation of rule of reciprocal discovery  
2           that we had sent out on the start of this case.

3           Thank you.

4           And I do not think that he has the knowledge,  
5           the basis of foundation, and the expertise to talk  
6           about Verizon, that he had nothing to do with,  
7           just like he can't talk about cell phone towers.  
8           And I do not think that it is fair. And I do not  
9           think it is in good faith to tell me you're not  
10          bringing something in, but then you give it to me  
11          in the middle of trial, and then you seek to admit  
12          it now through cross-examination.

13          It doesn't matter if it's brought on through  
14          evidence or not. As far as an itemized thing,  
15          you're bringing out through testimony, which is a  
16          form of evidence. And I think it's a major  
17          misrepresentation for the defense counsel to bring  
18          that up, when I have repeatedly asked for that,  
19          and we filed the reciprocal Rule 5 request. And I  
20          think it's in violation of the rules, Judge.

21          And I don't say that lightly to be -- I -- I  
22          really don't. But I'm very taken aback about the  
23          ~~situation, that she made a statement to me on~~  
24          Monday, they would not admit it. Mr. D'Angelo  
25          made a statement to me two weeks ago that if they

1       had anything, they would give it to me. And then  
2       Ms. Blazer, Monday says, "Oh, I guess we found  
3       them now from what we received two years ago, or  
4       whenever."

5               And I cannot speak to the context. I have  
6       not had time to open them. They're telling me  
7       they haven't had time to read things that I gave  
8       them that's one single piece of paper. She gave  
9       me a zip drive. I don't have time to call an  
10      expert from Verizon. I -- I have no way to  
11      authenticate what they're saying. They're just  
12      gonna throw a piece of paper at Paul. And I'm not  
13      gonna have any way to investigate it. I think  
14      it's a fair --

15             **THE COURT:** (Inaudible). And how is this in  
16      Mr. McManigal's? And why -- expertise? Or how is  
17      it relevant to his testimony? And why didn't you  
18      ask him about it when we had him here in camera?

19             **MS. BLAZER:** Because, Your Honor, I was under  
20      the impression that we were -- you had told me  
21      that we were doing limited inquiry of him.

22             **THE COURT:** This is a -- this would go to the  
23      data. I'm at a loss as to why you didn't ask him  
24      those questions.

25             **MS. BLAZER:** I simply thought --

1           **THE COURT:** Especially when you knew she  
2           thought it was an issue.

3           **MS. BLAZER:** I -- I -- I am aware that she  
4           thought it was an issue. It is a total of one,  
5           two...

6           **MS. SAVAS:** If I may, Your Honor.

7           **THE COURT:** Yeah.

8           **MS. SAVAS:** These are also provider records,  
9           which we already indicate in the court ruling  
10          would be a separate search warrant, separate  
11          matter for Mr. McManigal. So these are not the  
12          same.

13          I'm looking at a brief printout. There's  
14          call logs that are not on his record that we have  
15          provided to them based upon the deletion. And  
16          that's the state's position. But if they had  
17          these in their possession, and you didn't even  
18          mention that in your brief in any of this, nor did  
19          you ask me about it for years, again, I feel like  
20          it's a violation of Rule 5, a failure to disclose,  
21          and a failure to comply with the request the state  
22          sends out at the beginning of all of these. When  
23          we send discovery initially, we always --

24          **THE COURT:** You need to look at them. And  
25          you need to see if they corroborate what

1       Mr. McManigal downloaded from the phone. They may  
2       be exact duplicates. In which case, is it really  
3       an issue?

4               **MS. BLAZER:** And in fact, Your Honor, the  
5       call logs from the eighth from Verizon match the  
6       calls from the eighth that Mr. McManigal testified  
7       to today.

8               **THE COURT:** So why would you need to question  
9       him about it?

10              **MS. BLAZER:** I'm not sure I'm going to.  
11       I'm -- I'm -- I'm genuinely trying to ensure that  
12       we don't have this kind of situation tomorrow.

13              **THE COURT:** Well, we'll have to -- we'll have  
14       to take it up in camera. Because I can't make a  
15       decision about it until I know what the scope of  
16       the testimony would be. And I don't know if he  
17       has -- if you can establish foundationally that he  
18       would have the ability to testify about these  
19       records, whether it would have had any bearing on  
20       his opinion that he is going to provide.

21              You know, his testimony is very limited.  
22       What he does is he downloads phones and he  
23       analyzes the data.

24              **MS. BLAZER:** You're right. And -- and that's  
25       exactly why I didn't ask him about it earlier

1           today. And I'm telling you right now, I don't  
2           know if I will ask him about it tomorrow. And I'm  
3           trying to be --

4           **THE COURT:** Well, if you think that you  
5           might, you need to let me know. So we could take  
6           it up in camera.

7           **MS. BLAZER:** And I'm happy -- would you like  
8           to have the records that I've given to her --

9           **THE COURT:** Sure.

10          **MS. BLAZER:** -- for review?

11          May I approach?

12          **THE COURT:** Sure.

13          **MS. BLAZER:** And Your Honor, I don't want to  
14          belabor it. But I do feel like I have to respond  
15          to what I think is an intemperate choice to make  
16          an accusation about a violation of the rules when  
17          I think they're -- I think we're starting from a  
18          misreading of what Rule 5 requires of defendants.  
19          Because we have a different obligation than the  
20          prosecution. We have a reciprocal obligation to  
21          provide discovery when it is going to be  
22          introduced in the case in chief.

23          ~~I am not representing to this court now, nor~~  
24          do I intend to introduce this information in our  
25          case in chief. I may seek to elicit testimony

1       about it if a witness competent testify about it  
2       testifies in a way that opens the door for me to  
3       ask these questions.

4               **THE COURT:** Who is Tamethia Brown?

5               **MS. BLAZER:** That is TP, the daughter. So  
6       she's the owner of the account and the phone  
7       number at the top of page two of the records that  
8       I provided to you, is the 843-568-2765 number,  
9       which is the number that is the same number that  
10      is on the phone that Mr. McManigal dumped.

11              **THE COURT:** So she had a phone under her  
12      daughter's name?

13              **MS. BLAZER:** Yes, ma'am.

14              **THE COURT:** Yeah. I --

15              **MS. BLAZER:** And the zip drive that was --

16              **THE COURT:** I suggest --

17              **MS. BLAZER:** -- that was sent -- just so you  
18      know. The zip drive that was sent, we sent the  
19      entire zip drive we got from Verizon, to ensure  
20      that we sent complete information. And it  
21      contains several Excel spreadsheets that have a  
22      single line in them. It contains this PDF. It  
23      contains a PDF that restates the subpoena that was  
24      the basis of them sending it to us. And -- and  
25      that subpoena, as was discussed earlier today, was



1 a subpoena in which we sought, but could not  
2 obtain cell tower data. This was all that was  
3 turned over to us in terms of usable information,  
4 all -- these six pages.

5 **THE COURT:** It seems these are just phone  
6 calls from the sixth, seventh, and eighth of  
7 February.

8 **MS. BLAZER:** That's right. Because we had --

9 **THE COURT:** But I would imagine the only  
10 thing that's really relevant based on what the  
11 state is going to elicit from Mr. McManigal is  
12 February 8.

13 **MS. BLAZER:** Correct.

14 **THE COURT:** And there's a lot of phone calls.  
15 It looks like pretty much the same as what he  
16 extracted from the phone.

17 **MS. BLAZER:** That's right.

18 **THE COURT:** But I think before we have a  
19 knee-jerk reaction, you'll need to review it and  
20 see if it in fact tracks the calls that  
21 Mr. McManigal extracted from the phone. And then  
22 the defense has not indicated they really intend  
23 ~~to use it. But I would instruct them that if they~~  
24 plan to --

25 **MS. BLAZER:** I will take up a matter of law.

1           **THE COURT:** Thank you.

2           **MS. BLAZER:** Yes, ma'am.

3           **THE COURT:** All right.

4           Is there anything else we need to take up  
5           before we break for the evening from the state?

6           **MS. SAVAS:** No, Your Honor.

7           **THE COURT:** From the defense?

8           **MR. D'ANGELO:** No, Your Honor.

9           **THE COURT:** All right, guys. Go get some  
10          rest. I'll see y'all in the morning.

11          **MS. SAVAS:** Good night.

12          **MS. BLAZER:** Thank you, Judge.

13          **THE COURT:** 9:30.

14          (The Court recesses for the day at 6:10 p.m.)

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## CERTIFICATE

1  
2 I, the undersigned, Teresa B. Johnson, Official  
3 Court Reporter, do hereby certify that I transcribed  
4 the electronic recording of the remote hearing in this  
5 matter; and that the foregoing is a true transcript of  
6 said electronic recording.

7 I do further certify that I am not a relative,  
8 employee, attorney, or counsel of any of the parties  
9 connected with the action, nor am I financially  
10 interested in the action.

11  
12 Dated: 5/22/2024

13  
14 /s/Teresa B. Johnson

15 Teresa B. Johnson

16 Official Court Reporter  
17  
18  
19  
20  
21  
22  
23  
24  
25

|                          |   |                           |
|--------------------------|---|---------------------------|
| STATE OF SOUTH CAROLINA  | ) | COURT OF GENERAL SESSIONS |
|                          | ) |                           |
| COUNTY OF CHARLESTON     | ) | Case No.: 2023GS1003323,  |
|                          | ) | 2023GS1003324             |
|                          | ) |                           |
| State of South Carolina, | ) |                           |
|                          | ) |                           |
| vs.                      | ) |                           |
|                          | ) |                           |
| Toya Danielle Steward,   | ) |                           |
|                          | ) |                           |
| Defendant.               | ) | February 29, 2024         |

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TRANSCRIPT OF TRIAL - DAY 4 OF 5

BEFORE THE HONORABLE DEADRA L. JEFFERSON  
Circuit Court Judge, and a jury

A P P E A R A N C E S:

For Government: NINA SAVAS, Esquire  
CATHERINE FRIES, Esquire  
Ninth Circuit Solicitor's  
Office  
101 Meeting Street, Ste 400  
Charleston, SC 29401

For Defendant: NICHOLAS G. D'ANGELO, Esquire  
CAMERON BLAZER, Esquire  
Charleston County Public  
Defender's Office  
101 Meeting St, Fifth Floor  
Charleston, SC 29401

|                 |                      |
|-----------------|----------------------|
| Recorded by:    | DCRP                 |
| Transcribed by: | Teresa B. Johnson    |
|                 | CVR-M-CM, RVR, RVR-M |
|                 | P.O. Box 2812        |
|                 | Greenville, SC 29602 |

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P R O C E E D I N G S

(Proceedings begin on the 29th day of  
February 2024, at 9:42 a.m.)

**THE COURT:** You may be seated. Good morning.  
The state ready to proceed?

**MS. SAVAS:** Yes, Your Honor.

**THE COURT:** You said that hesitantly.

**MS. SAVAS:** Sorry.

I was just bringing -- oh, Lord. I had the  
requested documents for Your Honor. I was just  
gathering them.

**THE COURT:** What documents are you referring  
to?

**MS. SAVAS:** Those potentially redacted  
e-mail. I do have the modified jail call disc.

**THE COURT:** What redacted e-mail? I'm  
confused. Oh.

**MS. SAVAS:** Yes, ma'am. From last night.  
And now I don't know where I put it.

**THE COURT:** I think the defense request was  
for if it came in, for it all to come in, correct?

**MR. D'ANGELO:** Yes, sir.

~~**MS. SAVAS:** They did request.~~

**THE COURT:** Yeah. I'll deal with that later.  
Do you have your first witness ready?

1           **MS. SAVAS:** Yes, Your Honor.

2           **THE COURT:** Are they in the courtroom? Or  
3 are they outside?

4           **MS. SAVAS:** He -- he's walking in, Judge.

5           And I do have the modified exhibit number for  
6 the jail calls for the record.

7           **THE COURT:** Which is?

8           **MS. SAVAS:** No. 79. They will just be all of  
9 the jail calls.

10          **THE COURT:** I'm con- -- yeah. We'll deal  
11 with all that later. I'm trying to figure out  
12 what you're referring to. I'm -- 79 be all the  
13 jail calls.

14          **MS. SAVAS:** Last night you requested all the  
15 jail calls be on one disc for the jury.

16          **THE COURT:** Yes.

17          **MS. SAVAS:** And so I had listed in my  
18 original exhibit list, I separated them out. So I  
19 just combined them all into one exhibit number.

20          **THE COURT:** Which would be 79?

21          **MS. SAVAS:** Yes, ma'am.

22          **THE COURT:** Okay. That makes sense.

23                 And you've given a copy of that to the  
24 defense?

25          **MS. SAVAS:** Of that exact disc, no, Judge.



1 But they have copies of the original --

2 THE COURT: I think they need a copy of what  
3 is actually going to be going into evidence.

4 MS. SAVAS: We can do that.

5 THE COURT: Okay. I was given a disc  
6 marked -- a disc marked Exhibit 79 and 83, jail  
7 calls in full.

8 Do y'all have a copy of this?

9 MS. SAVAS: That's what my investigators  
10 (inaudible).

11 THE COURT: No, no. This is so original one.

12 MR. D'ANGELO: We have the original calls.

13 THE COURT: I need -- I'm asking because I  
14 need to mark it as a court's exhibit. Is this the  
15 full -- all -- the entirety of those calls?

16 MS. SAVAS: Yes, ma'am.

17 THE COURT: No. Actually, what I'm asking --  
18 I don't think that's what I'm asking.

19 So you combined 79 and 83 to 79?

20 MS. SAVAS: Yes, Judge.

21 So I guess on that disc my investigator  
22 labeled it yesterday before we had that other  
23 decision.

24 THE COURT: But what I'm asking is, those  
25 are -- this is -- this is the redacted 79 and 83,

1 correct? Originally. The original.

2 MS. SAVAS: I'd have to see the disc,  
3 Your Honor. If it says in full, then those are  
4 the jail calls unredacted in full.

5 THE COURT: That's what it says, Exhibit 79  
6 and 83, jail calls in full.

7 MS. SAVAS: Yes, ma'am. And those are not  
8 redacted.

9 THE COURT: Okay.  
10 Then I need that marked as a court's exhibit.  
11 And then, did y'all bring an envelope for the  
12 full interview with Detective Muirheid?

13 MS. SAVAS: Yes, Judge.

14 THE COURT: And that, likewise, will be  
15 marked as a court's exhibit.

16 You can have your 79 and 83 back. I don't  
17 need those anymore.

18 (Court's Exhibit Nos. 1 and 2 are marked for  
19 identification.)

20 MS. SAVAS: Yes, ma'am.

21 THE COURT: And then, the voicemails will  
22 still be at 80, 81, and 82, correct? And then I  
23 have something, a video from Dan Heiterer.

24 MS. SAVAS: Yes, ma'am. That was the video  
25 from the first witness, the 911 caller.

1           **THE COURT:**   Okay.

2           So that's already been entered.

3           **MS. SAVAS:**   Yes, ma'am.

4           **THE COURT:**   Okay.

5           And you said that you were making the  
6           redacted 79, or you have already completed?

7           **MS. SAVAS:**   I've completed that and presented  
8           it to Your Honor.  You've requested the defense  
9           have an additional copy.  My investigator is doing  
10          that.

11          **THE COURT:**   And who's the state's next  
12          witness?

13          **MS. FRIES:**   Paul McManigal.

14          **MS. BLAZER:**   And Your Honor, if I may  
15          briefly.  I know that yesterday, we talked about  
16          the demonstrative that Mr. McManigal was going to  
17          rely on during his testimony.

18          **THE COURT:**   Yes, ma'am.

19          **MS. BLAZER:**   And I only have one quibble with  
20          it.  And if you give me just a second, I'll point  
21          the state to where the issue is.

22          **THE COURT:**   You didn't do that before we  
23          started this morning?

24          **MS. BLAZER:**   No, Your Honor.

25          **THE COURT:**   Is there a reason you didn't talk

1 with Ms. Savas and let her know what your quibble  
2 was --

3 MS. BLAZER: No, ma'am.

4 THE COURT: -- to see if y'all could resolve  
5 it?

6 MS. BLAZER: No, ma'am.

7 THE COURT: So why don't you do that right  
8 now?

9 MS. BLAZER: I'm happy to.

10 (Pause in proceeding.)

11 THE COURT: Are y'all working it out?

12 MS. BLAZER: I -- I think they're talking.  
13 I've shown them what my issue is. And they're  
14 trying --

15 THE COURT: You're trying to work -- is  
16 this -- and that's with your next witness?

17 MS. SAVAS: Yes, Judge.

18 Cameron, if you want to come on.

19 MS. BLAZER: Sure.

20 MS. SAVAS: There's just not a way for me to  
21 modify it on the fly.

22 MR. D'ANGELO: You can draw a line.

23 (Pause in proceeding.)

24 MS. SAVAS: Your Honor, because we -- you  
25 just can't do it on the fly, we're gonna have to

1 do a Sharpie. It's not my favorite --

2 THE COURT: What page are we referring to on  
3 this?

4 MS. SAVAS: It is -- what is it? -- it's the  
5 one o'clock page, one to two.

6 THE COURT: Uh-huh.

7 MS. SAVAS: She wants a smaller yellow block.  
8 Although he'll speak to the start and end time --

9 THE COURT: I guess I'm trying to figure out  
10 what does that block refer.

11 MS. SAVAS: Just the timestamp of when her  
12 location pointed her at [REDACTED] Avenue.

13 THE COURT: Is the correct time reflected in  
14 this block?

15 MS. SAVAS: This start times, yes, Judge.  
16 They are.

17 THE COURT: And the end times.

18 MS. SAVAS: And the -- and the end times.

19 THE COURT: So what's the issue, then?

20 MS. SAVAS: He -- okay. So she just wanted  
21 it -- well, I guess she can explain the issue,  
22 Judge.

23 ~~MS. BLAZER: Yes. Thank you.~~

24 THE COURT: Uh-huh.

25 MS. BLAZER: So if you look at -- may I

1 approach again?

2 THE COURT: Uh-huh.

3 MS. BLAZER: If you look at Exhibit 71, that  
4 particular block makes reference to the GPS  
5 location data that are parts of No. 4 and No. 5 on  
6 Exhibit 77 -- I'm sorry -- 71.

7 THE COURT: Uh-huh.

8 MS. BLAZER: And if you look, it shows a  
9 time -- a time of, No. 4, 1:15:28 and end time  
10 1:15:30.

11 THE COURT: Uh-huh.

12 MS. BLAZER: And then the next one starts at  
13 1:24:46 and ends at 1:25:01. So it's misleading.  
14 And I don't believe it was intentionally so. But  
15 it's misleading to suggest that there's a  
16 consistent block of time from 1:15 to 1:24, where  
17 throughout that duration, the phone is reflecting  
18 the locations, 'cause it's not.

19 There are multiple entries that are not  
20 contained on Exhibit 71. And I agree with them  
21 that there are multiple vacation entries, one  
22 after another right around 1:15 and right around  
23 1:24. But there's a substantial gap between 1:15  
24 and 1:24 where there is no location data. So to  
25 have that clock be --

1           **THE COURT:** But he's going to testify as to  
2 what the times that clock's referencing, correct?

3           **MS. SAVAS:** Yes, Your Honor.

4           **MS. BLAZER:** Well --

5           **THE COURT:** And it's not going back to the  
6 jury. So as long as he's testifying to the  
7 accurate times, what real difference does it make  
8 besides the --

9           **MS. BLAZER:** Because if you look -- if you go  
10 to the next page -- I believe it's the next page.  
11 At 3:03, there's a little box that says --

12           Maybe the next one.

13           -- that say Rifle Range Road.

14           **MS. SAVAS:** And just for clarity in his --  
15 what he just showed Ms. Blazer was there were more  
16 1:15 times than what we put on our exhibit.

17           **THE COURT:** Uh-huh.

18           **MS. SAVAS:** So that's what he was referring  
19 to.

20           **THE COURT:** Uh-huh.

21           **MS. SAVAS:** I don't know what the thing  
22 smaller than seconds are called. Milliseconds? I  
23 don't know.

24           (Indiscernible cross-talk.)

25           **MS. SAVAS:** But he could definitely explain

1        what Ms. Blazer pointed out. She could put that  
2        on cross-examination. He just did it as a block  
3        of time of where she -- her location was  
4        unchanged.

5                **THE COURT:** Okay.

6                This is demonstrative aid to explain his  
7        testimony. I see no need to change.

8                **MS. BLAZER:** Okay.

9                **THE COURT:** I'll note your exception. I  
10       think it -- I think it makes no appreciable  
11       difference. It's not as if the jury -- it's a  
12       demonstrative aid. And it's called demonstrative  
13       for a reason. It's to explain the witness's  
14       testimony and to aid them in explaining their  
15       testimony. It doesn't go back to the jury. So  
16       there's no chance that they're going to be sitting  
17       back, studying this timeline. And there's no  
18       chance that they will make some error in their  
19       fact finding based on a block on a diagram when  
20       he's going to explain what timeframe that block  
21       represents.

22                All right. Are we ready to proceed?

23                **MS. SAVAS:** Yes, Your Honor.

24                **THE COURT:** And did you-all -- bless you.  
25       Did you provide -- you said that your assistant or



1           your assistants in your office are making 'a  
2           copy --

3           **MR. D'ANGELO:** Yes, Your Honor.

4           **THE COURT:** -- of No. 79 for Mr. D'Angelo?

5           You got it.

6           **MR. D'ANGELO:** I just got that, Your Honor.

7           **THE COURT:** Perfect.

8           All right. Are we ready to proceed, from the  
9           state?

10          **MS. SAVAS:** Yes, Your Honor.

11          **THE COURT:** From the defense?

12          **MR. D'ANGELO:** Yes, Your Honor.

13          **THE COURT:** Detective -- is it detective?

14          **THE WITNESS:** Sergeant.

15          **THE COURT:** Sergeant McManigal --

16          **MS. SAVAS:** I'm sorry.

17          **THE COURT:** -- if you could stand by the  
18          stand for me, please.

19                Go ahead and get the jury for me, please.

20          (Pause in proceeding.)

21          **MS. SAVAS:** Your Honor?

22          **THE COURT:** Yes.

23          ~~**MS. SAVAS:** In marking the timeline, it has a~~  
24          sticker on it. Do we put that as ID only?

25          **THE COURT:** It's ID only. It's

1 demonstrative.

2 **MS. SAVAS:** Yes, ma'am.

3 **THE COURT:** It does not go into evidence.  
4 What number is it? I have it as 74. So it should  
5 be 74, ID only.

6 **THE BAILIFF:** All jurors are present,  
7 Your Honor.

8 **THE COURT:** You may be seated.

9 Ladies and gentlemen, I hope you-all had a  
10 pleasant and restful afternoon as well as evening.  
11 We apologize for the delay in resuming testimony.  
12 We had some additional matters of law we needed to  
13 deal with this morning. And if it's any  
14 consolation, we were here past 6:30 last night  
15 trying to get -- work on everything, so that we  
16 would be able to move through the testimony as  
17 best as we can, with as few interruptions, for  
18 lack of a better word, as possible. So we  
19 appreciate your patience.

20 If you would give counsel your attention as  
21 the state proceeds with its next witness.

22 You may proceed.

23 **MS. FRIES:** Thank you, Your Honor.

24 **THE COURT:** You're welcome.

25 **MS. FRIES:** The state calls Sergeant Paul

1 McManigal.

2 **PAUL MCMANIGAL**

3 having first been duly sworn, testifies as follows:

4 **THE WITNESS:** I do.

5 **THE CLERK:** Please state your full name,  
6 spelling your last name in the microphone.

7 **THE WITNESS:** Paul David McManigal,  
8 M-c-m-a-n-i-g-a-l.

9 **THE COURT:** You may proceed.

10 And Ms. Fries, you're a little soft-spoken.  
11 I'm gonna need to speak up so --

12 **MS. FRIES:** Yes, Your Honor.

13 **THE COURT:** -- the court reporter can take  
14 down everything as well as record it. Thank you.

15 **DIRECT EXAMINATION**

16 **BY MS. FRIES:**

17 **Q** Good after -- or good morning, Sergeant  
18 McManigal.

19 **A** Good morning.

20 **Q** Where do you work?

21 **A** I work at the Charleston County Sheriff's  
22 Office.

23 ~~**Q** And what's your current position?~~

24 **A** I'm a digital forensic examiner with the  
25 United States Secret Service Cyber Fraud Task Force.

1           Q     And how long have you been in that position?

2           A     Since 2010.

3           Q     How long have you been in law enforcement?

4           A     35 years.

5           Q     And can you explain your background in law  
6 enforcement?

7           A     I started off -- nine years seems to be my  
8 magic number. I started off doing nine years in  
9 patrol. And then I transferred to the crime scene  
10 investigation unit, where I did another nine years.  
11 Then I took over the unit and was a supervisor for nine  
12 more years. And ever since then, I've been assigned to  
13 the United States Secret Service Cyber Fraud Task  
14 Force.

15          Q     And what is -- what are the roles of your  
16 current position?

17          A     I basically process any digital devices that  
18 may potentially contain evidence. That includes  
19 desktops; laptops; cell phones; tablets; DVRs, digital  
20 video recorders; or even vehicle infotainment systems.

21          Q     And what kind of training do you have in  
22 that?

23          A     So I have extensive training from the  
24 National Computer Forensic Institute, which is the  
25 United States Secret Service school, in Hoover,

1 Alabama.

2 Q And do you have any certifications?

3 A I have several certifications. Do you need  
4 me to read my --

5 Q If you'll just go into a few of them.

6 A Okay.

7 So as far as the training NCFI is concerned,  
8 I've been trained in basic computer evidence recovery,  
9 advanced computer forensics, Oxygen Forensics suite.  
10 BlackLight examiner, Advanced Mobile Device examiner,  
11 Cellebrite physical and logical -- logical examination,  
12 XRY certification, Apple "i" device forensics,  
13 Macintosh triage and imaging, Cellebrite Advanced JTAG  
14 Extraction, Network Intrusion Response, vehicle  
15 forensics, digital video recorder evidence recovery,  
16 and ransomware investigation response training.

17 And I currently hold current certifications  
18 as an AccessData Certified Examiner, Cellebrite  
19 Certified Operator, Cellebrite Certified Physical  
20 Examiner, and Cellebrite Certified Mobile Examiner.

21 Q And how many phones -- or how many devices  
22 have you examined?

23 A I average about 500 devices per year. So I  
24 would say probably over 5000.

25 Q And what -- what kind of devices are they?

1           **A**     The range is anything that I've mentioned --

2           **Q**     Okay.

3           **A**     -- cell phones, tablets, computers, desktops,  
4     laptops, vehicle infotainment systems, digital video  
5     recorders. Anything that contains digital evidence.

6           **Q**     And how many phones have you examined?

7           **A**     Out of that 5000, I'd probably say 4000 on  
8     cell phones.

9           **Q**     Have you testified regarding your  
10    examinations?

11          **A**     Many times.

12          **Q**     And what courts have you testified in?

13          **A**     The Ninth Circuit, which is this circuit; the  
14    First Circuit; and federal court.

15          **Q**     Have you been qualified as an expert?

16          **A**     I have.

17          **Q**     How many times?

18          **A**     12.

19          **Q**     What were you declared an expert in?

20          **A**     Well, prior to I've been certified 10 times  
21    as a digital forensics expert.

22                 **MS. FRIES:** Your Honor, at this time, the  
23    state moves that Paul McManigal be qualified as an  
24    expert in the field of digital forensics examiner.

25                 **THE COURT:** Any objections or questions?

1                   **MS. BLAZER:** No, ma'am, Your Honor.

2                   **THE COURT:** Without objection, you may  
3                   proceed.

4                   **BY MS. FRIES:**

5                   **Q**     Sergeant McManigal, can you explain what a  
6                   cell phone data extraction is?

7                   **A**     Cell phone, they have data much like a  
8                   computer does, especially modern cell phones. So when  
9                   we conduct an extraction, basically, we're trying to  
10                  collect the binary data from the phone, making a copy  
11                  of it forensically. And then we import into our own  
12                  software so we can interpret the data.

13                  **Q**     And what is binary data? Can you explain  
14                  that process of extracting the cellphone?

15                  **A**     Absolutely. So bi- -- all computers store  
16                  things as binary data, which is just zeros or ones. So  
17                  we extract all of that binary data, all the zeros and  
18                  ones. It makes no sense to anybody who's looking at  
19                  it. But it literally is just zeros and ones on the  
20                  device. So we forensically extract that.

21                  In this case, I used a device called Graykey,  
22                  which we connect an iPhone to. It extracts all the  
23                  data from the device. And then, I take that binary  
24                  extraction, import it into software that interprets all  
25                  that binary data and organizes it into text messages,

1 videos, phone calls, all that stuff, so that we can  
2 actually make sense of it and go through it and examine  
3 all the evidence on that device.

4 Q What happens with that binary data once you  
5 complete your extraction process?

6 A So once -- after I pull the binary data into  
7 the reporting software and I export the report, it has  
8 what we call a UFDR file. Some people call it a  
9 Cellebrite Reader file. Once I create that UFDR file,  
10 I delete the binary data.

11 Q And how accurate is the UFDR data that you  
12 obtain?

13 A It's as accurate as the binary data.

14 Q And is Graykey the predominant program that  
15 you've used in the last four years?

16 A It is. It's the industry standard.

17 Q And again, when you complete the data  
18 extraction, what contents do you receive from that  
19 extraction?

20 A Anything that can be parsed out by the  
21 software, all of the call logs, text messages, anything  
22 that the software recognizes.

23 Q And did you get a full file extraction in  
24 this case?

25 A I did.



1           Q     And is there any way that the extracted data  
2     can be altered?

3           A     Not without rendering the file useless.

4           Q     And were you working in your role as a  
5     digital forensic examiner in February 2020?

6           A     I was.

7           Q     And were -- you were involved in this case?

8           A     I was.

9           Q     How were you involved?

10          A     I was provided with the cell phone and a  
11     search warrant process and Apple iPhone XR.

12          Q     And what was the phone's serial number?

13          A     The serial number on the phone is  
14     F2LZ66RZKXKN.

15          Q     And what date did you receive the phone?

16          A     I received the phone on February 12.

17          Q     Who did you receive it from?

18          A     I received it from the evidence technician  
19     who entered it that morning.

20          Q     And what date did you examine the phone?

21          A     February 13.

22                 **THE COURT:** Please say what year that is.

23                 **THE WITNESS:** 2020, ma'am.

24                 **THE COURT:** Thank you.

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

1     **BY MS. FRIES:**

2           **Q**     And regarding the iPhone XR, would you  
3 recognize a flash drive containing the original report?

4           **A**     I would.

5           **Q**     I'm now going to show you what's been marked  
6 as Exhibit 84 for identification purposes only. Do you  
7 recognize that?

8           **A**     I do.

9           **Q**     And how do you recognize it?

10          **A**     This is the flash drive that I provided to  
11 the prosecution.

12          **Q**     And is that the extraction report in its  
13 entirety?

14          **A**     It is.

15          **Q**     And in preparation for this case, did you  
16 create other reports that summarized or condensed the  
17 original extraction?

18          **A**     I did.

19          **Q**     And does that narrow down the focus from the  
20 voluminous data that is shown on the original  
21 extraction report?

22          **A**     It does.

23          **Q**     And what do those other reports show? What  
24 content?

25          **A**     So we limited the reports to February 8,

1 2020. And in -- particularly with the call logs and  
2 text messages, we limited those between the defendant  
3 and the alleged victim.

4 Q And although the reports were summarized, do  
5 they remain accurate as to what was on the original  
6 extraction?

7 A They do. They're essentially snippets of the  
8 main report.

9 Q Are they more user-friendly to read than the  
10 entire extraction report?

11 A Much more.

12 Q And again, they're limited and pertinent to  
13 the information in this case?

14 A That's correct.

15 Q And during your examination, were you able to  
16 determine the owner of the phone?

17 A I was.

18 Q And is there a report that shows this?

19 A Yes. So one of the reports I created is  
20 called the Preliminary Device Report. It's basically a  
21 summary of the identifying information on the phone.

22 Q I'm going to show you what's been marked as  
23 State's Exhibit 75. Is that the preliminary report?

24 A That is.

25 Q Can you please read the owner of the phone,

1 the e-mail addresses, and the phone number associated  
2 with it?

3 A So the Apple ID -- since this is an iPhone,  
4 it has to have an Apple ID associated with it. And in  
5 this case, it is [REDACTED]@icloud.com. It has a  
6 secondary ID as [REDACTED]@icloud.com. And then the  
7 third one is [REDACTED]@gmail.com. And the user's  
8 owner name is Toya's iPhone.

9 Q And where you provided a passcode to the  
10 phone.

11 A I was.

12 Q Did you still need to use Graykey even though  
13 you were provided a passcode?

14 A So with Graykey, one of the tools that law  
15 enforcement uses Graykey for is being able to bypass or  
16 crack PIN codes in the case that we're not provided  
17 with them. But even if we have the phone or if the  
18 phone is unlocked, we still use Graykey. Because it's  
19 just the best tool available to get a binary extraction  
20 from an iPhone.

21 Q And was that extraction report provided via  
22 Cellebrite Reader?

23 A It was.

24 Q And that's just what's used to read and  
25 interpret the data after extraction?

1           **A**     That's correct.

2           **Q**     How do you know the data isn't altered or  
3 manipulated from the extraction once you pull it into  
4 that Cellebrite Reader?

5           **A**     So binary data has a hash value. And that is  
6 incorporated by the Cellebrite Physical Analyzer, which  
7 is the software I use to create the reader report.

8           **Q**     And again, your full system extraction  
9 included calls, messages, locations, device events, and  
10 device activities from the phone?

11          **A**     That's correct.

12          **Q**     And what constitutes a device event?

13          **A**     Device events occur when a device is either  
14 powered on or powered off, plugged in, connects to  
15 Bluetooth, anything like that.

16          **Q**     And what constitutes device activities?

17          **A**     Activity comes from the Health app. It's  
18 what records your steps. So it record your steps, any  
19 stairs you may have climbed, other things depending on  
20 how much interactivity you've had with the Health app.

21          **Q**     Focusing on the call logs specifically, I'm  
22 going to show you what's been marked as State's  
23 Exhibit 68. Is this the report that you extracted on  
24 the call logs?

25          **A**     This is.

1           Q     And were those limited to calls between the  
2 owner of the phone and phone number 843-557-8215 on the  
3 incident date of February 8?

4           A     That is correct.

5           Q     And how many calls did you find on that day  
6 of the incident?

7           A     127.

8           Q     Okay.

9                     And I'm just going to have you go through a  
10 few. If you could read line one, which is the first  
11 call of the day, who it was to and the time and the  
12 duration of the call.

13          A     The call was to Phone No. 843-557-8215. The  
14 contact name listed in the phone for that phone number  
15 is Frank. It occurred on February 8, 2020, at 8:53 and  
16 11 seconds a.m.

17          Q     Okay.

18                     And then line -- page two, line 24?

19          A     Line 24 is to that same phone number,  
20 843-557-8215, to the contact Frank on February 8, 2020,  
21 at 9:46 and 19 seconds a.m.

22          Q     Okay.

23                     And if a call shows as answered, could that  
24 mean two different things?

25          A     So yes. It basically means that the other

1 end connected either through talking to a live person  
2 or reaching voicemail.

3 Q Okay.

4 And you'll look at page five, line 65. If  
5 you could read who that's to and duration and the time?

6 A Line 65 is to 843-557-8215, contact name  
7 Frank, on February 8, 2020, at 12:17 and 27 seconds  
8 p.m.

9 Q Okay.

10 And then page six, line 73.

11 A Line 73 is to 843-557-8215, contact named  
12 Frank on February 8, 2020, at 1:20 and 30 seconds p.m.

13 Q All right.

14 And what about the very last call, page 10,  
15 line 127?

16 A Line 127 is 843-557-8215, contact named  
17 Frank, on February 8, 2020, at 9:26 and 20 seconds p.m.

18 MS. FRIES: Okay.

19 Beg the Court's indulgence. (Pause.)

20 BY MS. FRIES:

21 Q Okay.

22 Going back to -- going back to the first  
23 call. Does it show that it was deleted?

24 A It does.

25 Q So can a user of the phone manually delete

1 phone calls?

2 A Yes, I can.

3 Q And in this case, you were able to determine  
4 that phone calls were deleted?

5 A That's correct.

6 Q And how were you able to do that?

7 A So when a phone call is deleted, initially an  
8 iPhone will delete the index, but it will still remain  
9 in the log file. Eventually it will go through and do  
10 a process called garbage collection where it will try  
11 to erase all of the blocks that are marked as deleted.  
12 But some blocks still remain especially with the way  
13 garbage collection works.

14 Q So did these next three calls, they show as  
15 deleted as well?

16 A That's correct.

17 Q I'm focusing on text messages specifically.  
18 Did you create a report in this case that's text  
19 messages?

20 A I did.

21 Q I'm gonna give you a copy. I'm gonna show  
22 you what's been marked as State's Exhibit 69. How many  
23 text messages were received on February 8 or --  
24 sorry -- well, between the user of the phone and the  
25 Phone No. 843-557-8215?



1           **A**     146.

2           **Q**     And what was the contact name saved under  
3 that phone?

4           **A**     Frank.

5           **Q**     Okay.

6                   And if you will please read line 1 with the  
7 time and the message.

8           **A**     Line 1 was sent from the iPhone II.  
9 843-557-8215. The contact name is Frank. And that  
10 occurred on February 8, 2020, at 8:41 and 37 seconds  
11 a.m.

12          **Q**     And it says good morning.

13          **A**     It does say good morning.

14          **Q**     What about line 2? If you could read the  
15 time, who it's to, and the message.

16          **A**     Line 2, from 843-557-8215, contact name  
17 Frank, occurred on February 8, 2020, at 8:54 and 11  
18 seconds a.m. The message says, "Hey. Can drop my truck  
19 off at your house? I got Rachel to come in for me, so  
20 I can get this done and so we could spend some time  
21 together."

22          **Q**     All right.

23                   If you could read line 3?

24          **A**     From 843-557-8215, contact name Frank,  
25 occurred on February 8, 2020, at 9:02 and 23 seconds

1 a.m. The message is, "Wow. This is over. Get someone  
2 else to fix your car."

3 Q And if you could read line 17?

4 A I need to correct myself. On line 3, I  
5 believe I said it was to Frank. It was from Frank.

6 Q From Frank?

7 A That's correct.

8 Q Line 3. From Frank?

9 A Line 3, that -- correction. Yeah. That was  
10 incoming from Frank.

11 Q Okay. All right.

12 Line 17.

13 A Line 17, from 843 -- sorry -- to  
14 843-557-8215, Frank, on February 8, 2020, at 9:37 and  
15 21 seconds a.m. "I'll just come get all my shit. Your  
16 mask jumped off. You flat-out used me, even if you  
17 didn't ask. You used me. You treated me like dirt  
18 when I've been good to you. And if you're not there,  
19 I'll just wait for you to get there. I'm done with  
20 this mess.

21 "Also you are a trip and I swear you're never  
22 going to have an -- any good luck. You get back what  
23 you put in, Frank. I've been too good to you as for  
24 this."

25 Q Okay.

1                   Line 19?

2           **A**     Line 19 is sent to Frank, 843-557-8215, on  
3     February 8, 2020, at 9:42 and 58 seconds a.m. Message  
4     is, "I'll beat off. Now I'll go back to the same  
5     person you are and I never come back. I will never  
6     forget this lesson you taught me. And you will not get  
7     away with doing me like this. I'll go to court if I  
8     have to.

9                   "I'm at your house now. And I will not leave  
10    without all my shit. Clubs, laptop, washer and dryer,  
11    even the sheets on your bed. Fuck this. I'm not  
12    playing with you anymore. My plates, cooks, forks, I  
13    want it all back. You think I'm stupid. But I know  
14    what's going on. You are a mess. You're too old to  
15    play games with people."

16           **Q**     Okay.

17                   Line 20.

18           **A**     Line 20 was sent to Frank. 843-557-8215, on  
19     February 8, 2020, at 9:43 and 24 seconds a.m. The  
20     message is, "I'm here now."

21           **Q**     That's at 9:43 a.m.?

22           **A**     That is at 9:43 and 24 seconds a.m.

23           **Q**     Okay.

24                   If you could read line 21.

25           **A**     Line 21 was sent to Frank at 843-557-8215 on

1 February 8, 2020, at 9:50 and five seconds a.m.

2 Message is, "I cry for a while. Then I get pissed.

3 You had no right to do me like this. You are wrong.

4 And I swear, I wish all your pain back on you.

5 "I will not leave without my stuff. I hate  
6 what you've done to me. And I swear I will not rest to  
7 you give me all my shit back today. And that job --  
8 that job you used me to get, it's over today. Fuck you  
9 for life, Frank. All your shit at my house is in your  
10 front yard. And I will get everything."

11 Q Okay.

12 In looking at the next page, you can read  
13 line 24, and who's that from, and the time?

14 A Line 24 is from Frank, 843-557-8215, on  
15 February 8, 2020, at 10:03 and seven seconds a.m.  
16 Message is, "I don't give a fuck. You need to leave my  
17 house right now. Because I will call the police. This  
18 is the main reason I don't want to fuck with you.

19 "I didn't tell you to buy me shit and I  
20 didn't use you. This new shit you're saying you've  
21 always felt. And I knew once I told you I didn't want  
22 to be with you, you would flip and try to take back  
23 everything you ever bought from me.

24 "You are off the hook for mentioning my  
25 daughter and the fact that I used you to get her that

1 job. Shit, she's your best employee. And you're  
2 welcome.

3 "You said if I didn't want to fuck with you,  
4 it was okay. And now you're posted outside my house.  
5 My son is in that house. And you need to take that  
6 bullshit somewhere else. Leave my house."

7 Q Line 34.

8 A Line 34 was sent to Frank, 843-557-8215, on  
9 February 8, 2020, at 10:18 and 42 seconds a.m. And the  
10 message is, "I'm not playing."

11 Q Okay.

12 Go to the next page. Line 41.

13 A Line 41 is incoming from Frank at  
14 843-557-8215, on February 8, 2020, at 10:28 and 24  
15 seconds a.m. The message is, "All I did why [sic] I  
16 tried to understand all your craziness. But you call  
17 me what you want. I did nothing wrong to you. I don't  
18 want another crazy motherfucker in my life. And you  
19 are proven to be worse than the last.

20 "Take me to court. Because everything I got  
21 is mine. And I don't know why I believed you when you  
22 said you bought shit for me from the heart. 'I would  
23 never try to take anything back if this didn't work.'  
24 But it was a lie. I didn't need anything from you or  
25 wanted any of it. But you did it because you wanted

1 to. Leave."

2 Q Looking at the next page. Line 46.

3 A Line 46 is sent to Frank at 843-557-8215, on  
4 February 8, 2020, at 10:31 and 54 seconds a.m. Message  
5 is, "I talked to Destiny, Frank."

6 Q Okay.

7 Line 51.

8 A Line 51 was sent to Frank at 843-557-8215, on  
9 February 8, 2020, at 10:35 and 42 seconds a.m. Message  
10 is, "I'll just wait here for my stuff."

11 Q The next page. Line 66?

12 A Line 66 is sent to Frank at 843-557-8215, on  
13 February 8, 2020, at 11:49 and 26 seconds a.m. Message  
14 is, "I feel so stupid. You just don't have no idea how  
15 much you hurt me."

16 Q The next one, line 66.

17 A Oh, I'm sorry. 66. From -- the message to  
18 Frank 843-557-8215, on February 8, 2020, at 11:49 and  
19 44 seconds a.m. The message is, "I have your name on  
20 my neck. I'm so dumb."

21 Q All right.

22 The next page. Line 75.

23 A Line 75 is sent to Frank at 843-557-8215, on  
24 February -- February 8, 2020, at 12:17 and 35 seconds  
25 p.m. The message is, "Oh. So it was the Gram. You

1 got mad because I wrote on your page and blocked me  
2 now."

3 Q And that was at 12:17 p.m.?

4 A That was at 12:17 and 35 seconds p.m.

5 Q Okay.

6 Line 79.

7 A Line 79 sent to Frank at 843-557-8215, on  
8 February 8, 2020, at 12:47 and three seconds p.m.  
9 Message is, "I'm going to get my shit. And yeah. I  
10 can get in just like you can get in my house. I'm done  
11 playing with your ass."

12 Q Line 81.

13 A Line 81 is sent to Frank on February 8, 2020,  
14 at 12:52 and 14 seconds p.m. Message is, "And I got  
15 the picture of you working out. So you want to treat  
16 me like shit. We will see how long you get to take  
17 your arm. You want to ruin my life. You call me worse  
18 than your ex then. Okay. I'll show your ass worse.  
19 Give me my stuff now."

20 Q Line 82.

21 A Line 82 is sent to Frank at 843-557-8215, on  
22 February 8, 2020, at 12:52 and 49 seconds p.m. The  
23 message is, "Oh, I'm coming for everything."

24 Q Line 83.

25 A Line 83 is sent to Frank at 843-557-8215, on

1 February -- February 8, 2020, at 1:09 and 47 seconds  
2 p.m. The message is, "I'm sick of people doing me any  
3 kind of way. I will not take this from you until I get  
4 all my shit back. You're going to see me every day.  
5 You can block me. But my life is now getting all y'all  
6 motherfuckers back for all the pain y'all have cost me.  
7 You want to call me crazy and say I'm like your ex,  
8 then so -- so be. I will be."

9 Q Okay.

10 Line 85.

11 A Line 85 is a message to Frank at 843 --  
12 843-557-8215. It occurred on February 8, 2020, at 1:16  
13 and 22 seconds p.m. The message is, "I promise I will  
14 not rest till I get my stuff."

15 Q That's at 1:16 p.m.?

16 A 1:16 and 22 seconds.

17 Q 86?

18 A Line 86, message to Frank at 843-557-8215, on  
19 February 8, 2020, at 1:17 and 32 seconds p.m. The  
20 message is, "You won't either. I'm almost there. And  
21 I'm going to -- going in. And I'm getting my stuff.  
22 I'm not playing no more. You didn't have to do none of  
23 this to me. I swear on everything, I have nothing to  
24 lose anymore."

25 Q Line 95?



1           **A**     Line 95 sent to Frank at 843-557-8215, on  
2     February -- February 8, 2020, at 2:03 and 32 seconds  
3     p.m. The message is, "That just broke me into a  
4     million pieces. Sometimes what you do to people  
5     changes them. I didn't deserve this."

6           **Q**     And the next page, line 99?

7           **A**     Line 99 is sent to Frank at 843-557-8215, on  
8     February 8, 2020, at 2:15 and 23 seconds p.m. The  
9     message is, "You was cheating on me, too, with another  
10    white girl. Really, Frank?"

11          **Q**     Line 102?

12          **A**     Line 102 is from Frank at 843-557-8215 --  
13    sorry -- to Frank. Back up. It's an incoming message  
14    from Frank -- I apologize -- at 843-557-8215, on  
15    February 8, 2020, at 2:35 and 28 seconds p.m. The  
16    message is, "You better not be in my fucking house."

17          **Q**     Line 103?

18          **A**     Line 103 is to Frank at 843-557-8215, on  
19    February 8, 2020, at 2:37 and 23 seconds p.m. The  
20    message is, "I'm not. I don't even have a key. I'm  
21    done, Frank. The message I got from your new  
22    girlfriend was enough. I know what this was all about.  
23    I know now you used me and hurt my heart on purpose.  
24    Thank you."

25          **Q**     Line 110.

1           **A**     Line 110 was sent to Frank at 843-557-8215,  
2     on February 8, 2020, at 2:59 and 33 seconds p.m. The  
3     message is, "Chris in that house. What's going on?"

4           **Q**     Okay.

5                     The next page, line 113.

6           **A**     Line 113 sent to Frank at 843-557-8215, on  
7     February 8, 2020, at 3:10 and 36 seconds p.m. The  
8     message is, "What -- WTH is going on for real? Are you  
9     lying? Are you okay? Is Chris okay? I swear I left.  
10    I didn't do anything to your house. I left that anklet  
11    you gave me. I broke that. And I put it on a trash  
12    can. And I left. There was a guy fixing the road that  
13    saw me leave and when I was knocking on the front door.  
14    But other than that, I left your house. So don't call  
15    me "trying to put shit off on me. I didn't do anything  
16    to you at all."

17          **Q**     Okay.

18                     The next page, line 124.

19          **A**     124 is a message to Frank at 843-557-8215, on  
20    February 8, 2020, at 4:59:09 p.m. The message is,  
21    "OMG. I drove over there to see if you was lying. And  
22    listen, I did not do that. No. You are not going to  
23    put that on me.

24                     "When I left your house, your house was in  
25    tact. I knocked on the door. I knocked on the back

1 door. And I sit in the parking lot and text you. And  
2 then I left. I did not touch anything. And that was  
3 this morning.

4 "I went back to work. You can ask the people  
5 at work. I talked to Joanne and Kathy on the phone.  
6 And I went home.

7 "I did not do anything to your house. And  
8 there was a guy fixing on the road that can testify.  
9 That guy pulled off. Because I had my window down.  
10 And I pulled up. And that was this morning. I did not  
11 do anything to your house. You will not put that on  
12 me."

13 Q Okay.

14 And then line 146. Is this the last text on  
15 that day?

16 A It is.

17 Q What is -- who's it too and what does it say?

18 A Message is sent to Frank at 843-557-8215 on  
19 February 8, 2020, at 7:54 and nine seconds p.m. The  
20 message is, "Frank, I did not do this. Why would you  
21 say this? I didn't do this. I'd never do anything  
22 like this. I did not set your house on fire. I would  
23 not do that to you. You gotta believe me. This is  
24 killing me. I thought you was lying. I didn't do  
25 this."

1           **Q**     So all of these text messages were sent on  
2     February 8, 2020?

3           **A**     That's correct.

4           **Q**     Okay.

5                 Did you also extract MMS messages from this  
6     report?

7           **A**     I did.

8           **Q**     Let me back up. Do you know how many text  
9     messages were from the defendant's phone versus how  
10    many Frank sent to the defendant, text messages?

11          **A**     One moment, please. (Reviews document.)

12                 One hundred and thirty-eight messages were  
13    from the defendant.

14          **Q**     All right.

15                 So focusing on MMS messages, you did extract  
16    a report -- a summarized report from your original  
17    extraction of the phone?

18          **A**     That's correct.

19          **Q**     And what is an MMS message?

20          **A**     It's basically a text message that has an  
21    attachment, like a video or a photograph.

22          **Q**     And were those messages all from user of the  
23    phone and the same number that we have previously been  
24    looking at?

25          **A**     That's correct.

1           Q     I'm now going to show you what's been marked  
2 as State's Exhibit 70. If you could read line one and  
3 its content, what's -- what was being sent?

4           A     Line one is a message to Frank at  
5 843-557-8215. Do not believe there's any text  
6 associated with it. It's just a photograph of a house.

7           Q     Okay.

8                     I'm going to show you what's been marked as  
9 70A. Is that just an enlarged photo of the attachment?

10          A     That is correct.

11          Q     Looking at line two.

12          A     Line two is a message to Frank at  
13 843-557-8215, on February 8, 2020, at 12:52 and 38  
14 seconds p.m. And this is a photograph of what I  
15 believe is Frank working out?

16          Q     Okay.

17                     Showing you 70B. Is that just an enlarged  
18 photograph of that?

19          A     That is correct.

20          Q     Okay.

21                     I'm looking at box three. What does that  
22 show?

23          A     One moment, please. (Reviews document.)

24                     Box three is a message to Frank at  
25 843-557-8215, on February 8, 2020, at 2:01 and 40

1 seconds p.m. And there is an attachment.

2 Q Okay.

3 Showing you what's been marked 70C. Is that  
4 just a large photograph of that attachment?

5 A That is correct.

6 Q So these were all photographs or attachments  
7 that were sent to Frank from the incident date,  
8 correct?

9 A That is correct.

10 Q And did you extract location data from the  
11 phone as part of your report?

12 A I did.

13 Q And how is location data stored on the phone?

14 A iPhone store location data in what they call  
15 location services, which is an API. API stands for --  
16 it's basically software that's built into the operating  
17 system that other apps can use. So for other apps to  
18 get geolocation data, they don't have to write their  
19 own code to reach out to the GPS and get it. All they  
20 have to do is reach to location services on the iPhone.  
21 iPhone prefer -- Apple prefers this because it keeps  
22 the size of apps down. They don't each have their own  
23 code for reaching GPS.

24 So the app that wants to grab the location,  
25 reaches out to the location services API built into the

1 operating system. And the location services returns  
2 that information to the app. All the data that was  
3 recovered on the iPhone for geolocations came from the  
4 Location Services app.

5 Q How precise or accurate is location data?

6 A With GPS data, it's accurate within about  
7 five meters.

8 Q And does it give the exact longitude and  
9 latitude?

10 A It does.

11 Q And then those turn into exact addresses?

12 A That's correct.

13 Q And do cell phone towers just show a cone of  
14 an area?

15 A That is also correct.

16 Q So if I'm standing here in the courthouse, I  
17 could ping off of a tower in the peninsula.

18 A Cell phone tower triangulation, according to  
19 the FCC, is accurate within about three quarters of a  
20 square mile.

21 Q Okay.

22 And again, you testified that GPS data is  
23 will give an exact latitude and longitude.

24 A It's much, much closer within five meters.

25 Q Okay.

- 1                   And so these are reliable --
- 2           **A**     Yes.
- 3           **Q**     -- locations?
- 4                   And are cell phones, GPS devices?
- 5           **A**     They are.
- 6           **Q**     And are there's sometimes gaps in between
- 7     locations when looking at location data?
- 8           **A**     With Location Services, yes, there are.
- 9     There really is no rhyme or reason to what locations
- 10    the iOS decides to log. And this has been researched
- 11    extensively by Cellebrite to try to determine the when,
- 12    why, and how. And there just is no rhyme or reason to
- 13    what gets logged.
- 14           **Q**     Can a person turn their phone into Airplane
- 15    Mode?
- 16           **A**     They can.
- 17           **Q**     And would turning the phone into Airplane
- 18    Mode, could that -- could -- would that turn off
- 19    Location Services?
- 20           **A**     It would prevent it from logging locations.
- 21           **Q**     Were you able to determine if the user of the
- 22    phone turned on their Airplane Mode?
- 23           **A**     Airplane Mode was not on.
- 24           **Q**     Okay.
- 25                   Can a person turn on or off their Location



1 Services?

2 A They can.

3 Q And if their location services were off,  
4 would that be able -- would that be a reason for a gap  
5 in location?

6 A It would be.

7 Q And were you able to determine whether the  
8 user of the phone turned off their location services or  
9 on?

10 A I was not the -- whether Location Services  
11 were turned on or off, it's not logged in any part of  
12 the operating system.

13 Q Okay.

14 Now, I'm going to show you what's been marked  
15 as State's Exhibit 71. If you could please read line 1  
16 with the address and the start time and end time.

17 A Line 1, the origin is that [REDACTED] Avenue  
18 in Charleston, South Carolina, on February 8, 2020, at  
19 9:31 and 29 seconds a.m. ending at, on February 8,  
20 2020, at 9:31 and 37 seconds.

21 Q All right.

22 Line 2?

23 A Line 2 is also at [REDACTED] Avenue in  
24 Charleston, South Carolina, on February 8, 2020, at  
25 9:58 and 25 seconds a.m. ending at 9:58 and 42 seconds

1 a.m.

2 Q Line 3?

3 A Line 3 is [REDACTED] Road in Mount  
4 Pleasant, South Carolina, on February 8, 2020, at 12:24  
5 and 16 seconds p.m. ending at 12:24 and 30 seconds p.m.

6 Q All right.

7 Line 4?

8 A Line 4 is at [REDACTED] Avenue in Charleston,  
9 South Carolina, on February 8, 2020, at 1:15 and 28  
10 seconds p.m., ending at 1:15 and 30 seconds p.m.

11 Q Okay.

12 Line 5?

13 A Line 5 is [REDACTED] Avenue in Charleston,  
14 South Carolina, on February 8, 2020, at 1:24 and 46  
15 seconds p.m. ending at 1:25 and one second p.m.

16 Q And then line 6?

17 A Line 6 is at [REDACTED] Road in Mount  
18 Pleasant, South Carolina, on February 8, 2020, at 3:03  
19 and zero seconds p.m., ending at 3:03 and 18  
20 seconds p.m.

21 Q So 1:15 and 1:25, her location is at [REDACTED]

22 [REDACTED] Avenue?

23 A Correct.

24 Q And then at 3:03, it's back at that Rifle  
25 Range address, correct?

1           **A**     That is correct.

2           **Q**     And in examining the phone, did you create a  
3 report regarding device events?

4           **A**     I did.

5           **Q**     And what are the devices that that encompass?

6           **A**     Device events are when the phone is plugged  
7 in or unplugged or when the display comes on, when the  
8 display orientation changes, pretty much anything like  
9 that on the iPhone.

10          **Q**     And when we're -- we're talking about a phone  
11 being plugged in, is this referring to any -- to a  
12 phone being connected to any kind of power source?

13          **A**     That is correct.

14          **Q**     And could a power source be a car charger?

15          **A**     It can be.

16          **Q**     Now I'm going to show you what's been marked  
17 as State's Exhibit 72. If you could read line 1 and  
18 the time and then the status of the phone?

19          **A**     Line 1, February 8, 2020, at 1:15 and 57  
20 seconds p.m. The device was plugged in and it ended at  
21 1:24 and 23 seconds p.m.

22          **Q**     And line 2?

23          **A**     Line 2 is on February 8, 2020. Begins on  
24 one -- at 1:24 and 23 seconds p.m. The device is  
25 unplugged with an end time of February 8, 2020, at 2:29

1 and 42 seconds p.m.

2 Q Line 3?

3 A Line 3 begins at 2:29 and 42 seconds p.m. on  
4 February 8, 2020. The device is plugged in, with an  
5 end time of February 8, 2020, at 3:02 and 42 sec- -- 47  
6 seconds p.m.

7 Q Okay.

8 So from 1:15 to 1:24, the phone is plugged  
9 in. And then it becomes unplugged from 1:24 to 2:29,  
10 correct?

11 A That is correct.

12 Q Okay.

13 Read the next line. I believe it's line 3.

14 A So line 4?

15 Q Or line 4. Sorry. Yes.

16 A February 8, 2020, at 3:02 and 47 seconds p.m.  
17 The device was unplugged, with an end time of  
18 February 8, 2020, at 3:07 and 42 seconds -- 42  
19 seconds p.m.

20 Q Okay.

21 And line 5?

22 A Line 5 begins on February 8, 2020, at 3:07  
23 and 42 seconds p.m. The device is plugged in, with an  
24 end time of February 8, 2020, at 3:18 and six seconds  
25 p.m.

1           Q     Okay.

2                     Line 6?

3           A     Line 6 begins on February 8, 2020, at 3:18  
4     and six seconds p.m. The device is unplugged, with an  
5     end time of February 8, 2020, at 3:20 and 13  
6     seconds p.m.

7           Q     And you testified that the phone being  
8     plugged into a power source could be a phone -- could  
9     be a car charge?

10          A     A car charger or wall charger. Yes, ma'am.

11          Q     And you also testified previously that her  
12     location at 1:25 was [REDACTED] Avenue, correct?

13          A     That's correct.

14          Q     And at 1:24, the phone is unplugged?

15          A     That is correct.

16          Q     Did you also extract an activity report  
17     during your examination of the phone?

18          A     I did.

19          Q     And what is this data specifically?

20          A     The activity report is mostly just the steps  
21     taken, depends on the Health app and what you've got  
22     connected to it. Sometimes it's capable of getting  
23     your heart rate and other health information like that.

24          Q     So -- and how is the data stored on the  
25     phone?

1           **A**     In this case, it's stored in the Health  
2     Activity app.

3           **Q**     And can it -- does it show how many -- it  
4     shows how many steps are taken, right?

5           **A**     That's correct.

6           **Q**     Okay.

7                   Now I'm going to show you what's been marked  
8     as State's Exhibit 73. If you could read line one for  
9     us.

10          **A**     Line one are steps and distance: 181 steps,  
11     123.29 meters. Began on February 8, 2020, at 1:36 and  
12     19 seconds p.m. or -- sorry. That was when it was  
13     recorded. The start time for that activity is  
14     February 8, 2020, at 1:25 and 16 seconds p.m., ending  
15     at 1:32 and 46 seconds p.m.

16          **Q**     Okay.

17                   And line 2?

18          **A**     Line 2, steps and distance. There were 703  
19     steps, 475.13 meters. The creation date for this event  
20     was February 8, 2020, at 2:01 and 10 seconds p.m. The  
21     start time was February 8, 2020, at 1:50 and eight  
22     seconds p.m., with an end time of February 8, 2020, at  
23     2:00 and 28 seconds p.m.

24          **Q**     Okay.

25                   Line 3?

1           **A**     Line 3, steps and distance. There were 51  
2     steps; 28.01 meters. Creation date for this event was  
3     February 8, 2020, 2:32 and 36 seconds p.m., with a  
4     start time of February 8, 2020, at 2:21 and 34 seconds  
5     p.m., with an end time February 8, 2020, 2:23 and 47  
6     seconds p.m.

7           **Q**     Okay.

8                     So from 1:25 to 1:32, she takes 181 steps.  
9     And then from 1:50 to two o'clock, within that  
10    10-minute frame, she takes 703 steps?

11          **A**     Correct.

12          **Q**     And you testified previously, again, her  
13    location at 1:15 and 1:25 was [REDACTED] Avenue?

14          **A**     That is correct.

15          **Q**     And then from 2:00 until 2:21, there's no  
16    activity? There's no steps?

17          **A**     Correct.

18          **Q**     Okay.

19                    If you could read line 4?

20          **A**     Line 4, steps and distance where 165 steps,  
21    116.94 -- 94 meters, with a creation time of  
22    February 8, 2020, at 3:14 and two seconds p.m. The  
23    start time for this event was February 8, 2020, 3:02  
24    and 59 seconds p.m. with an end time of  
25    February 8, 2020, at 3:07 and 37 seconds p.m.

1           Q     Okay.

2                     And line 5.

3           A     Line flight -- line 5 is flights climbed.

4     One floor. Created on February 8, 2020, at 3:18 and .  
5     six seconds p.m., with a start time of 3:07 and three  
6     seconds p.m., and and end time of 3:07 and 06  
7     seconds p.m.

8           Q     Okay.

9                     So at 3:07, it's showing that one floor was  
10    climbed. And then you testified previously that her  
11    location at 3:03 was back at that Rifle Range address,  
12    correct?

13          A     That is correct.

14          Q     And in preparation for this trial, did you  
15    prepare a timeline for this case?

16          A     I did.

17          Q     What does that timeline encompass?

18          A     I believe I include health activity, the  
19    steps, the location, whether the phone was plugged in  
20    or not.

21          Q     Okay.

22                     I'm now going to show you what's been marked  
23    for identification purposes only a State's Exhibit 74.  
24    Do you recognize that?

25          A     This is the timeline that I created.



1           **THE COURT:** Let me interrupt you just one  
2 second.

3           Ladies and gentlemen, we're gonna take a  
4 brief break. During the break, please do not  
5 discuss the case and please leave your notepads in  
6 your seats.

7 (The jury exits the courtroom at 10:55 a.m.)

8           **THE COURT:** You may be seated.

9           I have a juror that's nodding. And I needed  
10 him to move around. He's been nodding the whole  
11 time. Sometimes he listens with his eyes closed.  
12 And he's nodding

13           **MS. BLAZER:** Are we talking about the fellow  
14 on the back row.

15           **THE COURT:** No. I'm talking about the guy on  
16 the front --

17           **MS. BLAZER:** Oh, on the front row. 'Cause  
18 we've got two who are --

19           **THE COURT:** Yeah. But --

20           **MS. BLAZER:** -- periodically nodding.

21           **THE COURT:** -- sometimes people -- especially  
22 with these fluorescent lights, sometimes people  
23 listen with their eyes closed.

24           **MS. BLAZER:** Yes. Yes. Yes.

25           **THE COURT:** 'Cause it's hard on their eyes.

1 But he needed to -- it's -- I don't know whether  
2 he stayed up late or if he works late at night. I  
3 don't know what it is. But I needed him to move  
4 around.

5 **MS. FRIES:** May I take this chance to --

6 **THE COURT:** Yes. Uh-huh.

7 **MS. FRIES:** -- take a quick break?

8 **THE COURT:** Go right ahead.

9 Mr. McManigal, if you need to walk around,  
10 feel free to. Just don't discuss your testimony  
11 with anyone.

12 (A recess is taken.)

13 **THE COURT:** All right.

14 I had the bailiffs attend to our juror. And  
15 I think he'll be okay. All right.

16 The state ready to proceed?

17 **MS. FRIES:** Yes, Your Honor.

18 **THE COURT:** Defense ready to proceed?

19 **MS. FRIES:** Yes, Your Honor.

20 **THE COURT:** You can bring in the jury when  
21 they're ready. Because I know somebody was  
22 getting something for one of them.

23 (The jury enters the courtroom at 11:10 a.m.)

24 **THE BAILIFF:** All jurors are present,  
25 Your Honor.

1           **THE COURT:** You may be seated.

2           We'll resume the witness's testimony.

3           You may proceed, Ms. Fries.

4           **MS. FRIES:** Thank you.

5           **THE COURT:** You're welcome.

6           **BY MS. FRIES:**

7           **Q**     So Sergeant McManigal, I'm going to show you  
8           what's been marked for identification purposes only as  
9           State's 74. Is that the timeline that you were  
10          referencing?

11          **A**     It is.

12          **Q**     Okay.

13                 And if you could kind of walk us through, did  
14          you do this in increments of an hour?

15          **A**     So each page represents an hour. And then on  
16          each page is broken down to every five minutes.

17          **Q**     Okay.

18                 If you could walk us through from 9 a.m. to  
19          10 a.m. what we're seeking.

20          **A**     At 9 a.m., at around 9:20, she was traveling.  
21          The phone recorded 25 steps. The display was on most  
22          of the time and it was plugged in. And then around  
23          9:30, she apparently arrived at [REDACTED] Avenue in  
24          Charleston. Took 214 steps. The screen, again, was  
25          mostly on. And it was unplugged shortly after 9:30.

1                   And then around 9:50, the phone was plugged  
2 in. And close to 10 o'clock, another 144 steps are  
3 taken.

4           Q       Okay.

5                   So at 9:30, it shows her location at [REDACTED]  
6 [REDACTED] Avenue?

7           A       Correct.

8           Q       Then from 10:00 to 11:00?

9           A       10:00 to 11:00, those 144 steps out were  
10 taken at the end of the 10 o'clock continued on. This  
11 is all part of the same 144 steps. The display was on  
12 the entire time. And it was plugged in around 10:25  
13 and remained plugged in until 11 o'clock.

14          Q       And is -- why does it not show a location?

15          A       There was no location listed at that  
16 timeframe.

17          Q       Okay.

18                   Is that kind of like the gap that we were  
19 talking about previously?

20          A       Correct. Okay.

21          Q       From 11:00 to noon?

22          A       11:00 to noon, again, there was no location  
23 data at that timeframe. The device display was on the  
24 whole time and plugged in the whole time. And around  
25 11:15, there were 27 steps taken.

1           Q     Okay.

2                     12:00 to 1:00?

3           A     12:00 to 1:00, the display is on the entire  
4 time. Traveling occurs between 12:01 and 12:24. At  
5 the beginning of travel, it shows 226 steps were  
6 logged. The device started off plugged in, was  
7 unplugged briefly, then plugged back in about 12:07.  
8 It remained plugged in until approximately 12:20. At  
9 which time, the traveling also ended. And one floor of  
10 stairs climbed was recorded.

11          Q     Okay.

12                     So she unplugged her phone when the traveling  
13 ends. She arrives at [REDACTED]. And she climbs  
14 a flight of steps, correct?

15          A     That is correct.

16          Q     Okay.

17          A     And then at 12:45, another 65 steps are  
18 recorded and approximately 12:50, the phone was plugged  
19 back in.

20          Q     Okay.

21                     Then from 1:00 to 2:00?

22          A     The display starts off on the phone. It's  
23 still plugged in. It was briefly unplugged about 1:16  
24 or so. At the same time, it records the location at  
25 [REDACTED] Avenue in Charleston. And then approximately

1 1:25, 181 steps are logged. The display comes back on  
2 after brief time off. And then around 1:50, 703 steps  
3 are taken.

4 Q Okay.

5 So the location at 1:15 is 2245 -- [REDACTED]  
6 Avenue. The phone is plugged in up until 1:25, where  
7 then it's unplugged. And at 1:25 she's -- she's at  
8 [REDACTED] Avenue, correct?

9 A Correct.

10 Q And the phone is unplugged. And then from  
11 1:50 to 2 p.m., 703 steps are recorded, correct?

12 A That is correct.

13 Q Okay.

14 And then from two to three?

15 A The display is on most of the time. Around  
16 220, 51 steps are logged. And at 2:30, the phone is  
17 plugged in.

18 Q Okay.

19 And then 3:00 to 4:00.

20 A 3:00 to 4:00, the display starts off on. The  
21 phone is plugged in. Unplugged shortly after. And  
22 around 3:03, the location recorded is [REDACTED]  
23 Road in Mount Pleasant. 165 steps were logged. One  
24 floor was climbed. The phone was plugged back in.

25 And then approximately 3:22, 55 steps were --

1       were taken. The phone is unplugged. Plugged back.  
2       Unplugged. Plugged back in.

3               At 3:30, the display comes on again. And at  
4       335, the phone is plugged in.

5           Q       Okay.

6               So from about 3:03 to 3:07, the phone's  
7       unplugged. She arrives at [REDACTED], climbs a  
8       flight of steps, and then the phone is plugged back in?

9           A       Correct.

10          Q       Okay.

11               And what -- and that -- that summarizes your  
12       timeline of the events from 9:00 to 4 p.m. that day,  
13       correct?

14          A       That is correct.

15          Q       What did you do with the phone after you  
16       examined it?

17          A       After I examined it, I placed it back in  
18       evidence.

19          Q       What was the condition of the phone when you  
20       returned it into evidence?

21          A       Same condition as I received it.

22          Q       And does doing an extraction damage or render  
23       the phone inoperable?

24          A       It does not.

25          Q       And if the phone was damaged or inoperable,

1 would you be able to even examine the phone -- or would  
2 you make note of it if it was afterwards?

3 A Both. I would make note of it. And I would  
4 not be able to get an extraction.

5 MS. FRIES: Okay.

6 Beg the Court's indulgence. (Pause.)

7 I have nothing further please answer anything  
8 that the defense may have.

9 THE COURT: You may proceed.

10 MS. BLAZER: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 CROSS-EXAMINATION

13 BY MS. BLAZER:

14 Q Good morning, Sergeant.

15 A Good morning.

16 Q How are you?

17 A Doing well. How are you?

18 Q I'm great. Thank you. So we went through  
19 on -- the jury already heard about your extensive  
20 training in electronic forensics. And you have  
21 extensive training and experience in -- also in crime  
22 scene evidence collection?

23 A Correct.

24 Q And in those nine-year increments of -- of  
25 patrol, and then crime scene, and now where you are,



1     you've been -- you've been involved in countless  
2     investigations?

3             A     That's correct.

4             Q     You've -- you've lost count, right?

5             A     Yes, ma'am.

6             Q     But now you're focused on digital forensics?

7             A     That is correct.

8             Q     But you're familiar generally with how the  
9     digital forensics work product you create gets used to  
10    support other investigations?

11            A     Correct.

12            Q     And in fact, they come to you to explain it  
13    to them because it's complicated. And we went through  
14    a long process of explaining it?

15            A     That's correct.

16            Q     And you do that both for the solicitor's  
17    office and for the sheriff's office. Yeah?

18            A     Yes.

19            Q     And other people that are part of that Secret  
20    Service Task Force?

21            A     Correct.

22            Q     But before you did forensics, you were in  
23    crime scene?

24            A     Right.

25            Q     Yes?

1                   And before you were in crime scene, you spent  
2 nine years in patrol?

3           **A**     Correct.

4           **Q**     So through the course of more than 30-year  
5 career in law enforcement, I'm guessing you've drafted  
6 more than your fair share of subpoenas and search  
7 warrants.

8           **A**     I actually didn't write a lot of search  
9 warrants.

10          **Q**     Okay.

11          **A**     I executed a lot.

12          **Q**     Okay.

13                   So when you were back on patrol, you were  
14 more executing the search warrants that were written by  
15 others?

16          **A**     In patrol, you don't really serve a lot of  
17 search warrants.

18          **Q**     Uh-huh.

19          **A**     You will serve arrest warrants.

20          **Q**     Okay.

21          **A**     But most of my arrests were done with  
22 citations.

23          **Q**     So then when have you written search  
24 warrants?

25          **A**     Honestly, I -- I don't think I can think of

1 one time I've actually written a search warrant.

2 Q Okay.

3 So you don't draft the search warrants for  
4 the phones? That's done by somebody else?

5 A That's correct.

6 Q Okay.

7 Tell me about. I know you've already been  
8 through this a little bit. But I just want to make  
9 sure, because it's not something that the rest of us do  
10 all the time, that we understand the extraction and the  
11 analysis process. Okay?

12 Can you explain for the jury the difference  
13 between a full file system extraction and a logical  
14 extraction?

15 A Yes.

16 Q So there are three different types of file  
17 extractions, basically. One is when we get just what  
18 the user can see on their phone. That's called a  
19 logical extraction.

20 Another one is called a file system. That's  
21 when we can get to all the files that you would be able  
22 to access on the phone, even if it doesn't show it to  
23 you.

24 And then the largest one is called a physical  
25 extraction. And Graykey considers a full file system

1 to be a physical extraction. And that's where you get  
2 everything on the phone, all the zeros and ones.

3 Q All the zeros and the ones. We talked -- you  
4 talked about that on direct a little bit, binary data?

5 A Correct.

6 Q And so we walk around with these super  
7 computers in our pockets, right?

8 A Yes, ma'am.

9 Q But at some level, we go all the way back to  
10 how the code gets created and how the data gets stored.  
11 It's just little switches between zero and one, zero  
12 and one, zero and one, right?

13 A That's correct.

14 Q And so when you extract a -- a Graykey  
15 extraction, that's full physical extraction, what you  
16 get, you know, if this was the extraction, it would be  
17 just endless zeros and ones that you and I couldn't  
18 read?

19 A Correct.

20 Q And so you have to use other tools in order  
21 to interpret that information?

22 A That is correct.

23 Q And you do that binary extraction because you  
24 want to have as close to an identical copy of what's in  
25 that phone as you can?

1           **A**     Correct.

2           **Q**     And you -- I think you testified on direct  
3     that you use Graykey because it's the best in the  
4     industry?

5           **A**     For iPhones at the time, yes.

6           **Q**     Uh-huh. Okay.

7                   Has that changed?

8           **A**     So it has competition now.

9           **Q**     Okay.

10                   What's the competition?

11          **A**     Cellebrite Premium.

12          **Q**     Cellebrite Premium. And that's something  
13     that you're also authorized to use?

14          **A**     Correct.

15          **Q**     That's something that came along after  
16     Graykey or just got better after Graykey.

17          **A**     So initially, Graykey was developed solely  
18     for Apple devices. And Cellebrite Premium pretty much  
19     was solely Android and some Windows devices. But  
20     throughout the years, they both crossed over trying to  
21     compete with each other. So Graykey now does both and  
22     Cellebrite Premium now does both.

23          **Q**     Do you remember about when Cellebrite Premium  
24     started doing Apple?

25          **A**     I want to say it was couple years ago.

1 Q Okay. All right.

2 So Cellebrite, is this -- so Graykey is one  
3 piece of software, right?

4 A It -- it's hardware. Yes, ma'am.

5 Q It -- that's right. So it -- it's software  
6 inside of hardware, right?

7 A Correct.

8 Q So it's like a -- it's almost like a box?

9 A It is a box.

10 Q And you put the phone inside it?

11 A We plug the phone into it --

12 Q Or you plug the phone into it.

13 A Correct.

14 Q Right.

15 And -- and the software inside the box,  
16 slurps the information off the phone and store --  
17 and -- and creates that binary copy?

18 A Essentially, yes.

19 Q Okay.

20 And then you take that slurped copy out of  
21 the box? Or do you plug that box into Cellebrite?

22 A So what -- it passes through the box --

23 Q Uh-huh.

24 A -- and gets downloaded to the workstation.

25 Q Got it.

1           **A**     And then I pull that file that's on the  
2 workstation into Cellebrite Physical Analyzer, which is  
3 the tool I use to read the file.

4           **Q**     Yes.

5           **A**     And then Cellebrite Physical Analyzer, I used  
6 to create the UFDR file, the portable case file to give  
7 to investigators.

8           **Q**     Got it. Okay.

9                   Try -- trying to keep it as simple as I can.  
10           So the -- the Physical Analyzer is the tool you use  
11 here. And that's a -- that's a separate thing that  
12 exists on your workstation?

13          **A**     It's software on the workstation.

14          **Q**     Yes.

15                   And it takes that zeros and ones stack and  
16 turns it into stuff that you can understand and I can  
17 understand?

18          **A**     Yes.

19          **Q**     And it does that in the -- and it -- it turns  
20 out something called a UFDR file?

21          **A**     Correct.

22          **Q**     And that's just -- I mean, Microsoft Word  
23 sends out a doc file, Excel an XLS. So the -- that's  
24 just kind of the file extension?

25          **A**     The extension is UFDR. It's colloquially

1 known as Cellebrite Reader.

2 Q Okay.

3 And so Cellebrite Reader actually is a  
4 little -- is a smaller app, can we say then -- piece of  
5 software than Cellebrite Physical Analyzer?

6 A It's -- it's close to the same.

7 Q It doesn't do the same thing, though. Does  
8 it?

9 A It -- it -- you can. If you know how to use  
10 it, yes.

11 Q Does Cellebrite sell Physical Analyzer to  
12 private criminal defense lawyers?

13 A I don't believe so.

14 Q But -- but when you turn out that UFDR  
15 report, you turn it out in a way that it can be  
16 interpreted through the reader?

17 A Correct.

18 Q And you give that to law enforcement who then  
19 gives it to the lawyers?

20 A Correct.

21 Q Okay.

22 So Cellebrite is like all software, something  
23 that is continuing to improve over time?

24 A Yes. The phone technology is constantly  
25 changing.



1           Q     Right.  If the phone changes, the Cellebrite  
2     has to change?

3           A     That's correct.

4           Q     And the phones change all the time?

5           A     That's correct.

6           Q     So Cellebrite keeps getting smarter and  
7     smarter about every previous iteration of a phone?

8           A     Correct.

9           Q     But if it -- if -- if -- if the phone --  
10    either the phone operating system or the phone apps  
11    change, it takes a little bit of time for Cellebrite to  
12    catch up to that?

13          A     As new apps comes out, it takes time for them  
14    to develop the ability to parse that data.

15          Q     So what Physical Analyzer does is, it takes  
16    that zeros and ones file that you have.  And it -- and  
17    it takes everything it can interpret from that document  
18    and turns it into that UFDR file?

19          A     Correct.

20          Q     But you'd agree with me that if -- if it  
21    can't interpret it, it doesn't put it in the UFDR file?

22          A     Correct.

23          Q     So there is a little bit of a difference.  
24    Maybe -- depending on how many apps the person is using  
25    and whether they're apps that Cellebrite understands,

1     there's going to be a difference between what's in the  
2     binary file and what's in the reader?

3           **A**     There is a difference between the binary file  
4     and UFDR.

5           **Q**     Okay.

6                   And it -- Cellebrite can interpret a lot of  
7     data?

8           **A**     Yes.

9           **Q**     Not everything, but a lot?

10          **A**     Yes.

11          **Q**     And it can interpret a lot in 2020?

12          **A**     Yes.

13          **Q**     But it can interpret more today?

14          **A**     Newer file -- newer apps, yes.

15          **Q**     Okay.

16                   So turning to how you actually get the  
17     assignment to -- to -- to extract a file, you don't do  
18     it the same way every single time because the scope of  
19     the search may be different.

20          **A**     My process is pretty much the same for all  
21     devices.

22          **Q**     But sometimes you're limited in what you're  
23     allowed to take off of the devices; is that true?

24          **A**     Sometimes I am limited. However, the way --  
25     the way the process works is, I can't just go in and

1 grab the zeros and ones. Because I don't know what  
2 they mean. So I have to grab everything.

3 Q Uh-huh.

4 A And then I import that into Physical  
5 Analyzer. Now what I output from Physical Analyzer may  
6 vary.

7 Q Uh-huh.

8 A But that's the only step in the process that  
9 would change.

10 Q Okay.

11 A And it's very rare.

12 Q Got it. So what -- if I could restate what  
13 you're saying, I think what you're saying is it never  
14 changes how you do the binary file extraction?

15 A Correct.

16 Q Because you're always trying to capture the  
17 entire thing when you do that binary extraction?

18 A Correct.

19 Q Okay.

20 And you didn't put any limitations on the  
21 binary extraction for this phone?

22 A Did not.

23 Q You testified on direct that you took the  
24 phone, you received the phone out of evidence on the  
25 13th?

1           **A**     On the 12th.

2           **Q**     On -- on the -- and you performed your  
3 extract- --

4           **A**     I performed the extraction.

5           **Q**     I'm sorry. Yes.

6                    You received it out of evidence on the 12th.  
7 And you --

8           **A**     I received it on the 12th, began the binary  
9 extraction, which completed on the 12th. And I pulled  
10 it into Cellebrite Physical Analyzer on the 13th and  
11 exported my report on the 13th.

12          **Q**     And then what did you do with the phone?

13          **A**     And then I placed the phone back in evidence.

14          **Q**     Do you make any notes on the phone?

15          **A**     I place a sticker on the phone, stating to  
16 retain it, and it's needed for evidence.

17          **Q**     Did you make that note anywhere else?

18          **A**     Also on the report file that I provide to the  
19 investigators.

20          **Q**     Is that a physical file or an electronic file  
21 that you provide to them?

22          **A**     It's in a physical device. If it'll fit on a  
23 CD, it goes on a CD. If it doesn't, I could put it on  
24 a thumb drive.

25          **Q**     So it would have been in something like this

1 with a thumb drive with a sticky on top saying, "Don't  
2 get rid of that phone"?

3 A In an envelope just like that one. Yes,  
4 ma'am.

5 Q Gotcha.

6 MS. BLAZER: May I approach the evidence?

7 BY MS. BLAZER:

8 Q All right.

9 So I'm turning to State's Exhibit 68, which  
10 is your call log report. And you testified earlier  
11 that you have call data in this report that -- in  
12 your -- in your big report that relates to all the  
13 calls from the phone, right?

14 A Right.

15 Q And what -- these exhibits represent  
16 summaries of only that information you were asked to  
17 extract for the purposes of trial?

18 A Correct.

19 Q Which is just they give you a parameter, they  
20 say we want just the -- just the calls between these  
21 two people?

22 A That is correct.

23 Q And they can do that for two people, 10  
24 people. As many people as you have calls on a phone,  
25 they can do that?

1           **A**     Correct. With Cellebrite Reader, that's  
2 possible.

3           **Q**     Uh-huh. Right.

4                   Because you just go in and you filter it and  
5 you say this is what I want, and it -- it can spit out  
6 an extraction report that's a PDF or an Excel file or  
7 something like that?

8           **A**     Correct.

9           **Q**     Okay.

10                   And you testified earlier that in this  
11 extraction report that is Exhibit 68, there are 127  
12 calls, correct?

13          **A**     Correct.

14          **Q**     But there were more calls than that that day?

15          **A**     There were.

16          **Q**     There were 206 total calls that day.

17          **A**     That sounds about right.

18          **Q**     Okay. You also testified that there's data  
19 in the report to suggest that some of those calls,  
20 those earliest calls in the morning, that you -- that  
21 the calls at 8:53, 8:55, 9:03 and 9:03 were deleted?

22          **A**     Correct.

23          **Q**     And there -- in fact, there were more than  
24 just those calls that were deleted. There were a few  
25 other calls. They're just not between this number and

1 the number you were asked to search for?

2 A Correct. I believe there were eight or nine  
3 altogether.

4 Q Okay.

5 So some of those calls were -- the call --  
6 the calls here are just the ones that were deleted  
7 between the defendant and Frank Simmons?

8 A Correct.

9 Q But there were other calls deleted to people  
10 named Rachel Simmons, and Mike, Nick, and Chuck, and  
11 other people?

12 A That were recovered, yes.

13 Q Uh huh. Okay.

14 And just to be clear, the calls that were  
15 deleted, the last call that appears to have been  
16 deleted -- was deleted, it was a call that happened at  
17 9:03 a.m.

18 A Correct.

19 Q Okay.

20 And the report does not actually tell you the  
21 mechanism by which they were deleted?

22 A That is also correct.

23 Q And you'd agree with me that apps on phones  
24 regularly flag certain no longer useful information for  
25 deletion?

1           **A**     Correct.

2           **Q**     And that's something that happens in what you  
3 would call a background process?

4           **A**     Yes.

5           **Q**     Right. Which means that it's happening while  
6 I'm not even touching my phone. My phone is sitting  
7 over on that desk over there. And for all I know, an  
8 app is trying to free up memory and is saying, "I don't  
9 need this stuff from yesterday or this morning anymore,  
10 so I'm going to delete it"?

11          **A**     It'll do that with background data, not with  
12 call logs.

13          **Q**     Okay.

14                 But calls do fall off of the call log  
15 eventually?

16          **A**     Eventually.

17          **Q**     Uh-huh.

18          **A**     Once it reaches a limit, which on an iPhone I  
19 believe is about 10,000.

20          **Q**     Okay.

21                 Are you confident that was the limit on an  
22 iPhone XR in 2020?

23          **A**     No. I cannot say for certain.

24          **Q**     Okay.

25                 So it was deleted, but you found it.



1 Explain -- you went into that a little bit for the jury  
2 on direct. But if you could just explain that a little  
3 bit better. Because I think people think you delete  
4 something and it's gone forever.

5 A Right.

6 Q But it's not necessarily.

7 A So the way it works is when -- when phone  
8 calls are deleted, especially in mass, there's nothing  
9 on this phone prior to February 8, even though there  
10 are many text messages prior to February 8. So the  
11 recovered phone logs that were deleted, have not been  
12 erased yet. When you mark, these phone calls for  
13 deletion in mass, they're all mark to be erased. But  
14 the way the phone works is, it doesn't actually get  
15 around to erasing them until it's done a process called  
16 garbage collection.

17 When a phone is stored on an iPhone, it's  
18 stored in different sizes. So you have blocks, pages  
19 and cells. A block would be kind of like binder. And  
20 a page would be a page in that binder. And the cells  
21 would be what's written on that page. iPhones can only  
22 delete blocks. They can't delete pages.

23 So with phone calls, they're stored in pages.  
24 So when they're deleted, it tries to arrange it so that  
25 it can get -- if there's 14 erased calls in here and

1     then 14 that aren't, it's going to try to move the 14  
2     that aren't into another block, try to consolidate that  
3     one block with nothing but good files so that it can  
4     erase this block. So in that case, it will erase most  
5     of the files. But then there's a couple of pages that  
6     it can't move because it still has data in it. So all  
7     the erased files in that block will be recovered.

8             And so if I understood part of what you said  
9     a few minutes ago, you said something about they're not  
10    being call data before the eighth on this -- in the --  
11    in the phone dump that you received. And so do I  
12    understand your -- you to say that your explanation for  
13    that is that likely a bunch of calls from the seventh,  
14    sixth, fifth, fourth, whatever, were intentionally  
15    deleted?

16            A     Correct.

17            Q     Okay.

18             But those are -- those are for days prior to  
19    the eighth. Your -- your belief is that those were  
20    intentionally deleted, and that's why there is no  
21    recoverable data?

22            A     Correct.

23            Q     Okay.

24             Turning to your testimony about Exhibit 71,  
25    the GPS records. I just want to talk generally about

1 location data. And then we'll talk specifically about  
2 Exhibit 71.

3 So you testified on direct that phones use  
4 and collect location data constantly? Yeah?

5 A For most part, yeah.

6 Q Yeah. And it comes in lots of different  
7 forms, right?

8 A It all comes through Location Services. But  
9 it can be requested by multiple apps.

10 Q But it also comes from different sources.  
11 It's -- it's not just GPS?

12 A Right. So there's GPS and cell towers and  
13 Wi-Fi.

14 Q Uh-huh.

15 So those would be the three primary  
16 mechanisms that a location would be logged in a phone.

17 A It's the three main methods for determining a  
18 location.

19 Q I see. But you also, I think, when I was --  
20 and you correct me if I'm misunderstanding it. But  
21 when I was going through this massive 87,000-record  
22 database that you sent me, there's -- there's locations  
23 that are -- that appear to be searches from Google  
24 Maps, or from some other mapping device. What -- what  
25 category would you put those in as location data?

1 Because they're logged in your report as location data.

2 A I'd have to see which entries you're talking  
3 about.

4 Q Okay.

5 So if I saw location data that would  
6 reflect -- reflected addresses in Mount Pleasant that  
7 appear to be searches in Google Maps, you don't  
8 consider that to be the same kind of location data,  
9 even though Cellebrite tags it as location data?

10 A I'm not sure I understand the question.  
11 Well, so if you're asking me if somebody puts an  
12 address into Google Maps to search for it, and it's  
13 recorded in Location Services, that's because it  
14 actually pulled up through Google Maps and showed them  
15 the map.

16 Q Okay.

17 A Yes.

18 Q Okay.

19 That's exact- -- you did understand my  
20 question, and you answered it.

21 A Okay. Yeah.

22 Q Yeah. Okay.

23 So GPS, Wi-Fi, cell tower, those are the  
24 three sources?

25 A The three main ones. Yes, ma'am.

1           Q     Okay.

2                     And so there's at 87,586 timeline activities  
3 in your report for this phone, correct?

4           A     In total?

5           Q     Yes.

6           A     87,586. Yes.

7           Q     Okay.

8                     And explain -- because I just started talking  
9 about timeline activities. Explain what I mean when I  
10 say "timeline activities."

11          A     So with Cellebrite, with Physical Analyzer,  
12 and Cellebrite Reader, it takes all of the data that  
13 had split into categories, text messages, phone calls,  
14 pictures, all that stuff. And it puts it all into one  
15 report in chronological order. So you'll see  
16 everything that happened on device as long as it has a  
17 timestamp in chronological order.

18          Q     So if you had been asked to, you could have  
19 generated a report that instead of sorting out  
20 locations, and you know, messages, could have simply  
21 put in chronological order everything that happened on  
22 this phone on February 8?

23          A     Correct.

24          Q     Okay.

25                     So -- but today, the state asked you through

1 Exhibit 71 to focus your attention on the GPS records?

2 A For that report -- for that -- for that  
3 report, right. Right.

4 Q For the locations --

5 A Right.

6 Q The locations they asked you to focus on were  
7 GPS locations only?

8 A Yes. I -- I took the report that I provided  
9 to the investigator and solicitor's office, which was  
10 eventually provided to you?

11 Q Yes.

12 A And I just narrowed it down from that one  
13 report.

14 Q Right. Right.

15 And so you went through and you provided a  
16 total of six locations. And each of those has a time  
17 associated with it?

18 A Correct.

19 Q And then it also -- each of those also has an  
20 end time associated with it, correct?

21 A Correct.

22 Q And would it be fair to say that for each of  
23 those six locations that you testified to on direct,  
24 they last between one and about 20 seconds?

25 A Correct.

1           Q     So these are not continuous representations  
2 of the phone's location?

3           A     These records, no.

4           Q     They're -- they're more pinpoint -- pinpoint  
5 moments in time?

6           A     Correct.

7           Q     And they are extremely accurate as to  
8 location?

9           A     Within five meters, yes.

10          Q     Right. Much more accurate as to location  
11 than cell tower data?

12          A     Much.

13          Q     But the cell tower data does exist on the  
14 phone. Some cell tower data does exist on the phone?

15          A     Correct.

16          Q     You just weren't asked to provide that?

17          A     I -- I'm not one that deals with cell towers.

18          Q     Right. But I'm talking -- you weren't asked  
19 to extract it out of this phone?

20          A     I'm sorry?

21          Q     You were not asked to extract any of the cell  
22 tower data that existed in this phone for the purposes  
23 of a location report?

24          A     So cell tower data that you're referring to,  
25 I believe, correct me if I'm wrong, it's not actually

1 in the phone. It's with the provider. You have to  
2 send a search warrant to the cell phone provider to get  
3 the cell tower data.

4 Q If you look in your report, do you --

5 A Uh-huh.

6 Q Do you have a -- do you have an ability to  
7 just look at the locations, the location sources in  
8 your report for the eighth?

9 A So there are some locations that were derived  
10 using cell tower data?

11 Q Yes.

12 A Yes.

13 Q That -- that's what I'm getting at.

14 A Okay. Yes.

15 Q So -- and that's because Apple's API gathered  
16 that information from one after another, and held onto  
17 it?

18 A Correct.

19 Q And we have no idea why it chose to hold on  
20 to that information at that time?

21 A Correct.

22 Q But we know that it held onto it?

23 A Yes.

24 Q You weren't asked to -- to show -- to extract  
25 that for this purpose, because it is not pinpoint



1 accurate?

2 A Not for that report; it is on the Cellebrite  
3 Reader report.

4 Q Right. It -- it -- it's just -- .

5 A Right.

6 Q -- not in any of the --

7 A It's not in that report.

8 Q -- exhibits that are before the jury?

9 A It's not in that snippet. Correct.

10 Q Right.

11 And you testified that -- and I just want to  
12 make sure this is clear, that the phone does not store  
13 all of the location data that it receives or transmits?

14 A Correct.

15 Q And you have -- you and all the really clever  
16 people at Cellebrite have tried everything you can to  
17 figure out what's the rhyme or reason to how it stores  
18 it, and you don't know?

19 A Correct.

20 Q And let's talk a little bit more about that  
21 Location Services app. You were asked on direct if you  
22 could turn it on and off, and you can?

23 A You can, yes.

24 Q And you don't have a device event that shows  
25 that that was done here?

1           **A**     Correct.

2           **Q**     And you don't have a device event that it  
3 shows that the Airplane Mode was turned off or on?

4           **A**     So Airplane Mode is logged. And it showed  
5 that it was off.

6           **Q**     Right. So Airplane Mode is off, which means  
7 that Airplane Mode wouldn't be the reason that it's not  
8 getting location data?

9           **A**     Correct.

10          **Q**     Okay. Double negative. But I think we got  
11 each other, right?

12                   And the location -- once the location data is  
13 received by the phone, and it goes into that location  
14 data API storage location, that's not something that's  
15 readily available to the user of the phone --

16          **A**     Correct.

17          **Q**     -- right?

18                   So I can turn off whether my phone is telling  
19 me where I am or telling anybody else where I am. But  
20 I can't turn off how it collects that information  
21 once -- if it's on?

22          **A**     If it's on, correct.

23          **Q**     Right. Okay.

24                   So if we have evidence, maybe not GPS  
25 evidence, but evidence throughout the day, that there's

1     some sort of activity going into the Location Services  
2     API, that suggests to us that it's not off?

3           A     When those locations were recorded --

4           Q     Right.

5           A     -- yes.

6           Q     Okay.

7                     And so -- and also, to be clear, if there is  
8     an absence of location data, it -- it -- it can't be  
9     because the user deleted it. Because that's not  
10    something that the end user has the ability to do  
11    immediately in -- in pick-apart format.

12          A     Not -- not -- yeah. You'd have to do it all  
13    at once.

14          Q     Right.

15          A     All or nothing.

16          Q     So it'd be -- if we -- if the user had tried  
17    to get rid cover their tracks and get rid of location  
18    data, they'd have gotten rid of everything?

19          A     Correct.

20          Q     Okay.

21                     So I have an iPhone. My son has an iPhone.  
22    My husband has an iPhone. We have an app called Life  
23    360. Are you familiar with that one?

24          A     A little bit, yes.

25          Q     Is that one that Cellebrite can interpret?

1           **A**     Yes.

2           **Q**     And I have that because back in the day, we  
3           called it "low jack." I went low jack on my  
4           17-year-old, right? And so I turned that thing on.  
5           And he knows he has to have it on. And my husband has  
6           to have it on, so that I can watch where they go all  
7           the time. They can watch where I go. Right?

8           **A**     Correct.

9           **Q**     And so tell -- tell the jury how that -- how  
10          that location data would feed from or to the API.

11          **A**     I -- I -- actually, I'm not that familiar  
12          with 360.

13          **Q**     Okay.

14          **A**     I don't know how it works. But essentially,  
15          it would have to reach out to Location Services to get  
16          the data and bring it back. I don't know how it does  
17          it for the other phones.

18          **Q**     Uh-huh.

19          **A**     I imagined they would -- those phones would  
20          reach out to their Location Services --

21          **Q**     Yeah.

22          **A**     -- and it will be stored on their phones --

23          **Q**     Uh-huh.

24          **A**     -- and then probably sent back.

25          **Q**     And that's GPS location data. Because that's

1     how you watch my kid drive down Highway 17 or --

2           **A**     So when -- when apps reach out to Location  
3     Services, Location Services can do it via -- there --  
4     there's actually four altogether. There's GPS, which  
5     is the best. You have cell towers. You have Wi-Fi  
6     hotspots. There's also some Bluetooth beacons for like  
7     in big cities that have tunnels, they have Bluetooth  
8     beacons.

9           **Q**     Uh-huh.

10          **A**     So it will try to reach out to the best one  
11     first, which is GPS. If it can't get GPS, it will try  
12     something else. And it will do that. So depending on  
13     which service was available at the time, is what it  
14     would have used to track that location.

15          **Q**     Makes perfect sense. Thank you.

16                 So we talked a little bit about the accuracy  
17     of GPS versus the accuracy of cell phone. And you  
18     talked about that -- I'm sorry. Cell tower. And you  
19     talked about it a little bit on direct. And I want to  
20     be clear that there's a difference between accuracy and  
21     precision.

22                 So if we are trying to be accurate about a  
23     long timeline, we might want more information that's  
24     less precise. Is that fair to say?

25                 **MS. FRIES:** Objection. Argumentative.

1                   **THE COURT:** Basis?

2                   **MS. FRIES:** Argumentative.

3                   **THE COURT:** Please restate the question.

4                   **BY MS. BLAZER:**

5                   **Q**     All right.

6                             GPS is more accurate than cell tower data.

7                   **A**     Yes.

8                   **Q**     But that depends on what we want to know,  
9                             right?

10                  **A**     No.

11                  **Q**     Well, if we want to know where someone was  
12                             throughout a long period of time and we have access to  
13                             some -- and something exists that constantly tracks  
14                             that, that would actually be more accurate as to the  
15                             time. Wouldn't it?

16                  **A**     I don't see how you can take something less  
17                             defined and make it more accurate.

18                  **Q**     Well, it wouldn't be more -- it wouldn't be  
19                             as precise. I agree with you. But if you're trying to  
20                             tell the story of a timeline, something that starts --

21                             **MS. FRIES:** Objection. Argumentative.

22                             **THE COURT:** Basis? I haven't heard the whole  
23                             question.

24                             Complete the question.

25                   **BY MS. BLAZER:**

1           **Q**     If you're trying to tell the story of  
2 something that starts around 1:25 and ends around 3:03,  
3 would you rather have two data points or 25? Or 50?

4           **MS. FRIES:** Objection. Hypothetical.

5           **THE COURT:** Basis? I'm sorry?

6           **MS. FRIES:** Hypothetical.

7           **THE COURT:** He's an expert. They can answer  
8 hypotheticals --

9           **THE WITNESS:** I would agree --

10          **THE COURT:** -- if it's within his knowledge.

11          **THE WITNESS:** Yes. I would agree that having  
12 more data points is better. But then again, you  
13 have to consider the source of the data. I'd  
14 rather have two very accurate points than  
15 something -- you know, 30 that are within three  
16 quarters of a square mile.

17 **BY MS. BLAZER:**

18          **Q**     Okay.

19                 But you'd agree with me that -- well, I don't  
20 know. Because when we start talking square miles, then  
21 my brain starts to break. Is [REDACTED] Road  
22 within three quarters of a square mile of [REDACTED]  
23 Ave?

24          **MS. FRIES:** Objection.

25          **THE COURT:** Basis.

1           **MS. FRIES:** Lack of knowledge. She's asking  
2 distance, locations that he doesn't know about.  
3 He doesn't have a map.

4           **THE COURT:** To the extent that he can answer  
5 the question, and it's within his knowledge, and  
6 you can establish the foundation for the question,  
7 it can be answered.

8           Sir, do you understand the question?

9           **THE WITNESS:** I -- I'd like it repeated,  
10 ma'am.

11          **THE COURT:** Please repeat the question.

12          **MS. BLAZER:** Sure. And I actually will try  
13 to lay a better foundation for that, Judge.

14          **THE COURT:** Uh-huh.

15 **BY MS. BLAZER:**

16          **Q** Are you a resident of Charleston County?

17          **A** I am.

18          **Q** And do you regularly engage with maps that  
19 come out of Cellebrite of locations?

20          **A** I do.

21          **Q** And so are you generally familiar with the  
22 geography of Charleston County?

23          **A** I am.

24          **Q** And you appear to have some knowledge of how  
25 cell tower data works and -- and -- and what level of



1 accuracy it has; is that right?

2 A Correct.

3 Q And you -- what you've told the jury is that  
4 that's within three quarters of a square mile, a  
5 radius; is that right?

6 A That -- that's the best cell towers we'll  
7 get.

8 Q Okay.

9 A You can actually have several square miles.

10 Q Okay.

11 But are you -- so with that fount of  
12 knowledge, are you able to tell the jury whether [REDACTED]  
13 [REDACTED] Road in Mount Pleasant is -- is within  
14 three quarters of a square mile of [REDACTED] Ave in  
15 West Ashley?

16 A It -- it's several miles away.

17 MS. BLAZER: Okay.

18 Beg the Court's indulgence just a moment.

19 I would like to -- may I approach the  
20 witness, Your Honor?

21 BY MS. BLAZER:

22 Q I'd like to take a look -- do you have a copy  
23 of your --

24 A I do.

25 Q So if I have this in my hand, it's okay with

1     you?

2           **A**     Have at it.

3           **Q**     So in your timeline that you drafted, you  
4     have -- and actually, I need to approach my desk real  
5     quick just to check one piece of data.

6                   On the 12 o'clock to one o'clock hour, you  
7     indicate travel from 12:01 to 12:24, correct?

8           **A**     Correct.

9           **Q**     And the start point of that travel is not  
10    listed here?

11          **A**     It's not. But it is in the Cellebrite  
12    report.

13          **Q**     It is. And it's somewhere on Highway 41 in  
14    Mount Pleasant; isn't that right?

15          **A**     I can check real quick, please.

16          **Q**     Okay.

17          **A**     (Reviews document.)

18                   I apologize. I'm almost there.

19          **Q**     No. Take your time, sir.

20          **A**     So at 12:01 and 49 seconds p.m. on  
21    February 8, 2020, that traveling starts in the area of  
22    1055 Highway 41 in Mount Pleasant, South Carolina.

23          **Q**     Okay.

24                   But you don't show on your timeline the  
25    travel between Wood Avenue and Highway 41, do you?

1           **A**     I'm sorry. Question again?

2           **Q**     So that that Highway 41 address that you made  
3 reference to at 12 o'clock, if you look at your  
4 timeline that you made that you were talking about  
5 earlier today, there's nowhere on this report that you  
6 show her traveling from Wood Avenue to Highway 41; is  
7 that right?

8           **A**     Not directly, no.

9           **Q**     Okay.

10                   And that's because you don't know when that  
11 happened?

12           **A**     Correct.

13           **Q**     And then you testified that -- actually, you  
14 were asked if you, by virtue of -- of a GPS record,  
15 that's No. 6 contained on State's Exhibit 71, 3:03  
16 p.m., that pings at Rifle Range Road, you were asked if  
17 you know that that's when she arrived at Rifle Range  
18 Road. And you said yes.

19           **A**     I don't know if that's when she arrived. But  
20 that's when it showed her there.

21           **Q**     Right. That's exactly right. So --

22           **A**     Correct.

23           **Q**     -- you don't know when she arrived? You just  
24 know that the first time the phone shows her there,  
25 again, is at 3:03?

1           **A**     That's correct.

2           **Q**     Okay.

3                   So circling back to what we talked about a  
4     few minutes ago. We're pretty concerned here today  
5     about about a two-hour window on February 8, 2008  
6     [sic]; is that fair to say?

7           **A**     I agree.

8           **Q**     And in that two-hour window, you have three  
9     data points, is that fair to say, for three GPS data  
10    points that you're relying on?

11          **A**     Can you define the two-hour window?

12          **Q**     Well, let's say between 1:15 and 3:15 on  
13    February 8.

14          **A**     (Reviews document.)

15                   I have 11 data points between those two those  
16    times -- during those two hours.

17          **Q**     Okay.

18                   And -- but some of those data points aren't  
19    provided as part of this report because they're sort of  
20    redundant. Is that fair to say?

21          **A**     Yes. Correct.

22          **Q**     Because they basically all happened within  
23    seconds of each other?

24          **A**     Correct.

25          **Q**     So to be fair, we have a cluster of events at

1 1:15.

2 A Correct.

3 Q A cluster of location events at 1:24?

4 A Correct.

5 Q And a location event at 3:03?

6 A Correct.

7 Q Okay.

8 So would you not -- would you disagree with  
9 me that if we have other location information from  
10 other sources, like cell towers, that it could fill in  
11 those gaps, even if not as accurately?

12 A Correct. But you're not gonna get that data  
13 from the cell phone.

14 Q Right. You're not gonna get that data from  
15 the cell phone. Where do you get that data from?

16 A Cell towers from the provider -- service  
17 provider.

18 Q How's that done?

19 A You have to send a search warrant or subpoena  
20 to the provider.

21 Q Is that something that regularly happens?

22 A Not by me.

23 Q But I mean --

24 A I only do the devices.

25 Q Right. But you seem to know a lot about it.

1 Is that something that you know to regularly happen?

2 A I know it has happened. I've been asked  
3 to --

4 MS. FRIES: Objection. Asked and answered.

5 THE COURT: Overruled.

6 BY MS. BLAZER:

7 Q I'm sorry?

8 A I've been asked to interpret cell tower data  
9 for others, yes.

10 Q Okay.

11 You have been asked to interpret it?

12 A Yes.

13 Q Because you were trying to interpret it?

14 A Not -- not the cell tower data locations.  
15 Geolocation, I don't do at all.

16 Q Okay.

17 A Geofencing, I don't do at all.

18 Q Uh-huh.

19 A But cell tower data contains other things  
20 like -- and it can contain -- actually I'm getting  
21 confused. That cell tower -- if you get a report from  
22 say Apple --

23 Q Uh-huh.

24 A -- they're very notorious for encrypting  
25 everything they send you. And it's very difficult to

1 decrypt it.

2 Q Uh-huh.

3 A So I often will decrypt all the data for  
4 them --

5 Q Okay.

6 A -- so that they can read it.

7 Q Okay.

8 To get at things like, among other things,  
9 cell tower information?

10 A Yes.

11 Q Okay.

12 And so you have some familiarity with that?

13 A Yes.

14 Q You testified that you're aware of the  
15 accuracy of cell tower data. How did you become aware  
16 of that accuracy?

17 A Through training.

18 Q What training was that?

19 A Cellebrite.

20 Q Cellebrite trains you on the accuracy of cell  
21 tower data?

22 A It's part of the training, yes.

23 Q Okay.

24 As part of your work assisting other members  
25 of law enforcement, have you ever been asked to look at

1 provider call logs or records of any kind from -- from  
2 an --

3 MS. FRIES: Objection.

4 THE COURT: Basis.

5 MS. FRIES: Outside of the scope of direct.

6 THE COURT: Mr. Foreman, ladies and  
7 gentlemen, I have a brief matter of law to take up  
8 with counsel. During the break, please do not  
9 discuss the case. And please leave your notepads  
10 in your seats.

11 (The jury exits the courtroom at 11:59 a.m.)

12 THE COURT: You may be seated.

13 Are you going into these Verizon records?

14 MS. BLAZER: I am seeking to lay a foundation  
15 to determine --

16 THE COURT: I thought we have already  
17 determined that that would be heard in camera.

18 MS. BLAZER: Yeah. And I was going to make  
19 the matter of law before I did it.

20 THE COURT: No, ma'am. You don't ask any  
21 questions about it --

22 MS. BLAZER: Okay.

23 THE COURT: -- until we do it in camera.

24 Now my question is: What was the basis of  
25 your objection, Ms. Fries?



1           **MS. FRIES:** It was --

2           **THE COURT:** Because you can't lay a -- he's  
3           been qualified. The area that he has been  
4           qualified in as an expert is digital forensics  
5           examiner. That's it. So if you have an expert on  
6           cell phone towers, you need to call him. But  
7           you're not gonna question. He doesn't -- you  
8           haven't established a foundation to question him  
9           about cell towers.

10          **MS. BLAZER:** Well, and that's actually --

11          **THE COURT:** Cellebrite training isn't  
12          enough --

13          **MS. BLAZER:** And -- and -- and --

14          **THE COURT:** -- to have him render any expert  
15          opinions about cell towers.

16          **MS. BLAZER:** And I was asking all the  
17          questions I was to determine if we could do that.

18          **THE COURT:** And I've listened very intently.  
19          And he can't be qualified in that area.

20          **MS. BLAZER:** I understand. Thank you,  
21          Your Honor.

22          **THE COURT:** You're welcome.

23                 I assume you have an expert in that area.  
24                 And I assume that's where you've gotten the trend  
25                 of the questions from. But if you want to ask

1           somebody who is an expert in geofencing and cell  
2           towers, you need to call him.

3           He's not -- he was not qualified as an  
4           expert. And you can't dovetail that into his  
5           expertise and ask him questions that are outside  
6           of his expertise. And him having taken training  
7           in Cellebrite on cell towers does not qualify him  
8           to render opinions about it. You can go and ask  
9           the questions you want to ask so we can preserve  
10          it for proffer.

11          **MS. BLAZER:** Thank you, Your Honor.

12          **THE COURT:** You're welcome.

13                   **(PROFFER) CROSS-EXAMINATION**

14          **BY MS. BLAZER:**

15           **Q**     Sergeant, have you ever had occasion in  
16           support of other law enforcement functions to review  
17           cell provider records?

18           **A**     On a limited basis.

19           **Q**     So have you ever looked at a cell provider's  
20           call log -- call record?

21           **A**     I have.

22           **MS. BLAZER:** Okay.

23                   Your Honor, may I approach?

24           **THE COURT:** And that begs another question.  
25           Because you were supposed to look at these call

1 logs over the evening, Ms. Savas and determine if,  
2 in fact, the records from Verizon match up to the  
3 data, those being the call logs that are listed in  
4 No -- in No. 127, if they reflect the same calls.  
5 And if they do, you need to refine your questions  
6 to that exhibit. Because it's the same  
7 information.

8 Yes, ma'am.

9 MS. SAVAS: Oh, sorry.

10 THE COURT: Uh-huh.

11 MS. SAVAS: Yes, Your Honor. This scope of  
12 the -- what I'm -- she hasn't shown me  
13 specifically what she wants. I'm assuming it's  
14 this entire thing. Her report goes all the way to  
15 prior dates that's not inclusive.

16 THE COURT: There are only a few. There are  
17 two --

18 MS. SAVAS: The ones --

19 THE COURT: There are a few calls from 2/6, a  
20 few calls from 2/7. But the bulk of them are from  
21 2/8.

22 MS. SAVAS: And Judge, the -- these are very  
23 vague. It's unclear the -- what the origination,  
24 destination, if she's tried to compare it to the  
25 GPS locations from him.

1           Again, it's just -- we're not able to  
2           substantiate -- I don't know --

3           **THE COURT:** It says the time --

4           **MS. SAVAS:** -- what this is besides a phone  
5           bill. I don't know --

6           **THE COURT:** It goes without saying that if  
7           you have a call log from Verizon that these phone  
8           calls would have originated from the phone that  
9           they provided it for. It clearly has the time and  
10          the phone number and the dates. I -- it's not  
11          particularly complex.

12          You were supposed to look at this and -- and  
13          compare it against the call log that Mr. McManigal  
14          downloaded from Ms. Steward's telephone, to see if  
15          the dates match. It's really about that cut and  
16          dry. Did you do that?

17          **MS. SAVAS:** Yes.

18          **THE COURT:** Okay.

19          And do the dates match?

20          **MS. SAVAS:** There are some, yes, Judge.

21          **THE COURT:** Okay.

22          So I'm trying to figure out for what purpose  
23          are you seeking to -- to -- first of all, you'd  
24          have to establish that any calls on 2/6 are  
25          relevant.

1           **MS. BLAZER:** And I'm not seeking to ask  
2           questions about those.

3           **THE COURT:** And so what would be the purpose  
4           of this line of questioning?

5           **MS. BLAZER:** I would be seeking to ask  
6           Sergeant McManigal about calls on page 41 from  
7           1:43 p.m. to 2:26 p.m., which is --

8           **THE COURT:** Say that time frame again for me.

9           **MS. BLAZER:** 1:43, Your Honor --

10          **THE COURT:** Uh-huh.

11          **MS. BLAZER:** -- to 2:26. That's a total of  
12          three calls.

13          **THE COURT:** And those are not on his list  
14          that he downloaded from?

15          **MS. BLAZER:** No, they are on his list. As  
16          far as I know, I believe they are.

17          **THE COURT:** Do you have your -- the exhibit  
18          up there with you, Sergeant? The call logs  
19          detail?

20          **THE WITNESS:** I have on my computer.

21          **MS. BLAZER:** I can provide it.

22          **THE COURT:** Well, we can provide you with the  
23          actual hard copy.

24          **THE WITNESS:** Okay. I -- I have this.

25          **THE COURT:** Okay.

1           And can you look and see if you have any  
2           calls on that list from February 8 that originate  
3           at 1:43, 2:05, and 2:26?

4           **THE WITNESS:** 1:43 and -- what were the other  
5           ones, Your Honor?

6           **THE COURT:** 2:05.

7           **THE WITNESS:** 2:05.

8           **THE COURT:** And 2:26.

9           **THE WITNESS:** And 2:26. The closest one I  
10          have, Your Honor, is 2:04 and 59 seconds.

11          **THE COURT:** And these numbers, he was only  
12          asked to look at numbers with Mr. Simmons. He was  
13          not asked to download any numbers from anybody  
14          else?

15          **MS. BLAZER:** That's correct. Well, no,  
16          actually, let me -- let me be clear. It's correct  
17          that he testified only as to call logs extracted  
18          with Mr. Simmons --

19          **THE COURT:** He testified that that's all his  
20          focus was. And that's what he was asked to look  
21          at. And that's what he focused on.

22          **MS. BLAZER:** But his total report, the total  
23          extraction report --

24          **THE COURT:** That is correct. He said he  
25          contained a whole bunch of other numbers. But he

1           didn't evaluate them and he didn't look at them.

2           **MS. BLAZER:** Okay.

3           **THE COURT:** And that's his testimony. So I'm  
4           trying to figure out what is the relevance to a  
5           call to 704-579-7024, which is Charlotte, and  
6           843-922-1131, which is Harleysville, and 557-8250,  
7           and that's Mr. Simmons's phone number, correct?

8           **MS. BLAZER:** Yes. Yes, ma'am.

9           **THE COURT:** So conceivably, that could be  
10          relevant. And that is already in the call detail.  
11          I'm trying to figure out what's the relevance of  
12          these other two numbers?

13          **MS. BLAZER:** So what's relevant is that  
14          between 1:43 and 2:26, Verizon, whether this is  
15          accurate or not --

16          **THE COURT:** He didn't say the numbers didn't  
17          come in and the calls weren't made then. He said  
18          the scope of his evaluation dealt with only calls  
19          to Mr. Simmons.

20          **MS. BLAZER:** Right.

21          **THE COURT:** He wasn't asked to look at these  
22          other phone calls. They're too voluminous,  
23          really, frankly. And they would have no relevance  
24          what state was seeking to find out?

25          **MS. BLAZER:** I would submit, Your Honor, that

1           because these three calls reflect origination,  
2           location information stored by Verizon, they are  
3           relevant. Because it's --

4           **THE COURT:** No, ma'am. You'd have to elicit  
5           that through another witness who would have that  
6           geofencing expertise. He does not.

7           So you gonna have to keep it within what he  
8           downloaded. And what he is able to testify to.  
9           He's not able to testify to that information.

10          **MS. BLAZER:** And -- and --

11          **THE COURT:** And I understand that you-all may  
12          not want to call a witness because you want to  
13          preserve last argument. And that's laudable. But  
14          I can't allow you to mislead the jury with a  
15          witness who does not have the expertise to testify  
16          to the information you're seeking to elicit. If  
17          you want to ask him questions, you need to keep it  
18          within his expertise. He's already said he's not  
19          a geofencing expert.

20          **MS. BLAZER:** I -- I understand, Your Honor.  
21          And I was simply --

22          **THE COURT:** And it would mislead the jury to  
23          ask questions of him in his expert capacity --

24          **MS. BLAZER:** And I understand that that's  
25          your ruling and that this is only for the purpose



1           of proffer.

2           **THE COURT:** Uh-huh.

3           **MS. BLAZER:** I -- I -- I respect your ruling.

4           And I understand that it's final. My purpose is  
5           only to elicit that he's -- he's testified just  
6           now that he has reviewed cell provider records  
7           before. And -- and still only as an expert in  
8           digital forensics, he's acknowledged that he has  
9           experience reviewing these records in the past.

10          **THE COURT:** Only for unencoding them --  
11          un- -- what's the word? I forget.

12          **MS. BLAZER:** He said decrypting.

13          **THE COURT:** Decrypting.

14          **MS. BLAZER:** Yes.

15          **THE COURT:** Yeah. It's misleading to lead  
16          the jury -- give the jury the impression that he's  
17          a geofencing expert. He is not.

18          **MS. BLAZER:** I -- I -- I've heard you. I'm  
19          just trying to make my record that I'm trying to  
20          show --

21          **THE COURT:** I'm gonna let you ask the  
22          questions. But again, you can't dovetail another  
23          expert into it. It just -- the rules don't work  
24          that way. So go ahead and ask --

25          **MS. BLAZER:** And -- and I -- I'll -- I'll get

1 I'll be very quick.

2 THE COURT: Go ahead and ask the questions.

3 BY MS. BLAZER:

4 Q Mr. McManigal -- sorry. Sergeant McManigal,  
5 if I present you with what I'm -- I don't have this  
6 marked. Do you want me to mark this is for ID only?

7 THE COURT: Yes. Because it's not coming  
8 into evidence.

9 MS. BLAZER: Right.

10 THE COURT: Uh-huh.

11 MS. BLAZER: May I approach the witness, Your  
12 Honor? I'm --

13 THE COURT: You may.

14 MS. BLAZER: -- sorry.

15 Sergeant, take a minute to flip through what  
16 I've just handed you.

17 THE WITNESS: (Reviews document.)

18 THE COURT: Do you have questions for him?

19 MS. BLAZER: Yeah. I think --

20 THE WITNESS: I'm good.

21 BY MS. BLAZER:

22 Q You're good? Okay. So if you would look at  
23 page 41 -- well, actually, before you look at that,  
24 what do those appear to be?

25 A Call logs.

1           Q     Call Logs to -- from what number?

2           A     (Reviews document.)

3                     Doesn't say from what number. It just has  
4 the account number.

5           Q     Did it --

6           A     Oh, wait. I'm sorry. I'm sorry. It says  
7 Tamethia Brown, 843-568-2765.

8           Q     Is that the same number as the phone that you  
9 downloaded?

10          A     One moment please. 843-568-2765. Yes.

11          Q     Okay.

12          A     Same number.

13          Q     So that would appear to be, then, call log  
14 records for that phone number for the same period of  
15 time that your analysis was completed?

16          A     Correct.

17          Q     And if you turn your attention to page 41.

18          A     Uh-huh.

19          Q     Toward the bottom of the page, there are  
20 calls that begin -- I gave you my copy. (Inaudible).  
21 I don't know what I did with my other one.

22                   **MS. BLAZER:** May I approach the witness,  
23 Your Honor?

24                   **THE COURT:** You may.

25 **BY MS. BLAZER:**

1           Q     All right.

2                     Beginning at 1:43 and going to 2:26 --

3           A     Uh-huh.

4           Q     -- how many calls do you see on the call log  
5     that I provided to you?

6           A     Five calls between 1:43 and 2:26.

7           Q     Okay.

8                     And for (inaudible)?

9           **THE COURT:** I'm sorry. I didn't hear your  
10     answer.

11           **THE WITNESS:** There were five calls between  
12     1:43 and 2:26.

13     **BY MS. BLAZER:**

14           Q     Well, between the end of 2:26. So there's  
15     a -- am I right that there's a call at 1:43, a call at  
16     2:05, and a call at -- the next call is 2:26?

17           A     1:43, 2:05, and then there's three calls at  
18     2:26.

19           Q     Yes, sir.

20           A     Yes.

21           Q     Okay.

22                     So in the 1:43 call, is -- is their  
23     origination location information printed on that bill?

24           A     Yes.

25           Q     And what does that reflect?

1           **A**     North Charleston.

2           **Q**     And the next --

3           **A**     Sorry. That one says Charleston.

4           **Q**     Right.

5                   And then the next call that's at 2:05, what  
6 location does that reflect?

7           **A**     North Charleston.

8           **Q**     And then the next call at 2:26, what location  
9 does that reflect?

10          **A**     Mount Pleasant.

11                   **MS. BLAZER:** Thank you.

12                   May I approach?

13 **BY MS. BLAZER:**

14          **Q**     And those are calls that we account for  
15 rounding errors correlate to calls that you have in  
16 your report?

17          **A**     Try that again.

18          **Q**     Those -- those three calls I just had to look  
19 at, those correlate to calls in your report as long as  
20 we account for the rounding error 22- -- 2559?

21          **A**     I have calls around that time frame, yes.

22          **Q**     Okay. Thank you. That's all I'd seek to  
23 elicit, Your Honor.

24                   **THE COURT:** What's the objection?

25                   **MS. SAVAS:** Your Honor, it would be -- I --

1           the still thinks it's a lack of foundation.  
2           There's no connection to who Tamethia Brown is to  
3           the defendant. Are they now confusing and  
4           misleading the jury to say that Tamethia Brown is  
5           the one using the phone. They have not collected  
6           those dots.

7           They also -- it would be duplicative.  
8           They're asking the same thing. He just testified  
9           there was a phone call around this time, it then  
10          comes in through him. It's more accurate than  
11          this. He did not -- state did not put into  
12          evidence any of these other phone numbers,  
13          984-392-2131 or 704-579-7024. That is not in our  
14          line of questioning on direct. It's still a lack  
15          of foundation to what this document is.

16          They're simply trying to get anyone to read  
17          their piece of paper to circumvent the rules of  
18          evidence, which tells them that they must put a --  
19          lay a foundation through their expert. There's no  
20          custodian of records. Mr. McManigal has testified  
21          he only is trained in Cellebrite. This is not a  
22          Cellebrite GPS location.

23          He has testified that his GPS is far more  
24          accurate. He has testified he has never even  
25          written the warrants. There -- this is

1 information, as he said, that comes through a  
2 service provider. He was asked to extract phone  
3 data specific to his expertise. This is a service  
4 provider record. They need to bring that in  
5 through a service provider expert. A search  
6 warrant was not done. If they have an expert they  
7 need to bring it in and lay that foundation,  
8 rather than trying to force the state to get their  
9 piece of evidence in in order for them to lose  
10 last close. That's what this comes down to.  
11 They're trying to put unsubstantiated lack of  
12 foundation information in as evidence to  
13 circumvent the rules of procedure and evidence.

14 Mr. -- Sergeant McManigal has testified in  
15 depth both in the proffer before where they didn't  
16 bring this up. And now again today and on the  
17 stand in direct and cross-examination for over two  
18 hours -- two and a half hours, about very specific  
19 things. Your Honor, as the Court has indicated,  
20 this would be duplicative, misleading, confusing.  
21 Moreover, it is a lack of authentication for this  
22 exhibit.

23 And 403 relevance, there's no relevance to  
24 why she called different people from -- that's on  
25 this phone bill. And we don't know who Tamethia

1 Brown is. And he can only testify to things  
2 within his scope of knowledge and expertise. And  
3 he did not provide this document, nor was this in  
4 the Cellebrite report.

5 **THE COURT:** For what purpose would you be  
6 seeking to introduce this line of testimony? And  
7 you need to address all -- one, she's correct.  
8 You don't have anybody that can authenticate these  
9 records.

10 **MS. BLAZER:** These -- their -- they were  
11 attended with a certificate.

12 **THE COURT:** Yeah. That -- that -- that may  
13 count for your purposes. But that don't count for  
14 you trying to use them in court.

15 **MS. BLAZER:** I think it does when we are --  
16 when we are asking an expert to -- because experts  
17 can testify as to otherwise --

18 **THE COURT:** Experts can look at other things  
19 and form a basis of their opinion. But they  
20 cannot testify to hearsay. They cannot read  
21 somebody else's results or records into a record.  
22 That's a violation of the rule of hearsay. And  
23 the Supreme Court has spoken on that issue many  
24 times.

25 It usually comes up in medical malpractice



1 cases where another doctor comes in. And then  
2 what they will try to do is have that doctor read  
3 another doctor's records into the record under the  
4 guise of providing an expert opinion. And the  
5 Supreme Court has said not so; it's not an  
6 exception to the hearsay rule. They can say they  
7 reviewed something to form the basis of their  
8 opinion. And as a result of reviewing these  
9 items, that they have formed an opinion. But they  
10 can't state what is in those documents. It's  
11 hearsay. It's not subject to cross-examination.

12 **MS. BLAZER:** And that makes sense, Your  
13 Honor. And I'd be happy to have him elicit only  
14 his opinion based on what, --

15 **THE COURT:** You'd have to establish for me  
16 that it's within the realm of his expertise. And  
17 you have failed to do that.

18 **MS. BLAZER:** I understand, Your Honor.

19 **THE COURT:** And I'm still trying to figure  
20 out, nor have you established for the Court how  
21 it's relevant, for what purpose you're seeking to  
22 elicit the testimony.

23 **MS. BLAZER:** It's relevant because it -- the  
24 state has made location over time an essential  
25 feature of their case. They created this

1           timeline.

2           **THE COURT:** Then you should be able to  
3           cross-examine him based on the documents that they  
4           have elicited within his expertise to challenge  
5           his credibility on that issue. And you have more  
6           than adequate room to do that. Because they have  
7           already indicated that they only asked him to  
8           review certain documents. And you certainly have  
9           a wide breadth and a wide berth and questioning  
10          him about that. If that is in fact what you're  
11          trying to establish. I cannot allow a jury to be  
12          misled about information that is without -- that  
13          is outside of the scope of his expertise.

14                 He's only testified that he -- he reviews  
15          these sometimes,"but not for the purpose for which  
16          you're questioning him. So you have failed to  
17          establish that it's within his expertise such to  
18          elicit an opinion regarding that. And you have  
19          failed to establish that these are business  
20          records within this -- it's -- the exception of  
21          the hearsay rule. You don't have anyone here to  
22          testify that these records were regularly kept,  
23          that they have not been hypothecated, that they're  
24          accurate, such that they would be an exemption to  
25          the hearsay rule.

1           **MS. BLAZER:** I -- I -- I will say they were  
2 submitted with a certificate. And I understand  
3 the Court's ruling.

4           **THE COURT:** Usually when an expert has  
5 records that are outside of that, they have --  
6 it's usually depositions or other documents, sworn  
7 testimony. Sometimes they can rely on treatises  
8 and other learned documents. But you're talking  
9 about a phone bill that you have not -- while you  
10 may have a certificate, that is for your  
11 purpose --

12           **MS. BLAZER:** I -- I -- I --

13           **THE COURT:** -- that they have complied with  
14 whatever subpoena that you have sent to them.

15           **MS. BLAZER:** They have certified under 902  
16 that these --

17           **THE COURT:** Yeah. But that's -- that's --  
18 that's the -- that's for your compliance with your  
19 subpoena. That's because they're required to do  
20 that. So that -- they're certifying, essentially,  
21 that they've sent you what you requested, subject  
22 to being within the scope of the contempt powers  
23 of the court. That's the purpose of that  
24 certification.

25           **MS. BLAZER:** I would only like to note for

1       the record that in recent cases in this  
2       courthouse, the state has sought to introduce  
3       exactly the same records and exactly --

4               **THE COURT:** And I am not -- wasn't the Judge  
5       in those cases. And that's why they're  
6       40-something of us. We've all got different  
7       opinions.

8               **MS. BLAZER:** I don't think it worked. I --  
9       I -- I --

10              **THE COURT:** I don't think -- and only time  
11       stuff like that comes in on a certification is  
12       when everybody agrees.

13              **MS. BLAZER:** And that may well be true.

14              **THE COURT:** And when folks agree, the Court  
15       doesn't have a dog in the fight. But when there's  
16       an objection interposed, the Court has to rule on  
17       it.

18              **MS. BLAZER:** Yes, ma'am. And I understand  
19       your ruling.

20              **THE COURT:** And you cited Rule 902, correct?

21              **MS. BLAZER:** That is, I believe, what --

22              **THE COURT:** That's self-authentication.

23              **MS. BLAZER:** Yes, ma'am.

24              **THE COURT:** And I think these --

25              **MS. BLAZER:** I think -- I actually don't have

1 a copy of the certification.

2 **THE COURT:** So these would not fall within --  
3 these are not certified copies of the public  
4 record.

5 **MS. BLAZER:** No. They're not.

6 **THE COURT:** They are not commercial papers or  
7 related documents. They are not domestic public  
8 documents under seal. They're not foreign public  
9 documents, nor are they domestic public documents  
10 under seal. They're business records. And you  
11 need to establish who collected them, who had  
12 control of them, they've not been hypothecated,  
13 and that they've been kept in the ordinary course  
14 of business.

15 The certifications -- so that the state has  
16 the ability to cross-examine them regarding  
17 those -- those items of evidence or testimony.  
18 And in addition to that the certification that is  
19 attached, those certifications are attached, one,  
20 so that they have complied with the Closed Storage  
21 Act, as required by the federal government, and to  
22 certify to you that subject to the penalties of --  
23 of -- of contempt or otherwise for non-compliance  
24 with a subpoena, that they have complied with your  
25 request, in other words, what you've subpoenaed of

1           them.

2           But the real critical issue regarding this  
3           line of testimony is the fact that you cannot  
4           establish through this witness, who has been  
5           qualified as an expert in the area of digital  
6           forensics examiner, that these records would be --  
7           would be within the scope of his expertise, that  
8           these are records that he regularly utilizes in  
9           formulating his opinions, or that he utilized  
10          these records in formulating his opinions.

11          If your real goal is to try to discredit or  
12          somehow to diminish his opinion regarding the  
13          location of Ms. Steward's phone, or that all of  
14          the phone calls may not have been downloaded or  
15          analyzed, you have more than a wide berth within  
16          the records that are currently in evidence to  
17          explore that and to thoroughly question --  
18          cross-examine him regarding any opinions that have  
19          been elicited in this case.

20          Does the state want to ask Mr. McManigal any  
21          cross-examination on the Verizon records for the  
22          purposes of the proffer? And I assume that's  
23          Defendant's No. 1 for ID that was marked?

24               **MS. BLAZER:** Yes, ma'am.

25               **THE COURT:** Ms. Fries, you may proceed.

Paul McManigal - (Proffer) Redirect Examination by  
Ms. Fries

(PROFFER) REDIRECT EXAMINATION

BY MS. FRIES:

Q These Verizon records that you just received,  
were those part of your report?

A No.

Q So this is a different report than what you  
extracted and gathered from the phone?

A Yes.

Q And did your -- did your report specifically  
narrow down the user of the phone and a phone number,  
843-557-8215?

A Yes.

MS. FRIES: That's all I have, Judge.

THE COURT: Any redirect on the -- well, no,  
it wouldn't be redirect, because it's your  
cross-examination. It's the proffer. Sorry. I'm  
having to do a little flowchart in my head.

Okay. And what would be the basis of the  
state's -- well, you've already stated the basis  
of your objection. I apologize for being  
redundant. And also, the Court would annotate its  
ruling to this extent. There's -- the court is  
not prohibiting you from eliciting this testimony  
from a qualified witness, Ms. Blazer.

If you want to call a witness on this issue

Paul McManigal - (Proffer) Redirect Examination by  
Ms. Fries

1           who -- either -- whether that be a representative  
2           of Verizon or some other expert who is qualified  
3           to testify regarding these records, the  
4           origination of the records, as well as the -- the  
5           fact that these records are kept in the ordinary  
6           course of business, you certainly are not  
7           precluded from doing that.

8           **MS. BLAZER:** Understood. Thank you,  
9           Your Honor.

10          **THE COURT:** You're welcome.

11               Or if the state has another witness that they  
12           may call during the course of their direct --  
13           their case in chief that may have the  
14           qualifications to testify regarding this evidence.

15               In addition, the Court would find that any  
16           probative value of this testimony is outweighed by  
17           its potential prejudice in addition to the fact of  
18           misleading the jury. The objection is sustained.

19               Are you ready to resume your  
20           cross-examination of the witness?

21           **MS. BLAZER:** Yes, Your Honor.

22           **THE COURT:** Please get the jury for me.

23               Is the state ready to proceed?

24           **MS. FRIES:** Yes, Your Honor.

25           **MS. BLAZER:** May I come to the podium,



1 Your Honor.

2 THE COURT: And you are not precluded from  
3 asking him if there were other --

4 MS. BLAZER: Yes, ma'am.

5 THE COURT: I think there's a whole lot of  
6 other information --

7 MS. BLAZER: Yeah. You were clear about  
8 that.

9 THE COURT: I just wanted to make sure I was  
10 clear about that.

11 MS. BLAZER: Yes, ma'am.

12 (The jury enters the courtroom at 12:25 p.m.)

13 THE BAILIFF: All jurors are present,  
14 Your Honor.

15 THE COURT: You may be seated.

16 Ladies and gentlemen, we appreciate your  
17 patience.

18 Ms. Blazer, you may continue your  
19 cross-examination of the witness.

20 MS. BLAZER: Thank you, Your Honor.  
21 I think --

22 THE COURT: You're welcome.

23 CONT. CROSS-EXAMINATION

24 BY MS. BLAZER:

25 Q I think when we broke, Sergeant, we were

1 talking about the call data.

2 A Okay.

3 Q Does that jog your memory as to where we  
4 were?

5 A It was one of the things we talked about  
6 today, yes.

7 Q Okay.

8 And you produced State's Exhibit 68 at their  
9 request?

10 A Correct.

11 Q And that contains all of the calls that you  
12 found in the phone between the number on that phone  
13 and -- and 843-57- -- 557-8215 --

14 A Correct.

15 Q -- right?

16 A Correct.

17 Q That is not the same thing as all the calls  
18 that were made that day, correct?

19 A That is correct. All of those calls are in  
20 the Cellebrite Reader report.

21 Q And that number of calls from the eighth is  
22 more like 206; is that right?

23 A Correct.

24 Q Okay.

25 So this report has 127 calls. But there

1 are -- I'm doing math -- 89 other calls; is that right?

2 A Sounds about right.

3 Q That -- or 79.

4 There were a lot of other calls that you were  
5 not asked to produce as part of this report?

6 A Correct.

7 Q And they occur at times throughout this day?

8 A Correct.

9 Q This -- this set of calls is not an  
10 uninterrupted set of calls where there are no other  
11 telephone calls being made or received?

12 A Correct.

13 Q During your direct testimony, Ms. Fries asked  
14 you to read some messages. And you read messages into  
15 the record that make reference to Instagram or the  
16 Gram; is that right?

17 A There was one text that, yes, referred to the  
18 Gram.

19 Q Uh-huh.

20 And is Instagram information -- does the  
21 Instagram app write evidence to the phone that you're  
22 able to retrieve from Cellebrite?

23 A Yes.

24 Q And was there Instagram-related data  
25 retrieved from this phone?

1           **A**     Yes.

2           **Q**     About how many records do you see?

3           **A**     I -- I don't know how many records. I just  
4 know that Instagram was installed on this device and it  
5 was parsed by Cellebrite.

6           **Q**     Okay.

7                    So --

8           **A**     It would be included in all the other  
9 categories with call logs and things like that.

10          **Q**     But if you went looking for it, whatever --  
11 whatever Cellebrite retrieved, any messages that were  
12 sent on February 8, or any other day that had not  
13 previously been deleted, those exist in your Cellebrite  
14 report?

15          **A**     They should, yes.

16          **Q**     And they would be potentially images that  
17 were uploaded to Instagram?

18          **A**     Correct.

19          **Q**     Comments left on Instagram?

20          **A**     Correct.

21          **Q**     Messaging between people who both have  
22 Instagram accounts?

23          **A**     Correct.

24          **Q**     But the state did not ask you to produce any  
25 report as to that material?

1           A     Not to Instagram, no.

2           Q     Also on direct, you made reference to the  
3     step data, the health data that we get from the phone.  
4     And I want to turn our attention to that -- the -- the  
5     step data is not in your report directly correlated  
6     to -- the step data doesn't also contain a location  
7     record?

8           A     Correct.

9           Q     So any -- any interpretation you've done of  
10    locations and steps is your own deductive reasoning?

11          A     I'd -- I'd say so.

12          Q     Okay. And there's a difference. So my cell  
13    phone is sitting on the table. And if I walk away from  
14    it, it's -- it's not counting my steps unless I have  
15    some other device attached to it?

16          A     Correct. Like an iWatch.

17          Q     So like I do. And I don't know why, because  
18    it's not keeping me healthy. But it's tracking my  
19    steps in a way that's a little bit more accurate than  
20    the iPhone; is that fair to say?

21          A     Correct.

22          Q     Why is that?

23          A     I honestly couldn't tell you the reason why.

24          Q     You don't know why one is more accurate than  
25    the other?

1           **A**     I really don't.

2           **Q**     But you would agree with me that that's the  
3 generally-accepted fact?

4           **A**     I -- I don't even know if I can agree with  
5 that. Because I really don't know the difference  
6 between the iWatch and iPhone's tracking abilities.

7           **Q**     Okay.

8           **A**     They both have -- they both have ways to  
9 track that information. I don't know the specifics of  
10 exactly how they track or if one is more accurate than  
11 the other.

12          **Q**     But you -- you -- you testified about that  
13 information earlier and how many steps that Cellebrite  
14 says were taken?

15          **A**     Correct.

16          **Q**     And you trained on that in your extensive  
17 training into digital forensics.

18          **A**     I trained on reading what the Cellebrite  
19 Reader report said, yes.

20          **Q**     Okay.

21                 So that's different from training on knowing  
22 how the gyroscope and the accelerometer inside a phone  
23 or an iWatch actually work?

24          **A**     Correct. I'm not an engineer.

25          **Q**     Right.

1           So you don't actually know whether that  
2 information is accurate. You just know that's what's  
3 reflected in the phone.

4           **A**     That is what's recorded, correct.

5           **MS. BLAZER:** Okay.

6           I beg the Court's indulgence.

7           **THE COURT:** Yes, ma'am.

8           **MS. BLAZER:** No further questions. Thank  
9 you, Your Honor.

10          **THE COURT:** Any redirect of the witness?  
11 You're welcome.

12          **MS. FRIES:** Yes, Your Honor.

13                   **REDIRECT EXAMINATION**

14          **BY MS. FRIES:**

15          **Q**     Just to go over a few things that defense  
16 touched on. Your report regarding the calls was  
17 specifically narrowed down between the user of the  
18 phone and the phone number that's associated with  
19 Frank, correct?

20          **A**     Correct.

21          **Q**     And -- and couldn't the defense pull their  
22 own report of what the original extraction that you  
23 made?

24          **A**     Correct.

25          **MS. BLAZER:** I'm gonna object, Your Honor.

1           **THE COURT:** Basis?

2           **MS. BLAZER:** Burden shifting.

3           **THE COURT:** You need to rephrase the  
4 question. Sustained.

5           Mr. Foreman, ladies and gentlemen, you're to  
6 disregard the last question and answer in its  
7 entirety. You are to give it no consideration in  
8 your deliberations.

9           **BY MS. FRIES:**

10          **Q**     Can another report be conducted on the phone?

11          **A**     Anybody who has a Cellebrite Reader file can  
12 create their own reports.

13          **Q**     And focusing on locations, were -- the  
14 locations I asked you about that you provided, were  
15 those searches or were they actual locations from the  
16 phone?

17          **A**     Those were actual locations, GPS locations.

18          **Q**     Okay.

19                 And to clarify, the gap in locations could  
20 mean that Location Services were off?

21          **A**     That's one possibility.

22          **Q**     And those are turned off just by going to the  
23 general settings, correct?

24          **A**     "Settings", "Privacy," and then "Location  
25 Services."



1           **Q**     And did you do everything you -- or -- excuse  
2     me. Did you have everything you needed once the report  
3     was complete, once the extraction was done?

4           **A**     Yes.

5           **Q**     And in 2020 when you did this extraction, was  
6     it as complete as possible?

7           **A**     Yes.

8           **MS. FRIES:** Beg the Court's indulgence?

9           **THE COURT:** Uh-huh.

10          **MS. FRIES:** I have nothing further.

11          **THE COURT:** Any objection to the witness  
12     being excused from the state?

13          **MS. FRIES:** No, Your Honor.

14          **THE COURT:** From the defense?

15          **MS. BLAZER:** No, Your Honor.

16          **THE COURT:** Sir, you're excused.

17          **THE WITNESS:** Thank you, Your Honor.

18          **THE COURT:** You're welcome. It's Sergeant  
19     McManigal. I'm sorry. You can leave any of the  
20     exhibits up there. We'll take care of them.

21                 The state may call its next witness.

22          **MS. SAVAS:** Yes, Your Honor. At this time,  
23     the state calls Frank Simmons.

24          **THE COURT:** Mr. Simmons, if you would come to  
25     the stand to be sworn.

1           **THE CLERK:** Please raise your right hand and  
2           place your left hand on the Bible.

3                           **FRANK SIMMONS**

4           having first been duly sworn, testifies as follows:

5           **THE CLERK:** Please be seated.

6                           Please state your full name, spelling your  
7           last name in the microphone.

8           **THE WITNESS:** Frank Fitzgerald Simmons,  
9           S-i-m-m-o-n-s.

10          **THE COURT:** You may proceed.

11                           **DIRECT EXAMINATION**

12   **BY MS. SAVAS:**

13           **Q**     All right.

14                           Mr. Simmons, good afternoon.

15           **A**     Good afternoon.

16           **Q**     Mr. Simmons, how old are you?

17           **A**     53 years old.

18           **Q**     And where do you currently live?

19           **A**     The address?

20           **Q**     No. You just tell me the city.

21           **A**     Charleston, South Carolina.

22           **Q**     And are you originally from here?

23           **A**     I am.

24           **Q**     And Mr. Simmons, where'd you graduate high  
25           school?

1           **A**     St. Andrew's Parish High.

2           **Q**     And after high school, what'd you do?

3           **A**     I went into the military.

4           **Q**     How old were --

5                   **THE COURT:** Sir, I need you speak a little  
6 closer to the microphone for me.

7                   **MS. SAVAS:** You and Jason.

8                   **THE WITNESS:** Got you.

9                   **THE COURT:** Thank you.

10          **BY MS. SAVAS:**

11           **Q**     And what did you do after high school?

12           **A**     I went into the military.

13           **Q**     How long did you serve?

14           **A**     Six years.

15           **Q**     And what branch were you in?

16           **A**     Army.

17           **Q**     And how did -- what do you do after that,  
18 after being in the military?

19           **A**     Once I got out, I started working for a  
20 welding company.

21           **Q**     And what do you do today?

22           **A**     I'm a longshoreman. I work on the port.

23           **Q**     That's a lot of hard, technical work.

24           **A**     I'm a heavy structure repair mechanic. I  
25 repair the truck chassis and the -- and the boxes that

1     they carry.

2           Q     Okay.

3                     And Mr. Simmons, do you have any children?

4           A     I do.

5           Q     How many?

6           A     Four.

7           Q     And how many boys and girls?  What are their  
8     names?

9           A     Two and two.  There's Kayla, who's 27;  
10    there's Rachel, who's 25; Christopher, who's 19; and  
11    Frank Junior is 21.  He just turned 21.

12          Q     And Mr. Simmons, are those children from a  
13    previous marriage?

14          A     Yes.

15          Q     And Mr. Simmons, back in 2019-2020 timeframe,  
16    where did you live?

17          A     That was Shadowmoss.  I can't remember the  
18    address.

19          Q     And in December 8, 2020, where did you live?

20          A     [REDACTED] Avenue.

21          Q     And that's in West Ashley?

22          A     Yes.

23          Q     And do you remember when you moved there?

24          A     I do.  I moved in on December 2, 2020 --

25          Q     2019?

1           A     2019.

2           Q     Okay.

3                     And do you remember your phone number back  
4 then? Is it the same phone number you --

5           A     It's the same phone.

6           Q     And what's your phone number?

7           A     843-557-8215.

8           Q     Okay.

9                     And Mr. Simmons, back then, who were you  
10 living with in your house at that time?

11          A     My cousin Jason and my son Christopher.

12          Q     Okay.

13                     And, Jason -- you mean Jason Simmons?

14          A     Yes.

15          Q     Okay.

16                     And back at that time, were you -- did you  
17 know Ms. Toya Steward?

18          A     I did.

19          Q     And what was the nature of y'all's  
20 relationship?

21          A     We were friends.

22          Q     Okay.

23                     And was sometimes it just a little bit more  
24 than friends?

25          A     Yes.

1           Q     Okay.

2                     And in that process of your relationship, did

3     y'all buy each other gifts and things like that?

4           A     Yes.

5           Q     Did she buy you gifts?

6           A     Yes.

7           Q     What were some of the things she bought you?

8           A     Washer and dryer, laptop, golf clubs.

9           Q     Okay.

10                    And did she ever have a key to your house?

11          A     Never.

12          Q     Did she live with you?

13          A     No.

14          Q     Did she stay over the night there and keep

15     her personal belongings there?

16          A     No.

17          Q     Where did she live during that time? Do you

18     know?

19          A     Rifle Range Road.

20          Q     Okay.

21                    So she had her own place across town?

22          A     Yes.

23                    **MS. FRIES:** Beg the Court's indulgence.

24     **BY MS. FRIES:**

25          Q     Okay.

1                   And Mr. Simmons, how far would you say the  
2 two of y'all's houses were?

3           A       I don't know. In mileage, maybe 30 minutes.

4           Q       Thirty minutes or so?

5           A       Thirty-minute drive maybe.

6           Q       So she lived up Mount Pleasant side. And you  
7 were in West Ashley?

8           A       Yes.

9           Q       Okay.

10                   And did she come over to your house a lot?

11           A       I had just moved in. She -- I would say  
12 maybe four or five times, maybe.

13           Q       Okay.

14                   And did she come over -- did she tell you  
15 when she was coming over every time?

16           A       No.

17           Q       Did she just kind of show up sometimes?

18           A       Yes.

19           Q       How did you feel about that?

20           A       I told her not to do that anymore.

21           Q       Why did you tell her that?

22           A       Because I have a son. And I'm a single  
23 father. And I was trying to, you know, present the --  
24 the right picture for him as far as what needs to be  
25 done when you're not married. And you're just, you

1 know --

2 Q Yes.

3 A -- dealing with someone.

4 Q So you just made it a home for you and Jason  
5 and your son?

6 A Exactly.

7 Q Okay.

8 And did she have an under- -- she understood  
9 that?

10 A She didn't like it. But I laid down the law.  
11 And that was it.

12 Q Okay.

13 But she's made it known, if Christopher was  
14 around, you did not want her there.

15 A Right.

16 Q Okay.

17 And how old was he about that time?

18 A 15 or 16.

19 Q Okay.

20 On February 8, were y'all still a part of  
21 each other's lives, you with Ms. Steward?

22 A Well, that morning I broke up with her.

23 Q And was it often on a little bit prior to  
24 that date as well?

25 A So three weeks prior to that, we'd been going



1 through some things.

2 Q Okay.

3 A Things were happening. And I started to pull  
4 away at that point.

5 Q Okay.

6 So you were in the process of trying to just  
7 not be with her anymore?

8 A Yes.

9 Q And then on February 8, you -- that was it  
10 for you?

11 A Yes.

12 Q Now, on February 8, what were you doing that  
13 morning? Can you -- can you just kind of describe your  
14 morning for us?

15 A I do side work. At that particular morning,  
16 I went to the mother of my kids' house. And I was  
17 doing repairs. She had an open patio on the side. And  
18 I closed it in, put side -- siding on it, and put two  
19 windows in it and a door.

20 Q And do you know about -- when you went out  
21 that morning, was it just you that went or did Jason  
22 come with you?

23 A I asked Jason to come. But he said he was  
24 tired. So he stayed behind. And I left.

25 Q Okay.

1 Do you remember about what time you left that  
2 morning?

3 A Had to be around eight, nine, maybe.

4 Q Okay.

5 And when you left the house, where did you go  
6 first?

7 A I headed to Wadmalaw to grab a partner of  
8 mine to help me in the renovation of house.

9 Q Okay.

10 And then you ultimately made it to your --

11 A The mother of my kids' house?

12 Q Yeah. And to -- to do the renovations?

13 A Yes.

14 Q Okay.

15 And was that prearranged with them?

16 A Yes.

17 Q Okay. Now, at that time, on February 8, you  
18 had left the house. Jason was at home. When -- when  
19 you left, did Ms. Steward at any point in that morning  
20 come over to your house?

21 A Yes, she did.

22 Q How did you know, if you weren't home, that  
23 she was at your house?

24 A Jason sent me a text saying she's outside.

25 Q Okay.

1                   And did she message you that morning as well?

2           **A**     Yes.

3           **Q**     And did she inform you that she was at your  
4 house?

5           **A**     She did. She sent me a pit- -- she sent --  
6 she -- I think she sent me a text showing that she was  
7 outside my -- she was in the driveway, looking at my  
8 front door.

9           **Q**     So she texted you that morning that she was  
10 at your house. And then she also sent you -- showing  
11 you State's Exhibit 70A. Is this the picture she sent  
12 you?

13          **A**     Yes, it is.

14          **Q**     Of her in front of your house and you weren't  
15 home?

16          **A**     Yes.

17          **Q**     Was this in the middle of multiple text  
18 messages?

19          **A**     Yes, it was.

20          **Q**     Was she -- what did she tell you that she was  
21 trying -- why -- why was she at your house?

22          **A**     She was coming over, actually, that day to  
23 get her car repaired. I was going to work on her car.

24          **Q**     Okay.

25                   Did you --

1           A     But I changed --

2           Q     Go ahead.

3           A     I changed that by -- things happened that  
4     day, that morning. I found out some things. And I  
5     told her I was done; get someone else to fix your  
6     vehicle.

7           Q     What did find out that morning?

8           A     That -- I put up an Instagram post. And  
9     everybody who commented on the post, she decided to  
10    call and talk to them or send them a message about who  
11    they were.

12          Q     And Mr. Simmons, I'm showing you 70B. Is  
13    this the Instagram post you're referring to?

14          A     Yes.

15          Q     And who is this Ms. Toya Stafford's comment,  
16    "Work it out, babe?"

17          A     That's her.

18          Q     That's Toya Steward?

19          A     Yes.

20          Q     Also goes by Toya Stafford?

21          A     Yes.

22          Q     Okay.

23                 And so you posted this Instagram. She  
24    commented. What else did you find out about it? You  
25    said that she was messaging people?

1           **A**     Yeah. Other people commented on the picture.  
2     And she notified them, as far as "Who are you? And why  
3     are you texting my man?"

4           **Q**     And how did you come to know that?

5           **A**     I spoke to one of the people who commented.

6           **Q**     And who was that? Was there a specific  
7     person?

8           **A**     Destiny Brees.

9           **Q**     Okay.

10                 Ms. Destiny. And so Ms. Destiny told you  
11     that Toya was messaging her on Instagram?

12           **A**     Yes.

13           **Q**     And did Destiny and Toya know each other?

14           **A**     No.

15           **Q**     Okay.

16                 And when that happened, what do you do once  
17     you figured that out?

18           **A**     Once I realized what she was doing and what  
19     she did, I ended the -- I ended the relationship.

20           **Q**     And did you do anything to that Instagram  
21     comment section?

22           **A**     I probably blocked her.

23           **Q**     You blocked Ms. Steward?

24           **A**     Yes.

25           **Q**     Okay.

1                   And you did it that morning?

2           **A**     Yes.

3           **Q**     And did she also send you text messages about  
4     being blocked on Instagram?

5           **A**     She did.

6           **Q**     So as you're blocking her, she told you that  
7     she was at your house. Did she make it known she was  
8     at your house?

9           **A**     She did.

10          **Q**     And then she brings up the Instagram?

11          **A**     She did.

12          **Q**     Does she bring up that other female, Destiny?

13          **A**     She did.

14          **Q**     Okay.

15                   And that's just all in your text messages  
16     throughout that morning?

17          **A**     Yes.

18          **Q**     Were there a lot of text messages coming in?

19          **A**     Yes.

20          **Q**     Were you responding back and forth to her?

21                   **MR. D'ANGELO:** Objectin.

22                   **THE COURT:** Basis?

23                   **MR. D'ANGELO:** I have to object. Leading.

24                   **THE COURT:** Sustained. Leading. Rephrase.

25                   **BY MS. SAVAS:**

1           Q     Did you respond back to her messages?

2           A     A couple of them.

3           Q     Okay.

4                     But who was primarily sending the messages?

5           A     It's her sending a whole bunch to me.

6           Q     Was it a -- were there multiple at once  
7 incoming?

8           A     My phone never stopped ringing, never stopped  
9 dinging.

10          Q     Okay.

11                     And when you were receiving messages from --  
12 text messages from her, was she also calling you?

13          A     Yes.

14          Q     So she's calling and texting in that same  
15 time frame around -- do you -- do you remember about  
16 time she got there?

17          A     What time she got to the house?

18          Q     Or what time she started texting you.

19          A     Soon as I sent her that message that it was  
20 over --

21          Q     Okay.

22          A     -- that's when all the texts and calls.

23          Q     And so you had left. So about nine. So  
24 starting around nine-ish --

25          A     Yes.

1           **Q**     -- in the morning that day? Did she also  
2 leave you voicemails?

3           **A**     She did.

4           **Q**     And do you recall being left those  
5 voicemails?

6           **A**     Yes.

7           **Q**     And were they at the same time as you were  
8 receiving the phone calls from her?

9           **A**     Yes.

10          **Q**     So about 930-ish --

11                 **MR. D'ANGELO:** Objection. Your Honor,  
12 leading.

13                 **THE COURT:** Sustained. Leading. And no  
14 commentary.

15 **BY MS. SAVAS:**

16          **Q**     Did you --

17                 **THE COURT:** Rephrase the question.

18                 **MS. SAVAS:** Yes, ma'am.

19                 **THE COURT:** Watch the leading.

20                 **MS. SAVAS:** Yes, ma'am.

21 **BY MS. SAVAS:**

22          **Q**     And do you -- do you recall about a timeframe  
23 when you received one of those early messages?

24                 Frank, if I showed --

25          **A**     I mean, it was four years ago.



1 Q Right.

2 A I really don't remember a lot about that,  
3 except for that date.

4 Q Would you say --

5 Frank, was it around the same time you were  
6 receiving all of those text messages?

7 A Yes.

8 Q Do you recall what one of the voicemails was  
9 about?

10 A Yes.

11 Q What was one of them about?

12 A She was saying she was coming to get all her  
13 stuff, and she wasn't leaving without it.

14 Q And what was she referring to when she was  
15 saying "getting all of her stuff"?

16 A Washer and dryer, the golf clubs, laptop.

17 Q So it was the gifts she gave you.

18 A Right.

19 Q Was it any -- okay.

20 And did you also provide that voicemail as  
21 part of this case?

22 A I did.

23 Q And on the voicemail, did you recognize  
24 Ms. Steward's voice?

25 A Oh, yeah.

1           **Q**     And it was left from -- do you recall if it  
2 was left from her phone --

3           **A**     Yes.

4           **Q**     -- number?

5                     And it was put on your phone and --

6           **A**     Yes.

7           **Q**     -- sent to you? Okay.

8                     **MS. SAVAS:** At this time, Your Honor, the  
9 state would seek to admit State's Exhibit 80.

10 **BY MS. SAVAS:**

11           **Q**     Mr. Simmons, I'm gonna show you what's been  
12 pre-marked for identification purposes, State's Exhibit  
13 80. Do you recognize this?

14           **A**     I do.

15           **Q**     And what is this?

16           **A**     It's -- it looks like the voicemails that  
17 I've submitted to you guys.

18           **Q**     Okay.

19                     And is this your --

20           **A**     My initials and the date.

21                     **MS. SAVAS:** At this time, Your Honor, the  
22 state seeks to admit Exhibit 80 and publish for  
23 the jury.

24                     **THE COURT:** Marked and admitted, subject to  
25 the defense objection, which has been overruled.



1           **Q**     What is this?

2           **A**     Voicemails that I submitted.

3           **MS. SAVAS:**   Okay.

4                   At this time, Your Honor, the state seeks to  
5           admit and publish to the jury State's Exhibit 81.

6           **THE COURT:**   Marked and admitted, State's 81,  
7           subject to the objection which has been overruled.

8                   (State's Exhibit No. 81 is admitted into the  
9           record.)

10                   (Exhibit is played.)

11   **BY MS. SAVAS:**

12           **Q**     And that's the voicemail she left you also  
13           that day?

14           **A**     Yes.

15           **Q**     And Mr. Simmons, did she leave you another  
16           voicemail that day as well?

17           **A**     I'm sure she did.

18           **Q**     And do you recall what the contents of that  
19           was about?

20           **A**     Every voicemail was -- is either talking  
21           about a woman I was cheating on her with or -- or  
22           coming to get her items.

23           **Q**     Okay.

24                   Mr. Simmons, I'm showing you what's been  
25           pre-marked as identified, State's Exhibit 82. Do you

1 recognize this?

2 A Yes.

3 Q What is this?

4 A Voicemails that I've submitted. My initials  
5 with the date.

6 MS. SAVAS: At this time, the state seeks to  
7 admit and publish State's Exhibit 82.

8 THE COURT: You may proceed. Marked and  
9 admitted 82, subject to the objection, which has  
10 been overruled.

11 (State's Exhibit No. 82 is admitted into the  
12 record.)

13 (Exhibit is played.)

14 BY MS. SAVAS:

15 Q Mr. Simmons, in your conversations with her  
16 that day, and in your text messages, did you tell her  
17 whether anyone was in the house?

18 A I did. I told her my cousin was in there --  
19 well, actually, that day when she was telling me she  
20 was there, I told her my son was there. I told her my  
21 son was in house.

22 Q Why did you tell her Chris was in the house?

23 A So that would deter her from going there.

24 Q And was Chris actually in the house?

25 A He wasn't.

1           Q     Where was he?

2           A     He was with his mom. I sent him away for  
3 that weekend -- that weekend.

4           Q     Did you think by telling her that then she  
5 would leave?

6           A     Yes.

7           Q     Based on your previous understanding?

8           A     Yes.

9           Q     How long were you doing the home renovation  
10 project?

11          A     At that time, I was probably maybe two months  
12 in.

13          Q     Okay.

14                   And how long were you over there that day?

15          A     I probably got over there like maybe 9:30. I  
16 left at around 2:00.

17          Q     Around 2:00?

18          A     Uh-huh.

19          Q     And what were you doing about two o'clock  
20 when you left? Where were you at?

21          A     Headed to Wadmalaw to take my friend back  
22 home.

23          Q     And did anything happen on that drive back to  
24 Wadmalaw?

25          A     Yeah. On the call -- I got a call -- frantic

1 call from one of my friends, who told me that, "Frank,  
2 your house is on fire. Your cousin just barely made  
3 it -- made it out alive." And -- yeah.

4 Q What'd you do once you got that call?

5 A The guy who I was riding with, I pulled over  
6 immediately and told him he had to get out.

7 Q You didn't even get him home?

8 A I wasn't really worried about him at that  
9 point. Once he heard over the radio, what was going on  
10 or, you know, the speakers in the -- the truck --

11 Q Yeah.

12 A -- he understood what was going on. So I  
13 pulled over. I said, "You got to get out." He didn't  
14 give me any problems.

15 Q Sure.

16 A I immediately turned around; headed back  
17 towards my home.

18 Q Did you notice anything when you were driving  
19 back home?

20 A I looked in there and I saw big, black, thick  
21 smoke. And I just knew that was my house.

22 Q Coming from what direction?

23 A I was on main road on John's Island at the  
24 time, coming over the bridge.

25 Q So the West Ashley area?

1           A     Yes.

2           Q     Were you still getting calls and text  
3 messages from Toya at that time?

4           A     I think I tried to call her. She didn't  
5 answer at the time. And then I think she called back.

6           Q     Okay.

7           A     And when she called back, I yelled, "You  
8 burned my house down." Some other things I said --

9           Q     Sure.

10          A     -- and that was it.

11          Q     And she texted you -- do you recall receiving  
12 text messages from her about -- you recall getting a --  
13 like a text -- not text message, but a picture, a  
14 screenshot sent to you around two o'clock?

15          A     Yes.

16          Q     I'm showing what's to be marked as State's  
17 Exhibit 70C.

18          A     (Reviews document.)

19          Q     Frank, do you recognize this?

20          A     I do.

21          Q     And what is this?

22          A     Looks like a -- that's from Destiny.

23          Q     Okay.

24                 And that's from Destiny. Is this -- what --  
25 is this a --



1           **A**     That is a -- that's -- that's a message from  
2     Destiny. And that's my response to Destiny.

3           **Q**     So this is F, I'm assuming is Frank. And  
4     these are your texts you sent Destiny?

5           **A**     Yes.

6           **Q**     Can you please read these, if you can see?

7           **A**     "This is an attempt from her to get back with  
8     me, and it's not going to work. I will take care of  
9     that shit."

10          **Q**     Who is "her" you're referring to?

11          **A**     Toya.

12          **Q**     And why were you and Destiny talking about  
13     Toya?

14          **A**     Because Toya was texting her, trying to  
15     figure out who she was.

16          **Q**     And it says 10:35 a.m. Can you read what you  
17     texted Destiny at that time?

18          **A**     "This girl is definitely a fatal attraction  
19     and is saying I used her and all that shit. But I  
20     didn't ask for anything that she gave. I have my own  
21     and don't want her. And she's very upset. Don't let  
22     her mess up what's going on with you and I. Understand  
23     she's bitter because I don't want her."

24          **Q**     And those are messages you sent that same day  
25     to Destiny?

1           **A**     It is.

2           **Q**     And when you received this screenshot from  
3     Ms. Steward?

4           **A**     Yes.

5           **Q**     At two o'clock.

6                     Frank, you said got the call about the fire  
7     about two o'clock. You get that screenshot of your  
8     personal message between you and Destiny at 2:05. What  
9     did you do after you start driving back? Where did you  
10    go?

11          **A**     Jason was not at the scene. He was at a  
12    friend's house in West Ashley. So the first thing I  
13    did was go pick him up. And then we headed to the  
14    scene.

15          **Q**     And what did you see when you arrived?

16          **A**     My house was burned. Everything was gone.  
17    Car was burnt up. The house had a big hole in it with  
18    smoke coming out of it. At that point, I realized I  
19    lost everything.

20          **Q**     You lost everything?

21          **A**     Yes.

22          **Q**     Were you able to salvage much?

23          **A**     They let me in the place at 3 a.m. I grabbed  
24    some stuff. It was filled with smoke. And eventually,  
25    I had to throw everything away.

1           Q     What about all the furniture?

2           A     All of that was lost.

3           Q     Did you buy all that furniture?

4           A     I went to -- what's the name of the place --  
5 Rooms To Go. And I got all of my furniture on credit,  
6 that I continue to pay for this day, even though it was  
7 destroyed in the fire. Didn't have any homeowners  
8 insurance. Was going to get that the previous or -- or  
9 the following week before the fire. But that never  
10 happened. So everything was lost.

11          Q     What about any of Christopher's things?

12          A     Everything was lost.

13          Q     All your things?

14          A     Yes. We tried to salvage some things by  
15 washing it and everything. But just the smell was just  
16 too much. And we had to get rid of it.

17          Q     How did that make you feel?

18          A     I hated it. It changed my life.

19          Q     How so?

20          A     The reason I had Christopher was because he  
21 was in a bad environment. So I brought him to stay  
22 with me to keep him from, you know, dealing with the  
23 wrong crowds and keeping him out of trouble. And after  
24 the fire, he was sent back to the same environment.  
25 And then later on, he got in trouble with the law.

1           Q     And so you weren't able to provide that safe  
2 home for your son again?

3           A     I didn't have a home myself.

4           Q     Where did you go? What happened?

5           A     I stayed in a hotel for a month after the  
6 fire. Then I worked it out to where I applied for an  
7 apartment and got it. I had good credit. I didn't  
8 need anything from anyone. I was self-sufficient. Had  
9 a good job. I still do. And I didn't need anyone  
10 to -- it was easy for me to get back into another  
11 place. Because I have already put myself in position  
12 to qualify to get in there. So...

13          Q     You worked hard?

14          A     Yes.

15          Q     Frank, I'm going to show you State's  
16 Exhibit 8. Is this kind of what the house looked like  
17 when you arrived?

18          A     Yes.

19          Q     And whose car is that in the front?

20          A     That's my car.

21          Q     What happened to the car?

22          A     It was burned. Sitting two feet away from  
23 the window, and flames are so, I guess, in their rage  
24 that it broke the window and then burned the car up.

25          Q     Were you able to keep the car?

1           A     I wasn't. It was a total loss.

2           Q     I'm showing you State's Exhibit 7. Is -- is  
3 this your car?

4           A     It is.

5           Q     What is this?

6           A     That's Jason's truck. And that's Jason.

7           Q     Okay.

8                     I'm showing you State's Exhibit 49. That's  
9 just a close-up of your car?

10          A     It is.

11          Q     Frank, when you arrived on scene, did you  
12 walk around the house on the outside?

13          A     Not at first. I collapsed when I first got  
14 there. I -- I just -- it was just a lot to take in.

15          Q     Yeah.

16          A     So after that, I did walk around.

17          Q     And I'm showing you State's Exhibit 12. What  
18 is this?

19          A     That's my backyard. That's the patio area.  
20 There was a back door.

21          Q     Did you notice anything when you were walking  
22 around the backyard?

23          A     I did. Probably a week before that, I  
24 brought a gas -- a five-gallon metal gas can from the  
25 port where I worked, filled with gas. And it was used

1 in the lawnmower when my son cut the grass that week.

2 Q Let me ask you, why do you know what you're  
3 kind of gas can is?

4 A Why do I know?

5 Q Yeah.

6 A Because I -- because I was the one that --  
7 they were giving it away at work. And I got one for  
8 myself, filled it up with gas, and brought it home.

9 Q So Christopher mowed the lawn. Do you keep  
10 it anywhere?

11 A I kept it in the back, right below the steps  
12 on the side.

13 Q Right here?

14 A Yes.

15 Q Was it in this corner here or on the other  
16 side?

17 A On that corner, the first corner.

18 Q So it's the corner here?

19 A Yes.

20 Q Was it always there?

21 A Yes.

22 Q Was it -- did Christopher place it back there  
23 to your knowledge?

24 A He did.

25 Q After he mowed the lawn?

1           **A**     Yes.

2           **Q**     And how freshly filled up was it?

3           **A**     It was filled. I filled it up all the way.

4     And the only gas that was missing from it was what he  
5     used to fill the lawnmower.

6           **Q**     So --

7           **A**     So it's pretty much still fill -- full.

8           **Q**     Okay. Five-gallon.

9                   I'm showing you State's Exhibit 13. What is  
10    this?

11          **A**     That's the back patio area. I had a party a  
12    on New Year's Eve. That's where that -- that -- that  
13    girl is from.

14          **Q**     Okay. All right.

15                   So (inaudible) items were from the party?

16          **A**     Right.

17          **Q**     Frank, I'm going to show you State's  
18    Exhibit 20. This is a layout of your home. So there's  
19    a lot of rooms here and there's different bedrooms.  
20    Which room was yours?

21          **A**     Okay.

22                   I see the front door. You go through the  
23    front door. You make a left in the hallway. You go  
24    all the way down and to the right. All the way -- yes.  
25    That's my master bedroom.

1           Q     So the master bedroom was yours?  
2           A     Yes.  
3           Q     Whose room was this one?  
4           A     Christopher.  
5           Q     Whose room was this?  
6           A     Jason.  
7           Q     And then what is this room?  
8           A     Dining room.  
9           Q     This one right here, this little one next --  
10          A     Oh, the bathroom.  
11          Q     The bathroom. Okay.  
12               And then the back door we're talking about is  
13   where?  
14          A     That right there?  
15          Q     Right here?  
16          A     Uh-huh.  
17          Q     The one with the kitchen and the back porch?  
18          A     Yes.  
19          Q     Your gas can was right around here.  
20          A     It was.  
21               **THE COURT:** I'm gonna interrupt you.  
22               Mr. Foreman, ladies and gentlemen, it's 1:09.  
23               We're going to break for lunch until 2:15. During  
24               the break, please do not discuss the case. And  
25               please leave your notepads in your seats. Have a



1 good lunch.

2 Please don't read, watch, or listen to any  
3 media accounts, or have any contact with anyone in  
4 or about the courthouse when you return.

5 (The jury exits the courtroom at 1:09 p.m.)

6 **THE COURT:** Sir, you may step down. During  
7 the break, don't discuss your testimony with  
8 anyone. Thank you.

9 All right. Anything before we break for  
10 lunch from the state?

11 **MS. SAVAS:** Judge, there is a point where I  
12 will seek to admit that e-mail.

13 **THE COURT:** I'm still thinking about it.

14 **MS. SAVAS:** Yes, ma'am. I have also  
15 different redacted versions for the Court.

16 **THE COURT:** Well, let me ask. Do y'all have  
17 any objection to the e-mail?

18 **MR. D'ANGELO:** Again, if it's unredacted, no,  
19 Your Honor.

20 **THE COURT:** What would be the purpose of  
21 redacting it?

22 **MS. SAVAS:** Relevance, Your Honor. And it  
23 would be confusing the jury. There's a lot of  
24 talk about different situations and different  
25 people that just can't be explained.

1           **THE COURT:** I don't think it's a lot of --  
2           I've read it. She only makes reference to her  
3           daughter and him. There's no lot of other people.  
4           I'm a little confused as to what you're referring  
5           to.

6           **MS. SAVAS:** Okay.

7           **THE COURT:** The first part of this e-mail  
8           basically talks about how she felt on -- when she  
9           woke up the morning of the incident. Then the  
10          next part of it talks about kind of basically the  
11          same thing. But she makes a couple of admissions  
12          in that paragraph. And then the last paragraph  
13          does sort of, in some connotation, make a vague  
14          reference, or it could be implied that she planned  
15          to take her life.

16          So I'm trying to figure out how that would  
17          be -- that last paragraph would be appropriate,  
18          Mr. D'Angelo?

19          **MR. D'ANGELO:** Your Honor, I think that goes  
20          to her state of mind.

21          **THE COURT:** Yeah. But that would appeal to  
22          the passions, prejudices, and sympathies of the  
23          jury, which has absolutely nothing to do with the  
24          elements of this case. So how would it be  
25          relevant? And why would it be necessary to

1       understand the context of the admissions?

2               **MR. D'ANGELO:** Because I think it takes into  
3       account why everything is being said in the  
4       previous paragraphs, Your Honor. Again, I think  
5       it's -- it's all one thought. It's all important  
6       for the jury to know then the context of why  
7       everything is being stated.

8               **THE COURT:** On the other hand, it does say  
9       that she plans to kill herself because she don't  
10      want to go to jail. My parenthetical. That's  
11      basically what the gist of the last paragraph is,  
12      that she'd rather take her life on her own terms  
13      than spend it in a jail cell, which in and of  
14      itself may well be an admission as well.

15              **MS. SAVAS:** Your Honor --

16              **THE COURT:** I'm regarding specifically to  
17      "but prison isn't a place I can go or deserve to  
18      be, not and die. I'd rather die in my own way."

19              **MS. SAVAS:** Your Honor, (inaudible). It also  
20      speaks to sentencing. It does, you know --

21              **THE COURT:** It doesn't speak to sentencing.  
22      I can give a curative on that. The jury knows  
23      they don't sentence anybody.

24              **MS. SAVAS:** Judge, there's no evidence that  
25      she was suicidal that day. She didn't try to die

1           in the fire. She lit the house on fire to try to  
2           kill someone else.

3           **THE COURT:** I don't think -- people can pick  
4           very different ways to kill themselves. Very few  
5           people, other than some certain philosophical  
6           religious beliefs, set themselves on fire. Very  
7           few people choose that as a way to die.

8           **MS. SAVAS:** I just think, Your Honor, the  
9           definition of, you know, the passion of the jury  
10          and making that very emotional connection about  
11          suicide, we didn't voir dire people on whether  
12          they struggled with suicide.

13          **THE COURT:** I wouldn't ask that question  
14          anyway, so it wouldn't have matter.

15          **MS. SAVAS:** It's just -- Judge, it's one of  
16          those things that it is not relevant. The  
17          relevant part of this is the admission of guilt  
18          and the statement against her own self-interest,  
19          which we would seek to get in. I could do a big  
20          bulk of just not putting the third paragraph in as  
21          a compromise, Judge. That one is just very,  
22          very -- that one's just not appropriate, nor is it  
23          relevant. And they failed to show that in their  
24          argument. We are seeking to admit this for very  
25          specific reasons, not the entirety of it. And we

1           can do a very clean copy and just having a third  
2           page -- a third paragraph, which is what they  
3           expressed last night.

4           **THE COURT:** Yeah. I'll think about it over  
5           the lunch break.

6           **MS. SAVAS:** Yes, ma'am.

7           **THE COURT:** Why would you want the whole  
8           thing in Mr. D'Angelo?

9           **MR. D'ANGELO:** Again, as I stated Your Honor,  
10          I think it all does go to her state of mind, as  
11          you said. I think the third paragraph, it cuts  
12          both ways as far as motive and -- and what she is  
13          stating.

14          Again, I think it just provides clarity. I  
15          think under 403, it would be confusing without  
16          understanding the entire context of the letter  
17          from beginning to end. I think under the rule  
18          completeness, if the state wants it, they can have  
19          it. But they don't get to chop it up.

20          **THE COURT:** I'll think about it over lunch.  
21          Have a good lunch.

22          **MR. D'ANGELO:** Thank you, Your Honor.

23          **THE COURT:** See you at 2:15.

24          **MS. SAVAS:** Thank you, Your Honor.

25          **THE COURT:** You can leave everything in the

1 courtroom.

2 (A recess is taken.)

3 **THE COURT:** You may be seated.

4 Sir, if you would retake the stand. I'll  
5 remind you you're still under oath.

6 (Off-the-record discussion.)

7 **THE COURT:** Okay.

8 Defense ready to proceed?

9 **MR. D'ANGELO:** Yes, Your Honor.

10 **THE COURT:** Please bring in the jury.

11 **MS. SAVAS:** Your Honor, we also -- the jury  
12 charges. And I have given to the defense as well.

13 **THE COURT:** Thank you.

14 **MS. SAVAS:** Yes, ma'am.

15 **THE COURT:** Do y'all have any request for  
16 instruction? I need them today.

17 **MR. D'ANGELO:** Not at this time. But we  
18 will, Your Honor.

19 **THE COURT:** I need them today.

20 **MR. D'ANGELO:** We get them about today. Yes,  
21 ma'am.

22 **MS. BLAZER:** Yes, ma'am. I -- I hope to have  
23 them before the afternoon break.

24 **THE COURT:** Thank you.

25 (The jury enters the courtroom at 2:25 p.m.)

1           **THE BAILIFF:** All jurors are present,  
2           Your Honor.

3           **THE COURT:** You may be seated.

4           Ladies and gentlemen, I hope you-all had a  
5           pleasant lunch. We'll now resume the testimony of  
6           the witness. You may proceed.

7           **MS. SAVAS:** Thank you, Your Honor.

8           **THE COURT:** You're welcome.

9           **BY MS. SAVAS:**

10          **Q**     Okay. All right.

11                 Mr. Simmons, before we break [sic], we were  
12           talking about your home that day. Let me just go back  
13           to State's Exhibit 13. When you left that day, did you  
14           lock your doors to your house?

15          **A**     I did.

16          **Q**     Were all the -- all the doors locked or just  
17           some of them?

18          **A**     Every last door was locked.

19          **Q**     What about the back door?

20          **A**     That was locked as well.

21          **Q**     Does the back door -- did you lock it that  
22           day or does it usually stay locked?

23          **A**     Stays locked. But I made sure everything was  
24           locked before I left the house that day.

25          **Q**     Okay.

1                   State's Exhibit 20 is a layout. So you had  
2 indicated you're the master bedroom. And whose room  
3 was this again?

4           A     Chris.

5           Q     And this one?

6           A     Jason.

7           Q     Jason. Okay.

8                   And you said that -- what time were you able  
9 to go into the home?

10          A     I think I got there around three. I wasn't  
11 be able to go in there until 3 a.m.

12          Q     Okay.

13                   And Mr. Simmons, is this back door right  
14 here?

15          A     Yes.

16          Q     And in this photo -- sorry. That was State's  
17 25. State's 30A, what room is this first door?

18          A     Is that the bathroom? Looks like it..

19          Q     And then --

20          A     To the left is Jason's room.

21          Q     What about this one?

22          A     To the back to the left is Christopher. And  
23 to the right is the master bedroom, which is mine.

24          Q     Okay.

25                   So I'm showing you State's Exhibit 17. Is



1       this -- which room is this?

2           A       That's the master bedroom.

3           Q       So that was your bedroom?

4           A       Yes.

5           Q       Is that your furniture inside there?

6           A       It is.

7           Q       Mr. Simmons, showing you State's Exhibit 46.

8       Whose room is this?

9           A       That's Jason's room.

10          Q       Okay.

11                   Showing you State's Exhibit 44. Whose room  
12       is this one?

13          A       Actually, the first one -- that looks like  
14       Jason's room right there with the -- with the air  
15       mattress.

16          Q       Oh, you're right.

17          A       Okay.

18                   That's Jason's room. Jason's room.

19          Q       Okay.

20                   So the one with the window and the one with  
21       the air mattress is Jason's bedroom?

22          A       Right.

23          Q       Mr. Simmons, showing you State's Exhibit 39.

24       Is this your -- what room is this?

25          A       That's the bathroom Jason was in.

- 1           Q     Is there a window in your bathroom?
- 2           A     No.
- 3           Q     Mr. Simmons, I'm showing you State's
- 4     Exhibit 50. Where were these recycling -- recycling
- 5     bins usually?
- 6           A     On the side of the house.
- 7           Q     On the side of the house.
- 8                     And did Ms. Steward tell you whether she left
- 9     anything at your house that day?
- 10          A     Yes.
- 11          Q     What did she tell you?
- 12          A     She left an anklet I bought her.
- 13          Q     I'm showing you State's Exhibit 52. Is this
- 14     that anklet?
- 15          A     It is.
- 16          Q     And she told you that she left it. When did
- 17     you get this for her? Do you remember?
- 18          A     How to be a holiday or something. Maybe
- 19     Christmas. Not sure.
- 20          Q     And do you recall whether she said she left
- 21     it broken or not?
- 22          A     She did.
- 23          Q     Mr. Simmons, in speaking with investigators
- 24     on scene, did you give them Toya's information?
- 25          A     I did.

1           Q     Do you -- did you give them her phone number  
2     at that time?

3           A     I did.

4           Q     Do you recall what that phone number was?

5           A     It was such a long time ago. And I just --  
6     her name -- after it goes into my phone, I don't  
7     remember the number.

8           Q     Okay.

9                     But you gave them -- that phone number to  
10    investigators?

11          A     I gave them all the information: Where she  
12    lived and her number.

13          Q     Where she lived?

14          A     Yes.

15          Q     And let's talk about where she lives again.  
16    I'm showing you State's Exhibit 78. So you said that  
17    she lived in Mount Pleasant. Does this accurately  
18    depict Rifle Range?

19          A     Yes.

20          Q     So a little bit past the -- but over Mount  
21    Pleasant. And then, your house, does this accurately  
22    show?

23          A     Correct.

24          Q     Okay.

25                     So you have to -- how -- how could you drive

1 over to her house?

2 A How can I drive?

3 Q Yeah. Are there some different routes you  
4 would typically take?

5 A I just let my GPS guide me.

6 Q Okay.

7 But is it possible to take up 526 --

8 A Yes. Uh-huh.

9 Q Okay.

10 And then it just kind of dumps you back off  
11 right there?

12 A Right.

13 Q And Mr. Simmons, you tell what kind of car  
14 she drove?

15 A Equinox.

16 Q Do you remember?

17 In State's Exhibit 57, is that her vehicle?

18 A It is.

19 Q And that's the one that you knew her to  
20 drive?

21 A Yes.

22 Q Did you give the investigators consent to go  
23 into your home that day?

24 A I did.

25 Q Did you give both the fire investigator --

1           **A**     Yes.

2           **Q**     -- and Sergeant Cheek, the sheriff's office?

3           **A**     I did.

4           **Q**     Okay.

5                   How many cars do you have, Mr. Simmons?

6           **A**     I have two.

7           **Q**     What kind of cars were those at that time?

8           **A**     Dodge Challenger and a F250. 1990 F250

9           Lariat.

10          **Q**     Okay.

11          **A**     Old school truck.

12          **Q**     And what car did you go to Wadmalaw and do  
13          the home renovations on that day?

14          **A**     I used my truck.

15          **Q**     Your truck? Okay.

16                   You said that Jason -- did Jason contact you  
17          throughout that day?

18          **A**     He sent me texts. He never called. He just  
19          sent the texts.

20          **Q**     Messages?

21          **A**     Yes.

22          **Q**     And do you remember what they were about?

23          **A**     Yeah. The first one was she's -- she's here  
24          at the door, at the front door. Something along the  
25          lines of that.

1           Q     Did you respond to him?

2           A     Yes.

3           Q     What did you tell him?

4           A     I told him ignore her.

5           Q     Why'd you do that?

6           A     Because it's not his fight. It has nothing  
7 to do with him.

8           Q     Okay.

9           A     Didn't want him involved?

10          Q     Did he reach out to you another part in that  
11 day?

12          A     Yes. Later on, around one something, when he  
13 says she's in a house. Call 911.

14          Q     Did you call 911?

15          A     I didn't.

16          Q     Why?

17          A     Because I didn't see the message until I got  
18 the call that there was a fire in the house; he barely  
19 got out alive. That's when I started looking back at  
20 all the messages and missed calls.

21          Q     Okay.

22                 Mr. Simmons, were -- were you expecting  
23 anyone else to come over that day?

24          A     No.

25          Q     When you -- did you inform the officers

1 about -- did -- did you talk to the officers about your  
2 relationship with Miss Steward?

3 A I did.

4 Q Did you explain to them what happened that  
5 day?

6 A I think I did.

7 Q That morning?

8 Okay. Mr. Simmons, did you ever speak with  
9 Ms. Steward about what happened, about the fire?

10 A Yes.

11 Q Did she ever talk to you about what happened  
12 that day?

13 A In a roundabout way, yes.

14 Q Did you tell her Chris was there that day?

15 A I did.

16 Q Did she ever say anything about Chris to you  
17 afterwards?

18 A I didn't see the messages until later. But  
19 something came over about Chris. I don't really  
20 remember exactly what it was.

21 Q Okay.

22 Do you -- did she ever express to you whether  
23 she thought Chris was home?

24 A I think that came through on a text message  
25 as well.

1           Q     Mr. Simmons, once the officers came and  
2     cleared the scene and everything, and this couple of  
3     days went by, did you ever talk to Ms. Steward while  
4     she was in jail?

5           A     I did. She called me from the jail.

6           Q     She called you from jail?

7           A     Yes.

8           Q     Let me back up before we go into that. When  
9     you walked through the outside of the house, and then  
10    you went through the inside, did you see if anything  
11    was missing of yours from inside the home? Yes. What  
12    was missing?

13          A     Golf club, cell phone, laptop, some of my  
14    clothes were missing. That's about it.

15          Q     And did she ever -- did y'all ever talk about  
16    those missing items?

17          A     We did.

18          Q     What -- can you talk about this conversation?

19          A     She said she had them. And we were trying to  
20    make plans for me to retrieve them.

21          Q     Were you able to get them back from her ever?

22          A     No.

23          Q     Why not?

24          A     I don't know if it was a wild goose chase or  
25    whatever. But nothing ever panned out. Every time she



1 told me to meet her someplace, that didn't work;  
2 something went wrong. There was always an excuse.

3 Q Why did you continue talking to her after  
4 this happened?

5 A I wanted -- she said she was going to give me  
6 some money because she felt guilty. So it was that and  
7 my property, the laptop, everything that was taken out  
8 of the house.

9 Q How much money did she say she was going to  
10 give you for this?

11 A \$19,000.

12 Q She was gonna give you \$19,000? Did she say  
13 why?

14 A She didn't directly tell me. But she was  
15 very sorry about what happened.

16 Q Did she ever tell you she was sorry?

17 A Yes.

18 Q One time or multiple times?

19 A Multiple.

20 Q Was she generally sorry, like sorry something  
21 unfortunate happened to you? Or what was the  
22 sentiment?

23 A I don't know. I didn't really believe any of  
24 that.

25 Q You didn't think she was sorry.

1           **A**     I didn't even think she was sorry. Because  
2 my house was burned to the ground, and she was the only  
3 one there. So I didn't accept any of that. I was  
4 angry, and I still am.

5           **Q**     So she apologized to you, but you just didn't  
6 necessarily accept it.

7           **A**     I mean, I'm a nice guy. And -- and for some  
8 reason, I kind of feel sorry for her after a period of  
9 time. She told me her mother died; one of her sisters  
10 died. And I just kind of felt like everything came to  
11 a head, and it just -- she just couldn't handle  
12 everything that was going on in her life.

13          **Q**     Do you think everything she told you was  
14 truthful?

15          **A**     I don't think so. Actually, no. I found out  
16 things that weren't true. So you know, at the end of  
17 the day, I don't really know her like I thought I did.

18          **Q**     When you talked to her on the jail calls, do  
19 you recall speaking to her in March?

20          **A**     Yes.

21          **Q**     Specifically, did you ever talk to her on the  
22 jail calls about getting your items back from her?

23          **A**     Definitely. That's what the jail calls were  
24 about mainly.

25          **Q**     Okay.

1                   And do you recall speaking to her on a jail  
2 call from March 1, 2020?

3           **A**     Yes.

4           **Q**     Around 8:06 p.m.

5           **A**     Uh-huh.

6           **Q**     Mr. Simmons, I'm going to show you what's  
7 been marked for identification as State's Exhibit 79.  
8 Do you recognize this?

9           **A**     Yes. Jailhouse calls, my initials and date.

10           **MS. SAVAS:** At this time, Your Honor, the  
11 state seeks to admit into evidence and publish  
12 State's exhibit 79.

13           **THE COURT:** Seventy-nine marked and admitted,  
14 subject to the objection, which has been  
15 overruled.

16           (State's Exhibit No. 79 is admitted into the  
17 record.)

18           **BY MS. SAVAS:**

19           **Q**     Mr. Simmons, just for explanation purposes,  
20 when you -- when you -- did Ms. Steward call -- she  
21 called you from the jail?

22           **A**     Yes.

23           **Q**     And is there some sort of introduction in the  
24 jail call from the -- from the --

25           **A**     It says who's calling. Like the jail is

1 calling; do you accept the charges?

2 Q Okay.

3 And did that happen in those phone calls?

4 A It did.

5 (Exhibit is played.)

6 BY MS. SAVAS:

7 Q And is that the introduction?

8 A Yes, it is.

9 (Exhibit is played.)

10 BY MS. SAVAS:

11 Q What computer were y'all talking about in  
12 that call?

13 A A laptop that I purchased.

14 Q Okay?

15 A And cell phone and golf clubs.

16 THE COURT: Wait one second. Please

17 approach. I just thought about something.

18 (A sidebar conference is held off the record.)

19 (Exhibit is played.)

20 BY MS. SAVAS:

21 Q Mr. Simmons, do you recall speaking to her a  
22 few days later again, on March 5, 2020, around  
23 2:18 p.m.?

24 A I do.

25 Q Did you speak to her often from the jail?

1           **A**     Whenever she called.

2           **Q**     The -- did you ever speak to her about the  
3 incident from that day while -- while on the jail  
4 calls?

5           **A**     Not -- that was a long time ago. I'm not  
6 sure. Maybe. Possibly.

7           **Q**     Okay.

8                   Did you ever discuss about what Jason had  
9 expressed to you with her on the jail calls?

10          **A**     Yes.

11          **Q**     Okay.

12          **A**     Yes, I did.

13          **Q**     I'm showing you again State's Exhibit 79. Do  
14 you recognize this?

15          **A**     Yes.

16                   **MS. SAVAS:** Your Honor, at this time, the  
17 state seeks to admit and publish 79, the call from  
18 March 5.

19                   **THE COURT:** Marked and admitted subject to  
20 the objection, which has been overruled.

21                   (State's Exhibit No. 79 is admitted into the  
22 record.)

23                   (Exhibit is played.)

24           **BY MS. SAVAS:**

25           **Q**     Was that the introduction again --

1           A     Yes.

2           Q     -- that started that call?

3           A     Uh-huh.

4           (Exhibit is played.)

5    **BY MS. SAVAS:**

6           Q     And Frank, just to go back, on those jail  
7    calls, who was that female speaking?

8           A     That was Toya.

9           Q     And who was the male?

10          A     That was me.

11          Q     Okay.

12                Do you recall speaking to her again a couple  
13   of days later on March 7, 2020?

14          A     Yes.

15          Q     About two o'clock in the afternoon?

16          A     Yes.

17          Q     Did you ever talk about y'all's relationship  
18   together --

19          A     Yes.

20          Q     -- while on the calls?

21          A     Yes.

22          Q     Again, showing you State's Exhibit 79, the  
23   same one?

24          A     Yes.

25          Q     You recognize that?

1           **A**     Got you.

2           **MS. SAVAS:** At this time, the state seeks to  
3 admit and publish 79, the March 7 call.

4           **THE COURT:** You may proceed. Marked and  
5 admitted subject to the defense objection, which  
6 has been overruled.

7           (State's Exhibit No. 79 is admitted into the  
8 record.)

9           (Exhibit is played.)

10          **BY MS. SAVAS:**

11           **Q**     Mr. Simmons, was that -- who was the female  
12 speaking in that one, again?

13           **A**     That was Toya.

14           **Q**     And --

15           **A**     The guy was me.

16           **Q**     The guy was you? And was she the one that  
17 apologized to you?

18           **A**     She did.

19           **MS. SAVAS:** Beg the Court's indulgence.

20           Your Honor, at this time, we may have an  
21 issue of law.

22           **THE COURT:** Mr. Foreman, ladies and  
23 gentlemen, we have a brief matter of law. During  
24 the break, please do not discuss the case. And  
25 please leave your notepads in your seats. We

1 appreciate your patience.

2 (The jury exits the courtroom at 2:52 p.m.)

3 **THE COURT:** You may be seated.

4 I assume this is about e-mail?

5 **MS. SAVAS:** Yes, Your Honor.

6 At this time, the state seeks to admit the  
7 e-mail into evidence. I have a few different ways  
8 of redaction, if Your Honor was inclined to  
9 redact, so we can just the --

10 **THE COURT:** What are you seeking to admit? I  
11 need to know. And Mr. D'Angelo needs to know.

12 **MS. SAVAS:** Yes, ma'am.

13 May I approach, Your Honor?

14 **THE COURT:** You may.

15 **MS. SAVAS:** It might be easier.

16 These are the only statements I'm seeking to  
17 admit in this document, where she says "Then the  
18 pain came. Your girl started texting me on the  
19 Gram, sending your texts to her to me about me."  
20 Then, "I was totally gone that day. Felt like it  
21 doesn't even matter what it felt like. It just  
22 hurts so bad. That's the mind frame I was in that  
23 day. I didn't break in your home. The side door  
24 was locked at the bottom but not all the way  
25 closed.



1            "It wasn't glass that he heard. My keys, I  
2 hit the top of the door glass with my keys really  
3 hard. It didn't break. But it was loud."

4            **THE COURT:** Mr. D'Angelo?

5            Well, for what purpose are you seeking to  
6 admit these statements?

7            **MS. SAVAS:** Statement against a party  
8 opponents that -- admission of guilt, Your Honor.  
9 And it goes to her motive to show about the  
10 Instagram, the female that she thought was  
11 cheating on him. And then she goes on to describe  
12 how she entered into his home.

13           **THE COURT:** Mr. D'Angelo, do you have an  
14 exception to what the state is seeking to  
15 introduce?

16           **MR. D'ANGELO:** Yes, I do, Your Honor. And  
17 again, I know I've argued it to you at -- at  
18 length. So I won't delay the court. But again, I  
19 feel under rule of completeness, I think taking  
20 out of context, sending back this e-mail to the  
21 jury with heavily redacted portions like this, as  
22 I stated, I think is going to have them wondering  
23 what -- what are we hiding? What is the context?

24           Again, I think the context is important. If  
25 we're arguing -- you know, the state is stating --

1 goes towards the state of mind. I think having  
2 the context of what the e-mail is sending is  
3 certainly going to that. I certainly think the  
4 last paragraph, Your Honor, could be dying  
5 declaration. Again --

6 **THE COURT:** I think that's a stretch.

7 **MR. D'ANGELO:** Again, though, I think it's  
8 important for the context.

9 **THE COURT:** I think it's a stretch. It's  
10 been my experience that people who want to kill  
11 themselves succeed and they don't talk about it.  
12 Unfortunately, I've had contact with a lot of  
13 lawyers, unfortunately, who have killed  
14 themselves. And it's been my experience that when  
15 someone intends to end their life, they do it.  
16 They don't chat about it. They have a plan and  
17 they execute it. Unfortunately.

18 I don't think it's a dying declaration. I  
19 don't think it would meet the elements of a dying  
20 declaration.

21 **MR. D'ANGELO:** Understood, Your Honor.

22 **THE COURT:** But I do think -- go ahead. I'm  
23 sorry. Finish what you were telling me.

24 **MR. D'ANGELO:** Nothing further, Your Honor.  
25 I've -- I've made my argument. And I know

1           you've -- you've paid attention and heard it.

2           **THE COURT:** Anything further from the state?

3           **MS. SAVAS:** No, Judge.

4           **THE COURT:** I think that the full paragraphs,  
5 both one and two, are admissible. One portion,  
6 they include admissions against interest, which  
7 would be the last portion of paragraph two.  
8 Arguably, the -- the one sentence that the state  
9 wants in paragraph one would be a statement of  
10 motive.

11           But more importantly, the first two  
12 paragraphs are an exception to the hearsay rule,  
13 that being 803(3), which is a statement of her  
14 then-existing mental, emotional, or physical  
15 condition, which would events -- her state of  
16 mind, her emotions, sensation, such as intent,  
17 plan, motive, design, mental feeling, pain and  
18 bodily health. And these are not statements of  
19 memory. They're statements contemporaneously,  
20 that she's explaining, or conveying to  
21 Mr. Simmons, how she felt her motivation for the  
22 things that were going on around her at the time.

23           I was a little conflicted about paragraph  
24 three. But the more I read it, I do not think it  
25 comes within an exception. These are more

1 statements about feeling -- they really sort of  
2 imply that "I'm going to take my own life." And I  
3 am concerned that they have the tendency to  
4 mislead the jury, or to also appeal to their  
5 passion, prejudices, and sympathies -- sympathy,  
6 none of which have anything to do with the  
7 elements of this case.

8 There's a vague reference, now that I have a  
9 point of reference, where she says -- I was  
10 wondering why there was a reference to having  
11 money set aside for her grandchildren and for him.  
12 But I guess now in context, that may be referring  
13 to the \$19,000 that Mr. Simmons has testified to.  
14 But upon reflection, it's such a vague statement,  
15 that I would not want to run the risk, again, of  
16 appealing to the passion, prejudice -- prejudice  
17 or sympathy of the jury, or any tendency to  
18 mislead them, as well as it really not being --  
19 coming within the ambit of any of the exceptions  
20 in the hearsay rule.

21 But I think there's a better way to redact  
22 this. You don't have to black it out. You can  
23 redact something and it won't even look like it's  
24 been blacked out. There's a way to do it. I've  
25 done it. All you have just put a different -- all

1       you have to do is when you run it, run it, put a  
2       similar color piece of paper over it. And it will  
3       cover up that last paragraph. And it will look  
4       like that's the end of the e-mail, instead of that  
5       big black.

6               **MS. SAVAS:** Oh.

7               **THE COURT:** Because they'll then --

8               **MS. SAVAS:** Yeah.

9               **THE COURT:** -- assume that you are not -- are  
10       keeping something from them. And I agree with  
11       Mr. D'Angelo to that extent. Because I've already  
12       had a juror tell the bailiff, she wants to be in  
13       here for matters of law. Because she got some  
14       questions that she wants to ask me about in this  
15       case, not my last case.

16              **MS. SAVAS:** Yeah.

17              **THE COURT:** Again. I told you we've got  
18       Inspector Gadgets. Y'all don't be listening to  
19       me.

20              **MS. SAVAS:** I just had my secretary do the  
21       redaction process. Does the Court want me to --

22              **THE COURT:** I don't want that blacked-out  
23       spot on there. There's a way to do it. All you  
24       have to do is cut a piece of white paper, put it  
25       over it, and it'll color it just like it's a

1 regular piece of paper.

2 MS. SAVAS: Okay.

3 THE COURT: And they won't know that  
4 something's been redacted.

5 You can work on it. He doesn't have to make  
6 any references. And you don't have to show it to  
7 the jury while he's making reference to it.  
8 Because you only want to elicit two statements  
9 from it. But if you want it to come into  
10 evidence, of course, they can ask about these  
11 other portions of it. But I think to have those  
12 big blacked-out spots is just a red flag for the  
13 jury to have more questions about what they think  
14 they're not seeing.

15 MS. SAVAS: Yes, Your Honor. So to be clear:  
16 We can refer to it. But then I can have time for  
17 my secretary to --

18 THE COURT: Yes.

19 MS. SAVAS: -- go do it you want --

20 THE COURT: Uh-huh.

21 MS. SAVAS: -- before I --

22 THE COURT: Absolutely.

23 MS. SAVAS: -- submit it in there.

24 THE COURT: Uh-huh.

25 MS. SAVAS: Okay.

1           **THE COURT:** What number is that?

2           **MS. SAVAS:** It is number --

3           **THE COURT:** E-mail. No. 77.

4           **MS. SAVAS:** Thank you, Judge. I have the top  
5 portion.

6           **THE COURT:** And it'll be marked and admitted  
7 subject to the Court's instructions on redaction  
8 and subject to the objection, which has been  
9 overruled.

10           **MS. SAVAS:** And I think -- and, Judge, would  
11 that also then be that they could not refer to  
12 anything within that third redacted?

13           **THE COURT:** I think that goes without saying,  
14 doesn't it, if I said it's to be redacted?

15           **MS. SAVAS:** I just wanted to clarify, Judge.  
16 I just wanted to make sure.

17           Okay. I will have that redacted. And --  
18 yes.

19           **THE COURT:** All right.

20           We're ready to proceed? And while we're  
21 out -- have the jury out, the conference at the  
22 bench. I'm not sure the mic picked it up.

23           I questioned Ms. Savas as to why Ms. --  
24 Ms. Melissa --

25           **MS. SAVAS:** High?

1           **THE COURT:** Ms. High had not been called as a  
2           witness prior to the introduction of the phone  
3           calls. Apparently, she had some misunderstanding  
4           about her requirement to establish the foundation  
5           for the admissibility of the calls. But the  
6           defense waived any objection regarding that.  
7           Correct?

8           **MR. D'ANGELO:** That's correct.

9           **THE COURT:** Is what I said an accurate  
10          summary of our conversation from the state?

11          **MS. SAVAS:** Yes, Your Honor.

12          **THE COURT:** From the defense?

13          **MR. D'ANGELO:** Yes, Your Honor.

14          **THE COURT:** All right.

15          Are we ready to proceed?

16          **MS. SAVAS:** Yes, Your Honor.

17          **MR. D'ANGELO:** Yes, ma'am.

18          **THE COURT:** Please bring in the jury.

19          (The jury enters the courtroom at 3:03 p.m.)

20          **THE BAILIFF:** All jurors are present,  
21          Your Honor.

22          **THE COURT:** You may be seated.

23          You may proceed.

24          **MS. SAVAS:** Thank you, Your Honor.

25          **THE COURT:** You're welcome.



1     **BY MS. SAVAS:**

2           **Q**     Mr. Simmons, after this incident, did  
3     Ms. Steward continue to contact you?

4           **A**     Yes, non-stop.

5           **Q**     And you said she had called you and messaged  
6     you or texted you? Are there other ways she  
7     communicated with you?

8           **A**     No.

9           **Q**     Did -- did she ever send you an e-mail?

10          **A**     Yes.

11          **Q**     Okay.

12                 Mr. Simmons, do you recall what she  
13     discussed -- Mr. Simmons, did you provide that e-mail  
14     to the state as part of this --

15          **A**     I did.

16          **Q**     -- investigation?

17          **A**     Yes.

18          **Q**     Okay.

19                 I'm going to show you what's been marked for  
20     identification purposes as State's Exhibit 77. Do you  
21     recognize that?

22          **A**     Yes.

23          **Q**     And Mr. Simmons, do you recognize that?

24          **A**     Yes.

25          **Q**     Okay.

1 State's Exhibit 77, and what is this?

2 A A letter she sent to me.

3 Q Was it via e-mail?

4 A E-mail.

5 Q What was your e-mail address at that time?

6 A [REDACTED]@gmail -- @yahoo.com.

7 Q What was her e-mail at that time?

8 A [REDACTED]@gmail.com.

9 Q Was that also another name that she went by?

10 A Yes.

11 MS. SAVAS: Your Honor -- Your Honor, at this  
12 time the state seeks to --

13 THE COURT: Marked and admitted subject to  
14 the Court's ruling.

15 MS. SAVAS: Thank you, Judge.

16 THE COURT: Subject to the objection, which  
17 has been overruled.

18 (State's Exhibit No. 77 is admitted into the  
19 record.)

20 MS. SAVAS: Thank you, Judge.

21 THE COURT: Uh-huh.

22 BY MS. SAVAS:

23 Q Mr. Simmons, I'm going to ask you to read a  
24 couple of lines from that e-mail for me. Start there.

25 A "Then the pain came. Your girl started

1     texting me on the Gram, sending your text to her to me  
2     about me."

3           Q     And when she's talking about "your girl," do  
4     you know who she's referring to?

5           A     Destiny.

6           Q     Okay.

7                     Can you read the next part?

8           A     "I was totally gone that day. It felt like  
9     it didn't -- it doesn't matter even matter what it  
10    felt. Like it just hurt so bad. That's the mind frame  
11    I was in that day. I didn't break in your home. The  
12    side door was locked at -- my keys really hit hard. It  
13    didn't break. But it was loud."

14          Q     Okay.

15                     Can you -- I think you may have skipped a  
16    line. Can you just reread that last portion?

17          A     So you want me to read it all over again?

18          Q     Yes. Go ahead and finish the sentence.

19          A     "I was totally gone that day. It felt like  
20    it doesn't even matter what I felt. Like it just hurts  
21    so bad. That's the mind frame I was in that day. I  
22    didn't break in your home. The side door was locked at  
23    the bottom but not all the way closed. Wasn't glass  
24    that he heard. He heard my keys. I hit the top of the  
25    door glass with my keys really hard. It didn't break.

1 But it was loud."

2 Q Thank you.

3 And who was she referring to that he heard my  
4 keys?

5 A Jason.

6 Q And which door did -- did your back door have  
7 glass?

8 A The back patio door.

9 Q Back patio door had glass. Okay.

10 Mr. Simmons, do you know about how many times  
11 she apologized to you?

12 A A handful of times maybe.

13 Q Multiple times?

14 A Yes.

15 Q Okay.

16 Mr. Simmons, at this time, please answer any  
17 questions the defense may have.

18 THE COURT: You may proceed.

19 MR. D'ANGELO: Your Honor, at this time, we  
20 have a very brief matter of law that needs to be  
21 taken up.

22 THE COURT: Mr. Foreman, ladies and  
23 gentlemen, we have a brief matter of law. During  
24 the break, please do not discuss the case. Please  
25 leave your notepads in your seats, and we

1 appreciate your patience.

2 (The jury exits the courtroom at 3:08 p.m.)

3 **THE COURT:** You may be seated.

4 Yes, sir.

5 **MR. D'ANGELO:** Thank you, Your Honor. And  
6 again, I -- I apologize I couldn't bring this up.  
7 I wasn't sure how long that was going to be.

8 **THE COURT:** Why didn't you bring it up last  
9 night when we were here until almost seven o'clock  
10 when we were covering everything?

11 **MR. D'ANGELO:** This is -- this is based on  
12 testimony that I just heard, Your Honor.

13 **THE COURT:** I'm listening.

14 **MR. D'ANGELO:** At the beginning, the state  
15 had made a motion in limine to suppress any  
16 conversation revolving conversations that Frank  
17 Simmons and Toya had in regards to the fact that  
18 she was pregnant, and then talking about a --

19 **THE COURT:** They never made any motion  
20 about -- yeah. You did. But it hadn't come up to  
21 this point, so I'm trying to figure out why.

22 **MR. D'ANGELO:** So Your Honor -- I -- I think  
23 it would be important and it's relevant --

24 **THE COURT:** To?

25 **MR. D'ANGELO:** To multiple reasons. First,

1           and most recently, Frank misstating that the main  
2           thing that they spoke about on the jail calls was  
3           in regards to him getting his property back. A  
4           very large portion of their phone calls was  
5           talking about her being pregnant, the test that  
6           she was having, about their child.

7           **THE COURT:** How is that relevant to an issue  
8           of consequence in this case?

9           **MR. D'ANGELO:** It goes toward -- directly  
10          towards his credibility, Your Honor.

11          **THE COURT:** No, it does not.

12          **MR. D'ANGELO:** Your Honor --

13          **THE COURT:** I need to note he's never been  
14          asked directly anything about whether they were  
15          speaking about her pregnancy. That's a  
16          disingenuous argument.

17          **MR. D'ANGELO:** I would state --

18          **THE COURT:** I need to know how it relates to  
19          an element or a fact of consequence in this case.  
20          How does her being pregnant make anything more or  
21          less probable?

22          **MR. D'ANGELO:** I think the fact that as the  
23          solicitor spoke in her opening arguments about  
24          Frank being a family man, as Frank has had  
25          multiple statements about how he is there for his

1 children, about how he wants to be a positive role  
2 model for his children, I think it's relevant --

3 **THE COURT:** What does pregnancy have to do  
4 with that?

5 **MR. D'ANGELO:** The fact that she was pregnant  
6 with his child. And he's never even met with the  
7 child and has no relationship with his child.

8 **THE COURT:** Have any DNA testing been done to  
9 prove it's his child?

10 **MR. D'ANGELO:** It has not, Your Honor.

11 **THE COURT:** All right.

12 Well, then we don't know if it's his child,  
13 do we? It's an allegation.

14 **MR. D'ANGELO:** He never challenged it in any  
15 of the jail calls.

16 **THE COURT:** He doesn't have to. I'd need  
17 some empirical proving that that is in fact his  
18 child, other than someone's assertion that cannot  
19 be corroborated. DNA is empirical. Have they  
20 ever had DNA testing that this is in fact his  
21 child?

22 And this is my first notice that she even has  
23 a child. Nobody's ever really mentioned it before  
24 now. There was a mention about children -- I'm  
25 trying to remember exactly what the motion in

1           limine -- oh. There was a paragraph in the  
2           pre-trial brief, about three lines about --

3           Let me see that again.

4           It was, "The state anticipates the defense  
5           may allege the victim Frank Simmons and defendant  
6           have a child in common. Depending upon testimony  
7           elicited at the time of trial, the state may seek  
8           to exclude such testimony regarding this matter."

9           How many children does Mr. Steward have?

10          MR. D'ANGELO: One -- well, she has an older  
11          daughter, Your Honor --

12          THE COURT: And what is that --

13          MR. D'ANGELO: -- and this is her second  
14          child.

15          THE COURT: -- child's name?

16          MR. D'ANGELO: Harmony.

17          THE COURT: What is -- and how old is she?

18          MR. D'ANGELO: Three and a half? Three.

19          THE COURT: No, I'm talking about the first  
20          child. What is her name?

21          MR. D'ANGELO: Tamethia. And she is 35, Your  
22          Honor.

23          THE COURT: And the second child is named?

24          MR. D'ANGELO: Harmony.

25          THE COURT: And what was her date of birth?



1                   **MR. D'ANGELO:** [REDACTED] [REDACTED].

2                   **THE COURT:** And what's the birth certificate  
3 say? Did anybody sign an affidavit of parentage,  
4 saying that that was their child?

5                   **MR. D'ANGELO:** Not to my knowledge,  
6 Your Honor. No.

7                   **THE COURT:** So that means then she was a  
8 child born outside of wedlock?

9                   **MR. D'ANGELO:** Yes, Your Honor.

10                  **THE COURT:** Considered not to have a father,  
11 correct?

12                  **MR. D'ANGELO:** Correct, Your Honor.

13                  **THE COURT:** Has she ever taken any action to  
14 establish paternity?

15                  **MR. D'ANGELO:** She has not wanted to,  
16 Your Honor.

17                  **THE COURT:** Has she ever received any child  
18 support from Mr. Simmons?

19                  **MR. D'ANGELO:** No, she --

20                  **THE COURT:** Has he been involved with any  
21 state agencies to establish paternity or pay child  
22 support?

23                  **MR. D'ANGELO:** No, he has not, Your Honor.

24                  **THE COURT:** So what we have is an allegation  
25 that this is a child of his, with no empirical