

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable John C. Hayes, Circuit Court Judge

 ORIGINAL

THE STATE,

RESPONDENT,

V.

JONATHAN DONELL RHODES,

APPELLANT

APPELLATE CASE NO. 2015-002605

RECORD ON APPEAL

RECEIVED

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SC Court of Appeals

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT NO. 103 (POWERPOINT PRESENTATION)
STATE’S EXHIBIT NO. 93 (PHOTOGRAPH)
STATE’S EXHIBIT NO. 150 (PHOTOGRAPH)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
-VS-)
)
JONATHAN D. RHODES,)
)
DEFENDANT.)
_____)

2013-GS-23-04260 - 04264

TRANSCRIPT OF RECORD
(VOLUME ONE OF TWO)

NOVEMBER 30 - DECEMBER 3, 2015
GREENVILLE, SOUTH CAROLINA

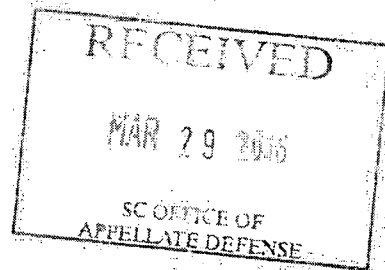
BEFORE:

THE HONORABLE JOHN C. HAYES, III

APPEARANCES:

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CIRCUIT COURT REPORTER

JONATHAN HOWARD - CROSS EXAMINATION BY MR. ERWIN

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1 Q. Okay.

2 MR. ERWIN: I have no further questions.

3 THE COURT: Redirect?

4 MR. WILKINS: None, Your Honor.

5 THE COURT: You can step down. Thank you. Call your
6 next witness.

7 MR. WILKINS: That's all we have on that statement,
8 Your Honor. It's the statement on the phone and the one in
9 the law enforcement center that we would say is knowing and
10 voluntary, Your Honor.

11 THE COURT: All right. What's the Defense position?

12 MR. ERWIN: And, Judge, on that I really don't have any
13 objection. I guess we'll see when the statement actually
14 comes in in context if there are other objections made, but
15 as far as Jackson v. Denno, I believe they've satisfied what
16 they need to.

17 THE COURT: All right. I find that it's freely and
18 voluntarily, in fact, to echo the questions on cross, it was
19 spontaneous and voluntary. So it's admissible. And I don't
20 think I need to go through a full Jackson versus Denno
21 analysis because it is voluntary, a voluntary statement, no
22 custody, no interrogation. All right.

23 MR. SARRATT: Your Honor, the final motion we have is
24 one under rule 702 in Council for hearing on the
25 admissibility of certain expert testimony.

1 **THE COURT:** All right.

2 **MR. WILKINS:** We shall proceed, Your Honor.

3 **THE COURT:** Well, let me isolate it a little bit so
4 I'll know what I'm listening for. This has to do, I
5 understand, the telephone?

6 **MR. SARRATT:** Correct, Your Honor.

7 **THE COURT:** All right. What is the -- what are the
8 experts?

9 **MR. SARRATT:** It's my understanding the State intends
10 to call Special Agent Richard Fennern from the FBI, the CAST
11 Team to come and present certain demonstrative evidence and
12 potentially give opinion testimony as to the location of the
13 Defendant's cell phone at various points in time near the
14 murders.

15 **MR. WILKINS:** That's correct, Your Honor.

16 **THE COURT:** This is triangulation, pinging?

17 **MR. WILKINS:** It's not triangulation. Mr. Fennern can
18 explain it better than me.

19 **THE COURT:** All right. Well, I'd rather hear -- okay.

20 **MR. WILKINS:** You can kind of hear him as how he
21 explains it. But he -- I think the argument is going to get
22 -- the information that he is representing in -- that he's
23 going to represent to the jury is actually not his -- it's
24 not a calculation that he did, it's information he received
25 from cell phone companies, two in particular, Sprint and T-

RICHARD FENNERN - DIRECT EXAMINATION BY MR. WILKINS

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1 Mobile. The cell phone that was in the possession of the
2 Defendant at the time of the murder had service with Sprint.
3 There's also other cell phones that may have been involved
4 that were under T-Mobile.

5 What Mr. Fennern will testify to as an expert in
6 historical cell detail record analysis is measurements from
7 that phone to the cell phone tower at various times
8 throughout the day.

9 **THE COURT:** All right. I know what I'm looking at.
10 All right.

11 **MR. WILKINS:** So the State calls Richard Fennern.

12 **Richard Fennern,** being
13 duly sworn testified as follows;

14 **MADAME CLERK:** Please be seated and state your name for
15 the record.

16 **MR. FENNERN:** Richard Fennern.

17 **Direct Examination by Mr. Wilkins:**

18 Q. Mr. Fennern, with whom are you employed?

19 A. I'm a special agent with the Federal Bureau of
20 Investigation.

21 Q. All right. And what do you do for the FBI?

22 A. Two parts, I'm a special agent investigating violent
23 crime matters as well as I'm a member of the FBI's Cellular
24 Analysis Survey Team called CAST, which deals with call
25 detail record analysis.

RICHARD FENNERN - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. How long have you been with the FBI?

2 A. I've been with the FBI since June of 2009.

3 Q. All right. What kind of educational background do you
4 have?

5 A. I have a bachelor's degree in accounting from
6 Metropolitan State University in Minnesota as well as a two
7 year degree in criminal justice from the Community College
8 of the Air Force.

9 Q. And any other job experience?

10 A. Prior to -- I spent eight years in the Air National
11 Guards/Air Force active duty as well as I worked as a CPA
12 for approximately three years.

13 Q. All right. So what is your sort of day-to-day
14 experience at the FBI? What do you do every day?

15 A. I investigate violent crime matters in Prince George's
16 County, Maryland as well as Baltimore, Maryland, which
17 include armored car robberies, commercial robberies, assist
18 with homicide investigations, bank robberies. And then also
19 with the CAST Team I assist local state and federal agents
20 with cases, how they relate to cell phone analysis.

21 Q. All right. What does CAST stand for?

22 A. Cellular Analysis Survey Team.

23 Q. All right. And when was the C-A-S-T, the CAST Team
24 developed within the FBI?

25 A. Initially it was an initiative in 2006 that came out of

RICHARD FENNERN - DIRECT EXAMINATION BY MR. WILKINS

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1 Philadelphia with their Violent Crimes Task Force after they
2 recognized the need for cell phone analysis and
3 investigations. From that point it became a -- moved to our
4 headquarters unit where it was an initiative under the Safe
5 Street Gangs Unit.

6 And then in, I believe it was 2013, it became its own
7 unit within the Violent Crimes Against Children's section of
8 the FBI where now it employs approximately ten people at
9 headquarters as well as forty-two agents throughout the
10 country that are certified members of CAST as I am.

11 Q. Okay. And how many members do you have?

12 A. It's forty -- right now forty-two that are in the field
13 working.

14 Q. Tell us what -- what is historical cellular record
15 analysis?

16 A. Historical record analysis deals with -- kind of think
17 of it as their -- your records that you normally have when
18 you use a cell phone. If you've ever looked at your bill,
19 you get -- you have information on that bill regarding the
20 numbers you called, the numbers that called you, when those
21 calls happened as well as the duration of those calls.

22 What in addition you have with that, in a law
23 enforcement perspective, is it gives you the cell tower that
24 was used for a communication, which allows you to provide a
25 general location where a phone is as well as additional

RICHARD FENNERN - DIRECT EXAMINATION BY MR. WILKINS

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1 information as far as distance to tower information on some
2 carriers of where the phone is in relation to the tower. So
3 with those records we really can do a number of things
4 depending on what the situation is.

5 We can look for patterns if we're looking for a
6 fugitive. We can utilize those records to determine who
7 that person's talking to as well as where they may be
8 located to find them as well as our primary -- our primary
9 responsibility under the Violent Crimes Against Children's
10 section is if there's a kidnapping that happens throughout
11 the country, one of our members is deployed to do the cell
12 phone analysis to try to locate that missing individual.

13 And in addition to that, then we also have historical
14 events. As in this case where it's a homicide case, we can
15 look at the records and determine if a phone was consistent
16 with being in an area or consistent with not being in an
17 area.

18 Q. And so you use the historical cell phone data provided
19 to you by the provider to make those determinations?

20 A. That's correct.

21 Q. Okay. Are you familiar with cellular technologies
22 utilized by all the major cellular companies?

23 A. Yes. We go through all of it as part of our training
24 to become CAST certified.

25 Q. All right. So tell us about your training.

RICHARD FENNERN - DIRECT EXAMINATION BY MR. WILKINS

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1 A. Okay. As far as my initial training with cell phone
2 analysis, I went through various FBI training until 2011
3 when I went to a three day course that was offered by the
4 CAST Team at that time in Philadelphia. I'm sorry, that was
5 in Florida. That was a three day course, which is just an
6 introduction to the cell phone records, how you get them
7 from the company, how they're created and then how do you
8 plot them in a law enforcement setting to determine the
9 general location of a phone.

10 After that point I utilize the records in my
11 investigations to realize the value in them, requested
12 additional training, which sent me to Melbourne, Florida for
13 a two week course with a private company to learn radio
14 frequency and how a cell phone network operated -- how a
15 cell phone network is put together and how it operates.

16 After that point I went through an advanced course,
17 which was another week, with the FBI CAST Team to look at
18 the records and anomalies that happen with them and how to
19 interpret them. And then I became part of the -- requested
20 to be a part of the CAST Team.

21 Went through a selection process, which then was four
22 weeks broken up in two parts in Charlotte, North Carolina
23 where we went through -- we bring in all the providers. So
24 Sprint, T-Mobile, Verizon, AT&T, Cricket, I believe at the
25 time U.S. Cellular as well, we bring in their engineers who

RICHARD FENNERN - DIRECT EXAMINATION BY MR. WILKINS

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1 then explain their network to us, how the records are
2 created. And then they bring in their records custodians,
3 which show us how those records are then presented in their
4 -- the formats that they use that we receive.

5 And then we additionally went through even more radio
6 frequency training with engineers and after that became CAST
7 certified after completing that process. And then since
8 then I've done annual, semi-annual update trainings, usually
9 a week at a time meeting with the providers again and going
10 over any updates to their networks and things on the horizon
11 of that sort.

12 Q. About how many different cases have you been involved
13 in where you had to analyze records to make determinations,
14 historical or real time?

15 A. Hundreds, at least five hundred cases.

16 Q. And so how often do you think you analyze cell phone --
17 cell phone records?

18 A. For the past two years I've done them every day. If
19 not, I may have had a day off here and there, but pretty
20 much every day.

21 Q. Have you ever had the chance to validate the location
22 of a phone after a specific event has occurred?

23 A. Yes. Two things, a part of our training is we go
24 through -- we get certified in the equipment that cell phone
25 companies use to measure their network. It's called -- it's

RICHARD FENNERN - DIRECT EXAMINATION BY MR. WILKINS

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1 drive testing equipment. It's what's generally referred to
2 a company being JDSU agilent technology. Those are the same
3 companies and tools the cell phone companies use to measure
4 their network.

5 So part of that is we go out and we can actually
6 measure the radio frequency in an environment and map out
7 what a sector looks like. So we utilize that in our
8 understanding of the analysis.

9 As well as cases I've worked I've actually had
10 defendants that have been on GPS monitoring when they have
11 committed a crime. And I've been able to take that GPS
12 point from their ankle bracelets throughout that period and
13 map that with the cell phone records to validate the
14 historical analysis as well as having individuals that have
15 admitted to being in locations through interviews as well as
16 guilty pleas and things of that sort.

17 Q. And have you given any training in this field?

18 A. Yes, I have. I've taught our -- the three day course I
19 initially went through, I've taught that now since 2013.
20 I've taught over five hundred investigators from
21 Pennsylvania, Maryland, Virginia, North and South Carolina,
22 Georgia, Florida, Texas, Utah and Seattle.

23 Q. And have you ever testified as an expert in court
24 before?

25 A. Yes, I have.

RICHARD FENNERN - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. How many times?

2 A. Over twenty times.

3 Q. And what were you -- what were you certified as an
4 expert in in those cases?

5 A. Historical call detail record analysis.

6 Q. Okay. And as a CAST Team, the CAST Team as a whole,
7 how many times have CAST Team members testified throughout
8 the country?

9 A. We've testified in over eight hundred trials throughout
10 the country. I believe every state now we've been --
11 testified in.

12 **MR. WILKINS:** Your Honor, I would move to admit Richard
13 Fennern as an expert in historical call detail analysis.

14 **THE COURT:** Do you want to do any voir dire now or do
15 you want to wait and -- since we don't have a jury here?

16 **MR. SARRATT:** Well, I'll do a brief voir dire.

17 **THE COURT:** Okay.

18 **Voir Dire by Mr. Sarratt:**

19 Q. Agent Fennern, you said that you graduated with a
20 degree in accounting?

21 A. That's correct.

22 Q. And worked as a CPA?

23 A. Correct.

24 Q. But you don't hold any degrees in engineering?

25 A. No, I do not.

RICHARD FENNERN - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. Okay. And you've never been employed as an engineer?

2 A. No.

3 Q. Do you have any peer review journals or anything that
4 you would rely on in terms of measuring the distance from
5 tower figures that you spoke to and radio frequency
6 propagation maps?

7 A. Peer reviews, as far as there's -- there's articles out
8 there. I couldn't specify to a specific one. I'm trying --
9 there's a book that's out of the U.K. that deals with the
10 same matter in law enforcement that we do from Brandon Hoy.
11 I believe it's called Detail Record Analysis. I can't
12 remember the entire title for it. As far as anything more
13 specific than that book, no.

14 Q. Okay. And as far as you're aware of are there any
15 courses or any formal education available in that specific
16 field?

17 A. As far as -- the training that I go through with CAST,
18 as far as outside of that, the only training that the FBI
19 offers is the three day course.

20 Q. Um-hum (affirmative).

21 A. And then beyond that, no, just regarding the cellular
22 industry.

23 Q. Okay.

24 **MR. SARRATT:** I believe that's all I have on voir dire,
25 Your Honor.

RICHARD FENNERN - DIRECT EXAMINATION BY MR. WILKINS

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1 **MR. WILKINS:** Thank you, Your Honor.

2 **THE COURT:** Yes.

3 **Direct Examination by Mr. Wilkins Continued:**

4 Q. All right. Mr. Fennern, I'm going to -- well, let me
5 ask you this. Were you asked to get involved ---

6 **MR. SARRATT:** I don't mean to interject.

7 **MR. WILKINS:** That's all right.

8 **MR. SARRATT:** I was going to -- should we put anything
9 on the record ---

10 **THE COURT:** Well, I find that he's qualified under the
11 -- what exactly do you offer him ---

12 **MR. WILKINS:** He's an expert in historical call detail
13 analysis.

14 **THE COURT:** All right.

15 **MR. WILKINS:** And that was the -- his prior training,
16 CAST member of the FBI, the two weeks. He's also an
17 instructor in this particular area.

18 **THE COURT:** Right. Yeah.

19 **MR. WILKINS:** Analyzing historical cell phone data.

20 **THE COURT:** I find he is qualified in that area.

21 **MR. SARRATT:** And I certainly have no objection to his
22 qualification in that field generally, however, I would
23 object -- but that does not necessarily make him an expert
24 on all fields -- the underlying science underneath the ---

25 **THE COURT:** Right.

RICHARD FENNERN - DIRECT EXAMINATION BY MR. WILKINS

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1 **MR. SARRATT:** --- analysis.

2 **THE COURT:** Well, we, you know, under Council, which is
3 we're all looking at at this point that this -- the
4 qualification is one of the areas, one of the hurdles so to
5 speak. And there are other hurdles. Let's just put it like
6 that. Go ahead.

7 **MR. WILKINS:** All right. Thank you, Your Honor.

8 **Direct Examination by Mr. Wilkins Continued:**

9 Q. Were you asked to get involved in the case of the State
10 versus Jonathan Rhodes?

11 A. Yes, I was.

12 Q. How did you get involved with that?

13 A. I received a request from our headquarters unit. Our
14 headquarters unit received a request, I believe, from your
15 office regarding analyzing some cell phone records for a
16 case. And it came back to me being the one responded to
17 take the case on.

18 Q. Okay. And were you sent cell phone records?

19 A. Yes, I was.

20 Q. Okay. And do -- we can get into that in just a second.
21 And did you analyze the cell phone records that you were
22 sent?

23 A. Yes, I did.

24 Q. And who -- do you remember who sent them to you?

25 A. I believe they came from your office. The specific

RICHARD FENNERN - DIRECT EXAMINATION BY MR. WILKINS

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1 person, I don't recall.

2 Q. All right. And once you received that information --
3 did they give you a time-frame as well that you were focused
4 on?

5 A. Yes. As part of our request we ask for all pertinent
6 information being the time of the crime that happened, the
7 cell phone numbers that we're looking at and in general any
8 other important addresses to the case that need to be taken
9 into account with the analysis.

10 Q. Okay. And did you receive those as well?

11 A. Yes, I did.

12 Q. All right. As a result of receiving that information
13 from law enforcement did you create a PowerPoint
14 presentation ---

15 A. Yes, I did.

16 Q. --- with this information in it?

17 A. Yes, I did.

18 Q. All right. So the PowerPoint information, what does --
19 what information does the PowerPoint information have?

20 A. So what happens is the records that you get are all in
21 numerical format. So there's numbers listed throughout,
22 dates, times, cell towers that are used. What we do is we
23 take that information from that number spreadsheet
24 environment and use that to then illustrate it on a map so
25 you can visualize what is exactly happening with the cell

RICHARD FENNERN - DIRECT EXAMINATION BY MR. WILKINS

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1 phone records.

2 Q. So did you receive Sprint cell phone records and it's
3 -- was it PCMD data for two particular numbers in the name
4 of Eric Cade, specifically -7553 and -0257?

5 A. Yes.

6 Q. Okay. And the same time-frame as well, around
7 September 30th through about October 3rd or 4th?

8 A. Correct. Yes.

9 Q. Did you also receive T-Mobile information for cell
10 phone -- for three cell phone numbers, -9391, -
11 -3532 and -7678?

12 A. Yes.

13 Q. And so those are the five numbers that you were --
14 those are the -- the cell phone records related to those
15 five numbers were what you were looking at?

16 A. That's correct.

17 Q. All right. And the first two that I mentioned to you
18 came from Sprint?

19 A. Correct.

20 Q. The second three came from T-Mobile?

21 A. That's correct.

22 Q. Okay. And you put that into a PowerPoint?

23 A. Correct.

24 Q. All right. I'm going to show you what, Judge, we have
25 today as State's exhibit 103 for our purposes. Is this your

RICHARD FENNERN - DIRECT EXAMINATION BY MR. WILKINS

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1 PowerPoint presentation?

2 A. Yes, it is.

3 Q. Did you create that?

4 A. Yes.

5 Q. And did you base that -- this PowerPoint presentation
6 on the information that we previously just discussed?

7 A. Yes.

8 Q. All right.

9 **MR. WILKINS:** Your Honor, for purposes of this hearing
10 I'd like to admit exhibit 103 into evidence.

11 **MR. SARRATT:** No objection.

12 **THE COURT:** In for purposes of the hearing.

13 (Whereupon State's exhibit 103 was admitted into
14 evidence for this hearing)

15 Q. All right. Mr. Fennern, you may want to step over here
16 so you're not blinded by the light of the projector and so
17 the Judge can see. And I'm just going to start with your
18 PowerPoint and we can go through -- go through it in detail.
19 Can everybody see that?

20 **THE COURT:** Yes.

21 Q. All right. So on here, Mr. Fennern, the bottom right
22 here, what are these phone numbers?

23 A. Those are the phone numbers that I received and
24 reviewed in this report.

25 Q. And do you know the names associated with each of those

RICHARD FENNERN - DIRECT EXAMINATION BY MR. WILKINS

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1 phone numbers? And you'll detail that in your ---

2 A. Prior to doing the report I was provided names for
3 those reports. So nothing that I personally know that I put
4 those names.

5 Q. All right. So let's do -- and I know we talked -- we
6 touched on the background of the CAST Team, but you also
7 provided a little more detail in here regarding the Cellular
8 Analysis Survey Team.

9 A. This is just a background of what we do being that I
10 was -- our office was contacted by the Greenville County
11 Solicitor's Office to analyze the phone records we
12 previously identified related to -- it was a double homicide
13 that occurred on October 1st, 2012. So that's what we have
14 at the background.

15 Methodology talks about analysis that's performed on
16 the records and how we do it. The call detail records
17 document the interaction with the cell phone company, the
18 cell phone with the tower. So what that does is creates a
19 record that is kept by the cell phone company.

20 We then -- we have that information that we can then
21 match up with cell tower lists that are also provided by the
22 cell phone companies to show where those towers that are
23 used are physically located on this earth and in which
24 direction from that tower a phone utilized that tower.

25 Q. Do you have access to the cell tower locations of each

RICHARD FENNERN - DIRECT EXAMINATION BY MR. WILKINS

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1 company?

2 A. Yes. Companies have -- there's a website set up for
3 law enforcement where the phone companies update their cell
4 towers as they update their networks. So we have a running
5 list of cell towers going back ten or more years and then
6 current to whatever the tower looks like today.

7 Q. So can you do -- you can look at a particular tower if
8 you wanted to?

9 A. Yes. What we do depending -- so this being -- I
10 received this, I believe, sometime in 2015, I believe. So I
11 go back to the towers that were in place on October 1st,
12 2012, grab -- utilize that tower list to then import into a
13 map to create the slides that we'll see.

14 Q. Okay.

15 A. So with that, on here the cell site locations, we
16 utilize mapping software to import the towers and then to
17 search for the towers that were used at any specific time
18 during the records.

19 Q. All right. I'll show you your next slide. What is
20 that?

21 A. So this is the -- mentioned the cell tower a couple of
22 times. This is what you typically would think of when you
23 see a cell tower as you're driving along a highway you see a
24 large pole and then you see all the, you know, bunch of
25 things, you know, on the top of that.

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1 What this is, these are receivers and transmitters on
2 the top of a cell tower. Those are the -- that's what the
3 cell tower actually is. So while you see it on a
4 traditional tower here, these are also located -- you'll see
5 them on water towers, on sides of buildings, there's fake
6 trees, really anything that your imagination can come to,
7 there's cell towers probably located on one of those
8 somewhere. With that, I briefly touched on it, for a cell
9 phone to communicate it needs to have a radio frequency
10 connection with one of these cell towers.

11 You'll also notice from this tower that there's -- it's
12 in a triangle here at the top. What that is is
13 traditionally a cell tower is divided into three distinct
14 sides. So a circle being three hundred and sixty degrees,
15 each side of these would represent then a hundred and twenty
16 degrees of coverage area for a cell tower.

17 So that's what allows us to -- in the records it'll
18 show that this specific tower was used. And then it'll say
19 and this side of the tower was used. So then we know for
20 that call this hardware is what communicated with that cell
21 phone during that transaction.

22 Q. And briefly let me touch -- prior to becoming a CAST
23 member or while you were becoming a CAST member, did you
24 meet with engineers from each of these cell phone companies
25 to learn about how their particular cell towers work and

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1 their network works?

2 A. Yes. Part of our training, briefly touched on earlier,
3 we meet with the engineers for each company to understand
4 how their network is built and then how they maintain it and
5 how their records are created. We also go out -- so we'll
6 visit -- we visit cell sites. We'll go in and look in the
7 actual cell site.

8 Below the towers there's computer equipment and
9 everything else in there that maintains that tower. So
10 we'll go -- we'll see those towers and we go back and see
11 their monitoring centers of how their networks truly work.

12 Q. Okay. All right. So give us another brief explanation
13 on how the sectors work.

14 A. So this is when you -- you have the call detail records
15 and in this case the PCMD records that we'll see. And what
16 they'll identify for a call is the cell tower. And there'll
17 be a cell tower number that's associated with that.

18 That tower's much like a fingerprint in the cellular
19 network system where that number's not duplicated anywhere.
20 It relates to a specific tower. As a fingerprint would
21 relate to a specific person, that number goes to a specific
22 tower as well as a sector of that tower.

23 So in this case, the easiest way to explain this is to
24 think of -- I briefly touched the circle. Think of a
25 circle. So you have three hundred and sixty degrees as you

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1 look around the circle. Look at it as how a clock is set up
2 where you have, you know, twelve hours on a clock.

3 So I go to the tower list and it'll tell me the cell
4 tower used was this tower and its azimuth or direction of
5 its antennae would be at thirty degrees. So thirty degrees
6 is much like looking at a clock at 1:00.

7 So what you do then to map out the records is you go
8 sixty degrees each side of that or think of it as two hours
9 on a clock. And then you get your left and right boundaries
10 of that tower and how it's set up.

11 So in this case this is showing it at a thirty degree
12 azimuth of a tower. And this shaded area here then is the
13 direction of that energy from that tower.

14 Q. If they gave you a hundred and eighty degree azimuth
15 would it be a -- that would tell you it's a different
16 sector?

17 A. So you'd look down here. So a hundred and eighty then
18 is the same as being 6:00. So that cell tower would be
19 located due south. And then the one limit would be going
20 back -- so two hours here to a hundred and twenty degrees or
21 4:00 and two hours this way to a two hundred and forty
22 degrees or 8:00.

23 Q. All right. I'm going to show you -- you were able to
24 review the Sprint records associated with this case,
25 correct?

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1 A. Correct.

2 Q. All right. Tell the Court what this is and what each
3 of these columns represent.

4 A. So this is the -- a snippet of the actual records in
5 this case for the -7553 number, I believe. Yes. So
6 these are what the records looked like from the cell phone
7 company.

8 The first thing to notice, I touch on here, this first
9 line showing up, you'll see there's a calling number, called
10 and dialed digits. And it says outgoing with a duration and
11 cell tower information. That immediately tells me that
12 that's a call that takes place.

13 So that call would be in the local time. So all calls
14 that take place happen in the local time. So meaning we're
15 Eastern Standard Time, it would be Eastern Standard Time.

16 Right below that we'll see activity where there's a
17 zero duration and there's no cell tower information for it
18 and there's no dialed digits. That tells me that that
19 record relates to a text message that happened on that
20 phone.

21 And because the companies aren't designed to make this
22 for law enforcement or make it easy, those calls are
23 actually in Central Time. So those text messages are
24 actually in Central Time.

25 So this call here being at 21:23 or 9:23 pm is actually

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1 9:23 pm Central Time. So you actually have to add an hour
2 to it. It took place at 10:23 pm here where that
3 communication happened.

4 So next I'll go through each of these columns. We have
5 calling number here. This is saying what number initiated
6 that communication. So the calling number will be the
7 target number on outgoing calls. So meaning in this case as
8 it's -7553 is the calling number, that means that
9 phone's making a call.

10 Next we have a called number. The called number's
11 going to be the number that is being called or it could also
12 be a routed -- routing number. So if you were to call
13 someone and it would go to voicemail for some reason, you
14 could see that there'd be a different number in here than
15 the number you're calling or you'll see -- on an incoming
16 call you'll see a 1-1 in the front of it indicating that
17 that call went to voicemail.

18 You can also just see routed numbers meaning as a phone
19 is moving through the system, it can be routed. And you can
20 see really a random Sprint number located in this called
21 number column.

22 The important one, actual number dialed though, that
23 shows the numbers that were actually punched into that phone
24 and dialed by the calling number. So in this case, using
25 the top one again as an example, you have 7553

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1 making an outgoing call to -9967.

2 Furthermore, then the next one we have, the MR number,
3 which designates if it's an outgoing, incoming or routed
4 call. So further on that one we see the outgoing, again,
5 further showing that this is the call who the records belong
6 to.

7 Next we have the start date and time. And that's the
8 date and time of that transmission that that happened --
9 that those resources were utilized by the network. So
10 that's when that cell tower was initiated with that phone.
11 Again, taking into account calls are in Eastern Time, text
12 messages, you have to adjust for an hour.

13 You then have the end date. So that's the end date and
14 time of when that transmission ended. And then you have the
15 duration, which is recorded in seconds. So that's the
16 duration of that communication.

17 Next you have what's called a repoll number. And I'm
18 going to talk about the repoll number, first cell together.
19 Those members combine to form that unique number that
20 identifies the cell tower and sector that was used. The
21 repoll is much like an area code. It provides a general
22 grouping of towers. So that identifies that first one as
23 the repoll is 607, which is a grouping of towers that are in
24 the Greenville area.

25 Next is the -- identifies the first cell. And the

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1 first cell is what we utilize in mapping with our phones.

2 The first cell is broken up into -- first, the first number
3 on here identifies the sector that was used on that tower.

4 And in this area, it's a lucid market, meaning the
5 tower -- the sectors are labeled as being two, three and
6 four. So you have to subtract one from each of those to get
7 sector one, sector two and sector three. So, again, to
8 confuse a little bit more, it's just how the network is
9 designed, you have to subtract one to get the actual sector.

10 The next information on there identifies that tower.

11 So taking all that together would get you an area where it
12 is, then it'll give you that pole, that specific tower that
13 was used and then this number will give you what direction
14 from that tower that the phone call utilized when making the
15 call.

16 The last cell then is the ending sector of where your
17 call was when you ended that transmission. With that, the
18 reason -- we only -- we use the primary -- the first cell to
19 map as the first cell is the tower that the phone -- the
20 phone saw the clearest and strongest to make that call. So
21 the phone is making that determination of what it sees the
22 best at that time.

23 Once you get into the call, the network has the ability
24 to move your phone call around to another tower that still
25 has coverage in that area, but it can move you from maybe

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1 the tower the phone sees the best to the second best, which
2 just goes on capacity and how the network spans out its
3 calls.

4 Q. All right. So next we're going to talk about PCMD
5 information. Can you tell us what that is?

6 A. So the first thing you have in cell phone analysis, the
7 most you have is knowing the cell tower and sector that was
8 used. In some cases, real low cases only the cell tower and
9 not the direction. But we have the cell tower direction.

10 The next thing that Sprint has is a report called the
11 per call measurement data report or Sprint review report.
12 What this is is additional information that Sprint began
13 providing law enforcement a few years back regarding
14 distance measurements from how far the phone is away from
15 the tower when that transmission happens.

16 This is stuff that -- this information is perishable.
17 The cell phone company doesn't keep it for the same
18 retention period as the regular records. It's something
19 that's used within their engineering to know their network
20 capacity and know where the phones are being utilized in
21 their network for planning decisions.

22 So with this, all activity in this report is in local
23 time. And in this case we only have information for voice
24 calls. You can potentially get information for text
25 messages, but I don't believe we found any in this case

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1 being traditionally Sprint doesn't provide cell tower
2 information for text messages.

3 So in here the first column we have is the target
4 number being the phone number of those whose records we're
5 looking at, again. So -7553.

6 Next we have is the ESN, which is the electronic serial
7 number for the phone. What that is if you -- you have a
8 phone registered with Sprint to provide service. It has an
9 identification of the actual identity of that physical phone
10 in your hand. And that's what that ESN is.

11 Next we have the call start time. So that's the time
12 that this record was created by Sprint. Next is we have the
13 duration in seconds as it relates to this record that was
14 created.

15 And now we have instead of the repoll, we have another
16 -- the switch identifier for Sprint, which all these are
17 different names for -- a different way of them naming the
18 switches and towers. A switch and repoll can be used within
19 -- all referring to the same thing. So, again, that refers
20 to the grouping of towers that were used.

21 Next we have the cell ID. Again, that was used. And
22 now it's broken up into -- this would be the tower that was
23 used and then the next one being the sector. And now the
24 sectors are displayed in one, two and three instead of that
25 two, three and four as it was on the other report. So these

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1 three things, again, identify where that cell tower and
2 sector are located.

3 The next which is now getting into the additional
4 information that we didn't get on the other report is the
5 distance in miles of where that phone is away from that
6 tower. And where this information comes from is a round
7 trip delay time.

8 So it measures in nanoseconds and with the speed of
9 light, how long it takes the radio frequency to go up to
10 that phone and come back. And what it simply is is a
11 calculation that is done with the speed of light, which is
12 what radio frequency operates at, how long that takes by
13 that speed of light calculation, then provides this distance
14 in miles of where the phone is located.

15 And with that there's a chipset error rate of the speed
16 of light calculation of approximately two hundred and
17 thirty-three or two hundred -- two hundred and forty-three
18 to two hundred and forty-four meters of variance of where
19 that would be within that calculation.

20 Q. And, Mr. Fennern, I know there's going to be some
21 potential cross examination regarding that distance right
22 there.

23 A. Right.

24 Q. That is a number that Sprint provides you, correct?
25 You didn't -- you didn't make up that number?

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1 A. No. This is a -- this is a calculation that takes
2 place of when that transmission happened it took the time of
3 how long it went there to get back and applied it to the
4 speed of light and it comes up with that. So that's a
5 measured calculation that happens..

6 Q. Now, are there variables? Can that distance vary?

7 A. There are slight variations in it. I like to refer to
8 it -- think about being out on a sunny day and you take the
9 temperature out and you measure the -- what the temperature
10 is. So you could go out -- you bring it out and you see
11 that it's sixty-eight degrees.

12 Well then the question comes out, did you take the --
13 was the temperature taken in the shade or was it taken in
14 direct sunlight? So you can have slight variations in that
15 temperature when you go out there. I use that analogy the
16 same way as how this calculation is made.

17 The calculation, you can have different things that
18 affect it as in if you're buried in a building, there's
19 going to a slight variation in how long it takes that signal
20 to get to you and get back because there's obstacles in the
21 way. So there is a slight variation in that that can
22 happen.

23 With that understanding how a cell network is built,
24 though, you must understand that cell towers are built to
25 provide coverage to a specific area. And then there's

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1 slight overlap with adjacent cells to provide coverage.

2 Your -- you can't have too much interference from one
3 cell tower to another, especially in Sprint, as that's
4 what's called -- the measurement for Sprint is a signal to
5 noise ratio. So it's not just how strong a signal is, it's
6 is there another signal that's interfering with that from
7 another tower. So those have to be properly maintained to
8 provide coverage to a specific area.

9 So with these measurements you're within that coverage
10 area in the tower, obviously, because it was used. And then
11 there could be variables that are already built into the
12 system, really, of, you know, if you're in a building in
13 such that it's going to be -- it could be slightly larger --
14 this number could be slightly larger than the distance that
15 you're actually away from the tower.

16 Q. When you're saying slightly, what are we talking about
17 here?

18 A. In my experience, in my -- since 2011 dealing with it
19 and our team since 2006, that variation, I've never seen
20 more of extreme circumstances being -- you're talking blocks
21 -- blocks at most. Nothing ---

22 Q. Assuming there is a -- you're buried in a bunker down
23 below the earth or in a building, a concrete building that
24 would cause a delay or could cause a delay, is that what
25 you're referring to, the variation?

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1 A. Right, because the delay can't be so much -- if the
2 delay gets so much you wouldn't have service because how
3 that signal goes out, it's code division multiple access.
4 So it operates as in a coded environment. So it goes to
5 your phone and back in code.

6 When you get variations in the timing of it coming
7 back, those codes don't match that up, so you wouldn't have
8 service. So I use an example a lot, where I live we have
9 Giant grocery stores. And when I go to the back of Giant, a
10 big concrete building, and I get in the back, and I always
11 have to call my wife and say again what do I need to get
12 because I get the wrong thing, I don't have service back
13 there because the obstructions are too great for me to carry
14 that call. So in that case, much like how this measurement
15 is taken, it's gotten so far out of whack that it can't
16 connect and provide service to me.

17 Q. So what about the latitude and longitude?

18 A. The next thing which is latitude and longitude is an
19 estimate provided by Sprint of where they believe that phone
20 could be located. With this, this is kind of a point of
21 contention with Sprint and why Sprint for a while didn't
22 want to provide these records to law enforcement. For a
23 while they would only provide this to us because this
24 latitude and longitude is something that they can't -- they
25 can't tell us what went into that calculation for that -- to

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1 come up with that latitude and longitude.

2 So the things -- and the things that say in their
3 environment of different factors that affect that distance
4 -- if they have this distance measurement, so one point
5 eight three (1.83) on this top one here, it says that
6 phone's approximately one point eight three (1.83) miles
7 from the tower, if it only got that reading from that one
8 cell tower, it has no other bearing of where to put that
9 latitude and longitude.

10 So what it'll do, it'll put that dot or that latitude
11 and longitude one point eight three (1.83) miles out
12 directly onto the azimuth of that cell tower. So that's not
13 -- obviously that's not a good -- a good point because it
14 can be anywhere within one point eight three (1.83) miles
15 within that sector. So that's the issue with that latitude
16 and longitude is we don't know what additional factors go
17 into that.

18 Q. Is it -- let me -- in your analysis here did you use
19 longitude and latitude to make your -- to represent what the
20 cell phone ---

21 A. I can't -- no, we can't testify to that latitude and
22 longitude. And I don't use that in my report.

23 Q. You're using the distance miles section right there?

24 A. Correct.

25 Q. Okay.

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1 A. The next we have is the cascade number, which is
2 another internal number, unique tower identification for
3 that cell tower that was used. And then again we have the
4 call type showing the voice call. And this site ID, again,
5 it's -- they're kind of redundant with the identifiers of
6 their system.

7 Q. All right. I'm going to show you T-Mobile and you can
8 briefly go through that. I'm assuming with T-Mobile, the
9 information maybe looks different, but it's all the same --
10 same information ---

11 A. Correct.

12 Q. --- to you once you're trained on how to use it.

13 A. So these are also a clippit then of the -- of, which
14 are pretty hard to see, had to scrounge them down a little
15 bit, for records in this case. Again, you'll note in this
16 all calls for this case specifically are in local time,
17 Eastern Time.

18 Again, text messages now for T-Mobile, their service
19 for text messages are located in the -- on the west coast.
20 So they're actually in Pacific Time. So you have to adjust
21 by, I believe, three hours added to the text message times,
22 which they are none displayed on this record. These are all
23 good call times.

24 So the same information for the most part. MSI DSN,
25 just identifying the subscriber number. So that's the

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1 target number, whose records we're looking at. We have the
2 direction of the call.

3 MOC, meaning mobile originating call, meaning that
4 target's initiating the call. We then have MTC saying
5 mobile terminated the call, meaning that target received a
6 call. We then again have the seizure date and time of when
7 that happened. And then we have the cell ID right here.

8 And T-Mobile provides records in all different formats.
9 And this one is kind of goofed up a little bit where we have
10 the first cell ID over here and then the first LAC over
11 here. The first LAC is the same as the switch. That gives
12 you that grouping of cell towers.

13 And then the cell ID all inclusive in that number
14 identifies the tower and sector that were used. So the LAC
15 and SID and cell ID together form that unique identifier for
16 T-Mobile's network, what tower and sector were used.

17 T-Mobile also identifies the actual latitude and
18 longitude of the cell tower that was used. So it actually
19 shows it directly in the records of the latitude and
20 longitude of that tower. They also, again, have the last
21 cell and last LAC, so the ending cell tower that was used
22 for the call.

23 It has a mobile switching name, which that's the switch
24 that was used. Market, so showing it was in the Carolina
25 market. Again, just redundant of showing the switch in the

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1 area that you're in.

2 We then, just like the other, we have the calling
3 number and called number. So the person making the call,
4 the person receiving the call. And then you can, of course,
5 match that back up with the mobile originating to verify
6 who's calling who.

7 Lastly, now for this we have the IMEI, which is the
8 international mobile equipment identifier. That again is
9 just like a serial number on your physical phone. So it
10 shows you what physical phone is being utilized for that.

11 And then the IMSI is a subscriber identity, another
12 number the network utilizes to identify the phone. IMSI,
13 you think of the -- if you look at the back of your phone,
14 if you're on a T-Mobile or AT&T, you'll have what's called a
15 SIM card. This IMSI is that number for that SIM card.

16 You then have the duration. So that's showing you,
17 again, in seconds how long that call took place.

18 Q. All right. And briefly, just so we're all -- you
19 identified the phone numbers -- you were given the phone
20 numbers and the identifiers for each phone number and you
21 color coordinated them?

22 A. Yes.

23 Q. Okay. So that's what we'll see, those phone numbers,
24 and that is the numbers related to those people?

25 A. Correct. I'm not pertinent to the investigation. So I

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1 don't know any ---

2 Q. Sure.

3 A. --- of who these people are.

4 Q. You were given some addresses that were important to
5 the investigation?

6 A. Correct.

7 Q. All right. So that's sort of your legend right there.
8 So briefly explain those addresses real quick ---

9 A. Yes.

10 Q. --- to the Judge.

11 A. And, again, there's a lot on here. I'm going to start
12 at the top left. Throughout this presentation, a little
13 hard to see in here, but you'll see there's red or pink
14 circles. Those are identifying T-Mobile cell towers.

15 So each network has their own cell towers that are
16 used. So if you're a T-Mobile phone, you're only using a T-
17 Mobile tower. If you're a Sprint, you're only using a
18 Sprint tower. So the red circles represent T-Mobile towers.
19 The Sprint towers are identified with the black circles.

20 And then up here, this pie wedge as we like to refer to
21 it, is the V with the shaded area in the middle, this
22 identifies what tower and sector were utilized for the call.
23 So if we go back as we talked earlier about the left and
24 right boundaries from the azimuth, this is how it appears, a
25 one hundred and eighty degree azimuth, so straight down 6:00

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1 or due south. So left and right limits on that, approximate
2 limits are then shown here with these lines.

3 These lines don't represent an ending to that tower by
4 any means, nor does the shaded area mean the phone was in
5 that area. What that shows is this is the direction of the
6 energy. And then you'll have to take into account is the
7 other cell towers in the area that go to approximate -- and
8 how I explain approximating where the phone was located.

9 Next I was provided of the address of Terramont
10 Drive being the location of the homicides in this case. I
11 then was provided the address of South Vance Street,
12 which was a residence of someone associated with this case.

13 Glen Forest Drive, another residence pertinent to the
14 investigation. And down here at the bottom, Verdae
15 Boulevard, which, I believe, was associated with a business.

16 Q. All right.

17 A. So I'm going to start here.

18 Q. What phone calls are you looking at in this slide?

19 A. So here I was provided a few hours before, I believe,
20 the homicide occurred. Some activity where I believe
21 witnesses say they were at or near Verdae Boulevard.

22 **MR. WILKINS:** And, Your Honor, just let me -- just for
23 the record, a witness would have testified that they were
24 with Mr. Rhodes at that location about this exact time. So
25 it's illustrative of the, not a calculation, but the

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1 representations that the expert witness is making, I guess,
2 showing its veracity or its truthfulness as a
3 representative. So that's what he's doing.

4 **THE COURT:** Okay. Thank you.

5 **MR. WILKINS:** So we don't have the benefit of that
6 testimony today.

7 **THE COURT:** I understand.

8 A. So in this case we have activity. We're looking at the
9 cell towers and sectors used by telephone number
10 7553, identified as belonging to Mr. Rhodes. And at this
11 time at 8:24 pm and 8:28 pm on October 1st, 2012 there is
12 activity with that phone, meaning that phone communicated
13 with cell towers at that time.

14 What this is showing then, at 8:24 pm this cell tower
15 down here to the south facing north was utilized for that
16 call. And at 8:28 pm the cell tower up here to the north
17 facing back south-southeast was used to make a call.

18 With that, an explanation of how a cell phone network
19 is set up, a cell phone network is not a clean pie wedge by
20 any means from -- of how it's set up. You have a tower
21 here, a tower here in that direction and these other towers
22 that all have influence on that network.

23 So what you can say from these records is this tower
24 was used, the energy pointing in this direction. Somewhere
25 along as you get further out here, this cell tower is going

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1 to be -- going to be picking up that call and you'd expect
2 it to see that one better. As the same way as you go out
3 here you have another tower over here that at some point
4 around here is going to be picking up that coverage and the
5 same thing along here.

6 But I don't know from -- without doing a drive test,
7 which I didn't do in this case, I wouldn't be able to say
8 exactly where that boundary ends. All I know is it's in
9 this direction from here, and then in this call, this
10 direction from here.

11 Q. Would that be consistent with somebody being at Verdae
12 Boulevard, Verdae Boulevard at that time?

13 A. Yes, it would.

14 Q. All right. Now we're going to up the time-frame from
15 8:44 to 9:46 on October 1st.

16 A. So this is the next activity, I'm still referring to
17 the Rhodes' phone, which happens from 8:44 to 9:46 pm on
18 October 1st. So we move from the towers -- these towers
19 down here to now this tower to the west and to the north.

20 So we have activity first at 8:55 in this tower here,
21 at 8:44, I apologize. 8:55, 9:05, again, up here. 9:20,
22 9:21, the tower over here. And then 9:46, this tower over
23 here.

24 Q. Now that looks like somebody's moving around up there.

25 A. It's possible that a person would be moving around with

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1 those towers.

2 Q. Could they also be at Glen Forest Drive?

3 A. Yes. This is one, actually, I was asked to look into a
4 little more detail with it. As I said, traditionally the
5 cell towers only have -- are in equal one hundred and twenty
6 degree pie wedges. Of course, not always the case.

7 So the first -- the primary issue was you see these two
8 cell towers here, these would be consistent with someone
9 being near Glen Forest Drive. At first glance this cell
10 tower down here would be inconsistent with someone that
11 would be in that area.

12 Q. So did you look further into it?

13 A. I did. As we always do, we needed to look into it
14 further to make sure what you're looking at is what you're
15 truly seeing.

16 So in this case -- cell phone networks are built --
17 they want to provide coverage to a specific area. So they
18 don't always -- there's not a standard -- when they always
19 have the azimuth pointing in the right or in the same
20 direction.

21 So in this case, this is that tower that was located to
22 the left that was -- seemed a little off. This is showing
23 the sector make-up of that tower. And what that shows you
24 is the sector one located here is a zero azimuth tower
25 pointing straight north. So left and right limits would be

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1 about one twenty and over here to three hundred, to about
2 10:00.

3 So you'd expect the next one of sector two to marry
4 right up with that one to complete a straight circle.
5 However, this one's off by twenty degrees or there's a
6 twenty degree gap between those two sectors. So this one is
7 canted down this way shown in red.

8 And then, furthermore, you have sector three, which is
9 identified blue down here and then shares the line with the
10 black line over here meeting that three sector make-up.

11 So what that shows per me looking at it, you have an
12 airport over here, which is usually low level, no
13 obstructions as far as you don't have big buildings near
14 where an airport is. Here you have a major road, which I
15 would believe that they canted the cell tower to provide
16 more coverage to the road here and a residential area here.

17 But what that leaves us with is a gap in coverage up
18 here that would need to be filled by one of these two
19 sectors or another tower in another area because there would
20 be coverage here, however, it probably wouldn't be the
21 strongest of coverage as the edges of a cell sector have
22 less -- the energy is not as powerful as it is in the
23 center.

24 Q. So with that are you able to do calculations based on
25 you showed the Judge the distance from the cell tower?

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1 A. So what I did is -- what we do with the distance
2 information if we're looking for someone, we're looking for
3 a missing person or a fugitive and we have these
4 calculations, they give us a point of overlap of where to
5 focus on.

6 So in this case, being that that -- those towers looked
7 a little off from one another, I looked at the distance
8 calculations for the Rhodes' phone. At 8:44 there was a
9 tower that was used point nine eight (.98) miles from the
10 tower.

11 So here's the tower, here's the black distance, and
12 showing that point nine eight (.98) miles. Given that two
13 hundred and forty-three meter variance is what you're seeing
14 in that -- with that wedge going out there.

15 We then have 8:56 pm, we have the one point eight three
16 (1.83) miles right here. So this would be that hundred and
17 twenty degrees, not taking into account that missing twenty
18 degrees.

19 We then had the 9:05 of being point eight seven (.87)
20 miles, which is identified here in blue. And then again we
21 have 9:21 pm, one point eight three (1.83) miles, again, the
22 red.

23 So with that and looking at that, I have two places
24 where I would be focused on. One is down here because you
25 see that all three of those meet. It's triangulation of

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1 where a phone would be. I'd be looking here.

2 The one thing being in this is there's a cell tower
3 located right here that was used during other calls. If a
4 phone is located right there, I would expect to see that
5 cell tower would be used because it's right on top of that.

6 So when you take this out, that other twenty degrees,
7 you can see that that's going to -- that's lining up to
8 right about this distance right here, which what that
9 provides me is another area of focus being over near where
10 that residence is.

11 Now I couldn't say from this that the phone would be
12 located at the residence, but it would be consistent with
13 that. And being that, I would suggest that anyone that --
14 the person that does live there probably has had cell phone
15 service from Sprint because when you're seeing three --
16 you're seeing different sectors like that, especially at
17 this distance, you're not seeing one tower strongest,
18 clearest every time, which means you have a pretty weak
19 signal.

20 Q. All right. I'll take you to 10:45 and 11:02.

21 A. So this is the next activity then. So the Rhodes'
22 phone, 10:45 and 11:02. So you see 11:02, there's two
23 separate transactions that happened. This now is the cell
24 tower and the sector that's used during that call, meaning
25 that the phone then would be located down south from that

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1 tower, and meaning there's another cell tower down here near
2 Terramont Drive as well.

3 Q. So what you're saying, when Mr. Rhodes received three
4 calls, 10:45, 11:02 and 11:03, did it use that tower that
5 you've referenced up there?

6 A. It utilized this tower identified with the wedge and
7 the dark color going down to it, the black towards the --
8 towards south.

9 Q. And were you able to do calculations?

10 A. With this phone, obviously, again, this is ---

11 Q. I apologize. I don't mean calculations. Were you --
12 are you able to represent on a map where the cell phone
13 could possibly be located?

14 A. Yes. Again, for this, we had that distance to tower
15 measurements, again, from that phone. So the distance tower
16 for the Rhodes' phone at 10:45 is showing one point nine
17 seven (1.97) miles, which is identified in this black.
18 Again, that variation being that two hundred and forty-
19 three, forty-four meters.

20 We then have the 11:02. The two communications at
21 11:02, one being one point eight nine (1.89) and one being
22 one point eight eight (1.88). One point eight nine (1.89)
23 being in the blue and one point eight nine (1.89) being in
24 the red.

25 And what these arcs mean -- and this tower is an equal

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1 three sectors, one eighty. Then the other one would be, I
2 believe, three hundred up at the top. And one twenty going
3 in this way. Three equal sectors showing that -- the
4 measurements shows some are within this -- the phone is
5 located somewhere within these arcs, anywhere from the left
6 to right limits during that communication.

7 Q. And this is just a close-up of that.

8 A. This is just a close-up, obviously, in relation to
9 where Terramont Drive is and to where those lines all
10 come through.

11 Q. All right. And then we proceed later on that night of
12 October 1st.

13 A. Right. The next activity then from that tower then is
14 at 11:44, 11:45, 11:47 pm on October 1st in relation to near
15 the vicinity of South Vance Street.

16 Q. Okay. And we don't have the global map back up, but
17 the big map that we would have here, that's across the City
18 of Greenville? That's on the other side of the City of
19 Greenville, correct?

20 A. That's correct.

21 Q. Okay. So would that be consistent with the Rhodes'
22 phone at 11:44 and 53 seconds being in the area of the South
23 Vance Street house?

24 A. Correct.

25 Q. You can't say it's at the house?

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1 A. No.

2 Q. You can just say that's the cell phone tower that it's
3 hitting off of at that time?

4 A. That's correct.

5 Q. And then take us through 1:00 to 1:41.

6 A. So this is the next activity then with the Rhodes'
7 phone starting on the left here at 1:17 southwest of 14
8 South Vance. We then have 1:19. And as we move to the
9 right, 1:22, 1:23.

10 Further to the right, 1:26 am. And then 1:32 this
11 north facing sector here. 1:34 the south facing. With that
12 -- oops, I -- so I missed 1:27, 1:33, 34, 41 down here as
13 well moving from the area of South Vance over here to the
14 area near Glen Forest Drive.

15 Q. Is that consistent with somebody moving from an area at
16 South Vance Street over to the Glen Forest Drive area?

17 A. Yes, especially with the time -- time and distance is
18 how you look at travel patterns. And being 1:17 to 1:19,
19 you could be somewhere within this area, you know, three
20 minutes later, then you're on the opposite here, 1:22, four
21 minutes later. So you can definitely see that that -- I can
22 almost tell you the exact travel pattern of what that phone
23 did from one area to the next.

24 Q. What about between two and almost four?

25 A. So this is showing the next activity then. These again

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1 are slightly -- on slightly canted tower to provide coverage
2 over in this area where you have 2:03 and 2:04 being these
3 lines here. And then the 3:58 call being this one here,
4 again, showing the overlap between those two being right --
5 right along the line of where Glen Forest Drive is.

6 Q. And -- all right. Were you able to do representations
7 of Eric Cade's phone during the night of October 1st?

8 A. Yes. This again focusing on -- starting along that
9 same time period near 8:30. We have 8:34, had a block
10 there. 8:37 is this tower and sector here. 8:34 is this
11 tower and sector here. 8:47, tower and sector here in
12 relation to Verdae Boulevard.

13 Q. And then later on ---

14 A. Then we have -- the next activity, 9:10, 9:33, 9:50,
15 9:52. We see the same cell tower pattern as was used for
16 the other phone during this time period. 9:50, 9:52, 9:10
17 9:33. Again, this is that slightly canted tower.

18 Q. All right. And then finally later on in the night the
19 same thing?

20 A. 10:03, 10:06, the tower to the left. 10:07 and 10:12,
21 10:16, the tower here in the north.

22 Q. And then 10:44 to 11:02?

23 A. The same towers. 10:58 up here. 11:01, 10:44, 10:46,
24 10:47, 10:48, 10:49 and 11:02, the tower down there to the
25 southwest.

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1 Q. And 11:40 to 11:46?

2 A. Same towers, 11:44, 11:45, 11:46, 11:44, 11:45, 11:40.

3 Q. And then til about 12:25?

4 A. And, again, 11:55, this tower and sector here. 12:25,
5 tower and sector here near Glen Forest Drive.

6 Q. So is that consistent with Eric Cade being at his home
7 at Glen Forest Drive the entire night?

8 A. Yes. It could be consistent with being there or
9 driving -- how those towers are made up, you're in that area
10 -- you're in this area within that period.

11 Q. Sure. He could have taken a walk, he could have driven
12 down Haywood Road and gone and eat. He could have done
13 anything?

14 A. Correct.

15 Q. Would that put him near Terramont Road?

16 A. No, it wouldn't.

17 Q. All right. Let's look at what you have as Shirley
18 Rogers' phone.

19 A. This is the cell tower and sectors used by the 9391
20 Rogers' phone. The activity for that phone with cell towers
21 was only at 8:57 and 8:58 pm on October 1st, 2000 -- that
22 should be 12. I apologize. And then twelve am, 1:06, 1:13
23 am on October 2nd, 2012. So you can see both of these
24 towers in relation to 14 South Vance.

25 Q. All right. So the last communication was at 8:58?

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1 A. That's correct.

2 Q. And then the next communication there is ---

3 A. Twelve.

4 Q. So they were -- Ms. Rogers was there at 8:58. And she

5 -- there were no other communications -- the next

6 communication was not until midnight? And that's ---

7 A. Correct.

8 Q. --- where she pinged? Where her phone was during that,

9 you can't say?

10 A. Correct.

11 Q. All right. And then I think that's ---

12 A. That's another cell tower and sector used by the 3532

13 Rogers' phone from 6:58 through 7:46 pm. Then a call at

14 9:46 pm on October 1st, 2012. And from 1:22 am through 2:04

15 am on October 2nd, 2012. No other cell tower activity

16 between those two time periods.

17 Q. All right. And finally, let's look at Amber McDaniel's

18 cell phone.

19 A. It's the cell tower and sector used by McDaniel, the

20 McDaniel's 7678 phone. From 8:56 pm on October 1st through

21 1:45 am on October 2nd. And there's activity all throughout

22 that time period including 10:22, 10:46, 11:26, 11:44,

23 11:53, 11:58 pm.

24 Q. So is that consistent with Ms. McDaniel being at the

25 South Main Street or in that area?

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1 A. Yes.

2 Q. Is that near Terramont Road?

3 A. Not near Terramont Road, no.

4 Q. All right.

5 **MR. WILKINS:** Your Honor, that's all I have at this
6 time.

7 **THE COURT:** Okay. We'll take a break then before we do
8 cross. All right.

9 **MR. WILKINS:** Thank you, Your Honor.

10 **THE COURT:** We'll take about a ten minute break. You
11 can step down now.

12 (Whereupon court was in recess at 2:48 pm)

13 (Whereupon court reconvened at 3:04 pm)

14 **THE COURT:** All right. Cross.

15 **Cross Examination by Mr. Sarratt:**

16 Q. Agent Fennern, you don't work for Sprint?

17 A. No, I don't.

18 Q. You don't work for any telecom company?

19 A. No.

20 Q. You work for the FBI, as you said?

21 A. Correct.

22 Q. And so you actually did not get involved in this case
23 until -- since April 2015?

24 A. Sometime in 2015. I'm not exactly sure of the time.

25 Q. And so in your involvement you were not there for the

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1 initial investigation?

2 A. No.

3 Q. Okay. And so you were just provided records from the
4 Solicitor's Office?

5 A. Correct.

6 Q. And those records, again, were the call detail records?

7 A. Correct.

8 Q. In addition to that you were provided with PCMD data?

9 A. For the Sprint records, yes.

10 Q. Right. Correct, just the Sprint records. And then
11 also you said you were provided with the map of the cell,
12 I'm sorry, not the map, a list of cell towers, and their
13 coordinates that you then plotted on the map?

14 A. Yes. I actually pulled the -- I pulled the towers
15 myself from the database. But, yes, we have the towers that
16 we match up that ---

17 Q. Right.

18 A. --- information with.

19 Q. Okay. Now, in this information that you're provided,
20 you're not adding anything to the data?

21 A. No.

22 Q. Certainly not adding new fields. You're just
23 interpreting the data that's provided to you?

24 A. Correct.

25 Q. Okay. And talking about the sort of role that you did,

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1 we've seen demonstrations and demonstrative evidence. You
2 plot these on a map to attempt to locate where a cell phone
3 might be at a certain time?

4 A. Correct. Correct.

5 Q. Okay. And you testified that in reading those records
6 some companies do things differently. They ---

7 A. Right. Their technologies are different so that
8 terminology between one and the other would be slightly
9 different.

10 Q. And I believe you said that text messages, sometimes
11 some companies don't record cell tower information on the
12 text messages?

13 A. Correct.

14 Q. And you said the telecoms don't make it easy on you.

15 A. As far as their records, their records are kept for
16 their business purposes, not for law enforcement.

17 Q. Correct. And that's a point I wanted to get to.
18 Stepping back a minute, you're familiar with GPS?

19 A. Yes.

20 Q. And that stands for Global Positioning System?

21 A. Yes.

22 Q. And that system, you would agree with me, was designed
23 for the purpose of locating people or objects? Locating
24 things?

25 A. Correct.

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1 Q. Okay. And because it was designed for that purpose
2 it's very accurate.

3 A. It can be. It depends on different things as well.
4 Your GPS -- phone records actually work better when you're
5 in a building than a GPS would.

6 Q. Do you know how accurate generally GPS is to a number
7 of meters?

8 A. It all depends on where you are, but, no, I don't know
9 exactly.

10 Q. Okay. You don't have any training on GPS as part of
11 your ---

12 A. No. I mean, we utilize some GPS information. But as
13 far as knowing the accuracy in any given scenario, I do not
14 know.

15 Q. Okay. But, again, GPS relies on triangulation?

16 A. No, GPS relies on satellites.

17 Q. Where there are multiple satellites involved that fix a
18 person's position.

19 A. Global Positioning System utilize satellites to locate
20 a phone. In the cellular environment you can have a GPS
21 receiver in a phone as well as cell phone records to locate
22 a phone.

23 Q. But, again, GPS does not give you a general area, it's
24 more of a fixed point?

25 A. Yes.

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1 Q. Okay. All right. So CDRs generally, these were not
2 designed for the purpose of locating an individual?

3 A. No. I mean, they're designed for the business of the
4 cell phone provider.

5 Q. Sure. They're sort of their internal documents created
6 by the telecoms for their course of business?

7 A. They're business records for the -- yes.

8 Q. Sure. And a lot of that is just making sure that
9 they're billing their clients correctly.

10 A. Billing and network performance, yes.

11 Q. Sure. All right. Now, again, the CDRs, they're
12 generated by the telecoms?

13 A. Correct.

14 Q. And you're not adding any data to that?

15 A. No.

16 Q. So what you do then is you're provided a tower map, you
17 match that with the CDRs and then you're able to create a
18 map?

19 A. Correct.

20 Q. But the map, I'm sorry, the specific towers that you
21 designate that a person hit on, that doesn't necessarily
22 mean that that tower's the closest one to the person?

23 A. No. The -- how a cell phone works, it's your strongest
24 and clearest signal that you see. So it's not always the
25 closest tower as you'll have some towers that'll be as high

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1 as maybe a light pole. And then you'll have another tower
2 that's maybe further away that's fifty feet up, sixty feet,
3 a hundred feet in the air. So, obviously, a larger tower
4 would have more of a coverage area than a smaller tower
5 would.

6 Q. So a cell phone doesn't necessarily connect with the
7 closest tower, but the one with the strongest signal?

8 A. The strongest and clearest signal.

9 Q. Okay. And that's -- the strength of that signal or the
10 clarity of that signal depends on a number of factors?

11 A. Correct.

12 Q. Some of those factors would be, you just said, the
13 height of the tower?

14 A. Correct.

15 Q. Also the wattage, the power of that tower?

16 A. Well, when a network is built, it's built on putting in
17 all those -- all the factors in that could influence it as
18 far as what buildings are in the area, what the environment
19 is. And that's how it's designed 'cause each tower that's
20 built is anywhere -- can be anywhere from two hundred and
21 fifty to five hundred thousand dollars to install a tower.

22 So there's various factors that influence that, but
23 they're all -- they're all taken into account, the tower
24 design, as each sector provides coverage to a specific area.
25 And while that fluctuates a small distance, you're not -- it

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1 doesn't fluctuate very much.

2 Q. Okay. Additionally you testified that physical
3 obstructions can diminish the signal.

4 A. Correct.

5 Q. And that could be buildings, structures?

6 A. Man made, yeah, man made, correct.

7 Q. And it could also be topographical, a mountain in the
8 way?

9 A. Right. Again, that would -- obviously, that would
10 factor in. When you're spending that money as a cell phone
11 company, you're not going to put a tower blocked by a
12 mountain to provide coverage on the other side of that
13 mountain.

14 Q. You also talked about signal noise.

15 A. Yes.

16 Q. That's something that can affect what tower is
17 broadcasting the strongest signal.

18 A. Correct.

19 Q. Call load's another factor.

20 A. Not -- not really.

21 Q. Not in terms of signal strength, but in terms of what
22 tower you might connect to.

23 A. No. What happens -- a common misconception with that,
24 your phone only sees the tower and sees the strongest and
25 clearest. Your phone will only connect with that tower. It

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1 doesn't -- it doesn't take into account if that tower has a
2 lot of traffic on it.

3 The network's built to absorb that, meaning if one's
4 busy, it has a reserve spot that's there that allows your
5 phone to see that tower. So -- may I use you as a tower?
6 So you're the -- you're the tower I see the strongest and
7 clearest, and the phone's saying, I want to connect with
8 you. You're saying, I'm busy.

9 What you do, you can transfer me over to the other
10 attorney who may be the other tower and say use that tower.
11 In the records you're going to be reflected in that first
12 cell ID column. And then the other tower would be reflected
13 in the second column. So it'll do that.

14 If it doesn't -- if there's not enough band width in
15 there to have that happen, you wouldn't make the -- you
16 wouldn't make a call. Your phone would just continue to --
17 you've had it before where you might have called someone and
18 your phone rang ten times on your side. And the -- you
19 said, why -- what took you so long? And they say, it rang
20 once here. That's because that is searching for that signal
21 and that connection to happen.

22 Q. All right. Now earlier you showed certain wedges that
23 designate the angle, the hundred and twenty degree angle
24 from which the tower would broadcast.

25 A. Yes.

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1 Q. I noticed on another one of those maps you had a circle
2 outlining that indicating the potential range of that tower?

3 A. I'm not -- if we can put -- I'm not familiar with which
4 one you're talking about.

5 Q. I apologize, it's not my exhibit. Here it is. This
6 map. The outer boundaries there, is that a designation of
7 the range of that tower?

8 A. No. I didn't take -- that was just to illustrate how
9 that sector layout is, not -- these are -- those are just to
10 -- so you can see them better as to what sector is ---

11 Q. All right. Because, again, you can't -- not all towers.
12 have a fixed range. They can have larger ranges than
13 others.

14 A. Correct.

15 Q. In fact, cell phone companies could, if they wanted to,
16 designate a range and limit the wattage and limit the
17 distance that it broadcasts at, but they're not all uniform?

18 A. No, they're not -- that is actually cell network
19 design. When they build the cell towers they designate
20 where they want the coverage to be at that point.

21 Q. Okay. So, again, in order to determine the range of
22 the tower it would help tremendously if you had what's known
23 as a radio frequency map, propagation map?

24 A. More accurately would be an actual drive test map. A
25 radio frequency is built on probabilities. An actual drive

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1 test shows you the true coverage of a sector.

2 Q. Okay.

3 **MR. SARRATT:** Court's indulgence one moment.

4 (Whereupon Defendant's exhibit 1 was marked for
5 identification)

6 Q. All right. I'm going to show you what I've just had
7 marked as Defendant's exhibit 1. Now, you did not create
8 this?

9 A. No.

10 Q. But that is a representation of what a radio frequency
11 map might look like? Roughly?

12 A. I can't really say I agree with that.

13 Q. Well, have you ever seen a radio frequency ---

14 A. Yes. We create them. We drive test and actually do
15 the propagation for cell towers.

16 Q. Okay.

17 A. So if I could on this?

18 Q. Sure.

19 A. I might have to ---

20 Q. Okay.

21 A. So I'm not sure where the point eight or negative eight
22 five DB's coming from, but what you would have -- how you
23 have the towers in here, which I'm not sure if these --
24 these say multiple carriers. So each carrier has its own
25 tower. So without being a single carrier, it's -- I

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1 couldn't do anything with it.

2 You see the sectors here and how they would be. You
3 would have different colors for each of these to identify
4 what sector for every tower is there.

5 Q. Um-hum (affirmative).

6 A. In general, I'll say a -- how a network is -- looks
7 like, this would probably be a good -- there's coverage from
8 one tower to the other. So what this would show is from one
9 tower and sector to the next, somewhere in there is that
10 boundary between one or the other.

11 And a drive test is what would show truly where that
12 boundary is. But, yeah, as far, I'm sorry, as far as
13 interpreting anything else from that, I ---

14 Q. And this is not drawn from this case. This is -- this
15 is just an example just for illustration. But you would
16 agree that when you in your own -- in your own efforts to go
17 out and do these drive tests, the actual footprint is not a
18 perfect complete wedge as drawn on the diagrams that you've
19 provided?

20 A. No. Doing the left and right -- the left and right
21 boundaries are pretty -- I call it a fuzzy line or a dotted
22 line. They're not exact, but as the radio frequency goes
23 out, you know, especially when they're equal, one direction
24 straight in the middle, the next straight in the middle, as
25 they get out to that boundaries, they get to be about equal

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1 strength at that point, and you could see either tower the
2 best. But it's not a -- it's not at all a nice pie wedge
3 for it.

4 The strongest signal is usually -- is directly out
5 where that center of that azimuth is. So I usually refer to
6 it. You have a tower coming out and it's kind of -- comes
7 out this way and kind of squiggly lines over there and meets
8 up with the next tower. It's an amoeba shape.

9 Q. Okay. And as you've said, there's -- the signal sort
10 of bleeds over on the edges a little bit.

11 A. There's overlap between -- that, you know, what allows
12 you from sector to sector within a tower or a tower to tower
13 to travel down the road and maintain your call.

14 Q. And, again, the further out you get from the tower,
15 that signal is going to get -- it's going to have rough
16 edges. It's not going to end in a perfect arc.

17 A. That's correct.

18 Q. Okay. So, again, when your maps have the pie shapes,
19 that's not to say that that is the exact footprint and
20 anything beyond that line certainly would not be picked up
21 or ...

22 A. Right. Well, I don't have an outer boundary line. I
23 have the left and right boundaries, you know, as I said, a
24 dotted or a fuzzy line and then that -- the small area in
25 the middle just showing a direction of the energy. But as

RICHARD FENNERN - CROSS EXAMINATION BY MR. SARRATT

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1 far as how far out it goes, again, it's just looking at
2 those other towers and understanding some -- at some point
3 there you're transitioning to another tower.

4 Q. Okay. Let's talk about doing a drive test. You
5 mentioned that as being a very accurate way of showing a
6 cell tower's footprint.

7 A. Yes.

8 Q. Just generally a drive test involves taking a piece of
9 equipment and going out and actually measuring is there a
10 signal here or is there not?

11 A. Yeah. I refer to it as the -- I think it's the Verizon
12 commercial, can you hear me now, with the individual on the
13 phone. That's essentially what a drive test is.

14 What we do is we utilize the JDSU equipment that the
15 cell phone companies use. And we go out with a -- it's a
16 phone hooked up to a software that's measuring all the radio
17 frequency in the area.

18 And what we do is drive every road possible that we can
19 in that area from that tower out to the next towers out in
20 the boundary there. And then one tower -- one sector of a
21 tower, I've done them taking six to eight to ten hours just
22 to do one sector. So it's a very time intensive activity.

23 Q. Okay. Now, in order to do a drive test -- well, let me
24 back up. You stated that the cell towers are -- you pull
25 them out of a database and the database -- cell towers are

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1 entered into that database from the telecom companies?

2 A. Correct.

3 Q. And they update that database frequently.

4 A. Each company differently, but as they change their
5 network they update them, yes.

6 Q. Sure. Because as more and more people get cell phones
7 and more and more cell phones are out there, they need to
8 add towers.

9 A. Correct. They add, they decommission, they evaluate
10 the network. That's what the records and like the PCMD do
11 to -- they use that information to evaluate their network.

12 Q. So if you were to go out and do a drive test, if you
13 came back two years later and did another drive test, it
14 wouldn't be the same as that first if there had been
15 additions to the network?

16 A. Right. If I -- this case, if I were to do a drive test
17 in this case what I'd first have to do -- obviously, we're
18 primarily talking about Sprint. I would take the Sprint
19 records, tower list that was in place on October 1st, 2012.

20 I would then pull the current tower list that's in
21 place today, and I would map them -- I would compare those
22 to make sure the towers still are in the same spot and the
23 azimuths remain the same. If those two things matched up,
24 then I would conclude that the network is the same as it was
25 at that point and do a drive test.

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1 Q. And you did not perform a drive test in this case?

2 A. No, I did not.

3 Q. Okay. All right. Now I want to move to what we talked
4 about, what you testified to earlier, PCMD. PCMD is
5 something that is provided by Sprint?

6 A. Correct.

7 Q. And other cell phone providers have records like PCMD,
8 they're not called PCMD, but they have different
9 terminology, is that correct?

10 A. Verizon is the other main one. They're both CDMA
11 companies, which operate the same. And they both provide
12 those types of data. I believe U.S. Cellular may have, but
13 it's been absorbed by another company now.

14 Q. And PCMD contains basically three pieces of
15 information. Contains latitude?

16 A. Contains the latitude and longitude -- an estimated
17 latitude and longitude.

18 Q. Okay. Well, I was counting that as two pieces of
19 information there.

20 A. Okay. Sorry.

21 Q. All right. It has estimated latitude, as you said,
22 estimated longitude and then estimated distance from tower.

23 A. Correct.

24 Q. All right. And in talking about distance from tower, I
25 believe you discussed the round trip delay?

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1 A. Correct.

2 Q. In that being the time that it takes to go out to the
3 phone and then come back?

4 A. That's correct.

5 Q. All right.

6 (Whereupon Defendant's exhibit 2 was marked for
7 identification)

8 Q. You were provided records from Sprint to analyze.

9 A. Correct.

10 Q. The packet that was provided to you, did it include any
11 cover sheet on top of it?

12 A. Not that I received, no.

13 Q. Have you ever received packets from Sprint that did
14 have a cover sheet?

15 A. I am familiar with the cover sheet, yes.

16 Q. So if I show you this, you will be familiar with what
17 this is?

18 A. Yes.

19 Q. Okay. Now this says the key to understanding PCMD
20 reports. And again, this is not generated by the
21 Solicitor's Office or law enforcement, this comes from
22 Sprint?

23 A. Correct.

24 Q. Okay. And it lists some of the things you talked about
25 earlier, what's in the records themselves, the cell ID, the

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1 sector, and then you just said latitude and longitude, and
2 then distance in miles.

3 A. Yes.

4 Q. Okay. Now, down here where it says please read and has
5 a bit of an explanation from Sprint saying that the distance
6 in miles, latitude and longitude, there are many variables
7 that affect those measurements?

8 A. Correct.

9 Q. And it talks about multi-path, the radio wave being one
10 of those variables.

11 A. Yes.

12 Q. In addition it says that the one way connection or
13 multiple handoff is another variable that can affect it.

14 A. Yes. That's for the latitude and longitude, yes.

15 Q. Okay. And then repeaters that may be employed.

16 A. Correct.

17 Q. Okay. And then down at the bottom, this line says that
18 -- well, Sprint Nextel will not guarantee the accuracy of
19 the location information..

20 A. Correct.

21 Q. Okay. Now, you said that you don't use latitude and
22 longitude because those are not accurate.

23 A. Well, it's not that they're not accurate. There can be
24 some that are accurate. What happens with Sprint, Sprint
25 put the disclaimer on -- and usually there's another sheet

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1 that says see disclaimer related to the latitude and
2 longitude points.

3 What they had done is -- and no fault on an average
4 detective that would look at the information is they were
5 getting called, Sprint was getting called to testify to
6 saying a phone is located at one of those specific latitude
7 and longitude points that are on there. And Sprint, you
8 know, will not -- will not do that as there's other
9 information that factors into determining that point.

10 It works on, as I talked about, having the multi-path
11 and having a one way or two way handoff. What that means is
12 you have -- I think I explained it before where you have --
13 you have the measurement first from one tower.

14 So if all you have is that measurement from the one
15 tower, Sprint will default to just putting that -- the
16 latitude and longitude directly on the azimuth of that
17 tower. So they'll just put it right at the center, put a
18 dot at that distance.

19 Now what also happens is you get -- maybe you get a
20 measurement from another tower that's not referenced on the
21 records, but they use in that calculation. And that's when
22 you see -- you'll see the points going off of that center
23 point to a different area.

24 I know investigative-wise that I would put more -- if
25 I'm looking for a missing child, I'm going to those points.

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1 But without knowing what they came up with, what the other
2 measurements are, you can't -- you can't -- you can't
3 testify to actually that latitude and longitude.

4 (Whereupon Defendant's exhibit 3 was marked for
5 identification)

6 Q. Okay. Now in addition, I want to show you one more
7 exhibit I've had marked. Well, before I do, are you
8 familiar at all with Dwight Nicholson from -- as a Sprint
9 custodian record -- you ever had any communication with him?

10 A. Not that I -- I do with the -- the head of the law
11 enforcement relations and subpoena group.

12 Q. Okay. Well, I'm going to show you briefly a report.
13 And you did not prepare this report and it's the first time
14 you've seen it, but here at the bottom paragraph, and I'm
15 mainly looking right here, this is a report from
16 Investigator Jonathan Howard who you probably were in
17 contact with in your investigation.

18 Here he was asked in April, about the time that you
19 were going to be involved, that he wanted to speak to the
20 records custodian from Sprint. Do you see there where it
21 says Nicholson advised that they could not testify to the
22 accuracy of PCMD data as it is only a rough estimate?

23 A. Yes, with the manager of subpoena compliance. If
24 you'll read the entirety of it, this is a subpoena
25 compliance individual. So it's someone that doesn't have

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1 any knowledge of how the network's set up. They're just
2 there to process the request.

3 When they call, they don't know anything about the
4 towers. They'll give you the default, well, the tower could
5 be any distance. Two to ten miles I saw on this one. I saw
6 earlier different ones. They're not -- they don't have any
7 knowledge of the towers beyond your request, you pull the
8 records from a system.

9 But what they -- what they did at Sprint with our
10 training that we received is they, as he said on the bottom,
11 he referred me to speak with a CAST member as their report
12 would be more accurate. The cell phone companies, Sprint
13 specifically for this, will refer them to us who have the
14 experience looking at the records from that distance tower
15 information where they don't want their engineers getting in
16 -- brought into court as they're better served monitoring
17 their network.

18 Q. But, again, the Sprint representative here says that
19 the distance -- the data as the distance to tower can be
20 anywhere from two to ten miles because of the margin of
21 error.

22 A. That's -- that's not accurate.

23 Q. Well, and Sprint in their cover sheet and in this
24 report say that the data, the PCMD data is not accurate.

25 A. It's topped with action, not -- not that it's not

RICHARD FENNERN - REDIRECT EXAMINATION BY MR. WILKINS

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1 accurate.

2 **MR. SARRATT:** I don't have any further questions.

3 **THE COURT:** Okay.

4 **MR. WILKINS:** Briefly, Your Honor. Just a couple of
5 questions.

6 **THE COURT:** Okay.

7 **Redirect Examination by Mr. Wilkins:**

8 Q. Agent Fennern, I just forgot to ask you, when you
9 prepared your analysis of the cell phone records that are
10 provided to you did you have anyone engage -- in the CAST
11 Team peer review your work?

12 A. Yeah. Everything that we do has to go through -- our
13 CAST unit has to go through and verify what we do before we
14 go into court. So a lot of times, as I'm sure the Defense
15 would receive a draft from me, until it's been peer reviewed
16 by the CAST unit.

17 Q. So in this case was this -- this analysis that we
18 presented earlier reviewed by the members of your CAST Team?

19 A. Yes.

20 Q. And it was signed -- was it signed off by them?

21 A. Yes.

22 **MR. WILKINS:** No further questions, Your Honor.

23 **THE COURT:** All right. You can step down. Thank you.
24 Any further witnesses on this?

25 **MR. WILKINS:** None from the State, Your Honor.

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1 **THE COURT:** Any witnesses?

2 **MR. SARRATT:** Yes, Your Honor. The Defense would call
3 Tom Slovenski.

4 **THE COURT:** Okay.

5 **Thomas Slovenski,** being
6 duly sworn testified as follows;

7 **MADAME CLERK:** Please be seated and state your name for
8 the record.

9 **MR. SLOVENSKI:** Thomas J. Slovenski.

10 **Direct Examination by Mr. Sarratt:**

11 Q. Mr. Slovenski, where are you employed?

12 A. I am the owner and president of Cellular Forensics, LLC
13 located in Greenville County, South Carolina.

14 Q. And how long have you run that business?

15 A. Since 2007.

16 Q. And just generally what's your -- what is your
17 background? Where have you worked?

18 A. Okay. From 1984 to 1999 I was employed with various
19 police agencies. I started out with the City of Greenville.
20 I was with the City of Midlothian, Texas. And then we came
21 back here, and I was on the sheriff's office as a patrolmen,
22 then took a promotion to senior investigator of Internal
23 Affairs for the Greenville County Community Services.

24 And then took a break and went to Simpsonville and
25 worked the road again. Simpsonville Police Department's

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1 where -- was my final venture in 1999.

2 Q. Okay. And from 1999 until 2007 what were you doing?

3 A. I was the owner of Elite Investigations of South
4 Carolina, a private investigative firm.

5 Q. Okay. And can you talk generally about what your --
6 have you been trained in cellular forensics?

7 A. Yes. In 2007 there was no one in South Carolina in the
8 private field working on mobile forensics. SLED was just
9 starting to get a go at it. And I became very interested in
10 mobile phones, mobile technology and especially mobile phone
11 investigations and how it relates to criminal investigations
12 and civil and other type investigations.

13 So I took it upon myself to go to Purdue University.
14 And there I trained under Dr. Rick Mislán, who at that time
15 was the premiere trainer in mobile phone forensics. He
16 certified me, and I came back and changed the name of my
17 company from Elite Investigations to Cellular Forensics,
18 LLC. And since then that's all I've been doing, mobile
19 phone forensics, cell tower examinations and spyware
20 discovery.

21 Q. All right. Now we just talked about your training.
22 Have you ever trained anyone else on cellular forensics?

23 A. Yes, sir. I have been involved with numerous police
24 departments across the country. I've trained hundreds of
25 police officers in mobile forensics as well as attorneys and

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1 judges.

2 In fact, my company is the only company in South
3 Carolina with CLE approved training by the South Carolina
4 Bar for attorneys and judges. In fact, I'm the only one who
5 has ever produced and written entirety eight separate
6 training videos that the South Carolina Bar now uses on
7 their website as training for not just South Carolina
8 attorneys, but other attorneys across the nation.

9 Q. In addition to those eight courses that you wrote, do
10 you have any other publications in this field?

11 A. Yes. I was the very first to write a book for police
12 officers and investigators on mobile phone forensics. It's
13 entitled Cellular Forensics for First Responders. I
14 published it through Amazon. It's still going to this day.
15 In fact, it's used internationally by police departments and
16 military units across the world.

17 In addition, I also was a senior digital instructor,
18 digital forensics instructor, excuse me, for the United
19 States Department of State in their Antiterrorism Assistance
20 Program. And that was where I was employed by the State
21 Department to go to foreign countries and to teach their
22 military and federal police in mobile and digital forensics.

23 Q. All right. Now how many cases roughly have you been
24 involved in since 2007 in your employment?

25 A. Gosh, I don't keep a record. I know some guys do, you

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1 know, for, you know, pride. I don't. Hundreds, sir, would
2 be just hundreds.

3 Q. All right. And in your spare time do you study this
4 stuff?

5 A. Yeah. I've been told I need to get a hobby. I enjoy
6 reading on mobile technology, finding out where it's going
7 because it's all the time morphing, I call it, evolving,
8 always wanting to know the next best thing.

9 I go to cell tower conferences where I'm the only one
10 -- I'm the only investigator there, no law enforcement,
11 nobody. But I want to know these things. And I pay for it
12 out of my own pocket. All my training, all my equipment,
13 all my software, everything comes out of my own pocket. I'm
14 not sponsored by tax dollars.

15 Q. Okay. And you heard Special Agent Fennern testify that
16 he was trained by the -- well, through the FBI and he was
17 trained by all the head engineers at the various telecoms.
18 Would you be allowed to attend any of those training?

19 A. No, not whatsoever. In fact, I used to use a program
20 written by an FBI agent, and when he heard I was doing
21 criminal defense work, he automatically cut me out of the
22 program. So I'm not privy to a lot of the training they're
23 privy to.

24 Q. And is that typical in that field?

25 A. That is typical for us in the private field. It hurts

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1 badly because we're called in to testify and to review
2 things that were done by, say, a prosecution, and let's put
3 it this way, there's more money for the training companies
4 in law enforcement than there are in private entities like
5 myself.

6 Q. Okay. Anything else you want to add in terms of your
7 training, background experience, education?

8 A. Yeah. I was certified in mobile forensics in 2007. In
9 2009 I was certified in historical cell records, analyzation
10 by a company called Cellular Data Resources. Brent Bailey
11 was the number one instructor at the time..

12 Mind you, when I got into mobile forensics, it was in
13 its infancy. There wasn't a lot out there. And what
14 training there was was elementary. I have had to take that
15 training and build on it. All my software, all my
16 procedures, everything that I do has been built and learned
17 on my own. I've got over seventeen thousand hours of
18 training, experience and examination time since 2007 in
19 mobile forensics and cell towers.

20 Q. All right. And as far as you know is there any
21 graduate program or anything that would have a degree in
22 specifically mobile forensics?

23 A. No, sir. There's digital forensics like Purdue
24 University, and RIT, Rochester Institute of Technology, MIT.
25 They offer beginning things into digital forensics, but

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1 digital forensics is so wide that you have to pick out what
2 niche you want.

3 Personally for me it was mobile. I am just obsessed
4 with mobile, mobile technology, the towers, magazines that
5 talk about these things. Like I said, I've been told to get
6 a hobby, but, you know, this one keeps me off the streets.

7 Q. Sure.

8 **MR. SARRATT:** Your Honor, at this time I would move to
9 have him qualified unless there's any voir dire.

10 **MR. WILKINS:** Your Honor, if I could just save it til
11 cross examination.

12 **THE COURT:** Okay.

13 **MR. WILKINS:** I don't, you know, I don't know what he's
14 going to say.

15 **THE COURT:** All right. Well, I find he's qualified in
16 the same area. I'm going to ---

17 **MR. SARRATT:** In historical cell phone analysis.

18 **THE COURT:** Yeah.

19 **MR. SARRATT:** Okay.

20 **THE COURT:** I find he's qualified.

21 **MR. SARRATT:** Thank you.

22 Q. Mr. Slovenski, could you talk sort of generally about
23 principles of verification and the importance of that?

24 A. Ah, verification is something that I have preached to
25 law enforcement since I started training them back in 2008.

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1 Verification is where you take the results that you got and
2 then you take other results gotten another way to make sure
3 that they're congruent with each other, that they match.

4 Case in point, when the FBI agent gave you or you got
5 from the solicitor his records, I did my own examination and
6 then used mine to verify his results. Sometimes though
7 we're finding law enforcement does not do that, especially
8 when it comes to mobile forensics.

9 Q. Okay. In a case like this where we're looking at
10 historical analysis, ---

11 A. Um-hum (affirmative).

12 Q. --- is there any way to verify the results of that?
13 When you're looking back ---

14 A. Okay.

15 Q. --- historically, ---

16 A. Right.

17 Q. --- is there any way to verify that?

18 A. No, not really. What we're given basically are records
19 from the cell phone company, and it is what it is. They're
20 telling us this is -- these are the records we had for that
21 date and time that you're requesting, like the Solicitor's
22 Office got and the sheriff's office got, okay?

23 Now, to go back and say, well, are these correct? You
24 have to -- there has to be a starting line. And that would
25 be the CDRs, the call detail records.

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1 Q. Okay. And what I'm getting at, if a cell phone were in
2 a specific place, ---

3 A. Right.

4 Q. --- and you had a reading and you predicted where that
5 phone might be, ---

6 A. Um-hum (affirmative).

7 Q. --- if the phone was still there you could go back and
8 see, oh, here's the phone. It matched up with my reading.

9 A. Right. Right. And you could say it was in a specific
10 sector at a specific time.

11 Q. But once the phone is no longer there, there's no way
12 to go back and verify unless there's video surveillance or
13 something showing that the phone was, in fact, there.

14 A. Right. If you're going to try to pinpoint an area in
15 that sector and say he was there, the only way you're going
16 to do that is with outside data, namely an eyewitness, video
17 camera, somebody with a cell phone took a picture, that sort
18 of thing to actually verify that that person was at that
19 exact place and time.

20 The cell records would back up the hard data being the
21 video, the picture, but cell tower records are generalized
22 records. They're not for pinpointing purposes, never have
23 been. In fact, as the agent testified, they're used for
24 billing purposes.

25 What has happened, and this is what's happened in the

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1 very beginning of mobile forensics, and that is we take
2 things that are there and then exploit them to try to prove
3 something or to glean something from that information that's
4 totally relevant to another area. That's the way mobile is.

5 Q. Now, you talk about call detail records, CDRs.

6 A. Um-hum (affirmative).

7 Q. Have you been dealing with call detail records the
8 entire time that you've been doing mobile cellular
9 forensics?

10 A. Since 2009 ---

11 Q. Okay.

12 A. --- when I was certified.

13 Q. And then specifically PCMD, can you speak as to PCMD
14 records?

15 A. Right. In my training, and that dealing with not only
16 those who provided me my certification, but in taking
17 updated training as to the towers and the providers from a
18 law enforcement agency that I pay to attend their classes,
19 we were told PCMD was very inaccurate and stay away from it,
20 do not even attempt to bring it into the case.

21 Q. And why is that?

22 A. Well, because Sprint, when it comes to PCMD by Sprint,
23 Sprint actually says that their records are inaccurate in
24 the PCMD realm. They won't testify to them.

25 Q. Have you ever spoken to anyone at Sprint about this?

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1 A. Yes, I have.

2 Q. And what did they -- what did he or she say?

3 A. Okay. It was around August 4th, 2015. I spoke via
4 email with Heather Ramos, which is -- who is a senior
5 technical analyst at Sprint in regards to PCMD. Her words
6 were "we do not guarantee any accuracy of the distance or
7 latitude, longitude at all."

8 Just before this case, when your office was looking for
9 someone to testify from Sprint to the PCMD, I again went to
10 Heather Ramos via email and I said, okay, what is the
11 procedure to get someone from your office here? Do you have
12 somebody locally? And she said, if it's going to be
13 involving the PCMD, we will tell you those records are
14 inaccurate.

15 MR. SARRATT: No further questions.

16 THE COURT: All right.

17 **Cross Examination by Mr. Wilkins:**

18 Q. Good afternoon, Mr. Slovenski.

19 A. Hey. How are you?

20 Q. I'm Walt Wilkins.

21 A. Yes, sir.

22 Q. Nice to see you.

23 A. Good to see you again.

24 Q. Just a couple of questions. In your law enforcement
25 experience did you have any law enforcement experience using

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1 PCM data or cell phone data in a case?

2 A. Sir, when I was in law enforcement cell phones were a
3 bag. There was no PCMD out there at that time.

4 Q. So you've never -- you never worked with cell phone
5 companies as a law enforcement agent?

6 A. No, sir, sure didn't.

7 Q. So you've never tried to find a kidnapped kid or a
8 fugitive on the run or anything like that as a law
9 enforcement agent?

10 A. Not using cell tower ---

11 Q. Cell tower information?

12 A. --- as a police officer.

13 Q. Because when did -- you got out of law enforcement in
14 ---

15 A. 1999.

16 Q. 1999. I remember when I got -- I think I got my first
17 cell phone in 2001.

18 A. Yeah.

19 Q. If I can recall.

20 A. They're fascinating.

21 Q. And you also testified -- you don't get the -- you
22 don't get the -- you don't have the ability or they don't
23 give you the access to the engineers at Sprint, T-Mobile ---

24 A. No.

25 Q. So you don't get to interact with them to talk about

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1 their network, their cell tower locations, how it's utilized
2 and those types of things?

3 A. The only way we do is like just friendly banter if we
4 go to a conference. Other than that, there are no private
5 entities that are offering that type of training to us,
6 unfortunately.

7 Q. And you would agree that the CAST Team members do have
8 access to ---

9 A. Oh, yeah. They've got a lot of access to a lot of
10 stuff.

11 Q. So they're, you would agree, they're talking to the
12 senior engineers of those -- of those networks?

13 A. Right. One thing about an engineer is you could get
14 three of them up here from Sprint and every one of them
15 would probably say something different. That's just the way
16 engineers are.

17 Q. That's pure speculation, we don't know, but you would
18 agree that he has -- the CAST Team member and specifically
19 Agent Fennern has access to the senior engineers at Sprint,
20 T-Mobile, the major networks?

21 A. I don't know now. He testified that he was trained by
22 them, he'd met with them for a particular period of time.
23 What they taught him, I don't know. Hard to answer that
24 one.

25 Q. You're saying you don't have access, but he does?

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1 A. He may.

2 Q. He may? Okay. Well, you heard him testify. And you
3 have -- you've testified that a Sprint custodian said the
4 records were -- Heather Ramos was not -- this information
5 was not accurate?

6 A. She's the lead trial coordinator at legal compliance.

7 Q. She's a custodian of records?

8 A. She -- from what I ---

9 Q. Do you know who she is?

10 A. Yeah.

11 Q. Have you met her?

12 A. She's in Kansas City. No.

13 Q. So you have not physically met her? How many times
14 have you talked to her?

15 A. Oh, numerous via email.

16 Q. Okay. How ---

17 A. If I have questions about Sprint records, I'll write
18 her.

19 Q. Okay.

20 A. She's become a contact person for me.

21 Q. How many times have you talked to her?

22 A. Oh, man, dozen.

23 Q. Okay. And how many times have you talked to her in
24 relation to this case?

25 A. Twice.

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1 Q. Okay. And she is -- she is the legal liaison for
2 records?

3 A. Well, one of her titles, underneath there it says
4 analyst.

5 Q. Okay.

6 A. So she ---

7 Q. She's not a senior engineer, is she?

8 A. Not to my knowledge.

9 Q. She wouldn't know whether the cell tower information is
10 accurate or not, she just knows what she knows?

11 A. Well, she works there. I think she would know a whole
12 lot more than we would.

13 Q. Do you -- let me go back. You talked about
14 verification.

15 A. Um-hum (affirmative).

16 Q. But you would agree that what Agent Fennern did was he
17 took distances and then he made measurements off those --
18 off those distances?

19 A. Right.

20 Q. All right. You would agree Sprint's, what, a billion
21 dollar company?

22 A. Today.

23 Q. T-Mobile same?

24 A. Today.

25 Q. All right. They're pretty proud of their network,

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1 would you agree?

2 A. Of course.

3 Q. All right. They have a lot at stake with their
4 network?

5 A. Correct.

6 Q. All right. And you would agree there are forty-six FBI
7 CAST Team members that rely on that information to
8 illustrate the potential location of cell phones, correct?

9 A. They rely -- okay. You're saying forty-six CAST
10 members rely on Sprint's information?

11 Q. Or T-Mobile or ---

12 A. Or T-Mobile or whoever the provider for accuracy?

13 Q. That's correct.

14 A. Yes, sir.

15 Q. And just as Agent Fennern has testified over twenty
16 times and his CAST Team has testified over eight hundred
17 times according to him in courts that these measurements
18 are, in fact, accurate and consistent within a small
19 variable that he explained on the stand?

20 A. That's -- that's his story. I have no way to verify
21 it.

22 Q. You have no way to verify it?

23 A. I have no way to verify it.

24 Q. You have no way -- you have no way to disprove it
25 either?

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1 A. Well, if that's the case, that he can prove it, I'd
2 love to see the manual that states it, okay? Because the
3 only thing that we can go by, sir, was this key that Sprint
4 gives to every law enforcement agency when the records are
5 given to us. And it says right there on the bottom, these
6 records are inaccurate. They will not testify to them.

7 And in all my training I've been told to stay away from
8 the PCMD records. Okay. So why now are they being called
9 into play when Sprint will not even testify to their
10 validity?

11 Q. In the record that was put up there by counsel did it
12 say please see a CAST Team member on it?

13 A. Oh, that was someone's notes. That was not from
14 Sprint, sir. That was in someone's notes.

15 Q. No, it was -- it was in a report ---

16 A. Yes.

17 Q. --- that Counsel Sarratt put up there.

18 A. Right.

19 Q. And it was -- he was using it to illustrate that it was
20 not -- that the longitude, latitude was not accurate, but
21 please see a CAST Team member.

22 A. Sure.

23 Q. Okay.

24 A. Because CAST people have more experience -- ah, I know
25 where you're going with this. But CAST members have, CAST

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1 people have more experience in CDRs than regular law
2 enforcement, okay? But that doesn't mean that the PCMD is
3 accurate.

4 Q. Well, I -- and that's what experts are here to tell us
5 that they are accurate or not accurate. The bottom line is
6 you've never discussed PCMD with a senior engineer at any
7 major networking ---

8 A. No, I don't have -- I don't have that ---

9 Q. Well, you don't know whether it's accurate or not
10 because you've never had the ability to do an analysis?

11 A. I can only go by what Sprint's told me. It's like the
12 Bible, you either believe it or you don't. If you don't,
13 then why do you go to church? Okay. If we're going to base
14 this case on Sprint records and Sprint says they're not
15 accurate, then how can we base anything else on that then?

16 Q. So are you telling this Court that the CAST members and
17 Richard Fennern are not telling the truth here in the
18 courtroom? Is that what you're saying?

19 A. No, sir. I'm saying that what they're -- what they are
20 stating cannot be verified at this time and should be in
21 order for this Judge to know whether -- what they're saying
22 is the truth or not.

23 Q. And you're basing that on the fact that a legal
24 custodian said so one time?

25 A. No, sir. I'm basing it on what Sprint tells us

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1 numerous times every time we get CDRs from them.

2 Q. And are you aware that they're basing that -- they're
3 discussing, talking about the longitude and latitude?

4 That's what they're -- that's what they're talking about in
5 that disclaimer right there, the longitude and latitude.

6 A. Then how come Ms. Ramos -- okay, I'll just -- I'll just
7 give it to you. Okay.

8 Q. Yeah.

9 A. If you say so, sir.

10 Q. All right. Thank you.

11 **MR. SARRATT:** No redirect, Your Honor.

12 **THE COURT:** Okay. You can step down.

13 A. Thank you, sir.

14 **THE COURT:** Anything further?

15 **MR. SARRATT:** Argument. No further questions for this
16 witness, Your Honor.

17 **THE COURT:** Okay. Any further witnesses?

18 **MR. SARRATT:** No. I'm sorry. No further witnesses.

19 **THE COURT:** Okay. All right. Tell me why you think
20 this methodology didn't comport with the requirements of the
21 rules and case law.

22 **MR. SARRATT:** Your Honor, I'll hand up -- it's not a
23 full memo, but it's a listing of pertinent cases because
24 there is no one essential authority on this. They're
25 scattered all across various district courts and state

1 courts. And I have some of those listed in here.

2 **THE COURT:** Well, I'll be very candid with you. I
3 don't know how much law we need in addition to Council. But
4 ---

5 **MR. SARRATT:** No. And I have ---

6 **THE COURT:** --- I'm more concerned about how, I mean, I
7 certainly don't have time to read this, but I'll certainly
8 take a look at it. But you've got two cases from Georgia
9 and Illinois ...

10 **MR. SARRATT:** And, again, because this is just so new
11 and there is no authoritative case, those are the various
12 courts I have found who have discussed the reliability of
13 historical cell site data. So I just provided that for Your
14 Honor ---

15 **THE COURT:** Okay. No, I'll take a look at them.

16 **MR. SARRATT:** And certainly not right now. It's twenty
17 cases that I've put in there. But the original -- the
18 initial threshold inquiry here is whether expert testimony
19 is even required. And I think both sides would probably
20 agree that this is beyond the experience and knowledge of a
21 layman, and so expert testimony would be required.

22 Then under Council on the various cases the inquiry is
23 whether or not it is reliable and whether or not the expert
24 is qualified. Certainly we did not object to their expert's
25 qualifications except as to the science underneath --

1 underlying the distance from tower measurement. That, I
2 believe, is scientific evidence and would have to be
3 analyzed under Council.

4 We heard that there are no peer reviewed studies. In
5 fact, there's no oversight because this is -- these are
6 closely guarded trade secrets by the telecom companies.
7 There is no way to review it.

8 Anytime that anyone goes private, they're black listed
9 and they're not allowed to attend any of these trainings.
10 So I don't ---

11 **THE COURT:** You -- go ahead.

12 **MR. SARRATT:** Well, and again, Your Honor must first
13 find that it is scientific evidence. Expert testimony is
14 required though whether it's technical or scientific. So
15 even if Your Honor were not to find that it would have to
16 meet the higher burden of Council, it does still have to be
17 reliable.

18 And as you've heard, the argument's fairly simple,
19 Sprint creates the records. Agent Fennern interprets those
20 records. And Sprint says the records are not accurate and,
21 therefore, they are not reliable.

22 That's the thrust of my argument. And we believe that
23 this should be excluded and suppressed from this trial.

24 **THE COURT:** All right.

25 **MR. SARRATT:** Well, I'm sorry. Let me be more clear on

1 that. Not the entire thing. The distance from tower, PCMD
2 data that shows, again, that band of where the phone might
3 have been, that is our objection to that piece of -- that
4 piece of evidence.

5 **THE COURT:** All right. Well, isn't that a mathematical
6 computation, basically?

7 **MR. SARRATT:** Well, he testified that there's a
8 variance.

9 **THE COURT:** Well, I mean, I know, but you got the right
10 to cross examine him. But as far as that particular, if you
11 determine -- if I were to determine that there is
12 reliability at least to the extent that it's reliable, the
13 underlying data from Sprint is -- that the CAST members can
14 rely on that, then doesn't it, after you get that, it sort
15 of becomes just a math problem?

16 **MR. SARRATT:** Well, Your Honor, as we've said, there
17 are variables that go into that. The margin of error,
18 there's no testimony as to how that margin of error is
19 computed, whether that has been studied by anyone outside of
20 law enforcement. Just because every member of CAST comes in
21 and says that there is a two hundred and twenty meter
22 variance does not necessarily make it true.

23 So I would argue that because ---

24 **THE COURT:** How many would it take?

25 **MR. SARRATT:** Well, I think it would take some outside

1 source to come in and test that. And that's the whole
2 purpose of Council and these cases is to make sure that the
3 data is itself trustworthy to some degree and does not
4 simply go to the weight of the evidence, it does go to the
5 admissibility.

6 **THE COURT:** Okay. All right. Let me hear from the
7 State.

8 **MR. WILKINS:** Your Honor, again, this falls under rule
9 702. And I think that the factors under -- I think we can
10 all agree to -- that the first factor of 702, the trial
11 judge must consider that the evidence will assist the trier
12 in fact. Obviously, this will assist the trier in fact in
13 determining guilt or innocence in this case. I think ---

14 **THE COURT:** Well, I hate to stop you, but as far as it
15 being relevant and helpful to the jury, I don't think
16 there's any question about that. I think the third element
17 ---

18 **MR. WILKINS:** We're down to Jones factors.

19 **THE COURT:** --- the only thing that really is at issue.

20 **MR. WILKINS:** The Jones factors. And I asked him, and
21 that is publications in peer review, and that is inside the
22 CAST Team. It's forty-six members that are FBI trained.
23 They've got extensive training. They train with the
24 cellular companies as well.

25 Prior application, he alone has testified over twenty

1 times. The CAST Team members have testified over eight
2 hundred times across the country in various courts.

3 The quality control procedures used to ensure
4 reliability, well, there's no dispute that the records are
5 received by the CAST Team member. The records are the -- in
6 the possession and the sole owner of those are Sprint or T-
7 Mobile, whoever, in this case Sprint. And there's a
8 distance measurement. But the CAST Team is trained and
9 qualified as an expert to interpret that data and illustrate
10 it. And that's exactly what he's done.

11 I think what they're trying to say is the distance on
12 -- the distance information, the cell phone distance at the
13 time of a call was made is being contested by Defense
14 counsel. And our expert witness is qualified, trained and
15 knowledgeable enough to take that piece of information and
16 make an illustration that is true and accurate.

17 And he does so in that arc. And that's the arc that
18 you see. He can say it's one point eight (1.8) miles from
19 the tower. I know which tower it is because they told me.
20 This is -- this data is accurate because it's a billion
21 dollar company that has to keep accurate data. So I'm going
22 to rely on it. And then he says the cell phone was located
23 at that time somewhere in that particular arc.

24 In addition to this particular case, and I think the
25 most contested is the one during 10:45, 11:02, two calls at

1 11:02, which puts the Defendant's phone at Terramont Road or
2 the arc is within Terramont Road where the homicides
3 occurred on that night. And in this case we don't just have
4 one telephone call, we have three telephone calls. 10:45,
5 the arc is there. 11:02 and something seconds, at 11:02 and
6 something seconds. And all three arcs are exactly the same.

7 So we've tested the theory. He's analyzed it on call
8 one, call two and call three. All three calls are
9 consistent, which further goes to the accuracy of the
10 information and the data that he's given.

11 And then finally, the consistency of the method with
12 recognized scientific laws and procedures, you know, they've
13 been doing this since 2009. So it's over six years old. I
14 think the CAST Team was developed in 2006. And, you know,
15 that's what he does every single day. He testified that he
16 analyzes these cell phone records every single day and they
17 use it for a myriad of law enforcement purposes.

18 **THE COURT:** All right. Anything further?

19 **MR. SARRATT:** Nothing, Your Honor.

20 **THE COURT:** All right. This is a new area. And that
21 always is -- makes us scratch our head as to exactly what
22 the four factors -- what they really mean. They're easy to
23 say, but they're hard in practice as to reliability.

24 As I said before, I do find that this evidence would be
25 relevant and helpful if it is -- if it's found to be

1 reliable.

2 As to publication and peer review of the technique,
3 kind of a funny way to say it, but there haven't been a lot
4 of publication. And most of what I've heard today is the
5 most prolific publicator is Mr. -- I've got his name written
6 here somewhere, but the witness for the Defense. He's the
7 most prolific publisher from what I hear.

8 But I do find there is peer review of the technique
9 established through the evidence, the fact that Mr.
10 Fennern's own report in this case was peer reviewed, was his
11 testimony, that there have been at least, according to his
12 testimony, he's testified around twenty times. That's not
13 peer review in and of itself. That has to go more with
14 prior application in a moment.

15 But eight hundred events of testimony by CAST members,
16 I think, establishes ample peer review of the -- that there
17 exists ample peer review of the technique. And as we all
18 know with -- I can't speculate, but I can think out loud, I
19 guess, that if there were eight hundred cases in which the
20 agent testified, there's some multiple of that of cases
21 which they've actually worked on. So I find that the Jones
22 standard or Council, that publication and peer review of the
23 technique has been sufficiently established.

24 Prior application, as I said, has been utilized by the
25 CAST Team. And keep in mind, or I shouldn't say keep in

1 mind, but I'm keeping in mind the fact that this team was
2 put together, established, trained specifically for this
3 purpose, to be able to come into court and address this
4 particular issue.

5 And the fact that it was put together, the fact that it
6 has been trained, the fact that Mr. Fennern and the CAST
7 Team members, he didn't testify that all of them were
8 certified, but he's been certified by CAST or certified
9 through education to use this methodology. So I find that
10 the -- that establishes quality controls and procedures
11 which would ensure the reliability of the evidence.

12 And by that I mean that the -- that they're all -- to
13 me they're all tied together. They basically all revolve
14 around whether or not the methodology used is reliable. And
15 then the court has broken it down into these four factors,
16 which are, quite frankly, I think, hard to articulate except
17 for to the extent that I've done so.

18 Now, the consistency with recognized scientific laws
19 and procedures, as I said earlier, the -- it's pretty much
20 math. I don't think there's much scientific about the
21 actual method. It's the reliability of the documentation
22 used to make the mathematical computations.

23 So I find that the method Agent Fennern used is
24 consistent with scientific laws and procedures. I do find
25 that the -- and I know we're on new ground, but I find that

1 CAST members and Agent Fennern in particular have a right to
2 rely on the -- and I've got so many acronyms down here that
3 I can't remember which one ---

4 **MR. SARRATT:** PCMD.

5 **THE COURT:** Yeah. Provided by Sprint. I find that
6 that is -- it's a reliable source of information upon which
7 the CAST members can or may use as a basis for reaching
8 their opinions they reached.

9 The fact that a custodian, basically liaison person,
10 says not to rely on it, that could be company policy. We
11 don't know. It certainly doesn't smack of any reason to say
12 it -- they generate it. And they -- companies such as
13 Sprint are always concerned about liability. And they're
14 about afraid to say that anything is reliable if they can
15 avoid it.

16 So I find that it is relevant, reliable, will help the
17 jury. And I find that its probative value outweighs any
18 prejudicial value. I probably have not articulated my
19 finding as good as somebody else might, but I do find that
20 it is admissible.

21 **MR. ERWIN:** Thank you, Your Honor. May I clean up the
22 record just ---

23 **THE COURT:** Yeah.

24 **MR. ERWIN:** --- briefly? Mr. Sarratt referred to three
25 separate exhibits in his cross examination and also

1 submitted to you and also provided the prosecutor with a
2 copy of some cases that he referenced in his argument. I
3 would like to make all four of those Court's exhibits for
4 purposes of this hearing for purposes of the record being
5 set appropriately.

6 **THE COURT:** I don't think he gave me any cases. He
7 gave me the motion that cites two federal cases.

8 **MR. ERWIN:** And, Judge, that's all I would be seeking
9 to make a Court's exhibit in this case is the authority that
10 Mr. Sarratt was speaking to ---

11 **THE COURT:** Okay.

12 **MR. ERWIN:** --- in his argument.

13 **THE COURT:** I'll try to pull up those cases. And if
14 they make me think any differently, obviously, until we get
15 into the -- the jury's sworn, I could ---

16 **MR. ERWIN:** I understand, Judge. I'm certainly not
17 disputing your ruling at all. I'm just ---

18 **THE COURT:** No, I know that.

19 **MR. ERWIN:** This is new stuff, as you said. So I'm
20 making sure we have the record set as well as we can.

21 **THE COURT:** I'd like to see what they say.

22 **MR. ERWIN:** Okay. So may we put these in, these four
23 things in as four Court's exhibits for purposes of this
24 hearing?

25 **THE COURT:** All right. Does that include these cases

1 so I don't have to ---

2 MR. ERWIN: It included the -- what you're holding
3 right now, the document that you're holding would be our
4 fourth Court's exhibit.

5 THE COURT: Okay. But not copies of the case?

6 MR. ERWIN: No, sir. We have copies of the cases if
7 you'd like them.

8 THE COURT: Yeah, I'd like it.

9 MR. ERWIN: Okay. We will make sure in the afternoon
10 we'll get copies to y'all as well.

11 (Whereupon Court's exhibits 1, 2 and 3 were marked,
12 which were previously Defendant's exhibits 1, 2 and 3)

13 (Whereupon Court's exhibit 4 was marked)

14 THE COURT: All right. Anything else for today?

15 MR. ERWIN: No, sir. I don't believe so.

16 MR. WILKINS: Nothing from the State, Your Honor.

17 THE COURT: All right.

18 MR. ERWIN: Well, hold on, Judge.

19 THE COURT: Okay.

20 MR. ERWIN: One second. I'm sorry.

21 (Pause)

22 MR. ERWIN: Okay. Well, Judge, we have one more -- one
23 more motion on the cell phone stuff.

24 THE COURT: Okay.

25 MR. SARRATT: Your Honor, I'd make a just brief motion

1 to exclude under the Fourth Amendment and also under the
2 South Carolina Constitution, Article 1, section 10 that this
3 essentially constitutes an invasion of privacy. And it
4 should be suppressed because it does run afoul of the Fourth
5 Amendment.

6 The historical -- the surveillance of his movements
7 over the four days. This is also a very new and developing
8 issue ---

9 **THE COURT:** Is there not a case pending before the U.S.
10 Supreme Court just on that issue right as we -- right now?

11 **MR. SARRATT:** I believe there may be. There's also
12 pending -- there was a District Court case out of Maryland
13 that -- United States versus Graham that found that there is
14 no expectation of privacy in your historical cell site data.

15 There's a very recent South Carolina case as well that
16 was decided earlier this year that found that it was a novel
17 issue in South Carolina, no court had ever addressed whether
18 you can have an expectation of privacy or the Fourth
19 Amendment touches on this issue. But it cited to the
20 federal case law and said there had been no federal case
21 that finds this, and so we decline to as well.

22 It then cited the District Court Graham case in support
23 of that opposition. Since that South Carolina case was
24 decided, however, the Graham decision has gone up to the
25 Fourth Circuit on appeal. They overturned that District

1 Court decision and found that there is an expectation of
2 privacy in historical cell site data.

3 Now, that's pending a rehearing. And so whether that
4 will stand, I'm not sure. But, again, I think that has been
5 controlling on the Federal Constitution in this State given
6 that is a Fourth Circuit case.

7 And, further, I still will have an argument to make
8 under the South Carolina Constitution, Article 1, Section 10
9 that it -- that is more restrictive than the Federal Fourth
10 Amendment. And it does run afoul of the provision that
11 specifically states that you have a privacy interest.

12 There is more to that argument. Obviously, my first
13 barrier is I've got to have State action. We haven't had
14 any testimony as to that issue. And so I'm not sure if the
15 State wants to ...

16 **MR. WILKINS:** As to?

17 **MR. SARRATT:** As to whether there's State action and --
18 because it's ---

19 **MR. WILKINS:** Starting to get -- riding down a
20 constitutional issue, Your Honor, I think is what it -- but,
21 you know, these records were obtained pursuant to a law
22 enforcement request under a criminal investigation first and
23 foremost. So I don't think the expectation of privacy has
24 been considered in a criminal context in South Carolina.

25 These are merely business records. And then the

1 information of business records, which would be, we would
2 argue, would be admissible under 803, were then analyzed by
3 an expert to illustrate what that actual data means. So
4 they're really illustrating a business record is really all
5 they're giving.

6 Secondly, the testimony has not come out, and we can --
7 I can put up testimony if you need, this phone was not in
8 the name of Jonathan Rhodes. It was in the name of his
9 roommate, Eric Cade. So I'm not sure his expectation of
10 privacy is as high as someone else who actually pays and
11 owns the actual phone, but gave it to him to use at his
12 leisure, so another issue that I would bring to the Court's
13 attention regarding going down this constitutional road.

14 **MR. SARRATT:** So, again, Your Honor, it would require
15 you to find that there was State action through discovery
16 that I've been provided. The records were disclosed under
17 an exigency order, which is under Title 18 United States
18 code section 2702 states there's certain circumstances under
19 which a telephone provider can voluntarily disclose
20 subscriber information to various people including law
21 enforcement.

22 They have to have a good faith belief that there is
23 some exigent circumstance that risked danger, imminent
24 danger in somebody's life and safety. Law enforcement did
25 provide an affidavit which indicated that was the case, and

1 in turn they were provided the records. The telephone
2 company did choose to voluntarily disclose those.

3 I would argue that there's an agency relationship at
4 that point between the telecoms and law enforcement, that
5 they are acting at law enforcement's request for the benefit
6 of law enforcement and through no benefit of themselves and
7 that would, therefore, make them a State actor, thereby
8 triggering a Fourth Amendment and South Carolina State
9 Constitution analysis.

10 **THE COURT:** Well, I don't think by divulging
11 information requested, particularly if they're required to
12 do it, makes them a State actor.

13 **MR. SARRATT:** And that's the end of that argument ---

14 **THE COURT:** Okay.

15 **MR. SARRATT:** --- because if I can't get past State
16 actor, then, Your Honor, ---

17 **THE COURT:** Well, this case is chock-full of novel
18 issues. And we're on the cusp of a lot more because
19 technology is changing as we speak.

20 But I don't believe, and I'm somewhat cold on it
21 because I'm just sitting here and just now hearing that
22 argument for the first time, although I am aware that that
23 has been raised and litigated, that under the facts of this
24 case there's been any denial of Mr. Rhodes' right under the
25 Fourth Amendment, subject to his search and seizure, that

1 there's been any unconstitutional search and seizure of
2 anything in which Mr. Rhodes had a right of privacy.

3 **MR. SARRATT:** Thank you, Your Honor. And, again, given
4 that this is just an in limine ruling, having decided that
5 there is no State action, I won't argue further at this
6 point, but I would reserve the right to argue in the trial
7 prior to the admission of that testimony -- arguing further
8 points.

9 **THE COURT:** Okay. Well, that's fine. I don't know
10 that you really have to warn me, but that's okay.

11 **MR. SARRATT:** Just trying to protect the record.

12 **THE COURT:** No. I want everybody to protect the
13 record.

14 **MR. SARRATT:** Yes, I'm very concerned about ---

15 **THE COURT:** I'm very big on that. So don't ever feel
16 offended. Just speak your peace because my philosophy on
17 this job is that I want to do it right. If I don't, I want
18 somebody to set it aside and get it right. So if you think
19 I've done something, or need to hear something, or need to
20 address something, don't be shy.

21 **MR. SARRATT:** Thank you, Your Honor.

22 **THE COURT:** Thank you.

23 **MR. SARRATT:** And there's nothing further from the
24 Defense at this point, Your Honor.

25 **THE COURT:** Okay. Is that it for the day?

1 TUESDAY, DECEMBER 1, 2015:

2 (Whereupon State's exhibit 144 was marked for
3 identification)

4 (Whereupon court reconvened at 9:38 am)

5 **THE COURT:** Good morning. Thank you. Everyone take
6 your seats. State ready?

7 **MR. WILKINS:** Yes, Your Honor, the State's ready.

8 **THE COURT:** Defense ready?

9 **MR. ERWIN:** Yes, sir.

10 **THE COURT:** A couple of things to follow up from
11 yesterday. Shooting off the hip as I had to in ruling on
12 counsel's issue yesterday I felt like I didn't make a
13 straight line anywhere. I just kind of garbled and rambled.
14 So I decided to fashion a little more succinct ruling. So
15 I'm going to read that into the record. This is my ruling
16 -- clarifying my ruling yesterday.

17 As I said yesterday, the Council and Jones factors are
18 easy to articulate, but somewhat difficult in their
19 application. So applying rule 702 and 703 and the Council
20 factors coupled with the benefit of some further research, I
21 want to try to concisely address the issue I so garbled
22 yesterday.

23 I find the evidence the State wishes to introduce
24 through Agent Fennern is relevant. I say this without the
25 benefit of a lot of testimony, that is, I don't -- haven't

1 heard the whole case, but I do understand the evidence
2 presented by Agent Fennern puts a cell phone lent by a man
3 named Cade to Defendant in the proximity of the address
4 where these murders allegedly occurred at relevant times.

5 I find Agent Fennern to be qualified in the expertise
6 of analysis of and interpretation of historical cell phone
7 tower data and is qualified as an historical cell phone data
8 analyst. I find this based on his training, education, his
9 certification and his experience over a significant period
10 of time.

11 I find the methodology utilized by Agent Fennern, and,
12 I'm sorry, I keep -- I know I'm not pronouncing that right.
13 And I just apologize for that.

14 **MR. WILKINS:** Fennern.

15 **THE COURT:** Fennern?

16 **MR. WILKINS:** Yes, sir.

17 **THE COURT:** I find the methodology utilized by Agent
18 Fennern meets the requirement of Council regarding peer
19 review. Agent Fennern testified that his analysis in this
20 case has been peer reviewed. He also testified that members
21 of the CAST Team, which is a team specializing in cell phone
22 forensics, have testified approximately eight hundred times,
23 based on the analysis he utilized in this case.

24 Agent Fennern testified that he has testified regarding
25 historical data analysis twenty times. These latter

1 observations establish to me ample prior application of the
2 methodology. There's very -- so that meets the first and
3 second prong of Council.

4 There's very little in the record regarding quality
5 control procedures. However, dovetailing this factor with
6 the findings regarding peer review, I find sufficient
7 evidence of internal quality control procedures to meet the
8 requirements of Council.

9 Likewise, there's very little in the record regarding
10 consistency of the method with recognized scientific laws
11 and procedures. However, I find that the method used by
12 Agent Fennern does not require engineering expertise.

13 I find the interpretation of the historical data relied
14 on technical expertise applied to verified data and in spite
15 of -- and not making any finding other than that, I disagree
16 with Mr. Slovenski's testimony about the veracity of -- the
17 accuracy of the data. I find that it would -- that the data
18 supplied by Sprint to be -- I do not find it to be -- well,
19 I find it is verified data.

20 In addition to using verified data that he utilized the
21 knowledge of positioning of and technical functioning of
22 cell towers and knowledge of the behavior of radio waves,
23 that is, radio frequency couple with mathematical knowledge.

24 Finally, I find that the probative value of the
25 testimony of Agent Fennern outweighs any prejudicial effect

1 it might have.

2 Like I say, this is somewhat novel. However, I have
3 been supplied, thank you, Mr. Sarratt, with a number of
4 cases. And I haven't had a chance to read them all, but an
5 interested one from our good friend Judge Norton in
6 Charleston. I'm not going to go through the whole case, but
7 the name of the case is United States versus Eadie. It is
8 filed as number 2:12-cr-00415-DCN-3.

9 And he in this order approved use of historical data
10 analysis. And in so finding on page 4 of 5 he states "the
11 court in Jones also remarked that 'the use of cell phone
12 location records to determine the general location of a cell
13 phone has been widely accepted by numerous federal courts.'
14 He goes on, while the law in this area is still developing,
15 this court agrees that the overwhelming consensus of
16 judicial authority favors a finding that methodology of the
17 kind employed by Special Agent Sutton is reliable.

18 So that takes care of that. And again, I apologize for
19 having to come back and be a little more coherent, for lack
20 of a better word.

21 Also, as to the other issue regarding the privacy,
22 there is a case of the State versus Drayton, filed -- it's
23 411 S.C. 533, which involved telephone records and the
24 Fourth Amendment attack. And the court states under our
25 analysis of the cases interpreting the United States Fourth

1 Amendment, we find Drayton did not have a legitimate
2 expectation of privacy in his historical cell site location
3 records.

4 So that takes care of those issues with a little more
5 clarity. Maybe not the best clarity, but a little more.

6 All right. You ready for the jury?

7 **MR. WILKINS:** Yes, sir.

8 **THE COURT:** All right. Bring in the jury.

9 (Whereupon the jury entered the courtroom at 9:48 am)

10 **THE COURT:** Good morning, members of the jury. Now
11 that you're all comfortably seated, please stand and the
12 clerk will administer the oath.

13 **MADAME CLERK:** Please raise your right hand. The
14 correct response to the oath will be I will. You shall well
15 and truly try the case 2013-GS-23-4262 and 4263, the State
16 versus Jonathan Donnell Rhodes, indicted for murder and
17 possession of a weapon during the commission of a violent
18 crime, 4264 for burglary, first degree, and 4260 and 4261
19 for kidnapping and possession of a weapon during the
20 commission of a violent crime and a true verdict rendered
21 according to the law and the evidence so help you God. I
22 will?

23 **THE JURY:** I will.

24 **MADAME CLERK:** Thank you.

25 **THE COURT:** Members of the jury panel, I'm going to

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1 questions asked, we'll take a break. And I extend that to
2 counsel and Mr. Rhodes. We want to move the case along, but
3 we're not in such a hurry that we won't take a break if we
4 need to take a break.

5 So with all of that said, I will now turn it over to
6 the attorneys for their opening statements.

7 **MR. WILKINS:** Thank you, Your Honor. May it please the
8 Court. Good morning, ladies and gentlemen. My name is Walt
9 Wilkins. And I represent the State in the case versus
10 Jonathan Rhodes. This is Betty Strom with me here at co-
11 counsel. And we're the prosecutors in this case.

12 I first want to thank you for your service. Being
13 called to jury duty sometimes is not the most glamorous
14 thing. You get that piece of paper in the mail and you know
15 you have to be here, but you're serving here on your own, of
16 your own volition. And I've been told this is one of the
17 most patriotic things you can do for your country and for
18 your community because you here as the triers of fact are
19 giving us the ability to resolve a case, a case in dispute.

20 At this moment in time Jonathan Rhodes is presumed
21 innocent. And the State is here to present evidence to you
22 to convince you, the trier of fact, that he did, in fact,
23 commit the crimes that the Judge has explained to you. And
24 I'll go into a little bit -- a little bit further.

25 We as prosecutors, what we do is we present evidence to

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1 you. And there's multiple kinds of evidence that we can --
2 we can present to you. Mr. Rhodes is sitting over there.
3 He has his defense counsel with him.

4 You've heard from the Judge. He sits a little bit
5 higher than us because he's a pretty important fellow. He's
6 sort of the referee. He's going to -- you may hear
7 objections. You may hear him rule on objections, those kind
8 of things. That's just how this process works.

9 This right here is the court reporter. And she is
10 putting down and eventually writing everything that we're
11 saying so we can have a record of everything that we're
12 saying.

13 So there's sort of formalities that you will sort of
14 become accustomed to as we present evidence through
15 witnesses that will sit on that stand right there. And
16 you'll see pictures, other pieces of evidence that are
17 related to this crime.

18 Now, evidence that you'll hear typically is going to be
19 direct evidence or circumstantial evidence. Direct evidence
20 can be just as important as circumstantial evidence.
21 Circumstantial evidence can be just as important, more
22 important than direct evidence.

23 You, ladies and gentlemen, get to decide which evidence
24 you give the weight to. At the end of the day you're the
25 ones who are going to decide the guilt or innocence of

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1 Jonathan Rhodes.

2 Now, direct evidence is pretty simple. It's something
3 that somebody can feel, touch, or hear, something they've
4 seen directly, have direct knowledge of something that they
5 have.

6 Circumstantial evidence is a little bit different. It
7 relies on more of an inference to connect it to a
8 conclusion. And there are many cases that prosecutors
9 present in criminal court where you put a number of factors
10 together to draw one particular conclusion. And that's
11 called circumstantial evidence.

12 A really simple example would be if somebody walked
13 through that door and they had an umbrella and a raincoat on
14 and it was wet. Well, I can't see that it's raining
15 outside. There are no windows in here, but I could conclude
16 beyond a reasonable doubt that it was raining outside when
17 that person entered the building because they had on a
18 raincoat, an umbrella and there's moisture on them. So that
19 would be an example of circumstantial evidence.

20 And, again, that can be just as powerful to prove --
21 prove a case beyond a reasonable doubt as direct evidence.
22 And you can rely on one or both.

23 Ladies and gentlemen, this is an emotional case. This
24 is a double homicide. Gary and Helen Wells were brutally
25 murdered on October 1st, 2012. I don't think there's going

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1 to be any dispute about that.

2 They were brutally murdered in their home on Terramont
3 Drive. And we're alleging that Jonathan Rhodes was involved
4 in that murder as well as the kidnapping before they were
5 murdered, as well as the breaking and entering into the
6 house and then using a weapon during the commission of those
7 two murders.

8 Now, you're also going to hear testimony that it wasn't
9 just Jonathan Rhodes by himself that did this brutal murder.
10 You're going to hear about a woman named Shirley Rogers.
11 And you're going to hear that Shirley Rogers was an
12 assistant to Helen and Gary Wells. She cleaned their house.
13 She helped Mrs. Wells do a lot of things during the days.

14 And Shirley and Jonathan Rhodes, that you'll learn
15 later, decided that Mr. and Mrs. Wells didn't need to be
16 around anymore. And they went to Terramont Road on October
17 1st, 2012 and they brutally murdered them.

18 Now, cases -- cases of this nature and this magnitude
19 insight emotion. I just want to warn you, there may be some
20 semi-graphic pictures and incidents of the crime scene that
21 we have to show you because they have evidentiary value, but
22 that's just the kind of case that this is.

23 And when you're hearing the evidence, I want you to
24 focus on a couple of things, the crime scene itself. What
25 do you notice about the crime scene? The house? This is an

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1 elderly couple who were in their house, are found two days
2 after they were murdered. And there's no forced entry. The
3 weapons came from inside the house. There is a very bloody
4 crime scene there.

5 There's also going to be other evidence that ties
6 Jonathan Rhodes to that house because if we don't tie
7 Jonathan Rhodes to that house, what would he -- what would
8 he be doing there? Well, his connection is going to be
9 Shirley Rhodes -- Shirley Rogers and their connection
10 together.

11 And so you're going to hear a lot of information,
12 technical information about cell phones. Oh, the cell
13 phones. The cell phones have been around for quite a while.
14 We all have them, are used to them.

15 Well, the technology of cell phones has advanced and
16 we're able to often see where somebody has been in the past
17 by looking at their cell phone records. And so we were able
18 to do that in this case. And you're going to hear from an
19 expert from the FBI regarding that cell phone information
20 that puts Jonathan Rhodes in that area of the Terramont Road
21 during the time of the murder.

22 And then finally, ladies and gentlemen, you're going to
23 hear from a witness named Eric Cade as well. Eric Cade was
24 Jonathan Rhodes' roommate. They were living together at the
25 time as roommates.

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1 And Jonathan Rhodes would utilize Eric Cade's car on a
2 regular basis. And there's one thing that doesn't lie, it
3 never lies, and that's DNA. And you're going to find --
4 you're going to hear expert testimony that there was the
5 Wellses' DNA in that car. And that is very powerful
6 evidence because how could the Wellses' DNA get in that car?

7 And at the end of the day, ladies and gentlemen, it's
8 sort of like putting together a picture puzzle. You've got
9 a picture puzzle and you start with one piece, and you find
10 the next matching piece, and the next matching piece.

11 And over the next couple of days we're going to present
12 to you a picture, a perfect picture of how this occurred and
13 what happened. And once you get that picture made out
14 perfectly, you will look down and you will see that Jonathan
15 Rhodes murdered Gary and Helen Wells. Thank you.

16 **MR. ERWIN:** Good morning, ladies and gentlemen. I'm
17 going to be pretty brief right now and probably for the most
18 of this week. I'll be very brief.

19 No doubt this is horrible. What happened to the
20 Wellses is a terrible, terrible tragedy. You're not going
21 to hear me downplaying that at all.

22 But, you know, we hear every day about people who are
23 or were wrongly convicted and years later are exonerated and
24 new evidence comes out, people change their stories, things
25 like that happen. And those cases, when we hear about those

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1 things happening, the ones that are on TV, the ones that
2 they make podcasts about, things like that, the common
3 thread in those cases is that the crime itself is so
4 horrible and so emotional that the jurors at the trial were
5 not able to separate the emotion and the passion from the
6 evidence and the facts.

7 Now, you guys have taken an oath. And it's your duty
8 to try your best to do that. So that's what I'm going to
9 ask you this week is to try to focus on the facts, on the
10 real stuff that you're going to be shown and do your very
11 best to not be passionate, to not be emotional and to listen
12 and to be, you know, as detached as you can from the
13 horrible tragedy that happened in this case.

14 Now, secondly, Solicitor Wilkins talks about putting
15 together a puzzle. And that's what they're going to be
16 doing for you this week. I think we're going to be here for
17 sometime, probably several days.

18 And the second thing that I'll ask you to try to do is
19 to keep in mind that with a puzzle or a painting, you can't
20 really judge it until it's done, okay? Until the artist has
21 made that last brush stroke, you cannot properly judge a
22 painting.

23 So as we're going along this week, as you're hearing
24 more and more about this case, do your very best to wait, to
25 withhold judgment until it's all been shown to you. And I

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1 am confident when that happens that you're going to see that
2 Jonathan over here is not actually guilty of this case, of
3 this crime. Thank you very much.

4 **THE COURT:** You can call your first witness.

5 **MR. WILKINS:** Your Honor, the State calls Douglas
6 Doughty.

7 **MADAME CLERK:** Mr. Doughty, please place your left hand
8 on the Bible and raise your right hand.

9 **Douglas Doughty,** being
10 duly sworn testified as follows;

11 **MADAME CLERK:** Please be seated and state your name for
12 the record.

13 **MR. DOUGHTY:** My name is Douglas Brian Doughty.

14 **Direct Examination by Mr. Wilkins:**

15 Q. Mr. Doughty, I'm going to stand right here. And I just
16 want to make sure the jury can hear everything we're saying.
17 And I appreciate you speaking into the microphone.

18 A. Yes, sir.

19 Q. Mr. Doughty, where do you live?

20 A. I currently live at Cameron Creek Lane in
21 Simpsonville, South Carolina.

22 Q. In Simpsonville?

23 A. Uh-huh (affirmative).

24 Q. And what do you do for a living?

25 A. I'm U.S. Air Force retired. I'm not currently working.

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1 Q. All right. I'm going to take you back to October 3rd
2 of 2012.

3 A. Yes, sir.

4 Q. Do you remember that day?

5 A. Yes, sir.

6 Q. That morning on October 3rd, 2012 what were you doing?

7 A. I was at my father-in-law's house at Terramont Drive
8 doing yard work.

9 Q. Is that near Terramont Drive?

10 A. Yes, sir. It's just to the right of their house.

11 Q. All right. And what were you doing that day?

12 A. I was doing yard work for my father-in-law.

13 Q. Now was he living at that house?

14 A. No, he wasn't. He was living with his wife. They own
15 two homes. And he currently resided there, came there every
16 day to check his mail and make sure things were okay and
17 then went back home.

18 Q. And were you assisting him in just maintaining the yard
19 ---

20 A. Yes, sir. Yes, sir. Just maintaining the yard.

21 Q. And during that day did you have the occasion to go
22 over to Terramont Drive?

23 A. I did, sir.

24 Q. And can you tell us how that occurred?

25 A. Yes, sir. I was out in the front yard working, weed-

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1 eating the yard. And the person that I know as the Wellses'
2 housekeeper, Shirley, approached me and said that there was
3 a -- a man was down and that I -- she needed help.

4 Q. Okay. And where did she approach you?

5 A. She came from the Wellses' house across the yard
6 towards me.

7 Q. And so are you on the same side of the road as the
8 Wellses' house ---

9 A. Yes, sir, same side, just to the right of them.

10 Q. To the right. So if you're facing the house ---

11 A. House is just to the right, yes, sir.

12 Q. Did she cross through the -- through the woods?

13 A. I believe she did. I didn't see her approach me. She
14 tapped me on the shoulder. I was back to her when she
15 approached me.

16 Q. Did you know Shirley's last name?

17 A. I believe it's Rogers.

18 Q. And so when she approached you, what did you do?

19 A. I shut the machinery off and asked her what was wrong.
20 And she said there's a man down in the house, come -- help
21 me, I need help, come quick.

22 Q. Okay. And so what did you do?

23 A. I followed her to the back of the house. She led me to
24 the back of their house to a window and had me look through.
25 She said that he's on the floor. And I looked into the

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1 window. I couldn't really see anything. There was chairs

2 and a ---

3 Q. Let me stop you right there.

4 A. Okay.

5 Q. I'm going to show you a couple of photos at this time

6 ---

7 A. Yes, sir.

8 Q. --- so we can show you the house. I'm going to show

9 you State's exhibits 1, 2, 3 and 4.

10 A. Yes, sir.

11 Q. I'm going to ask you if you recognize these photos?

12 You can just say yes or no.

13 A. Okay. Yes, sir. Yes, sir. Yes, sir.

14 Q. And do you recognize that person?

15 A. Yes, sir.

16 **MR. WILKINS:** Your Honor, State moves exhibits 1

17 through 4 into evidence.

18 **MR. ERWIN:** Without objection, Your Honor.

19 **THE COURT:** In without objection.

20 (Whereupon State's exhibits 1 - 4 were admitted into

21 evidence)

22 Q. I apologize. I'm going to have to pull this down. You

23 may want to move just a touch that way so the light doesn't

24 get you in the eyes. I'm going to show you State's exhibit

25 1 and ask you if you recognize that?

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1 A. Yes, sir. That's the Wellses' home.

2 Q. That's Helen and Gary Wells' house?

3 A. Yes, sir.

4 Q. All right. And your house would be to?

5 A. Just to the right. Their driveway's here. The
6 driveways parallel each other. And then my father-in-law's
7 home is just to the right.

8 Q. And is that the front of the house?

9 A. Yes, sir.

10 Q. I'll show you State's exhibit 2. What is that?

11 A. That would be the, I believe, the south side of the
12 house. The Wellses' driveway with the van, and the car
13 parked in it was my father-in-law's driveway here to the
14 right.

15 Q. So about where were you when you came into contact with
16 Shirley Rogers?

17 A. My house -- the house is here. I was down towards,
18 closer to Hudson Road on the corner of Terramont and Hudson.

19 Q. All right. I'm going to show you State's exhibit 3 and
20 ask you if you recognize that person?

21 A. I recognize that as Shirley Rogers.

22 Q. I'm going to show you State's exhibit 4.

23 A. And that would be the front of my father-in-law's house
24 at Terramont Drive.

25 Q. All right. So you were -- you went across the yard to

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1 -- with Shirley Rogers, is that correct?

2 A. Yes, sir.

3 Q. Okay. And so where did you go?

4 A. Went around to the back of the house in the picture
5 where you saw where the van was. We went around to the back
6 side of them.

7 Q. I'm going to show you State's exhibit 5, 6 and 7 and
8 ask you if you recognize these? Just tell me yes or no.

9 A. Yes, sir. Yes, sir. Yes, sir.

10 **MR. WILKINS:** Your Honor, State moves exhibits 5, 6 and
11 7 into evidence.

12 **MR. ERWIN:** Without objection, Your Honor.

13 **THE COURT:** In without objection.

14 (Whereupon State's exhibits 5 - 7 were admitted into
15 evidence)

16 Q. I'm going to show you State's exhibit 5. What is that?

17 A. That would be the back side of the Wellses' home.

18 Q. Okay. And can you see their van in the driveway to ---

19 A. Yes, sir, to the left.

20 Q. Okay. So where did you and Shirley go?

21 A. We went to this window here.

22 Q. Okay. I'm going to show you State's exhibit 7, which
23 is a little -- would that be the window y'all went to?

24 A. Yes, sir.

25 Q. Okay.

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1 A. The set of three windows here.

2 Q. What happened there?

3 A. That's where she told me that Mr. Wells was lying on
4 the floor. I looked in the window. I couldn't really see
5 anything. She said, didn't you see him? He's laying on the
6 floor. And so I obviously looked again. And when I did at
7 that time I did see a foot, a toe and a foot, the partial
8 foot just in view. And then I realized that he was on the
9 floor and that we needed to do something.

10 Q. When you looked in did you know it was Mr. Wells or ---

11 A. No, sir, there was no way. All I could see was a foot.

12 Q. But Shirley Rogers had told you it was Mr. Wells?

13 A. Yes, sir.

14 Q. So after you saw what you believed to be a foot, what
15 did you and Shirley do?

16 A. I then pounded on the window to try and get the
17 attention of anybody that might have been in the home.
18 Nobody came to the window. We tried the doors in the back
19 of the house. That one, I believe, goes into the livingroom
20 area. Tried that door, tried the door next to it, which is
21 the patio doors, and they were all locked.

22 We then went around to the front of the house.

23 Q. Let me show you what's State's exhibit 5. Is that the
24 patio doors right there?

25 A. Yes, sir.

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1 Q. Okay. Were both of those doors locked?

2 A. Yes, sir, they were both locked. And pounded on the
3 doors there and no response there either.

4 Q. So then what did y'all do?

5 A. Went around to the front of the home by the sidewalk
6 and went up to the front door, knocked on the door, pounded
7 on the door, waited for an answer. No answer. So then I
8 tried the door with the door knob and the door was open. So
9 we went inside.

10 Q. I'm going to show you State's exhibit 1 again. Is that
11 the front door that you went in right there?

12 A. Yes, sir.

13 Q. Okay. So the door was open?

14 A. Yes, sir. It was -- it was latched shut when I -- when
15 we went to the door, but the -- it was unlocked.

16 Q. So what did you do?

17 A. Knocked on the door, tried to get any -- to see if
18 anybody would respond. At that time, no one did. So I went
19 ahead and tried the door. It was open. So I went inside
20 the house. Called out for anybody in the house.

21 I knew basically where I'd seen the foot. So went into
22 the hallway, turned left, down the short hallway there was
23 -- his office was on the right hand side, what appeared to
24 be his office. I looked in there and I saw his body laying
25 on the floor.

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1 Q. Where was Shirley Rogers during this?

2 A. She was behind me.

3 Q. Okay. Did she follow you in?

4 A. She did.

5 Q. All the way down the ---

6 A. Yes, sir.

7 Q. --- hallway ---

8 A. Yes, sir.

9 Q. --- to the office?

10 A. Yes, sir.

11 Q. Okay. And when you saw that body, what did you do?

12 A. I checked to see if he might still be breathing or
13 alive. There was a lot of blood on the floor. I could tell
14 by looking at him that he was already past and there was
15 nothing I could do. So at that point, told her that we
16 needed to get out of the house, leave and go call 911 to get
17 help.

18 Q. And did y'all leave the house?

19 A. We did. We went back down the hallway. And just
20 before we exited the hallway or back out the front door, she
21 said, what about Mrs. Helen? And I said, I'll go look. And
22 when I did that, I told her to stay on the outside.

23 And I went back down the hallway; again a short
24 hallway, down looking through the bedrooms. And I got to
25 the bedroom at the end of the hallway on the left, and I

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1 looked inside and I saw a body laying on the floor. I
2 couldn't tell at the time who it was. Her head and face was
3 behind the bed.

4 Q. So at that time what did you do?

5 A. I immediately turned around and went outside and called
6 911.

7 Q. All right. And where was Shirley Rogers during this
8 time?

9 A. She was on the front porch, waiting outside on the
10 front porch.

11 Q. Did Shirley Rogers have anybody else with her that day?

12 A. There was a young lady with her. I don't -- I'm not
13 sure who it was. I'd seen her occasionally there with her.
14 I'd seen them both when I was doing yard work there. So --
15 but she stayed outside. She never entered the house. She
16 was on -- down on the grassy area just below the front
17 porch.

18 Q. Is that where she stayed the whole time you could see
19 her?

20 A. Yes, sir. I did ask her at the time as we went into
21 the house to cross the street and go see if there was
22 anybody across the street to go get help, at that time, the
23 neighbor I knew as a nurse. So I asked her to go get help.
24 She came back and she said nobody was home.

25 Q. / Okay. And did you call 911?

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1 A. Yes, sir, I did.

2 Q. And do you remember about what time Shirley Rogers came
3 over to your -- to your house?

4 A. It was probably between 10:30, 10:40, sometime around
5 there.

6 Q. And that was on October 3rd?

7 A. On October 3rd, yes, sir.

8 Q. Mr. Doughty, please ask -- answer any questions Defense
9 counsel ---

10 A. Yes, sir.

11 Q. --- may have, okay?

12 **Cross Examination by Mr. Erwin:**

13 Q. Good morning.

14 A. Good morning.

15 Q. So the door you eventually went in, the front door, ---

16 A. Yes, sir.

17 Q. --- it was unlocked when ---

18 A. Yes, sir.

19 Q. --- you got there, right?

20 A. Um-hum (affirmative).

21 Q. Okay. Now, Shirley, ---

22 A. Yes, sir.

23 Q. --- you had seen her plenty of times before?

24 A. Several times, yes, sir.

25 Q. You knew who she was?

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1 A. I knew who she was. I knew that she was their
2 housekeeper and that she was usually there.

3 Q. So you're familiar with her for the most part?

4 A. With her presence, yes, sir.

5 Q. Right. And the young lady who was with her, Amber, you
6 had seen her a couple of times?

7 A. Maybe once or twice, yes, sir.

8 Q. But you knew basically who she was and you'd seen her
9 around at least once?

10 A. I had never met her or ---

11 Q. But you recognized her?

12 A. I had seen her there once or twice, yes, sir.

13 Q. And you had seen her there with Shirley?

14 A. Yes, sir.

15 Q. Okay. All right. And you had never seen Jonathan
16 Rhodes over there, had you?

17 A. No, sir.

18 Q. Okay. I have no further questions.

19 **THE COURT:** All right. Redirect?

20 **MR. WILKINS:** No, sir, Your Honor.

21 **THE COURT:** You can step down and be excused. We
22 appreciate your time.

23 A. Thank you, sir.

24 **THE COURT:** Call your next witness.

25 **MR. WILKINS:** Your Honor, the State calls Steven

STEVEN PICONE - DIRECT EXAMINATION BY MR. WILKINS

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1 Picone.

2 **Steven Picone**, being duly
3 sworn testified as follows;

4 **MADAME CLERK:** Please be seated and state your name for
5 the record.

6 **MR. PICONE:** My name is Steven Picone.

7 **Direct Examination by Mr. Wilkins:**

8 Q. Mr. Picone, who are you employed with?

9 A. The Drug Enforcement Administration.

10 Q. And back in 2012 who did you work with?

11 A. The Greenville County Sheriff's Office.

12 Q. And what did you do back in 2012 for the Greenville
13 County Sheriff's Office?

14 A. I was a deputy sheriff.

15 Q. Did you ever have an occasion to get a call to go to
16 Terramont Drive?

17 A. Yes, sir.

18 Q. Did you -- did you go there?

19 A. Yes, sir, I did.

20 Q. Do you remember about what time you received that call
21 to go to Terramont?

22 A. It was approximately eleven am.

23 Q. And do you remember what date that was?

24 A. October 3rd, 2012.

25 Q. And is -- Terramont Drive, is that in Greenville

STEVEN PICONE - DIRECT EXAMINATION BY MR. WILKINS

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1 County?

2 A. Yes, sir, it is.

3 Q. When you responded there what did you do?

4 A. I initially -- EMS was already on-scene. They were
5 waiting on the front porch with Ms. Rogers and the gentleman
6 that just left. They advised me that they had not been
7 inside the residence, they needed me to clear it.

8 I immediately unholstered my weapon to go inside. From
9 the call that I received it was stating that there was a
10 male's body in the den area. So when I entered the front
11 door I was trying to locate the den area.

12 I went to the right of the residence first, which was
13 very clean, no signs of blood, nothing disturbed, anything
14 like that. So I made my way to the right side. Checked for
15 anything. Couldn't find anybody over on that side.

16 When I came back around I noticed that there was blood
17 on the rug leading to the left side of the residence. As
18 you come in the front door, there's only two ways in. You
19 can either go to the right side, which was kind of like a
20 den, living area, kitchen. And then on the left side were
21 bedrooms and an office area and bathrooms.

22 When I went to the left side of the hallway I noticed
23 bloody footprints. I noticed blood smeared on the doorway
24 on the first door to my right. As I entered that room I
25 noticed about from chest down of a body laying on the floor.

STEVEN PICONE - DIRECT EXAMINATION BY MR. WILKINS

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1 I noticed there was a lot of blood and there didn't appear
2 to be any life in that person.

3 I also noticed from the call that I received that there
4 was supposedly a female victim in another room. Since I'd
5 cleared every other room, I made my way down the hallway.
6 Immediately to my left at the end of the hallway was another
7 room.

8 As I made my way into that room I noticed what appeared
9 to be a female's body laying feet first towards me with the
10 bed that was angled so the top part of her body was hidden
11 behind the bed and also a large bloody butcher knife by her
12 feet.

13 When I went to the right there was another bedroom.
14 Didn't appear anything was disturbed. Looked like that was
15 the living quarters for Mr. and Mrs. Wells.

16 There was a Jack and Jill bathroom inside that
17 apparently connected the office area where Mr. Wells' body
18 was as well as the bedroom to where they had lived. That
19 was when I discovered the rest of his -- his body in that
20 room.

21 Q. And as a result -- were you able to clear the house?

22 A. I was, yes, sir.

23 Q. Was anybody in there?

24 A. No, sir, there wasn't.

25 Q. So after you cleared the house what did you do?

STEVEN PICONE - DIRECT EXAMINATION BY MR. WILKINS

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1 A. I went outside. EMS asked me if there was anything
2 they could do. I said it appeared that both parties were
3 deceased. I said that I would only like to take one person
4 in to keep the evidence and the crime scene contained.

5 I took a female EMS worker with me out of the three.
6 She walked in, she looked at Mr. Wells, she said it's
7 confirmed. She walked over to where Mrs. Wells was, she
8 looked at her and said that's confirmed as well. And I
9 said, well, we need to exit this residence and secure it
10 before the investigators arrive.

11 Q. And once you and the EMS individual left were you able
12 to secure the house?

13 A. Yes, sir. We had everybody back up into the street.
14 My partner at the time, which is Master Deputy Justin
15 Burdine, he arrived as I was coming out of the residence
16 from clearing it. I told him that we needed to rope it off
17 and make it as big as possible. And I advised him what we
18 had inside the residence as well.

19 Q. And were any investigators called out there?

20 A. They were. I contacted my sergeant first via telephone
21 to let him know what I had. And he told me that he already
22 had investigators en route.

23 Q. And once -- did you actually rope off the ---

24 A. Yes, sir, myself and Master Deputy Burdine did.

25 Q. Did that keep everybody else out of ---

STEVEN PICONE - CROSS EXAMINATION BY MR. ERWIN

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1 A. We did.

2 Q. --- the scene ---

3 A. We didn't let anybody in there until the investigators
4 arrived, yes, sir.

5 Q. Once you roped it off did you do -- did you do anything
6 else?

7 A. Well, I spoke with Ms. Rogers about -- kind of just
8 what she was doing there. And it was very brief because I
9 knew the investigators were going to be on their way soon,
10 but I kind of wanted to get an initial of why we're called
11 out there in the first place.

12 Q. And did you learn who Ms. Rogers was ---

13 A. I did, yes, sir.

14 Q. And why she was there?

15 A. She advised me that she was there to work, however, she
16 had also -- I had learned later that she was not supposed to
17 even work that day.

18 Q. Please answer questions ---

19 A. Sure.

20 Q. --- Defense counsel may have.

21 **Cross Examination by Mr. Erwin:**

22 Q. Good morning.

23 A. Good morning.

24 Q. Okay. So the lead investigator on this case is
25 Investigator Hammett, right?

STEVEN PICONE - CROSS EXAMINATION BY MR. ERWIN

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1 A. I believe so, sir.

2 Q. Okay. And he's the CEO of this operation, essentially,
3 right?

4 A. I believe so, yes, sir.

5 Q. Kind of he decides what to do, tells somebody else to
6 do it, they report back to him, right?

7 A. I believe so.

8 Q. Okay. And there was a lot, a lot of law enforcement
9 that worked on this case?

10 A. That's correct.

11 Q. Yeah. I mean, pretty much everybody touched it in some
12 way, right?

13 A. Yes, sir.

14 Q. Okay. And I know you were only in the house for a
15 short amount of time.

16 A. That's correct.

17 Q. But when you were there you didn't see any signs of
18 forced entry or anything like that?

19 A. No forced entry.

20 Q. Okay. No further questions.

21 **THE COURT:** Redirect.

22 **MR. WILKINS:** None, Your Honor.

23 **THE COURT:** You can step down and be excused.

24 A. Thank you, sir.

25 **THE COURT:** We appreciate your time. Thank you. Call

MICHAEL PETERSON - DIRECT EXAMINATION BY MS. STROM

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1 your next witness.

2 **MS. STROM:** Your Honor, the State calls Mike Peterson.

3 **MADAME CLERK:** Mr. Peterson, please place your left

4 hand on the Bible, raise your right hand.

5 **Michael Peterson,** being

6 duly sworn testified as follows;

7 **MADAME CLERK:** Please be seated and state your name for
8 the record.

9 **MR. PETERSON:** Michael Peterson.

10 **Direct Examination by Ms. Strom:**

11 Q. Good morning, Mr. Peterson.

12 A. Good morning.

13 Q. Where are you employed?

14 A. Nowhere right now. I'm happily retired.

15 Q. Happily retired.

16 A. Yes.

17 Q. Well, congratulations to you.

18 A. Thank you.

19 Q. Prior to retirement where did you work?

20 A. I worked for Greenville County Department of Public
21 Safety in the forensic division.

22 Q. Okay. I'm going to ask you to speak up or bring that
23 microphone a little bit closer ---

24 A. Sorry.

25 Q. --- to you. That's okay. I want to make sure

MICHAEL PETERSON - DIRECT EXAMINATION BY MS. STROM

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1 everybody can hear you. So you worked -- again, where did
2 you work before you retired?

3 A. The Greenville County Department of Public Safety in
4 the forensic division.

5 Q. How long had you worked in the forensic division?

6 A. Been with Greenville County since 1989, transferred to
7 forensics in 1999. So had about twelve and a half years.

8 Q. In the forensics department?

9 A. In the forensics division.

10 Q. Prior to that, how much experience did you have in law
11 enforcement in general?

12 A. Back to 1989.

13 Q. When you retired from the forensics division, I don't
14 know if this is the correct word, but what rank or position
15 did you have?

16 A. I was a lieutenant. I was the manager of the Crime
17 Scene Unit. We were the ones that actually respond out to
18 crime scenes.

19 Q. Would you please tell this Court what education,
20 training, experience you had in the processing of crimes
21 scenes.

22 A. Yes. You know, besides from just basic police training
23 I've had a variety of schools and workshops in crime scene
24 investigation, advanced crime scene investigation, basic and
25 advanced blood stain pattern analysis, shooting

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1 reconstruction, latent prints, variety of those types of
2 classes.

3 I actually did manage the forensic division or the
4 Crime Scene Unit where we responded to probably six to seven
5 thousand calls a year. And that was anything from a car
6 break-in to a homicide.

7 Q. And have you ever testified as an expert before in the
8 courts of this State?

9 A. Yes, I have.

10 Q. And that has been in the area of crime processing,
11 evidence collection?

12 A. Yes.

13 Q. Okay.

14 **MS. STROM:** Your Honor, at this time we would offer Mr.
15 Peterson as an expert in the area of crime scene processing,
16 which includes evidence collection, preservation and that's
17 it.

18 **MR. ERWIN:** Without objection, Your Honor.

19 **THE COURT:** All right. I find he's qualified.

20 Q. Did you have an occasion, Mr. Peterson, back on October
21 3rd, 2012 to respond to number Terramont?

22 A. I did.

23 Q. And how was it that you got to number What made
24 you go there?

25 A. A call came into our office regarding a death

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1 investigation at that address. An officer who worked for
2 me, Officer John Derby, informed me of the type of crime it
3 was. Our policy was always at least two people respond to
4 homicides. So I went with him to that location.

5 Q. So you and Mr. Derby went to number Terramont?

6 A. Yes.

7 Q. And, again, that is in Greenville County, ---

8 A. Yes.

9 Q. --- correct?

10 **MS. STROM:** Court's indulgence for just one moment,
11 Your Honor.

12 (Pause)

13 Q. I'm going to have you take a few minutes to look
14 through all of these photographs, if you will. And just
15 look to see if you recognize those and are they true and
16 accurate depictions of the scene as you found them?

17 A. Yes, they are.

18 **MS. STROM:** Your Honor, at this time we would offer
19 into evidence State's exhibit 8A, which is a diagram of the
20 residence.

21 Q. You're familiar with this diagram?

22 A. Yes, I am.

23 Q. And that is an accurate depiction of the interior of
24 the residence?

25 A. It is correct.

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1 **MR. ERWIN:** Without objection, Your Honor.

2 **THE COURT:** In without objection.

3 (Whereupon State's exhibit 8A was admitted into
4 evidence)

5 **MS. STROM:** And then photographs 9 through 27.

6 **MR. ERWIN:** Again, without objection, Your Honor.

7 **THE COURT:** In without objection.

8 **MS. STROM:** Thank you.

9 (Whereupon State's exhibits 9 - 27 were admitted into
10 evidence)

11 Q. It took a little while, but I think it might make it go
12 a little quicker. Now, first I want to show you -- you
13 recognize this residence?

14 A. Yes. That is the front door of Terramont.

15 Q. Explain to this jury how it is that y'all go about
16 processing a crime scene, what you do to secure a crime
17 scene, that sort of thing.

18 A. Initially, once we receive the call and we get to the
19 scene, in this case Terramont, the first thing we do is
20 make contact with the investigator or the officer on-scene.
21 Myself and Officer Derby met with Investigator Hammett with
22 the sheriff's office, and he gave us a briefing of what he
23 knew so far in the case.

24 Once we received that information we did observe that
25 the entire yard had already been cordoned off with crime

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1 scene tape. Once we have that, we're going to start doing a
2 documentation process. And that's going to be documenting
3 the scene with still photography, just your normal pictures,
4 and we're also going to do video.

5 And the things that we're going to be looking for are
6 anything that might be a little abnormal. We're going to
7 look at the condition of the doors and the windows. Was
8 there any forced entry? Was there any debris in the yard?
9 Was there cigarette butts laying around somewhere around the
10 yard? Was there excess mail? Just something that would
11 just be abnormal about someone who's living in the house
12 day-to-day.

13 Looking at the condition of the vehicles that may or
14 may not be in the driveway. In this case there were. We
15 looked at those vehicles to ensure that there was no forced
16 entry into those vehicles that were tampered with in any
17 way. And we document that fully. We're not collecting
18 evidence at that point. We're simply documenting the
19 evidence or documenting the scene as we find it.

20 Q. When you arrived and you started that process with
21 Officer Derby what did you notice about anything in the
22 driveway?

23 A. There was a newspaper in the driveway.

24 Q. This is State's exhibit number 9. Do you see that ---

25 A. Yes. Yes.

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1 Q. There's a laser pointer up there, I believe. Do you
2 see the laser pointer? Okay. If you could, point out to
3 the jury. And did you determine what the date of that
4 newspaper was?

5 A. The date of that newspaper was October 3rd, 2012.

6 Q. Is this a close-up of that?

7 A. Yes, it is.

8 Q. State's 10. Did you find another newspaper there as
9 part of your processing?

10 A. Yes, we did. It was further up the driveway on a
11 minivan.

12 Q. State's exhibit 11. Is that ...

13 A. Yes. It was just laying on the windshield.

14 Q. And did you determine the date of that newspaper?

15 A. The date on that was October the 2nd, 2012.

16 Q. And, again, that was on -- just to orient the jury,
17 State's exhibit 2. Where did you find that second
18 newspaper?

19 A. Second newspaper was on this minivan that was next to
20 the garage door.

21 Q. When you conducted the process scene outside the
22 residence did you determine if there was any forced entry to
23 the home?

24 A. No, there was not.

25 Q. Okay. How did y'all enter the home?

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1 A. We entered the house by the front door. And the front
2 door was unsecured.

3 Q. By unsecured?

4 A. Unlocked.

5 Q. Unlocked. Thank you. When you entered the residence
6 -- I'm going to put up 8A. This is the diagram of the home.
7 Could you please orient this jury as to where y'all entered?

8 A. The front door is located right here. As we came up
9 the steps -- there was a set of steps off the front porch
10 here. We came up the steps and that was kind of our
11 entrance and exit point. That's the way we entered it and
12 that's the way we exited. We didn't go out any other door
13 to do our initial walk-through.

14 Q. When you were processing the exterior of the residence
15 did you check the doors to the residence, the back doors and
16 ...

17 A. Yes. The doors were locked.

18 Q. The doors were locked? So there was only one door
19 unlocked?

20 A. Front door.

21 Q. The front door was only one unlocked? Okay. Please
22 tell us what you did when you proceeded into the home.

23 A. Well, just as the necessary precautions, we boot up,
24 meaning we put the protective boots on. And as we entered
25 the door we start a -- during our initial approach, we're

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1 trying to observe each and everything that we can and we're
2 also taking photographs and video at the same time.

3 Once we entered the front door, there is a chair
4 sitting right -- right beside the door. And on that chair
5 happened to be a telephone. And the back of the telephone
6 had been removed. And there appeared to be some suspected
7 blood on it.

8 Q. I'm going to show you State's 12. Is that what you're
9 describing to us?

10 A. Yes, that is.

11 Q. And then also State's 13. What is that depicting?

12 A. That is depicting the back of the portable phone and
13 then the cover for the battery compartment.

14 Q. If you would, please continue.

15 A. Once we entered the front door we observed the carpet.
16 The carpet did appear to have some footwear impression on
17 it. We suspect those were footwear impressions in blood,
18 but at that point it was really too early to tell.

19 Looking into this den area, untouched. There was no
20 activity in there. There was no debris, no odd footwear
21 impressions, no observation of blood on it or in this dining
22 area.

23 Proceeding further down this hall, it turns left
24 towards the bedrooms. Once we got to this area we were able
25 to visually see on a series of throw rugs that lined the

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1 hallway, on top of the hardwood floor we saw some very
2 distinct footwear impressions that, again, were in suspected
3 blood. And they went down this hallway at different -- at
4 different angles.

5 As we proceed down that hallway we look into this room
6 right here, this office, and we observe a pool of blood at
7 the office door, which comes into the hallway. On the door
8 that leads to that room there was a blood pattern. About
9 halfway up on that door there was another area of blood at
10 the lower part of that door. Just to the right as you enter
11 the room on the light switch there seemed to be some
12 suspected blood on it as well.

13 The victim's body, Mr. Wells, we saw halfway in this
14 office and halfway in the hallway that appeared to be a
15 closet area that actually led into the master bathroom here.
16 Once we observed him, his legs were in the office area, his
17 head was in the doorway into the closet area. Significant
18 amount of blood on and around his body.

19 He was wearing a pair of blue jockey boxer shorts, a
20 green, long sleeve t-shirt. He was laying on his back. We
21 observed that he had some severe lacerations on his legs,
22 very deep gashes on his legs, some wounds on his abdomen,
23 but being clothed we couldn't tell to what extent that was,
24 significant lacerations on the hand and the head area.

25 One of the things that we did see as we entered this

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1 area was that we saw a series of cards, like cards you would
2 keep in your wallet as though all the cards had been strewn
3 out that had been in a wallet like your Bi-Lo card or
4 something of that nature. So they were observed right here.
5 There was other blood within the room, but by and large the
6 significant blood, the pool of blood was around Mr. Wells.

7 From that point -- you want me to proceed on?

8 Q. Yes.

9 A. Okay.

10 Q. Where did y'all proceed after that?

11 A. Right through here we go into the master bedroom. The
12 master bedroom, there is blood, especially on the light
13 switches and door knobs. There was a little bit of blood
14 out here.

15 We did observe in front of the dresser a wallet. We
16 observed that -- this would be a rug right here. And this
17 is a -- sort of -- I would call it a set T-couch, or chair
18 or something like a fainting couch. It had a very long seat
19 on it.

20 At the bottom of that chair was a couple of jewelry
21 boxes. It was a jewelry box and another tray with some
22 items on it that had just been placed there. On top of that
23 we saw a knife that appeared to be heavily covered, the
24 blade heavily covered with suspected blood.

25 Q.- I'm going to show you State's exhibit number 26. Is

MICHAEL PETERSON - DIRECT EXAMINATION BY MS. STROM

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1 that what you're describing?

2 A. Yes, it is. This would be the area of -- it was the
3 chair covered by a quilt. This appeared to have been moved
4 off the dresser. This jewelry drawer was from a jewelry box
5 that was sitting also on the dresser. And this knife had
6 been placed on top of it.

7 Q. Where did you proceed after that?

8 A. Once we left there we went across the hall and we
9 entered the front left bedroom. And in there we found Mrs.
10 Wells.

11 And proceeding in there, again, the blood on the light
12 switches, blood on the wall. This room seemed to be in
13 disarray. The bed appeared to be away from the wall. There
14 was a broken lamp that was laying over the bed.

15 The rug tended to have been pushed up a little bit. On
16 that rug we saw another knife, which, again, appeared to
17 have blood saturated on the blade.

18 Q. I'm going to show you State's exhibit 27. Is that what
19 you're describing to us?

20 A. Yes. This is the rug that was in the room. And this
21 was the knife that was just laying there.

22 Q. And that was as you entered the room?

23 A. As you entered the room, yes.

24 Q. Please continue.

25 A. That would be in this area right in here.

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1 As we began to observe the body of Mrs. Wells we
2 observed, again, some very severe lacerations to the leg.
3 She was laying on her back. And her body was somewhat
4 twisted a little bit so that she was actually laying more on
5 her left side. Her left hand was up like this. The right
6 arm was like this.

7 In addition to multiple wounds that we saw on her
8 shoulder and head, she also appeared to have a gunshot wound
9 in the right bicep area. There was a substantial amount of
10 blood surrounding her.

11 There was a -- the bedspread ---

12 Q. I'm going to have to stop ---

13 A. Yes.

14 Q. --- you for just a minute.

15 A. Yes, I'm sorry.

16 Q. You seem to be in a ---

17 A. I'm sorry. Wrong room. Sorry.

18 Q. Okay.

19 A. Okay. Right here on the corner of the bed was
20 saturated with suspected blood. There were boxes on top of
21 the spread, seemed to be like your home office type stuff,
22 you know, maybe a checkbook, receipts and deposit slips,
23 just some things that you would just have for your normal
24 office for your house or your bookkeeping for your house.

25 Significant amount of blood around her. We did observe

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1 some shell casings in the room. There was a pillow beside
2 here. And, again, that pillow was, again, saturated with
3 blood. And saturated would be that there is no color of the
4 original item there. It was -- the end of that bed was so
5 saturated, it was just complete red. The same with the
6 pillow, it was almost completely red.

7 Q. As part of -- when you first went into the home and
8 y'all were doing your walk-through did you have an occasion
9 to request additional assistance to help with this crime
10 scene?

11 A. Absolutely. As we began to go through the scene we
12 realized that it was going to be much more involved than a
13 normal scene. So I -- at that time I called one of my
14 sergeants, Sergeant Ron Lendway, who came out when we had
15 completed our walk-through.

16 Q. So -- and I'm going to get into you -- into with you in
17 just a few minutes about collection of certain items of
18 evidence from the residence, but y'all did that as a team
19 ---

20 A. Yes.

21 Q. --- pretty much?

22 A. Yes.

23 Q. Under your supervision?

24 A. Right.

25 Q. Okay. All right. I want to go specifically to where

MICHAEL PETERSON - DIRECT EXAMINATION BY MS. STROM

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1 Mrs. Wells was found and the particular items of evidence
2 that you collected from that area, and specifically you had
3 talked about the fact that Mrs. Wells had an apparent
4 gunshot wound?

5 A. Yes.

6 Q. Where was that again?

7 A. That was on the right bicep.

8 Q. And as a result of seeing that wound what did that
9 indicate to you as an investigator and crime scene
10 processor?

11 A. Well, that we actually had a gun involved and that
12 there should be some evidentiary items related to that.

13 Q. And did you find such items?

14 A. Yes, we did.

15 Q. Specifically as to shell casings -- well, excuse me.
16 I'm sorry. I'm going to go back. The wound to Mrs. Wells,
17 you said was in her right bicep?

18 A. Yes.

19 Q. Okay. You found shell casings in there. Did you find
20 any other ammunition in there?

21 A. We found a live round.

22 Q. A live round?

23 A. Yes.

24 Q. All right. I'm showing you ---

25 A. An unfired round.

MICHAEL PETERSON - DIRECT EXAMINATION BY MS. STROM

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1 Q. --- State's exhibit 14. Is that the live round y'all
2 found?

3 A. Yes, it is. It's a .32 caliber.

4 Q. .32 caliber. For lack of a better term, it's a .32
5 caliber bullet?

6 A. Yes.

7 Q. And where was that located in Mrs. Wells' room? I have
8 a blow-up of that diagram if that would help you.

9 A. Well, no, that's fine. It's just -- it was right in
10 this area right in here.

11 Q. Okay. All right.

12 A. Just as you come in the door you turn to the right,
13 there would be a closet. Quite a bit of furniture was
14 sitting in the room. And this was just as you come in going
15 to the right.

16 Q. I'll show you what's been previously marked as State's
17 exhibit number 28. I ask you do you recognize that?

18 A. Yes, I do.

19 Q. And is that the item you collected from Mrs. Wells'
20 room?

21 A. Yes. This is the barcode label that I put on the
22 envelope.

23 Q. That's the bullet?

24 A. Yes.

25 **MS. STROM:** Your Honor, we'd offer this into evidence

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1 at this time.

2 MR. ERWIN: Without objection.

3 THE COURT: In without objection.

4 (Whereupon State's exhibit 28 was admitted into
5 evidence)

6 Q. Result of the -- seeing the gunshot wound, finding a
7 live round and seeing the casings -- the casings were
8 actually collected by someone else, correct?

9 A. That's right.

10 Q. Part of your team?

11 A. (Affirmative nod).

12 Q. All right. What did you do in terms of trying to
13 determine if there were any projectiles, spent bullets for
14 lack of a better term?

15 A. Well, you know, seeing the shell casings we -- next we
16 assume that we're probably going to have a semiautomatic
17 weapon and that we should have projectiles or the fired
18 bullet from that weapon somewhere in the room or in her
19 body.

20 Q. Okay. I'm not very familiar with guns. So can you
21 explain to me why you made that assumption? What are you
22 talking about there?

23 A. Well, .32 caliber make a lot of -- .32 caliber
24 semiautomatic weapons. And that's just a weapon that you
25 have a magazine and you put that particular caliber bullet

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1 in there. And once they're fired, the action of that weapon
2 actually casts out the shell casing that had just been fired
3 and it reloads it with another.

4 Q. And that's different than a revolver?

5 A. Yes.

6 Q. Okay. Because they don't eject?

7 A. Right.

8 Q. How many shell casings, again, did y'all find in Mrs.
9 Wells' room?

10 A. I think we found two.

11 Q. Two shell casings?

12 A. Two shell casings and one live round.

13 Q. Okay. Back to where I was, looking at her wound and
14 then trying to find a projectile, what did you determine?
15 What were you able to find?

16 A. We did find a small hole in the wall, the north wall
17 here. She has a vanity that sits in this area. And
18 approximately a foot, maybe sixteen inches off the floor we
19 saw a small hole and proceeded to pry from there to see if
20 we could determine if there actually was a projectile in the
21 wall.

22 Q. I'm going to show you State's exhibit 18. If you would
23 show -- please explain to us what we're seeing here.

24 A. Okay. This is the baseboard of the -- of that north
25 wall. You will see some blood spatter in this area, but

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1 this is the projectile hole that we were interested in at
2 that point. And this is where we marked it and decided
3 that, you know, we were going to try to cut out a section of
4 that wall to try to salvage that projectile.

5 Q. And did you do that?

6 A. Yes, we did.

7 Q. I'm going to show you State's exhibit 20. What are we
8 seeing here? Do I have it upside down?

9 A. Yeah, I think it is.

10 Q. Okay. Let's go that way. Yeah.

11 A. Okay. You can see the projectile here. This is the
12 bottom of it, kind of an oval shape right here. You can see
13 the lands and grooves that the weapon actually makes on the
14 projectile imbedded into the sheetrock here in the wall.

15 Q. What did y'all do in furtherance of that?

16 A. We actually collected this projectile and placed it
17 into our property and evidence division.

18 Q. I show you what's been previously marked as State's
19 exhibit number 30.

20 A. Yes, this is mine.

21 Q. How do you know that's yours?

22 A. My initials are on the back of it with my barcode on
23 the front.

24 Q. And that is the actual projectile that you took out of
25 that wall?

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1 A. Yes.

2 Q. All right. What, if anything, did you do to -- let me
3 ask it this way. What did you learn about it? I mean, what
4 can you tell us about where that projectile was located in
5 relation ---

6 A. Well, in looking at the projectile we thought it was a
7 little bit odd that if -- this being towards the baseboard,
8 this being towards the ceiling, the projectile is at an
9 upward angle, which meant that if someone were to fire that
10 projectile, they had to be way down on the floor or it
11 ricocheted.

12 So our assumption was that there was a ricochet. So
13 what we wanted to do was try to find a ricochet mark that
14 might help us determine how this projectile entered the
15 wall.

16 Q. And were you able to do that?

17 A. We did find a small divot on the hardwood floor that --
18 although there was a lot of blood in the area, we feel like
19 that was -- we were pretty confident that was a ricochet.

20 Q. I'm going to show you State's exhibit 19 and ask you,
21 if you would, if you could point that out to us, please.

22 A. That's this small area right here. We have a little
23 sticker next to it just indicating its location. But it was
24 this area right in here.

25 Q. And then State's exhibit 21.

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1 A. Again, that is the -- the divot area is at the very,
2 very bottom ---

3 Q. Okay.

4 A. --- right here. Here we took a trajectory rod just to
5 kind of give us an idea. There was no measurement or
6 calculation of angles on that. We were just trying to
7 substantiate whether that was a ricochet. And up here in
8 the hole, holding it at an angle that is very similar to the
9 angle of the entrance of the projectile, it led back towards
10 the divot area.

11 Q. And can you, if you would, on State's exhibit 19, will
12 you indicate to us where Mrs. Wells was found?

13 A. You'll see all this area of suspected blood here has
14 been disturbed. This would have been the area that she was
15 located. Again you see some blood out this way undisturbed,
16 which was just a pool of blood that was leaving the body.

17 Q. Thank you. I want to go back to the room where Mrs.
18 Wells was found and direct your attention to a footstool.
19 This is State's exhibit 15. Are you aware of that?

20 A. Yes.

21 Q. Okay. Tell this jury what -- where this was located
22 and what you did with it.

23 A. It was located next -- close to the bed. And I think
24 in our diagram it shows that.

25 Q. Okay.

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1 A. A footstool, which I believe I'm pointing to the right
2 one here. Footstool was very close to the bed. On top of
3 that footstool was -- I believe there was a checkbook that
4 was on top of that footstool.

5 Q. Okay. Was it on top -- well, let me show you this
6 because this is not showing a checkbook.

7 A. No. No. For purposes of evidence collection, once we
8 do the initial documentation of the scene and we begin to
9 collect evidence, items have to be moved.

10 Q. Oh, okay.

11 A. We have to move items. I know that this stool in some
12 subsequent pictures that we have is in another location in
13 the house -- well, in the room.

14 Q. But it was initially found near the bed?

15 A. Yes.

16 Q. And it initially had a checkbook or something on top of
17 it?

18 A. Correct.

19 Q. And then you moved that, obviously, and it exposed --
20 what are we seeing here?

21 A. We're seeing some suspected blood droplets.

22 Q. And did you collect this footstool?

23 A. Yes, I did.

24 Q. And as opposed to bringing in the actual footstool into
25 the courtroom what did you -- what did you do with that

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1 actual footstool?

2 A. The actual footstool was packaged and placed into the
3 property and evidence division of the law enforcement
4 center.

5 Q. And so that could be further tested later?

6 A. Absolutely.

7 Q. Thank you. I direct your attention to State's exhibits
8 16 and 17. Tell us what we're seeing here.

9 A. This is also in the front corner bedroom where Mrs.
10 Wells was found. Again, part of that process of processing
11 that crime scene is removing the mattress. And once we had
12 inspected the mattresses, we remove them out of the room and
13 we located a cradle for a portable telephone up under the
14 bed.

15 Q. This is State's exhibit 17, a closer. What are we
16 seeing here?

17 A. This is the cradle with suspected blood.

18 Q. What did you do with that cradle?

19 A. That was collected also, packaged so as to maintain the
20 integrity of the item and placed in the property and
21 evidence division at the law enforcement center.

22 Q. I'll show you what's been marked as State's exhibit
23 number 29. Again, I ask you to take a look at this and see
24 if you recognize it.

25 A. Yes. That's my barcode and my initials.

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1 Q. So that is -- inside that package is that cradle?

2 A. That's correct.

3 Q. All right.

4 **MS. STROM:** Your Honor, at this time I move State's
5 exhibit -- I just lost my numbers, 29 and 30. I think I did
6 not move 30 into evidence last time.

7 **MR. ERWIN:** Without objection to either, Your Honor.

8 **THE COURT:** In without objection, both.

9 (Whereupon State's exhibits 29 and 30 were entered into
10 evidence)

11 Q. Officer Peterson, I know that there were other items of
12 evidence collected throughout the house and even in that
13 bedroom.

14 A. Right.

15 Q. Did you have an occasion to -- well, let me ask -- let
16 me ask it this way. You saw the knife on the jewelry box
17 drawer in the master bedroom. You see a knife in the floor
18 of where Mrs. Wells was found. Did you have an occasion to
19 go into the kitchen area to observe anything that may be in
20 relation to those knives?

21 A. Yes.

22 Q. All right. Tell us about that.

23 A. In the kitchen area I located a wooden block that holds
24 a set of knives sitting on the kitchen counter. It had six
25 empty slots, two large slots and four other slots for

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1 smaller knives. Also, going through the dishwasher located
2 four knives that were of the same brand that remained in the
3 knife set.

4 Q. State's exhibit 22, kind of gives us a visual. Can you
5 ---

6 A. Yes.

7 Q. --- direct us to what we're seeing?

8 A. This is the knife block right here. There's a couple
9 of areas right here for smaller knives and areas on the
10 upper part of it for larger knives.

11 Q. 23 just a close-up of that? State's 23?

12 A. Yes.

13 Q. And then you also said you were looking in the
14 dishwasher?

15 A. Yes.

16 Q. All right. State's exhibit 24. Point out to us what
17 we're seeing.

18 A. We had three right here and ---

19 Q. State's exhibit 25.

20 A. And the remaining knife right here.

21 Q. So it's actually over here in this photograph?

22 A. Right.

23 Q. And then this is just a close-up of it?

24 A. Right.

25 Q. Okay. The knives that you found in the bedrooms, what

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1 could you tell us about them that was either consistent or
2 not consistent with the knives in the ---

3 A. They ---

4 Q. --- board, the block, the knife block?

5 A. They all were stamped by the same manufacturer.

6 Q. That was for the one inside both bedrooms?

7 A. That's correct.

8 **MS. STROM:** Court's indulgence, Your Honor.

9 (Pause)

10 Q. Again, Officer Peterson, there were other officers
11 there with you, in particular Mr. Lendway, ---

12 A. Yes.

13 Q. --- who also collected other items of evidence ---

14 A. Correct.

15 Q. --- from this home. And those items of evidence would
16 have been then placed into the property and evidence room at
17 the law enforcement center?

18 A. Yes.

19 Q. And is that a secured facility?

20 A. It is.

21 Q. Thank you. Please answer any questions the Defense may
22 have.

23 **Cross Examination by Mr. Erwin:**

24 Q. Good morning.

25 A. Good morning.

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1 Q. So, again, in this case, Investigator Hammett over here
2 is the lead investigator?

3 A. Right.

4 Q. Right. So he's basically in charge of the law
5 enforcement presence on this scene?

6 A. Yes.

7 Q. You are in charge of the forensic presence on this
8 scene to a certain extent?

9 A. Correct.

10 Q. Okay. Lots of law enforcement involved in
11 investigating this case?

12 A. There was a large presence of officers there. I don't
13 know quite how many it was. It was very restricted in the
14 -- in the scene itself.

15 Q. Sure. There was a large forensics presence in this
16 house, ---

17 A. Yes.

18 Q. --- right? A lot of folks worked on this case?

19 A. Yes.

20 Q. Okay. And you mentioned booting up when you went into
21 the house to -- and that's so you don't contaminate the
22 scene, right?

23 A. That's right.

24 Q. Because you have to be really careful that you don't
25 leave anything behind that would mess up the scene or

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1 confuse law enforcement about what happened in that house,
2 right?

3 A. Yes.

4 Q. Okay. And as we talked about, there was a lot of
5 forensics on the scene, a lot of samples were taken to be
6 tested. I am counting a hundred and thirty-one samples were
7 eventually tested. Does that sound about right to you?

8 A. Most ---

9 Q. In the neighborhood ---

10 A. Don't know. A lot.

11 Q. Right. A whole lot.

12 A. Yes.

13 Q. Okay. No further questions.

14 **THE COURT:** Redirect?

15 **MS. STROM:** No redirect, Your Honor. I would ask that
16 he -- we not excuse him as a witness in case I may need him
17 later, but I don't think I will, but just in case.

18 **THE COURT:** You can step down. Thank you. Appreciate
19 your time.

20 A. Thank you.

21 **THE COURT:** We're going to take a break.

22 **MS. STROM:** The next witness will be of equal length,
23 Your Honor.

24 **THE COURT:** Yeah, we're going to take a break now.
25 Thank you.

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1 duly sworn testified as follows;

2 **MADAME CLERK:** Please be seated and state your name for
3 the record.

4 **MR. LENDWAY:** Ronald Lendway.

5 **Direct Examination by Ms. Strom:**

6 Q. It's still morning. Good morning.

7 A. Good morning.

8 Q. Would you spell your last name for us, please.

9 A. L-e-n-d-w-a-y.

10 Q. Mr. Lendway, by whom are you employed?

11 A. Greenville County Forensics, which is under the
12 Department of Public Safety.

13 Q. How long have you been with the Department of Public
14 Safety Forensics Division?

15 A. Fourteen and a half years.

16 Q. Do you have any other law enforcement experience?

17 A. Yes, I do.

18 Q. Please tell us about that.

19 A. Prior to going to the Crime Scene Unit I worked for the
20 Greer Police Department for five years. And prior to that I
21 was in the U.S. Coast Guard where we did law enforcement
22 there as well.

23 Q. Okay. What position do you currently hold in the
24 forensic unit?

25 A. Currently I'm the lieutenant.

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1 Q. Lieutenant? Okay. Please tell this jury your
2 education, experience, training classes that you have
3 attended regarding your work in the forensics division.

4 A. Over the last fourteen and a half years in the Crime
5 Scene Unit I've had numerous training classes, anywhere from
6 mass fatality, to crime scene reconstruction, shooting
7 reconstruction, blood stain pattern analysis, which I also
8 take proficiency tests in that as well, tire track, footwear
9 impression evidence, question documents. There's just a
10 whole list. I have a list here.

11 Q. Okay. I don't think we have to go through each and
12 every class you've attended, but have you been qualified as
13 an expert before in the courts of this State?

14 A. Yes, I have.

15 Q. In the area of crime scene processing, blood spatter?

16 A. Evidence -- evidence collection and evidence packaging,
17 I was qualified as an expert in 2012, 2014 qualified as an
18 expert in blood stain pattern analysis.

19 **MS. STROM:** Your Honor, at this time we would offer
20 Officer Lendway as an expert in crime scene processing,
21 evidence collection, preservation and blood stain patterns.

22 **MR. ERWIN:** Without objection, Your Honor.

23 **THE COURT:** I find he is qualified.

24 Q. Thank you, Officer Lendway. Officer, Mike Peterson
25 testified previously to you and has given an overview to the

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1 jury about how y'all as a team go in and process a scene.

2 It's my understanding that you were called to this scene by

3 Lieutenant Peterson at that time.

4 A. That's correct.

5 Q. And that was back on October 3rd, 2012?

6 A. Yes.

7 Q. I want to go through with you specifically some items

8 of evidence that you collected as part of that team and show

9 you some photographs that, I believe, will help us in going

10 through that process. Now, if you'll just take a moment and

11 look through State's exhibits 31 through 55 for

12 identification at this time.

13 (Pause)

14 Q. Do you recognize those photographs?

15 A. Yes, I do.

16 Q. Are they true and accurate depictions of the scene as

17 you found it when you arrived on October the 3rd, 2012?

18 A. Yes.

19 **MS. STROM:** Your Honor, we would offer State's exhibits

20 31 through 55 into evidence.

21 **MR. ERWIN:** Without objection, Your Honor.

22 **THE COURT:** In without objection.

23 (Whereupon State's exhibits 31 - 55 were admitted into

24 evidence)

25 Q. I believe there's a laser pointer up there, should be

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1 if you need it. I'm going to move this out of the way. If
2 you would, tell this jury what you observed when you went in
3 -- I believe you -- how did you enter the residence? Front
4 door or back door?

5 A. Through the front door.

6 Q. Through the front door. Okay. What did you observe
7 when you entered through the front door?

8 A. I arrived approximately an hour and a half after
9 Lieutenant Peterson did. He had called for assistance.

10 When I arrived there there was -- they had right outside the
11 front door on the front porch area, right here, they had
12 established an area, almost a staging area, for some of the
13 equipment, some of our booties that we all wore before we
14 went into the scene. Everyone that went into the scene was
15 required to wear those upon entering.

16 And once I first came through the front door,
17 immediately to the right there was a chair right here. And
18 it had a cordless phone on top of it.

19 Q. I think Lieutenant Peterson has already testified to
20 that, but I want to show you State's exhibit 12. Is that
21 what you're referring to?

22 A. Yes.

23 Q. Okay. And again, where was that?

24 A. It's right here. This is the chair right here. And
25 this is the cordless phone sitting right on top of it just

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1 as you come in the front door immediately to the right.

2 Q. And did you have an occasion as part of your duties to
3 process the area in the kitchen of this residence?

4 A. Yes.

5 Q. All right. Show us where that is, please.

6 A. Coming through the hallway here, taking a right to the
7 family room and then over this way you have the kitchen
8 area. Right in here you have a dining room table and a
9 small dining area right here.

10 Q. Explain to this jury -- tell this jury what you found
11 when you processed the kitchen area.

12 A. Over in this kitchen area you'll see these two red
13 circles here. Those are -- one of those was a swab of
14 suspected blood from the light switches. And the other one
15 was where I collected the whole -- the light switch plate
16 itself.

17 Also, further down here towards the kitchen sink
18 there's some cabinets. They are the low cabinets that you
19 find in most kitchens. And there was one cabinet door that
20 was partially open. And there was some suspected blood on
21 the outside of that one cabinet door.

22 Q. Okay. Let's go back to the light switches. State's
23 exhibit 31, if you would, please orient the jury as to what
24 we're seeing here.

25 A. This is -- this is the light switch plate where those

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1 two red circles were just at on the overall diagram. We had
2 the four switches here and you had the whole light switch
3 plate.

4 Q. And what door does that lead out to?

5 A. This door right here leads right out to the garage.

6 And as you can see, there was a vehicle that's in the garage
7 there.

8 Q. State's exhibit 32.

9 A. This is another photograph of that same light switch
10 plate, just a little bit closer.

11 Q. And did you observe anything unusual about this light
12 switch plate other than the fact that it had suspected blood
13 on it?

14 A. Right. When I looked at this it was pretty obvious to
15 me that those were fabric impressions. It appeared to be
16 suspected blood with fabric impressions all over this light
17 switch here.

18 Q. Okay. When you're talking about fabric impressions,
19 what are you talking about? I don't understand what you're
20 telling me.

21 A. Fabric -- it's commonly -- we see that a lot. We come
22 across it maybe not so much in blood, but sometimes in
23 pollen, sometimes in dust, sometimes when we sidelight our,
24 lighting on glass or some metal we can see fabric
25 impressions where they have the lines. If you were to have

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1 something covering your hands, that would be very consistent
2 to this pattern right here.

3 Q. Okay. So that's consistent with someone's hand being
4 covered?

5 A. Yes.

6 Q. All right. And how would you classify that blood stain
7 there that we're seeing?

8 A. It's a transfer pattern.

9 Q. What does that mean?

10 A. That's -- a transfer pattern is where you have
11 something that has blood on it that gets transferred to a
12 source that had no blood on it.

13 Q. And that's different from other types of blood stains
14 such as?

15 A. Such as a wipe pattern or a swipe pattern. I mean,
16 there's multiple different types of patterns.

17 Q. And you classified this one again as a what?

18 A. This is a transfer stain.

19 Q. A transfer. And it has fabric impressions which
20 indicate to you what?

21 A. That the person that had touched the light switch had
22 their hands covered.

23 Q. I'll show you State's exhibit 33. What are you seeing
24 here?

25 A. This is the -- this is the same light switch with the

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1 plate that was removed.

2 Q. Okay. And did you take samples from that?

3 A. Yes, I did.

4 **MS. STROM:** Court's indulgence.

5 (Pause)

6 Q. I'm going to show you State's -- what's been marked

7 previously as State's exhibit 56 and 57 and ask you to take

8 a minute and look at those for me, please.

9 (Pause)

10 Q. Do you need a knife or something?

11 A. Yes.

12 Q. Do you have one?

13 **MS. STROM:** Do you have a pair of scissors?

14 (Whereupon one of the courtroom officers handed up a

15 pocketknife)

16 **MS. STROM:** Yes. Thank you.

17 A. Thank you.

18 **MS. STROM:** Officer, do you mind if -- officer, do you

19 mind if we hold onto that?

20 **THE OFFICER:** No.

21 **MS. STROM:** We may need it for some other packages.

22 Just in case.

23 Q. Do you recognize that?

24 A. Yes, I do.

25 Q. And is that the light switch you removed from where

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1 we're seeing right here?

2 A. Yes. This is the light switch and this is the swab.

3 **MS. STROM:** Your Honor, I would offer them into

4 evidence at this time if I didn't already do so.

5 **MR. ERWIN:** Without objection, Your Honor.

6 **THE COURT:** In without objection.

7 (Whereupon State's exhibits 56 and 57 were admitted
8 into evidence)

9 Q. And this one up here, I take it, that was not there
10 when you got there?

11 A. Right. That's ---

12 Q. You placed that there?

13 A. Right. That's one of our markers that we use.

14 Q. And what's the purpose of that?

15 A. It's just how you categorize your evidence as you move
16 along in the scene. And what I do when I list my evidence,
17 I'll use my first two initials, which is RL, and then I'll
18 put a dash and then I'll follow it up with a number. So in
19 this case here it would be RL-1. And as I go down my
20 evidence it'll be RL-2 and so on.

21 Q. And the actual light switch plate that you removed is
22 RL-2?

23 A. That's right.

24 Q. Now I want to go to the ---

25 **THE COURT:** What exhibit number was that?

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1 **MS. STROM:** Oh, I'm sorry, Judge. 34.

2 Q. We talked about the swab of suspected blood on the
3 light switch plate and actual light switch plate. You also
4 talked about something you saw on the bottom counters. Tell
5 me about that.

6 A. Okay. It's ---

7 Q. Or the bottom cabinets, I should say.

8 A. Yeah. There's a bottom cabinet right here. And
9 there's a little corner right here just to the left of the
10 sink. And there was -- there was a plastic bag on the
11 outside of that cabinet area.

12 Q. I'm going to show you State's 35.

13 A. This is -- this is where the suspected blood was where
14 this door that's partially open. And it had -- there's a
15 plastic bag that was kind of hooked on the knobs. And that
16 appeared to be used just for household trash, just to kind
17 of put little wrappers and kind of things in before it goes
18 to the trash can.

19 Q. Okay. Were you able to determine what was in the
20 cabinet?

21 A. In this cabinet there was a whole stack of plastic bags
22 very similar to this.

23 Q. State's exhibit 36.

24 A. The plastic bags, it was just a whole stack of them
25 right in this area, just inside this door.

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1 Q. And what are we seeing there on the exterior of that
2 cabinet?

3 A. These are some more suspected bloody transfer stains
4 right here on the corner.

5 Q. And did you -- what, if anything, did you do with that
6 stain there on the corner?

7 A. I took a swab.

8 Q. You took a swab?

9 A. Yes.

10 Q. I'll show you State's 37. Is that the area where you
11 took the swab?

12 A. Right. This is the area right here. I ---

13 Q. Tell me about this blue that I'm seeing. What is that?

14 A. That's Leuco Crystal Violet, which we refer to as LCV.

15 And it's just a chemical that we can use to enhance any
16 blood that may be present. We use that for a variety of
17 things including footwear also.

18 Q. So if you have something that you suspect to be blood,
19 you use that?

20 A. Well, I mean, you could, but you could also -- if
21 there's some faint impressions, very faint, if you use the
22 LCV it will enhance that detail to it ---

23 Q. Okay.

24 A. --- to where you can see it much better. But in this
25 particular photo here, the swab was taken prior to the LCV

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1 being sprayed in that area.

2 Q. You found it like this?

3 A. That's right.

4 Q. Which is State's 36. You took the swab?

5 A. That's right.

6 Q. And then you sprayed it with this LCV?

7 A. Right.

8 Q. I'm going to show you RL-3, which is State's exhibit 58
9 and ask you to take a minute to look at that to see if
10 that's the swab you took from that area?

11 **THE COURT:** What exhibit number do you have up?

12 **MS. STROM:** That one -- oh, up on the ---

13 **THE COURT:** Yeah. We need to keep track of that.

14 **MS. STROM:** 37.

15 **THE COURT:** Okay. Thank you.

16 A. Yes, this is the swab from that cabinet door.

17 **MS. STROM:** Your Honor, at this time we would offer
18 into evidence State's exhibit number 58.

19 **MR. ERWIN:** Without objection, Your Honor.

20 **THE COURT:** In without objection.

21 (Whereupon State's exhibit 58 was admitted into
22 evidence)

23 Q. Get these out of your way. I now want to direct your
24 attention out of the kitchen and down to the office area
25 where Mr. Rhodes [sic] was found. Do you recall that? Do

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1 you recall where he was found?

2 **THE COURT:** Not Mr. Rhodes.

3 Q. I mean, I'm sorry, Mr. Wells. I apologize.

4 A. Yes. This is the office area right here. Mr. Wells
5 was found in this area right here.

6 Q. What, if anything, when you entered that office area
7 did you notice that was unusual or caught your attention?

8 A. There was a -- there was some more transfer --
9 suspected bloody transfer stains, a swipe pattern on the
10 office door. There was some suspected blood similar to the
11 light switch over here in the kitchen area. The same was
12 found leading into the office area.

13 Q. All right. I want to show you -- this is State's
14 exhibit 38 already in evidence. Tell us what we're seeing
15 here.

16 A. This is the office door that leads into the office. If
17 this door was pulled towards me, closed, it would be right
18 near the hallway that leads down there. But this door, the
19 office door was open. And then this is a swipe pattern on
20 the -- on the door here. There's also a transfer stain down
21 there at the bottom.

22 Q. All right. Let's first look at the bottom. Again,
23 what are we seeing down at the bottom right there?

24 A. The bottom is a transfer stain, right there at the
25 bottom.

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- 1 Q. Of suspected blood?
- 2 A. Yes.
- 3 Q. Okay. And what are we seeing in this pattern in the
- 4 middle of the door?
- 5 A. It's a swipe pattern. And, again, there were the
- 6 fabric type impressions in this blood. And this pattern
- 7 here, it came down here and went down -- went down at this
- 8 angle here. And then you have this pattern here that went
- 9 up this way. And then you had another pattern here, which
- 10 just went across from this way over on top of that other
- 11 pattern.
- 12 Q. And I believe you testified they had the same fabric
- 13 impressions or the fabric indicators?
- 14 A. That's right.
- 15 Q. Which again tells us what?
- 16 A. That somebody's hands were covered.
- 17 Q. You said you took a swab ---
- 18 A. Yes, I did.
- 19 Q. --- of that?
- 20 A. Yes.
- 21 Q. And the photograph I have on that, on the screen right
- 22 now is State's exhibit 40. I'm going to show you State's
- 23 exhibit 59 and ask you is that the swab that you took from
- 24 that door?
- 25 A. Yes, it is.

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1 **MS. STROM:** Your Honor, at this time we would offer
2 State's exhibit 59 into evidence.

3 **MR. ERWIN:** Without objection, Your Honor.

4 **THE COURT:** In without objection.

5 (Whereupon State's exhibit 59 was admitted into
6 evidence)

7 Q. As you entered the office area, I believe you were --
8 we were talking about the swipe pattern on the door, did you
9 find any other blood transfers immediately in that area?

10 A. Down below at the bottom of that same door.

11 Q. At the corner where we just saw?

12 A. That's right.

13 Q. All right. How about on any other surface as you
14 entered that room?

15 A. Yes.

16 Q. And what was that?

17 A. Near the light switch as you first enter. It was on
18 the right side as you entered the office area.

19 Q. I'm going to put up State's 41. If you could just
20 orient us to where we are.

21 A. Okay. This is the area -- the door -- the doorway
22 leading into the office. Directly around this door-frame to
23 the left is that door that was just put up with that swipe
24 pattern on there. And right here is where the light switch
25 plate was. This is a corner office here. There's suspected

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1 blood transfer on that corner as well.

2 Q. Showing a close-up of State's 42.

3 A. This is just a reverse photograph of that same area

4 stepping into the office area just a few feet and looking

5 back. This is the hallway right here.

6 Q. Right.

7 A. And then this is the light switch plate to the office

8 area.

9 Q. And State's 43.

10 A. This is a close-up photograph of that same light switch

11 plate to the office.

12 Q. Did you take a swab of that?

13 A. I collected the light switch plate.

14 Q. The actual plate itself?

15 A. Yes.

16 Q. And I'll show you State's exhibit 60. And if you could

17 tell from the outer packaging, you don't have to open it,

18 but if you need to, please do so.

19 A. Do we still have that knife?

20 Q. It's right there beside you. Right beside the water

21 pitcher.

22 A. Yes, it's the same light switch plate.

23 **MS. STROM:** Your Honor, we would offer that into

24 evidence at this time.

25 **MR. ERWIN:** Without objection, Your Honor.

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1 **THE COURT:** In without objection.

2 **MS. STROM:** State's exhibit 60.

3 (Whereupon State's exhibit 60 was admitted into
4 evidence)

5 Q. I want to direct your attention also, Officer Lendway,
6 to -- use the diagram again. As you entered the office area
7 did you notice anything in particular right outside the door
8 or right there in the doorway on the floor?

9 A. There were a few cards that you would commonly find in
10 a wallet or a purse, credit cards, that type of thing.

11 Q. State's exhibit 44. Is that it?

12 A. Yes, it is.

13 Q. State's exhibit 61, if you would, tell if those are the
14 documents and the items that you saw outside the doorway?

15 **MS. STROM:** This is State's 44 back up on the screen,
16 Your Honor.

17 A. Yes, those are the same cards.

18 Q. And in particular in there -- I show specifically out
19 of these items I'm going to mark as 61A.

20 (Whereupon State's exhibit 61A was marked for
21 identification)

22 Q. Can you tell us what 61A is?

23 A. It's a -- it's a blank check. It's a Palmetto Bank
24 check with the name Gary Wells on it with the Terramont
25 Drive address.

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1 Q. Thank you.

2 THE COURT: Has that been put in evidence?

3 MS. STROM: Well, Your Honor, since 61 was in evidence,
4 I assume 61A is, but I ---

5 THE COURT: Okay.

6 MS. STROM: --- offer 61A into evidence.

7 MR. ERWIN: Without objection.

8 THE COURT: Okay.

9 (Whereupon State's exhibit 61A was admitted into
10 evidence)

11 THE COURT: You're right.

12 Q. Put 61A back in there.

13 THE COURT: All right. The court reporter tells me 61
14 is not in.

15 MS. STROM: All right. Well, then I offer 61 into
16 evidence and 61A into evidence.

17 MR. ERWIN: Without objection.

18 THE COURT: All right.

19 MS. STROM: Thank you.

20 THE COURT: Both are in without objection.

21 (Whereupon State's exhibit 61 was admitted into
22 evidence)

23 THE COURT: Thank you, Susan.

24 MADAME CLERK: Thank you, Madame Court Reporter.

25 Q. Also in the office where Mr. Wells was found did you

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1 have an occasion to locate a computer and a computer tower,
2 I mean, a hard drive tower?

3 A. Yes.

4 Q. State's exhibit 45. Can you orient us?

5 A. This is a -- this is a photograph of part of the office
6 area. And this is the black computer tower below this desk
7 right here.

8 Q. And it has a number 13 on that. That's ---

9 A. That's correct. That's the evidence item number.

10 Q. Y'all placed that placard number ---

11 A. Officer Derby did.

12 Q. All right. And was this computer tower collected and
13 placed into evidence?

14 A. Yes, it was.

15 Q. And by evidence we're talking about the property and
16 evidence room down at Greenville County ---

17 A. Right, at the law ---

18 Q. --- Law Enforcement ---

19 A. --- enforcement center. That's right.

20 Q. And, again, in lieu of bringing in the computer tower,
21 I'm just using the photographs. As you proceed from the
22 office area where Mr. Wells was found and into the master
23 bedroom what, if anything, did you observe as far as any
24 blood stains, patterns?

25 A. Leading from the office area towards the master bedroom

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1 there's a short, I'll call it a very small hallway area.
2 And it had a closet right here on this side. And then it
3 had a door that led into a bathroom, the master bathroom
4 right there. Right on this corner right here, just inside
5 that hallway is another light switch where again I observed
6 suspected bloody, fabric impressions on that light switch as
7 well.

8 Q. State's 47.

9 A. This is the light switch here. Just to the left of
10 that, that would lead you into the office area.

11 Q. Um-hum (affirmative).

12 A. This -- where this photograph was taken. Of course,
13 there's the closet there. But it's that real small hallway
14 that I was referring to.

15 Q. And what were you telling us about that stain on the
16 light switch?

17 A. There was suspected bloody fabric impressions on this
18 light switch as well.

19 Q. And did you give that a number?

20 A. I did. It's number 16. It's right here on that
21 sticker just to the top of the corner of the light switch
22 plate.

23 Q. I show you what's been marked as State's exhibit number
24 62 and ask you to take a look at that.

25 A. This is the same light switch plate. And as I

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1 previously mentioned, where the sticker is number 16, I
2 also, you know, as I mentioned earlier, put my initials
3 before that. So on this package here would be RL-16.

4 **MS. STROM:** I'd move State's exhibit 62 into evidence.

5 **MR. ERWIN:** Without objection, Your Honor.

6 **THE COURT:** In without objection.

7 (Whereupon State's exhibit 62 was admitted into
8 evidence)

9 Q. I'm going to leave the area where Mr. Wells was found
10 and I want us to proceed to the area, to the room in which
11 Mrs. Wells was found, okay? Tell us about what you noticed
12 when you entered the room where Mrs. Wells was found.

13 A. What I noticed?

14 Q. Yes.

15 A. Very active area as far as a crime scene's -- as far as
16 we see in crime scenes. Mrs. Wells was down on the ground,
17 large amount of suspected blood on the bed, on the floor, on
18 Mrs. Wells. There was some spent cartridge casings on the
19 floor. There was a large knife that was on a rug near Mrs.
20 Wells' feet. And there was also another light switch plate
21 in that room where, again, I observed suspected fabric
22 impressions on that light switch as well.

23 Q. Okay. I believe we already have a photograph, if I may
24 just one second, of the knife that you were referring to
25 that you saw, is that correct?

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1 A. That's correct.

2 Q. And that was in the room where Mrs. Wells was found?

3 A. Yes, it was. That's the rug that it was on. And it
4 was close proximity to Mrs. Wells' feet.

5 Q. I'll show you what's been marked as State's exhibit
6 number 67 and ask you to look at that and tell me if that's
7 the knife that y'all collected from Mrs. Wells' bedroom.

8 A. Yes, it is.

9 Q. That is that knife?

10 A. Yes.

11 Q. And that would have been taken and placed in the
12 property and evidence room at the law enforcement center?

13 A. That's correct.

14 MS. STROM: We offer State's exhibit number 67 into
15 evidence.

16 MR. ERWIN: Without objection.

17 THE COURT: In without objection.

18 (Whereupon State's exhibit 67 was admitted into
19 evidence)

20 Q. And I failed to bring out from you earlier back where
21 Mr. Wells was found, there was a knife found in that room as
22 well, correct? Or in the master bedroom.

23 A. It is in the master bedroom.

24 Q. Showing State's exhibit 49. I believe Officer Peterson
25 has previously testified to that. I'll show you State's

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1 exhibit 63.

2 A. Yes, that's the same knife as in the master bedroom.

3 **MS. STROM:** We offer State's exhibit 63 into evidence.

4 **MR. ERWIN:** Without objection.

5 **THE COURT:** In without objection.

6 (Whereupon State's exhibit 63 was admitted into
7 evidence)

8 **MS. STROM:** Your Honor, may I publish to the jury?

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

10 (Whereupon Ms. Strom published State's exhibit 63 to
11 the jury)

12 **MS. STROM:** And then State's exhibit 69 [sic], may I
13 publish to the jury?

14 (Whereupon Ms. Strom published State's exhibit 67 to
15 the jury)

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

17 Q. Proceeding to, again, where Mrs. Wells was found did
18 you find any blood stains or patterns on the light switches
19 or light switch in her room?

20 A. Yes, I did.

21 Q. Where was that?

22 A. This is the room where we found Mrs. Wells. This is
23 the doorway here. And just as you come into that room, it's
24 immediately to the right, right around that corner, coming
25 right around that corner right there by the door.

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1 Q. I'll show you State's exhibit 50. Is that what we're
2 seeing here?

3 A. Yes, it is.

4 Q. And, again, that number 14 in the corner is yours?

5 A. That's correct. And this is the actual door that leads
6 into the bedroom. And it's immediately right around this
7 door-frame is where the light switch was.

8 Q. And State's 51. What is that?

9 A. That's just a closer photograph of the same light
10 switch plates. You could see the lines right here, which we
11 see in our work, which is consistent with fabric.

12 Q. Okay. Did you take that light switch plate? Would
13 have been your RL-14. State's exhibit 64. If you would,
14 look at that and see if that's the light switch you -- the
15 light switch plate you took from that area.

16 A. Yes, it is.

17 Q. Thank you.

18 MS. STROM: Your Honor, we would move that into
19 evidence at this time.

20 MR. ERWIN: Without objection.

21 THE COURT: In without objection.

22 MS. STROM: That's State's 64.

23 (Whereupon State's exhibit 64 was admitted into
24 evidence)

25 Q. Officer Peterson [sic], I believe you talked about

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1 earlier as well as Officer Peterson about some shell casings
2 that were located?

3 A. That's right.

4 Q. And they were located in Mrs. Wells' room or the room
5 where she was found.

6 A. That's right.

7 Q. State's exhibit 52. What are we seeing here?

8 A. This is one of the fired shell casings that we found in
9 the room where Mrs. Wells was located. This is -- it's
10 right here on the floor marked with evidence placard number
11 18. It's right here.

12 Q. What are we seeing right here? What is this right
13 here?

14 A. You pointing to up here?

15 Q. Yes.

16 A. This is where the headboard area is. And this bed
17 right here appeared to have been shifted and moved.

18 Q. All right. And State's exhibit 53 is just a closer
19 photograph of that fired casing?

20 A. That's right. It's right here.

21 Q. So did y'all move the bed to find the casing?

22 A. No. That bed was like that when we -- when we entered
23 the room.

24 Q. When you entered, the bed was away from the wall?

25 A. That's right. This is -- just to give you a little bit

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1 of reference to that bedroom, this is the door knob to the
2 door that leads into this room.

3 Q. And you found another shell casing?

4 A. That's right.

5 Q. I'll show you State's 54. Could you orient us to this
6 as well?

7 A. Okay. If you're walking into the bedroom through the
8 bedroom door, this corner right here is going to be the far
9 right corner of the room.

10 Q. Do you need the diagram again?

11 A. This is the bedroom leading into the -- the bedroom.
12 And then the photograph with that shell casing that was just
13 up there was in this far right corner. And it was right in
14 this area right here. And this is ---

15 Q. Okay, sorry.

16 A. Okay. This is, of course, the bed right here that was
17 -- that had been shifted. The previous shell casing was
18 right on -- in this area. And this was the other shell
19 casing in this area right here.

20 Q. State's 54 is what you were showing us earlier. And
21 then a close-up version of that is State's 55. Is that what
22 we're seeing?

23 A. That's right. This is the spent casing there.

24 Q. And a spent casing is another name for a fired casing.

25 A. That's right.

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1 Q. You collected the casings. The casings were collected.

2 A. Yes, the casings were collected.

3 Q. I'm going to show you State's -- what's been marked as
4 State's exhibit 65 and 66. I ask you to take a look at
5 those and see if those are the casings that y'all collected.

6 A. Yes, those are both the shell casings in that bedroom.

7 **MS. STROM:** Your Honor, we'd offer these into evidence
8 at this time.

9 **MR. ERWIN:** Without objection.

10 **THE COURT:** In without objection.

11 **MS. STROM:** State's 65 and 66.

12 (Whereupon State's exhibits 65 and 66 were admitted
13 into evidence)

14 Q. And, finally, Officer Lendway, we've talked about a lot
15 of pieces of evidence, you know, the shell casings, the
16 swabbings, the knives and all those things, how is it that
17 the integrity of those items are maintained? I mean, are
18 they all put in one bag? What happens when you collect
19 evidence?

20 A. Each item of evidence is packaged individually and
21 sealed. They're labeled with the evidence item number from
22 the crime scene officer that collects those items. They
23 remain with that person throughout the whole process from
24 the crime scene to our office.

25 Once items get to our office, each officer is assigned

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1 their own locker where nobody has access to it. And they
2 have that area there that remains locked. The lockers
3 remain locked. The room that is there is also secured.
4 There's no one else that can get in that area unless they
5 work in the Crime Scene Unit. And ---

6 Q. Are they ultimately placed in P&E, property and
7 evidence, at the ---

8 A. Right.

9 Q. --- law enforcement center?

10 A. Once the barcode labels are placed on the packaging
11 they'll -- all the items are brought down to the law
12 enforcement center to the property and evidence room.

13 Q. Thank you. Please answer any questions the Defense may
14 have.

15 **MR. ERWIN:** Your Honor, I don't have any questions for
16 this witness.

17 **THE COURT:** Okay. You can step down.

18 **MS. STROM:** Your Honor, we'd ask that he be excused.

19 **THE COURT:** You can be excused. We appreciate your
20 time. Thank you. Call your next witness.

21 **MS. STROM:** The State calls Chris Hammett.

22 **MADAME CLERK:** Mr. Hammett, please raise your right
23 hand.

24 **Henry Christopher Hammett,**
25 being duly sworn testified as follows;

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1 **MADAME CLERK:** Please be seated and state your name for
2 the record.

3 **MR. HAMMETT:** Henry Christopher Hammett.

4 **Direct Examination by Ms. Strom:**

5 Q. Officer Hammett, by whom are you employed?

6 A. The Greenville County Sheriff's Office.

7 Q. How long have you been employed with the Greenville
8 County Sheriff's Office?

9 A. Approximately seventeen years.

10 Q. And do you have any other law enforcement experience or
11 has it all been with the Greenville County Sheriff's Office?

12 A. It's all been with Greenville County.

13 Q. In what capacity do you work with the Greenville County
14 Sheriff's Office?

15 A. I'm an investigator assigned to the Violent Crimes
16 Unit.

17 Q. How long have you been with the Violent Crimes Unit?

18 A. Approximately eight years.

19 Q. Have you had occasion to respond to number
20 Terramont?

21 A. Yes, ma'am, I did.

22 Q. All right. And tell us about -- well, how was it that
23 you got the call?

24 A. I was the on-call investigator for that particular week
25 and received a call from a uniform patrol sergeant advising

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1 that they were on the scene where two deceased persons had
2 been found inside their residence at Terramont Drive.

3 Q. And you responded?

4 A. I did, yes.

5 Q. All right. Did anyone go with you or were you by
6 yourself?

7 A. No. I believe Investigator Newman actually went with
8 me, but there were several other investigators that worked
9 at the law enforcement center.

10 Q. All right. When you got there what did you do?

11 A. My initial arrival on-scene, I observed where the scene
12 had been taped off with the yellow sheriff's office crime
13 scene tape. Initially I spoke with Deputy Picone, who was
14 the deputy who entered the residence to just get a briefing
15 from him of what he had seen inside the residence so I would
16 know kind of what we were looking at. And then I spoke with
17 Deputy -- Master Deputy Burdine, who was posted at the end
18 of the driveway and requested a crime scene log be started
19 for anyone that entered into the crime scene.

20 Q. Did you -- we've heard testimony from Officers Peterson
21 and Lendway with the forensic division, did you request the
22 presence of the forensics division?

23 A. I did. When I arrived on-scene I radioed our
24 communications center and requested forensics unit to
25 respond before anyone entered the residence other than

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1 Deputy Picone, and I believe, an EMS person.

2 Q. Okay. You said that you had spoken with Deputy Picone.

3 Did you speak to anyone else out there at the scene?

4 A. I -- as far as deputies that were present, I received a
5 phone call while I was at the scene. There were three
6 witnesses, Mr. Doughty, and Ms. Rogers, and Amber McDaniel,
7 who were on the scene.

8 Q. Okay.

9 A. I requested that they be sent to the law enforcement
10 center to be interviewed and give statements about what they
11 saw.

12 Q. And while they were down at the law enforcement center
13 did you receive any information that may give you a
14 potential suspect in this case?

15 A. Yes, ma'am, I did. I received a call from Investigator
16 Maxwell, who is with the sheriff's office also, was assigned
17 to the White Collar Unit. And he advised me that Shirley
18 Rogers was a suspect in a current on-going fraud case
19 involving Helen and Gary Wells as the victims on that.

20 Q. So you heard it from Officer Maxwell that Shirley
21 Rogers was being investigated for a fraud case, is that what
22 you said?

23 A. Yes, ma'am. Identify type theft case, I believe.

24 Q. Where the victims were Mr. and Mrs. Wells?

25 A. That's correct. Yes.

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1 Q. As a result of getting that information what did you
2 do?

3 A. I contacted Investigator Bailey who was at the law
4 enforcement center speaking with Ms. Rogers, interviewing
5 her at the time and requested -- advised him of the
6 information I had been given by Investigator Maxwell. And
7 then I then requested that a background investigation be
8 started on Ms. Rogers to include anything that we could find
9 on her as far as background information as well as her phone
10 records, cellular phone records.

11 Q. As a result of requesting that a background be done on
12 Shirley Rogers did you become aware or did you learn of any
13 of her known associates?

14 A. Yes, ma'am, I did.

15 Q. Okay. And was one of them the Defendant in this case,
16 Mr. Rhodes?

17 A. Yes, it was.

18 Q. Did you have an occasion -- well, let me ask you this.
19 You went to the scene on October 3rd, 2012, is that correct?

20 A. Yes, ma'am.

21 Q. All right. Did you subsequently after learning of Mr.
22 Rhodes' association with Ms. Rogers, did you have an
23 occasion to meet with him?

24 A. With Mr. Rhodes?

25 Q. Yes.

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1 A. Yes, ma'am, I did.

2 Q. And approximately when was that?

3 A. It was October 22nd of 2012.

4 Q. How was it that you became -- well, first of all, how
5 did you become aware that he was an associate of hers?

6 A. Investigator Howard was assisting me with going through
7 the phone records and other information that we had received
8 from the -- prior information we had received from other
9 investigators from the phone records and other sources. I
10 had been advised that he had located a phone number through
11 that and was attempting to locate a gentleman named Richard
12 Cade, who the phone was registered to.

13 Q. So you were looking at Shirley Rogers' phone ---

14 A. Yes. And that phone -- there was a contact between
15 Shirley Rogers' phone and this particular number from the
16 time period of, I believe, of around September 30th to
17 October 3rd that he became interested in and attempted to
18 locate the owner of that phone.

19 Q. And the owner of that phone you learned was whom again?

20 A. Eric Richard Cade or Richard Eric Cade. I'm not sure
21 which order that's in.

22 Q. Did you later determine who Mr. Cade is in relation to
23 the Defendant, Mr. Rhodes?

24 A. Yes. It was his roommate at that time..

25 Q. And then you said subsequently in your investigation

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1 you had an occasion to actually see Mr. Rhodes?

2 A. That's correct. Yes.

3 Q. And when was that?

4 A. October the 22nd of 2012.

5 Q. And how was it that you met with him?

6 A. Mr. Rhodes came to the law enforcement center in the
7 company of Mr. Cade to, I guess, to follow up on why we were
8 trying to locate them. I believe Mr. Cade had received
9 information that investigators had been looking for him and
10 had shown up at the law enforcement center wanting to speak
11 with Investigator Howard, I believe.

12 Q. Not going into anything that y'all discussed, but
13 during your meeting with Mr. Rhodes did you obtain a cell
14 phone from him?

15 A. Yes, ma'am, we did.

16 Q. All right. And subsequently did you obtain a or have
17 someone obtain a search warrant for that cell phone?

18 A. Yes, ma'am. I obtained a search warrant from the judge
19 myself for that phone.

20 Q. Did you determine who the owner of that phone was?

21 A. It was Richard Cade.

22 Q. Oh, I'm sorry. You told me that earlier. I apologize.

23 A. Or it was in his name.

24 Q. Was in his name?

25 A. Yes, ma'am.

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1 Q. And was that cell phone subsequently returned to Mr.
2 Cade?

3 A. Yes, it was.

4 Q. After y'all had completed your investigation of it?

5 A. It was, yes.

6 Q. At a subsequent time in your investigation did you have
7 an opportunity to meet with the Defendant again?

8 A. Yes, I did.

9 Q. Again, not going into what y'all discussed, but did you
10 have an occasion to obtain a known DNA sample from the
11 Defendant?

12 A. Yes, ma'am, I did.

13 Q. And were you present when that was collected?

14 A. I was, yes.

15 Q. Did you do the actual collection?

16 A. I did not. I was -- forensics unit, they actually
17 collected the sample.

18 Q. But you were present when it happened?

19 A. I was, yes.

20 Q. All right. I'll show you State's exhibit number 142
21 for identification at this time. Do you recognize that?

22 A. Yes, I do.

23 Q. Where did you get that exhibit? Where did you get that
24 known sample?

25 A. As far as the packaging it's in now?

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1 Q. Yes.

2 A. From property and evidence.

3 Q. Okay. The actual sample that was taken from Mr.

4 Rhodes, ---

5 A. Um-hum (affirmative).

6 Q. --- how is that done? I know you said you didn't do it
7 yourself, but you were there when it happened.

8 A. It's by use of a swab that is put into the mouth and
9 rolled up and down the inside of the cheek to obtain skin
10 cells or saliva for the DNA content.

11 Q. And I believe that was actually done by a Detective
12 Hope or an Officer Hope?

13 A. Yes.

14 Q. All right. Did he give you those samples?

15 A. Yes.

16 Q. What did you do with those samples once you got them?

17 A. Placed them in our property and evidence room at the
18 law enforcement center.

19 Q. All right.

20 **MS. STROM:** And I'm just going to leave that for ID for
21 right now, Your Honor.

22 Q. Did you also in part of your investigation obtain what
23 is known as known DNA samples of the victims?

24 A. I did, yes.

25 Q. This is going to be State's exhibit 77 and 78.

HENRY C. HAMMETT - DIRECT EXAMINATION BY MS. STROM

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1 Currently they're in that packaging. Would you open that,
2 please, and tell me if you recognize those.

3 A. Do we need to take them out of the smaller envelopes
4 ---

5 Q. No, you can leave them in the smaller envelopes, if you
6 would. So they are individually packaged?

7 A. Yes, ma'am, they are. They're individually wrapped and
8 labeled inside that.

9 Q. And do you recognize those?

10 A. Yes, ma'am.

11 Q. And from whom did you retrieve these?

12 A. These were given to me by Deputy Coroner Kent Dill with
13 the coroner's office.

14 **MS. STROM:** Court's indulgence, Your Honor, so I can
15 get the right sticker on the right envelope.

16 **THE COURT:** All right.

17 **MS. STROM:** We would offer these into evidence.

18 **MR. ERWIN:** Without objection, Your Honor.

19 **THE COURT:** In without objection, 77 and 78.

20 (Whereupon State's exhibits 77 and 78 were admitted
21 into evidence)

22 **MS. STROM:** And, Mr. Erwin, if you don't have an
23 objection, I'll go ahead and offer the known samples of Mr.
24 Rhodes ---

25 **MR. ERWIN:** Yes, no objection to that.

HENRY C. HAMMETT - DIRECT EXAMINATION BY MS. STROM

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1 MS. STROM: No objection?

2 MR. ERWIN: None.

3 MS. STROM: Okay.

4 THE COURT: In without objection.

5 MS. STROM: That was 142.

6 (Whereupon State's exhibit 142 was admitted into
7 evidence)

8 Q. You mentioned earlier that when you met with the
9 Defendant he had come to the law enforcement center with
10 Eric Cade, ---

11 A. Yes, ma'am.

12 Q. --- his roommate? Did you get a known sample of DNA
13 from Mr. Cade?

14 A. Yes, I did.

15 Q. And did you personally take that sample?

16 A. I did that one, yes.

17 Q. I show you State's exhibit 143.

18 A. Did you need me to open this one also?

19 Q. If you can tell by the packaging that that is what you
20 obtained, no, I do not.

21 A. Okay.

22 Q. Can you?

23 A. Yes, ma'am.

24 Q. All right. And you did that the same process that you
25 described earlier as far as taking the Q-tip and ---

HENRY C. HAMMETT - DIRECT EXAMINATION BY MS. STROM

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1 A. Yes, ma'am, that is correct. The same process.

2 MS. STROM: We would offer that into evidence.

3 MR. ERWIN: Without objection.

4 THE COURT: In without objection.

5 (Whereupon State's exhibit 143 was admitted into
6 evidence)

7 MS. STROM: Court's indulgence.

8 Q. There's previously been testimony about a computer
9 tower taken from the office where Mr. Wells was found.

10 A. Yes, ma'am.

11 Q. Did you do a walk-through of that house with the
12 forensics officers?

13 A. I did, yes.

14 Q. That was when you initially arrived?

15 A. Yes, ma'am.

16 Q. And do you recall seeing this computer tower without
17 the placard on it, I've got a better picture, being located
18 in that room?

19 A. Yes, ma'am, I do.

20 Q. And subsequent in your investigation ---

21 THE COURT: And that's number?

22 MS. STROM: Oh, I did it again, Judge. I'm sorry.
23 What's up on the screen right now is State's exhibit 45.
24 And previously was 46.

25 Q. Did you have an occasion in your investigation to

HENRY C. HAMMETT - DIRECT EXAMINATION BY MS. STROM

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1 obtain that computer tower from the property and evidence
2 room?

3 A. Yes, I did.

4 Q. Okay. It was already collected -- you didn't collect
5 it from the scene?

6 A. No, I did not. That was ---

7 Q. Someone else collected it?

8 A. That's correct.

9 Q. Put it into property and evidence?

10 A. Correct. Yes.

11 Q. And then you got it out of property and evidence?

12 A. Correct. Yes.

13 Q. And to whom did you give it?

14 A. Investigator Jim Perry with the Computer Forensics
15 Unit.

16 Q. For him to do an analysis of that?

17 A. I did, yes.

18 Q. And then finally -- excuse me just one second.

19 (Whereupon State's exhibit 145 was marked for
20 identification)

21 Q. I'm going to show you a diagram, if you would, it is
22 State's exhibit number 145. Without going into it do you
23 recognize that?

24 A. Yes, ma'am.

25 Q. And is that a true and accurate depiction of the areas

HENRY C. HAMMETT - DIRECT EXAMINATION BY MS. STROM

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1 that we've been talking about here today and that there will
2 be testimony about later on?

3 A. Yes, ma'am, it is.

4 Q. All right.

5 **MS. STROM:** We'd offer State's exhibit 145 into
6 evidence.

7 **MR. ERWIN:** Without objection.

8 **THE COURT:** In without objection.

9 (Whereupon State's exhibit 145 was admitted into
10 evidence)

11 Q. And if you will, can you step down? I can hold it and
12 you can just step down and show us what this is -- I'll be a
13 human easel.

14 A. Okay.

15 Q. Show us what this map is indicating.

16 A. Let me step over here.

17 Q. Do you have your laser pointer?

18 A. I do not. I'm sorry.

19 Q. You're fine. It might be easier.

20 A. This location here, which is number Terramont Drive,
21 that's the actual incident location where the victims were
22 found. This is Glen Forest Drive, which at the time
23 was the residence of Mr. Cade and Mr. Rhodes. And this
24 noted over here is South Vance Street. That was the
25 residence at that time of Shirley Rogers.

HENRY C. HAMMETT - CROSS EXAMINATION BY MR. ERWIN

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1 of those. But as to the things that are not in evidence, I
2 think that would have to come in through a different
3 witness.

4 **MS. STROM:** Thank you, Your Honor.

5 **MR. ERWIN:** Thank you, Judge.

6 **THE COURT:** All right. Bring in the jury. All right.
7 The witness -- Mr. Hammett, you can come on back up and have
8 a seat.

9 (Whereupon the jury entered the courtroom at 1:55 pm)

10 **THE COURT:** All right.

11 **MR. ERWIN:** Thank you, Your Honor.

12 **Cross Examination by Mr. Erwin:**

13 Q. Good afternoon, Investigator Hammett.

14 A. Afternoon, sir.

15 Q. Okay. So I've been talking about this a little bit
16 today. You are the lead investigator on this case, right?

17 A. Correct. Yes, sir.

18 Q. And that means that essentially you are the CEO of this
19 operation?

20 A. Other than my supervisor that's above me.

21 Q. Sure.

22 A. But as far as the investigation, yes, sir.

23 Q. As far as this particular investigation you pretty much
24 have the final say on what gets done?

25 A. Yes, sir.

HENRY C. HAMMETT - CROSS EXAMINATION BY MR. ERWIN

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1 Q. You decide what people should do as far as
2 investigations go?

3 A. Correct.

4 Q. And then when they are done with those investigations
5 they report back to you with the results of those
6 investigations?

7 A. Correct.

8 Q. So any evidence that was collected in this case, you
9 are aware of?

10 A. Should be, yes, sir.

11 Q. Yes. And anything that was done in this case, you're
12 aware of?

13 A. Yes, sir, should be.

14 Q. Okay. And as -- also we've talked about a bunch today
15 there were a large number of law enforcement personnel that
16 were involved in this case.

17 A. Yes, sir. Quite a few.

18 Q. Okay. Pretty much everybody in the sheriff's
19 department in some way, shape or form touched this case.

20 A. I don't think I'd say it in that regard. I mean,
21 there's around four hundred and something people that are
22 working at the sheriff's office. But ---

23 Q. Right.

24 A. --- there were a lot of investigators, and uniform
25 patrol persons on the scene.

HENRY C. HAMMETT - CROSS EXAMINATION BY MR. ERWIN

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- 1 Q. And you were in here when the Judge read the potential
2 witness list to the jury.
- 3 A. Correct. Yes, sir.
- 4 Q. And there were some eighty-five, ninety names on it,
5 something like that?
- 6 A. Yes, sir.
- 7 Q. A lot of people in law enforcement ---
- 8 A. Correct. Yes, sir.
- 9 Q. Now, as to the fraud investigation, ---
- 10 A. Yes, sir.
- 11 Q. --- you spoke -- you testified before lunch that
12 Shirley Rogers was being investigated for a credit card
13 fraud against the Wellses, right?
- 14 A. It's a fraud case of some type ---
- 15 Q. Some ---
- 16 A. Yes, sir.
- 17 Q. Some kind of fraud case, right?
- 18 A. Correct. Yes, sir.
- 19 Q. Okay. And you're familiar with that investigation?
- 20 A. Somewhat.
- 21 Q. Somewhat.
- 22 A. Yes.
- 23 Q. Okay. Familiar enough with that investigation to say
24 that Jonathan Rhodes is not involved with that ---
- 25 A. To my knowledge, no.

HENRY C. HAMMETT - CROSS EXAMINATION BY MR. ERWIN

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1 Q. Okay. And also there were a lot of forensic personnel
2 who were involved in this case.

3 A. Yes, sir, quite a few.

4 Q. All right. We've been talking about all morning about
5 the house and the scene. And it seems to me like there was
6 a lot of tests done on the house, pieces of the house.

7 A. Yes. Yeah, evidence that was collected from there.

8 Q. Evidence was ---

9 A. Yes.

10 Q. --- collected, eventually tested.

11 A. Um-hum (affirmative). Correct.

12 Q. For some fingerprints?

13 A. Correct. Yes, sir.

14 Q. Some for DNA?

15 A. Correct.

16 Q. Okay. Now, there were some fingerprints found in that
17 house.

18 A. Inside their residence.

19 Q. Yes.

20 A. Yes, sir.

21 Q. None of them matched Jonathan Rhodes.

22 A. That's correct.

23 Q. Okay. There were, and this is by my count, a hundred
24 and thirty-one samples taken of DNA, things to be tested.

25 A. Right.

HENRY C. HAMMETT - CROSS EXAMINATION BY MR. ERWIN

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- 1 Q. That sound about right to you?
- 2 A. Somewhere -- it was a lot.
- 3 Q. More than a hundred.
- 4 A. Yeah.
- 5 Q. Okay.
- 6 A. Yes, sir.
- 7 Q. Of the stuff that was taken out of the house and
- 8 tested, ---
- 9 A. Um-hum (affirmative).
- 10 Q. --- none of it matched Jonathan Rhodes.
- 11 A. No, sir.
- 12 Q. Okay. And this house was actually locked down for a
- 13 long time.
- 14 A. Yes, sir, it was.
- 15 Q. The scene had to be processed. And that stuff takes
- 16 time.
- 17 A. Correct.
- 18 Q. So you guys had sort of around the clock some sort of
- 19 law enforcement presence there to make sure that that scene
- 20 was clean.
- 21 A. That nobody entered it, yes, sir.
- 22 Q. Right. That it wasn't contaminated, and nobody ---
- 23 A. Correct.
- 24 Q. --- ever came in and changed anything.
- 25 A. Correct.

HENRY C. HAMMETT - CROSS EXAMINATION BY MR. ERWIN

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1 Q. Because it took several days to get through this,
2 right?

3 A. Yes, it did.

4 Q. All right. And you visited the house a bunch of times
5 during those several days?

6 A. I did, yes, sir.

7 Q. Did various different forms of investigation.

8 A. Correct.

9 Q. Right. There was no sign of forced entry in the house,
10 was there?

11 A. No, sir, not to my knowledge.

12 Q. Okay. There were -- we've been looking at the blood
13 spatters all morning.

14 A. Um-hum (affirmative).

15 Q. All right. There's blood on -- all over the house.
16 There's blood on furniture.

17 A. Yes, sir.

18 Q. Blood on the floors.

19 A. Correct.

20 Q. On walls.

21 A. Correct.

22 Q. We've got footprints in the blood ---

23 A. Correct.

24 Q. --- that ends up on the floors, correct?

25 A. Yes, sir.

HENRY C. HAMMETT - CROSS EXAMINATION BY MR. ERWIN

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1 Q. Now, there were pictures taken of the footprints,
2 correct?

3 A. Yes, sir.

4 Q. Okay. And those were eventually analyzed against shoes
5 that were taken from Jonathan's house?

6 A. Correct.

7 MS. STROM: Objection, Your Honor.

8 THE COURT: I sustain the objection.

9 Q. All right. There were hairs seized as part of the DNA
10 analysis in this case.

11 MS. STROM: Objection, Your Honor.

12 THE COURT: Let me let the jury go to the jury room
13 just for a minute.

14 (Whereupon the jury exited the courtroom at 2:00 pm)

15 THE COURT: All right.

16 MS. STROM: Your Honor, I thought what we or what ---

17 THE COURT: That was as a result of tests. Now he's
18 just asking what was collected.

19 MS. STROM: He is not the one who collected it. That,
20 again, would go to hearsay. And I suspect that the next
21 question is going to be, well, that didn't come back to my
22 client, did it?

23 And so what he's asking for is for this officer to
24 testify as to hearsay in this case. If he wants to lay the
25 proper foundation to bring the witness in to say they

HENRY C. HAMMETT - CROSS EXAMINATION BY MR. ERWIN

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1 **THE COURT:** I'm going to allow him to ask it.

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

3 **THE COURT:** You're not going to ask him?

4 **MR. ERWIN:** Sir?

5 **THE COURT:** Are you through with this witness?

6 **MR. ERWIN:** Oh. No, sir, I'm not. I thought we were
7 bringing ---

8 **THE COURT:** Oh, bring the ---

9 **MR. ERWIN:** Well, I thought your ruling was you were
10 going to allow me to ask the question ---

11 **THE COURT:** I am. I'm sorry.

12 **MR. ERWIN:** Okay.

13 **THE COURT:** I'm getting ahead of myself. I'm trying to
14 do two things at one time.

15 **MR. ERWIN:** I understand, Your Honor. Thank you.

16 (Whereupon the jury entered the courtroom at 2:03 pm)

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

18 **MR. ERWIN:** Thank you, Your Honor.

19 **Cross Examination by Mr. Erwin Continued:**

20 Q. Okay. Where were we? All right. So a hundred and
21 thirty-one samples tested for DNA in the house. None
22 matched Jonathan Rhodes, right?

23 A. Correct. Yes.

24 Q. Okay. Fingerprints were found in the house. None
25 matched Jonathan Rhodes, right?

HENRY C. HAMMETT - CROSS EXAMINATION BY MR. ERWIN

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- 1 A. That's correct also. Yes.
- 2 Q. Okay. Furthermore, there were hairs that were found in
- 3 the house.
- 4 A. Correct. Yes.
- 5 Q. Those hairs were processed for DNA matches, right?
- 6 A. Correct. Yes, sir.
- 7 Q. None of them matched Jonathan Rhodes.
- 8 A. That's correct. Yes.
- 9 Q. In fact, a couple of the hairs that were in the house
- 10 were, for whatever reason, unable to be processed by the
- 11 forensic people that we have here in Greenville County.
- 12 A. Correct. Yes, sir.
- 13 Q. Correct? And so recently, in the last year, those
- 14 hairs were sent to the FBI, right?
- 15 A. Yes, sir. Correct.
- 16 Q. Because they have more advanced equipment or they can
- 17 test it deeper and find more out about it, right?
- 18 A. Yes, sir. Correct.
- 19 Q. Okay.
- 20 A. That's my understanding.
- 21 Q. So those tests were done on those hairs, right?
- 22 A. Correct. Yes, sir.
- 23 Q. And none of those hairs matched Jonathan Rhodes.
- 24 A. That's correct. Yes, sir.
- 25 Q. Okay. Now, also as part of this investigation you had

HENRY C. HAMMETT - CROSS EXAMINATION BY MR. ERWIN

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1 a criminal profiler come up from SLED, is that right?

2 A. Correct. Yes, sir.

3 Q. Okay. As a result of that investigation it was
4 determined that the killer in this case knew the victims,
5 that it was personal in nature.

6 A. That was his opinion, yes, sir, if I recall correctly.

7 Q. Thank you. Now, as far as real circumstantial evidence
8 that we have in this case, there is a car that is important,
9 right?

10 A. That is correct. Yes, sir.

11 Q. Okay. A car that, I believe, was referenced before
12 that is owned by Mr. Cade.

13 A. Yes, sir. Correct.

14 Q. Jonathan's roommate.

15 A. At the time, yes, sir.

16 Q. At the time that was Jonathan's roommate. And Mr. Cade
17 and Jonathan both used that car.

18 A. Correct. Yes, sir.

19 Q. And so there was, in fact, there was blood found inside
20 that car, right?

21 A. Correct. Yes, sir.

22 Q. And that blood matched the victims in this case.

23 A. That is correct. Yes, sir.

24 Q. Through same DNA analysis that we've been talking about
25 with the stuff from the house.

HENRY C. HAMMETT - CROSS EXAMINATION BY MR. ERWIN

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1 A. Correct. Yes, sir.

2 Q. Okay. So that would seem to indicate that this car was
3 at the scene near the time of this killing, right?

4 A. That would be correct. Yes, sir.

5 Q. Okay. Also, we have evidence from a cell phone, right?

6 A. Correct. Yes, sir.

7 Q. From a cell phone that, again, was owned by Mr. Cade,
8 but that Jonathan used.

9 A. Correct. Yes, sir.

10 Q. All right. And without going into details about what
11 that evidence is and exactly what it says, I'm sure we're
12 going to get to it later, that evidence would seem to
13 indicate that that phone was also at the house at the time
14 of this killing.

15 A. Correct. Yes, sir.

16 Q. Okay. So you've got a car that was there and you've
17 got a phone that was there.

18 A. Correct. Yes, sir.

19 Q. All right. So as an investigator, as the lead
20 investigator in the case, you're looking for evidence that
21 would connect, at the time that this killing took place,
22 Jonathan to being with the phone and the car, right?

23 A. Yes, sir.

24 Q. Okay. You do not have a witness who would put him in
25 the car at the time of the killing.

HENRY C. HAMMETT - CROSS EXAMINATION BY MR. ERWIN

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1 A. At the scene or ---

2 Q. At the scene.

3 A. No, sir.

4 Q. And you don't have a witness that will put him with the
5 phone at the scene.

6 A. No, sir.

7 Q. You've got nothing like that, right?

8 A. No, sir.

9 Q. Okay. Do you have any evidence in this case that he
10 was not with this phone and this car at the time of this
11 killing?

12 A. No, sir.

13 **MS. STROM:** Objection, Your Honor.

14 **THE COURT:** I don't understand the question. Re-ask
15 it.

16 Q. Do you have any evidence in this case as the lead
17 investigator that you are aware of that would indicate that
18 Jonathan was not with his phone or his car at the time this
19 happened?

20 **MS. STROM:** Your Honor, I think we need to approach.

21 **THE COURT:** All right. Come on up.

22 (Whereupon a bench conference was held off the record,
23 in the presence of the jury, but out of their hearing)

24 (Whereupon the bench conference was ended)

25 **THE COURT:** I sustain the objection. And I'll let ---

HENRY C. HAMMETT - REDIRECT EXAMINATION BY MS. STROM

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1 **MR. ERWIN:** No further questions, Your Honor.

2 **THE COURT:** All right. You can step -- well, any
3 redirect?

4 **Redirect Examination by Ms. Strom:**

5 Q. You were asked about the hairs being sent off to the
6 FBI. Are you aware of the results of those?

7 A. Yes, ma'am.

8 Q. And who did they come back to be?

9 A. I believe they were the victims.

10 Q. Thank you. I have no further questions.

11 **THE COURT:** Recross?

12 **MR. ERWIN:** No, sir.

13 **THE COURT:** Okay. You may step down.

14 A. Thank you.

15 **THE COURT:** Thank you. All right. Call your next
16 witness.

17 **MR. WILKINS:** Your Honor, the State calls Jim Perry.

18 **MADAME CLERK:** Mr. Perry, please place your left hand
19 on the Bible and raise your right hand.

20 **James Perry,** being duly
21 sworn testified as follows;

22 **MADAME CLERK:** Please be seated and state your name for
23 the record.

24 **MR. PERRY:** It's James Phillip Perry.

25 **Direct Examination by Mr. Wilkins:**

JAMES PERRY - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. Agent Perry, who do you work for?

2 A. The Greenville County Sheriff's Office.

3 Q. And what do you do for the sheriff's office?

4 A. I work in the Computer Crimes Unit of the sheriff's
5 office.

6 Q. And what does that mean? What do you do for them?

7 A. We do everything from cell phone forensics, computer
8 forensics, to the online creditors, work on anything from
9 armed robberies up to homicides, depending on the type of
10 equipment needing to be examined.

11 Q. Do you have the understanding and ability to extract
12 information from computers ---

13 A. I do.

14 Q. --- and things like that? What kind -- what kind of
15 training do you have in that?

16 A. Since 2002 when I started the unit I've been to -- I
17 can't even -- a thousand hours worth of schooling dealing
18 with computers, cell phones, GPSs, any type of electronic
19 media.

20 Q. And what are you able to determine by doing these tests
21 on computers or extractions?

22 A. Well, you can -- you can determine all kinds of
23 different information as to what you find, what you're
24 looking for. It's all depending on that.

25 Q. Did you have the occasion to do -- did you ever receive

JAMES PERRY - DIRECT EXAMINATION BY MR. WILKINS

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- 1 a tower from Investigator Hammett?
- 2 A. I did.
- 3 Q. And do you know where that tower came from?
- 4 A. It came from our property and evidence.
- 5 Q. And were you able to do an extraction on that?
- 6 A. I did do an extraction.
- 7 Q. And do you know where the tower came from itself before
- 8 it was in property and evidence?
- 9 A. The Wellses' house.
- 10 Q. And I'm going to show you what's marked as State's
- 11 exhibit 68 and ask you if you recognize that?
- 12 A. I do.
- 13 Q. Okay. What is that?
- 14 A. It's a DVD that I prepared as a result of the
- 15 examination of the computer, item number JD13.
- 16 Q. JD13?
- 17 A. Right.
- 18 Q. And how did you conduct that extraction?
- 19 A. I'm sorry, what?
- 20 Q. How did you conduct the extraction ---
- 21 A. What I do is I take the hard drive out of the computer,
- 22 I take it over to my forensic computer and externally
- 23 connect it to my forensic computer using what is called a
- 24 write blocker. And what the write blocker does is it
- 25 prevents me from being able to change any of the data that's

JAMES PERRY - DIRECT EXAMINATION BY MR. WILKINS

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1 on there whether it's a date or add anything, delete
2 anything off of there. It preserves it as it came to me.

3 Q. And you did that on this particular computer?

4 A. That is correct.

5 Q. All right.

6 **MR. WILKINS:** Your Honor, State moves 68 into evidence.

7 **MR. ERWIN:** Without objection, Your Honor.

8 **THE COURT:** In without objection.

9 (Whereupon State's exhibit 68 was admitted into
10 evidence)

11 Q. Mr. Perry, I'm going to show you State's exhibit 68.
12 Is this your report ---

13 A. It is.

14 Q. --- on State's exhibit 68?

15 A. That's correct.

16 Q. All right. And what do we have here?

17 A. Those are the folders that -- this is in an html
18 format.

19 Q. Um-hum (affirmative).

20 A. These are the folders where the different pieces of
21 evidence are stored. And then when you open up the second
22 one down, it brings the report together.

23 Q. That one right there?

24 A. Correct.

25 Q. All right. What is the jury looking at right here?

JAMES PERRY - DIRECT EXAMINATION BY MR. WILKINS

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1 A. This is just precursor of information about the Outlook
2 that's in the report and that deals with what you'll see
3 farther down.

4 Q. Okay. Were you able to look at the Outlook on this
5 particular computer?

6 A. Not specifically his Outlook. He was using Outlook or
7 the computer was using Outlook to open the emails that were
8 -- this particular one here.

9 Q. And by doing that are you able to tell the last -- the
10 last time that the Outlook was utilized by a user?

11 A. Correct. I was able to determine the last access that
12 wasn't -- like if it was an automatic Windows update, it
13 would show an access time that occurred whether somebody was
14 at the computer or not if the computer was on.

15 Q. Okay.

16 A. However, an email has to be clicked on manually to open
17 it up to view it.

18 Q. So when was the last time an email was accessed by the
19 -- a user of the computer?

20 A. According to this, 8:30 pm on the -- October
21 10th, 2012.

22 Q. Can you say that date again? I didn't hear you.

23 A. October 1st, 2012.

24 Q. I thought you said 10th.

25 A. Oh, I might have.

JAMES PERRY - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. All right. So it's October 1st, 2012?

2 A. Correct.

3 Q. And whose email is listed on here?

4 A. It's to garywells@bellsouth.net.

5 Q. And who was it from?

6 A. It's from a messaging -- it's an automatic message
7 that's sent out. Like if you sign up for something and you
8 want to be notified if something comes available, they just
9 -- they send out automatic emails.

10 Q. And so was this -- was that email -- what you're saying
11 -- was that email clicked on around 8:30?

12 A. Correct.

13 Q. Were there any temporary internet files that you looked
14 at?

15 A. There were. These are the temporary internet files,
16 which these pictures get put in the temporary internet file.
17 If you go on your -- if you get an email from somebody and
18 there's a link, and you open that link, and then you see a
19 picture you want to look at, you click on the picture. Then
20 it brings up the picture.

21 When you close that picture down, it goes into the
22 temporary internet file. So to be in the temporary internet
23 file it would have had to have been clicked on. And then it
24 would have been put in the temporary internet file when he
25 closed that email account down or the web browser.

ROSEMARY TRAYLOR - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. And when was the last time a file or a picture was put
2 in the temporary internet file?

3 A. It was on that same date, October 1st, 2012 at 8:34 pm.

4 Q. Please answer any questions Defense counsel may have.

5 MR. ERWIN: I have no questions for this witness, Your
6 Honor.

7 THE COURT: All right. You can step down. Thank you.

8 MR. WILKINS: Your Honor, may this witness be excused?

9 THE COURT: Yes.

10 MR. WILKINS: Thank you, Your Honor.

11 THE COURT: Call your next witness.

12 MR. ERWIN: The State calls Rosemary Traylor.

13 MADAME CLERK: Ms. Traylor, please place your left hand
14 on the Bible, raise your right hand.

15 Rosemary Traylor,
16 being duly sworn testifies as follows;

17 MADAME CLERK: Please be seated and state your name for
18 the record.

19 MS. TRAYLOR: I'm Rosemary Traylor.

20 **Direct Examination by Mr. Wilkins:**

21 Q. Ms. Traylor, with whom are you employed?

22 A. BB&T.

23 Q. And how long have you been employed with BB&T?

24 A. Nineteen years.

25 Q. And what do you do for BB&T?

ROSEMARY TRAYLOR - DIRECT EXAMINATION BY MR. WILKINS

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- 1 A. I'm the branch banker, which is sales and servicing.
- 2 Q. And where is your office located?
- 3 A. East North Street.
- 4 Q. And how long have you been at East North Street?
- 5 A. Over three years. Almost four years.
- 6 Q. Ms. Traylor, I'm going to take you back to 2012. Where
- 7 were you employed in 2012?
- 8 A. East North Street, BB&T.
- 9 Q. Same branch?
- 10 A. Um-hum (affirmative).
- 11 Q. And you were the branch manager?
- 12 A. No.
- 13 Q. No?
- 14 A. Branch banker.
- 15 Q. Branch banker.
- 16 A. Um-hum (affirmative).
- 17 Q. Did you ---
- 18 A. Then it was called relationship banker.
- 19 Q. Back then it was called -- I'm sorry?
- 20 A. Relationship banker then.
- 21 Q. All right. Did you have the occasion to talk with a
- 22 Helen Wells that day?
- 23 A. Yes. Yes, I did.
- 24 Q. Can you tell this jury what you talked about?
- 25 A. She had some charges on her checking account and her

ROSEMARY TRAYLOR - DIRECT EXAMINATION BY MR. WILKINS

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1 Visa credit card that were not hers. And she was worried
2 about where her money was going.

3 Q. So when somebody comes in and -- so they're complaining
4 about fraudulent activity on their account?

5 A. Um-hum (affirmative). Well, she just didn't know what
6 happened. She didn't know what it was. And then I looked
7 for her to find out.

8 Q. Were you able to assist her?

9 A. Yes.

10 Q. How would you go about assisting Mrs. Wells in locating
11 fraudulent activity?

12 A. I just go through her checking account and look at all
13 the charges. And I looked at all the charges on her Visa.
14 She didn't think she had any on her Visa. And she had a lot
15 of charges on her checking account as well that were not
16 hers.

17 Q. All right. And when you do that do you generate any
18 internal documents regarding the assistance that you're
19 giving?

20 A. Yes.

21 Q. Tell the jury about that.

22 A. It's called a dispute. So we call in to the phone 24
23 for our branch and claims department and do a dispute
24 against the charges. And they take a report and send it,
25 and she signs it.

ROSEMARY TRAYLOR - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. And do you remember what date that Mrs. Wells came down
2 there?

3 A. September 17th, I believe.

4 Q. All right. And while you were helping her were you
5 able to determine what had happened to her accounts or to
6 her Visa card?

7 A. Oh, yes. Yes.

8 Q. What happened?

9 A. There were charges in different ATMs where money was
10 taken out. There was charges at different stores, grocery
11 stores, I think a phone place, and -- now do you just want
12 to know on the checking account?

13 Q. Both.

14 A. Oh, okay.

15 Q. Yeah. Was there another one?

16 A. The Visa, ---

17 Q. Visa card.

18 A. --- there was a charge -- charges for a car, a rental
19 car at a rental place.

20 Q. And was she disputing that charge ---

21 A. Yes, ---

22 Q. --- as well?

23 A. --- because she thought that that was supposed to be a
24 zero balance.

25 Q. What did you advise her to do as a result of that?

ROSEMARY TRAYLOR - DIRECT EXAMINATION BY MR. WILKINS

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1 A. Get a police report.

2 Q. All right. Did Mrs. Wells ever come back down to BB&T?

3 A. Yes.

4 Q. Do you remember when she came back?

5 A. Maybe two days later, the 19th, I think.

6 Q. And on the 19th what did you -- how did you assist Mrs.
7 Wells?

8 A. We did the dispute because some -- some charges were
9 pending. And when they're in the pending status waiting to
10 go through, you can't dispute them. So we -- by then most
11 of them were all cleared out and had come against her
12 account and pulled the money out of her account. So we
13 called and did the dispute. And she signed it and sent it
14 in -- we sent it up.

15 Q. All right. I'm going to show you what's State's
16 exhibit 69. I'm going to ask you to take a look at State's
17 exhibit 69 to see if -- just tell me if you recognize that.

18 A. Yes.

19 Q. All right.

20 A. This is what I did. Yes, this is the dispute that we
21 did.

22 Q. All right. And are these disputes utilized by BB&T in
23 their everyday common course of business?

24 A. Yes.

25 Q. And is this the form you would use for every customer

ROSEMARY TRAYLOR - DIRECT EXAMINATION BY MR. WILKINS

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1 who came in who wanted to do a -- do a dispute?

2 A. Yes.

3 Q. And is this -- is this record -- is this a record of
4 BB&T?

5 A. Oh, yes.

6 Q. And is State's exhibit 69 BB&T's record that they keep
7 in the common everyday course of business?

8 A. Yes.

9 **MR. WILKINS:** Your Honor, State moves 69 into evidence.

10 **MR. ERWIN:** Without objection, Your Honor.

11 **THE COURT:** In without objection.

12 (Whereupon State's exhibit 69 was admitted into
13 evidence)

14 Q. All right. Ms. Traylor, I'm going to show you State's
15 exhibit 69. Can you tell the jury what this is?

16 A. That is the dispute for her debit card with the claim
17 number at the top and how much the charges were that were
18 against her account that she had not done for thirteen
19 hundred, fifty-one dollars and forty-three cents (\$1351.43).

20 Q. And it says September 20th up there, ---

21 A. Yes.

22 Q. --- 2012.

23 A. Right.

24 Q. I thought you said she came in on the 19th.

25 A. She did, but back then we had a 2:00 cut-off. So if we

ROSEMARY TRAYLOR - DIRECT EXAMINATION BY MR. WILKINS

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1 did the dispute after 2:00, it turns into the next day.

2 Q. I'm going to show you the second page of State's
3 exhibit 69. Can you explain this to the jury?

4 A. Yes. The claims department, fraud department asked her
5 these questions. And she answers the questions. And when
6 she answers the questions, I'm listening as a witness. And
7 I witness her signature that she signs that she spoke to
8 them and does this claim against her account.

9 Q. Is that your name up there at the top that you'd helped
10 complete it?

11 A. Yes.

12 Q. All right. I'm going to refer you to question seven.
13 Can you read that? Can you see question seven? I can ---

14 A. Yes. It says does client know of any possible
15 suspects?

16 Q. And what is the answer?

17 A. Yes. Shirley Wells, I mean, excuse me, Shirley Rogers.

18 Q. And what does it say across from there?

19 A. It says if yes, relationship to client. And it was her
20 cleaning woman.

21 Q. And was this document signed by Mrs. Wells?

22 A. Yes, that's Helen's signature.

23 Q. All right. And what is this right here?

24 A. Those are the disputed charges that were not -- that
25 she did not do that came against her account for her -- with

ROSEMARY TRAYLOR - DIRECT EXAMINATION BY MR. WILKINS

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1 her check card.

2 Q. That's a list of the charges ---

3 A. Yes.

4 Q. --- y'all were disputing?

5 A. Yes.

6 Q. And that was attached to the report?

7 A. Yes.

8 Q. And that's this -- that the second page?

9 A. Yes.

10 Q. Did you ever have the occasion to talk with Shirley
11 Rogers?

12 A. Yes.

13 Q. Can you tell this jury how that came about?

14 A. Well, Helen called her and said, how could you do this
15 to me? On one of those days Shirley came into the bank.

16 Helen came into the bank, Shirley came into the bank with
17 another person and was saying that she didn't make the
18 charges. And can I say what Helen said?

19 Q. (Affirmative nod).

20 A. Helen said, Shirley, how could you do this to me? You
21 were like family to me. How could you do it? And Shirley
22 said, you know I didn't do anything. And she said, how
23 could you, how could you? And Shirley says, you know I'll
24 pay you back. And she handed her the card. She said she
25 picked up the card by mistake.

ROSEMARY TRAYLOR - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. So where did this conversation take place?

2 A. In my office.

3 Q. Do you remember about what time Shirley Rogers arrived
4 at your office?

5 A. I don't remember. I think it was in the morning. That
6 was the morning sometime.

7 Q. And was -- Mrs. Wells was there as well?

8 A. Yes.

9 Q. And that's where this conversation was occurring, ---

10 A. Yes.

11 Q. --- in your office?

12 A. Yes.

13 Q. I'm going to show you what's marked as State's exhibit
14 70 and 71 and ask you if you recognize these? State's
15 exhibit 70 and 71.

16 A. Yes, I do.

17 Q. Are they stills from a camera at your branch?

18 A. Yes.

19 Q. And do you recognize those?

20 A. Yes.

21 Q. Are they true and accurate?

22 A. Yes.

23 MR. WILKINS: Your Honor, State moves 70 and 71 into
24 evidence.

25 MR. ERWIN: Without objection, Your Honor.

ROSEMARY TRAYLOR - DIRECT EXAMINATION BY MR. WILKINS

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1 **THE COURT:** In without objection.

2 (Whereupon State's exhibits 70 and 71 were admitted
3 into evidence)

4 Q. I'm going to show you 71 on the screen. Who is that
5 right there?

6 A. That's Shirley Rogers and then an employee, Luce,
7 giving her two suckers, one for her and one for her
8 daughter.

9 Q. Did you ever talk to the other person that Shirley was
10 with?

11 A. She walked -- she walked in and out of my office a few
12 times, but she wouldn't talk. She just kept telling
13 Shirley, come on, let's go, come on, let's go. And ---

14 Q. All right. So let's go back to the conversation in
15 your office with Shirley and Mrs. Wells..

16 A. Okay.

17 Q. They were -- and you said Mrs. Wells had called Shirley
18 down there while y'all were looking at these disputed
19 charges.

20 A. I'm trying to think of if she called from in my office
21 or just called her from home and told -- and talked to her.
22 I just can't remember that part. But she -- Shirley said
23 she would meet -- she would meet her up there. I just
24 remember her saying that. So I don't ---

25 Q. She did, in fact, meet her up there?

ROSEMARY TRAYLOR - DIRECT EXAMINATION BY MR. WILKINS

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1 A. Yes.

2 Q. Okay.

3 A. Yes. In a separate car.

4 Q. So what did you say to Shirley after -- after they had
5 this disagreement about the charges?

6 A. I said -- because a couple of the charges were blocked
7 and didn't go through at, I believe, it was Wal-Mart. And
8 she said she didn't know it was her card. And I said, well,
9 how could you not know it wasn't your card? Your name isn't
10 on it. It's Helen's name on there. And she said, well, I
11 didn't look at it.

12 And I said, but when you went to look at your card it
13 said BB&T and you don't have a BB&T account. And she said,
14 but you remember I was going to get a BB&T account. I came
15 in here before to get a BB&T account, to open it because of
16 my mother's money from her lawsuit, but I didn't get to open
17 one.

18 And then I said, well, when you went to Wal-Mart and
19 the card was denied, surely you looked at the card then to
20 realize it wasn't yours because then you tried to use it a
21 second time. And she just gave me a mean look and took my
22 business card.

23 Q. Did y'all ever warn -- well, did BB&T or you or BB&T
24 advise Shirley that y'all were taking over the charges?

25 A. Yes.

ROSEMARY TRAYLOR - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. How did you do that?

2 A. Because Helen was really upset and hurt that this
3 happened, and she was like crying and not crying. And
4 Shirley was saying, you know, and Helen kept saying, I'm
5 sorry, but, you know, I've got to -- how could you do this?
6 And I said, stop telling her you're sorry, you haven't done
7 anything wrong. And Shirley was yelling.

8 And so I had gotten -- my manager came in and the
9 auditor, the AOO auditor came in and asked Shirley to leave
10 the room, and we shut the door. And they said, are you
11 afraid of her? And she said, no, I'm not afraid of her, but
12 I'm afraid of her daughter. And they said -- we said, why?
13 And she said, because Shirley had asked her to come stay at
14 her house one ---

15 Q. That's ---

16 A. I'm sorry.

17 Q. We need to stop right there.

18 A. Okay. Sorry.

19 Q. Did y'all have a conversation with Shirley after that?
20 What did y'all ---

21 A. Yes, we did.

22 Q. --- tell Shirley ---

23 A. We did. We did.

24 Q. Okay.

25 A. Sorry. We told Shirley -- my manager told Shirley and

ROSEMARY TRAYLOR - CROSS EXAMINATION BY MR. ERWIN

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1 the auditor said, BB&T has to take over now. It's going to
2 be on BB&T. We're taking over on this, and Mrs. Wells is
3 out of it. This is no longer up to her to press charges,
4 it's up to us. And she said she would come back the next
5 morning and pay her -- pay us back the money, pay the money
6 back to Helen.

7 Q. Did Shirley return to pay the money back?

8 A. No.

9 Q. Did y'all ever tell Shirley not to go back to the
10 Wellses' house?

11 A. Helen did. I mean, we told Helen, don't let her back
12 in your house and lock the doors, change the locks. Don't
13 let her in and don't answer the phone. Don't talk to her on
14 the phone. Don't tell her anything.

15 Q. Please answer any questions Defense counsel might have.

16 **Cross Examination by Mr. Erwin:**

17 Q. Good afternoon.

18 A. Hi.

19 Q. So you mentioned that Shirley, when she came into the
20 bank the first time, was with another person?

21 A. Right.

22 Q. To be clear, you're talking about ---

23 A. Her daughter.

24 Q. --- her daughter?

25 A. Her -- she said -- she said it was her daughter.

MARY ELLEN CERVETTI - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. Right. But it's not -- it's not Jonathan Rhodes,
2 right?

3 A. Oh, no. No.

4 Q. Okay. And when she filled out the form about the
5 fraud, she listed Shirley as the suspect.

6 A. Yes.

7 Q. Did not mention Jonathan Rhodes.

8 A. No, she did not.

9 Q. Okay. And when -- well, you've never met Jonathan
10 Rhodes.

11 A. No.

12 Q. And through your investigation of this fraud, what
13 you've just discussed, his name never came up.

14 A. No.

15 MR. ERWIN: No further questions.

16 THE COURT: Redirect?

17 MR. WILKINS: None, Your Honor.

18 THE COURT: All right. Thank you for your time. You
19 can be excused. Call your next witness.

20 MR. WILKINS: Your Honor, the State calls Mary Ellen
21 Cervetti.

22 MADAME CLERK: Ms. Cervetti, please come forward, place
23 your left hand on the Bible and raise your right hand.

24 Mary Ellen Cervetti,
25 being duly sworn testified as follows;

MARY ELLEN CERVETTI - DIRECT EXAMINATION BY MR. WILKINS

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1 **MADAME CLERK:** Please be seated and state your name for
2 the record.

3 **MS. CERVETTI:** Mary Ellen Cervetti.

4 **Direct Examination by Mr. Wilkins:**

5 Q. Ms. Cervetti, with whom are you employed?

6 A. I'm employed with BB&T.

7 Q. And what do you do for BB&T?

8 A. I'm a corporate investigator in our corporate
9 investigations department.

10 Q. In 2012 with whom were -- who did you work with?

11 A. With BB&T.

12 Q. Were you in the same position?

13 A. Yes, I was.

14 Q. And what prior experience do you have?

15 A. I'm a retired special agent with the FBI and -- after
16 twenty years. And prior to that I was a federal, I mean,
17 excuse me, a state probation and parole agent.

18 Q. Did you ever get involved as a corporate investigator
19 with BB&T with some disputes made by Helen Wells?

20 A. I did.

21 Q. How did you get involved with that?

22 A. I received a call somewhere around September 19th, I
23 remember it was a Friday afternoon, from Rosemary Traylor
24 regarding some fraudulent activity on Mrs. Wells' Visa card
25 and debit card.

MARY ELLEN CERVETTI - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. And when that happens, what do you do?

2 A. Well, the branch files a claim. The client comes in
3 and files a claim. And normally I get involved after the
4 claim has been filed, but Rosemary called me because there
5 was some concern. It was an elderly client, and the client
6 knew the alleged suspect and there was some concern for her
7 safety.

8 Q. So once you learned that what did you do?

9 A. Then I talked to Rosemary and I said, you need to make
10 sure that Mrs. Wells files a police report with Greenville
11 County and make sure that when she does that that she
12 provides my name and information because I will work with
13 Greenville County in getting them the evidence they need.

14 Q. And did you do that?

15 A. I did.

16 Q. I'm going to show you -- do you have access to client's
17 central information to conduct your investigation?

18 A. Yes, I did.

19 Q. And did you -- were you able to look up the -- some
20 history of this particular dispute?

21 A. I did.

22 Q. I'm going to show you State's exhibit 72. If you can
23 tell me if you recognize that document.

24 A. Yes, I do.

25 Q. What is that?

MARY ELLEN CERVETTI - DIRECT EXAMINATION BY MR. WILKINS

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1 A. This is part of our client central, our electronic
2 records. And as a client, whenever you use a debit card or
3 a Visa card or you call into our system it records
4 information that you accessed that system. Do you want me
5 to tell you specifically ---

6 Q. Not yet. And are those records kept by BB&T?

7 A. Yes. They're kept as part of our electronic records.

8 Q. Are they kept in the ordinary course of business?

9 A. Yes, they are.

10 Q. Is that a BB&T record?

11 A. It is.

12 Q. Has it been changed or altered?

13 A. No, it has not.

14 Q. Is it true and accurate?

15 A. It is.

16 Q. All right.

17 **MR. WILKINS:** Your Honor, we move State's 72 into
18 evidence.

19 **MR. ERWIN:** Without objection, Your Honor.

20 **THE COURT:** In without objection.

21 (Whereupon State's exhibit 72 was admitted into
22 evidence)

23 Q. Now, Ms. Cervetti, if you will tell the jury what this
24 document is.

25 A. That is part of the electronic record that shows up on

MARY ELLEN CERVETTI - DIRECT EXAMINATION BY MR. WILKINS

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1 our profile on client central of a client's account.

2 Q. And I know it's hard to read, but there's a highlighted
3 portion under there.

4 A. Yes.

5 Q. What does that tell us?

6 A. Can I go a little closer ---

7 Q. Yeah, you can or I can bring you the document if you'd
8 like.

9 A. Yeah, could I look from the ---

10 Q. Sure.

11 A. --- if you don't mind. It's just a little easier and
12 then I'll -- that is a debit card activation. And the
13 bottom part is that activation. Shows it was -- this
14 account number was activated. And the top part, and I'm
15 sorry, I'll give it back to you if you -- okay. The top
16 part is the date and the time and the phone number from
17 which that card would have been activated.

18 Q. Did you review that with Mrs. Wells?

19 A. I did not review this with Mrs. Wells. I pulled this
20 later in the course of the investigation.

21 Q. Did you learn -- was that Mrs. Wells' phone number that
22 activated that card?

23 A. No, it was not.

24 Q. Please answer any questions Defense counsel may have.

25 **MR. ERWIN:** One second, Your Honor.

MARY ELLEN CERVETTI - CROSS EXAMINATION BY MR. ERWIN

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1 **THE COURT:** Okay. Take your time.

2 (Pause)

3 **Cross Examination by Mr. Erwin:**

4 Q. Hi, Ms. Cervetti.

5 A. Hi.

6 Q. So you've never met Jonathan Rhodes?

7 A. No, I have not.

8 Q. And as far as you know he doesn't have anything to do
9 with this fraud investigation, does he?

10 A. I don't know Jonathan Rhodes.

11 Q. Right. But his name didn't come up in anything you did
12 in this case?

13 A. No, he did not.

14 Q. No further questions.

15 **THE COURT:** You can step down and be excused. We
16 appreciate your time. Thank you.

17 A. Thank you, sir.

18 **THE COURT:** Call your next witness.

19 **MR. WILKINS:** Your Honor, the State calls Dr. Fulcher.

20 **James Fulcher, M.D.,**

21 being duly sworn testified as follows;

22 **MADAME CLERK:** Please be seated and state your name for
23 the record.

24 **DR. FULCHER:** Dr. James Fulcher.

25 **Direct Examination by Mr. Wilkins:**

JAMES FULCHER, M.D. - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. Good afternoon, Dr. Fulcher. With whom are you
2 employed?

3 A. I'm a pathologist with Pathology Associates of
4 Greenville.

5 Q. What's a pathologist?

6 A. A pathologist is a medical doctor board certified and
7 trained in forensic pathology, anatomic pathology and
8 clinical pathology. I do autopsies for the State.

9 Q. Okay. Give us a brief primer on your educational
10 background.

11 A. Sure. I'm originally from Virginia. I went to the
12 University of Virginia for undergrad, the Medical College of
13 Virginia for medical school. I then did a residency split
14 between the Medical College of Georgia, in Augusta, Georgia
15 and the Medical College of Virginia. And I then did a
16 fellowship in forensic pathology for one year. So I guess
17 after college it would be four years of med school, four
18 years of residency and one year fellowship.

19 Q. And you currently conduct autopsies here in Greenville
20 County?

21 A. I do, yes, sir.

22 Q. And about how many autopsies have you performed?

23 A. Between -- I don't have an exact number. Between
24 seventeen hundred and nineteen hundred.

25 **MR. WILKINS:** Your Honor, the State moves to have Dr.

JAMES FULCHER, M.D. - DIRECT EXAMINATION BY MR. WILKINS

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1 Fulcher offered as an expert in forensic pathology.

2 THE COURT: Any voir dire?

3 MR. ERWIN: No, Your Honor. And no objection to ---

4 THE COURT: Okay.

5 MR. ERWIN: --- him being certified as such.

6 THE COURT: I find he is qualified.

7 Q. All right. Dr. Fulcher, I'm going to refer you to the
8 autopsies of Gary and Helen Wells. Are you familiar with
9 those -- those two autopsies?

10 A. Yes. And I will refer to my notes, the autopsy report
11 and diagrams.

12 Q. Anytime you need to refresh your memory, ---

13 A. Very good.

14 Q. --- please do so. About when did you perform the
15 autopsy of Helen Wells?

16 A. The autopsy of Helen Wells and also Mr. Wells were
17 performed on October 4th, 2012. I believe the time was in
18 the morning on both. I don't remember exactly which one I
19 did first.

20 Q. And tell this jury how you -- how the body is received
21 by your office and what you typically are going to do during
22 an autopsy.

23 A. Sure. So in a case like this the coroner reports to
24 the scene. He examines the scene. The body is essentially
25 picked up as best as it can be without disturbing anything,

JAMES FULCHER, M.D. - DIRECT EXAMINATION BY MR. WILKINS

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1 placed in a body bag, which is sealed, and then delivered to
2 the morgue.

3 It then, because this happened in the evening, it sits
4 in a refrigerated area secured in the hospital. And then
5 the next morning I come in, we open up the bag and start
6 taking photos. You want me to go into the details of the
7 autopsy at this point?

8 Q. Not yet. Just sort of generalized ---

9 A. General outline? Very good. So an autopsy starts with
10 an external examination and photographs. So in a case like
11 this, if there are wounds, there'll be a picture of wounds
12 with a diagram that shows where all the wounds are. And at
13 that point we do what you think of in an autopsy, we
14 actually eviscerate the body. So we remove all the organs.

15 And if there's a gunshot wound, we figure out where the
16 bullets come from, what organs are injured. If there's stab
17 wounds, we find out which stab wounds are fatal and which
18 ones aren't, the directionality of these wounds.

19 We take samples to look at all these organs under the
20 microscope. Several days later we'll get those microscopic
21 sections back and we'll be able to make additional diagnoses
22 and findings on the body based on what we see
23 microscopically in the tissue.

24 As a protocol for Greenville County, we also always run
25 toxicology. So I'll withdraw fluids from the body including

JAMES FULCHER, M.D. - DIRECT EXAMINATION BY MR. WILKINS

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1 blood and fluid from the eye, the vitreous humor, to send to
2 an outside toxicology lab. And they will run a, as best as
3 we really believe in them, a very complete toxicology panel.

4 Q. Okay. In this particular case, as you were conducting
5 the autopsy of Gary and Helen, did you do a diagram?

6 A. I did, yes, sir.

7 Q. And I'm going to show you State's exhibits 73, 74 --
8 I'm going to show you 73 and 74 and see if you recognize
9 these.

10 A. I do recognize these, yes.

11 Q. Are those your diagrams?

12 A. They are.

13 Q. And that's your writing on there?

14 A. Yes, that is.

15 **MR. WILKINS:** The State moves 73 and 74 into evidence.

16 **MR. ERWIN:** Without objection, Your Honor.

17 **THE COURT:** In without objection.

18 (Whereupon State's exhibits 73 and 74 were admitted
19 into evidence)

20 Q. All right. Dr. Fulcher, so that we can better
21 represent to the jury ---

22 A. Sure.

23 Q. --- your results of this, of your findings, I'm going
24 to show State's exhibit 63 [sic].

25 A. Yes.

JAMES FULCHER, M.D. - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. 73, I'm sorry. All right. And, Dr. Fulcher, if you
2 could just take us through the autopsy and tell us what you
3 found.

4 A. Sure. So this is a standard body diagram. It shows an
5 outline drawing of a male body. These lines look just like
6 blue lines on paper, but, in fact, they represent wounds.
7 Each line on this body represents a separate wound. They
8 overlap. There's quite a few of them.

9 Some of them are inflicted before the person died and
10 some of them were actually inflicted on the dead body. So
11 the body was damaged after the person had died.

12 Because these wounds overlap, it is very difficult to
13 get an exact approximation of how many wounds, however, in
14 my report on page 6 I count at least twenty-three before the
15 person died, stab wounds or sharp force injuries, that's two
16 three, twenty-three, and at least twenty-one postmortem
17 injuries. So that is injured, stabbed, cut twenty-one times
18 after the heart had stopped beating, after blood flow had
19 stopped.

20 So if you add those up, we're at a total, at least
21 forty-four. And if you count on this diagram, it's hard to
22 come up with that number because some of these lines
23 represent very close wounds. If you think about yourself
24 hitting or stabbing something, you're more likely to hit it
25 in the same spot several times when you're doing it. So not

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1 all these correspond to exactly one wound.

2 The highlights on this case are the fatal wound, which
3 interestingly is the one right here at the groin. That goes
4 almost completely through the leg to transect the femoral
5 artery, thereby causing fatal bleeding.

6 It's quite long. That particular wound is -- let me
7 see. That particular wound is -- that's postmortem. Where
8 is it? Anti-mortem injuries. It is three and a half inches
9 long. Copious blood is present. And it completely
10 transects the femoral artery. So I don't have a ruler with
11 me, but you could visualize what that many inches looks
12 like. It's a significant wound.

13 Other highlights include what I would consider classic
14 defensive injuries. You could take a picture of these
15 wounds and put them in a textbook for that, particularly on
16 Mr. Wells. His were very, very prominent.

17 And what I mean by defensive injury is that means while
18 the person was being attacked they were trying to defend
19 themselves. This line between the pinky and the ring finger
20 came from him putting his hand up and a blade slicing in
21 between cutting him nearly to the wrist. Defensive wounds.

22 Lots of significant wounds to the head, although to be
23 honest, none of them puncture the skull and there's not a
24 lot of damage to the brain. So despite there being a lot of
25 wounds, most of them were survivable.

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1 There's a few stab wounds to the chest, which do create
2 some internal injuries, but to be honest, the most
3 significant trauma was, in fact, to that groin area
4 transecting that vessel.

5 The particulars of the ones to the chest, we had some
6 superficial wounding to the upper side of one of the lungs
7 with a small amount of blood in the chest cavity, a hundred
8 CCs, which is not a significant amount in our world, but the
9 fatal wound is this. Defensive wounds on the hands.

10 Postmortem wounds are spread throughout the body.
11 They're kind of scattered through. We can tell they're
12 postmortem by looking at them. They don't bleed basically.
13 The heart's not -- it's like stabbing a piece of meat or
14 fat. It doesn't bleed. Now, the anti-mortem ones, of
15 course, have lots of blood coming out of them, obviously.

16 Q. And, doctor, when you say anti-mortem ---

17 A. I'm sorry.

18 Q. --- or postmortem, how quickly can you identify a
19 postmortem wound?

20 A. Well, once the heart stops beating, a postmortem wound
21 is identifiable because it lacks that vital reaction, that
22 reaction that a living piece of tissue has to the wound --
23 the wounding. So ---

24 Q. What about -- I'm sorry. Go ahead.

25 A. So in this case there were no significant problems

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1 identifying them. There's some that could go either way,
2 but most of the postmortem ones have a very dry appearance
3 whereas the anti-mortem ones are very, very bloody.

4 Q. And what about contusions?

5 A. Contusions are represented on this diagram by the
6 little dots. There actually aren't that many of those.
7 There are a couple around the head. Those are described as,
8 let me refer to my notes, small contusions, abraded, no
9 significant injuries to vital structures.

10 They range between -- about an inch each, no vital
11 structures, skull's intact, brain is uninjured. So the
12 contusions are something you'd get from a fight, punching
13 someone. You could punch someone with your fist and cause
14 contusions like this.

15 Q. Could you cause it if you hit your head on a wall or on
16 the ground?

17 A. Absolutely.

18 Q. And is it further evidence of a struggle?

19 A. Yes. Absolutely.

20 Q. And so what is the -- what is the cause, medical cause
21 of death of Mr. Gary Wells?

22 A. The cause of death, which is a medical opinion, is
23 exsanguination, bleeding, bleeding out, bleeding secondary
24 to the incised wound to the thigh.

25 Q. Would you describe these wounds on Mr. Wells as

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1 violent?

2 A. Yes..

3 Q. Would you characterize them as struggling?

4 A. Yes, particularly these defensive wounds. This
5 absolutely indicates this person was fighting, trying to
6 save themselves.

7 Q. Can you estimate a time of how long it would take for
8 this type of struggle ---

9 A. Sure.

10 Q. --- to occur?

11 A. This seems like it would take quite a while to do all
12 this damage, but if you think about arming yourself and
13 really going after someone as if your life or their life
14 depended on it, you'd be amazed at how quickly you could
15 create this number of wounds. Just a few minutes is all it
16 would take to do this type of wounding.

17 Q. Is there anything else significant about Mr. Wells?

18 A. He has a slightly enlarged prostate. Other than that,
19 he had suffered an old heart attack quite some time ago, had
20 some preexisting heart disease, but his medical history --
21 he wasn't the healthiest guy, but for his age at seventy-
22 eight, he had some problems, but nothing -- nothing
23 unexpected medically.

24 Q. All right. I'm going to refer you to State's exhibit
25 74, which is your diagram of Helen Wells.

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1 A. Yes.

2 Q. Go through the wounds as well as the manner and cause
3 of death.

4 A. Mrs. Wells has two things that Mr. Wells did not have.
5 Her case is a bit more complicated. She actually has two
6 gunshot wounds. She has a gunshot wound -- and these are
7 loose contact. So the muzzle of the gun is very close to
8 the skin's surface, within an inch. So she wasn't shot from
9 a distance. If this was the gun, it's right here when it
10 was fired.

11 She has three holes, one, two, three. The bullet
12 enters the cheek, then exits the cheek almost right away.
13 So it's just a flesh wound. The meat of the cheek, if you
14 will.

15 It then reenters the shoulder, and I recover it deep in
16 the shoulder. It creates some soft tissue wounding, wounds
17 some muscle, wounds the deltoid muscle, the shoulder muscle,
18 but actually avoids hitting significant vessels. So serious
19 wound? Absolutely. Instantaneous fatal? Definitely not.
20 Not a -- what I would consider a fatal wound.

21 Next wound, a gunshot wound, is to the arm. Right
22 sided posterior arm. You know this thing would not work.

23 Q. There it is.

24 A. I can stand up. It's okay. Right there. Gunshot
25 wounds. Enters medially and exits laterally. So shooting

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1 down like this. Something I will warn you about since I
2 know you're probably asking yourself this, how do you get
3 these wounds in these positions? I do the autopsy as if the
4 person's standing exactly like this. May I stand?

5 Q. Yes. Absolutely.

6 A. Straight up in the air like this. This is standard
7 anatomic position. If you bend your arms like you would be
8 in a struggle, you can create relationships between parts of
9 your body that don't exist when you're standing perfectly
10 still. No one stands like this when they're being attacked.
11 This is not how that happens. There's a lot of movement
12 here.

13 And this wound normally occurs from an elbow type thing
14 and then shooting through. That's generally what it is.
15 The elbow's bent.

16 Q. Was that gunshot wound a through and through?

17 A. It was. I don't believe I recovered a projectile. And
18 the direction of wounding with the arm and that standard
19 position is downward, but I don't -- I did not recover a
20 projectile.

21 Q. I'm going to refer you back to the first gunshot wound

22 ---

23 A. Sure.

24 Q. --- and I want to show you two exhibits.

25 A. Yes.

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1 Q. I'm going to show you State's exhibit 75 and ask if you
2 recognize this?

3 A. I do. This is a projectile. I would have recovered
4 this from -- at autopsy. It's cleaned by myself, given to ,
5 forensics. We take photos of it. And that's it. That's a
6 projectile recovered. And that would have been the one
7 recovered from that gunshot wound to the shoulder.

8 Q. I'm going to show you State's exhibit 76 so you can --
9 you can recognize it by looking in there.

10 A. Yes.

11 Q. You don't have to take it out if you don't want to.

12 A. This is the projectile that I found. It's labeled, has
13 my signature on it. Yes.

14 **MR. WILKINS:** Your Honor, the State moves 75 and 76
15 into evidence.

16 **MR. ERWIN:** Without objection.

17 **THE COURT:** It's in without objection.

18 (Whereupon State's exhibits 75 and 76 were admitted
19 into evidence)

20 Q. All right. I'm going to refer you back to Mrs. Wells.
21 And if you could describe to this jury the type of knife
22 wounds that she has.

23 A. Sure. So once again, those are shown by these lines
24 with the exception of the back of the head. And to be
25 honest, I should probably cover this first because it looks

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1 like a lot's going on here, and, in fact, there is a lot
2 going on here.

3 So when I actually count the number of anti-mortem
4 wounds to Mrs. Wells, there are at least seventy of those.
5 There are fewer postmortem wounds. There's fourteen
6 postmortem wounds. So the body is injured fourteen times
7 after being -- after dying, the person was injured.

8 The seventy anti-mortem wounds, a lot of those, in
9 fact, at least twenty-seven of them are up here. And these
10 are interesting because they're lacerations. And a
11 laceration for me is not a stab wound, it's not an incised
12 wound. What a laceration is, it's a blunt object hitting
13 the skin and tearing the skin.

14 You see lacerations from baseball bats. You see
15 lacerations from big pipes. Think of someone hitting you
16 with a blunt object so hard that it rips the skin. You know
17 they're not incised wounds like with a knife or stab wounds
18 because the edges are very irregular. They're not clean.

19 Think about taking a piece of meat and cutting it
20 versus taking a hammer and smacking it really hard. You're
21 going to disrupt tissue a lot more with a hammer than a
22 knife. So all these are lacerations.

23 Q. Is it fair to say she was beaten in the back of the
24 head with an object?

25 A. With an object, yes. There was some object. I do not

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1 believe a person could make this number and shaped
2 lacerations with their fist. I would argue very strongly
3 that an object caused these wounds.

4 Q. Could a gun cause them?

5 A. Absolutely. In the traditional sense you could take a
6 gun and beat someone with the handle holding it by the
7 muzzle, pistol whipping would be the colloquial term for
8 that. You could definitely cause these wounds.

9 In fact, some of them have some very interesting
10 curvilarity [sic]. That's the wrong word, but they're
11 curved, which probably means that the object had some radius
12 on it. A gun, a bat, something cylindrical.

13 Q. All right. And where were her -- where were the knife
14 wounds to Mrs. Wells?

15 A. Knife wounds are represented elsewhere. We have
16 multiple on the thigh. Some of these are anti-mortem, some
17 of these are postmortem. If you bring your attention to
18 this hand, we have once again defensive injuries.

19 She wasn't so much grabbing at the knife like her
20 husband was. She was more of a -- trying to push it away
21 with the back of her hand. You can see there. And I don't
22 know if she was right or left handed, but she clearly was
23 favoring her right hand to defend these injuries.

24 This is a particularly troublesome one here on this
25 aspect -- both of these really, aspect of the forearm.

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1 That's a blocking maneuver, like blocking the knife with
2 your arm.

3 Several wounds to the flank, breasts. And, in fact,
4 these are the wounds that are fatal with her. She, in fact,
5 sustains trauma to her lungs, which caused significant
6 internal bleeding. Once again, I'll refer to my notes.
7 Those stab wounds to the chest and abdomen fatally injure
8 the right lung, the liver, portions of the kidney. And that
9 is it. Yeah, that's it.

10 So your fatal wounding is on this side. These wounds
11 overlap internally. Some of them are probably redirected,
12 which means that the blade goes in and then you pull out a
13 little bit, but not all the way, and then shove it back in
14 and reangle it to get new tissue. So you go in and then you
15 come out slightly, then go back in another way.

16 So several of these external wounds correspond to
17 multiple wound passes, particularly bad in the abdominal
18 area. The liver is quite severely damaged in this case
19 largely because the knife was redirected so many times. I'm
20 not sure an exact number, but several per wound causing
21 significant wound paths through the liver. I count a
22 minimum of four discreet wounds to the liver.

23 Q. What was the cause of death?

24 A. Stab wounds to the torso, which for me includes chest
25 and abdomen.

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1 Q. Would you consider based on these stab wounds and
2 contusions this is a violent struggle?

3 A. Yes, particularly, once again, the defensive wounds.
4 Good examples of defensive wounds. Once again, very classic
5 defensive wounds would be the wound to the back of the hand
6 and then these wrist and forearm wounds. There's also a
7 very good sized abrasion on this arm, which also could be
8 defensive.

9 Q. Do you know the height and weight of Mrs. Wells?

10 A. I do. She's sixty-five and a half inches and a hundred
11 and ninety-one pounds at autopsy.

12 Q. What about Mr. Wells? Sorry to flip you around.

13 A. It's okay. He is two hundred and five pounds, seventy-
14 two inches at autopsy.

15 Q. And what about the wounds to Mrs. Wells' face, the
16 knife wounds?

17 A. Stab wounds, let's see, most of those interestingly are
18 postmortem. So the anti-mortem wounds are -- these are all
19 anti-mortem. There's quite a few postmortem wounds to the
20 face. Let me try to get you a number on ---

21 Q. Are you telling this jury that the person who did this
22 continued to stab her in the face after she had deceased?

23 A. That is correct. Let's see. The postmortem, incised
24 wounds to face and head, at least eleven times to the face.

25 Q. I'm going to show you what's already been admitted into

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1 evidence, State's exhibit 63 and 67. I'll ask you to take a
2 look at 63 and 67.

3 A. Okay.

4 Q. Can you tell the jury what these are?

5 A. These are knives, Chicago Cutlery brand. One of them
6 appears to be a Santoku style with a curved radius at the
7 end. And the other is a Classic Chef's knife, five, six
8 inches, sharp point. All these have micro serrations at the
9 blade, very, very, very small serrations.

10 Q. Are these wounds on Mr. Wells -- well, let me ask you
11 this. You can't tell if one of these knives is consistent
12 with the wounds on a particular person?

13 A. I cannot, no, sir.

14 Q. Can you tell this jury if those knives are consistent
15 with the wounds that you saw in both of these autopsies?

16 A. Those knives could have absolutely caused any of these
17 wounds, yes.

18 Q. If you'll just answer any questions ---

19 A. Yes, sir.

20 Q. --- Defense counsel may have.

21 A. Thank you.

22 **Cross Examination by Mr. Erwin:**

23 Q. Good afternoon, Dr. Fulcher.

24 A. Thank you.

25 Q. Okay. So, gosh, it's tough, but all right. Helen,

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- 1 Mrs. Wells, ---
- 2 A. Yes.
- 3 Q. --- you're telling us that she was -- she had -- well,
4 first of all, she was seventy-seven years old, right?
- 5 A. Correct.
- 6 Q. Okay. She had at least seventy anti-mortem wounds.
- 7 A. At least, yes, sir.
- 8 Q. Okay. And she had at least fourteen postmortem wounds.
- 9 A. Yes, that's correct.
- 10 Q. And she was shot twice.
- 11 A. That's correct, sir. Yes.
- 12 Q. Okay. Mr. Wells, ---
- 13 A. Yes, sir.
- 14 Q. --- was seventy-eight years old?
- 15 A. Yes, sir.
- 16 Q. He had at least twenty-three anti-mortem wounds.
- 17 A. Let me refresh my memory. Yes, twenty-three separate
18 anti-mortem. Yes, sir.
- 19 Q. And he had at least twenty-one postmortem.
- 20 A. That is correct. Those are sharp force wounds. He's
21 got a couple of little contusions and abrasions, but I
22 didn't count those in those numbers.
- 23 Q. Okay.
- 24 A. Small things.
- 25 Q. All right. And he was not shot, right?

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1 A. No, he was not shot.

2 Q. Okay. And let's see. You were talking about Mr.

3 Wells' health ---

4 A. Um-hum (affirmative).

5 Q. --- prior to the death.

6 A. Yes.

7 Q. And you said that he had had some heart -- some stints
8 in his heart or something like that?

9 A. Yeah, he had a metal stint put in one of the coronary
10 arteries. If you're going to have a heart attack or had a
11 heart attack, sometimes what they'll do is they'll put a
12 metal tube in the vessel that feeds the heart and expands
13 and opens the vessel back up. It's what they would do in
14 the cath lab. It's what they do before they do bypass
15 surgery, generally. He did not have a bypass. And the
16 metallic stint that they put in was open and was working.

17 Q. But that's an indicator that he had had some heart ---

18 A. Oh, absolutely. And, in fact, we have evidence on
19 autopsy that he had had a very large posterior left sided
20 heart attack. So a very significant heart attack. That's
21 probably what got him the stint in the first place.

22 Q. Okay. And he had some knee issues as well?

23 A. He did. Although I did not document any pathologic
24 reasons for that. Usually at his age it would be
25 degenerative joint disease, stuff like that. But we do not

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1 generally examine the inside of joints unless we need to for
2 some particular reason.

3 Q. Okay. But some sort of degenerative issue ---

4 A. I would believe so, yes. I have no examination of the
5 knees other than to say there's nothing externally damaged
6 on them except for, I guess, I don't know if there are
7 injuries or not.

8 Q. But I can't remember if it's in your report or not that
9 you -- I know that when you were talking you mentioned that
10 his brain was slightly smaller, I guess?

11 A. Yes, atrophied. So his brain, a normal brain, this
12 man's age, let's see here. I've got to find it. Thirteen
13 hundred grams. I normally see them between thirteen fifty
14 and fourteen hundred. Given his weight and size he had --
15 and this is just me trying to predict clinically what he
16 might have been like, maybe some very minimal dementia type
17 things, very, very early, I would argue. I'm not sure what
18 his actual clinical history was, but his brain was slightly
19 atrophied, yes.

20 Q. Okay. Thank you. I have no further questions.

21 **THE COURT:** Redirect.

22 **MR. WILKINS:** None, Your Honor.

23 **THE COURT:** You can step down and be excused. We
24 appreciate your time.

25 A. Thank you, sir.

DANDRIDGE AKERS - DIRECT EXAMINATION BY MR. WILKINS

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1 **THE COURT:** Thank you. Call your next witness.

2 **MR. WILKINS:** Your Honor, the State calls Dan Akers.

3 **MADAME CLERK:** Mr. Akers, please place your left hand

4 on the Bible and raise your right hand.

5 **Dandridge Akers**, being

6 duly sworn testified as follows;

7 **MADAME CLERK:** Please be seated and state your name for
8 the record.

9 MR. AKERS: My name is Dandridge Akers.

10 Direct Examination by Mr. Wilkins:

11 Q. Mr. Akers, who do you work for?

12 A. AT&T.

13 Q. What do you do for AT&T?

14 A. I'm a retail sales manager.

15 Q. And where are you a retail sales manager?

16 A. Here in Greenville, South Carolina.

17 Q. How long have you been with AT&T?

18 A. Roughly ten years.

19 Q. Okay. And in your capacity as a retail sales manager,

20 are you familiar with the types of documents that AT&T

21 produces or keeps in the common course of their business?

22 A. Yes, sir.

23 Q. Mr. Akers, I'm going to show you what's been marked as

24 State's exhibit 79 and I'm going to ask you if you can

25 recognize these documents?

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1 A. Yes. This is a call history for Gary Wells at
2 Terramont Drive.

3 Q. And what's the phone number associated with that?

4 A. The phone number associated with that is -6912.

5 Q. And are those AT&T documents?

6 A. Yes, they are.

7 Q. Are those documents commonly used by AT&T?

8 A. Yes, they are.

9 Q. And are they kept by AT&T?

10 A. Yes, they are.

11 Q. Used in their common course of business?

12 A. Yes, they are.

13 Q. And have they been altered in any way?

14 A. No, sir.

15 **MR. WILKINS:** Your Honor, State moves 79 into evidence.

16 **MR. ERWIN:** Without objection.

17 **THE COURT:** In without objection.

18 (Whereupon State's exhibit 79 was admitted into
19 evidence)

20 **MR. WILKINS:** That's all I have, Your Honor.

21 **MR. ERWIN:** I don't have any questions for this
22 witness, Your Honor.

23 **THE COURT:** Okay. You can step down and be excused.

24 Thank you. I think this is probably a good time for us to
25 take our afternoon break. So we'll take a break til 3:30.

HENRY C. HAMMETT - PROFFERED TESTIMONY BY MR. ERWIN

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1 (Whereupon the jury exited the courtroom at 3:15 pm)

2 **THE COURT:** Would this be a good time to go ahead and
3 do your in-camera?

4 **MR. ERWIN:** That's exactly what I was going to say,
5 Your Honor.

6 **THE COURT:** Detective Hammett, would you come on back
7 up. You're already sworn in.

8 **Proffered Testimony by Mr. Erwin:**

9 Q. All right. Investigator Hammett, ---

10 A. Yes, sir.

11 Q. --- I believe the last thing that I asked you was do
12 you -- are you aware of any evidence in this case that would
13 suggest that Jonathan was not with his phone and car at the
14 time of the killing?

15 A. Yes, sir. You asked me that, yes, sir.

16 Q. You are. As long as there's no jury in here I'll go
17 ahead and ask you the next question. What is that evidence?

18 A. A statement that he made at some point after we
19 interviewed him, yes, sir.

20 Q. Right. So you did -- you did two interviews with
21 Jonathan?

22 A. Yes.

23 Q. One before he was arrested and one after he was
24 arrested?

25 A. Correct, yes.

HENRY C. HAMMETT - PROFFERED TESTIMONY BY MR. ERWIN

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1 Q. And in the second interview after he was arrested,
2 right after he was arrested, he told you that he had fallen
3 asleep at Shirley's house that night, ---

4 A. Yes.

5 Q. --- right?

6 A. Yes.

7 Q. And that she had taken the car?

8 A. Yes.

9 Q. And that his phone was in the car?

10 A. Yes.

11 Q. And that he didn't know where she went?

12 A. Correct.

13 Q. Okay. I have no further questions.

14 **THE COURT:** All right. Does the State want to ask any
15 questions?

16 **MS. STROM:** No, sir.

17 **THE COURT:** All right. You can step down. Thank you.
18 We'll take our break now.

19 **MR. ERWIN:** Thank you, Your Honor.

20 (Whereupon court was in recess at 3:18 pm)

21 (Whereupon court reconvened at 3:33 pm)

22 **THE COURT:** Thank you. Take your seats. State ready?

23 **MR. WILKINS:** Yes, Your Honor. We intend to call the
24 custodian of records for Sprint. If you recall yesterday,
25 we had State v. Council motions. So I think the Defense

1 wants to contemporaneously object to these records based on
2 the prior -- based on our prior hearing yesterday.

3 **THE COURT:** Okay.

4 **MR. ERWIN:** And, Judge, we're just trying to maintain
5 that record that we tried to set yesterday. And so I think
6 with the records actually coming in is probably when we need
7 to do that. And if that's going to happen next, I just
8 wanted to let you know that's what -- that's what we'll be
9 doing.

10 **THE COURT:** All right. And I think you should because
11 this is -- I've read some more since this morning with some
12 of the cases that Stuart so kindly got together for me. And
13 while I feel very comfortable with my ruling, it's still a
14 fertile, new ground that's still being plowed on the issue
15 of historical data analysis. So -- but you're on record.
16 And if you want to -- so you're going to object at the
17 proper time or ---

18 **MR. ERWIN:** Yeah, Judge. And when they actually move
19 to introduce it, we'll ask to take up a matter of law
20 outside the presence of the jury. And then Stuart will put
21 on the record our prior objections that we made yesterday
22 just to contemporaneously get it done.

23 **THE COURT:** Okay.

24 **MR. WILKINS:** No objection from us.

25 **THE COURT:** Okay.

1 **MR. ERWIN:** Thank you, Your Honor.

2 **THE COURT:** I think I understand.

3 **MS. STROM:** I would have thought we would have just
4 done it now and then he could make the objection then.

5 **MR. ERWIN:** That was -- I guess that was the other
6 thing, Judge. If you don't want to have the jury come ---

7 **THE COURT:** Well, I'd rather we go ahead, ---

8 **MR. ERWIN:** We could talk about it now.

9 **THE COURT:** --- it's not going to change. I mean, your
10 motion -- I'd rather go ahead and dispose of it now.

11 **MR. ERWIN:** Okay.

12 **THE COURT:** So your motion is? I would not call it in
13 limine at this point because ---

14 **MR. SARRATT:** That's right.

15 **THE COURT:** --- in limine is before trial. And ---

16 **MR. ERWIN:** Right.

17 **MR. WILKINS:** It's ripe.

18 **THE COURT:** I think it is ripe. I think that's a good
19 word to use, just witnesses coming up. And so I think, my
20 understanding of record protection, that this would suffice.

21 **MR. ERWIN:** Okay. And as with all the cell phone
22 stuff, I'm going to concede ---

23 **THE COURT:** Okay.

24 **MR. ERWIN:** --- to my co-counsel.

25 **MR. SARRATT:** Thank you, Your Honor. So, yes, I do

1 have a motion to suppress the records themselves under the
2 Fourth Amendment of the United States Constitution and as
3 well under the South Carolina Constitution, Article 1,
4 section 10.

5 I further object for the grounds stated previously.
6 And those are the cases that I provide, I'm sorry, provided
7 you that the expert testimony was unreliable. That's sort
8 of a separate argument.

9 Again, this motion that I'm making right now is just in
10 the Fourth Amendment right to privacy in the cell phone
11 records themselves. This was addressed by United States,
12 I'm sorry, State versus Drayton, a recent Court of Appeals
13 case that was decided, if I'm not mistaken, April.

14 However, that case, in determining that it did not find
15 a right to privacy in historical cell site records, cited a
16 federal case, that is a District Court case out of Maryland,
17 United States versus Graham that also found there was no
18 right to privacy of the historical cell site records.

19 However, since the Drayton case was decided, United
20 States versus Graham went up on appeal to the Fourth Circuit
21 Court of Appeals. They determined, and they are the first
22 circuit that I am aware of, that determined that you do have
23 an expectation of privacy in historical cell site data.
24 Therefore, I believe the introduction of the records
25 themselves would implicate the Fourth Amendment.

1 The obstacle, the main obstacle that I have to overcome
2 is that these records were obtained under Title 18 United
3 States code section 2702, which is part of the Electronic
4 Communications Privacy Act. And it governs voluntary
5 disclosures by the government.

6 The process there is that as long as a government
7 agency or a law enforcement official certifies that there is
8 some exigent circumstance, then the records custodian, the
9 cell phone company can choose to voluntarily turn over the
10 information to law enforcement. That would make the cell
11 phone companies a private actor, and, therefore, there would
12 be no Fourth Amendment implication, and I would not have
13 standing to raise any Constitutional grounds.

14 The only way to overcome that obstacle is I have to
15 show this Court that these cell phone providers in
16 disclosing those records were -- essentially became an agent
17 of law enforcement in doing so. My argument on those
18 grounds is that they did so to no benefit of themselves,
19 this only served a benefit to law enforcement.

20 And, furthermore, there was testimony earlier from
21 Investigator Hammett that he called in a SLED Agent Barton
22 to do a profile. And in his profile in his expert opinion
23 he determined that this was a personal attack against the
24 Wellses, that there was no broader danger to anyone else,
25 that this was sort of a personalized thing.

1 So I would argue that there were no exigent
2 circumstances warranting an exigency order under 18 U.S.C.
3 2702.

4 **THE COURT:** Is that before me? I mean, that's been
5 granted. I can't, I mean, that's -- you can't argue against
6 that order. I mean, I can't do anything about that order, I
7 don't think. I ---

8 **MR. SARRATT:** Well, it's ---

9 **THE COURT:** --- mean, I didn't issue it. And I'm not
10 an Appellate Court ...

11 **MR. SARRATT:** The order for the production of records?

12 **THE COURT:** Right.

13 **MR. SARRATT:** Well, and that's the thing, it's not
14 really an order. It's just -- it's a form that they check a
15 box that says there's exigent circumstances. And I believe
16 the reasons cited were a double homicide investigation.

17 There was no ---

18 **THE COURT:** Well, you referred to it as an order at one
19 point.

20 **MR. SARRATT:** I misspoke if I referred to it as an
21 order because that's really the crux of my argument is that
22 there should have been some order. The proper procedure
23 would have been to obtain those records under section 2703,
24 which governs compelled disclosures of subscriber
25 information. The call detail records, the cell phone

1 records, those are subscriber information as defined under
2 the Electronic Communications Privacy Act.

3 Because there was no process, there was no affidavit,
4 there was no order from the magistrate, the government
5 manipulated the cell phone companies in providing this
6 information voluntarily by misrepresenting and exaggerating
7 the exigency that did not exist. Therefore, the cell phone
8 company was manipulated into acting at the government's
9 behest. And that manipulation makes the cell phone company
10 an agent of law enforcement, thereby triggering the Fourth
11 Amendment.

12 **THE COURT:** Well, I'll hear from the State. A couple
13 of things I'm still not clear on from your argument, you're
14 arguing that it was -- that some profiler later said that
15 this was a personal thing and that, therefore, the law
16 enforcement pulled a fast one on the phone company by saying
17 there were exigent circumstances. Which came first?

18 **MR. SARRATT:** As I understand, on October 4th the SLED
19 agent came in and said there was no exigency ---

20 **MR. WILKINS:** I'm sorry, did you say SLED agent? He
21 didn't say there was no exigency.

22 **MR. SARRATT:** He said it was personalized to the
23 Wellses, I believe.

24 **MR. WILKINS:** No, ---

25 **MR. SARRATT:** He didn't say on the stand that there was

1 no exigency. He said that it was localized and personalized
2 to the Wellses.

3 **THE COURT:** And that predated the ...

4 **MR. SARRATT:** That predated the request for the
5 records, yes.

6 **THE COURT:** Well, it would have made some difference,
7 of course, if it had post dated it. But even though it
8 predated it, I don't think that the law enforcement, based
9 on the opinion of another agency, has to accept that, I
10 mean, on complete face value. I mean, that's an aid to the
11 investigation and not a controlling factor of the
12 investigation. So I'll be glad to hear from the State, but
13 I think I've pretty well made it clear.

14 And going back to Drayton, I mean, that's the case law
15 in this State. And I don't follow Maryland law. And I try
16 to stay out of federal court law unless it reaches up high
17 enough to -- to get my attention and to get the South
18 Carolina Supreme Court's attention. So go ahead.

19 **MR. WILKINS:** And I agree with you, Your Honor.
20 There's only one thing I want to add. In this particular
21 case Defense counsel has said that there needs to be an
22 agency relationship, that the phone company was acting on
23 behalf of law enforcement creating an agency relationship.

24 In this particular case Jonathan Rhodes has no
25 contractual relationship with the phone company. He doesn't

1 have a phone in his name. He doesn't -- I don't know if he
2 pays the bill or not, but Eric Cade has the contractual
3 relationship. So he doesn't have standing to argue -- to
4 make this argument as well.

5 **THE COURT:** Yeah.

6 **MR. SARRATT:** May I be heard on that?

7 **THE COURT:** Yeah.

8 **MR. SARRATT:** I would argue that the right that he is
9 seeking to have protected is his right to privacy in his
10 location. And so, therefore, it would not matter if the
11 phone was in his name.

12 The phone essentially acts as a tracking device. And
13 as long as it tracks his movements, then he does have the
14 right to privacy. It's not a right to privacy necessarily
15 in the phone itself, but it's the signals that are sent off
16 of the towers and bounce back and track his location.
17 That's what he has a right to privacy in.

18 And this order requested records from, I believe,
19 October 1st through the 4th. So it would have been four
20 days of essentially surveillance of his location. So I
21 would argue that while it is true he did not have a
22 contractual relationship, that's not the basis of this
23 privacy interest. So that wouldn't have bearing on the
24 analysis.

25 Furthermore, I should clarify, in the Graham opinion

1 under the Fourth Circuit it did say that -- well, opined
2 that anything between fourteen and two hundred and twenty-
3 one days -- it was two hundred and twenty-one days with
4 surveillance in that case. And they said that certainly was
5 too much. And I believe they said anything between fourteen
6 and two hundred and twenty-one would likely be too much, but
7 they were not going to create a bright line as to how much
8 surveillance is enough to trigger the Fourth Amendment.

9 Here we have four days. So there's no specific
10 guidance on whether that would be excessive or not and
11 whether that would be enough to trigger. I obviously would
12 argue that four days is enough.

13 My reasoning for that is that the Fourth Amendment
14 protection is the strongest when you're within your home.
15 And four days is enough to surveil a person when they're in
16 their home and outside of their home.

17 And so, therefore, my client's Fourth Amendment rights
18 are at their -- when he is in his home. Therefore, even
19 though it was only four days, much less than the fourteen
20 that the Fourth Circuit said would be an invasion of
21 privacy, it still suffices.

22 In addition, and I also, even though you're not
23 inclined to follow other districts, and I understand that,
24 they're not binding, they're simply persuasive. Under the
25 South Carolina Constitution it enumerates a specific privacy

1 right, that is, more limited than the Federal Constitution.
2 Again, the Federal Constitution says four. States are free
3 to restrict that or enhance that right, and South Carolina
4 has specifically in its State Constitution.

5 So, therefore, even if you do not find that the federal
6 cases are persuasive, the cases Forrester and other such
7 cases in South Carolina that do expound upon the State right
8 to privacy that I also raise a motion to suppress on those
9 grounds as well.

10 **THE COURT:** All right. Well, I find for a variety of
11 reasons. Number one, I do not find that he has standing.
12 Your argument is very esoteric in a way regarding his right
13 in privacy of people not knowing where he is at particular
14 times.

15 I mean, that opens a whole can of issues when, you
16 know, I don't know if you have a right of privacy when
17 you're walking down the street. Maybe you do. Maybe you
18 have a right of nobody should know you're walking down the
19 street. I don't know when you're on a public highway how
20 much your right of privacy has. I know you've got some
21 privacy in your automobile.

22 But in this particular case the records were -- if
23 anybody had any right of privacy in the divulging of those
24 records, it would be Mr. Cade. And, of course, he has not
25 raised that. He's not a party. So I'm going to allow the

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1 introduction of the records.

2 **MR. SARRATT:** Thank you, Your Honor.

3 **MR. ERWIN:** Thank you, Your Honor.

4 **THE COURT:** Bring in the jury.

5 (Whereupon the jury entered the courtroom at 3:47 pm).

6 **THE COURT:** Call your next witness.

7 **MR. WILKINS:** Your Honor, the State calls Ricardo Leal.

8 **THE COURT:** Members of the jury panel, I kept you out a
9 little longer than I had planned because I told you earlier
10 I have to make evidentiary rulings. And an issue came up.
11 I had to hear it, and I had to rule on it rather than have
12 you come in and then send you back out.

13 We got to a certain point in the trial. And so I kept
14 you in there a little bit longer, but it'll help move the
15 case quicker in the long run. So I apologize, but it was
16 done with reason.

17 **MR. WILKINS:** Thank you, Your Honor.

18 **THE COURT:** Not that everything I do has reason, but
19 that one did.

20 **MADAME CLERK:** Mr. Leal, please place your left hand on
21 the Bible and raise your right, please.

22 **Ricardo Leal,** being duly
23 sworn testified as follows;

24 **MADAME CLERK:** Please be seated and state your name for
25 the record.

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1 **MR. LEAL:** Thank you, ma'am. My name is Ricardo, last
2 name's Leal. It's R-i-c-a-r-d-o. Last name's spelled L-e-
3 a-l.

4 **Direct Examination by Mr. Wilkins:**

5 Q. Mr. Leal, who do you work for?

6 A. I work for Sprint.

7 Q. And what do you do for Sprint?

8 A. I am a records custodian for Sprint.

9 Q. And what is Sprint?

10 A. So Sprint is a telecommunications corporation. We are
11 a cellular telephone operator.

12 Q. And how long have you worked for Sprint?

13 A. I've worked for Sprint for thirteen years.

14 Q. And in your capacity as records custodian are you able
15 to identify certain documents that Sprint keeps in its
16 ordinary course of business?

17 A. Yes, sir.

18 Q. I'm going to show you State's exhibit 86. All right.

19 Mr. Leal, I'm going to show you State's exhibit 86 and ask
20 if you can identify that document for me?

21 A. Thank you. This is a response from Sprint that is
22 dated October 19th of 2012 that shows information that was
23 asked for through legal process. So it would have been a
24 search warrant, court order or a subpoena.

25 Q. And are those Sprint records that you're looking at?

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1 A. Yes, sir.

2 Q. And are those records kept by Sprint in the ordinary
3 course of their business?

4 A. Yes.

5 Q. And you can certify that those are -- have not been
6 altered or amended in any way?

7 A. Yes, sir.

8 Q. And did Sprint respond to that request from law
9 enforcement and that's what they sent them?

10 A. Yes, sir.

11 **MR. WILKINS:** Your Honor, State moves 86 into evidence.

12 **MR. ERWIN:** Judge, subject to our prior objections.

13 **THE COURT:** Based on the -- I'm going to allow it over
14 objection based on my earlier rulings.

15 **MR. WILKINS:** Thank you, Your Honor.

16 (Whereupon State's exhibit 86 was admitted into
17 evidence)

18 Q. All right. Mr. Leal, I'm going to show you State's
19 exhibit 86. If you can tell me what this page says right
20 here. This is -- right there. At the top there, what does
21 that tell us?

22 A. So this is the subscriber information for the
23 particular telephone number.

24 Q. And what telephone number is that?

25 A. -7553. It shows the name under that specific

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1 telephone number as well as an address for that subscriber
2 or Sprint subscriber.

3 Q. And who is this -- who is that number subscribed to?

4 A. It's in the name of Richard Cade.

5 Q. And the address that y'all have on account?

6 A. The most recent one was the Glen Road in
7 Greenville, South Carolina 29607.

8 Q. I'm going to show you -- is there -- I'm going to show
9 you another page of State's exhibit 86. Is there a number
10 -- is there another number associated with this person?

11 A. Yes. So there's a -0257 telephone number that
12 was also under the account in the name of Richard Cade at
13 Glen Road in Greenville, South Carolina.

14 Q. All right. I'm going to show you two CDs, State's
15 exhibits 83 and 84.

16 A. Okay.

17 Q. That's State's exhibits 83, I mean, sorry, 84 and
18 State's exhibit 83 and ask you if you recognize these CDs?

19 A. I do.

20 Q. What's on those -- have you reviewed those CDs?

21 A. Yes, I have.

22 Q. Are those your initials on those CDs as well?

23 A. Yes, sir.

24 Q. All right. And are you aware that those were in
25 compliance with the request by law enforcement?

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1 A. Yes.

2 Q. All right. What's on those CDs?

3 A. There are call detail records as well as information
4 for the particular Sprint case.

5 Q. All right. I'll ---

6 A. But when we receive a request, we get -- the
7 information all goes into our system at Sprint. And we
8 store that information for an amount of time. We have to.
9 And so the information that's on the disks is information
10 that was asked for through legal process. And I verified
11 the information within the case numbers at Sprint, verified
12 all the information that we had, made sure it was all
13 accurate.

14 Q. All right. I'm going to refer you to State's exhibit
15 84. There's a phone number associated with that. Can you
16 tell us what phone number that is and what documents are on
17 that CD?

18 A. It's cell phone records for -7553. There's call
19 detail records with cell site information. There's a cell
20 tower list, also known as a repoll list, it's r-e-p-o-l-l,
21 as well as per call measurement data information, which is
22 information for call records as well. It gives a little bit
23 more insight to what was actually happening within the
24 network on the -- for that time-frame.

25 **MR. WILKINS:** And, Your Honor, I think I neglected --

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1 the State moves exhibits 83 and 84 into evidence.

2 **MR. ERWIN:** Again, subject to our prior objections.

3 **THE COURT:** Yeah, over objection based on my earlier
4 rulings. So objection's overruled.

5 (Whereupon State's exhibits 83 and 84 were admitted
6 into evidence)

7 Q. State's exhibit 84, is there cell tower information on
8 that disk as well?

9 A. Yes, sir.

10 Q. And those are Sprint cell tower information?

11 A. Correct.

12 Q. All right. What other information is on there
13 regarding cell towers?

14 A. There's the repoll list as well as the first and last
15 cell information for that specific -- the records for those
16 specific documents for the time-frame that the information
17 was asked for. And then there's PCMD, which is per call
18 measurement data. And it's a -- it's information that is
19 more insightful to what was actually happening on those
20 given transactions for those times or time-frame.

21 Q. And is that the same for State's exhibit 83? If you
22 could tell us that phone number.

23 A. Yes, sir. So this number is the -0257 number. And
24 it as well had the same information, per call measurement
25 data, call detail records with cell site information as well

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1 as the cell site key or repoll list. In order to get a
2 summation for the information that you're looking at on the
3 call detail records you have to refer to this list that
4 gives you the actual latitude and longitude for the towers
5 that are being utilized when these calls took place.

6 Q. Answer any questions the Defense counsel may have.

7 MR. ERWIN: I don't have any questions for this
8 witness.

9 THE COURT: All right. You can step down and be
10 excused. We appreciate your time.

11 A. Thank you, Your Honor.

12 THE COURT: Thank you. Call your next witness.

13 MR. WILKINS: Your Honor, the State calls Kenneth
14 LeCesne.

15 MADAME CLERK: Mr. LeCesne, please come forward and
16 place your left hand on the Bible and raise your right hand.

17 Kenneth LeCesne, being
18 duly sworn testified as follows;

19 MADAME CLERK: Please be seated and state your name for
20 the record.

21 MR. LeCESNE: My name is Kenneth LeCesne. That's L-e-
22 C-e-s-n-e.

23 **Direct Examination by Mr. Wilkins:**

24 Q. All right. Mr. LeCesne, who do you work for?

25 A. I work for T-Mobile MetroPCS cellular telephone

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1 company.

2 Q. And how long have you worked for them?

3 A. Since August of 2011.

4 Q. And what is T-Mobile?

5 A. T-Mobile is a cellular telephone company. MetroPCS is
6 a cellular telephone company that T-Mobile actually
7 purchased mid 2014.

8 Q. And what do you do for them?

9 A. I am a records custodian.

10 Q. Does that give you the ability to recognize T-Mobile
11 records?

12 A. Yes, sir.

13 Q. I'm going to show you State's exhibits 87 and 88 and
14 ask you if you recognize these documents?

15 A. Yes, sir.

16 Q. What are those?

17 A. State's exhibit 87 and State's exhibit 88 are
18 subscriber information for two T-Mobile telephones.

19 Q. Okay. And what are the numbers?

20 A. The mobile number for State's exhibit 87 is -
21 3532. And State's exhibit 88, the phone number is -
22 9391.

23 Q. And can you tell us who the owner of those accounts
24 are?

25 A. On State's exhibit 87, it's a prepaid account. The

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1 billing account name that was given at the time of the
2 purchase, service and/or the phone was purchased from T-
3 Mobile is a Shirley Rogers.

4 On State's exhibit 88, it's a post paid account. In
5 other words, it's an account where there's a credit check
6 done and the name that was given on that particular account
7 is Helen Wells.

8 Q. Thank you.

9 **MR. WILKINS:** Your Honor, the State moves, I don't know
10 if I've moved them into evidence or not, 87 and 88 into
11 evidence.

12 **MR. ERWIN:** Without objection, Your Honor.

13 **THE COURT:** In without objection.

14 (Whereupon State's exhibits 87 and 88 were admitted
15 into evidence)

16 Q. I'm going to show you three exhibits, 81 -- 80, 81 and
17 82. It'll be three CDs. State's 81, 82 and 83, do you
18 recognize these CDs?

19 A. Yes, sir, all three exhibits, 81, 82 and 83, I'm sorry,
20 80, 81 and 82. These are the records for specific phone
21 numbers. My initial's in the top left hand corner. I
22 actually went over these exhibits last night with the
23 prosecutor in the prosecutor's office.

24 Q. And are those true and accurate representations of T-
25 Mobile phone records for those numbers on there?

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1 A. Yes, sir.

2 MR. WILKINS: Your Honor, State moves ---

3 Q. Are they used in the ordinary course of business?

4 A. Yeah, they're used in the ordinary course of business.

5 They're kept in the ordinary course of business. And then

6 they're sent out when the proper documentation comes into

7 the Subpoena Compliance Unit for T-Mobile requesting these

8 records of the phone with a search warrant and court order.

9 MR. WILKINS: State moves 80, 81 and 82 into evidence.

10 MR. ERWIN: Without objection, Your Honor.

11 THE COURT: In without objection.

12 (Whereupon State's exhibits 80, 81 and 82 were admitted
13 into evidence)

14 Q. If you could just tell us the phone numbers on exhibits
15 80, 81 and 82, that would be fantastic.

16 A. The phone number without the area code is -7678.

17 That is State's exhibit 80. The phone number on State's

18 exhibit 81 is -3532. That's without the area code. And

19 the State's exhibit 82, the phone number is -9391.

20 Q. Answer any questions Defense counsel may have.

21 MR. ERWIN: I don't have any questions for this
22 witness.

23 THE COURT: Thank you. We appreciate your time. You
24 can be excused.

25 A. Thank you, sir. Great southern hospitality. I'm from

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1 the south, too. So ...

2 **THE COURT:** Thank you. Call your next witness.

3 **MR. WILKINS:** The State calls Michael Rainey.

4 **MADAME CLERK:** Mr. Rainey, please place your left hand
5 on the Bible and raise your right hand.

6 **Michael Rainey, being:**
7 duly sworn testified as follows;

8 **MADAME CLERK:** Please be seated and state your name for
9 the record.

10 **MR. RAINEY:** Investigator Michael Rainey.

11 **Direct Examination by Mr. Wilkins:**

12 Q. Investigator Rainey, with whom are you employed?

13 A. The Greenville County Sheriff's Office.

14 Q. How long have you been employed with the Greenville
15 County Sheriff's Office?

16 A. Twenty-one years.

17 Q. And what do you do for them?

18 A. Data recovery.

19 Q. Can you tell this jury, what is data recovery?

20 A. Computer and cell phone recovery, computer forensics,
21 cell phone forensics.

22 Q. And how do you do that?

23 A. Software. We have issued software from different
24 manufacturers.

25 Q. And what do you do with that software?

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1 A. Depending on -- if we're analyzing a computer, we run
2 the computer on our forensics computer and obtain data off
3 of it or we run -- we hook the cell phone up to a
4 proprietary software and run a forensic exam through it.

5 Q. Were you -- were you ever asked to conduct cell phone
6 data recovery in this case?

7 A. Yes, I was.

8 Q. And were you ever asked to conduct cell phone data
9 recovery for a phone belonging to Eric Cade?

10 A. Yes, I was.

11 Q. I'm going to show you two exhibits. Well, I'm going to
12 show you one -- State's exhibit 90 and see if you recognize
13 that.

14 A. Looks like a cell phone forensics disk that we make.

15 **THE COURT:** You need to lift your voice up a little
16 bit.

17 A. It looks like a cell phone forensics disk that we make.

18 Q. Okay. All right. Again, State's exhibit 90 is -- is
19 that one of your cell phone dumps of Eric Cade?

20 A. It would appear to be, yes.

21 Q. And when you do a cell phone dump, what kind of
22 information would be on there?

23 A. Depending on the cell phone itself we would get the
24 data that's recovered off of the cell phone listed as our --
25 per our forensic device, call logs, text messages, calls

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1 received, voicemail, pictures, videos, in some applications,
2 deleted messages.

3 Q. Okay.

4 **MR. WILKINS:** Your Honor, the State moves exhibit 90
5 into evidence.

6 **MR. ERWIN:** Without objection, Your Honor.

7 **THE COURT:** In without objection.

8 (Whereupon State's exhibit 90 was admitted into
9 evidence)

10 Q. Now, I'm going to show you State's exhibit 98 as well
11 and see if you recognize that.

12 A. It would be part of the cell phone examination, ---

13 Q. Okay.

14 A. --- printed out version.

15 Q. And then specifically can you look to see what part of
16 the cell phone extraction it would be?

17 A. It would appear to be incoming and outgoing text
18 messages.

19 Q. And do you know what -- what number -- what is the
20 owner's number of that?

21 A. On this excerpt it won't show me.

22 Q. Well, you've already -- you already testified it's Eric
23 Cade's?

24 A. Correct.

25 **MR. WILKINS:** Your Honor, the State moves exhibit 98

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1 into evidence.

2 **MR. ERWIN:** Without objection, Your Honor.

3 **THE COURT:** In without objection.

4 (Whereupon State's exhibit 98 was admitted into
5 evidence)

6 Q. All right. So I'm going to show you what you've
7 already testified to as part of the extraction.

8 A. Correct.

9 Q. Is this what it looks like?

10 A. That is correct.

11 Q. All right. I'm going to refer you to the second line,
12 2795. It's the second line.

13 A. Okay.

14 Q. What is the first thing you see there?

15 A. Cell phone number.

16 Q. Okay. And then to the right of that?

17 A. Would be the name.

18 Q. Name. And then the next column?

19 A. I'm sorry, I'm having a hard time seeing it ---

20 Q. Sure.

21 A. --- with the glare. It would -- it's the date that it
22 came in.

23 Q. And then the next column?

24 A. Would show that if it was sent or received.

25 Q. Okay. And the next column?

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1 A. Would be if it was read or not, inbox, read box.

2 Q. Okay. And then whatever the text says?

3 A. Correct.

4 Q. All right. So that would be a sent text to Jonathan
5 Rhodes from the number on the far left?

6 A. Correct. It's an outgoing message.

7 Q. It's an outgoing message. And that's -- the name
8 Jonathan Rhodes, is that what's plugged into the phone at
9 that time?

10 A. Yes.

11 Q. They can plug whatever they want in there.

12 A. Right. That would be -- it's pulling from their
13 contact list.

14 Q. Their contact list, okay. All right. I'm going to
15 show you various exhibits.

16 (Whereupon a bench conference was held off the record,
17 in the presence of the jury, but out of their hearing)

18 (Whereupon the bench conference was ended)

19 Q. Investigator Rainey, I'm going to show you what's
20 marked as State's exhibit 91 and ask if you recognize that?

21 A. Yes, I do.

22 Q. What is that?

23 A. It's the front page of a cell phone generated report
24 that we conduct.

25 Q. Was that conducted by you?

MICHAEL RAINEY - DIRECT EXAMINATION BY MR. WILKINS

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1 A. Yes, it was.

2 Q. And from what phone?

3 A. Jonathan Rhodes' cell phone.

4 Q. I'm going to show you what's marked as State's exhibit

5 92. Do you recognize that?

6 A. It's part of the cell phone report.

7 Q. That was conducted by you?

8 A. That's correct.

9 Q. 94.

10 A. A photo from the cell phone.

11 Q. 93.

12 A. Further photos from the cell phone report.

13 Q. And 95.

14 A. Would be SMS or text messages from the cell phone
15 report.

16 **MR. WILKINS:** Your Honor, State moves 91, 92, 93, 94
17 and 95 into evidence.

18 **MR. ERWIN:** Without objection, Your Honor.

19 **THE COURT:** In without objection.

20 (Whereupon State's exhibits 91 - 95 were admitted into
21 evidence)

22 Q. I am going to show you, Investigator Rainey, one quick
23 thing, if you can explain to this jury. You previously
24 testified that this was part of the extraction from the cell
25 phone.

MICHAEL RAINEY - DIRECT EXAMINATION BY MR. WILKINS

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- 1 A. That's correct.
- 2 Q. Where would this have come from on the extraction?
- 3 A. This would be part of the cell phone. It would come
- 4 from the photos gallery.
- 5 Q. And to the far right there's this red yes on there.
- 6 A. Yes, sir.
- 7 Q. Can you tell us what that means?
- 8 A. It shows up in red as a yes mark. It would show that
- 9 it had been previously deleted.
- 10 Q. Okay. So these three pictures had previously been
- 11 deleted off the phone?
- 12 A. Correct.
- 13 Q. All right. How was your software able to recover them?
- 14 A. Again, depending on the manufacturer and the model of
- 15 the phone, our forensic software is able to retrieve some
- 16 data from some phones. Each cell phone make, model is
- 17 different.
- 18 Q. And is it able to receive, sorry, excuse me, retrieve
- 19 data that a user might believe had been deleted off their
- 20 phone?
- 21 A. That is correct, yes.
- 22 Q. And is that what happened in this case?
- 23 A. Yes.
- 24 Q. Okay. What about these photos?
- 25 A. Yes. One marked with a red yes would indicate that it

ERIC CADE - DIRECT EXAMINATION BY MR. WILKINS

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1 had been deleted.

2 Q. And the bottom two, were those deleted?

3 A. No. No, they were not.

4 Q. Please answer any questions Defense counsel may have.

5 **MR. ERWIN:** I have no questions for this witness.

6 **THE COURT:** You can step down and be excused. We
7 appreciate your time.

8 A. Thank you.

9 **THE COURT:** Thank you. Call your next witness.

10 **MR. WILKINS:** Your Honor, the State calls Eric Richard
11 Cade.

12 **MADAME CLERK:** Mr. Cade, please come forward and place
13 your left hand on the Bible and raise your right hand.

14 **Eric Cade,** being duly
15 sworn testified as follows;

16 **MADAME CLERK:** Please be seated and state your name for
17 the record.

18 **MR. CADE:** Eric Cade.

19 **Direct Examination by Mr. Wilkins:**

20 Q. Mr. Cade, where do you live?

21 A. You want my address?

22 Q. Oh, no, just what city do you live in?

23 A. Greenville, South Carolina.

24 Q. And how long have you lived in Greenville?

25 A. All my life, basically.

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1 Q. And what kind of education do you have?

2 A. I have a college education. A college degree from the
3 University of South Carolina.

4 Q. And where do you work?

5 A. Master Power Transmission.

6 Q. I'm going to take you back to October/September -- I'm
7 going to take you back to 2012.

8 A. Okay.

9 Q. Did you ever have the occasion to meet Jonathan Rhodes?

10 A. Yes.

11 Q. Okay. Can you tell this jury how you met Jonathan
12 Rhodes?

13 A. I met Jonathan in 2007. I met him at Publix. He was
14 giving someone a jump with their car. That's how we met. I
15 was impressed.

16 So I approached and told him that I wanted to mentor
17 him. And he told me that he was in foster care. So my
18 heart went out to him. That's how I met him.

19 Q. And I'm just going to make sure you speak up ---

20 A. Okay.

21 Q. --- and into that microphone.

22 A. All right.

23 Q. Do you see Jonathan Rhodes in the courtroom today?

24 A. I do.

25 Q. Where is he located?

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1 A. He's right there.

2 (Whereupon the witness pointed to the Defendant)

3 Q. Okay.

4 **MR. WILKINS:** And if the record will reflect he was
5 pointing to the Defendant, Your Honor.

6 Q. So that was back in 2007. As a mentor how did you help
7 Jonathan Rhodes?

8 A. I mean, we just, I mean, I encouraged him. I mean,
9 basically he was my friend. I befriended him. I was like a
10 father to him, you know, in a sense, like a brother. So ...

11 Q.. Did you assist him financially?

12 A. I did.

13 Q. How did you do that?

14 A. I mean, I gave him money, you know, helped him with
15 clothes and things like that. He was a teenager. So he --
16 I was sort of like a father figure and he was like my child.
17 So I did things that a parent would do.

18 Q. And did you ever invite him to -- did you ever give him
19 a place to stay?

20 A. I did.

21 Q. When did you give him a place to stay?

22 A. It would have had to be in 2007, later that year, later
23 that year.

24 Q. And did he live with you up and through 2012?

25 A. Yes.

ERIC CADE - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. And in 2012 were y'all living together as roommates?

2 A. Yes.

3 Q. Where were y'all living?

4 A. Glen Forest Drive, Glen Forest Drive.

5 Q. All right. I'm going to show you real quick State's
6 exhibit 145 real quick. I'll hold it up like this. Is that
7 your address there represented on this map?

8 A. Yes.

9 Q. Glen Forest Drive?

10 A. Glen Forest Drive. That's correct.

11 Q. And do you remember about when y'all moved to Glen
12 Forest Drive?

13 A. Maybe around -- maybe April. I moved alone there
14 first, then he later came.

15 Q. In 2012?

16 A. Yes, that's correct.

17 Q. Okay. So y'all began living there together in April of
18 2012?

19 A. That's correct.

20 Q. Did you provide him a room?

21 A. Yes.

22 Q. What about -- what did Jonathan Rhodes -- did he have a
23 job at that time?

24 A. He was doing something at Salvation Army on Rutherford
25 Road, I think.

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- 1 Q. Was he also into music?
- 2 A. He was into music, yes.
- 3 Q. What was he -- what was that like?
- 4 A. It was good. He was -- he was very poetic. And he
- 5 could rap really well. He was good, very good.
- 6 Q. And what was his rap name?
- 7 A. Really Real or double R.
- 8 Q. And, Mr. Rhodes [sic], at this time, did you have a
- 9 car?
- 10 A. Yes, I did.
- 11 Q. What kind of car did you have?
- 12 A. I had a Mini Cooper.
- 13 Q. What year?
- 14 A. I can't -- I don't remember exactly what year it was.
- 15 Q. And what color was it?
- 16 A. It was -- to me it was garnet, black and white, because
- 17 I'm a Gamecock, but maybe like a maroon color.
- 18 Q. Now at this time did you also provide Jonathan Rhodes a
- 19 cell phone?
- 20 A. I did.
- 21 Q. When did you do that?
- 22 A. April of 2012.
- 23 Q. And did you pay for that cell phone?
- 24 A. I did.
- 25 Q. But did you allow him to use the cell phone at his

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1 will?

2 A. Well, I just added it to my account. I had two cell
3 phones. So I just added one. And that was the cell phone
4 that he used.

5 Q. Okay. And do you know the number of that cell phone?

6 A. I do not.

7 Q. I'm going to show you what's marked as State's exhibit
8 86 that's already been admitted into evidence. This is
9 subscriber information ---

10 A. Okay.

11 Q. --- on your account. If you could look right there.
12 I'm going to point you to that number right there.

13 A. Okay.

14 Q. Do you recognize that number?

15 A. I do not.

16 Q. Is that your -- was that your cell phone number?

17 A. It is not.

18 Q. Would that be Jonathan Rhodes' cell phone number?

19 A. I don't remember.

20 Q. Okay. Well, Mr. Cade, the information on your
21 subscriber information says you've got two cell phone
22 numbers, -7553, right there.

23 A. Okay.

24 Q. And you have another phone number as -0257.

25 A. Um-hum (affirmative).

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1 Q. Do you know which one you could have given to Jonathan
2 Rhodes?

3 A. The -0257 is my number.

4 Q. That's your number?

5 A. That's my number.

6 Q. Okay. So the other one would have been used by
7 Jonathan Rhodes?

8 A. That's correct.

9 Q. So let's go -- you and Jonathan Rhodes were living
10 together at Glen Forest Drive, correct?

11 A. That's correct.

12 Q. Were you -- you were working during that time?

13 A. Yes, I was.

14 Q. Would you give Mr. Rhodes access to your car while you
15 were at work?

16 A. Yes.

17 Q. What was your typical schedule during the day?

18 A. Well, we were doing a start-up. So since we were doing
19 a start-up, ---

20 Q. What's start-up? At your company?

21 A. Right.

22 Q. Okay.

23 A. We had separated from the company that we used to sell
24 our product. So what we did was we started to sell it
25 within ourselves. So when we did that, we took over every

ERIC CADE - DIRECT EXAMINATION BY MR. WILKINS

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1 aspect of it. So what we did was we started to work maybe
2 from like 7:00 in the morning, sometimes to 6:30, 7:00 at
3 night.

4 Q. So you were working some long hours?

5 A. Yes, working through lunch also.

6 Q. Okay. So how would -- how would your car be utilized
7 during that time?

8 A. Jonathan would have my car.

9 Q. So would he drop you off at work?

10 A. He would.

11 Q. And during -- while you were at work who would have
12 ownership of your car?

13 A. Jonathan.

14 Q. And then would he pick you up from work?

15 A. He would.

16 Q. And at night would y'all do whatever or depending on
17 what the day was?

18 A. Depending on the day. If he didn't have music, he
19 would be there and we would watch television.

20 Q. Did you keep in contact with Jonathan Rhodes about the
21 whereabouts of your car?

22 A. I did not.

23 Q. You didn't? So during the day he had free rein with
24 it?

25 A. That's correct.

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- 1 Q. I'm going to take you to the night of October 1st,
2 2012. Do you remember that day?
- 3 A. I do.
- 4 Q. Can you tell us what -- what did you do after work on
5 October 1st, 2012?
- 6 A. Well, I talked to him earlier that day. And he had a
7 friend who needed -- she needed some assistance with a bill
8 or something. And so she sold us food stamps. So when I
9 got -- when he picked me up, we went to her house.
- 10 Q. Okay. Do you remember what time he picked you up that
11 night?
- 12 A. Maybe six or somewhere afterwards. I don't remember.
- 13 Q. And did he pick you up in your car?
- 14 A. He did.
- 15 Q. And you went to this person's house?
- 16 A. We did.
- 17 Q. Whose house did you go to?
- 18 A. Her name was Porshia.
- 19 Q. Did you know Porshia?
- 20 A. I do not know Porshia.
- 21 Q. Did you see Porshia that night?
- 22 A. Did not see Porshia.
- 23 Q. Did Mr. Rhodes go inside and see ---
- 24 A. He went ---
- 25 Q. --- Porshia?

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1 A. --- inside. I sat in the car.

2 Q. And what was the reason you were going there?

3 A. We were going to -- I gave him the sixty dollars to
4 give to her for her food stamp card. So we was just
5 exchanging the two. And then from there we went grocery
6 shopping, to the Bi-Lo on Verdae.

7 Q. Do you remember about what time you went to Bi-Lo?

8 A. I do not.

9 Q. Sometime after that?

10 A. It was directly after that.

11 Q. Directly after that?

12 A. Yes, directly.

13 Q. And then after that where did y'all go?

14 A. We went back to the apartments. So we unloaded the
15 groceries. And then after we unloaded the groceries and put
16 them up, he said he was going to take Porshia back her card.

17 Q. And so he left the apartment in your car?

18 A. He did.

19 Q. And that -- and is that -- that's the Mini Cooper?

20 A. That's correct.

21 Q. And do you remember what time he left your house that
22 night?

23 A. I do not. It was dark, though.

24 Q. It was dark?

25 A. I don't remember.

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- 1 Q. And what happened next?
- 2 A. Well, time went on, time went on, time went on. So I
- 3 was like ---
- 4 Q. Did you hear back from Jonathan soon after he left?
- 5 A. I did not.. And so time just continued to go, to going.
- 6 Then I'm looking, I was like, you know, where is he?
- 7 Q. What were you doing at your apartment during that time?
- 8 A. I was talking on the phone, watching television.
- 9 Q. And were you at your apartment that entire night?
- 10 A. I was.
- 11 Q. And as you said time went on, what did you do?
- 12 A. Well, I watched television. I talked on the phone with
- 13 different people. And then it dawned on me that he wasn't
- 14 back and I hadn't heard from him. So I started to call,
- 15 started to text.
- 16 Q. And do you remember about what time you started to call
- 17 or text?
- 18 A. I do not. I don't recall.
- 19 Q. How long had it been since he left that you started to
- 20 call or text?
- 21 A. For me it was a long time. For me it was -- it was
- 22 definitely hours.
- 23 Q. Hours?
- 24 A. Hours.
- 25 Q. So he'd been gone for hours by the time you started ---

ERIC CADE - DIRECT EXAMINATION BY MR. WILKINS

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- 1 A. That's correct.
- 2 Q. Okay. And how many times do you think you called him
- 3 that night?
- 4 A. Oh, I called a lot of times.
- 5 Q. And did you ever hear from Jonathan?
- 6 A. I did not.
- 7 Q. Did you ever -- did he respond back by text?
- 8 A. He did not.
- 9 Q. All right. Were you starting to get annoyed?
- 10 A. That's a good word for it, yes.
- 11 Q. Upset?
- 12 A. Yes.
- 13 Q. Why were you -- why were you getting upset?
- 14 A. Because I didn't know where my car was and he wasn't
- 15 answering the phone.
- 16 Q. I'm going to show you what's previously been admitted
- 17 as State's exhibit 98. This is the cell phone dump of your
- 18 cell phone that you allowed law enforcement to do. Can you
- 19 read that, Mr. Rhodes [sic]? Is that too -- that's too
- 20 hard?
- 21 A. You mean Mr. Cade?
- 22 Q. I'm sorry, Mr. Cade. I apologize.
- 23 A. Yeah, I can.
- 24 Q. Okay. The first -- the second line, which is 2841, the
- 25 first highlighted line, it says the name Jonathan Rhodes.

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- 1 A. Um-hum (affirmative).
- 2 Q. Is that how you had him plugged into your phone?
- 3 A. That's correct.
- 4 Q. Okay. And it says sent. So it would say that you sent
- 5 him a text message. Can you read what you sent him at --
- 6 the time on there is 23:03, which would be 11:03?
- 7 A. Is that the first one?
- 8 Q. The first highlighted one.
- 9 A. You can't be nice to them niggas because they always
- 10 run out.
- 11 Q. All right. That was at 11:03. Would that be about the
- 12 time you were texting Jonathan Rhodes?
- 13 A. That's correct.
- 14 Q. That's a pretty harsh -- harsh text right there. And
- 15 why were you sending him a text like that?
- 16 A. Because I had been calling and he didn't respond to my
- 17 phone -- he didn't pick the -- he didn't pick up. I didn't
- 18 know where he was in my car. So I was angry.
- 19 Q. And you still didn't have your car?
- 20 A. No, I did not.
- 21 Q. The next text is at 1:06 that you sent out to -- and it
- 22 says to the left there Jonathan Rhodes. What did you say to
- 23 him in that text?
- 24 A. Are you on the way?
- 25 Q. So at 1:00 in the morning do you still have your car?

ERIC CADE - DIRECT EXAMINATION BY MR. WILKINS

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- 1 A. I did not.
- 2 Q. And then the next morning you sent him a text at 7:26
- 3 to Jonathan Rhodes. What'd you say to him then?
- 4 A. I said, so is it going to be my way or yours?
- 5 Q. What was that referring to?
- 6 A. It was referring to having my car and not letting me
- 7 know where he was and about a cell phone that I was
- 8 providing service for and he wouldn't answer it. So when he
- 9 came in I was like, you know, what do you have a cell phone
- 10 if you don't answer it? And ---
- 11 Q. So at 1:06 you sent him a text, he's still not home?
- 12 A. No.
- 13 Q. Did Jonathan ever come home?
- 14 A. He did.
- 15 Q. Do you remember about when he came home?
- 16 A. Maybe 3:00, maybe. 3:00.
- 17 Q. After 2:00?
- 18 A. Definitely after two.
- 19 Q. Were you still awake at this point ---
- 20 A. I was.
- 21 Q. --- when he came in?
- 22 A. I was.
- 23 Q. Were you still upset?
- 24 A. I was.
- 25 Q. And when -- and when he came home, what happened?

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1 A. I asked him where he was and why he wasn't picking up
2 the phone. He had my car. He wasn't answering.

3 Q. What did he say?

4 A. He said he was with Tyrone.

5 Q. Do you know who Tyrone is?

6 A. I do not.

7 Q. Did you ask him who Tyrone is?

8 A. I did. I said, who is Tyrone?

9 Q. And what did he say?

10 A. I can't remember, but he said he was with Tyrone at
11 Tyrone's grandmother's house.

12 Q. How did that argument -- how did y'all resolve that
13 disagreement? Did y'all go to bed after that?

14 A. Yes, we did.

15 Q. I'm going to show you -- the next day did you go to
16 work?

17 A. I did. He dropped me off at work.

18 Q. And did -- Jonathan Rhodes dropped you off at work?

19 A. He did.

20 Q. And then he had your car for the rest of that day?

21 A. The rest of the day.

22 Q. I'm going to show you State's exhibits 97 and 96 and
23 see if you recognize that.

24 A. It's my Mini Cooper.

25 **MR. WILKINS:** Your Honor, State moves 96 and 97 into

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1 evidence.

2 MR. ERWIN: Without objection.

3 THE COURT: In without objection.

4 (Whereupon State's exhibits 96 and 97 were admitted
5 into evidence)

6 Q. That's your Mini Cooper?

7 A. It is.

8 Q. That's the car that -- is that the car that you allowed
9 Jonathan Rhodes to have the night of October 1st ---

10 A. It is.

11 Q. --- 2012?

12 A. It is.

13 Q. Mr. Cade, were you ever -- did you ever go down to law
14 enforcement and talk with law enforcement officers about
15 this particular case?

16 A. I did.

17 Q. How did you -- how did you know to go down to law
18 enforcement?

19 A. Well, my mom called me and she was like -- she was
20 like, Eric, the police came over here looking for you. They
21 came to my mom's house. And she said, they were looking for
22 your car.

23 And I said, well, mommy, I had a wreck going to the
24 Georgia game. So I said, my car is at this repair place, I
25 don't recall the name of it, on Wade Hampton. So she said,

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1 well, they came and they were looking for your car.

2 So I called. And when I called, it was late that
3 Friday 'cause I had just gotten off work. So they told me
4 to call back on Monday, Monday morning. So I called back on
5 Monday morning, and they transferred me up -- I can't
6 remember who I actually spoke to.

7 And so then I said, well, I heard that you were looking
8 for me. You can come back now. I'm at Glen Forest
9 Drive. And they said, no, you need to come here. So that's
10 when Jonathan and I went down there.

11 Q. So do you remember -- so you and Jonathan Rhodes went
12 down to the law enforcement center?

13 A. That's correct.

14 Q. And did you -- did you speak with law enforcement?

15 A. I did.

16 Q. And were aware that law enforcement -- strike that.

17 Did you voluntarily speak with law enforcement?

18 A. I did.

19 Q. And give them a full statement about everything that
20 you knew about this case?

21 A. I did.

22 Q. Did you voluntartily relinquish your phone to their
23 custody?

24 A. Absolutely.

25 Q. And there's a piece of evidence over here that I

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1 resubmitted was your cell phone dump.

2 A. Absolutely.

3 Q. And you gave consent for law enforcement to do that?

4 A. I did. I told them they didn't need a -- they didn't
5 need a warrant for that.

6 Q. Full cooperation?

7 A. Absolutely.

8 Q. What happened after -- after y'all left the law
9 enforcement center?

10 A. Well, I can't remember his name. The detective, when
11 he asked, you know, about the cell phone, I gave him my cell
12 phone. And he said, well, I need a search warrant. I said,
13 well, you don't need the search warrant.

14 And then he -- I said I'll tell you where my car is.
15 And he said, well, we'll need a search warrant. I said, you
16 don't need a search warrant for my car. You can just go get
17 it.

18 And I said, I'll take you to my house. And he said,
19 well, I'll have to get a search warrant. I said, you don't
20 need a search warrant. So he took me to the house.

21 And he gave me a little background into Ms. Rogers. I
22 assumed her name was Candy. I didn't know her name was
23 something totally different.

24 Q. So you knew Ms. Rogers as Candy?

25 A. I knew her as Candy.

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1 Q. Okay. And did Jonathan Rhodes and Shirley Rogers, or
2 you know her as Candy, have a relationship?

3 A. They did.

4 Q. What kind of relationship did they have?

5 A. I mean, ...

6 Q. Was it sexual?

7 A. Yes.

8 Q. Okay. And how long had they been in a relationship the
9 time when he took your car -- up until the time he took your
10 car and didn't come home?

11 A. Well, I don't think at that -- at that point I don't
12 think that they were having a relationship at that point. I
13 think that it was earlier on. I don't think it was at that
14 point, I don't believe so. But earlier on it was, but at
15 that point I don't believe so. Or at least I don't
16 remember. I don't recall him saying anything ---

17 Q. Did you ever meet Shirley Rogers?

18 A. I met her on three occasions. The first time I ever
19 met her was the 4th of July. She was at a 4th of July
20 celebration at his sister's house. She had blonde hair.

21 The second time I saw her, I got off work and she was
22 sitting in front of my house in a Lincoln. She had an afro.
23 And the last time I saw her, I was coming back from
24 Columbia. And I went to pick Jonathan up from over there.
25 And then she had long hair. So those were the only three

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1 times I've seen her or been in her company.

2 Q. All right. And so you've actually been to Shirley
3 Rogers' house? You went to Shirley Rogers' house at that
4 time?

5 A. I went to her house to pick up Jonathan.

6 Q. To pick up Jonathan. Do you remember where that was?

7 A. It's on the west side. I think if you -- if you go to
8 Woodside, it's over there -- it's on like a dead-end.

9 Q. Do you remember what street, by any chance?

10 A. I do not.

11 Q. Did you ever assist law enforcement in obtaining your
12 car? Did they ask you -- did law enforcement ever ask you
13 about your car when you were talking with them?

14 A. Well, they asked -- well, how we got to that was -- I
15 can't remember the detective's name, but he was saying that
16 -- he asked me something about my car. But he said that my
17 car was green. I was like, my car is not green. And he
18 says, well, you know, I have pictures of it. So he said, I
19 can show you pictures of it.

20 So when he showed me the pictures, my heart sank,
21 because it was my Mini Cooper. And I don't know if I should
22 be saying this, but my Mini Cooper was at TD Bank, and she
23 was getting out of my car, the passenger ---

24 Q. She's who?

25 A. Shirley Rogers. Was getting ---

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1 Q. Do you remember about when that was?

2 A. I do not.

3 Q. Okay.

4 A. I just know that from the pictures she was getting out
5 of my Mini Cooper withdrawing money out of the teller for TD
6 Bank. And it didn't make me feel so good.

7 Q. Why is that?

8 A. Because no one should have been in my car. That's
9 number one. And I didn't appreciate that because that was a
10 given, you don't ride anybody in my car without telling me.

11 Q. So that was some of the rules that you had with
12 Jonathan Rhodes?

13 A. Right.

14 Q. It was supposed -- was it supposed to be exclusively
15 for him?

16 A. Not exclusive to him, like his family members or people
17 that I knew. But I didn't know her. And to see her getting
18 out of my car was a complete shock to me. And I was hurt.
19 I was disappointed. I mean, I was -- I was like -- I was
20 hurt. I was devastated.

21 Q. So did you tell law enforcement where the car was?

22 A. I did. I did.

23 Q. Where was your car?

24 A. I cannot remember the name of it, but it's on Wade
25 Hampton. It was on Wade Hampton. I can't recall the name

ERIC CADE - DIRECT EXAMINATION BY MR. WILKINS

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1 of it. But if you -- if you leave from downtown and you
2 take the bridge, and when you come around, Henry's
3 Smokehouse, you'll see it first. And if you go up from
4 Henry's Smokehouse, it's right there on the right.

5 Q. Why was your -- was it a mechanic's shop?

6 A. It was a repair shop. I had, like I said, I had had a
7 wreck going to the Georgia game. And when I had that wreck,
8 that's where my insurance company at that time told me that
9 it could go. And so that's where my car was. My car was in
10 the process of being repaired at that time of that.

11 Q. Okay. And you told law enforcement where that car was
12 located?

13 A. I did.

14 Q. Did you -- did you take them over there to it?

15 A. I did not. I just -- I ---

16 Q. You just told them where it was?

17 A. I told them where it was. I maybe even gave them a
18 phone number.

19 Q. Okay. All right. Mr. Cade, you testified earlier that
20 when Jonathan Rhodes came home the night of October 1st
21 after he'd been away, ---

22 A. Um-hum (affirmative).

23 Q. --- you said he said he'd been at Tyrone's house --
24 well, Tyrone's grandmother's house?

25 A. Um-hum (affirmative).

ERIC CADE - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. Did you ever -- and then later on you spoke to
2 investigators about this case, correct?

3 A. I did.

4 Q. I believe that was probably around October 22nd when
5 you spoke to investigators. You don't remember?

6 A. I spoke to them. I did.

7 Q. Did you speak with Jonathan Rhodes again about what he
8 was doing on October 1st, that night?

9 A. We talked about it a lot, actually.

10 Q. What did he tell you he did? Where did he tell you he
11 was?

12 A. Well, that night it was -- he was at Tyrone's
13 grandmother's house with Tyrone. And so I blatantly asked
14 him, I said, did you have anything to do with this? Do you
15 know anything about it? He told me no, he didn't know
16 anything about it. And so he said that he went to Brian's
17 house.

18 Q. Brian? Do you know who Brian is?

19 A. I know Brian.

20 Q. Was that one of his friends?

21 A. Yes.

22 Q. Okay. So he changed his story the second time?

23 A. Yes.

24 Q. Did you talk to him a third time about where he was
25 that night?

ERIC CADE - DIRECT EXAMINATION BY MR. WILKINS

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1 A. Well, not necessarily talked to him about it, but again
2 I asked him. You have to understand that I loved Jonathan.
3 I considered Jonathan my brother, considered him my friend,
4 considered him my son. So I'm like, Jonathan, if you know
5 anything, you need to say something.

6 And at that point he told me that that night he went to
7 Ms. Rogers' house, he fell asleep, and when he woke up my
8 car was in a different direction, and the reason he didn't
9 answer the phone was because my phone was -- his phone was
10 in the car.

11 Q. And that's after -- was that conversation after you had
12 talked to law enforcement?

13 A. Yes.

14 Q. And had law enforcement told you about the pinging of
15 his phone at that point?

16 A. They ---

17 Q. After that conversation?

18 A. I want to say they told me the day that he and I went
19 there. I want to say they did.

20 Q. They told you about the pinging of his phone?

21 A. Yes.

22 Q. And then the third conversation where he said that his
23 phone was in his car, that was after you had talked to law
24 enforcement and learned about the pinging of your phone,
25 correct?

ERIC CADE - DIRECT EXAMINATION BY MR. WILKINS

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1 A. Yes.

2 Q. Mr. Cade, where did your wreck occur?

3 A. Actually, Jonathan and I were going to the Georgia
4 game. So I was meeting my God brother. And we were going
5 to meet -- we were going to meet, I think, at his house in
6 Simpsonville.

7 So what I did was I was on Hayward Road and I was
8 driving. And so I was on my cell phone, which I shouldn't
9 have been doing, so I was like, well, I'm going to go get me
10 a hot and ready ham sandwich.

11 So as I went to turn, he hollered, bruh. And when he
12 hollered, bruh, I guess he was trying to tell me that a car
13 was coming, but I didn't listen. And then that's when the
14 car hit me right in front of the Arby's on Hayward Road.

15 Q. Was anybody hurt?

16 A. Jonathan was hurt.

17 Q. He was hurt?

18 A. He was hurt.

19 Q. Like what kind of hurt?

20 A. Something like his leg.

21 Q. Okay.

22 A. His leg.

23 Q. Was there anybody bleeding or anything?

24 A. I don't recall. I don't believe so. I don't think so.

25 Q. Maybe a sprain to the leg or something like that?

ERIC CADE - CROSS EXAMINATION BY MR. ERWIN

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1 A. Oh, definitely was something going on with his leg,
2 with his right leg. Something was definitely going on with
3 his leg.

4 Q. But nobody was cut, or bleeding or anything like that?

5 A. Not that I recall.

6 Q. Answer any questions Defense counsel may have.

7 **Cross Examination by Mr. Erwin:**

8 Q. Good afternoon, Mr. Cade.

9 A. How you doing?

10 Q. I'm fine. So you got mad when you found out that
11 Shirley had been in your car?

12 A. No, I wasn't mad because she was in my car. I was just
13 mad because, you have to understand, you see if you're
14 sitting in an interrogation room and you're looking at
15 pictures of someone getting out of your car, ---

16 Q. Right.

17 A. --- that's related to a crime, ---

18 Q. Right.

19 A. --- I wasn't mad, but I was clearly upset.

20 Q. Right. But you knew Shirley. You'd met her a few
21 times before that.

22 A. I didn't know Shirley.

23 Q. You didn't ---

24 A. I met Shirley three times.

25 Q. You had met her three times before, ---

ERIC CADE - CROSS EXAMINATION BY MR. ERWIN

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1 A. Yes.

2 Q. --- right?

3 A. Yes.

4 Q. And you thought that she was bad news for Jonathan,
5 right?

6 A. I did.

7 Q. Yeah. And so you didn't like that Jonathan was hanging
8 around with her that much?

9 A. Well, not at -- well, at first it didn't bother me.
10 The reason I didn't like her was a conversation that I had
11 with his sister, and it was a comment that she made. So,
12 no, I didn't. I thought she was bad news.

13 Q. Okay. You didn't like that she had been in your car
14 that night?

15 A. I did not like it. I did not.

16 Q. Okay. Because Jonathan, like you said, he's like a son
17 to you.

18 A. (Affirmative nod).

19 Q. You're a mentor figure, father figure, older brother
20 kind of thing.

21 A. Yeah.

22 Q. You take care of him.

23 A. (Affirmative nod).

24 Q. You provide for him.

25 A. Um-hum (affirmative).

ERIC CADE - CROSS EXAMINATION BY MR. ERWIN

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1 Q. He doesn't -- at the time didn't have a job that paid
2 him very much, so you supported him financially a little
3 bit.

4 A. Yeah.

5 Q. You gave him a phone.

6 A. (Affirmative nod).

7 Q. You gave him a car.

8 A. (Affirmative nod).

9 Q. And you tried to show him how to be more responsible.

10 A. (Affirmative nod).

11 Q. Right?

12 A. Right.

13 Q. Okay. So the car that we're talking -- the Mini
14 Cooper, you were made aware in, I guess, middle to late
15 October 2012 that that car was of interest in this case,
16 right?

17 A. I -- excuse me. No, I wasn't.

18 Q. Okay.

19 A. I didn't like -- when I was there -- I don't remember.

20 Q. You sat down and had an interview with the police,
21 right? You ---

22 A. Right.

23 Q. --- already talked about that.

24 A. Right.

25 Q. Okay. And at that time those police officers let you

ERIC CADE - CROSS EXAMINATION BY MR. ERWIN

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1 know that they were interested in your car, right?

2 A. I don't think that the conversation went that way. I
3 think what it was was they said something about my car being
4 in a place. And they thought that the car was green. And
5 my Mini Cooper wasn't green. So what he said was he had
6 pictures of it.

7 Q. Okay. And later that day they wanted to get into your
8 car, right? And ---

9 A. Yes.

10 Q. --- you let them do that.

11 A. Yes.

12 Q. Right. Okay. So follow me here. Between the
13 beginning of October, ---

14 A. Um-hum (affirmative).

15 Q. --- that night that you couldn't find Jonathan.

16 A. Right.

17 Q. And that day, October, middle, late October when you
18 had that interview with police you did not clean the car.

19 A. No, I did not.

20 Q. Okay. Jonathan did not clean the car.

21 A. No, definitely not.

22 Q. Okay. Jonathan doesn't do stuff like that, does he?
23 Right?

24 A. Right.

25 Q. All right. He's ---

ERIC CADE - CROSS EXAMINATION BY MR. ERWIN

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1 A. Lazy.

2 Q. --- a little irresponsible, right?

3 A. Very.

4 Q. You have to follow behind him to make sure. But you
5 didn't clean the car either ---

6 A. Uh-uh (negative).

7 Q. --- in this case. They showed you the pictures of it
8 after they searched it, right?

9 A. No.

10 Q. The prosecutors didn't show you the pictures of the
11 inside of your car?

12 A. No. I haven't seen the pictures of the inside ---

13 Q. You met with them last week, right?

14 A. Yes.

15 Q. They didn't show you any pictures of your car?

16 A. No.

17 Q. Okay. But you remember it being dirty?

18 A. Possibly.

19 Q. Right?

20 A. Possibly, yes.

21 Q. Correct. Okay. Well, let's see. Jonathan being a
22 little irresponsible, right, would leave his phone in the
23 car from time to time.

24 A. Would he?

25 Q. Yeah.

ERIC CADE - CROSS EXAMINATION BY MR. ERWIN

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1 A. Yes.

2 Q. It's something that happened.

3 A. Yes.

4 Q. Right. Okay. Well, I have no further questions.

5 **THE COURT:** Redirect.

6 **MR. WILKINS:** Nothing from the State, Your Honor.

7 **THE COURT:** Thank you, Mr. Cade.

8 A. Thank you.

9 **THE COURT:** You can step down and be excused. We
10 appreciate your time.

11 **MR. WILKINS:** Your Honor, may we approach?

12 **THE COURT:** Yes.

13 (Whereupon a bench conference was held off the record,
14 in the presence of the jury, but out of their hearing)

15 (Whereupon the bench conference was ended)

16 **THE COURT:** Members of the jury panel, we're going to
17 work a little later so we won't push ourselves too past into
18 the week. So we're going to take about a ten minute
19 refresher break. So we'll just take a refresher break and
20 then probably work til around six. So we'll take a break at
21 this time.

22 (Whereupon the jury exited the courtroom at 4:49 pm)

23 (Whereupon court was in recess at 4:49 pm)

24 (Whereupon court reconvened at 4:58 pm)

25 **THE COURT:** Let's come to order, we've got the jury

HAROLD ATKINS - DIRECT EXAMINATION BY MR. WILKINS

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1 **Harold Atkins**, being duly
2 sworn testified as follows;

3 **MADAME CLERK:** Please be seated and state your name for
4 the record.

5 **MR. ATKINS:** Harold Atkins.

6 **Direct Examination by Mr. Wilkins:**

7 Q. Mr. Atkins, with whom are you employed?

8 A. TD Bank.

9 Q. And what do you do for TD Bank?

10 A. I'm a senior investigator in global security
11 investigations for TD Bank.

12 Q. And as a senior investigator what are some of your job
13 duties?

14 A. I investigate white collar crime, also review video for
15 such crimes as white collar crimes. And I'm a liaison with
16 law enforcement when they have a request for it.

17 Q. Do you have any prior law enforcement experience?

18 A. I do. I'm a retired Greenville City police officer.

19 Q. How long were you with the city?

20 A. Twenty-five years.

21 Q. Were you ever requested by law enforcement to look at
22 some video in the case of State versus Jonathan Rhodes?

23 A. Yes, I was.

24 Q. All right. I'm going to show you State's exhibits 148,
25 150, 152, 154 and 155 and ask if you recognize these?

HAROLD ATKINS - DIRECT EXAMINATION BY MR. WILKINS

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1 A. Yes, sir, I do.

2 Q. Are those -- what are those?

3 A. Videos from a ATM drive-up at our Augusta Road location
4 in Greenville, South Carolina.

5 Q. And is that a TD Bank drive-up location?

6 A. It is.

7 Q. All right. And as an investigator are you familiar
8 with the surveillance systems of TD Bank?

9 A. I am.

10 Q. And are those systems kept in y'all's common ordinary
11 course of business?

12 A. Yes, they are.

13 Q. And are they properly maintained by TD Bank?

14 A. Yes, sir.

15 Q. And are these videos true and accurate from that video?

16 A. Yes, sir, they are.

17 Q. And they're kept in the ordinary course of business?

18 A. Yes, sir.

19 Q. Can you tell us ---

20 **MR. WILKINS:** Your Honor, State moves exhibit 148, 150,
21 152, 154 and 155 into evidence.

22 **MR. ERWIN:** Without objection, Your Honor.

23 **THE COURT:** In without objection.

24 (Whereupon State's exhibits 148, 150, 152, 154, 155 was
25 admitted into evidence)

JONATHAN HOWARD - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. Will you just tell this jury, publish it, the date and
2 time of these pictures?

3 A. Yes, sir. These were taken on October 2nd, 2012.
4 11:05 am is when the first one was shown.

5 Q. Thank you.

6 **MR. WILKINS:** No more questions, Your Honor.

7 **THE COURT:** Any cross?

8 **MR. ERWIN:** No, sir, I don't have any questions for
9 this witness.

10 **THE COURT:** All right. You can step down and be
11 excused. We appreciate your time.

12 A. Thank you.

13 **THE COURT:** Thank you. Call your next witness.

14 **MR. WILKINS:** Your Honor, the State calls Jonathan --
15 Jonathan Howard.

16 **Jonathan Howard, being**
17 duly sworn testified as follows;

18 **MADAME CLERK:** Please be seated and state your name for
19 the record.

20 **MR. HOWARD:** I'm Investigator Jonathan Howard,
21 Greenville County Sheriff's Office.

22 **Direct Examination by Mr. Wilkins:**

23 Q. Mr. Howard, how long have you been employed at the
24 Greenville County Sheriff's Office?

25 A. Almost seven years.

JONATHAN HOWARD - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. And what do you do for the Greenville County Sheriff's
2 Office?

3 A. Currently I'm assigned to the Criminal Investigative
4 Division with the Economic Crimes Unit.

5 Q. And as an investigator there what are your principle
6 duties?

7 A. Chiefly I look at frauds, forgeries, sometimes what you
8 might refer to as extortion or embezzlement in businesses,
9 things like that.

10 Q. And were you asked to assist in the investigation in
11 the death of Gary and Helen Wells?

12 A. I was.

13 Q. How did you -- how did you get asked to get involved in
14 this case?

15 A. It was around probably October 6th I was asked to
16 assist with the investigation. It was a large investigation
17 at the time. And there was some financial records that
18 needed to be gone through as well.

19 Q. All right. And so what was -- specifically what did
20 you begin to do involving the case?

21 A. Initially I began a lot of research on the victims,
22 victims' finances, research on possible suspects in the case
23 and the history, things like that. And also I looked at
24 cell phone records that had been ordered by their
25 investigators.

JONATHAN HOWARD - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. So how did you receive those cell phone records?

2 A. The ones I -- the ones I looked at belonging to Shirley
3 Rhodes [sic] and Amber McDaniel had been ordered by two
4 other investigators, I believe, on the day -- earlier in the
5 investigation. Those records were delivered by the
6 companies and provided to me to review.

7 Q. And why were you looking at Shirley Rogers and Amber
8 McDaniel's cell phone records?

9 A. As I understand it, they were present when the bodies
10 were recovered and there was an ongoing financial fraud
11 investigation involving Ms. Rogers.

12 Q. And so did you start mining through their cell phone
13 record once you received them?

14 A. I did.

15 Q. And would those be cell phone records -- we'll get to
16 that in a little bit. What did you do when you started?
17 How did you mine through those cell phone records? What do
18 you do?

19 A. Well, initially I focus on the time-frame around where
20 we believe the deaths occurred, around October 1st. And I
21 started going through the call history on Ms. Rogers' phone
22 especially, looking to see who she'd been in contact with,
23 trying to contact some of these people and figure out either
24 what she talked with them about or if I could confirm who
25 they were.

JONATHAN HOWARD - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. As a result of that did you do anything in particular?

2 A. I did. There was one specific number that came up
3 several times around October 1st.

4 (Pause)

5 A. Sorry.

6 Q. You can refer to your notes to refresh your memory if
7 you need to.

8 A. Thank you. The phone number was a -7553 number. I
9 noticed that had been called several times on October 1st.
10 So ---

11 Q. What did you do?

12 A. I called that number and -- well, actually, I'm sorry.
13 Prior to calling the number we ran a CLEAR report on the
14 number. CLEAR is a law enforcement tool. It can give us
15 possible information on the owner of cell phone, home
16 address, that kind of thing.

17 Initially when we ran that report it came up to the
18 name of Leroy Harrison as being a potential owner of that
19 phone number. So I called the phone and I asked -- a male
20 voice answered when I called that number. And I asked if it
21 was Leroy Harrison.

22 Q. And what happened -- what happened next?

23 A. The male voice advised me that I had the wrong number.
24 So at that time I read the phone number back out loud to him
25 to confirm I had the right number. And he stated that, yes,

JONATHAN HOWARD - DIRECT EXAMINATION BY MR. WILKINS

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1 that was the correct number.

2 I then asked the male if he knew a Shirley Rogers at
3 which point he told me, no, he didn't. I made a comment to
4 him at that time, I said that that was funny because she
5 kept calling your phone. Once I made that comment the male
6 replied in a tone, his tone of voice changed to a rather
7 sharp -- almost panicked tone, he advised, you've got the
8 wrong number, I don't know her and hung up on me quickly
9 before I could say anything else.

10 Q. When you initiated the call did you identify yourself
11 as ---

12 A. I did.

13 Q. --- a law enforcement ---

14 A. I did identify myself as law enforcement.

15 Q. So after he hung up the phone on you what did you do?

16 A. I attempted to call the number back to see if I could
17 get the male back on the phone. It went straight to
18 voicemail. And the voicemail said, you've reached Really
19 Real.

20 Q. So as a result of that information what did you do?

21 A. We -- I notified the lead investigator of that
22 conversation I'd just had. And we also requested records
23 from Sprint for that particular phone number.

24 Q. And did y'all receive those records?

25 A. We did receive those records.

JONATHAN HOWARD - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. Did you do any follow-up on who this Really Real may
2 be?

3 A. I did. Actually, as I continued to -- from that point
4 I continued to go through Ms. Rogers' phone records. And I
5 ended up speaking with a Myra Rucker, who I brought into the
6 law enforcement center and had a conversation with in
7 reference to these records.

8 Q. Okay. And as a result of that conversation what did
9 you do?

10 A. I was able to pull up a Facebook page for a Really Real
11 Rhodes. And I asked Ms. Rucker to confirm that that was a
12 subject she knew as Mr. Rhodes -- or sorry, Ms. Rogers'
13 boyfriend.

14 Q. And did she confirm that?

15 A. She did.

16 Q. So as a result of that what did you do?

17 A. After that we received the phone records for Mr.
18 Rhodes.

19 Q. Did y'all attempt to try to locate Mr. Rhodes at that
20 time?

21 A. After receiving the records initially because the --
22 when I received the records from Sprint, there was
23 subscriber information on that phone number. It actually
24 came back showing that the owner of that phone number was a
25 one Eric Richard Cade or Richard Eric Cade and a possible

JONATHAN HOWARD - DIRECT EXAMINATION BY MR. WILKINS

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1 address at Glen Road. A little bit of research into Mr.
2 Cade revealed another potential address, Forest Glen
3 Drive.

4 So myself and another investigator went to both
5 locations trying to see if we could make contact with either
6 Mr. Cade or with this Rhodes subject. We were unsuccessful
7 at both locations, but we were able to speak with a neighbor
8 at the Glen Road address.

9 Q. Did y'all leave a card behind?

10 A. I believe we did. We left our cards, our names or
11 something along those lines.

12 Q. Did you ever have the ability to meet Mr. Rhodes?

13 A. I did. On October 22nd I actually received a phone
14 call from one of our desk officers in the lobby of the law
15 enforcement center stating that a Mr. Cade was there to see
16 me. I went down to the lobby to make contact with Mr. Cade
17 and with him was a young male whom I recognized from the
18 Facebook images I'd seen of this Really Real Rhodes.

19 Q. And did you introduce yourself when you -- when you ---

20 A. I did.

21 Q. --- when you saw them?

22 A. I introduced myself to them, and I thanked them for
23 coming. I advised them that I was going to escort them
24 upstairs to meet with the lead investigator in this case for
25 an interview. In the lobby we have a short ramp that walks

JONATHAN HOWARD - DIRECT EXAMINATION BY MR. WILKINS

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1 up to our first floor for -- you enter a secured door and
2 there is -- from there you take an elevator up to the second
3 floor where our actual investigative offices are.

4 On the way up to the lobby I believe Mr. Cade had
5 mentioned that someone had stopped by his mom's house and
6 that's how he knew to come up here -- come up here and see
7 us. And Mr. Rhodes made a comment to me that some
8 investigator had called him and that he had hung up on him.
9 I advised him that was me.

10 Q. And was that the end of your conversation ---

11 A. That was. We didn't talk any further than that.

12 Q. Okay. Now you said you were able to review the phone
13 records of Mr. Rhodes and others involved in this case.

14 Does that include cell phone dumps as well?

15 A. That does. I reviewed those as well.

16 Q. So by doing that -- so there's been a number of pieces
17 of evidence that have been introduced, Mr. Howard.

18 Specifically State's exhibit 79 has been introduced into

19 evidence, which is toll records of the victims' land line,

20 Helen and Gary Wells. Exhibit 80, which is the toll records

21 of a Amber McDaniel. When I say toll records, that's

22 already been testified, that's their cell phone information.

23 A. Correct.

24 Q. Toll records of two numbers in the name of Shirley

25 Rogers. Toll records -- I'm sorry. That was exhibits 81

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1 and 82. Exhibit 83, toll records of Eric Cade. Exhibit 84,
2 toll records of Jonathan Rhodes. Cell phone, I call it cell
3 phone extraction or dump of Jonathan Rhodes. Cell phone
4 extraction or dump of Eric Cade. And any subscriber
5 information for those particular numbers. Did you review
6 all of that information?

7 A. I did.

8 Q. And as a result of your review of all of that
9 information were you able to put together a comprehensive
10 phone list of who is who?

11 A. We were. We were able to confirm or verify the call
12 logs, subscriber information, contacting people and
13 confirming numbers. We were able to confirm whose number
14 belonged to who.

15 Q. And reviewing Jonathan Rhodes' cell phone extraction,
16 did he have contact information in there?

17 A. He did. We had a contact list for several of his phone
18 numbers.

19 Q. All right. I'll show you what's already been admitted
20 into evidence as State's exhibit 92. Is this the contact
21 information?

22 A. It's an example of what your contact list would look
23 like, yes.

24 Q. All right.

25 A. What his looked like, I'm sorry.

JONATHAN HOWARD - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. So for example, this would be the extraction from his
2 phone, is that correct?

3 A. Yes, sir.

4 Q. All right. So for example, here, this says?

5 A. That says Amber.

6 Q. All right. And her phone number?

7 A. Is the -7678.

8 Q. Okay. And you were able to confirm that that's Amber
9 McDaniel?

10 A. Yes, with her, actually.

11 Q. Okay. For example, who is that right there?

12 A. That would be Ms. Rogers.

13 Q. Okay. And that is her?

14 A. I would assume that's her email.

15 Q. Email address, that's correct. All right. Here, at
16 the very top here, what does that say?

17 A. That says St. Augustine.

18 Q. Were you able to cross reference that with this
19 particular number right here?

20 A. Yes. That belongs to Mr. Cade.

21 Q. So that St. Augustine, what is -- what is that?

22 A. That would be the name -- that would be how Mr. Rhodes
23 had entered that number under his contact list, the name he
24 assigned to that contact number.

25 Q. And then here at the bottom it says Candy. Who did you

JONATHAN HOWARD - DIRECT EXAMINATION BY MR. WILKINS

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1 discover Candy is by cross referencing the phone numbers
2 there?

3 A. Those two numbers down there, the -3532 and -9391
4 are both numbers belonging to Ms. Rogers.

5 Q. So now Candy is what?

6 A. Candy is the name he's assigned for Shirley Rogers'
7 phone numbers.

8 Q. Okay.

9 A. Or the name it has been assigned to.

10 Q. So did you comprise sort of a list of phone numbers for
11 everyone that this -- instead of having to refer back to
12 numbers and stuff did you compile a list of phone numbers
13 with all this information or assist in doing so?

14 A. I did.

15 Q. Okay. I'm going to show you State's exhibit 102 and
16 see if you recognize that.

17 A. This would be a spreadsheet containing the phone
18 numbers for the persons that we just discussed.

19 **MR. WILKINS:** The State moves 102 into evidence, Your
20 Honor.

21 **MR. ERWIN:** Without objection.

22 **THE COURT:** In without objection.

23 (Whereupon State's exhibit 102 was admitted into
24 evidence)

25 Q. All right. So let's do a quick -- quick overview of

JONATHAN HOWARD - DIRECT EXAMINATION BY MR. WILKINS

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1 who is who and what is their phone number.

2 A. So right here on the first line of the name of Eric

3 Cade, that number of -0257, the AKA, that's the name

4 -- the other name assigned in the call -- in the contacts

5 list, St. Augustine. That number belongs to Mr. Cade up

6 top.

7 The second number below, and actually the third number

8 as well, the -3532 and the -9391, it's under the name

9 of Candy in the contact list on Mr. Rhodes' phone, but both

10 numbers were used and operated by Ms. Shirley Rogers.

11 Below that you have Amber McDaniel's phone number of

12 -7678. And then below that we have Jonathan Rhodes'

13 phone number with the -7553. And finally we have a Mr.

14 Brian Ferguson with a -0080.

15 Q. So you continued to use this in your investigation to

16 cross reference and figure out -- keep ---

17 A. Keep ---

18 Q. --- a list of who was who?

19 A. Yeah, keep the names and numbers in line, yes, sir.

20 Q. Okay. So did you continue to review and analyze the

21 cell phone tolls of the individuals that were on State's

22 exhibit 102?

23 A. Yes, that's correct. We reviewed -- I reviewed those

24 and looked at any relationships between these parties, any

25 contacts and communications between them.

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1 Q. Now in reviewing those is it -- in addition you were
2 also reviewing the cell phone dump of Eric Cade and Jonathan
3 Rhodes ---

4 A. That's correct.

5 Q. And that would be the actual cell phone at the time it
6 was received by you?

7 A. Right. What I would have would have been the report
8 that our data recovery experts had or investigators had
9 recovered. So I'm looking at a printout that contains
10 whatever data was on the phone when they did the download.

11 Q. Is it difficult to review the toll information on each
12 of these individuals, especially if you've got Sprint
13 information and T-Mobile information and extraction
14 information?

15 A. Yes. Actually what we found out as we went through
16 this process is that for most of these cell records, the
17 phone records from the phone companies, your call logs would
18 be in Eastern Standard Time based on where the phone's been
19 used, it's been used in an Eastern Standard Zone, but your
20 text messages would actually be in a time zone based on
21 where the -- probably where the company was located. So
22 some of them were in Pacific, some of them were in Central,
23 I believe.

24 And Then, of course, on the cell dump, it returns these
25 text messages under, I believe it's Greenwich Mean Time. I

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1 hope I pronounced that right. But we had to adjust these
2 time zones to bring these things all back under Eastern
3 Standard to make sense of them.

4 Q. So is it fair to say that you would have an Eastern
5 Standard date for a cell, a Pacific time for a text, and if
6 you wanted to cross reference that with what you extracted
7 from the computer, that could be in Greenwich Mean Time?

8 A. That's correct.

9 Q. That sounds kind of confusing.

10 A. Yeah, it could be. That's why we had to make the
11 adjustments with the hours and put everything back into a
12 ---

13 Q. So ---

14 A. --- time zone we could understand.

15 Q. --- in an effort to make it more understandable and
16 readable did you prepare some -- assist in preparing some
17 spreadsheets ---

18 A. I did.

19 Q. --- for Jonathan Rhodes, Shirley Rogers and Amber
20 McDaniel?

21 A. I did.

22 Q. I'm going to show you what's exhibits 99, 100 and 101.
23 Do you recognize those?

24 A. 99 would be the -- sorry. 99 would be the spreadsheet
25 we did for Jonathan Rhodes' phone. 100 is going to be a

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1 spreadsheet done under Shirley Rogers' phone. And 101 would
2 be a spreadsheet done under Amber McDaniel's phone.

3 **MR. WILKINS:** The State moves ---

4 **THE COURT:** Okay. Go ahead.

5 **MR. WILKINS:** --- 99, 100 and 101 into evidence.

6 **MR. ERWIN:** Without objection, Your Honor.

7 **THE COURT:** In without objection.

8 (Whereupon State's exhibits 99, 100 and 101 were
9 admitted into evidence)

10 Q. And exhibit 100, which is Shirley Rogers, does that
11 include both of those phone numbers we saw on your call
12 list?

13 A. Yes, sir.

14 Q. So in mining through this were you able to look at the
15 call history and text history between Shirley Rogers and
16 Jonathan Rhodes during around the October 1st range to the
17 October 3rd or 4th range?

18 A. Yes, sir, I was.

19 Q. All right. I'm going to ask you to briefly go through
20 the cell interaction between Jonathan Rhodes. And I'm going
21 to use exhibit 99 on the screen to assist you in doing that.
22 So explain to the jury how you got this spreadsheet set up.

23 A. All right. The way we have it set up here, this column
24 here, the name, this is going to be the principal owner of
25 the records we're looking at right here. So what we're

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1 looking at here is basically this spreadsheet contains
2 Jonathan Rhodes' incoming/outgoing calls and text messages
3 recovered on his phone as pertains to what he may have sent
4 or submitted.

5 This column here, of course, is our date that we're
6 looking at, the date the call and/or text is submitted.
7 This would be the time-frame that the transaction, whether
8 it's call or text, is sent. Our action here, what this is
9 displaying is whether or not -- incoming or outgoing,
10 incoming would be something that is being received by our
11 target number, which is going to be Jonathan Rhodes' phone
12 number. Outgoing is something that's being sent by Mr.
13 Rhodes' phone number.

14 Of course, here we have our type -- we're specifying
15 whether we're talking about an actual phone call, a
16 telephone voice communication or a text message. And here
17 our phone number, this is going to be the phone number
18 that's either doing the receiving or the sending on this --
19 on this particular spreadsheet.

20 Q. Now, Mr. Howard, I see some are identified from our
21 previous spreadsheet, some are just numbers that are on
22 there.

23 A. Right. The ones that are identified that we're looking
24 at specifically are going to be from our previous
25 spreadsheet. SHR29391, this is going to be one of Shirley

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1 Rogers' phone numbers right here. The name of Cade, this
2 would be representative of Eric Cade's phone number.

3 Again, you see Mr. Cade here. Shirley Rogers 13532,
4 this is one of the other numbers that Ms. Rogers had. And I
5 believe you will also see Ms. McDaniels, Amber -- listed as
6 Amber on this spreadsheet as well at some point.

7 Q. Okay. So going down sort of at 12:17 pm, what kind of
8 call history is there?

9 A. So on October 1st, 2012 at 12:17 we have an incoming
10 text from one of Shirley Rogers' phones. This is the phone
11 that ends in 3532.

12 Q. Okay. So that just tells you Shirley Rogers sent a
13 text to ---

14 A. Jonathan Rhodes.

15 Q. Do we know what that text says?

16 A. Not in this particular case.

17 Q. And we'll get to that in a little bit. But were we
18 able to extract some texts?

19 A. Some texts were recovered during the dump. Some texts
20 did not appear to have been.

21 Q. So when you say -- so the extraction report can
22 retrieve some deleted information?

23 A. Some deleted -- some deleted information as I
24 understand it can be retrieved, but it depends on the type
25 of program, the type of phone device whether it can or

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1 cannot be retrieved.

2 Q. So in that case that actual text was not retrieved, ---

3 A. No, sir, it was not.

4 Q. --- and we just know that there was a text?

5 A. Well, we just know -- we just know that from the phone
6 records a text message was sent at this time. We don't know
7 what the content of it was.

8 Q. All right. I'm going to briefly show you -- we're
9 going to move in time, you know, it starts at 12:48 pm. So
10 we're at noon on October 1st. And just briefly show the
11 call history between Jonathan Rhodes and Shirley Rogers.

12 A. All right. So starting off here, October 1st at
13 12:49:38 pm, so about 12:40 -- 12:50 in the afternoon, we
14 have another incoming text from -- oh, I'm sorry. I was one
15 line up. 2:50 we have an outgoing text to Shirley Rogers'
16 phone here. And then again at 2:50 we have another outgoing
17 text there as well.

18 Q. Okay. I think that's 12:50.

19 A. I'm sorry, you're correct, 12:50.

20 Q. Okay. So that's just a text going back out to Shirley
21 that afternoon?

22 A. That's correct.

23 Q. All right. And then you can kind of go briefly down
24 the line on the phone number and you can see it's
25 interactions between Shirley and Jonathan Rhodes?

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1 A. Could I stand up to get a better angle?

2 Q. Yeah, absolutely.

3 A. Thank you. I'm sorry.

4 Q. Yeah, please do.

5 A. Okay. So here on the 1st as well, 12:52 we have an
6 incoming call from Amber. Another one at 12:53, another
7 incoming call from Amber.

8 Q. I'm going to show you, there's a little number to the
9 right, what is that column right there?

10 A. This is the duration, actually. Duration's measured in
11 seconds for how many seconds the contact was established.

12 Sometimes that is recorded and sometimes it's not.

13 Generally, if it's not recorded, it may not -- the call may
14 not have been picked up or answered. But you look at the
15 duration of the seconds to generally get an idea of how long
16 someone may or may not have talked for.

17 Q. So you can continue on down the list, some of the
18 interaction.

19 A. October 1st, here at 1:01 we have an outgoing text to
20 Mr. Cade's phone number. Again at 1:01, another outgoing
21 text. And then here we have an incoming text on the 1st at
22 1:23 pm from Ms. Rogers' phone, the 3532 phone number. That
23 is followed by an outgoing text from Mr. Rhodes to Ms.
24 Rogers at 1:24:29 pm via that 3532 number.

25 From there, again at 1:34 we have another incoming text

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1 from Ms. Rogers. And again at 1:35 an outgoing text. So a
2 response from Mr. Rhodes' phone to Ms. Rogers' phone.

3 Next thing down here, we also have -- and this is 2:46
4 in the afternoon, an incoming call -- oh, I'm sorry. Let me
5 make sure I'm on the right line. So an outgoing call at
6 2:44 to Mr. Cade followed by at 2:46 an incoming call from
7 Mr. Cade.

8 Q. All right. And I'm going to -- and this just continues
9 on. I'm going to skip over to more of the afternoon of
10 October 8th and more around 8:00.

11 **THE COURT:** You said October 8th.

12 Q. I'm sorry, October 1st at the -- and you can correct my
13 dates right there on the spreadsheet, down October 1st
14 around, you know, 8:00 that night.

15 A. All right. So -- all right. Going down here, October
16 1st at 8:24 we have an incoming call from Mr. Cade to Mr.
17 Rhodes' phone number.

18 And then on 8:28 we have another incoming call. Here
19 we have an incoming call at 8:44 pm on the 1st from Amber's
20 phone. It appears a voicemail may have been left on this
21 particular call.

22 Down here at 8:59 and 9:05, first off we have an
23 incoming text from Amber to Jonathan Rhodes' phone. Now,
24 this was actually one of the text messages we were able to
25 recover. And what it says is answer the phone, it's very

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1 important.

2 Followed by this we had an incoming call from Amber's
3 phone to Mr. Rhodes' phone. And that's at 9:05 pm.

4 Q. And to the right of there it says DBR, what does that
5 mean?

6 A. Oh, DBR stands for deleted but recovered. On our
7 actual report we had from our cell phone dump, some of these
8 text messages, the ones that are -- that have been deleted
9 but we were able to retrieve those would be marked or
10 annotated in some way as that they were deleted but we
11 recovered them.

12 All right. Now going back here to October 1st, 9:05:45
13 pm an outgoing text from Mr. Rhodes' phone to Amber
14 McDaniel's phone. The comment was, what up? I'm in the
15 studio. This status here was also deleted, but retrieved.

16 Down ---

17 Q. And you can ---

18 A. I'm sorry.

19 Q. --- just focus on the Shirley Rogers' ones.

20 A. Okay. From there we go down to 9:37 pm on October 1st.

21 Oh, I'm sorry, 9:40 pm we have an incoming text from Ms.
22 Rogers' phone.

23 Following that, 9:41 pm outgoing text to Ms. Rogers'
24 phone. 9:44 pm, another outgoing text to Ms. Rogers' phone.
25 9:45 an incoming text to Ms. Rogers' phone. And then at

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1 9:46 pm an outgoing call from Mr. Rhodes' phone to Ms.

2 Rogers' phone.

3 Q. Is there a duration with that?

4 A. There is, a hundred and sixty seconds. This was a
5 conversation.

6 All right. At 10:04 pm we have an outgoing text from
7 Mr. Rhodes' phone to Ms. Rogers' phone.

8 Q. And look -- after 10:04 pm, the night of October 1st,
9 is there anymore -- when's the next outgoing call by
10 Jonathan Rhodes?

11 A. Your next outgoing is going to be at 11:45 pm on the
12 1st.

13 Q. So everything there is incoming?

14 A. Yeah, this whole stretch right here is incoming texts,
15 calls, messages of some sort.

16 Q. I'm going to refer you to 11:44 on the screen.

17 A. 11:44 pm, this is an incoming call from Eric Cade's
18 phone to Jonathan Rhodes' phone.

19 Q. And then there's a host -- I see Cade, Cade, Cade, Cade
20 all the way down.

21 A. There are. These are several calls and text messages
22 from Mr. Cade.

23 Q. I'm going to refer you back up to 10:45. When's the
24 first incoming call from Mr. Cade?

25 A. The first incoming call is at 10:45. This appears to

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1 have been a voicemail left. And then a few minutes later,
2 about fifteen minutes later there's another incoming call
3 from Mr. Cade, duration seventeen seconds. Less than a
4 minute later Mr. Cade is calling Mr. Rhodes again. There's
5 a voicemail left. At 11:03 there is an incoming text from
6 Mr. Cade to Jonathan Rhodes' phone.

7 Q. And you don't have to read the text. I think Mr. Cade
8 covered that yesterday.

9 A. Thank you.

10 Q. It was a not so -- not so nice text to Jonathan Rhodes
11 at that time.

12 A. And then we have another incoming call from Mr. Cade to
13 Jonathan Rhodes at 11:44, very brief, five seconds there.
14 And finally we have an outgoing call to Mr. Cade, eighteen
15 seconds. An incoming call from Mr. Cade to Mr. Rhodes,
16 11:46, and then an outgoing text, an incoming text from Mr.
17 Cade and then an outgoing call to Mr. Cade from Mr. Rhodes'
18 phone followed by another text there.

19 And that -- I'm sorry, that last text I was just
20 talking about was at 12:49 am. And then again, here we have
21 an incoming text at 11 -- I'm sorry, 1:07 am on the morning
22 of October the 2nd. Incoming text from Cade to Mr. Rhodes.

23 Q. And what does that text from Eric Cade to Jonathan
24 Rhodes say?

25 A. That says, yo, are you on the way?

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1 Q. Now, what time was that text?

2 A. That was at 1:07 -- 1:07 and 12 seconds in the morning
3 on October 2nd.

4 Q. All right. You can continue on.

5 A. All right. So, again, we have another -- we are now
6 firmly October 2nd. This is incoming call from Mr. Cade to
7 Mr. Rhodes at 1:19 in the morning. Then we have two
8 incoming calls back to back at 1:22 and 1:23 in the morning,
9 both from Shirley Rogers' phone number, the one that ends in
10 3532.

11 Followed by 1:26 and 1:27 Mr. Rhodes' phone makes two
12 outgoing calls to Mr. Cade. Then beyond that we have a
13 series here on the 2nd, 1:32, 1:33, 1:34 and 1:34 outgoing
14 calls to a Brian Ferguson.

15 We have two more incoming calls here on the morning of
16 the 2nd, 2:00 in the morning, 2:03 and 2:04 incoming calls
17 from Ms. Rogers to Mr. Rhodes, very brief duration here,
18 nine seconds, seventeen seconds.

19 Incoming calls then again in the morning at 7:11 in the
20 morning and 7:11 again, both of them from Ms. Rogers' phone
21 to Mr. Rhodes' phone.

22 Here we have on the morning of the 2nd at 7:26 in the
23 morning an incoming text from Mr. Cade to Mr. Rhodes. The
24 content of this text message was, so what is it going to be,
25 my way or yours?

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1 7:36, again, October 2nd, we have an outgoing text from
2 Mr. Rhodes to Mr. Cade, where is the bag?

3 Then we had what appears to be another outgoing text
4 again, 7:42, you're taking too long with the car, your way
5 one more time. That may have been an incoming text.

6 Q. Outgoing to Richard Cade.

7 A. Outgoing, okay.

8 Q. All right. And then around 8:00 and 8:02 and 8:03?

9 A. Here we have a call from Ms. Rogers' phone, two of Ms.
10 Rogers -- the two calls from Ms. Rogers ---

11 Q. One is a text.

12 A. I'm sorry, text. One at 8:02:49 and one at 8:03:31,
13 3532 and 3532, both to Mr. Rhodes.

14 We have an incoming text from Mr. Cade, 8:09. And then
15 here we have two incoming texts at 8:11 and 8:11:47 from Ms.
16 Rogers to Mr. Rhodes, where you going? And I need to pick
17 up a car.

18 Q. All right. And then I'm going to turn you over to --
19 was there anymore communication around 9:35 with Shirley?

20 A. Right. We have an outgoing text here at 9:35 from Mr.
21 Rhodes' phone to Ms. Rogers' phone. We have an incoming
22 text from Ms. Rogers' phone to Mr. Rhodes' phone at 9:44.
23 And then at 9:52 an outgoing text from Mr. Rhodes to Ms.
24 Rogers.

25 Q. Okay. Now I'm going to show you what's previously been

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1 -- what has already been introduced, exhibits 148, 150, 152,
2 154 and 155 and see if you recognize these photos. I
3 believe you just testified that there was some incoming
4 calls around 9:45 in the morning of October 2nd.

5 A. That's correct.

6 Q. All right. Do you recognize this photo?

7 A. I do. This is one of our photos from TD Bank, the
8 transaction that occurred at a TD Bank ATM.

9 Q. And at what time did this photo -- did this photo
10 occur?

11 A. If you look up here at the top of the photo, we have
12 our time and date stamp, October 2nd, 2012 at 11:05 am. And
13 that's in Eastern Daylight Time there.

14 Q. Let me show you -- that was ---

15 **MR. WILKINS:** Your Honor, that was State's exhibit 154.

16 Q. Let me show you State's exhibit 155. Do you recognize
17 that photo?

18 A. I do. Again, it's from the same sequence of photos.

19 Q. Whose car is that?

20 A. This car here is Mr. Cade's Mini Cooper.

21 Q. I'll show you State's exhibit 152. Do you recognize
22 the person in the -- in the photo?

23 A. May I see the photo itself?

24 Q. Sure.

25 A. It's dark back there.

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1 Q. Let me show you State's exhibits 152 and 150.

2 A. This is Ms. Rogers.

3 Q. And what does she appear to be doing?

4 A. She appears to be using the ATM in those photos.

5 Q. I'll show you -- publish 150 to the jury. That's the
6 photo that you looked at?

7 A. That is the photo we just looked at.

8 Q. And then 148.

9 A. It's also from the same sequence. What you're seeing
10 there, that shape, that's the Mini Cooper and this is Ms.
11 Rogers to the side.

12 Q. And 152.

13 A. And this is Ms. Rogers again.

14 Q. So that would be late morning of the 2nd?

15 A. That's correct.

16 Q. All right. I'm going to ask you to look at a couple of
17 things from the extraction report of Jonathan Rhodes that's
18 already been admitted into evidence. I'm going to show you
19 exhibit 91. Do you recognize that?

20 A. Yeah. This section here is kind of a contents of the
21 report. And this will -- this -- what you see right here,
22 we have our call log. This is a type of -- this is our type
23 of what we're looking at in the contents here in this
24 section. This is our call log, incoming, missed calls,
25 outgoing, unknown. Included in the report is going to show

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1 the number of calls that were recorded on the phone that
2 were able to be retrieved in the report and be presented
3 here.

4 But in red you'll also see where it has a deletion
5 notation. That shows how many of those logs, those calls
6 were deleted, but we were able to recover them when the
7 report was actually run.

8 Q. So I'm going to refer you to the third page of State's
9 91 and refer you down to SMS message.

10 A. Right.

11 Q. What is that?

12 A. SMS messages are your text messages back and forth.
13 That would be what you're looking for when you're looking at
14 the texts one person sends to another or one person receives
15 from another.

16 Q. Okay. So how many were on here?

17 A. We have one draft, a single draft here. Our inbox,
18 these are received messages, three thousand, five hundred
19 and ninety-nine. Over here you'll see he has nine hundred
20 and ninety-nine deleted.

21 Q. Up at the top, how many total SMS messages were there?

22 A. Total we have -- I believe that's a 5874 or maybe a 6,
23 looks like 6874. And then over here -- yeah, it's 6874.
24 And over here we also have one thousand, a hundred and
25 sixty-four of those have previously been deleted, but

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1 recovered.

2 Q. Were you able -- did you ever review any photos that
3 were retrieved from the Cellebrite extraction?

4 A. I did.

5 Q. Okay. I'm going to show you State's exhibit 93. And
6 it's already been admitted into evidence.

7 A. This right here is kind of a section that would have a
8 bunch of thumbnails for images that were recovered off of
9 the phone device. Here, of course, is the name of the
10 image, just a random sequence of numbers, or not really so
11 much random, but that's the number sequence that identifies
12 this particular image right here. Of course, the size of
13 the image and all that. Here's our thumbnail representation
14 of the image itself.

15 And over here, if you'll see on this side right here,
16 this column, which you -- it's cut off up top, but this
17 column here on the right would indicate whether or not this
18 image had been deleted, but was able to be recovered. So
19 here we have a yes, a big red yes next to all three of these
20 images. These images had been deleted, but were recovered
21 during the download dump.

22 Q. I'm going to show you State's 94, which is a blow-up of
23 one of the pictures in State's 93. Do you recognize that
24 person?

25 A. I do.

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1 Q. Who is that?

2 A. It's -- this is Ms. Shirley Rogers.

3 Q. What's on the -- what's on her hat?

4 A. This hat up here reads Really Real.

5 Q. I'm going to show you State's exhibit 95, which comes
6 from, it's already been admitted into evidence, which comes
7 from the extraction. They're a little hard to read.

8 A. Yeah. This part of the section of the report would
9 just have been a long sequence that lists every single text
10 message that was retrieved during the dump. Here we have a
11 numerical order for each of these messages that were --
12 they're going down the line here.

13 The type of message, it's an SMS. That's your text
14 message. Date and time the message was either sent,
15 received, et cetera. It is in that Greenwich Mean Time. So
16 we had to adjust those when we're putting them in the
17 spreadsheet.

18 In this column you would either have whether it was
19 sent to someone or received from. And you see down here,
20 just for example, it says to, here's the phone number and
21 here's the name on the contact list, Amber. So this message
22 here was sent to -7678, Amber.

23 Below it, this message here was received from
24 3532. And it says Candy on it, which is the name he used
25 for Ms. Rogers.

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1 Then here on this section you have your actual content
2 of the message. This section here to the right, again where
3 it says yes, that yes is an indicator the message was
4 deleted, but it was recovered in the report.

5 Q. I'm going to show you a page of State's exhibit 95. Is
6 that where you extracted the -- what's the text message up
7 there?

8 A. This is a text message from Amber's phone,
9 7678. You see the content of the message here, answer the
10 phone, it's very important. It's what we've got on the
11 spreadsheet. This is a SMS message.

12 Here we have our date and time. It says 10/2/2012.
13 And it's got like 12:59 right here. I believe that's 12:59
14 in the morning. We had to -- it says am, yes. We had to,
15 of course, adjust that based on the Greenwich Mean Time,
16 subtract some hours from that to get a correct time.

17 Q. And that's how -- that's what you've got on the
18 spreadsheet that we previously looked at?

19 A. Right. That's correct.

20 Q. All right. I'm going to show you another page down at
21 the bottom there. So what is that?

22 A. This is another recovered message. This is from -
23 3532. The number was assigned -- assigned to Ms. Rogers
24 under the name Candy. The date of this message, October
25 13th, 2012. The time stamp on the phone says 3:33. This

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1 message was deleted, but recovered. And it says, good
2 night, love you still.

3 **MR. WILKINS:** Just a quick indulgence, Your Honor.

4 (Pause)

5 Q. One more, tell the date and what it says.

6 A. All right. This is -- date listed on the report is
7 10/15/2012. Then again here at 10/15/2012. Both of these
8 messages are from the -3532 number under Candy.

9 The first message is GM. This is -- over here it
10 states deleted, under the deleted, but recovered, it's yes.
11 What do you plan on doing today? Me? And then another
12 indication this message was deleted.

13 Q. All right. You've already testified that you were able
14 to review Cellebrite's and all the text messages, the toll
15 information that we previously discussed, the extraction
16 information. The toll information gives you the fact that
17 there was a call or not?

18 A. Correct.

19 Q. Was there any from the extraction, cross referenced
20 with the toll information, were there any text messages
21 between Jonathan Rhodes, Shirley and Amber that were not
22 deleted on his phone?

23 A. Not that I found, no.

24 Q. And this phone was recovered from Jonathan Rhodes when?
25 Do you remember?

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1 A. I believe it was done on the 22nd of October.

2 Q. And that's previously been testified to. All right,
3 Mr. Howard, were you involved in locating Jonathan Rhodes'
4 car?

5 A. I was. On the 22nd of October I received information
6 from Investigator Miller that the Mini Cooper in question
7 was located at McCurley's Body Shop, which is at 400 Wade
8 Hampton Boulevard. At his request I obtained a court -- I'm
9 sorry, a search warrant for that vehicle and went to
10 McCurley's to take possession of the vehicle.

11 From there we contacted forensics. Forensics wasn't
12 able to respond to the scene to take the vehicle at that
13 time. A tow -- one of our duty tow wreckers was called on-
14 scene to recover the vehicle.

15 I stayed with the -- with the vehicle and assisted -- I
16 believe it was partially in the shop. So myself and another
17 employee had to kind of push it back out of the shop to get
18 it back on the -- on the wrecker itself. But once it was
19 loaded on the wrecker, I followed the vehicle all the way to
20 our forensics office at 23 Winterberry Court until forensics
21 did take possession of the vehicle.

22 Q. And I'm going to show you State's 96, which has already
23 been admitted into evidence, real quick. And that's the
24 vehicle that y'all recovered from the mechanic shop?

25 A. That is.

JONATHAN HOWARD - DIRECT EXAMINATION BY MR. WILKINS

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1 Q. Once y'all recovered it did you call forensics or
2 anything like that?

3 A. Once I got there I contacted forensics immediately.
4 They weren't able to respond to the body shop itself based
5 on call volume. They were -- they advised they'd have
6 someone meet me at their office to take custody of the
7 vehicle. So I called a duty wrecker and had the duty
8 wrecker, as I stated before, tow the vehicle there, and I
9 followed the duty wrecker to the forensic office and stood
10 by while the car was turned over to the possession of our
11 forensics officers.

12 Q. Do you remember when that was?

13 A. That was the same day, October 22nd.

14 Q. Finally, I'm going to show you State's exhibit 98,
15 which was the extraction of Eric Cade's phone number,
16 already been admitted into evidence. If you could just read
17 those two.

18 A. The highlighted ones?

19 Q. Yeah, the highlighted ones.

20 A. This is, again, an extraction report. This is a
21 segment of the actual full download of the phone containing
22 the messages. This here, it's sent to Jonathan Rhodes. He
23 gave a section that shows whether it was read or not.

24 Q. I'm sorry, I think I may have said -- that is Jonathan
25 Rhodes' extraction.

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1 A. Oh, I'm sorry, you said with Mr. Cade.

2 Q. Yeah, ---

3 A. I'm sorry.

4 Q. --- I made a mistake.

5 A. Okay. All right. Sorry about that. October 3rd is
6 our date/time here. The content of this message, ---

7 Q. I'm sorry. Hold on two seconds. I'm confusing myself,
8 Mr. Howard.

9 A. That's all right.

10 Q. I don't want to put anything bad out there. This is
11 Eric Cade's.

12 A. Okay. All right.

13 Q. I apologize. I think Defense counsel was going to
14 correct me if I didn't correct myself.

15 MR. ERWIN: I was.

16 Q. I appreciate that.

17 A. That's no problem. Okay. Actually, on this column
18 here we see it's an incoming message to Mr. Rhodes here.
19 Where are you? Hurry up and come down. I want you to look
20 at something, too. I'm about to leave. I want you to see
21 these new shoes I got.

22 Q. All right. And finally, I'm going to show you State's
23 exhibit 145, briefly. I won't block everybody so the jury
24 can see. Who was living at South Vance Street at the
25 time -- around October -- on October 1st?

JONATHAN HOWARD - CROSS EXAMINATION BY MR. ERWIN

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1 A. This address here, Vance Street, this was the address
2 that Ms. McDaniel, Amber McDaniel and Shirley Rogers was
3 staying at.

4 Q. If you could answer any questions Defense counsel may
5 have.

6 Cross Examination by Mr. Erwin:

7 Q. Good morning, Investigator Howard.

8 A. Good morning.

9 Q. Okay. We have a lot to talk about. You are a white
10 collar crimes investigator, right?

11 A. That is correct.

12 Q. So -- and that's why you were brought into this case
13 because there was a lot of paper to track down, and that's
14 what you do?

15 A. Right. That is part of it, yes, sir.

16 Q. Okay. You assisted Investigator Hammett in looking
17 through the phone records and other financial stuff, ---

18 A. Yes, sir.

19 Q. --- right? Okay. And so you're familiar with the
20 fraud case that we've been talking about against Shirley?

21 A. Just the basic generics of it. I had not actually
22 worked that particular case.

23 Q. Okay. So basic generics of it, Jonathan's not
24 involved?

25 A. Not that I'm aware of, no.

JONATHAN HOWARD - CROSS EXAMINATION BY MR. ERWIN

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1 Q. Okay. All right. And let's talk about this TD Bank
2 picture at the ATM. You know the one I'm talking about?

3 A. Correct.

4 Q. Shirley's in it and the car's in it, right?

5 A. Um-hum (affirmative).

6 Q. Okay. Just to be clear, you're aware what Shirley's
7 doing there at the ATM, right?

8 A. If memory ---

9 Q. Because you pulled the bank records.

10 A. If memory serves, I believe that was related to the
11 fraud case.

12 Q. Right. But you're familiar with it?

13 A. Yes.

14 Q. Okay. And that is on October 2nd?

15 A. Correct.

16 Q. This is after the Wellses had been killed?

17 A. Correct.

18 Q. Right? And she is using her own card there, right?

19 She's extracting her own money?

20 A. I don't know if that was the case or not. I don't know
21 if it was her card or someone else's. I don't know that
22 much.

23 Q. It wasn't the Wellses' card?

24 A. I'm ---

25 Q. You don't know?

JONATHAN HOWARD - CROSS EXAMINATION BY MR. ERWIN

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- 1 A. I'm not sure.
- 2 Q. Okay.
- 3 A. I know those -- I know those images were taken from
- 4 that case, but I don't remember what the circumstances were
- 5 of the transaction.
- 6 Q. Okay. So when they brought you into this case to help
- 7 out, one of the first things you were doing was looking into
- 8 Shirley's background, right?
- 9 A. That is correct.
- 10 Q. You were trying to find known associates and things
- 11 like that? Ex-boyfriends, things ---
- 12 A. That's correct.
- 13 Q. --- along those lines, right? And you looked through
- 14 all incident reports and things like that you could find on
- 15 her to find other names that she was associated with.
- 16 A. That's also correct.
- 17 Q. Right. Jonathan Rhodes is not on any of those, right?
- 18 A. No.
- 19 Q. Okay. Now, and, of course, the first time that you
- 20 talked to Jonathan you didn't even know that's who you were
- 21 talking to.
- 22 A. No, not at the first -- not -- the first phone call?
- 23 No.
- 24 Q. Right. You were looking for Leroy at that point.
- 25 A. Correct.

JONATHAN HOWARD - CROSS EXAMINATION BY MR. ERWIN

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1 Q. Right. And that's who you asked for when he picked up
2 the phone. You asked for Leroy.

3 A. Correct.

4 Q. And then the next time you saw him he, of course, he
5 admitted that that had been him and that he was the one that
6 hung up on you.

7 A. That's correct.

8 Q. Now, you also participated in the investigation of the
9 case as in regards to the cell tower locator evidence,
10 right?

11 A. No. What I did was read the spreadsheets. There was
12 cell tower information. As far as -- and I'm not sure what
13 ---

14 Q. Okay. I'll ---

15 A. --- you mean by cell tower locator.

16 Q. --- I'll jump forward a little bit.

17 A. Okay.

18 Q. You know how the cell phone tower data stuff works,
19 right?

20 A. Generically, yes.

21 Q. Generically, right? You understand that we're going to
22 talk about in a little bit some information that shows based
23 on some of these calls where that phone was when those calls
24 were made.

25 A. That's correct.

JONATHAN HOWARD - CROSS EXAMINATION BY MR. ERWIN

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1 Q. Right.

2 A. Yeah.

3 Q. Okay. Your understanding of how that stuff works is
4 that that evidence, that data will indicate where the phone
5 was, right?

6 A. Correct.

7 Q. Not necessarily where the person was.

8 A. Well, correct. The data's going to reflect the phone.

9 Q. Right. So like if my phone is at my house right now,
10 ---

11 A. Um-hum (affirmative).

12 Q. --- and we were to call my phone, and then we were to
13 come back later and look at the data from those calls, ---

14 A. What we would be seeing is data that shows where the
15 phone is.

16 Q. Right, at my house, not here in the courtroom.

17 A. Correct.

18 Q. Not where I am, where the phone is.

19 A. Well, as long as you weren't -- as long as you were
20 separate from the phone.

21 Q. Well, right now ---

22 A. Right.

23 Q. --- when I am separate from the phone it would show
24 where the phone is, not where I am.

25 A. Yes.

JONATHAN HOWARD - CROSS EXAMINATION BY MR. ERWIN

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1 Q. Right. Okay. So let's talk about some of these phone
2 records.

3 MR. ERWIN: Just one second, Your Honor. I've got some
4 stuff to flip through.

5 Q. Okay. This is State's exhibit 99 already in evidence.
6 You and Mr. Wilkins were going through some of these calls.
7 And what I want to talk about are the calls that you guys
8 were discussing at 10:45 and then two at 11:02, these three
9 calls right here.

10 A. Yes, sir.

11 Q. Those are the important calls that we're talking about,
12 right?

13 A. Yes, sir.

14 Q. All right. You were in the courtroom yesterday when
15 Mr. Cade testified that those calls were not answered,
16 right?

17 A. Yes, sir.

18 Q. And you heard him say that those were missed calls,
19 that Jonathan did not answer the phone on those calls?

20 A. Correct.

21 Q. Okay. All right. So there was another aspect of this
22 investigation that you participated in, and that was with
23 the Enterprise rental car, right?

24 A. Yes.

25 Q. Okay. So on the early morning -- in the early morning

JONATHAN HOWARD - CROSS EXAMINATION BY MR. ERWIN

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1 hours of October 2nd Shirley Rogers, her car that she was
2 using, a rental car was repossessed, right?

3 A. According to Enterprise.

4 Q. According to Enterprise that's what happened, okay.

5 And that rental car was repossessed because she had been
6 paying for it with the stolen credit card that we were
7 talking about.

8 A. I believe that's correct, yes, sir.

9 Q. Okay. So in the early morning hours of October 2nd
10 that car gets repossessed and it gets taken back to
11 Enterprise, right?

12 A. Yes.

13 Q. And you find out about that?

14 A. Yes.

15 Q. Okay. So, of course, you run down to Enterprise to
16 figure out what's going on with that car because there might
17 be some evidence in there.

18 A. Correct.

19 Q. You found some stuff in that car, didn't you?

20 A. I did.

21 Q. Why don't you tell us what you found in the car.

22 A. In the glove box of the rental car was a canvas bag
23 that had two live unused .32 caliber rounds.

24 Q. And those were the same sized bullets that were used in
25 these killings.

JONATHAN HOWARD - CROSS EXAMINATION BY MR. ERWIN

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1 A. Same caliber.

2 Q. Same caliber?

3 A. Right.

4 Q. All right. And that was Shirley Rogers' car?

5 A. She had rented and used it at one point in time, yes,
6 sir.

7 Q. Okay. You also, Mr. Howard, Investigator Howard, you
8 also participated in some interviews in this case, right?

9 A. I did.

10 Q. You helped talk to some of the witnesses?

11 A. I did.

12 Q. Right. And one of the witnesses that you helped
13 interview was Amber McDaniel, this Amber we've been talking
14 about, right?

15 A. That's correct.

16 Q. There were two separate interviews of Amber, right?

17 A. I think I was on one of them.

18 Q. You were in the second one, right?

19 A. I think it was that one, is the one I was in.

20 Q. Okay. And you are aware -- well, you also looked
21 through the phone records, right? You looked through her
22 phone records.

23 A. I did.

24 Q. Right. And something that was interesting to you and
25 to the investigation was that after her first interview she

JONATHAN HOWARD - CROSS EXAMINATION BY MR. ERWIN

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1 called Jonathan a couple of times, like right after the
2 first interview.

3 A. Yeah, I think I remember that.

4 Q. Yeah, you remember that now, right? She called
5 Jonathan to come pick her up after the first interview,
6 right?

7 A. I can't remember if that was the reason. I know she
8 called him.

9 Q. Right. But you were there for the second interview
10 when you guys all talked about this, you and Investigator
11 Miller ---

12 A. Right.

13 Q. --- were talking about that she had called Jonathan to
14 pick her up from the first interview.

15 A. Right.

16 Q. And, of course, you remember that Jonathan didn't
17 answer the phone on that call.

18 A. I'd have to re-look at the records to verify ---

19 Q. Would it refresh your memory to look at the transcript
20 of the second interview?

21 A. Yeah.

22 Q. All right.

23 A. Sure.

24 **MR. WILKINS:** Could we approach, Your Honor?

25 **THE COURT:** Yes.

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1 (Whereupon a bench conference was held off the record,
2 in the presence of the jury, but out of their hearing)

3 (Whereupon the bench conference was ended)

4 **MR. ERWIN:** Court's indulgence for just one second, a
5 lot of paper to get straight here.

6 (Pause)

7 Q. Okay. So this is the transcript that I was talking
8 about. Take a look at that. And don't talk about what's in
9 it, just refresh your recollection of what you remember
10 about that.

11 (Pause)

12 A. Okay.

13 Q. Okay? So now after the first interview of Amber, she
14 called Jonathan's phone, right?

15 A. That's what she says she did.

16 Q. And Richard answered, right?

17 A. That is -- from the implication I got from reading it,
18 I believe that's what she was implying, ---

19 Q. Right.

20 A. --- yes.

21 Q. Because the phone had been left in the car.

22 **MR. WILKINS:** Objection.

23 A. I wouldn't know.

24 **MR. WILKINS:** Speculation.

25 **THE COURT:** Yeah, I sustain the objection.

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1 (Whereupon the jury entered the courtroom at 10:55 am)

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

3 **MR. WILKINS:** Your Honor, the State calls Richard
4 Fennern.

5 **MADAME CLERK:** Please raise your right hand.

6 **Richard Fennern,** being
7 duly sworn testified as follows;

8 **MADAME CLERK:** Please be seated and state your name for
9 the record.

10 **MR. FENNERN:** Richard Fennern.

11 **Direct Examination by Mr. Wilkins:**

12 Q. Mr. Fennern, with whom are you employed?

13 A. I'm a special agent with the Federal Bureau of
14 Investigation.

15 Q. And what do you do for the -- is that the FBI?

16 A. Yes.

17 Q. What do you do for the FBI?

18 A. I work on the Violent Crimes Task Force in Baltimore,
19 Maryland as well as I'm part of the FBI's Cellular Analysis
20 Survey Team.

21 Q. And how long -- how long you been with the FBI?

22 A. Since June of 2009.

23 Q. And what are your main job duties for the FBI?

24 A. As a Violent Crime Task Force, investigate bank
25 robberies, armored car robberies, what's called Hobbs Act

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1 robberies, which would be commercial robberies as well as
2 kidnappings. In addition with the Cellular Analysis Survey
3 Team I assist local departments in investigations as they
4 relate to cellular telephones.

5 Q. Okay. And when did you join the FBI?

6 A. 2009.

7 Q. And tell this jury a little bit about your educational
8 background.

9 A. Prior to the FBI I was in the United States Air Force,
10 initially the Air National Guard, received degree in college
11 of the Air Force in criminal justice degree. And then I got
12 an accounting degree, bachelor's degree from Metropolitan
13 State University in Minnesota and carry an active CPA
14 license out of Minnesota as well.

15 Q. Did you ever practice accounting?

16 A. I did for approximately three years before joining the
17 bureau.

18 Q. You said you were assigned to the Cellular Analysis
19 Team, is that correct?

20 A. Yes.

21 Q. All right. Tell this jury what that is and what y'all
22 do.

23 A. Cellular Analysis Survey Team, we refer to it as CAST.
24 CAST was an initiative that began in 2006 out of
25 Philadelphia relating to the use of cellular telephones and

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1 how you can use them in investigating crimes. From that
2 initiative it went to our FBI headquarters division where it
3 went to the Violent Crimes Against Children where we utilize
4 the cellular telephone evidence in the location of missing
5 kids and adults, abduction cases.

6 In 2013 we became our own unit within FBI headquarters
7 where now we have a staff at headquarters that manages our
8 team. And then we have forty-two agents throughout the
9 country that are -- go through a certification process and
10 that assist local, state, federal investigations and then go
11 as expert testifiers.

12 Q. So what does -- what is historical cellular record
13 analysis? What does that allow you to do?

14 A. What that is, it utilizes the information that -- you
15 have a cell phone, you communicate with a network by
16 utilizing your cell phone. And those companies keep
17 records, the numbers you're calling, the numbers that are
18 calling you, the activity on your phone.

19 In addition they have what's called cell tower
20 information or other location information that can tell you
21 the location or the general location of a phone when that
22 communication happened. So in a law enforcement setting we
23 can utilize that for many, you know, many different things
24 as far as pattern analysis. If you're looking at a subject,
25 you're looking for a fugitive, you can use these records to

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1 determine who that person is contacting and where they may
2 be located.

3 Our primary mission is utilizing it in kidnapping
4 cases. So if there is an abduction that happens and the FBI
5 is asked to assist in that case or there's some sort of
6 federal nexus for the FBI to be involved, one of our members
7 will then deploy to that location to assist in that
8 investigation to try to locate that missing individual. And
9 in addition to that we utilize it on a daily basis to
10 determine if a phone was consistent of being, if a crime
11 occurred, consistent of being in the area of that crime or
12 consistent with being somewhere else.

13 Q. And do you work with cell phone providers?

14 A. Yes, we work with them. We have constant communication
15 as far as one of our team members, really, on a daily basis,
16 but as part of our training we meet and train with the radio
17 frequency engineers for the cell phone companies as well as
18 their law enforcement relations or their custodians of
19 records, the individuals that actually produce the records.

20 Q. And are you familiar with the records kept by each
21 individual provider?

22 A. Yes, I am.

23 Q. And do you get training on that?

24 A. Yes.

25 Q. What kind of training?

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1 A. Well, to become certified with the CAST Team we have to
2 go through a selection process and then go over three
3 hundred initial hours of training. And with that training
4 we bring in the providers during this training.

5 And, as I said, we meet with them, we go through each
6 individual network to understand how it's built, what goes
7 into the factors of why -- how they create the network and
8 then how the records are created and then kept by their
9 companies. So we do that for each of those -- the
10 companies.

11 Q. How often do you think you have the privilege of
12 analyzing cell phone records?

13 A. Every day. I worked on two cases this morning before I
14 came here.

15 Q. And how long have you been doing this for CAST?

16 A. For CAST -- I've been doing it in my own cases since
17 2011. I became certified with CAST in August of 2013.

18 Q. And how many -- have you had chances to validate the
19 location of a phone after a particular event before?

20 A. Yes. As part of my -- part of my own cases I've had
21 cases where I've ended up having subjects that have had GPS
22 ankle bracelets on when they have committed a crime. So
23 I've been able to actually plot out their movements from
24 that ankle bracelet and matched up with their cell phone
25 records during that time to validate that, as well as had

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1 cases where we've had individuals on the phone with video
2 surveillance showing them where they were matched up with
3 the cell phone records that support that, as well as we do
4 what's called the drive test where we can actually map out
5 what cell phone networks -- what the actual sector, which
6 we'll get into -- what a sector looks like and show where
7 that phone must have been during that communication. So
8 through various reasons have been able to validate the
9 location information.

10 Q. And what about training? You ever do any training?

11 A. Yes. As far as -- so the training I've gone through
12 with radio frequency engineers and the phone companies, I've
13 also taught training all along the east coast from
14 Philadelphia, Maryland, Virginia, North/South Carolina,
15 Atlanta, Florida. I trained in Texas, Utah and Seattle as
16 well teaching law enforcement a three-day course.

17 Q. And is that related to historical cell detail analysis?

18 A. Yes, that is. It's going through each records from the
19 providers teaching law enforcement how to look at those and
20 then how to plot them out to determine a general location of
21 a phone. It's the standard three-day -- it's how I actually
22 began in 2011 in the CAST program was through that course.

23 Q. And have you ever had the opportunity to testify as an
24 expert before?

25 A. Yes, I have.

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1 Q. About how many times have you testified as an expert?

2 A. Over twenty times.

3 Q. And how many other members of the CAST Team are there
4 currently?

5 A. Currently -- we only had -- there's only twenty of us
6 up until a few months ago where we doubled in size to now
7 there's forty-two of us.

8 Q. And how many times have members of the CAST Team
9 testified as experts?

10 A. We've testified in over eight hundred trials throughout
11 the country.

12 Q. And what area of expertise have you been qualified in?

13 A. Historical call detail record analysis, which includes
14 the network setup, how towers react -- relate to networks
15 and how the phone interacts with those towers.

16 Q. And when you analyze records are those records then
17 reviewed by supervisors in the CAST Team?

18 A. Yes. Prior to -- prior to testifying we have to have a
19 peer review done by another member, a more senior member of
20 CAST or our headquarters team to double check and verify our
21 work.

22 Q. All right.

23 **MR. WILKINS:** Your Honor, at this time I would move to
24 have Richard Fennern as an -- qualified as an expert in
25 historical call detail analysis.

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1 **MR. ERWIN:** Judge, just subject to prior objections.

2 **THE COURT:** You don't have any voir dire at this time?

3 **MR. ERWIN:** No, sir, I don't.

4 **THE COURT:** All right. I find he is qualified as
5 offered.

6 **Q.** Now, Agent Fennern, did you -- were you ever asked to
7 become involved in the death investigation of Gary and Helen
8 Wells?

9 **A.** Yes.

10 **Q.** How did you become -- how did that request occur?

11 **A.** I believe the -- the request on my end came through our
12 headquarters unit as a request that came to them from
13 Greenville County requesting analysis. And then I was the
14 CAST agent, as there's twenty of us at the time, that
15 volunteered to take the case.

16 **Q.** And so once you get that request, what's the first
17 thing that you do?

18 **A.** What we do is request -- we provide the -- we ask for
19 the details of the case, any specific addresses that are
20 important as well as the time-frame that, in this case, the
21 homicides occurred, and then the records that were received
22 from the -- the original records that were received from the
23 phone company to perform our analysis.

24 **Q.** So you actually -- you were actually sent the
25 historical cell phone records that are related to the case?

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1 A. Yes.

2 Q. And were you sent historical cell phone records in this
3 particular case?

4 A. Yes.

5 Q. Do you recall which providers that were sent to you?
6 What are the name of the providers, the information I sent
7 to you?

8 A. Two telephone numbers that belonged to Sprint, and I
9 believe three telephone numbers that belonged to T-Mobile.

10 Q. And are you very familiar with Sprint and T-Mobile
11 network operations and their historical cell phone data?

12 A. Yes.

13 Q. And you've been trained on those and trained others on
14 those as well?

15 A. Yes.

16 Q. Once you receive that information what do you start
17 doing?

18 A. Really with just the basic information from that, I
19 will take that time-frame that was requested and I match up
20 the -- the cell phone records have that location information
21 that I talked about. So from that I'll look for activity
22 that happened during the specific time period.

23 And then I take the, what are called cell tower
24 identifiers, and I match them up to a cell tower list that
25 the cell phone companies keep of their network. And what

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1 that does is shows me a specific place where that tower's
2 located as well as a side of that tower that was used for a
3 call.

4 So I take that information and then present it,
5 illustrate it in a visual form. Instead of on a Excel
6 spreadsheet, I produce maps that show that information.

7 Q. And did you do that in this particular case?

8 A. Yes, I did.

9 Q. All right. Did you prepare a -- I'll call it a
10 PowerPoint presentation that explains or illustrates the
11 cell phone information that you received in this case?

12 A. Yes, I did.

13 Q. I'm going to show you State's exhibit 103 and ask if
14 you recognize that?

15 A. Yes, this is the report that I created.

16 **MR. WILKINS:** Your Honor, State moves exhibit 103 into
17 evidence.

18 **MR. ERWIN:** Without objection, Your Honor.

19 **THE COURT:** In without objection.

20 (Whereupon State's exhibit 103 was admitted into
21 evidence)

22 Q. All right, Mr. Fennern, you may want to stand up and
23 use that laser pointer as we go through your explanation.

24 So let's ---

25 **THE COURT:** Actually, I don't have any objection to him

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1 standing down here if ---

2 Q. Whatever is most comfortable for you and how you can
3 see ---

4 **THE COURT:** Probably give him a little better angle.

5 Q. --- see the screen, yeah, with a little better angle.
6 I'm just going to move the good book out of the way.

7 **THE COURT:** The only thing would be the court reporter
8 -- two things. Now, make sure you're not blocking the jury
9 and also make sure the court reporter can hear you.

10 Q. Mr. Fennern, I would stand, if you can, ---

11 A. Can I move over here?

12 Q. --- if you can see the screen, stand right there if you
13 can still see the screen there ---

14 A. Okay.

15 Q. --- so the jury can see the screen. So I'm going to
16 start with the first page of State's 103. I assume this is
17 your title page?

18 A. Yes. This is just the title page. It has my specific
19 internal number that identifies the case. And then this
20 lists out the five numbers that I analyzed in this case.

21 Q. And did you receive the details of those five numbers,
22 specifically the user of those particular numbers?

23 A. I was provided user information from Greenville County
24 Solicitor's Office of who used that phone.

25 Q. So now a little bit more background as to how your CAST

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1 Team operates.

2 A. This is just a background as far as the FBI was
3 requested to perform an analysis of these records. We
4 obtained them from the Greenville County Solicitor's Office
5 regarding a double homicide that occurred October the 1st of
6 2012.

7 What this talks about are the methodology, the analysis
8 report and the call detail records from the target post,
9 meaning there's activity that the phone companies keep of
10 what happened on that phone including cell tower
11 information. We match that cell tower information from
12 those records to tower lists that are provided by the
13 companies that show exactly where those towers are located.
14 And then we visually illustrated that.

15 The cell site locations -- we look for the towers. So
16 in this case I became involved in 2015 -- I believe 2015 in
17 the investigation. I go back to the towers.

18 I have a list of towers going all the way back -- so I
19 go back to towers that were in existence on October 1st of
20 2012 and utilize those to perform the analysis. And then
21 it's just a matching up of those records to then illustrate
22 that. And then the bottom just shows that the next page is
23 going to be the visual maps that show the location of these
24 phones during these specific times.

25 Q. So show us -- what is a cell phone tower?

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1 A. So the best way to say it is for your phone to work --
2 your cell phone works off of radio frequency. So you need
3 to have a radio frequency communication with a cell tower.

4 So meaning if you -- I'm sure you've maybe been in a
5 basement or somewhere where you have poor service and you
6 can't make a call. That's because you don't have that radio
7 frequency communication with a cell tower.

8 And your phone only communicates with a tower that is
9 -- if you're a Sprint phone, you only communicate with
10 Sprint phones with the one caveat being if you're not in a
11 Sprint network, there could be roaming agreements with other
12 towers. If you're in a Sprint -- in a Sprint network,
13 you're going to have that.

14 This is what a cell tower -- you may think of what a
15 cell tower looks. You'll see a large pole structure and
16 you'll see equipment on the top. The actual cell tower
17 really is -- this equipment on the top of the cell tower and
18 then the internal cables that run down to computer systems
19 and coax cables that connect with the main -- the public
20 network system, which is how you go from a cell phone to a
21 land-line phone or from a cell phone of a Sprint to the cell
22 phone of a T-Mobile phone.

23 So the close-up one here, you can see this equipment up
24 here are transmitters and receivers are what transmit the
25 radio frequency and receive that frequency back from the

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1 phone. So that is truly what the cell tower is.

2 You'll notice as I was waiting here in the back -- I
3 believe the -- there's a tower right outside this window.
4 And you can see on the top of that there's a cell tower.
5 They have that equipment just on the top of that building
6 facing down.

7 So you sometimes can see the tower -- the tower like
8 this big one. Sometimes you won't as they'll be blended in
9 with the side of a building, painted the same as the
10 building or I've seen them in fake trees.

11 So they disguise them 'cause we're customers.
12 Communities don't like to see these big towers all over the
13 place. So they try to hide them as much as they can.

14 Q. So ---

15 A. One other thing, -- sorry. There's a -- you see that
16 this is as a triangle. So this is a standard cell tower
17 setup, meaning there's three different sectors of the tower.
18 So each tower is traditionally three equal sides, however,
19 they can be canted depending on the network -- what the
20 phone company needs for the coverage.

21 Q. All right. So now I'm going to ask you to explain how
22 does the three sectors work?

23 A. So how the -- how a sector works with a cell phone is
24 the cell tower list will provide me a location of where that
25 tower location is. So that location is much like the large

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1 pole that I've shown you. That says this is where that
2 tower is physically located.

3 What it'll then tell me is that there's an azimuth or a
4 direction of where that sector is going to be. So in this
5 example here we have a tower, which is located here with the
6 sector being thirty degrees.

7 I like to look at it as much like a clock. If you look
8 at a clock from twelve, one, two, three, each hour is thirty
9 degrees. There's three hundred and sixty degrees in a
10 circle, twelve hours, twelve times thirty is three sixty.

11 So from that I know the center of that sector would be
12 at 1:00 or thirty degrees. Then what I do is go sixty
13 degrees each way or two hours as you look at a clock, and
14 that provides you the estimated left and right boundaries of
15 that sector.

16 So you can see in this case this sector would be from
17 11:00 to 3:00 is where that coverage is pointed. And that
18 would be the direction of where the phone would be located
19 in this example.

20 Q. So give us an overview of this particular case.

21 A. So in this case throughout here I'm going to have it
22 color coded between telephone numbers. I was provided --
23 provide analysis around -- I believe it started around 8:30
24 on October 1st through the early morning hours of October
25 2nd. I was told the crime scene was Terramont Drive in

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1 Greenville, South Carolina.

2 I had these five telephone numbers to analyze,
3 7553, which is a Sprint telephone number, which I was given
4 the name of Rhodes as being the user of that telephone.

5 -0257 is also a Sprint phone. I was provided the
6 name of Cade as the user of that phone.

7 I was then given -9391. The user, the last name
8 of Rogers. And another name -- phone for Rogers being
9 -3532. Both of those phones were T-Mobile phones. And
10 then -7678, provided the name of McDaniel, which was
11 also a T-Mobile phone, which T-Mobile and Sprint keep some
12 of the same records, but there is differences in what they
13 keep.

14 Q. Is that Amber McDaniel?

15 A. From what I know, yes.

16 Q. All right. Tell this jury sort of how this call detail
17 record -- what it looks like and what does it mean?

18 A. So this is the snapshot of, I believe, the Rhodes'
19 phone in this case. This is the actual record, snapshot of
20 the records that were received.

21 So with this, this is an explanation of what all these
22 things mean. The first thing to notice, calls are always in
23 -- in Sprint, they're always in local time. So here we're
24 in Eastern Time Zone. All these calls are in Eastern Time
25 Zone.

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1 Text messages are kept in Central Time. So meaning on
2 -- I'll show in a minute, this second line is a text
3 message. It shows up here saying the text message happened
4 at 9:23 pm. In actuality that actually happened at 10:23
5 because that time on there is Central Time because the
6 switch for text messages for Sprint are located in, I
7 believe it's Kansas. So each of the records have their own
8 unique quirks to them that you have to take into account.

9 So with that, what these records, much like your cell
10 phone bill, this first column is a calling number. So if
11 this is the -- in this case this would be the Rhodes' phone,
12 they're making a call. They're the calling number. So
13 they're the person making the call to someone else. So the
14 target number, where here it's -- that's the 7553 number, is
15 making a call to somebody else.

16 The next number is the called number. That can be
17 either the number that was called in a transaction or it
18 could be a routed -- a routed number, meaning as your phone
19 number goes to this -- goes through the system, it could be
20 -- it could be routed through numbers that Sprint has that
21 moves it from one place to another.

22 You'll also see the routed would be when there's a 1-1
23 in front of that. That means that that phone call was
24 routed to voicemail, so meaning the person never picked up
25 that phone. It got routed to the voicemail. And that's

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1 what that 1-1 identifies.

2 Also with this, in a text message, you'll only see
3 numbers in the calling and called number columns. Text
4 messages don't have a dialed digits.

5 And the next one is the dialed digits. That's showing
6 you the actual numbers that were pressed into the phone. So
7 that's the number that was called. So if you were to have a
8 difference in numbers from here to here, this is the number,
9 the dialed digits that was actually called. This would just
10 be a routed one whether it went to voicemail or it was
11 routed through the system.

12 So in this case, the first one we have is halfway down.
13 You see this is an incoming call. Both -- oops, I
14 have the wrong one. I'm sorry. -0257 dialed -
15 -7553. It shows it's a routed call. And you see the
16 1-1s in front of that. That means that that was a call to
17 the target phone that was routed to voicemail.

18 Next here, the MR number that we have, we have outgoing
19 and incoming. Pretty straightforward. It's telling you the
20 phone -- the target phone's receiving an incoming call or
21 making an outgoing call.

22 The other thing you'll see is that routed call, that's
23 going to identify -- that's going to normally be associated
24 with an incoming call that's coming to the phone and it's
25 getting pushed to voicemail.

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1 Next we have a start date and time. That's showing you
2 exactly when that transaction happened, when that
3 communication with the cell tower took place. Again, taking
4 into account, that start time, if it's a text message, it's
5 actually -- you'd have to add an hour to that start time.

6 End time, just as it says, the ending of that
7 communication. And then duration's in seconds. Sprint
8 keeps the duration of what your call -- records it in
9 seconds. So that shows that entire communication -- the
10 time that phone communicated with the network, with the
11 tower.

12 Next we have which is a repoll. This is getting into
13 that location information. So we have repoll, which is like
14 a switch. It's showing you a group of towers that were
15 used. So what that does, it'll tell you repoll 607 is
16 towers that are in the Greenville, South Carolina area.
17 It's much -- I refer to it as much like an area code. It
18 identifies a general area of where you are.

19 This number with this first cell forms a unique
20 fingerprint within the cell network system. That number is
21 only for one tower and sector. So that shows you exactly
22 where that phone -- the tower the phone used and what side
23 of the tower was used.

24 And what that is, this first number -- so this top one
25 you have a 3. That's identifying what sector was used of

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1 the tower.

2 And in this case there's a lucid market in Sprint,
3 which what that means to us is looking at the records the
4 sectors are kept in 2, 3, 4 format instead of 1, 2 and 3.
5 So if the sector here says 3, it's actually sector 2. So
6 you'd have to subtract one from each of them. So, again,
7 the phone company's not made for us, it's made for their
8 internal system. So there's little quirks to that.

9 The next numbers after that identifies the specific
10 tower that was used. So this is much -- I can think of it
11 as a -- much as like an address.

12 You first have, you know, your zip code would be 607.
13 The tower identifier would be 38, which would say Terramont
14 Street, for instance. And then the 3 would say
15 Terramont. So all of those together form the location
16 information of that tower. So that tells me those together
17 of where to look on the cell tower list of identifying that
18 tower.

19 That's for the first of the call. There's also a last
20 cell tower that's used. So where that phone -- the tower
21 used at the ending of the communication.

22 For mapping purposes, our CAST policy within CAST is we
23 utilize the first cell only traditionally because the first
24 cell is when a phone chooses what tower to use. Once you're
25 in the network, the network can move your phone to an

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1 adjacent tower, which it still has to be in the footprint of
2 that tower.

3 It still has to have enough energy, but it doesn't show
4 what that phone saw the best at that time. Your phone only
5 selects the tower that it sees the strongest and clearest
6 signal from. Not necessarily the closest tower, but the one
7 it sees the strongest and clearest signal.

8 Q. So as you -- let me follow up on that, that issue right
9 there. So could you be close to a cell phone tower and not
10 use that actual cell phone tower and use one that may be
11 located far away when you initially -- when you either
12 receive or activate that call?

13 A. Yes. And the reason is its line of sight technology is
14 what radio frequency uses. Frequency when it goes up from a
15 tower and bounces around, it moves -- obstructions cause it
16 to slow down, to have to go around them.

17 So the best case -- the easiest scenario would be in a
18 city environment where there's large buildings, you could
19 have a building that may be blocking, you know, the closest
20 tower to it at that point. So the signal from that tower is
21 being slowed down or being degraded where you may have a
22 direct line of sight to a tower that's further away. So
23 that signal's coming to you quicker. Nothing's slowing it
24 down.

25 So it's much like driving on a freeway versus driving

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1 with stop signs. The freeway's going to get you there
2 quicker, assuming you're not in rush hour, than the stop
3 signs.

4 Also, you'll have areas where you'll have a tower that
5 is small. So maybe on the top of a telephone pole, that's
6 used to cover a smaller area. Or you'll have a tower that's
7 a hundred feet up that is designed to cover a bigger area.
8 So those factors factor into what the phone sees the best.

9 Q. All right. So tell this jury about cell phone tower
10 location or I think it's called PCMD data.

11 A. So what we had first was the call detail records.
12 Those are the standard records that you get from --
13 information you get from any provider.

14 The next we have with Sprint -- Sprint's a CDMA, code
15 division multiple access company, which is the technology
16 they use. And with those companies we get what's called per
17 call measuring data, meaning we get distance measurements
18 that were taken during that call. So it can go from not
19 just knowing what tower and sector was used, but an
20 approximate distance of how far away that phone was during
21 that communication.

22 So in this, this is explaining what everything means in
23 this snapshot, which are the actual records in this case.
24 So, again, on the left it has phone number. That's the
25 phone number of whose records we're looking at. So in this

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1 it's the 7553 number.

2 We then have an ESN, which is the electronic serial
3 number. So that means if you have -- that is the identifier
4 on your actual phone that shows what hardware you use. So
5 it matches up the physical phone to the records.

6 Next we have again that call start time. That's the
7 time that this measurement was taken. You then will have
8 the duration of how long that communication happened when
9 the measurement was taken.

10 The only thing I'll note, you'll have -- maybe you'll
11 have a forty second duration, these measurements are taken
12 at the speed of light. So they're not -- it's not taking
13 forty seconds for that measurement to happen. It's just
14 happening during that call where that measurement is taken.

15 Next we have a switch. That's just another name for
16 the repoll that we went through earlier. The cell phone
17 company has many different ways to refer to the same thing.

18 The cell ID, again, you'll see that matches up to the
19 other call detail records. It takes -- it's separating out
20 the sector from it so it has a stand-alone number. So in
21 this case it's showing you that it's tower 38.

22 Next we have the sector. Now the sector on this report
23 is actually in 1, 2, 3 format. So if you were to look at a
24 record in here for this top one and see that it used tower
25 38, sector 2, on the actual CDRs that would be listed as

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1 30038 because you had to add that number to it. So that's
2 just how those two marry up.

3 The next is the distance in miles. So that's the
4 calculated estimated distance of where the phone is away
5 from the tower when that communication happened. With that,
6 it's a math problem that's taking place. It's measuring
7 time out and time back, the round trip delay in that
8 communication from the tower to the phone and back.

9 And then it's applying the formula much as the speed of
10 light, three hundred kilometers per second or microsecond.
11 I can't remember exactly which, but it's applying that
12 formula to then give a distance to it.

13 With that calculation there's a small error rate, being
14 that there's a chipset within that timing mechanism, which
15 is approximately two hundred and forty-three meters. So
16 when ---

17 Q. How many feet is that? I'm a feet guy.

18 A. Two hundred and forty-three meters is about three --
19 three feet in a meter at ---

20 Q. Six hundred ---

21 A. So six, seven hundred feet or so of variation in that.
22 And you'll see when we're mapping these out, I have instead
23 of a stroke just one line of where that one point eight
24 three (1.83) miles would be. I have it offset on each side
25 to have a two hundred and forty-three -- approximate two

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1 hundred and forty-three meter band of where that phone would
2 be located.

3 Next with this report is Sprint provides an estimated
4 latitude and longitude, which can be a -- in law enforcement
5 it can be kind of an interesting thing because you'll see
6 that and you want to believe that the phone must be -- it's
7 in here, it must be located at that latitude and longitude.
8 What happens with that is there's formulas the company uses
9 that we don't exactly know where it's getting that
10 measurement from. So we can't gain any confidence level on
11 what that means.

12 And what that is, based on the CAST Team and how we
13 work with the records is we utilize this to locate people,
14 to locate missing people. So we've been able to work with
15 these numbers and see how they're actually generated.

16 And in this case, this latitude and longitude, if they
17 only have a measurement from one tower -- so in this case if
18 they have a distance of one point eight three (1.83) miles
19 from a tower, if they only have a measurement from that one
20 tower, they're going to put that latitude and longitude
21 point right on the direct -- that azimuth.

22 Remember that center of that sector? They're going to
23 put that dot, that latitude and longitude point just right
24 on that center line because they don't have any information
25 that tells them left or right from where it is.

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1 So we don't rely on that to testify because we can't --
2 we can't verify the accuracy of that latitude and longitude
3 point. We don't know for any given one if they have
4 measurements from another towers -- another tower because
5 they don't -- they don't list it on here. And they -- this
6 is an engineering tool they use. So they won't -- they
7 won't provide anymore information than what is displayed on
8 here for that.

9 Q. But the distance in miles is accurate?

10 A. Right. That's a calculation that happens. So that
11 tells you what happened during that call. So that's an
12 accurate measurement. It's much like going out and taking
13 the temperature or something. You know that that happened
14 at that point in time.

15 Next after that is really just additional -- cascade is
16 another identifier for the towers within their network.
17 Call type is telling you what kind of transaction happened,
18 where they made that recording. In this case all of them,
19 the recordings are from voice calls that happened.
20 Sometimes, depending on when you get these records you can
21 get additional information regarding date of transmissions
22 as well as text messages, finding more information.

23 Q. All right. I'm going to ask you to do a brief overview
24 of T-Mobile, which is a different provider, is that correct?

25 A. That's correct.

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1 T-Mobile, again, calls in this case are all in local
2 time, again. However, text messages -- aren't any on this
3 one identified. But text messages, if you see them on a T-
4 Mobile network are actually in the Pacific Time. They're
5 switched -- their text messages are located on the west
6 coast.

7 So all those are located in that time. So you have to
8 adjust the time with three hours to come to the local time.
9 So you'd be adding three hours to the text messages for T-
10 Mobile.

11 Again, we have all -- maybe different names for all the
12 same type of information. You have the MSI DSN, which is
13 the subscriber identity. That's showing you whose records
14 we are. So in this case it's the -3532 number.

15 We then have the direction, MOC and MTC. Mobile
16 originating call, meaning that subscriber is making the
17 call. Mobile terminating call, meaning that individual
18 received an incoming call.

19 Next we have the seizure date and time. Again, that's
20 when that phone utilized resources on the network. These
21 are a little -- T-Mobile provides records in all different
22 formats. These ones are a little scrambled in what they
23 have, but right here we have first cell ID. That number
24 together provides the tower and the sector that was used.
25 It's a unique number specific to a tower and sector.

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1 The other side of that, I'm going to skip ahead a
2 little bit, is first LAC. The first LAC and the first cell
3 ID are the numbers that go together to provide that unique,
4 you know, fingerprint of where that tower's located. So
5 they're not in the nice order as they were in Sprint, but
6 those two things together provide that information.

7 Next we have the first tower latitude and longitude.
8 T-Mobile actually puts on the latitude and longitude of
9 where that tower is located on just their regular records.

10 You then have the last cell ID. And I'm going to put
11 that with the last LAC. Those numbers together form what
12 tower and sector were used at the end of that call. So the
13 LAC is much like the area code as it was with Sprint.

14 You next have the mobile switching center name. That's
15 identifying -- another identifier for the switch that was
16 used. And you have the market. So in this case showing you
17 that it's in the Carolina market as they refer to with T-
18 Mobile.

19 Down further you have the calling number. So that's
20 showing the number that was making the outgoing call. And
21 you have the called number being the number that received
22 the call.

23 And IMEI, again, is much like the electronic serial
24 number. That's that identifier for your physical phone. It
25 shows that this phone belongs to that number.

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1 And then the IMSI is the international mobile
2 subscriber identity. That's T-Mobile's GSM company. So
3 think of that as the SIM card that's in your phone. That
4 identifies -- it's just another identifier for that
5 subscriber.

6 And then at the end we have the duration, again in
7 seconds of how long that call took place.

8 Q. Now, let me ask you as far as calculations that you're
9 allowed to make between Sprint and T-Mobile. There's a
10 difference on what you can do with each provider's
11 information.

12 A. Correct.

13 Q. Okay. What's the difference?

14 A. Well, with T-Mobile all we can determine is the tower
15 and sector that was used. They don't provide any distance
16 to tower measurement. So we can't form any opinion as to
17 how far away that phone is from the tower that happens --
18 when the transaction happens.

19 Q. But you could do that for Sprint?

20 A. Correct, if you have that protocol measurement data
21 report.

22 Q. And was ---

23 A. Which we have in this case.

24 Q. Was Jonathan Rhodes' cell phone provider Sprint?

25 A. Yes, it was.

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1 Q. Shirley Rogers and Amber McDaniels was not?

2 A. Correct. T-Mobile.

3 Q. So tell us what we're -- what we're looking at
4 geographically.

5 A. So this is a legend of the analysis in this case. It
6 has the addresses that were provided to me by the government
7 that were important to this case.

8 I'll start with -- it's a little bit hard to see in
9 this format, but I have the T-Mobile's and Sprint phones in
10 the following slides individually so you'll be able to see
11 the towers better. But what it's identifying is there's
12 pink or red circles that are in here. Those are T-Mobile
13 cell towers.

14 So each network has -- each network has their own tower
15 setup. So they don't necessarily have to be in the same
16 location. So these red circles would be T-Mobile towers.
17 You'll see black circles. Those are representing the Sprint
18 towers, so the Sprint network.

19 We then have in red you'll see Terramont Drive.

20 That's going to be our crime scene location. We then have

21 South Vance Street on the left side, which is identified
22 with that house symbol. It was provided to me as an address
23 of importance to the case.

24 We then have another house symbol over here closer.

25 That is Glen Forest Drive, provided to me as another

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1 address of importance. And down just in the orange we have
2 Verdae Boulevard, another address provided to me.

3 What you'll see up here, when you have -- I call them
4 kind of a pie wedge. And you have these left and right
5 limits. This is -- remember that circle where I said you
6 have an azimuth, and left and right limits? That's what
7 this is showing you. This is showing you what cell tower
8 was used.

9 And then this shaded area in the middle, that doesn't
10 say where the phone's located. That's just telling you
11 that's the direction of the energy from that tower. So that
12 phone is located -- would be located somewhere in that
13 scenario south of that tower.

14 And then what we do -- what you do to determine that is
15 you know the other towers that are in the area for that
16 network. I refer to it as -- I think of it as a sprinkler
17 system within your yard. You put one sprinkler out, you
18 know, you only have coverage to do a certain area. So you
19 put more than one sprinkler out with overlapping area within
20 those sprinklers so you don't have a dead spot in your
21 grass.

22 A cell network is set up the same way with radio
23 frequency. You have a tower set up providing energy to an
24 area. You have another tower set up providing energy that
25 over -- slightly overlap with one another so you don't have

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1 any dead spots in your coverage.

2 That's what allows you to drive down the road and
3 continue on your call when you're moving, you know, from
4 cell tower to cell tower as that communication is happening.
5 It's because of that overlap.

6 Q. All right. So is this your first analysis of phone
7 numbers?

8 A. Correct. The first number that we're dealing with,
9 I'll probably refer to after giving the number the first
10 time as the Rhodes' phone. So we're dealing with telephone
11 number -7553, which was provided to me as being the
12 phone number for Rhodes.

13 So this is showing the cell towers and sectors used by
14 the Rhodes' phone at 8:24 pm and 8:28 pm on October 1st,
15 2012. So we have at 8:24 pm tower to the south facing
16 north. And at 8:28 pm we have the tower slight to the north
17 facing kind of south/southeast.

18 In between there we have the Verdae Boulevard,
19 which, I believe, was provided a Bi-Lo address showing where
20 that address is in relation to where those two tower
21 transactions were at that time.

22 Q. Did you extend out your time-frame?

23 A. Yes. This is now the next activity of cell tower,
24 meaning calls. Sprint only keeps tower information per
25 calls. So this is showing the next calls that take place,

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1 cell towers and sectors used by the Rhodes' phone from 8:44
2 to 9:46 pm on October 1st.

3 So you can see there's a tower here to the southwest.
4 Activity at 8:55, 9:20, 9:21. There's activity over here at
5 9:48. And up here at 8:44 and 9:05 pm we have cell tower
6 activity as well in relation to Glen Forest Drive.

7 Q. All right. On the previous slide, let me go back to
8 the previous slide, that cell tower information right there
9 is at 8:28 and 8:24. Is that consistent with somebody being
10 at the Bi-Lo at around that time?

11 A. Where you're hitting up, you have this tower here
12 going, you know, in this direction with the limits here.
13 This one going north. That would be consistent with, you
14 know, a phone being at or near that area between the two or
15 a phone traveling through that area. You can't specifically
16 tell, but it would be consistent with a phone that would be
17 near Verdae Boulevard.

18 Q. And the next slide, what is that consistent with?

19 A. So this one is a little more unique. Actually, I had
20 to dig into this one a little bit further. I said there's
21 usually a -- the tower usually has three sectors that are
22 equally spaced apart, but again it's based on the cell phone
23 company and what their needs are.

24 So in this case the question is is this phone
25 consistent with being at Glen Forest Drive? My

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1 analysis -- initially looking at it there are these towers
2 here that are consistent with that, but at first glance this
3 tower over here wouldn't really be consistent with being in
4 that area. So I had to look further at this tower to see if
5 there was something unique about it.

6 Q. And what did you discover?

7 A. What I did is, again, you have that additional
8 information with Sprint where you can dive down and have the
9 distance information. What I also did was looked at that
10 specific cell tower, which was unique compared to the other
11 towers as they're not set at an equal hundred and twenty
12 degrees from one another.

13 So in this case in black -- and this isn't showing you
14 the estimated coverage area of the tower or anything. It's
15 just used to show you the angles that it's set up with.

16 Second one is facing north identified with the -- in
17 black being the left and right boundaries for that hundred
18 and twenty degrees. You can see how the line of this one is
19 consistent with being right on the line of the Glen Forest
20 Drive area.

21 We then have sector two instead of traditionally it'd
22 be at one twenty being exactly a hundred and twenty degrees
23 from the other one, it's canted at a hundred and forty
24 degrees, which puts it with a estimated coverage area in
25 this area, which leaves a -- like a twenty degree gap in the

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1 network.

2 We then have the blue, which is now back consistent
3 with the edge of the black with extra overlap on the red one
4 here. What that means is the network was designed to make
5 sure you have adequate coverage, you know, more of an
6 emphasis on this residential/I'm assuming somewhat of a main
7 road, I think, 291.

8 What that means is you have the airport over here,
9 which is we see this in airports a lot. Airport's flat,
10 planes have to come in and go. So you have a flat
11 environment with less obstructions.

12 That means between these two sectors their coverage is
13 bleeding over and one of those sectors would be covering
14 that area, if not, a nearby area would be covering that
15 area. So it wouldn't be a dead spot, it would be more of a
16 -- I would say -- I would assume someone in that area would
17 have bad coverage.

18 Q. So were you able to do some calculations?

19 A. What I did is took that PCMD data, that per call
20 measurement data that showed me how far the phone was away
21 from each of the towers during those specifically three
22 calls that were fairly -- four calls here, 8:44 pm, 8:56 pm,
23 9:05 pm and 9:21 pm.

24 So what we did, we have this identifier, that repoll
25 tower and cell sector, 607523, was utilized at that 8:44 pm

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1 call. And during that time it was a measurement of that
2 phone being approximately point nine eight (.98) miles away.
3 That's indicated by the -- this black arc.

4 Next you had 8:56 pm you had utilized this 607382.
5 That is that tower that has that -- the canted that I was
6 just showing you in the previous one. So that measurement
7 puts you out one point eight three (1.83) miles out at this
8 distance here.

9 Next we have at 9:05 pm we have point eight seven (.87)
10 miles in blue shown here in relation to Glen Forest Drive
11 utilizing that 607523 tower. So you see we have consistent
12 measurements from the one tower. And then we have one point
13 eight three (1.83) miles again from the tower down here, the
14 center target.

15 So what we have is we have that twenty degrees of open
16 area from right here, meaning that one point eight three
17 (1.83) measurement -- if I'm looking for -- if I'm looking
18 for a missing individual, there's two points of emphasis
19 that I'm going to be looking for on this slide. I have
20 overlap between all three of these right here. And knowing
21 the makeup of that cell tower, I also have overlap coming up
22 into this area here. So I'm looking at those two points of
23 where I would go.

24 It's our policy to keep it at -- even though you have
25 that one twenty, that can't -- we don't -- we don't change

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1 our measurement to show anything besides explaining what
2 could happen.. So in that case, with that gap, it could be
3 consistent with being Glen Forest Drive. It also could be
4 with the phone that's moving within that area somewhere. So
5 you can't tell specifically where it is.

6 Q. So is it fair to say that between 8:44 and 9:21 on your
7 measurements the Rhodes' phone is consistent with being at
8 Glen Forest Drive?

9 A. Being at or near.

10 Q. At or near.

11 A. Yes.

12 Q. I'm going to show you real quick State's exhibit 99,
13 which was a synopsis done. At 8:44 down here at the bottom
14 it was an incoming call from who?

15 A. We have the Rhodes' phone. 8:44 we have an incoming
16 call that's listed as being coming from Amber. That's a
17 four second call that appears to go to a voicemail.

18 Q. And then another incoming call at 8:55?

19 A. This would be the 8:55 as shown on there would be
20 another incoming call from a 451-9967 number.

21 Q. And then there's a text after that. That's not in your
22 -- that's not in your calculations, right?

23 A. Correct, because there is no -- we don't have any data,
24 any cell tower information for texts.

25 Q. And then at 9:05?

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1 A. 9:05 we have an incoming call with Amber's telephone,
2 so the McDaniel phone at one -- a hundred and eighty-two
3 seconds. So it's slightly over three minutes.

4 Q. And then at the top you go to 9:05, 9:20 and 9:21?

5 A. Correct. Again, so 9:05 text. 9:20, 9:21 we have
6 outgoing calls to that 451-9967 for two seconds and thirty-
7 nine seconds.

8 Q. Okay. So up until 9:21 Rhodes' phone is consistent
9 with being at or near Glen Forest Drive?

10 A. Correct.

11 Q. What do we have here?

12 A. So from here, this is now the next communication with
13 that phone after the -- I think that's 9:21 pm. So we have
14 a break in cell tower activity until 10:45 pm where then we
15 have one communication at 10:45 pm and then two
16 communications that occur at 11:02 pm, one at 11:02 and 4
17 seconds, one at 11:02 and 57 seconds.

18 And that's showing the Rhodes' phone utilizing the
19 tower and sector depicted here facing south. And you see
20 the other towers and the other black dots in here being
21 other Sprint towers in that area.

22 Q. And that's that 10:45 phone call?

23 A. Right. 10:45 and 11:02, correct.

24 Q. I'm going to go back to State's exhibit 99. And you
25 just testified that at 9:21 right there, that phone was

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1 consistent with being at or near Rhodes' home where he was
2 living.

3 A. Correct.

4 Q. All right. And so what happened at 9:40 on this
5 exhibit?

6 A. 9:40 we have incoming text message.

7 Q. From?

8 A. It looks like, I believe, one of the Shirley Rogers'
9 phone ending in 3532.

10 Q. And what about 9:41 and 9:44?

11 A. We have more outgoing texts, 9:41 text to 254-8252.

12 Another one outgoing to the same number. And 9:41 and 31
13 seconds another outgoing text to the Shirley Rogers' phone.
14 9:44 another outgoing text to the 3532, Shirley Rogers'
15 phone.

16 Q. All right. And what about 9:45 and 9:46?

17 A. 9:45 you have an incoming text from the 3532, Shirley
18 Rogers' phone. At 9:46 an outgoing call to the 3532,
19 Shirley Rogers' phone.

20 Q. All right. And how long did that last?

21 A. A hundred and sixty seconds.

22 Q. All right. And then at 10:04 what do you have?

23 A. 10:04 an outgoing text to 254-8252 followed by another
24 , outgoing text to the Shirley Rogers' phone, 3532.

25 Q. So at 10:04 and 31 seconds Rhodes sends a text to

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1 Shirley Rogers?

2 A. The Rhodes' phone to the Shirley Rogers' phone,
3 correct.

4 Q. All right. When is the next outgoing -- the next
5 outgoing call or text from the Rhodes' phone?

6 A. The next outgoing after 10:04 -- all incoming until
7 11:45 pm an outgoing call to the Cade phone.

8 Q. All right. So I'll refer you back to State's -- the
9 original exhibit we were working on, State's 103. That is
10 the Rhodes' phone at 10:45, 11:02?

11 A. Correct.

12 Q. And so what is that -- what is that telling us?

13 A. It's showing this tower and sector was used for the
14 call, meaning that the phone is located just from this tower
15 information somewhere down in this area from that tower.

16 Q. Did we ever do some calculations or not calculations,
17 illustrations?

18 A. Again, being a Sprint phone, then you have that
19 distance to tower measurement information that happened
20 during these calls.

21 Q. What do we have there?

22 A. This is the distance to tower measurements for
23 telephone number -- the Rhodes' phone at 10:45 pm. That's
24 showing that the tower and sector identified here, 607292,
25 sector two, with an azimuth of a hundred and eighty degrees,

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1 due south, was used for the call at one point nine five
2 (1.95) miles or one point ninety-seven (1.97) miles away
3 from the phone, which is identified by the black arc shown
4 on the diagram here.

5 We then have the two calls that happened at 11:02
6 within, I believe, forty or fifty seconds of one another.
7 We have a measurement of one point eight nine (1.89) miles
8 from that same tower shown, hard to see here, but right in
9 the -- right in that same area in blue.

10 We then have a measurement of one point eight eight
11 (1.88) miles during that 11:02, which is shown in red.
12 Again, within that same area of all three of those
13 measurements.

14 Q. Is that consistent with the Rhodes' phone being at or
15 near Terramont Drive at 10:45 and 11:02 on October 1st?

16 A. Yes.

17 Q. All right. There's a closer Sprint tower I see there,
18 but it didn't use that one.

19 A. Right. So, again, the closest, furthest, it's whatever
20 tower it sees the best. In this case, this tower is
21 actually a much -- a pretty large tower. This one --
22 there's one tower that's hard to see, but there's a tower
23 over here that is a much smaller tower.

24 For whatever -- a phone in this distance measurement
25 saw this tower better than that one, which goes -- being

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1 right in here, this tower was used at a different time
2 during around that period, it was an active tower that was
3 used. Limits a little bit where the phone could be, but
4 what you have is this -- the location due south is located
5 straight in the azimuth of that tower, which means in the
6 azimuth that's -- you think of a light, as you shine the
7 light out, the center of that is what is the strongest
8 signal from that tower. So that's where that tower is the
9 strongest.

10 Q. Is that more consistent with the phone being at the
11 Terramont location than, say, way over here to the far left
12 in your -- in your arc?

13 A. Well, how I put it, it's two different ways. Since you
14 have this tower right here where you have this, as you get
15 further away from that you maybe would be consistent with
16 being here or -- but in this area as you get real close to
17 this tower, you know, it pushes you back towards this center
18 area and out this way.

19 Q. And what about the fact that there were three phone
20 calls in a -- does that -- does that assist you in or assist
21 you in the consistency?

22 A. Right. So you can take everything -- if you have one
23 point from something, you know a phone was in that point at
24 that second, so that gives you information. When you get a
25 second point and another point on top of that, that just

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1 goes -- it goes more to showing either a phone, you know,
2 traveled through, made a communication at a certain point in
3 time and then came back through and just happened to make a
4 call at the exact same general area as the other one or it
5 more supports to being a phone being, you know, in more of a
6 stationary location of those measurements.

7 In our setting what I'd, you know, do with this, you
8 know, this is good. My -- a best measurement would be if I
9 were to have a measurement from another tower overlapping,
10 you know, then you can triangulate where a phone is. But
11 this being that it's seeing only -- seeing that one tower
12 the best, you're just getting that on one tower, you know,
13 again and again. So it goes more to show a stationary
14 location at that time.

15 Q. Is that just a close-up?

16 A. This is just a close-up showing the measurements,
17 again, approximately two hundred and forty-three meters for
18 the black -- the one point nine seven (1.97) reading, and
19 then the one point eight nine (1.89) for the blue, and then
20 the one point eight eight (1.88) for the red and how they
21 line up as far as the address for Terramont.

22 Q. All right. And I'm going to briefly refer you back to
23 State's 99. And let's see who was making those calls at
24 10:45 and then two at 11:02.

25 A. So at 10:45, I'm sorry, that's 11:45. I apologize.

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1 10:45 [sic] we have incoming call from Cade lasting four
2 seconds that go to voicemail.

3 11:02, incoming call again from Cade lasting seventeen
4 seconds that either was -- would have either been -- didn't
5 go to voicemail. So it either had to have been answered or
6 hung up prior to going to voicemail. Again, then we have an
7 incoming call again at 11:02:57 again from Cade lasting five
8 seconds going to voicemail.

9 Q. For a call to last four or five seconds would somebody
10 had to have hung it up or would it have -- would it go to --
11 would it go on its own?

12 A. Being that there's a cell tower that is actually used
13 for that, your phone is going to ring until you do something
14 or it manually goes to voicemail. So that's more indicative
15 to me of someone that's pushing a phone to voicemail that
16 quick at four or five seconds with a cell tower -- it's a
17 phone that's communicating with that network for that
18 duration of time.

19 Q. And, of course, there was a text after that from Cade.
20 And we can let that be. All right. What about later on
21 that night? Where's the Rhodes' phone ping?

22 A. This is the next activity then after that with the
23 11:02. We now have 11:44, 11:45 and 11:47 pm on October
24 1st. The phone now is on the other side of Greenville. And
25 you can see in relation to the South Vance Street

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1 address.

2 Q. And that's up until 11:47?

3 A. Correct.

4 Q. And is that consistent with the Rhodes' phone being at
5 or near South Vance Street?

6 A. Correct, in this direction, the left and right limits
7 of anywhere, you know, anywhere in that area to include that
8 address.

9 Q. And I'm going to briefly show you to illustrate State's
10 145 right here. So we were talking about here, correct?

11 A. Correct.

12 Q. That's Terramont Drive?

13 A. Correct.

14 Q. And now you're talking about where?

15 A. Over on the far left hand side, South Vance Street
16 that's showing.

17 Q. And this is -- and that's on the other side of the City
18 of Greenville, is that correct?

19 A. Correct.

20 **THE COURT:** You want to put the exhibit number in the
21 record?

22 **MR. WILKINS:** That was 145.

23 Q. So at 11:47 the Rhodes' phone is pinging in the area of
24 the South Vance Street. Let's continue to 1:17 to 1:41.

25 A. So this is the next activity there with cell tower

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1 information showing where South Vance Street is. We have
2 a 1:17 am call utilizing this tower and sector here.

3 We then have 1:19 going to the -- a little bit
4 northeast. We have 1:22 and 1:23 followed by 1:26. And
5 then after that point we have multiple in this area of 1:27,
6 1:33, 1:32 up here, 1:33, 1:34, 1:34 again and 1:41 moving
7 from the -- this area to the left moving to the right
8 towards -- the Glen Forest Drive area.

9 Q. All right. At 1:17 that tower looks a little funny.
10 It's pointing kind of away from the South Vance Street.
11 Could that be consistent with being at or near the South
12 Vance Street?

13 A. To me this is more consistent with being at or near
14 this roadway than necessarily -- I wouldn't -- a phone here,
15 I wouldn't expect it to be at Vance Street at that point. I
16 say the roadway just being on the consistency of the timing
17 of the hits. And what we do, we look at timing and
18 distance, which allows you to -- how a phone can move from
19 one area to another.

20 Q. So does this show that phone moving back towards Glen
21 Forest Drive?

22 A. Yes.

23 Q. And what about from two to four that morning?

24 A. This is showing the activity at 2:03, 2:04 and 3:58 am.
25 And what that's showing, you have two different sectors

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1 here. Again, this is the overlap area where it's not always
2 the one twenty.

3 In this you can see this tower and sectors are here,
4 which goes over to this -- this is the left boundary of
5 that. And then you have -- those are the 2:03 and 2:04
6 calls. And then you have right here in the middle down --
7 straight down is the 3:58 am call.

8 Q. All right. I'm going to refer you back to State's 99.
9 Let's see what those 2:03, 2:04 and 3:58 calls were. 2:03?

10 A. 2:03 am is an incoming call from the 3532, Shirley
11 Rogers' phone. It appears about nine seconds. 2:04 am is
12 an incoming call from Ms. Shirley Rogers' phone, 3532 for
13 seventeen seconds. And then the ---

14 Q. Then at 2:11.

15 A. 2:11 there's a text message that's not depicted on the
16 previous diagram. And the next -- there's not an incoming
17 call til 3:58 am from a 294-0352. That goes -- I believe
18 that line goes to voicemail.

19 Q. All right. Back to State's 103. Let's look at Eric
20 Cade's phone on the night of October 1st.

21 A. This would be the Cade phone that, again, which is a
22 Sprint phone. At 8:34, 8:37 and 8:47 pm, these sectors
23 again kind of overlap here in this direction. And this one
24 from 10:47 from this direction in relation to the Verdae
25 Boulevard.

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1 Q. So that would be consistent with him being at or around
2 that Bi-Lo?

3 A. Again, consistent -- with all three of them close
4 together, you're looking at, and as I make you dizzy, I
5 apologize, an area somewhere in that area to include that
6 location.

7 Q. Let's go to Eric Cade's phone from 9:10 to 9:52.

8 A. So 9:10 we have this cell tower over here, which again,
9 that's that tower we talked about earlier that's slightly
10 canted, has the twenty degree gap. 9:10, 9:33, 9:50 down
11 here, 9:52 up here again. Same type of towers that were hit
12 for the other phone during that same time period.

13 Q. Is that consistent with Eric Cade being at or near his
14 house?

15 A. Again, I -- yes. I don't know if we have the same
16 measurements, but I looked at the measurements for this
17 again, and you have that same type of measurement of being
18 further away from this tower as with how that all matched up
19 with the Rhodes' phone.

20 Q. And what about 10:00?

21 A. Again, using two of those same three towers. We have
22 at 10:03, 10:06, 10:07, 10:12 and 10:16 utilizing the tower
23 here to the north closest to Glen Forest Drive as well as
24 that canted tower to the southwest.

25 Q. 10:44 to 11:02?

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1 A. The three same consistency of towers. 10:44, 10:46,
2 10:57, 58, 59 and 11:02 the canted tower to the southwest.
3 11:01 the next tower over. And at 10:58 pm the tower there
4 near Glen Forest Drive.

5 Q. And, again, that's when the call's received or sent the
6 first tower that it will hit off of?

7 A. Correct.

8 Q. It could jump from those towers while ---

9 A. Right.

10 Q. --- he's on the same call assuming maybe he moves from
11 a room to another room or outside porch to inside?

12 A. What happens when you have a series of calls like this
13 can be one of two things. One thing you could have is you
14 could have a phone that's moving rather rapidly throughout,
15 you know, the same general area.

16 The other thing you have is an area that's in an
17 overlap area within those towers. And what that usually
18 means is it's an area along the edges of towers or they
19 don't have a dominate tower that's serving.

20 As I said, I think earlier, how this -- measurements
21 are played out leads me to believe that this area near that
22 airport is one that does not have very good service 'cause
23 if a phone would be in that area with these recordings, it's
24 constantly seeing towers equally, which means -- and how
25 I've seen it constantly see equal towers not very good

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1 because if you're, you know, CDMA works on strongest
2 clearest signal.

3 So if you have two towers that are very strong right at
4 one area to another, they actually interfere with one
5 another. It's much like trying to talk to two people that
6 are yelling at you at the same time. You're not going to
7 hear either one of them. That's how the tower works with
8 the CDMA as well.

9 Q. As well if a signal is weak in a particular area and
10 you don't have service will a call be registered ---

11 A. No.

12 Q. --- on there?

13 A. No.

14 Q. So, for example, could you be deep in a -- back of a
15 Bi-Lo and be too much, you know, concrete, whatever for a
16 signal to penetrate?

17 A. Yes. That's happened -- I go to the grocery store a
18 lot and be at the end -- in the back, you know, calling home
19 to get the right thing and you're back there and your -- my
20 phone won't work in that environment because there's just so
21 much interference with that much concrete buried back into
22 there, that signal can't penetrate into that area. So you
23 wouldn't make a call.

24 Another example is I'm sure you've called someone
25 before where you're -- it's rang, you know, maybe ten times

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1 on your end or, you know, eight times and the person picks
2 up and you say, you know, where were you, the thing rang ten
3 times? And they say, it rang once on my end. That means
4 that -- that ringing is there just to make you feel good
5 that the phone company's doing something. It doesn't mean
6 that that signal's going out meeting with that person. It's
7 more of just a filler space as that connection is being made
8 until it gets to that tower and goes out.

9 Q. And back to Mr. Cade, 11:40, 11:46 still at or around
10 Glen Forest Drive?

11 A. Correct, the same towers. 11:40, that one closest to
12 the residence. 11:44 hitting this tower here as well as
13 this tower to the left. 11:45, 11:45, 11:46. So those two,
14 especially those two towers and how they're hitting is one
15 that goes even more towards your -- you're up in this area.
16 That's the only way possible to be hitting on those two
17 towers seconds apart.

18 Q. And then 11:55 to 12:25, the same thing?

19 A. Same thing. Now it's just that one tower closest, but
20 two different sectors of it. 11:55, the southwest sector.
21 And 12:05, that northwest sector.

22 Q. All right. Let's go to Shirley Rogers.

23 A. So this is the cell towers and sectors used by the
24 -9391, Roger's T-Mobile phone. We have activity, meaning
25 calls, again T-Mobile. I only -- we only have tower

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1 locations for calls.

2 So we have 8:57 pm, 8:58 pm on October 1st. And the
3 next call isn't until twelve am on October 2nd as well as
4 1:06 and 1:13 am all on October 2nd.

5 And during those communications we have, in relation to

6 South Vance, we have the tower to the north of that
7 facing back south. At 8:57, 8:58, twelve am, 1:13 am
8 utilizing the tower and sector facing south. 1:06 am, the
9 tower to the west of that location facing back east,
10 slightly northeast at 1:06 am.

11 Q. And is that consistent with her being at South Vance
12 Street?

13 A. It's consistent with being in that -- at or near South
14 Vance Street.

15 Q. So what happens if -- you say at 8:58 -- between 8:58
16 and midnight there's no measurements.

17 A. There's no cell tower usage, meaning there's no -- no
18 way to determine where that phone would be located at that
19 time.

20 Q. All right. This is her other phone?

21 A. Correct. This is now the cell tower and sector used by
22 the -3532, Rogers' phone. We have from 6:58 pm
23 through 7:46 pm, then have a gap, approximately two hours.
24 9:46 pm on October 1st, 2012.

25 And then that phone doesn't have any cell tower

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1 information again until 1:22 through 2:04 am on October 2nd.

2 All that tower usage during that time was shown is the tower

3 and sector here north of South Vance facing back south.

4 Q. All right. So the last call you have there is 9:46?

5 And do you remember whose phone call that is at 9:46?

6 A. I do remember that is with the Rhodes' phone.

7 Q. And then no other activity until when?

8 A. 1:22 -- 1:22 am on the 2nd.

9 Q. So let's briefly take a look at exhibit 100. This is
10 Shirley Rogers' cell phone spreadsheet. Starting at 9:40,
11 where is all her ...

12 A. These are outgoing, incoming, outgoing, incoming texts
13 all with the Rhodes' phone from 9:40 to 9:45, all text
14 messages that aren't depicted as there's no cell tower
15 information for those. And then next, which was depicted at
16 9:46 pm call was a incoming call from the Rhodes' phone.

17 Q. And then data. What is data?

18 A. Data could mean anything from someone looking at the
19 internet on their phone to their phone being in their pocket
20 communicating with apps or anything else that runs in the
21 background of your phone. And there's no tower information
22 depicted for that.

23 Q. And then she calls Amber at what time?

24 A. This is a twelve am call. It is an outgoing call to
25 Amber.

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1 Q. And at 1:06?

2 A. At 1:06 is another call, outgoing call to Amber.

3 Q. And 1:13?

4 A. 1:13 another call to Amber.

5 Q. And 1:22 in the morning?

6 A. Is a call with Rhodes.

7 Q. So what about Amber McDaniel?

8 A. The cell tower and sector -- only one cell tower and
9 sector, that same cell tower and sector that was used for
10 the Rogers' phone as it relates to South Vance. The
11 activity on that phone was from 8:56 pm on October 1st
12 through 1:45 am.

13 On October 2nd, no other cell tower information except
14 for what was depicted here. In this case we have more
15 activity during that time-frame. We have 8:56, 8:58, calls
16 all the way up through -- including calls at 10:48, 10:22
17 pm, 10:48 pm, slight gap until 11:26 pm, 11:44, 11:53,
18 11:58. So much less -- there's less -- there's not a -- a
19 dark period, I guess, with that phone where that was not
20 being used.

21 Q. All right. And so is it consistent to say that Amber
22 McDaniel's phone, was it at or near South Vance Street?

23 A. Yes.

24 Q. And let's look at State's exhibit 101, which is Amber's
25 cell phone spreadsheet starting at 10:12 that night, what

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1 does she do?

2 A. At 10:12 we have Amber McDaniel with an outgoing text
3 to -6105.

4 Q. And then at 10:22?

5 A. Outgoing call to -6355.

6 Q. How long was that call?

7 A. The one at 10:22 we're looking at one thousand, four
8 hundred and seventy (1,470) seconds.

9 Q. And then at 10:48?

10 A. 10:48 we have that same number at two thousand, three
11 hundred and fourteen (2,314) seconds.

12 Q. And then at 11:26 another call out to the same number.

13 A. For one thousand, eight hundred and seventy-three
14 (1,873) seconds.

15 Q. Would it be consistent to say that she's having a long,
16 drawn out conversation with 990-6355 during that time-frame?

17 A. Yes, it would.

18 **MR. WILKINS:** Court's brief indulgence, Your Honor.

19 (Pause)

20 **MR. WILKINS:** All right. Your Honor [sic], please
21 answer any questions of -- answer any questions the Defense
22 counsel may have.

23 **Cross Examination by Mr. Erwin:**

24 Q. All right. All of that to say, this data that we've
25 been talking about, it tells you where the phone is, right?

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1 A. That's correct.

2 Q. It does not tell you where the person is, right?

3 A. It tells you -- well, there's a -- there's someone on
4 the other end of the phone, but as far as -- I'm talking
5 about where the phone is. I ---

6 Q. Right.

7 A. --- can't say who's the person at the other end.

8 Q. Because, obviously, you weren't at Terramont Drive at
9 the time of these killings. So you're just reviewing this
10 information after the fact?

11 A. Correct.

12 Q. And so you can say where the phone is?

13 A. Yes.

14 Q. You cannot say where the people are?

15 A. Correct.

16 Q. All right. So -- one second.

17 (Pause)

18 Q. Well, okay. Were you in the courtroom yesterday when
19 Mr. Cade testified that those three phone calls were missed
20 calls?

21 A. No, I wasn't.

22 Q. Okay. All right. You know where the phone is, you
23 don't know where the person is?

24 A. Correct.

25 Q. And this is ---

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1 **MR. ERWIN:** For the court reporter, this is State's
2 exhibit 145.

3 Q. Take a look at this with me and I'll see if I can get
4 it to where the jury can see it as well. So, for example,
5 you got that?

6 A. Yes, I can see.

7 Q. All right. If my phone is here at Terramont Drive,
8 right?

9 A. Yes.

10 Q. And I am, let's say, asleep over at South Vance
11 Street.

12 A. Okay.

13 Q. And the phone rings, the data would show you that the
14 phone is here, right?

15 A. Correct.

16 Q. But it would not show you that I am over here?

17 A. Correct. Only showing where the phone is located.

18 Q. Okay.

19 **MR. ERWIN:** I have no further questions.

20 **THE COURT:** All right. Redirect.

21 **MR. WILKINS:** None, Your Honor.

22 **THE COURT:** All right. You can step down and be
23 excused. We appreciate your time.

24 A. Thank you, Your Honor.

25 **THE COURT:** Thank you. Call your next witness.

DAVID CALEB GAMBLE - DIRECT EXAMINATION BY MS. STROM

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1 **MS. STROM:** Your Honor, the State calls Caleb Gamble.

2 **MADAME CLERK:** Mr. Gamble, please come forward and
3 place your left hand on the Bible and raise your right hand.

4 **David Caleb Gamble,** being
5 duly sworn testified as follows;

6 **MADAME CLERK:** Please be seated and state your name for
7 the record.

8 **MR. GAMBLE:** My name is Caleb Gamble.

9 **Direct Examination by Ms. Strom:**

10 Q. Mr. Gamble, I'm going to ask that you speak into that
11 microphone and speak up so everybody can hear you, all
12 right?

13 A. My name is Caleb Gamble.

14 Q. Thank you. That's perfect. By whom are you employed?

15 A. I am currently employed by the U.S. Courts stationed in
16 Asheville, North Carolina as a federal law enforcement
17 officer.

18 Q. Back in October of 2012 where were you employed?

19 A. I was employed with the Greenville County Forensics
20 Division.

21 Q. Okay. Again, I'm going to either need you to come a
22 little closer or ---

23 A. Greenville County Forensics Division.

24 Q. Thank you. What capacity were you with them?

25 A. I was a crime scene investigator.

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1 Q. Please tell this Court what training and experience you
2 have had in the crime scene investigation, crime scene
3 processing and the collection and preservation of evidence.

4 A. Yes, ma'am. I worked for them for a little over four
5 and a half years. With them I went to the National Forensic
6 and Technology Institute in Largo, Florida and had extensive
7 forensics training by the National Institute.

8 Q. Have you ever been qualified as an expert before in the
9 area of evidence collection and crime scene processing?

10 A. No, ma'am, I have not.

11 Q. You have not? Then let's go a little further unless
12 there's any objection with his qualifications?

13 MR. ERWIN: I don't have any objection to that.

14 MS. STROM: Your Honor, then I'd offer Investigator
15 Gamble as an expert in the area of crime scene processing
16 and evidence collection.

17 MR. ERWIN: Without objection, Your Honor.

18 THE COURT: I find he's qualified.

19 MS. STROM: Thank you.

20 A. Yes, ma'am.

21 Q. Did you have an occasion on October the -- excuse me, I
22 just lost my train of thought. Did you have an occasion to
23 become involved with the investigation into the deaths of
24 Mr. Gary Wells and Mrs. Helen Wells?

25 A. Yes, ma'am, I did. And I completed the search warrant

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1 on a vehicle.

2 Q. And was that on a Mini Cooper?

3 A. Yes, ma'am, it was.

4 Q. I'm going to ask you to take just a second and look
5 through those photographs and make sure you can recognize
6 those.

7 (Pause)

8 A. Yes, ma'am, I do recognize these photographs.

9 Q. Are they true and accurate depictions of what you did
10 as part of the processing of the Mini Cooper?

11 A. Yes, ma'am, they appear to be the photographs I took
12 during the search warrant.

13 Q. Photographs you took?

14 A. Yes, ma'am.

15 **MS. STROM:** Your Honor, we would offer State's exhibit
16 104, shouldn't have left my glasses back over there, to 131
17 into evidence.

18 **MR. ERWIN:** Without objection, Your Honor.

19 **THE COURT:** In without objection.

20 (Whereupon State's exhibits 104 - 131 were admitted
21 into evidence)

22 Q. I'm going to bring this up. It might blind you for a
23 minute, but should come through there. I'm going to show
24 you -- first of all, I'll show you State's exhibit 104.

25 What is that?

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1 A. That is the Mini Cooper that I executed a search
2 warrant on on October the 23rd, 2012.

3 Q. You did this on the 23rd. Where was it?

4 A. This is at our crime scene office at 23 Winterberry
5 Court in Greenville, South Carolina. This is our secured
6 bay below our offices.

7 Q. So the vehicle had actually been towed to y'all's
8 location?

9 A. Yes, ma'am.

10 Q. Okay. And you said you had a search warrant for this
11 vehicle.

12 A. Yes, ma'am.

13 Q. Tell this jury how you go about processing a vehicle.
14 What do you do?

15 A. There's a lot that goes into it. When I first start a
16 search warrant for anything, the first thing you do is
17 document via photograph. So what I would have done is walk
18 around the entire vehicle taking 360 photographs of the
19 exterior of the vehicle.

20 After I was satisfied that I had everything documented
21 the way it was on the outside, then I would slowly go
22 through the inside of the vehicle doing the same thing,
23 photographing everything that I possibly can to show a true
24 and accurate description of what I had when it was sent to
25 me.

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1 Q. And, obviously, we're just going through a few of these
2 photographs. You took many photographs of this vehicle?

3 A. Yes, ma'am, I did.

4 Q. And then once you had secured the exterior of the
5 vehicle, is it then that you go into the interior?

6 A. Yes, ma'am.

7 Q. All right. State's exhibit 105, what are we seeing
8 here?

9 A. That is showing the entry into the front driver's side
10 of the vehicle, the driver's side seat that's leaned
11 forward, taking a picture to show all the paperwork that was
12 above the visor and general entry into the vehicle.

13 Q. Did you collect, observe, look at the paperwork that
14 was over the visors and other paperwork within that vehicle?

15 A. Yes, ma'am. Every piece of paper that I located inside
16 the vehicle was removed, was laid out on butcher paper,
17 which is a sterile paper, all separated and all photographed
18 individually.

19 Q. Just sort of run through this. Did you locate
20 information or documents in there that indicated the owner
21 of this vehicle to be a Richard Eric Cade or an Eric Richard
22 Cade?

23 A. Let me look real quick. My report does not
24 specifically state that, but if there was documentation in
25 the vehicle as in registration or anything, I would have

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- 1 removed it and taken photographs of it.
- 2 Q. Did you -- did you find indication through the items in
3 the -- above the visor and other documentation that
4 indicated that a Jonathan Rhodes had access to this vehicle?
- 5 A. Yes, ma'am, I do have that specifically listed in my
6 report.
- 7 Q. All right. I'm going to show you State's exhibit 106.
8 Did you recover that from the Mini Cooper?
- 9 A. Yes, ma'am.
- 10 Q. And that's showing a mail to Jonathan Rhodes at Glen
11 Forest Drive?
- 12 A. Yes, ma'am.
- 13 Q. And, again, State's exhibit 107, same thing?
- 14 A. Yes, ma'am.
- 15 Q. After looking and recovering the documentation there in
16 the vehicle what did you do as far as processing the
17 vehicle? Specifically what I'm getting to, did you take
18 swabs out of this vehicle? Do you look inside? What do you
19 do?
- 20 A. Yes, ma'am. After I removed all items to believe to be
21 evidence outside of the vehicle, that's when I would have
22 taken swabs for DNA. I would have taken or I would have
23 taken tape lifts for possible fiber and trace evidence. And
24 I would have also taken touch DNA swabs as well as
25 processing the exterior and interior of the vehicle for

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1 latent fingerprints.

2 Q. So when you're talking about you're taking swabs, do
3 you look specifically for suspected blood?

4 A. That is one thing that you would look for. To take a
5 swab of suspected blood, you usually can visually see the
6 blood. And that's an area that we would focus on and take
7 swabs for DNA. You cannot see specifically DNA. So those
8 swabs were taken in general areas that everybody touches
9 inside of a vehicle.

10 Q. I'm going to go specifically with you to the areas of
11 suspected blood and show you what's been previously marked
12 as State's exhibit number 132 and 133 and ask you to look at
13 those. And can you identify those? Do you need to open
14 them?

15 A. If you want me to identify what's inside, yes,
16 technically I would need to open it.

17 Q. Okay.

18 A. But I can read my barcode label ---

19 Q. Okay.

20 A. --- if you want me to.

21 Q. If you need it.

22 A. Yes, ma'am. Both of these packages that I've labeled
23 that were both taken of suspected blood from the vehicle,
24 items DCG-6A and DCG-6B.

25 **MS. STROM:** Your Honor, we would offer these into

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1 evidence at this time.

2 **MR. ERWIN:** Without objection, Your Honor.

3 **THE COURT:** In without objection.

4 (Whereupon State's exhibits 132 and 133 were admitted
5 into evidence)

6 Q. Specifically -- and you can refer to your report if
7 necessary. Where were these swabs, which are State's
8 exhibit 132 and 133, taken?

9 A. Yes, ma'am. State's exhibit 132, which is DCG-6A, was
10 ---

11 Q. And DCG-6A, that's your ---

12 A. Yes, ma'am. My ---

13 Q. --- number or identifier ---

14 A. My full name is David Caleb Gamble. And anytime I
15 collect evidence, I would always use my initials followed by
16 a number and/or letter to keep everything organized. So
17 DCG-6A and DCG-6B are my pieces of evidence that I
18 collected. Both of those were collected from -- those were
19 swabs of suspected blood taken from the interior front
20 passenger side door of the listed vehicle.

21 Q. I'm going to show you a series of photographs, first
22 State's exhibit number 110. Can you show us approximately
23 where those samples were taken?

24 A. It is difficult to see in this photograph, but if
25 memory serves, I believe the ---

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1 Q. You should have a laser pointer.

2 A. --- the suspected blood was in this underpinning.

3 Q. And I show you State's exhibit 113. What are we seeing
4 here?

5 A. That is a picture of me, again, it's difficult to see,
6 but that is a swab taken from a phenolphthalein chemical
7 kit. And that is a picture of a swab that the head of the
8 swab should be a bright pink in color identifying that it
9 is, in fact, blood.

10 Q. I'll show you that actual photograph because I know
11 it's hard to see. This is State's exhibit 113. The jury
12 will have this actual photograph, but is it pink in color at
13 the top?

14 A. Yes, ma'am, it is.

15 Q. Thank you. You can just set that right there. I want
16 to go next to your exhibits DCG-11 and 12, which are State's
17 exhibit 134 and 135. And referring to the barcode on the
18 items in your report can you tell us -- do you recognize
19 these?

20 A. Yes, ma'am. These are additional swabs ---

21 Q. Before you go into it, ---

22 MS. STROM: We would move them into evidence at this
23 time.

24 MR. ERWIN: Without objection, Your Honor.

25 THE COURT: In without objection.

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1 **MS. STROM:** Thank you.

2 (Whereupon State's exhibits 134 and 135 were admitted
3 into evidence)

4 Q. Please tell us what they are.

5 A. Yes, ma'am.

6 Q. And refer to the State's exhibit number, please.

7 A. This is State's exhibit number 134 and 135. Both of
8 these are swabs of blood that I collected from the vehicle
9 labeled DCG-11 and DCG-12. I collected both of these items
10 from the side of the front driver's side seat in the
11 vehicle. And I have in quotations or in parentheses, near
12 the gear shift, to give me an idea of where I took it from.

13 Q. Okay. I'm going to show you these since they are a
14 little hard to see on the overhead and let you look at them
15 first before we put them on the overhead. And they are
16 State's exhibit 114, 115 and 116.

17 A. Yes, ma'am. Thank you.

18 Q. So I want to -- if you would, as to State's exhibit
19 114, ---

20 A. This is a broad picture, a far away picture of what I
21 was zooming into to show the relation of where I took my
22 swab. And this is a picture showing a -- from a distance
23 where I took the swab with suspected blood, which is right
24 here.

25 Q. Okay. This is State's 115.

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1 A. Yes, ma'am. You may can see now, there's actually a
2 smear of suspected blood right there. And that's where I
3 was collecting.

4 Q. And then State's 116.

5 A. And that shows -- this is what I previously showed you,
6 but now this angle of the picture, you can also see right
7 here, that is also suspected blood.

8 Q. State's exhibit 118, again, this is showing the Q-tip
9 with the testing that you did?

10 A. Yes, ma'am. This is another photograph indicating that
11 the swab of the suspected blood that I took using the
12 phenolphthalein presumptive blood kit test, showed positive
13 that it was actually blood.

14 Q. And just for the record, since it is hard to see, will
15 you look at State's exhibit 118 and tell me if the top of
16 the Q-tip is pink as you indicated.

17 A. Yes, ma'am, it is.

18 Q. Thank you. Further processing of the vehicle, I'm
19 going to show you your exhibits 13A and 13B, which are
20 State's 136 and 137.

21 MS. STROM: Your Honor, we'd offer these into evidence.

22 MR. ERWIN: Without objection.

23 THE COURT: In without objection.

24 (Whereupon State's exhibits 136 and 137 were admitted
25 into evidence)

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1 Q. I'll ask you to look at those and tell us where you
2 collected those in the vehicle.

3 A. Yes, ma'am. This is also State's exhibit 136 and 137,
4 which is my item number DCG-13A and DCG-13B, which are both
5 swabs of suspected blood that I took from the vehicle,
6 specifically from the front passenger's side seat. Both of
7 them were from the front passenger's side seat.

8 Q. Both of those?

9 A. Yes, ma'am.

10 Q. I'm going to show you before I put them up on the
11 projector State's 119, 120 and 121 since it might be a
12 little easier for you to familiarize yourself with where
13 swabs were.

14 A. Yes, ma'am. Yes, ma'am.

15 Q. Now let's show them on the overhead.

16 A. Yes, ma'am.

17 Q. State's 119, orient us to what we're seeing here,
18 please.

19 A. Yes, ma'am. This is a picture that I took from outside
20 of the vehicle looking down on top of the front passenger's
21 side seat specifically trying to show orientation right
22 here. This is another smear of suspected blood.

23 Q. State's exhibit 120.

24 A. That is showing right here. It is a close-up of that
25 piece of suspected blood or the area of ---

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1 Q. And then ---

2 A. --- suspected blood.

3 Q. --- 121. I'm sorry. 121.

4 A. Again, that's me using the Q-tip showing that I tested
5 this area using the phenolphthalein presumptive blood kit
6 test. And that is showing that it came back positive for
7 blood. And that will be pink in color.

8 Q. Okay. Continuing processing of the vehicle we have
9 your items 14A and 14B, 14A and B and 15, which are State's
10 exhibits 138, 139 and 140.

11 **MS. STROM:** We offer these into evidence, Your Honor.

12 **MR. ERWIN:** Without objection.

13 **THE COURT:** In without objection.

14 (Whereupon State's exhibits 138, 139 and 140 were
15 admitted into evidence)

16 Q. Let me get you a photograph.

17 A. Yes, ma'am. This is State's exhibit 138, 139 and 140.
18 These are swabs of suspected blood that I collected.

19 They're my items number DCG-14A, DCG-15 or sorry, 14B and
20 DCG-15. These items were collected from the buttons on the
21 center console of the vehicle.

22 Q. I'm going to show you photographs -- State's exhibits
23 122, 123, 124, 125, 126 and 127 and let you orient yourself
24 to those photographs.

25 A. Yes, ma'am.

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1 Q. Now, if you will, using these photographs, orient the
2 jury as to where we are in the vehicle and where you took
3 these swabs.

4 A. All right. This is me standing outside of the vehicle
5 on the front passenger's side of the vehicle looking in.
6 And what I'm looking for in this is the center control knobs
7 that control the heat, the air, air condition, radio, things
8 of that nature.

9 Q. That was State's 122. State's 123.

10 A. This is a close-up of the area that was just pointed
11 out. This photo is trying to identify this area right here,
12 which this is items of or an area of suspected blood that I
13 was going to swab.

14 Q. State's 124.

15 A. That is showing the swab used by the phenolphthalein
16 presumptive blood kit test to show that it was positive for
17 blood in the area just shown.

18 Q. And it does show up pink in the photograph?

19 A. Yes, ma'am.

20 Q. State's 125.

21 A. This is a picture just below that. This specifically,
22 it's hard to tell, but there's an area right here of
23 suspected blood that was also going to be collected and
24 tested.

25 Q. And 126 is a closer up of that, may show it a little

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1 better?

2 A. Yes, ma'am. Right here is an area of suspected blood.

3 Q. Then again on 127, this is you showing the actual Q-tip
4 swab that you took?

5 A. Yes, ma'am, it is. And in this picture you can
6 actually see it a little bit better. It is pink up at the
7 top to show that it was positive for blood.

8 Q. And also, Officer Gamble, we have your DCG-17, which is
9 State's exhibit number 141.

10 **MS. STROM:** We offer State's 141 into evidence.

11 **MR. ERWIN:** Without objection, Your Honor.

12 **THE COURT:** In without objection.

13 (Whereupon State's exhibit 141 was admitted into
14 evidence)

15 Q. I'll show you photographs.

16 A. Yes, ma'am. State's exhibit 141 is my item DCG-17,
17 which is another swab of suspected blood that was collected
18 from the lower side of the front passenger's side seat near
19 the gear shifter.

20 Q. I'm going to show you State's 128, 129 and 130 so you
21 can orient us once we put them on the overhead.

22 A. Yes, ma'am.

23 Q. Thank you. State's exhibit 128, 128.

24 A. Again, this is a photograph taken from the exterior of
25 the vehicle at the front driver's side door looking into the

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1 passenger compartment. The area that I'm focused on in this
2 photograph is right here.

3 Q. State's 129.

4 A. And, again, it's difficult to see, but right here is
5 another area of suspected blood on the bottom of the front
6 passenger's side seat.

7 Q. And 130, is that just showing the swab?

8 A. Yes, ma'am. This is the swab, again, using the
9 phenolphthalein presumptive blood kit test to show that it
10 was positive, the area that identified as suspected blood
11 was positive for blood.

12 Q. As to each of these swabs that we discussed here today,
13 how would they have been handled there at the scene while
14 you were processing them?

15 A. Yes, ma'am. Since I was at the crime scene office in a
16 semi-controlled environment, after every swab of suspected
17 blood I would take that individual swab and put it back in
18 its individual container. I would write what the time was,
19 what my item number was on the outside of that container and
20 put it in its own paper bag, seal it up and move it to the
21 side so I can keep everything straight.

22 Q. So once you take one swab, you deal with it, seal it
23 up, put it aside and before you go on to take any other
24 swabs?

25 A. Correct. You do one swab at a time. You package it

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1 after you've collected it to keep everything -- a proper
2 chain of custody, no cross-contamination. Keep the sample
3 as pure as we found it.

4 Q. Okay. And I believe you testified also that you took
5 -- the samples that we discussed here were of suspected
6 blood?

7 A. Yes, ma'am.

8 Q. All right. And you took a number of other samples of
9 just possible DNA, correct?

10 A. Yes, ma'am. I think I added it up earlier while I was
11 waiting. I took forty-two additional swabs of possible DNA
12 from the vehicle.

13 Q. And that's just -- you don't see anything, you're just
14 looking, swabbing, seeing ---

15 A. Yes, ma'am.

16 Q. --- what you could get?

17 A. You would do it on the interior and exterior of the
18 door handles in the vehicle, off of the steering wheel, off
19 of the gear shift, off of the control knobs, off of the
20 sides of the seat, off of the seatbelt, anywhere that in
21 your normal everyday getting in and out of the vehicle, if
22 you're touching that area, that is a common area to try and
23 retrieve touch DNA from.

24 Q. And all of these items, once you sealed them in their
25 individual containers, would you have then placed them in

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1 the property and evidence room down at the law enforcement
2 center?

3 A. Yes, ma'am. All of the items of the suspected blood
4 went on October the 23rd. After I finished collecting
5 everything that I needed from the vehicle, I stayed over a
6 little bit later to package everything -- repack
7 everything, do all the barcode labels that you can see on
8 the outside of the items, and then I personally took them to
9 property and evidence to turn them in to property and
10 evidence so the other part of our forensic unit could
11 utilize that for the furtherance of the investigation.

12 Q. Thank you. Please answer any questions the Defense may
13 have.

14 A. Yes, ma'am.

15 **Cross Examination by Mr. Erwin:**

16 Q. All right. So you testified -- I'm counting eleven
17 samples of suspected blood and then the forty-two other
18 samples that you took for a total of fifty-three samples,
19 right?

20 A. That's correct.

21 Q. Okay. So -- and you mentioned some of the places that
22 you swabbed that were not suspected blood. So I want to
23 slow down a little bit and make sure that we go through all
24 those, okay?

25 A. Yes, sir.

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1 Q. So you took two swabs of the driver's side interior
2 door handle, right?

3 A. Of suspected blood?

4 Q. No, no, no. These are the non-suspected ---

5 A. Oh, sorry.

6 Q. General DNA swabs.

7 A. Yes, sir.

8 Q. And two of the top side of the steering wheel?

9 A. Yes, sir.

10 Q. Two of the center of the steering wheel?

11 A. Yes, sir.

12 Q. Two of the bottom of the steering wheel?

13 A. Yes, sir.

14 Q. Two of the back of the steering wheel?

15 A. Yes, sir.

16 Q. You got one from the driver's seatbelt? One from the
17 driver's headrest?

18 A. Yes, sir.

19 Q. One from the driver's side interior door panel?

20 A. Yes, sir.

21 Q. And then you got two from the passenger interior door
22 handle?

23 A. Yes, sir.

24 Q. Two from the passenger's seatbelt?

25 A. Yes, sir. No, ---

DAVID CALEB GAMBLE - CROSS EXAMINATION BY MR. ERWIN

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- 1 Q. Excuse me, one from the passenger's seatbelt ---
- 2 A. Sorry. One from the seatbelt, one from the headrest,
- 3 yes, sir.
- 4 Q. Yeah, one from the seatbelt, one from the headrest.
- 5 One from the passenger interior door panel?
- 6 A. Yes, sir.
- 7 Q. Two from the glove box handle?
- 8 A. Yes, sir.
- 9 Q. Passenger's seatbelt receiver, driver's seatbelt
- 10 receiver?
- 11 A. Yes, sir.
- 12 Q. Two from the emergency brake handle?
- 13 A. Yes, sir.
- 14 Q. Two from the gear shift knob?
- 15 A. Yes, sir.
- 16 Q. Three from the driver's seat adjustment lever?
- 17 A. Yes, sir.
- 18 Q. Three from the passenger's seat adjustment lever?
- 19 A. Yes, sir.
- 20 Q. Two of the center control knobs?
- 21 A. Yes, sir.
- 22 Q. Passenger visor?
- 23 A. Yes, sir.
- 24 Q. Driver visor?
- 25 A. Yes, sir.

DAVID CALEB GAMBLE - CROSS EXAMINATION BY MR. ERWIN

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1 Q. The dome light?

2 A. Yes, sir.

3 Q. The air vent controls on both the driver and
4 passenger's side?

5 A. Yes, sir.

6 Q. And then three from the trunk hatch outside of the car?

7 A. Yes, sir, that's correct.

8 Q. So counting those and the blood samples, fifty-three
9 total swabs you took?

10 A. Yes, sir.

11 Q. Basically every surface that you could get access to,
12 you tested, right?

13 A. I attempted to, yes, sir.

14 Q. Okay.

15 **MR. ERWIN:** I have no further questions.

16 **THE COURT:** All right. Redirect?

17 **MS. STROM:** No, sir. We'd ask that he be excused and
18 be allowed to return to Asheville.

19 **THE COURT:** Okay. Appreciate your time.

20 A. Yes, sir.

21 **THE COURT:** Thank you. You're excused.

22 A. I appreciate it.

23 **THE COURT:** All right. We'll break for lunch til 2:00.

24 **MS. STROM:** Thank you, Judge.

25 **MR. ERWIN:** Thank you, Judge.

25 A. Sure. J-a-q-a-n-n-a-d-h-a, Kandala, K-a-n-d-a-l-a.

JAGANNADHA KANDALA - DIRECT EXAMINATION BY MS. STROM

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1 Q. Good afternoon, Dr. Kandala.

2 A. Good afternoon.

3 Q. Just one second, let me get my photo here ready. By
4 whom are you employed?

5 A. By the Department of Public Safety in the DNA Forensic
6 Division.

7 Q. The Department of Public Safety in the DNA Division?

8 A. Yeah, forensics.

9 Q. What is your title in the division?

10 A. I'm the DNA technical leader.

11 Q. The DNA technical leader?

12 A. Yes, please.

13 Q. All right. And what does that entail as being the
14 technical leader?

15 A. I take care of the whole lab ---

16 Q. The DNA lab?

17 A. DNA lab and the technical aspects of it.

18 Q. All right.

19 A. And I'm also a DNA analyst at the same time.

20 Q. You're also an analyst?

21 A. So I do the work, also benchwork (phonetics) too.

22 Q. All right. And please tell us, if you would, your
23 education.

24 A. I have a bachelor degree in biology and chemistry and a
25 masters degree in chemistry, a masters in microbiology and a

JAGANNADHA KANDALA - DIRECT EXAMINATION BY MS. STROM

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- 1 PhD in biochemistry.
- 2 Q. And specifically what training and education have you
- 3 received to be a DNA analyst?
- 4 A. Before getting into DNA forensics I had to work with
- 5 DNA ---
- 6 Q. You had to work with DNA.
- 7 A. --- in the research for about twenty-five years. And
- 8 then when I joined forensics I had one year training in the
- 9 forensics itself.
- 10 Q. Where did you have that training in forensics?
- 11 A. In St. Louis Metropolitan Police Department.
- 12 Q. And that would be forensics DNA?
- 13 A. Yes.
- 14 Q. All right. And after that what training did you have?
- 15 A. I have attended several workshops and meetings during
- 16 the course of my seventeen year period of forensics, DNA
- 17 forensics.
- 18 Q. You've been in DNA forensics for seventeen years?
- 19 A. Yes.
- 20 Q. All right. And you had to have continuing education
- 21 updates?
- 22 A. Yeah, those are the workshops and meetings I have
- 23 attended and several other in lab from different companies
- 24 when they brought their instruments, which we have installed
- 25 in the lab.

JAGANNADHA KANDALA - DIRECT EXAMINATION BY MS. STROM

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1 Q. Okay. And we have a lab here in Greenville?

2 A. Yes.

3 Q. All right. And have you testified as an expert in the
4 analysis of DNA, forensic DNA in the courts of this State
5 before?

6 A. Yes.

7 Q. How many -- approximately how many times have you
8 testified as an expert in this State or other states?

9 A. Total probably at least thirty times.

10 Q. At least thirty times?

11 A. Yeah.

12 **MS. STROM:** At this time we would offer Dr. Kandala as
13 an expert in DNA analysis.

14 **THE COURT:** Any voir dire?

15 **MR. ERWIN:** No, sir, and no objection.

16 **THE COURT:** All right. I find he is qualified in the
17 area of DNA analyst.

18 **MS. STROM:** Thank you, Your Honor.

19 Q. Dr. Kandala, if you would, I think we all know a little
20 bit about DNA from TV, but if you would, tell us the real
21 story behind DNA.

22 A. DNA is the blueprint that is present in every cell in
23 the living organisms. All organisms have DNA in them. And
24 DNA is the blueprint. It gives the command to prepare the
25 natural, structural genes and functional genes in the

JAGANNADHA KANDALA - DIRECT EXAMINATION BY MS. STROM

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1 system.

2 Q. Every human being has DNA?

3 A. Every cell practically has, except for like nails and
4 the red blood cells.

5 Q. Okay. Every cell has DNA in them?

6 A. Yes.

7 Q. All right. How is it, and don't get too technical on
8 me, but how is it you're able to determine somebody's DNA?
9 What do you do to say this is that person's DNA versus that
10 person's DNA?

11 A. Practically in forensics we have what we call short
12 tandem repeats that are ---

13 Q. Short tandem repeats?

14 A. Repeats. And they are repeats of four nucleotides or
15 four blocks you can call them. And these repeats, we are
16 looking at fifteen areas in the DNA plus the sex gene,
17 whether it is male or female.

18 So we look at these fifteen areas because the short
19 tandem repeats exist in many forms, each one of them in the
20 human beings. And so we are looking at different
21 combinations of these different forms at the different
22 places, in the different fifteen places that we are looking
23 at.

24 Q. So there are fifteen different places you're looking
25 and you're looking for a combination within ---

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1 A. And each place has -- because if you look at DNA, the
2 gene exists in two forms because human beings are diploid.
3 So there are two alleles what you would call them as, two
4 forms.

5 Q. Two alleles?

6 A. One from the mother, one from the father.

7 Q. Right.

8 A. And so in these STRs, they exist like that in several
9 forms. So there is a combination at fifteen places of these
10 several forms at each place.

11 Q. All right. We heard it -- I think we've all heard it
12 that everybody's DNA is different. I mean, would you and I
13 have the same exact DNA pattern?

14 A. That is where I have -- I'm talking about the STRs
15 definitely show differences.

16 Q. Differences?

17 A. Yes.

18 Q. Okay. Does anybody have the same DNA?

19 A. Maternal twins or the like twins what you call them
20 have the same DNA.

21 Q. Okay. Would you repeat that again? I'm sorry.

22 Maternal twins?

23 A. Identical twins.

24 Q. Maternal identical twins have the same ---

25 A. Maternal twins are identical.

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1 Q. Okay.

2 A. They have the same DNA.

3 Q. All right. But other than that, people have different
4 DNA?

5 A. Different DNA.

6 Q. I'm going to show you what's already in evidence as
7 State's exhibit 142, which has been testified to as a known
8 DNA sample of the Defendant, State's exhibit 143, which is a
9 known DNA standard of Eric Cade.

10 A. Yes.

11 Q. And State's exhibits 77 and 78, which are the known DNA
12 standards of the victims, Helen and Mr. Gary Wells. Did you
13 have occasion to receive those items in your lab?

14 A. Yes, please.

15 Q. Did you perform a particular testing on them to develop
16 a DNA profile on those items?

17 A. Yes.

18 Q. Okay. Each one came up with a separate DNA profile?

19 A. Yes.

20 Q. Okay. As part of that, also, did you receive a number
21 of items of evidence either from -- from various locations
22 as part of this investigation?

23 A. Yes, please.

24 Q. And the purpose of that was to compare those unknown
25 samples with known samples?

JAGANNADHA KANDALA - DIRECT EXAMINATION BY MS. STROM

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1 A. Yes.

2 Q. Okay. I'm going to go through with you a little bit --
3 let's start with the items from the residence when this
4 murder occurred. And specifically I'll show you State's 56
5 and 57 -- and I believe State's 56 and 57. When you receive
6 an item into your lab, an item of evidence, do you give it
7 its own particularized number?

8 A. Pardon?

9 Q. When you receive an item of evidence ---

10 A. Right.

11 Q. --- into your lab, ---

12 A. Yes.

13 Q. --- you assign it a particular number, don't you?

14 A. Yes. We do give it different lab number, yes.

15 Q. All right. So it may be RL-3 out in the field, and
16 it'll be something totally different when it gets to your
17 lab. You assign it a different number.

18 A. Yes, please.

19 Q. All right.. So as to those two pieces you have right
20 there, items -- State's 56, which, I believe, is item 128 in
21 your lab? That has previously been testified as a swab from
22 the light switch in the kitchen and dining area near the
23 garage.

24 A. Yes.

25 Q. All right. Did you do a test on that sample?

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- 1 A. Yes, I did.
- 2 Q. Okay. What were your results?
- 3 A. For items 128 and 129, excluding an identical twin,
- 4 Gary Wells is the source of the minor contributor and ...
- 5 Q. All right. We're looking at your 128.
- 6 A. Yes.
- 7 Q. Okay.
- 8 A. It's a swab of blood from the light switch plate in the
- 9 dining area.
- 10 Q. Okay. And your results were?
- 11 A. This show that Gary Wells was the source of the minor
- 12 DNA.
- 13 Q. Gary Wells is the source of the minor DNA.
- 14 A. Yes.
- 15 Q. All right. Who's the source of the major DNA?
- 16 A. The major DNA is Helen Wells.
- 17 Q. So Helen Wells is the major contributor and Gary Wells
- 18 is the minor ---
- 19 A. Minor contributor.
- 20 Q. All right. What's the difference between the two? Why
- 21 is one called a major and one's called a minor?
- 22 A. Just being because when you extract DNA from any item,
- 23 if it has two or three people, it comes as a whole.
- 24 Q. Okay.
- 25 A. You cannot see them as different. But when we examine

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1 on the instrument or the machine and when you see the -- it
2 comes out as peaks on the ---

3 Q. As peaks?

4 A. --- from the machine.

5 Q. Like on a graph?

6 A. Graph.

7 Q. Peaks.

8 A. And so you see the mixture there. And depending on how

9 much DNA is contributed by the one or the other. If one

10 person's DNA is more, there are bigger peaks, and other

11 person's DNA is less, they're the smaller peaks. Where you

12 can see the major peaks are the major contributor and the

13 minor peaks are the minor contributor.

14 Q. So the stronger the more contributor, that's going to

15 be the major ---

16 A. Right.

17 Q. The minor is the lesser of ---

18 A. Yeah, within the small amount of DNA that you have

19 taken.

20 Q. Okay. Then, if you would, look at State's 57. We just

21 talked about 56. You've got 57 right here. And that has

22 been testified to as the actual light switch plate. This

23 actual plate was removed from the scene.

24 A. Yes.

25 Q. Did you obtain that plate in your lab?

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- 1 A. Yes, I did.
- 2 Q. What did you do with that?
- 3 A. We also -- we have swabbed that blood from the plate
- 4 and we checked it for the DNA.
- 5 Q. So not only do you get swabs from the forensics officer
- 6 who's out on the scene, he will actually collect items of
- 7 evidence and you will actually swab those?
- 8 A. Yeah, the whole item that has come into the lab that I
- 9 swab it and then look for the DNA there.
- 10 Q. So you did the swab on this item?
- 11 A. Yes.
- 12 Q. And you ran a DNA test on it?
- 13 A. Yes.
- 14 Q. What were your results?
- 15 A. That also the major, that is the female, Helen Wells.
- 16 And ---
- 17 Q. Major is Helen.
- 18 A. And then minor is Gary Wells.
- 19 Q. Minor is Gary Wells. Thank you.
- 20 **MS. STROM:** Court's indulgence, Your Honor.
- 21 (Pause)
- 22 Q. Did I give you one already?
- 23 A. Which one?
- 24 Q. No?
- 25 **MS. STROM:** Court's indulgence, Your Honor. I thought

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1 I'd put it out.

2 (Pause)

3 MS. STROM: Let me check with my paralegal. She keeps
4 me in check.

5 (Pause)

6 MS. STROM: Like I said, she keeps me straight. Had it
7 written down wrong.

8 Q. I'm going to show you State's exhibit 58. All right.
9 That has been testified to as being a swab taken from the
10 cabinet door in the kitchen. Did you -- did you obtain that
11 swab?

12 A. Yes.

13 Q. And did you test that swab and what were the results?
14 I believe it was item number 21 in the lab.

15 A. Yes, 21. The major DNA matches Helen Wells. And the
16 minor DNA matches Gary Wells.

17 Q. All right. I'm going to show you State's exhibit 15,
18 which is a photograph of a footstool that has been testified
19 to as coming from the bedroom where Mrs. Wells was found.
20 Do you see that photograph?

21 A. Yes.

22 Q. Did you -- did that stool come into your custody?

23 A. It has come and I have swabbed the ---

24 Q. All right. And what were your results of the swabs off
25 of that footstool?

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- 1 A. Can you tell me the lab number on that?
- 2 Q. Yes, sir, I can. The footstool was item 129. I'm
- 3 sorry, the footstool was item 142..
- 4 A. We have taken different swabs from that footstool.
- 5 Q. Okay. And as to -- I believe you labeled them 142.2.
- 6 What was the result of that?
- 7 A. 142.2, the DNA profile is from a single male
- 8 individual. This DNA matches DNA of Gary Wells.
- 9 Q. Okay. So on that swab that you took there was only one
- 10 contributor?
- 11 A. Yes.
- 12 Q. And it was Gary Wells?
- 13 A. Yes.
- 14 Q. All right. A different swab that you took from that
- 15 stool, 142.3, what was the result of it?
- 16 A. That is also same as the one before. It is Gary Wells.
- 17 It was ---
- 18 Q. Gary Wells?
- 19 A. Yes.
- 20 Q. All right. Another swab you took from that footstool,
- 21 a 142.4, what were the results of that?
- 22 A. The DNA matches the DNA of Helen Wells.
- 23 Q. Helen Wells?
- 24 A. Yes.
- 25 Q. All right. Thank you. I'm going to show you what's

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1 been marked as State's exhibit 64, which has been testified
2 to as the switch plate cover from Mrs. Wells' bedroom. I'm
3 putting State's exhibit 50 on the overhead. So you received
4 that item, which is your item number 138, in the lab?

5 A. Yes.

6 Q. What were your results of the test you ran on it?

7 A. The swab that was taken was tested. It is consistent
8 with the DNA of two individuals, a major female, Helen
9 Wells, and a minor contributor is Gary Wells.

10 Q. Again, a mixture of Mrs. Wells, Mrs. Helen Wells, and a
11 minor contributor being Mr. Gary Wells?

12 A. Yes.

13 Q. All right. I'm going to show you State's exhibit 29,
14 which has been testified to as a cradle for a portable phone
15 collected from Mrs. Wells' room, photograph, State's exhibit
16 16. Did you receive that phone cradle and did you take
17 swabs off of that phone cradle?

18 A. Yes, please.

19 Q. Item 143 in your lab?

20 A. Yes.

21 Q. As to your sample, 143A, what were the results?

22 A. This swab of the suspected blood that is taken is a
23 mixture of DNA, major is Helen Wells and the minor is Gary
24 Wells.

25 Q. Just one second, please.

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- 1 A. I'm sorry. It is 143A. No, this is from -- I'm sorry.
2 This DNA matches only Helen Wells.
3 Q. The swab that you took, 148A [sic] is only Helen Wells?
4 A. 143A.
5 Q. 143A, excuse me.
6 A. Yes.
7 Q. I'm sorry. All right. I'm going to show you State's
8 exhibit 67. I'm going to move some of this other stuff out
9 of your way.
10 A. Sure..
11 Q. That has been testified to as a knife that was
12 collected from the room in which Mrs. Helen Wells was found.
13 Did you swab the suspected blood on that knife?
14 A. Yes.
15 Q. I believe it is item 23 in your lab. I'm putting up
16 State's exhibit 27 ---
17 A. Yeah.
18 Q. --- on the ---
19 A. Yeah, it is swabbed at three places.
20 Q. You swabbed it in three places.
21 A. Yes.
22 Q. What were your results of those three swabs?
23 A. This is a mixture of DNA from two individuals, a major
24 female and a minor male. Female major is Helen Wells and
25 minor male is Gary Wells.

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1 Q. So both Mrs. Wells' and Mr. Wells' DNA is in blood on
2 that knife?

3 A. Yes.

4 Q. Thank you. I'll show you State's exhibit 63, which has
5 been testified to as being the knife recovered from the room
6 in which Mr. Wells was found. I believe it is item number
7 24 in the lab.

8 A. Yes.

9 Q. And I'm putting up State's 49 on the projector.

10 A. We have taken three swabs from that one also.

11 Q. All right.

12 A. And 24.1, the first swab, DNA results obtained from
13 this swab are consistent with an equal mixture of DNA from
14 two individuals. Mixture present is consistent with Helen
15 and Gary Wells.

16 Q. So in equal amounts you had Mrs. ---

17 A. So we ---

18 Q. --- Wells' DNA and Mr. Wells' DNA?

19 A. So we could not separate like a major or a minor.

20 Q. All right. As to your swab 24.2?

21 A. 24.2 and 3, both gave the same results.

22 Q. Okay. What was that?

23 A. Two individuals, the major is Helen Wells and minor is
24 Gary Wells.

25 Q. All right. Thank you. State's 59, which is already in

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- 1 evidence, and was previously testified to as being a swab
2 from the outside of the door leading into the office where
3 Mr. Wells was found. It's item number 132 in your lab.
- 4 A. Yes.
- 5 Q. And photograph, State's exhibit 40.
- 6 A. 132.
- 7 Q. Yes.
- 8 A. Swab of suspected blood from exterior of office door
9 facing hallway. DNA profile matches the DNA of Helen Wells.
- 10 Q. So that's Helen Wells?
- 11 A. Yes.
- 12 Q. All right. I'm going to show you State's exhibit 62,
13 which has been testified to as a light switch plate from the
14 hall connecting the office area to the bedroom area where
15 Mr. Wells was found. I have it as 139 in the lab. State's
16 47 on the projector.
- 17 A. Okay.
- 18 Q. Did you get that light switch plate and did you swab
19 it?
- 20 A. I swabbed it, yes. Swab from light switch in the
21 master bathroom hallway.
- 22 Q. Okay. And what were the results?
- 23 A. And the results are consistent with the DNA of a male
24 and a female individual. Helen, Gary Wells in near equal
25 proportions.

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1 Q. Equal proportions, all right. Also we have -- I'll put
2 up on the projector State's exhibit 42, which is from a
3 light switch plate in the office area where Mr. Wells was
4 found, which is State's exhibit 60. And I apologize, I
5 don't have your lab number written down on that one, but
6 I'll get it for you.

7 A. I have it here.

8 Q. You have it?

9 A. Yeah.

10 Q. Great. Did you swab that light switch plate?

11 A. Yes. 131. 131, a swab from light switch plate in the
12 office with suspected blood. The DNA matches the DNA of
13 Helen Wells.

14 Q. Helen Wells ---

15 A. Yes.

16 Q. --- is on that light switch?

17 A. Yes.

18 Q. Thank you. I'm going to show you State's exhibit 61.

19 **MS. STROM:** Photograph on the projector is State's 44,
20 Your Honor.

21 Q. State's exhibit 61 was collected. And as you can see,
22 it was various cards, Bi-Lo cards, that sort of thing. Did
23 you receive those in your lab?

24 A. Yes.

25 Q. And did you conduct testing on those items? Did you

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- 1 take swabs off of those items?
- 2 A. Yes.
- 3 Q. And in particular, Dr. Kandala, in there is a blank
- 4 check. Do you recall that?
- 5 A. Yes. That item number?
- 6 Q. And off that blank check did you obtain a DNA profile?
- 7 A. That is 122?
- 8 Q. It's 122 in the lab.
- 9 A. Yes.
- 10 Q. And I believe it was 122 1A.
- 11 A. Swab prepared from the Palmetto Bank blank check.
- 12 Q. You can't really see it on that. So what were your
- 13 results on it?
- 14 A. It's also a mixture of male and female DNA and
- 15 indicates Helen and Gary Wells in equal proportions.
- 16 Q. Helen and Gary Wells in equal proportions.
- 17 A. Yeah.
- 18 Q. And that's on 61A?
- 19 A. Yeah.
- 20 Q. Dr. Kandala, I know we've talked about only a handful
- 21 of items, swabs or footstools or whatever that was taken
- 22 from the residence of Helen and Gary Wells, however, as part
- 23 of your assistance in this case you examined many more
- 24 samples than what we have here on the table, correct?
- 25 A. Yes.

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1 Q. All right. And, quite honestly, I didn't count them
2 all up, but it's quite a few over seventy, seventy-five or
3 something like that out of the house?

4 A. Yes.

5 Q. A lot. You don't know the exact number?

6 A. I cannot ---

7 Q. Okay.

8 A. --- recall.

9 Q. But it was a lot?

10 A. Yes.

11 Q. All right. And of all of those samples that they
12 submitted to you and all the items that you processed, the
13 individual items, was there any foreign DNA? In other
14 words, DNA that did not match Helen Wells or Gary Wells?

15 A. One sample, but the DNA's very trace amount.

16 Q. There was one sample that did not match them?

17 A. The sample, it has their DNA. And extra to their DNA
18 there is one more person.

19 Q. There's one more person, okay.

20 A. But it is a very, very small trace amount, which we
21 cannot tell whose it is.

22 Q. Okay. And do you recall what item of evidence that
23 sample was off of?

24 A. That is from the paper towel dispenser.

25 Q. The paper towel dispenser?

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1 A. Yes.

2 Q. All right. And do you have -- you also received items
3 of evidence -- sorry, my contact's messed up on me. Did you
4 also receive items of evidence that were collected from a
5 Mini Cooper?

6 A. Yes.

7 Q. All right. I'm going to show you State's 132 and 133,
8 which I believe were 55 1 and 55 2 in your lab. And they
9 were swabs taken from the interior front passenger side door
10 of the Mini Cooper.

11 A. Yes.

12 Q. I'm putting up State's exhibit number 113 on -- when
13 you did the comparison of that swab what were you able to
14 tell us about it?

15 A. Results obtained from this swab are consistent of a
16 mixture of DNA from a major female and a minor male donor.
17 Excluding an identical twin, Helen Wells is the source of
18 this major DNA and minor male DNA matches Gary Wells.

19 Q. Dr. Kandala, were you able to determine if this or if
20 these two swabs that were taken from this, were they -- did
21 they test positive for blood?

22 A. I did not do the testing. Whoever has done the
23 swabbing, they have done the testing.

24 Q. All right. But the swabbing was -- I believe he called
25 it phenolphthalein. Is that right?

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1 A. Yes.

2 Q. All right. And so he described it as a suspected blood
3 swab sample.

4 A. Yes, because phenolphthalein is a -- is a presumptive
5 test. It indicates that it is blood.

6 Q. Okay. And, again, that sample was a mixture with a
7 major of Helen Wells and a minor of Gary Wells?

8 A. Yes.

9 Q. All right. I'm putting up State's 118 on the
10 projector. This would be State's exhibits 134, 135, which
11 would be 59 and 60 in your lab.

12 A. Yes. This is a blood swab from the side of driver's
13 seat near gear shift.

14 Q. Near the gear shift on the driver's side seat.

15 A. Yes.

16 Q. What were your results?

17 A. This is consistent with a mixture of DNA from three or
18 four individuals, a major female, a minor male donor and one
19 or two trace donors.

20 Q. Okay. You talked to us -- I'm going to stop you right
21 there because you've talked to us about major donors and
22 minor donors. Now we're hearing about a trace donor. What
23 is that?

24 A. This major/minor donors here we see the peaks are quite
25 significant and they're present in all these fifteen

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- 1 locations what I'm talking about.
- 2 Q. Okay.
- 3 A. And the trace is a very, very small amount of DNA in
- 4 the background, which comes as a small peak on the diagram.
- 5 Q. So it's a much smaller or shorter peak than the minor.
- 6 And then the major is bigger than the minor?
- 7 A. Minor.
- 8 Q. Okay. All right. Your results of this swab or these
- 9 two swabs?
- 10 A. And Helen Wells is the source of the major DNA. Minor
- 11 contributor to this DNA mixture is Jonathan Rhodes. And
- 12 considering possible allele dropout, a trace alleles include
- 13 both Gary Wells and Eric Cade.
- 14 Q. Okay. So ---
- 15 A. This is -- this is a possibility of a mixture where I
- 16 was talking about the alleles, the two.
- 17 Q. Right.
- 18 A. So when we look at it and look at the knowns, the
- 19 alleles that are seen here looks to be from those two.
- 20 Q. Okay. So you have the major as Helen Wells.
- 21 A. Yes.
- 22 Q. The minor contributor as Jonathan Rhodes. And then you
- 23 have trace contributors as Gary Wells and Eric Cade.
- 24 A. Yes.
- 25 Q. All right. As to your item number 60, ---

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1 A. Yes.

2 Q. --- what are the results of it?

3 A. The results obtained are consistent of the mixture of
4 DNA from three individuals, major being a mixture of Helen
5 and Gary Wells with a trace of Jonathan Rhodes.

6 Q. So in the second swab it's major of Helen and Gary
7 Wells and then a trace amount of Jonathan Rhodes?

8 A. Yes.

9 Q. All right. I'm going to show you State's exhibits 136
10 and 137, which are your 61 and 62 in the lab. They are from
11 the front passenger side seat, which I'm showing on State's
12 121. What were the results of your testing of those swabs?

13 A. Which ones here, the item numbers?

14 Q. Your item number is 61.

15 A. 61, okay. DNA results obtained from this swab are
16 consistent with the mixture of DNA from a major female and a
17 minor male donor. Excluding an identical twin, Helen Wells
18 is the source of the major DNA. And minor male DNA donor
19 matches Gary Wells.

20 Q. And as to your second swab, ---

21 A. 62?

22 Q. Yes, sir, in your lab.

23 A. That swab's from the side of front passenger's seat.

24 Q. Yes, sir.

25 A. They are -- the DNA results are consistent with a

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1 mixture from a major male and a minor female donor and with
2 a trace of third person. The major donor matches Jonathan
3 Rhodes. And excluding an identical twin, Jonathan Rhodes is
4 the source of this major DNA.

5 Q. Who was the minor contributor?

6 A. The minor contributor is Helen Wells.

7 Q. And the trace contributor?

8 A. Trace alleles, here we're talking about the alleles
9 again. There are only three places we could see, they
10 indicate possible Gary Wells.

11 Q. Okay. Now I'm going to show you State's exhibit 138,
12 139 and 140, which are 63, 64 and 65 in your lab. They were
13 testified to previously as coming from the console area ---

14 A. Yes.

15 Q. --- of the Mini Cooper.

16 A. Yes. Console control buttons. Results obtained from
17 the item 63, that is a blood swab from the center console,
18 consistent with a mixture of DNA from four individuals, a
19 major female and three minor contributors. The major female
20 matches Helen Wells. Excluding an identical twin, Helen
21 Wells is the source of this major DNA. Minor alleles
22 present at the different loci indicate -- that means we are
23 looking at just the alleles.

24 Q. The alleles.

25 A. Yeah, it's a possibility here looking at the mixture of

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1 those numbers we see indicates a mixture of Gary Wells,
2 Jonathan Rhodes and Eric Cade.

3 Q. So you have the major contributor as being Mrs. Wells
4 and then trace contributors as Eric Cade, Jonathan Rhodes
5 and Gary Wells?

6 A. Yes.

7 Q. All right. You also had -- there were two other swabs
8 there.

9 A. Yes. Blood swab from the center console again. DNA is
10 consistent with a mixture of alleles from -- it's only the
11 alleles mixture. We could not separate and tell anything
12 that we could see that they're all -- the numbers indicate
13 that they're a mixture from Helen Wells, Gary Wells and
14 Jonathan Rhodes.

15 Q. Okay. And then the third swab from the console area?

16 A. A mixture of DNA from Helen Wells as major donor and
17 Gary Wells as minor donor.

18 Q. Okay. I'm going to show you State's exhibit number
19 141, which is ---

20 A. 67.

21 Q. --- 57?

22 A. 67.

23 Q. 67?

24 A. Yes. This is a blood swab from the lower side of front
25 passenger's seat of the car. DNA results obtained from this

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1 swab are consistent with a mixture of DNA from three people,
2 a major female, a minor male and a trace donor. The major
3 donor matches Helen Wells. The -- Gary Wells is included --
4 with a possible dropout at a couple of places.

5 Q. All right. And you said there were three?

6 A. And the third person, it indicates, the allele indicate
7 that Jonathan Rhodes may be a -- the donor for this.

8 Q. So that one, the major was Mrs. Wells, with a minor of
9 Gary Wells and then a trace, would that be considered a
10 trace of ---

11 A. A possibly ---

12 Q. Possible trace ---

13 A. Yes.

14 Q. --- of Jonathan Rhodes?

15 A. (Affirmative nod).

16 Q. Dr. Kandala, just so as we did in the house -- just
17 those was in the house, they were multiple swabs submitted
18 to you. These particular swabs were of suspected blood,
19 correct?

20 A. Yes.

21 Q. All right. And I believe there was one more that was
22 submitted. Officer Gamble talked about there were eleven
23 swabs submitted from, I mean, eleven swabs taken from the
24 car, and we've talked about ten. There was one DCG-16,
25 which is your item number 67 in your lab.

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1 A. Um-hum (affirmative).

2 Q. Were you able to obtain DNA off it?

3 A. 67. Yes.

4 Q. 67.

5 A. Yeah. DNA results obtained from this swab are
6 consistent with a mixture of DNA from three people. That is
7 the one we talking about just now.

8 Q. Okay. Just one moment, please. Item number -- just
9 one second. I'm sorry.

10 (Pause)

11 Q. On page 3 of 18 of your report number 3.

12 A. Yes.

13 Q. Oh, okay. DNA was recovered from that item, yes. I'm
14 sorry. What were your results again on that?

15 A. Which one you're talking about?

16 Q. We were talking about -- there was one item in here
17 that there was insufficient DNA recovered from the car. Oh,
18 I see. I got my number wrong again. It was item number 66.

19 A. 66?

20 Q. Yes, 66. I said 67. It's 66. It was off the
21 emergency brake.

22 A. Human DNA was not detected on that sample.

23 Q. Okay. So Officer Gamble took eleven suspected blood
24 samples. You only got DNA off ten of them?

25 A. Yes.

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- 1 Q. Okay. Now, I was going forward with the -- you
2 received other samples from Investigator -- Forensic
3 Technician Gamble, which were swabs for potential DNA that
4 were not in blood or suspected blood or anything like that.
5 Yes?
- 6 A. Actually, I don't -- get from the samples from them.
7 I, obvious, get these samples from the property area.
- 8 Q. Right. But they were samples he collected.
- 9 A. Right.
- 10 Q. You got them from the property and evidence room?
- 11 A. Right.
- 12 Q. All right. And these other samples would be samples
13 from the steering wheel, the seatbelt, the ---
- 14 A. Yeah.
- 15 Q. --- visor, ---
- 16 A. They are not blood swabs, but they are what you call
17 them as a touch swabs.
- 18 Q. They're touch swabs.
- 19 A. Yes.
- 20 Q. All right. And you analyzed all of those?
- 21 A. Yes.
- 22 Q. Okay. And in those samples did you find any foreign
23 DNA in those samples, any DNA other than Jonathan Rhodes or
24 Eric Cade?
- 25 A. I think in probably one of the samples gave the third

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1 person called Brian Ferguson, I think.

2 Q. Brian Ferguson.

3 A. Yes.

4 Q. And that was on one or two samples on the console?

5 A. Yes.

6 Q. All right. Were there any unaccounted for DNA samples?

7 A. I don't recall anything.

8 Q. Thank you. Thank you. Please answer any questions the
9 Defense may have.

10 **Cross Examination by Mr. Erwin:**

11 Q. Good afternoon, Dr. Kandala.

12 A. Good afternoon.

13 Q. Okay. So we've talked about -- we've talked about the
14 DNA analysis you did from samples taken out of this car.

15 And we've talked about the DNA analysis that you did from
16 samples that were take out of the house, ---

17 A. Yes.

18 Q. --- right? There's at least one more series of tests
19 that you were asked to do in this case, right?

20 A. Yeah. I mean, such different times that we'll have.

21 Q. You did a lot of -- you did a lot of different work on
22 this ---

23 A. Yes.

24 Q. One of those were some shoes you were given to examine,
25 right?

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- 1 A. Yes. I think in the very beginning I got it.
- 2 Q. Right. Do you have your report for that?
- 3 A. I ---
- 4 Q. It's ---
- 5 MS. STROM: Your Honor, ---
- 6 Q. --- report number one.
- 7 MS. STROM: --- may we approach? I'm going to object
- 8 to this testimony.
- 9 (Whereupon a bench conference was held off the record,
- 10 in the presence of the jury, but out of their hearing)
- 11 (Whereupon the bench conference was ended)
- 12 Q. Okay. So let's talk about the Mini Cooper, the samples
- 13 out of the car ---
- 14 A. Okay.
- 15 Q. --- that you analyzed. All right. I'm counting fifty-
- 16 three samples that you analyzed out of that car. Does that
- 17 sound about right?
- 18 A. I just don't -- I'm not counting them because I haven't
- 19 done it, yes.
- 20 Q. Right.
- 21 A. If you have got the count, yes.
- 22 Q. And that came straight out of your report.
- 23 A. Yeah.
- 24 Q. Does that sound like a pretty fair number, fifty-three?
- 25 A. Yeah.

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1 Q. Okay. Eleven of those were the blood -- suspected
2 blood swabs.

3 A. Yes.

4 Q. And that leaves the other forty-two that were not blood
5 swabs, they were the -- just general DNA swabs from the car,
6 right?

7 A. I'm not sure unless I look at them because all in the
8 car, I learn of. I don't -- I don't remember.

9 Q. Okay. Well, you did some samples that were of
10 suspected blood ---

11 A. Yes.

12 Q. --- in the car. And there was another series of
13 samples that were just swabs from inside the car, right?

14 A. Yes.

15 Q. And they were just to look for the DNA ---

16 A. Yeah.

17 Q. --- that was left there, okay?

18 A. (Affirmative nod).

19 Q. So that's fifty-three total samples in the car. Of
20 those does it sound fair to say that there were seventeen
21 that, for whatever reason, did not yield results? Either
22 there wasn't enough DNA or was an insufficient sample or
23 something like that?

24 A. Right.

25 Q. Right. So that would leave thirty-six samples from the

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1 car that yielded results?

2 A. Okay.

3 Q. And you've already talked about this with Ms. Strom,
4 but a lot of those samples matched Jonathan Rhodes.

5 A. I did not say they matched.

6 Q. That his DNA was present in a lot of those samples.

7 A. That indicates or it is possibly ---

8 Q. Right. So of those thirty-six results, thirty-one, his
9 DNA was present in. Does that sound fair to say?

10 A. I cannot exactly tell you what exactly -- if you go
11 back sample by sample, I can tell how many.

12 Q. I can do that ---

13 A. Yeah.

14 Q. --- if you'd like.

15 A. But I -- if you want to say exactly thirty-six or
16 thirty-three, I cannot tell. That's what I'm saying.

17 Q. Okay. All right. Would you agree with me that the
18 majority of the samples, the large majority of the samples,
19 that Jonathan's DNA was present?

20 A. Yes.

21 Q. Okay.

22 A. Whatever you call it, has a large ---

23 Q. For example, about thirty-one out of thirty-six, just
24 in ---

25 A. I don't -- I cannot tell that.

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1 Q. All right. But you would agree that the majority of
2 them, Jonathan's DNA ---

3 A. Wherever it is present is present, I have said that,
4 yes.

5 Q. Okay. All right. Eric Cade's DNA was also present in
6 a lot of those samples?

7 A. Yes.

8 Q. The majority of those samples?

9 A. I don't -- I cannot say majority or minority, but, yes.
10 Whatever is present I dictate, I tell that a -- whoever is
11 present in those. I don't know, Eric Cade may not be there
12 in so many samples as much as ---

13 Q. Okay.

14 A. --- Helen Wells and Gary Wells.

15 Q. Right. And so these are -- we're talking about the
16 samples that are not ---

17 A. Not blood.

18 Q. Not blood swabs, just in the car?

19 A. Yes. There are touch swabs, yes.

20 Q. Right. Okay. And we've already agreed that Jonathan's
21 DNA is present in most of those samples?

22 A. Yes.

23 Q. And also Eric Cade's DNA is present in most of those
24 samples? Maybe about twenty-four out of thirty-six.

25 A. Number, I cannot -- I will not give you the number.

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- 1 You may know it. I have not seen that -- I'm taking --
2 looking at each sample ---
3 Q. Right.
4 A. --- and say whether the DNA is present or not present
5 ---
6 Q. Right.
7 A. --- in that sample.
8 Q. Um-hum (affirmative).
9 A. That's all. I'm not counting how many samples he's
10 present or not.
11 Q. All right. If I told you that I've gone through your
12 reports ---
13 A. Yes.
14 Q. --- and matched them up, ---
15 A. Yes.
16 Q. --- would you believe me that those numbers are right?
17 At least close?
18 A. Yes.
19 Q. Okay. So of those thirty-six samples Jonathan's DNA's
20 present in most of them and Mr. Cade's DNA is present in
21 most of them?
22 A. Yes.
23 Q. All right. So let's go back and talk about the blood
24 -- the suspected blood ---
25 A. Right.

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1 Q. --- swabs that you did. And you already talking about
2 how in those samples, in some of those samples there was
3 Helen Wells' DNA present, Gary Wells' DNA present, right?

4 A. Yes.

5 Q. There was -- in some of them there was Jonathan Rhodes'
6 DNA present, right?

7 A. Yes.

8 Q. And some of them there was Eric Cade's DNA present,
9 right?

10 A. Yes.

11 Q. Okay. So let's talk about how DNA samples mix, how
12 that works, okay? You said earlier those are mixed DNA
13 samples and through your analysis that means you're able to
14 determine that this sample has DNA from multiple people,
15 right?

16 A. Yes.

17 Q. Okay. What that analysis does not indicate, that
18 analysis does not indicate how long each of those samples
19 have been there, right?

20 A. Which samples you are talking about?

21 Q. I'm talking about the samples from the -- that had
22 suspected blood in them from inside the Mini Cooper.

23 A. Blood samples.

24 Q. Just in general when you have a mixed sample of DNA,

25 ---

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1 A. Yes.

2 Q. --- your analysis does not tell you how long each of
3 those -- those individuals' DNAs had been there ---

4 A. Yes.

5 Q. --- on the item. It does not tell you that?

6 A. No.

7 Q. Okay. It doesn't indicate -- doesn't tell you what
8 order those DNAs may have gotten on that surface, right?

9 A. Yes.

10 Q. Because it's just a mixture. And it doesn't tell you
11 what order they got ---

12 A. Yes.

13 Q. So in this particular case, your test don't tell you
14 whether Jonathan's DNA and Eric Cade's DNA would have been
15 there before the blood got on it. Your analysis does not
16 say that, ---

17 A. No.

18 Q. --- right? It doesn't say whether the blood may have
19 been there before Jonathan and Eric's DNA was put on top of
20 it. Your analysis does not tell you that, right?

21 A. Yes.

22 Q. Okay. So what it definitely does not tell you is that
23 the blood got into the car because it was on Jonathan? Your
24 analysis doesn't tell you anything like that, right?

25 A. One of the points it can tell you is the major DNA and

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1 minor DNA.

2 Q. Right.

3 A. Normally touch DNA is not in higher quantities.

4 Q. Right.

5 A. Okay? And then one of the blood swabs, the major is

6 Jonathan Rhodes and the minor of the -- Helen Wells.

7 Q. Of course it is, but this analysis does not tell you

8 what order those individuals' DNAs came into the mixture,

9 does it? It doesn't, does it?

10 A. Yes. That part, I'm not talking about, yes. Only I am

11 talking about how much DNA has got in there, who is the

12 major, who is the minor.

13 Q. Right. And you don't know what order they got there?

14 A. Yes.

15 Q. Major, minor, trace, you don't know what order they got

16 ---

17 A. Yes.

18 Q. --- mixed in. They could have come in at completely

19 different times, right?

20 A. Yeah, but that is -- but we are talking about the blood

21 DNA here.

22 Q. Yes.

23 A. Touch DNAs will not be in the same proportions.

24 Q. Right. Looking at these samples, though, ---

25 A. Right.

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- 1 Q. --- you can say that some of the DNA came from blood,
2 okay.
- 3 A. Yes.
- 4 Q. And you can say that some of the DNA came from
5 touching, right?
- 6 A. I cannot say anything about it.
- 7 Q. Oh, you can't say anything about that?
- 8 A. Yes.
- 9 Q. You don't know about whether it came from blood or
10 touching, right?
- 11 A. Yeah, but there is blood and there is human DNA.
- 12 Q. Of course.
- 13 A. So ...
- 14 Q. But, again, what order they got there, and how they got
15 there and how long ---
- 16 A. Yeah, we are not talking ---
- 17 Q. --- they ---
- 18 A. We are not talking about the order or whatever it is.
19 We are talking about there is blood and then there's a
20 mixture and who is the major and who is the minor in each
21 sample.
- 22 Q. Okay.
- 23 A. Or whether we can separate it out or not.
- 24 Q. Okay.
- 25 A. That is the basic thing we are looking at. There is

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1 blood and what is the proportion of each DNA there because
2 we can look at the peaks and separate them mathematically
3 and look at them and tell. So that is what we are looking
4 at here, basically. And then ---

5 Q. Okay. Thank you. Well, let's -- we've talked about
6 this ---

7 A. Yes.

8 Q. --- car stuff enough.

9 A. Yes.

10 Q. Let's move on to the samples from the house, ---

11 A. Sure.

12 Q. --- all right? Okay. There were one hundred and
13 thirty-one samples taken from the house that you tested?

14 Does that sound about right? Would you agree that it's more
15 than a hundred?

16 A. These are samples, but items are total probably -- I do
17 not know.

18 Q. The samples that you tested.

19 A. Yes.

20 Q. A lot of them.

21 A. Yes.

22 Q. Zero of items inside the house matched Jonathan Rhodes,
23 right?

24 A. Pardon?

25 Q. Zero ---

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1 A. Yes.

2 Q. --- of the items that you tested from inside that house

3 ---

4 A. Correct.

5 Q. --- matched Jonathan Rhodes.

6 A. No, no sample has come.

7 Q. Okay. And I know that y'all were talking about a item

8 38 1 that had a trace sample that was unidentified from the
9 house.

10 A. Yes.

11 Q. But that sample didn't match Jonathan Rhodes, did it?

12 It's unidentified.

13 A. That's a trace. The trace amounts, it's very difficult
14 to tell.

15 Q. Okay. Thank you. I have no further questions.

16 **THE COURT:** Redirect?

17 **MS. STROM:** Very briefly, Your Honor.

18 **Redirect Examination by Ms. Strom:**

19 Q. In the house you didn't find any DNA of Shirley Rogers
20 either, did you?

21 A. No.

22 Q. Thank you. No further questions.

23 **THE COURT:** Recross?

24 **MR. ERWIN:** No, sir. Thank you.

25 **THE COURT:** All right. You can step down.

1 **MR. ERWIN:** We have a client facing several life
2 sentences here. And ---

3 **THE COURT:** No, I don't ---

4 **MR. ERWIN:** --- we've got ---

5 **THE COURT:** --- mean that.

6 **MR. ERWIN:** --- to deal with ---

7 **THE COURT:** And I think, I mean, particularly with what
8 Mr. Sarratt raised the other day, it was very interesting.
9 I mean, when I say -- I use the word esoteric, I don't mean
10 that in the negative, I mean that as a positive. It takes a
11 lot of digging, and a lot of thought, and ---

12 **MR. SARRATT:** I take it as a compliment.

13 **THE COURT:** --- a lot of ingenuity to come up with it.
14 And to me, it's impressive.

15 **MR. ERWIN:** Well, thank you, Judge. I appreciate that.

16 **THE COURT:** No, I'm not offended at all. They make me
17 think. Gives me a headache ---

18 **MR. ERWIN:** Well, good. That's ...

19 **THE COURT:** Now, what about this ---

20 **MR. WILKINS:** Our issue number two, the Defendant [sic]
21 would testify that they met in the South Carolina Department
22 of Corrections initially, I think, in intake at Broad River
23 Road and then were at the same prison in Perry.

24 This individual was from Hartsville, South Carolina,
25 grew up in Hartsville, South Carolina, has never been to

1 Greenville except through the prison system. And that's
2 important for us from a credibility perspective on our side
3 to show that he didn't know Mr. Rhodes prior til 2015 when
4 they had -- when they had a conversation while they were
5 both incarcerated at Perry.

6 And so not only were they -- they were incarcerated at
7 Perry together, but they didn't share the same cell and they
8 surely didn't stay in the cell in the same POD. They only
9 saw each other on work detail, which is in the cafeteria in
10 the mornings. And that's where they had these conversations
11 that he's going to testify to.

12 So it's important for the prosecution to bring those --
13 bring those details out so that the jury has a full picture
14 of how the conversations occurred, with whom they occurred
15 and where they occurred because it goes to the credibility
16 of the statement against interest and the witness.

17 **MR. ERWIN:** Thank you, Judge. I do not believe --
18 well, just to be clear, what I have an objection to as far
19 as that is the idea that this is a prison as opposed to a
20 jail. A prison, of course, indicating post conviction, that
21 someone is serving a sentence, not pre-trial incarceration,
22 but a sentence.

23 All these things that Mr. Wilkins explained are all
24 well and good. I don't think the name of the institution is
25 going to have any effect on his ability to explain that they

1 had kitchen duty together.

2 **THE COURT:** What ---

3 **MR. WILKINS:** The location -- okay. Perry -- the
4 location of the institution is important, that it's out --
5 well, it's in Greenville County. But I don't want them to
6 think that I'm -- the issue is I don't want the jury to
7 believe that this guy has contacts to Greenville County
8 other than ---

9 **THE COURT:** Well, you can certainly ask him where he's
10 from ---

11 **MR. WILKINS:** Sure.

12 **THE COURT:** --- and all those sort of things, but could
13 you not just use the word while the two of you were in
14 custody as opposed to saying he was in jail in Perry? Did
15 you meet him while you were in custody?

16 **MR. WILKINS:** While you were, could I say incarcerated?
17 I mean, what ---

18 **THE COURT:** No, because then you get back to SCDC.

19 **MR. WILKINS:** While y'all were in custody? Okay, sure.
20 At Perry Correctional or just while the two of you were in
21 custody in an institution in Greenville County?

22 **MR. ERWIN:** That last formulation, I think, would be
23 fine with me.

24 **THE COURT:** Okay. All right.

25 **MR. WILKINS:** Then, Your Honor, that gets back to where

1 they think he's in the county jail ---

2 **THE COURT:** Okay.

3 **MR. WILKINS:** --- together. But then I can explain how
4 the make-up was is fine.

5 **THE COURT:** Okay.

6 **MR. WILKINS:** And we'll work around it.

7 **THE COURT:** It's a -- okay. Anything else?

8 **MR. ERWIN:** No, sir.

9 **MR. WILKINS:** All right. So if you'll give us five
10 minutes ---

11 **THE COURT:** Well, we're going to -- the jury's had a
12 break, we hadn't.

13 **MR. WILKINS:** Okay.

14 **THE COURT:** And so we can -- when we get back in we can
15 go forward for a good while.

16 **MR. WILKINS:** All right.

17 **THE COURT:** Thank you.

18 **MS. STROM:** And, Your Honor, we will need to advise
19 this witness not to speak of the institution's name. So
20 it's going to take us just a few minutes to get that
21 through.

22 **MR. WILKINS:** And, finally, Your Honor, I want to put
23 on the record, just so -- we've advised the client under
24 Brady, disclosing to Defense counsel, that we told him that
25 we would tell any other prosecutor that he has pending

1 charges. He ---

2 **THE COURT:** They're not your client. You called him .

3 ---

4 **MR. WILKINS:** Not my client. I'm sorry

5 **THE COURT:** You called him your client.

6 **MR. WILKINS:** My witness. I haven't had clients in

7 quite a while, Your Honor. The -- we would tell the person,

8 whoever's prosecuting him for his federal charges, that he

9 cooperated ---

10 **THE COURT:** Okay.

11 **MR. WILKINS:** --- with us and that's the deal, I guess.

12 **THE COURT:** That doesn't make him your client. That's

13 good. Thank you. We'll take about a five minute refresher

14 break.

15 (Whereupon court was in recess at 3:20 pm)

16 (Whereupon court reconvened at 3:31 pm)

17 **THE COURT:** Thank you. Take your seats. Keep your

18 seats. We want to bring the witness in and go ahead and put

19 him on the stand or you want to bring him in ---

20 **MR. WILKINS:** Whatever's easier for the -- for

21 security. If you can go ahead and bring him in, that's

22 fine.

23 **THE COURT:** Come over to the witness stand over here.

24 And there's a Bible right there. It'll be kind of difficult

25 for you to do, but the best you can, put your left hand on

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1 that Bible and raise your right.

2 **Curtis McLeod**, being duly

3 sworn testified as follows;

4 **MADAME CLERK:** Please be seated and state your name for
5 the record.

6 **MR. McLEOD:** Curtis McLeod.

7 **THE COURT:** Go ahead and bring in the jury.

8 (Whereupon the jury entered the courtroom at 3:34 pm)

9 **THE COURT:** Members of the jury panel, the next witness
10 is already in the witness chair and has already been sworn
11 in.

12 **MR. WILKINS:** Thank you, Your Honor.

13 **Direct Examination by Mr. Wilkins:**

14 Q. Mr. McLeod, would you state your name for the record.

15 A. Curtis McLeod.

16 Q. I want to make sure you -- just talk into that
17 microphone so everybody can -- I'm going to stand about
18 right here. I just want to make sure the jury can hear you,
19 okay?

20 A. Okay.

21 Q. Mr. McLeod, where do you -- I see you're in an orange
22 jumpsuit. Are you currently incarcerated?

23 A. Yes, sir.

24 Q. And what -- what prison are you currently incarcerated
25 in?

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- 1 A. In Lee County.
- 2 Q. Lee County?
- 3 A. Yeah.
- 4 Q. Okay. And where is Lee County?
- 5 A. It's in Bishopville.
- 6 Q. Bishopville. Down in the Pee Dee area?
- 7 A. Yeah.
- 8 Q. All right. And where are you from?
- 9 A. I'm from Hartsville.
- 10 Q. Is that where you were born and raised?
- 11 A. Yes.
- 12 Q. Did you -- you go to school down there in Hartsville?
- 13 A. Yes. Yes, sir.
- 14 Q. All right. What are you currently incarcerated for?
- 15 A. Some drug charges.
- 16 Q. Okay. And do you have any pending charges right now?
- 17 A. Yes.
- 18 Q. Are those federal pending charges?
- 19 A. Yes, sir.
- 20 Q. And what kind of charges are those? Do you know?
- 21 A. Weapons charge.
- 22 Q. Felon in possession?
- 23 A. Yeah.
- 24 Q. I'm going to take you back to 2012. Where were you
- 25 located in October of 2012?

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1 A. I was in a car accident in Darlington County. And I
2 was in the hospital for about a month in a coma. And a
3 couple months later I came out of the coma.

4 Q. So what time did you come out of that coma? Sometime
5 early 2013?

6 A. Yeah. Yeah.

7 Q. And you've been convicted of a number of crimes in the
8 past, haven't you?

9 A. Yes, sir.

10 Q. Have you -- you been convicted back in '06 of some
11 common law strong arm robbery?

12 A. Yes, sir.

13 Q. How about some -- failure to stop for a blue light in
14 2008, have you been convicted of that?

15 A. Yes, sir.

16 Q. Have you been convicted of possessing some cocaine in
17 2008?

18 A. Yes, sir.

19 Q. How about -- how about receiving stolen goods back in
20 2012, did you plead guilty to receiving some stolen goods?

21 A. No, sir, I didn't -- I didn't plead guilty to that.

22 Q. That doesn't sound familiar?

23 A. No, sir.

24 Q. Receiving stolen goods less than maybe two thousand
25 dollars?

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1 A. I didn't -- it was never settled. It's still -- it's
2 still pending.

3 Q. It's still pending?

4 A. (Affirmative nod).

5 Q. Okay. What about back in 2015, did you plead guilty to
6 selling some drugs?

7 A. Yeah. Yes, sir.

8 Q. And did you get a pretty -- pretty decent sentence on
9 that?

10 A. Yes, sir.

11 Q. How much did you get?

12 A. Ten years.

13 Q. Is that what you're currently incarcerated for?

14 A. Yes, sir.

15 Q. Did you -- did you meet the Defendant, Jonathan Rhodes,
16 while you were in custody at a certain institution?

17 A. Yes. Yes, sir.

18 Q. Do you remember when you met Mr. Rhodes?

19 A. It was around April, earlier this year.

20 Q. Of 2015?

21 A. Yes, sir.

22 Q. And I'm going to ask you, do you see Mr. Rhodes in the
23 courtroom today?

24 A. Yes, sir.

25 Q. Can you point him out for me?

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1 A. Yeah. He's right there.

2 (Whereupon the witness pointed to the Defendant)

3 Q. Are you pointing to the Defendant?

4 A. Yes, sir.

5 Q. And while at that institution did y'all become friends?

6 A. Yes, sir. In a way you could say that, yes, sir.

7 Q. How did y'all become friends?

8 A. Well, we just, you know, just like talking, you know,
9 working together. And, you know, we kind of became close,
10 you know. We had a lot of stuff -- different stuff in
11 common.

12 Q. And did y'all share a cell with each other?

13 A. No, sir.

14 Q. Were y'all even in the same area with each other?

15 A. No, sir.

16 Q. So when would y'all meet each other?

17 A. When we'd go to work in the cafeteria.

18 Q. Okay. So the only time you would see him was when
19 y'all went to work?

20 A. Yeah. Yes, sir.

21 Q. When would y'all go to work? What were the hours of
22 y'all's work where y'all would be together?

23 A. From about 4:30 in the morning to about eleven, 12:00.

24 Q. Okay. 4:30 in the morning to 11:00 when y'all would
25 see each other?

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1 A. Yes, sir.

2 Q. Other than that y'all wouldn't be able to have any
3 other interaction with each other?

4 A. No, sir.

5 Q. And would y'all -- where were y'all working?

6 A. In the cafeteria.

7 Q. In the cafeteria?

8 A. Yeah.

9 Q. Were y'all cooking food?

10 A. Well, not -- not really the cooking part.

11 Q. Prepping?

12 A. Yeah, prepping and, you know, cleaning up, stuff like
13 that, washing dishes and stuff.

14 Q. And while y'all were prepping would y'all have some
15 down-time?

16 A. Yeah. Oh, yeah, we had down-time in between meals and
17 stuff like that, you know.

18 Q. And during that down-time would y'all ever talk about
19 things?

20 A. Yes, sir.

21 Q. And about how long were y'all able to spend time in the
22 cafeteria -- over what period of time would y'all see each
23 other in the cafeteria and begin to talk about things?

24 A. I mean, really all -- all day long from early in the
25 morning til -- up until we left.