

<p style="text-align: right;">Page 29</p> <p>1 do this would this then satisfy your concerns?</p> <p>2 JUROR: Yes.</p> <p>3 THE COURT: All right. And there's nothing</p> <p>4 about your job or your home situation that's</p> <p>5 interfering with your ability to pay attention or allow</p> <p>6 you to be -- continue to be fair and impartial?</p> <p>7 JUROR: No. One of my co-workers called me</p> <p>8 last night.</p> <p>9 THE COURT: One of your co-workers alerted</p> <p>10 you to the fact that you needed to get up there.</p> <p>11 JUROR: That I needed to get up there, yeah.</p> <p>12 THE COURT: All right. Ms. Gutierrez, are</p> <p>13 you satisfied? Mr. Urick, are you satisfied?</p> <p>14 MR. URICK: Very much so. Thank you, Your</p> <p>15 Honor.</p> <p>16 THE COURT: Very well, sir. At 11:30 we will</p> <p>17 break, I have the rest of my docket that I'm going to</p> <p>18 deal with and so, we'll allow you to do that and we'll</p> <p>19 bring the jury back at 1:30.</p> <p>20 JUROR: All right.</p> <p>21 THE COURT: Very well. Also at 1:30 you'll</p> <p>22 hear me tell you, the jurors what they can do to get</p> <p>23 paid and you should do that as well.</p> <p>24 JUROR: Thank you.</p> <p>25 THE COURT: You may take your seat. There's</p>	<p style="text-align: right;">Page 31</p> <p>1 promptly this morning. I was advised that you all were</p> <p>2 here promptly at 8:30. We have dealt with some matters</p> <p>3 this morning and I want to let you know that we're</p> <p>4 going to proceed with this case. Before we get started</p> <p>5 I need to bring to your attention that at close of the</p> <p>6 day yesterday I made some reference to the fact, asking</p> <p>7 the correctional officers to transport the Defendant</p> <p>8 and you may have noticed that through the course of the</p> <p>9 trial that he is, the Defendant has been escorted by</p> <p>10 someone from Corrections. Please be advised that that</p> <p>11 means nothing. The pretrial status of the Defendant</p> <p>12 whether he's incarcerated or not is not relevant to</p> <p>13 this case in anyway and should not be considered by you</p> <p>14 in any way whatsoever with regard to the facts,</p> <p>15 circumstances, evidence or anything regarding this</p> <p>16 case.</p> <p>17 An individual as I indicated to you at the outset</p> <p>18 charged with the Defense is innocent until proven</p> <p>19 guilty: The State priors that burden at all times, so</p> <p>20 therefore his pretrial status should have no relevance</p> <p>21 or bearing on you whatsoever during the course of this</p> <p>22 trial or your deliberations. At this time we're going</p> <p>23 to continue with the testimony of Mr. Waranowitz and at</p> <p>24 this time the State I believe has a few questions.</p> <p>25 MS. GUTIERREZ: We would just have a</p>
<p style="text-align: right;">Page 30</p> <p>1 no reason you should leave. Yes.</p> <p>2 UNKNOWN: (inaudible)</p> <p>3 THE COURT: At 12:30. I understand, but I</p> <p>4 can make arrangements for him to be paid at 1:30, I was</p> <p>5 told as well. Thank you. Put that in the file, and if</p> <p>6 we could bring the remaining jurors.</p> <p>7 MR. URICK: Yeah, just ask the witness to</p> <p>8 come in. It's okay for the witness to come in?</p> <p>9 THE COURT: Whatever you'd like, Mr. Urick at</p> <p>10 this point.</p> <p>11 MR. URICK: Thank you, Your Honor.</p> <p>12 THE COURT: Obviously you've directed them</p> <p>13 and that's what -- she's gone so, she'll do whatever</p> <p>14 you've told her to do.</p> <p>15 MR. URICK: I apologize if I was</p> <p>16 presumptuous.</p> <p>17 THE COURT: That's all right. I just wanted</p> <p>18 to have the jury together as much as possible. Sir,</p> <p>19 you make take the witness stand.</p> <p>20 MR. WARANOWITZ: Thank you, Your Honor.</p> <p>21 (The jury returned to the courtroom.)</p> <p>22 THE COURT: Good morning, ladies and</p> <p>23 gentlemen.</p> <p>24 JURY: Good morning.</p> <p>25 THE COURT: I thank you for being here</p>	<p style="text-align: right;">Page 32</p> <p>1 continuing objection to any further questions asked.</p> <p>2 THE COURT: Yes, and as we proceed I'd ask</p> <p>3 that Counsel be advised that -- of my previous ruling</p> <p>4 with regard to this witness, ask that those preliminary</p> <p>5 foundation questions be made if you intend to go in the</p> <p>6 area that we've previously discussed.</p> <p>7 MR. URICK: Thank you, Your Honor. At this</p> <p>8 time I'll continue with what I was going to do when we</p> <p>9 were breaking yesterday. If the witness may get off</p> <p>10 the stand and approach.</p> <p>11 THE COURT: Yes, and Mr. Urick, I must remind</p> <p>12 you, you must keep your voice up. The jurors have</p> <p>13 indicated they can not hear you. I know the mic is far</p> <p>14 away from you, but I think that part of the problems</p> <p>15 that so are the easels. So, if you could keep your</p> <p>16 voice up so that your voice can be heard it would be</p> <p>17 greatly appreciated.</p> <p>18 MR. URICK: I will do that. Thank you, Your</p> <p>19 Honor.</p> <p>20 THE COURT: Mr. Waranowitz, please step over</p> <p>21 to the easel.</p> <p>22 EXAMINATION</p> <p>23 BY MR. URICK: I'd ask him to approach what's</p> <p>24 been marked for identification as State's Exhibit 33.</p> <p>25 (State's Exhibit 33 was marked for</p>

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1 identification.)

2 MR. URICK:

3 Q Mr. Waranowitz, at this time I would ask you

4 on the map to find the spot you testified to at Gelston

5 Park and to fix this sticker that says Park at that

6 location on the map. Secondly, I'd ask you to find the

7 location that you identified yesterday as the 2700

8 block of Gateway Terrace. Affix the sticker that I

9 wrote A. T-E-R-R. at that spot. I would note for the

10 record that he has affixed those stickers at the two

11 places he identified yesterday later in the day when

12 everybody was using Scotch tape I'm going to put tape

13 over those to make sure that they are permanently

14 affixed. You may returned to the stand at this time.

15 At this time I'd move into evidence State's Exhibit 33,

16 the exhibit that he just affixed the final stickers to.

17 THE COURT: And 33 includes the map only, is

18 that correct?

19 MR. URICK: That's the map and the overlay.

20 THE COURT: And the overlay, they're two

21 separate exhibits?

22 MR. URICK: I have them as a collective

23 exhibit, I can mark them 33A and 33B.

24 THE COURT: Why don't we do that just for the

25 continuity sake in the event that there is any problem.

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1 The map then would be 33, correct? What did you say,

2 33?

3 MR. URICK: Thirty-three.

4 THE COURT: Thirty-three A and then the

5 overlay will be 33B. Any objection from the Defense

6 with regard to 33A, the map?

7 MS. GUTIERREZ: No, Your Honor.

8 THE COURT: And with regard to 33B, the

9 overlay?

10 MS. GUTIERREZ: Yes. For all the previous

11 listed stated, correct.

12 THE COURT: The overlay and the map will be

13 accepted as evidence at this time.

14 (State's Exhibit No. 33A &

15 33B, previously marked for

16 identification, will be received

17 into evidence.)

18 BY MR. URICK:

19 Q Mr. Waranowitz, do you have a Nokia phone?

20 MR. WARANOWITZ:

21 A No, not currently.

22 Q Have you ever had a Nokia phone?

23 A Yes, I have.

24 Q And what -- what cellular phone system did

25 you use that phone with?

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1 A AT&T Wireless Services.

2 Q How did you obtain that phone?

3 A It was given to me by the company.

4 Q And did you have occasion to use that phone

5 while you were in the Baltimore/Metropolitan area?

6 A Yes.

7 Q And have you had occasion to receive billing

8 information on that phone as a result of the calls you

9 may have received or made in the Baltimore/Metropolitan

10 region?

11 A Yes.

12 Q Now, in the course of your for the AT&T

13 Wireless Corporation, have you had occasion to test the

14 performance of Nokia phones on the AT&T wireless

15 network in the Baltimore region?

16 MS. GUTIERREZ: Objection.

17 THE COURT: Overruled. You may answer it.

18 And your objection is noted for the record. You may

19 continue.

20 MR. WARANOWITZ: Yes.

21 BY MR. URICK:

22 Q What sorts of tests do you perform on Nokia

23 phones?

24 MS. GUTIERREZ: Objection.

25 THE COURT: Overruled. At this point the

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1 argument you previously made will be incorporated

2 herein by reference and is overruled.

3 MS. GUTIERREZ: Thank you, Your Honor. May I

4 have a continuing objection?

5 THE COURT: Very well. You may continue.

6 MR. WARANOWITZ: We monitored the Nokia --

7 the massive Nokia phones in our network statistically.

8 We also use it in test mode. The Nokia phone has a

9 test phone in it that you can enable that will test us

10 what cell site you were on and what frequency you're

11 on. So, we were able to compare the performance of the

12 Nokia phone versus other phones in our network.

13 MS. GUTIERREZ: Objection. Move to strike.

14 He's not responding to the question.

15 THE COURT: Overruled. You may continue.

16 BY MR. URICK:

17 Q How often do you conduct these sorts of tests

18 on Nokia phones?

19 MR. WARANOWITZ:

20 A Usually once when we first get the phone. We

21 monitor it over a period of time.

22 Q How many phones have you done this to?

23 A I've used my own phone and I monitor phones

24 used by the customers in our network.

25 Q And about how many customer's phones have you

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<p style="text-align: right;">Page 37</p> <p>1 monitored?</p> <p>2 A Hundreds of thousands.</p> <p>3 Q And what sorts of factors have you found</p> <p>4 effect the performance of the Nokia phones on the AT&T</p> <p>5 Wireless network?</p> <p>6 A If a found was dropped it will have problems,</p> <p>7 physically dropped on the floor and broken, we found a</p> <p>8 few of those. But we have not found any significant</p> <p>9 problems with the Nokia 6160.</p> <p>10 Q What sort of factors might effect their</p> <p>11 performance though?</p> <p>12 A Poor antennas, problems with the batteries.</p> <p>13 Q How would these problems be appearing?</p> <p>14 A When we monitor the network that phone number</p> <p>15 or rather that phone shows up in our statistics with</p> <p>16 high dropped calls. And what I mean by dropped call is</p> <p>17 the call gets disconnected in the middle of a call.</p> <p>18 Q And would the customer be aware of that</p> <p>19 factor?</p> <p>20 A Sometimes, yes.</p> <p>21 Q What other effects on performance might these</p> <p>22 factors have?</p> <p>23 A Voice quality. If you have a poor antenna</p> <p>24 your phone is going to see the site at a lower signal</p> <p>25 strength which distorts the phone quality, the voice</p>	<p style="text-align: right;">Page 39</p> <p>1 MR. URICK: I thought you wanted me to do</p> <p>2 that before I asked the question so that I could get --</p> <p>3 THE COURT: Which questions are they?</p> <p>4 MR. URICK: Based on your expertise and</p> <p>5 training would a properly functioning Nokia phone</p> <p>6 respond to the system in the manner that these records</p> <p>7 indicate.</p> <p>8 THE COURT: Okay. You're going to make an</p> <p>9 objection to that question, are you not?</p> <p>10 MS. GUTIERREZ: Yes, for all the previous</p> <p>11 articulate reasons and I would state --</p> <p>12 THE COURT: Before you go any farther, Ms.</p> <p>13 Gutierrez I just have a question and this may be</p> <p>14 dispositive of this whole issue. The phone that was</p> <p>15 tested by this witness, the one that he has indicated</p> <p>16 that he has expertise one is a Nokia 6160. Is that the</p> <p>17 same model of the phone that the Defendant had?</p> <p>18 THE COURT: His expertise is not as to all</p> <p>19 phones. He's already indicated that different phones</p> <p>20 perform different ways and the only Nokia he's an</p> <p>21 expert on and has tested is the Nokia 6160.</p> <p>22 MR. URICK: That's what this is.</p> <p>23 THE COURT: A Nokia 6160?</p> <p>24 MR. URICK: Yes.</p> <p>25 THE COURT: Very well. And you're going to</p>
<p style="text-align: right;">Page 38</p> <p>1 quality. It makes it sound warbley.</p> <p>2 Q Are there any variables in performance over</p> <p>3 different makes of Nokia phones?</p> <p>4 A Yes.</p> <p>5 Q And what performance -- what -- how might</p> <p>6 these factors effect performance?</p> <p>7 A Different makes of different Nokia phones</p> <p>8 appear to perform differently. I have not tested</p> <p>9 anything other than a Nokia 6160.</p> <p>10 Q And what effects might these have on -- in</p> <p>11 terms of relating to the network?</p> <p>12 A Our network performance shows higher dropped</p> <p>13 calls if we have a lot of dropped calls -- if we have a</p> <p>14 lot of poor performing phones.</p> <p>15 MR. URICK: At this time would offer the</p> <p>16 witness for his expertise in the performance of Nokia</p> <p>17 phones on the AT&T wireless network.</p> <p>18 MS. GUTIERREZ: Objection.</p> <p>19 THE COURT: Counsel, may I see you at the</p> <p>20 bench. Sorry.</p> <p>21 (Counsel approached the bench and following</p> <p>22 ensued:)</p> <p>23 THE COURT: Can you proffer what the purpose</p> <p>24 of offering him as an expert at this point with regard</p> <p>25 to any additional questions you intend to ask?</p>	<p style="text-align: right;">Page 40</p> <p>1 ask then that he be qualified. If you re-ask the</p> <p>2 question for his expertise I will overrule the</p> <p>3 objection for the -- you can leave it apart, I don't</p> <p>4 think it matters because you don't have it on, but for</p> <p>5 the purposes of this objection as asked the objection</p> <p>6 is sustained. You can rephrase your question and offer</p> <p>7 him as an expert with regard to the 6160 and it will be</p> <p>8 overruled.</p> <p>9 MR. URICK: Thank you.</p> <p>10 THE COURT: And I would also note he did</p> <p>11 reiterate each time you asked the question specifically</p> <p>12 model 6160, yes the Nokia, 6160 which is why my -- I'm</p> <p>13 not willing to find him as an expert as to all Nokia</p> <p>14 phones because frankly I have no idea how many there</p> <p>15 are and he's already said the performance varies from</p> <p>16 phone to phone.</p> <p>17 MR. URICK: Thank you very much.</p> <p>18 THE COURT: All right.</p> <p>19 MS. GUTIERREZ: Well, Judge --</p> <p>20 THE COURT: One moment. Something we want to</p> <p>21 place on the record.</p> <p>22 MS. GUTIERREZ: Yes, Judge because I'm now</p> <p>23 unclear. Is he now being offered as an expert in that</p> <p>24 particular model as to how it would perform because he</p> <p>25 is only testified as to what he does with it. He</p>

<p style="text-align: right;">Page 41</p> <p>1 monitors the network, that they statistically monitor 2 phones. He hasn't testified as to doing any testing 3 much less any testing in regard to performance such as 4 which they wish to intimate, i.e. Would that phone 5 make or receive or see a certain signal strength from a 6 certain cell site, would it be capable of performing? 7 What he testified to -- 8 THE COURT: Would you like to voir dire the 9 witness on that issue? 10 MS. GUTIERREZ: No, Judge I don't think 11 that's necessary, I guess I'm stating for the record. 12 There is nothing in evidence to support any expertise 13 as to testing the phone for anything relevant much less 14 testing it for anything. His only testimony is that 15 they've observed a high number of dropped calls, that 16 they have a lot of poor performing phone, not 17 specifically Nokia phone, but -- 18 THE COURT: Or specifically this phone. 19 MS. GUTIERREZ: Or specifically any phone. 20 But that that doesn't stand to qualify him as any 21 specific expert on anything. You know, he said they've 22 monitored statistically, whatever that means, you know, 23 doesn't establish an expertise in establishing even a 24 base line of performance on this model phone or any 25 phone to say, well we monitor it statistically. We</p>	<p style="text-align: right;">Page 43</p> <p>1 this time with the Court's permission I would like to 2 approach the witness and show him what's already in 3 evidence as State's Exhibit 30 from the Defendant. 4 THE COURT: Yes, you may. 5 BY MR. URICK: 6 Q Can you take a few seconds and examine that 7 please? 8 THE COURT: While he's examining that piece 9 of equipment, may I see Counsel at the bench please? 10 (Court hears other matters, the case resumes 11 as follows:) 12 THE COURT: All right. Very well. 13 BY MR. URICK: 14 Q Have yo had a chance to examine the exhibit? 15 MR. WARANOWITZ: 16 A Yes, I have.. 17 Q And can you identify that type of model of 18 cell phone? 19 A This is a Nokia 6160 phone. 20 Q Now, yesterday we had you testifying 21 concerning a test that you made at the Gateway Terrace 22 location, the Gelston Park location and the Lincoln 23 Park location to determine if it was possible for the 24 system to respond in a particular way. Based on your 25 experience with using the Nokia phone personally and</p>
<p style="text-align: right;">Page 42</p> <p>1 don't even know what that means. That's not 2 establishing an expertise in monitoring or testing the 3 performance thereof of any phone. 4 THE COURT: Mr. Urick, state again the 5 expertise that you're offering him so that I can 6 address Ms. Gutierrez's point. 7 MR. URICK: We're offering from his expertise 8 in the performance of the Nokia 6160 phone on the AT&T 9 wireless network. 10 THE COURT: In the performance of the -- 11 MR. URICK: In the Baltimore/Metropolitan 12 area. 13 THE COURT: Nokia 6160 on the AT&T network 14 system, correct? 15 MR. URICK: Yes. 16 THE COURT: All right. Very well, you may 17 step back. Thank you very much, Counsel. 18 (Counsel returned to the trial tables and 19 the following ensued:) 20 THE COURT: Over objection by Counsel that 21 will be noted for the record the witness will be 22 accepted as an expert in the performance of the Nokia 23 6160 on the AT&T network system. Mr. Urick, you may 24 ask your next question. 25 MR. URICK: Thank you, Your Honor. At</p>	<p style="text-align: right;">Page 44</p> <p>1 through testing it with -- as part of your duties with 2 the AT&T wireless network, are you able to form an 3 opinion whether or not a properly functioning Nokia 4 6160 phone would be capable of interacting with the 5 AT&T wireless network in the same way as you described 6 yesterday? 7 A Yes. 8 MS. GUTIERREZ: Objection. 9 THE COURT: Overruled. 10 BY MR. URICK: 11 Q And what is that opinion? 12 MR. WARANOWITZ: 13 A The opinion is that the Nokia 6160 is 14 equivalent to the test phone that we used in the test. 15 THE COURT: I'm sorry, I couldn't hear that. 16 MR. WARANOWITZ: The Nokia 6160 appears to 17 perform equally to the Erickson test phone that we used 18 in the test. 19 BY MR. URICK: 20 Q And if in fact it did interact in that manner 21 would the computer cell phone records record that 22 interaction in the same way as in State's Exhibit 34? 23 MR. WARANOWITZ: 24 A Yes. 25 MR. URICK: Witness with the Defense.</p>

<p style="text-align: right;">Page 45</p> <p>1 THE COURT: You may proceed, Ms. Gutierrez. 2 MS. GUTIERREZ: Thank you, Your Honor. 3 CROSS EXAMINATION 4 BY MS. GUTIERREZ: 5 Q Mr. Waranowitz, would you step down off the 6 witness stand? 7 THE COURT: Yes, you may follow her lead. 8 BY MS. GUTIERREZ: 9 Q Now, this Exhibit 33A and B, both the map and 10 the colored overlay are exhibits that you prepared, 11 correct? 12 MR. WARANOWITZ: 13 A Yes. 14 Q The underlaying map was from geological 15 survey map service? 16 A Yes. 17 Q And that map indicates in many places the 18 names of roads, does it not? And directions of roads? 19 A Yes. 20 Q And names of neighborhoods? 21 A Yes. 22 Q And you didn't put any of that on there, 23 that's already on there, correct? 24 A That is correct. 25 Q Now, the overlay is prepared on a clear see</p>	<p style="text-align: right;">Page 47</p> <p>1 step back for a minute, sir and discussed yesterday 2 State's Exhibit 43B as a demonstration that you 3 prepared to show us how the coverage area sites, the A, 4 B and C sites that emanate from a cell site should 5 appear, correct? 6 A Yes. 7 Q And you drew this, correct? 8 A Yes. 9 Q This doesn't appear somewhere naturally, you 10 drew it? 11 A Correct. 12 Q All right. And what you've described -- and 13 this is how ideally a cell site coverage area should 14 appear, correct? 15 A Yes, it's symbolic of that. 16 Q It's symbolic of that. Now, if you would 17 step back and look at, you have listed one, two, three, 18 four, five, six, seven cell site numbers on this cover 19 overlay, have you not? 20 A Yes. 21 Q And you drew in those cell site numbers, did 22 you not? 23 A I drew in the numbers. 24 Q And you're the one that determined what would 25 be the outlines of any particular color, did you not?</p>
<p style="text-align: right;">Page 46</p> <p>1 through sheet of transparent plastic, is it not? 2 A Yes. 3 Q And the areas where that transparent plastic 4 is colored is what you did, correct? 5 A Yes. 6 Q And there are various colors on there, are 7 they not? 8 A Yes. 9 Q And sometimes the colors are repeated? 10 A Yes. 11 Q And the repeats in fact appear all over the 12 map? 13 A Correct. 14 Q And there's no independent, significance to 15 the colors, are there? 16 A There are not unique colors, unique cell 17 sites, yes. 18 Q For instance, the blue doesn't mean something 19 special because it's blue, does it? 20 A Correct. 21 Q Or what you called orange here in the middle 22 doesn't have some special significance because it's 23 orange, right? 24 A Right. 25 Q Now, you showed us again, if you could just</p>	<p style="text-align: right;">Page 48</p> <p>1 A No, that was generated by the computer. 2 Q So, and the computer generated those outlines 3 based on information about the boundaries of the 4 specific sector that emanates from a specific cell 5 site, correct? 6 A Could you (inaudible) 7 Q The computer didn't decide what the coverage 8 sites should look like, did it? 9 A Yes, it did. 10 Q The computer didn't decide what the 11 boundaries of the coverage area was, did it? 12 A Yes, it did. 13 Q The computer merely generated what 14 information was in it, correct? 15 A Yes. 16 Q The computer doesn't decide that here all 17 cell sites ideally should look like the neat little 18 circles that you've drawn, does it? 19 A Where I drew these at? 20 Q Yes, Mr. Waranowitz. On your drawing which 21 you made which was computer assisted. You indicated 22 that ideally the A, B and C sectors are exactly alike 23 just in different locations, did you not? 24 A Yes. 25 Q The area that they cover is exactly the same</p>

<p style="text-align: right;">Page 49</p> <p>1 for each three sectors, is it not?</p> <p>2 A Yes.</p> <p>3 Q There's not a single one on your Exhibit 33B</p> <p>4 that looks like your ideal model, does it?</p> <p>5 A No.</p> <p>6 Q There's not a single one that has nice, neat</p> <p>7 little circles that express the coverage area, is</p> <p>8 there?</p> <p>9 A No.</p> <p>10 Q There's not a single one in which the</p> <p>11 coverage areas A, B and Ca are the same, is there?</p> <p>12 A No.</p> <p>13 Q You described for instance, for Mr. Urick in</p> <p>14 great detail the 653 has an A, B and C, did you not?</p> <p>15 A Yes, I did.</p> <p>16 Q And the A, B and C are the little purple area</p> <p>17 here right or brownish purple, right?</p> <p>18 A 653A.</p> <p>19 Q 653A. But I'm pointing to the right place,</p> <p>20 am I not?</p> <p>21 A Yes.</p> <p>22 Q And another sector and I don't remember if</p> <p>23 it's B and C is what you've described as the larger</p> <p>24 orange area, isn't that correct?</p> <p>25 A That would be L653C.</p>	<p style="text-align: right;">Page 51</p> <p>1 THE COURT: Ms. Gutierrez, well, Ms.</p> <p>2 Gutierrez, you've asked the question, let the witness</p> <p>3 answer the question. Mr. Waranowitz, can you answer</p> <p>4 the first question? Did you decide that the map should</p> <p>5 -- the overlay should go up above the map area or not?</p> <p>6 MR. WARANOWITZ: The maps are slightly</p> <p>7 different size and the location is to we printed this</p> <p>8 out. I printed out both the overlay and the underlay</p> <p>9 at the same scale and eventually rose up in-between.</p> <p>10 So, where the overlay matches the map underneath it</p> <p>11 covers the areas in question.</p> <p>12 THE COURT: Okay.</p> <p>13 BY MS. GUTIERREZ:</p> <p>14 Q Now, on the overlay --</p> <p>15 THE COURT: One moment, Ms. Gutierrez. but</p> <p>16 the question is, that you see how the overlay is moved</p> <p>17 up to the top of the map?</p> <p>18 MR. WARANOWITZ: Yes, I understand that the</p> <p>19 difference between them.</p> <p>20 THE COURT: There's about -- is that about an</p> <p>21 inch above?</p> <p>22 MR. WARANOWITZ: Yes.</p> <p>23 THE COURT: And that's the correct placement</p> <p>24 of the overlay?</p> <p>25 MR. WARANOWITZ: Yes.</p>
<p style="text-align: right;">Page 50</p> <p>1 Q 63C and that B was what I would call purple</p> <p>2 right there to the right of it, is it not?</p> <p>3 A Yes.</p> <p>4 Q And you would agree, sir, that the area</p> <p>5 defined by the computer as B is far more then three</p> <p>6 times the area defined by what you've defined as A,</p> <p>7 would you not?</p> <p>8 A That is correct.</p> <p>9 Q And in fact, if you look at any of these</p> <p>10 there's not a single coverage sector that is the same</p> <p>11 as A, B and C as any cell site, is it?</p> <p>12 A I'm sorry. Could you rephrase that last</p> <p>13 question?</p> <p>14 Q You didn't understand it?</p> <p>15 A Please ask me again.</p> <p>16 Q Okay. Now, sir, you prepared this, did you</p> <p>17 not?</p> <p>18 A Yes.</p> <p>19 Q And are you the one that taped it together so</p> <p>20 that the overlay goes over the map?</p> <p>21 A Yes.</p> <p>22 Q And so you're the one that determined that</p> <p>23 the overlay should not match the top line of the map,</p> <p>24 is that correct? You determined where to put the</p> <p>25 outline, didn't you?</p>	<p style="text-align: right;">Page 52</p> <p>1 THE COURT: Very well. Your next question,</p> <p>2 Ms. Gutierrez.</p> <p>3 BY MS. GUTIERREZ:</p> <p>4 Q Now, the overlay, sir, has no definitions</p> <p>5 that define any of the roads, does it?</p> <p>6 MR. WARANOWITZ:</p> <p>7 A No, it does not.</p> <p>8 Q It just has a series of lines, correct?</p> <p>9 A Correct.</p> <p>10 Q And those lines, sir, you put them there?</p> <p>11 A No, they're part of the computer program.</p> <p>12 Q The overlay has no logo on it that should be</p> <p>13 matched up to something underneath of it, does it?</p> <p>14 A Just the road maps.</p> <p>15 Q Just the roads that were generated by the</p> <p>16 computer, is that correct?</p> <p>17 A Yes.</p> <p>18 Q And that was generated by information fed</p> <p>19 into that computer by whom?</p> <p>20 A The software is created by LCC.</p> <p>21 Q So, it's software that exists in the</p> <p>22 computer, correct?</p> <p>23 A Yes.</p> <p>24 Q All right. Not something that your records</p> <p>25 created, is that correct?</p>

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<p style="text-align: right;">Page 53</p> <p>1 A Correct.</p> <p>2 Q Not something that you yourself put in the</p> <p>3 computer at any given time?</p> <p>4 A Correct.</p> <p>5 Q But this overlay is suppose to represent, not</p> <p>6 the ideal cell site coverage, but the actual cell site</p> <p>7 coverage, correct?</p> <p>8 A Yes.</p> <p>9 Q And the overlay in no way looks anywhere</p> <p>10 close to your ideal cell site coverage, does it?</p> <p>11 A No.</p> <p>12 Q You can take back your seat. Now, Mr.</p> <p>13 Waranowitz, before we go any further, let me ask you a</p> <p>14 question that really concerned me that Mr. Urick didn't</p> <p>15 bother to ask. You referred to -- you were asked to do</p> <p>16 this test, were you not?</p> <p>17 A Yes.</p> <p>18 Q You were asked by him were you not?</p> <p>19 A Yes.</p> <p>20 Q Okay. And you met with him, didn't you?</p> <p>21 A Yes, I did.</p> <p>22 Q And the information you received before doing</p> <p>23 anything you got from him, did you not?</p> <p>24 A Yes.</p> <p>25 Q You got a list of addresses, did you not?</p>	<p style="text-align: right;">Page 55</p> <p>1 Q And it isn't something you have anything to</p> <p>2 do with putting in information into to generate, is it?</p> <p>3 A Correct.</p> <p>4 Q That's done by somebody else, is it not?</p> <p>5 A Yes.</p> <p>6 Q And much of that is done by computers, is it</p> <p>7 not?</p> <p>8 A I don't know.</p> <p>9 Q You think all those entries are entered in by</p> <p>10 hand?</p> <p>11 A I don't know.</p> <p>12 Q You don't know. Mr. Waranowitz, the reason</p> <p>13 the billing information on a wireless includes</p> <p>14 information such as the time of the call and the</p> <p>15 duration of the call has to do with the way wireless</p> <p>16 phones are billed differently than land based phones,</p> <p>17 does it not?</p> <p>18 A Correct.</p> <p>19 Q Often time a cellular customer is billed for</p> <p>20 the minute of use, are they not?</p> <p>21 A I don't know how they bill for minutes of</p> <p>22 use.</p> <p>23 Q Well, sir, you testified all day yesterday</p> <p>24 and today that you're familiar because you in fact, are</p> <p>25 and AT&T wireless customer, did you not?</p>
<p style="text-align: right;">Page 54</p> <p>1 A Yes.</p> <p>2 Q He gave them to you, right?</p> <p>3 A Yes.</p> <p>4 Q You didn't of your own independent knowledge</p> <p>5 know what if any significance those addresses have, did</p> <p>6 you?</p> <p>7 A No, I did not.</p> <p>8 Q And you were asked to conduct a test to see</p> <p>9 if it was consistent with what he thought, were you</p> <p>10 not?</p> <p>11 A I was asked to see if the test wold be</p> <p>12 consistent with the locations and the phone records.</p> <p>13 THE COURT: I'm sorry, I couldn't hear the</p> <p>14 end of that.</p> <p>15 MR. WARANOWITZ: I'm sorry. The test -- I</p> <p>16 was asked to demonstrate or verify or test that the</p> <p>17 billing -- do the billing records correspond with the</p> <p>18 cell sites and the locations.</p> <p>19 THE COURT: Your next question.</p> <p>20 BY MS. GUTIERREZ:</p> <p>21 Q Let me get this straight, Mr. Waranowitz.</p> <p>22 The billing information for the AT&T wireless system</p> <p>23 isn't something you're responsible for, is it?</p> <p>24 MR. WARANOWITZ:</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 56</p> <p>1 A Yes.</p> <p>2 Q And does that information appear on your</p> <p>3 bills?</p> <p>4 A Yes.</p> <p>5 Q The duration of the call?</p> <p>6 THE COURT: Is that a question, Ms.</p> <p>7 Gutierrez?</p> <p>8 MS. GUTIERREZ: Yes, ma'am.</p> <p>9 THE COURT: Is the duration of the call</p> <p>10 appear on your bill, Mr. Waranowitz?</p> <p>11 MR. WARANOWITZ: It would, yes.</p> <p>12 BY MS. GUTIERREZ:</p> <p>13 Q Okay. And you're familiar with that because</p> <p>14 you've seen it in your own bill.</p> <p>15 MR. WARANOWITZ:</p> <p>16 A Yes.</p> <p>17 Q And now you don't pay by the minute of use</p> <p>18 for your own phone?</p> <p>19 A No, I don't.</p> <p>20 Q Your company pays for it, right?</p> <p>21 A That is correct.</p> <p>22 Q So, you're not concerned with verifying</p> <p>23 accuracy of any information that might appear on your</p> <p>24 bill, are you?</p> <p>25 A No.</p>

<p style="text-align: right;">Page 57</p> <p>1 Q You don't have to check your bill to see if 2 they counted up your minutes of use correctly? 3 A No, I don't do that. 4 Q You don't have to carefully check the 5 accuracy of any information regarding the time of the 6 call, do you? 7 A No. 8 Q You wouldn't be concerned for billing 9 purposes if there appeared because some computer 10 somewhere or some person somewhere made a mistake in 11 entry as to that information, are you? 12 A No, I don't handle billing. 13 Q I didn't ask you that, sir. I'm asking you 14 about your own phone bill. 15 A No. 16 Q You don't enter any information that 17 generates your own phone bill, do you? 18 A No, I do not. 19 Q No, and because you don't pay for it like the 20 rest of us because it's provided by your company, 21 you're not concerned in regard to how much you pay, 22 whether or not that information is accurate or not, are 23 you? 24 A No. 25 MS. GUTIERREZ: Can I have State's Exhibit</p>	<p style="text-align: right;">Page 59</p> <p>1 side, sir, you were asked to identify whether or not 2 those numbers correctly stated cell sites? 3 A I recognize the cell site. 4 Q Okay. And because you've looked at it 5 before, correct? 6 A Yes. 7 Q And you knew that every single entry in that 8 column was a cell site with which you were familiar? 9 A Correct. 10 Q Did you not? Now, the address column, sir, 11 you didn't fill that in, did you? 12 A No, I did not. 13 Q And, sir, we spoke a minute ago about you 14 were provided addresses by Mr. Urick, do you recall 15 that? 16 A Yes. 17 Q One of the addresses that you were provided 18 was 1208 Macado Road, Street whatever, was it not? 19 A Yes. 20 Q Now, 1208 Macado doesn't appear in this 21 column, does it? 22 A No, it does not. 23 Q No, and 1208 Macado is not the address of a 24 cell site, is it? 25 A No.</p>
<p style="text-align: right;">Page 58</p> <p>1 34? 2 MR. URICK: I believe that's the exhibit over 3 here. 4 THE COURT: Actually, it's the chart, but 5 there is a I believe a blank copy of that. 6 MS. GUTIERREZ: I thought that there was a 7 record. 8 THE COURT: No, I don't believe that it was 9 ever generated. 10 BY MS. GUTIERREZ: 11 Q I would like you to step off, sir and come 12 look at 34. 13 THE COURT: You may. 14 BY MS. GUTIERREZ: 15 Q You were asked to review this yesterday, were 16 you not? 17 MR. WARANOWITZ: 18 A Yes. 19 Q And before yesterday you've reviewed this 20 before, have you not? 21 A Yes. 22 Q You are familiar with the information in it, 23 were you not? 24 A Yes. 25 Q In regard to the columns in the far right</p>	<p style="text-align: right;">Page 60</p> <p>1 Q And the address of a cell site as you've 2 explained to us is the address of the owner of the 3 property, correct? 4 A Correct. 5 Q So, now the address -- the photos that you 6 were asked to look at were the antennas on top of the 7 building that defined as what you and we people you 8 worked with called the Social Security building, 9 correct? 10 A Yes. 11 Q Are you familiar with that complex that 12 actually fronts on Security Boulevard? 13 A I'm familiar with the complex. 14 Q Are you aware that there's a complex, a 15 Social Security buildings? 16 A Yes. 17 Q And that in fact, the name of that set of 18 buildings is the Social Security Administration 19 headquarters. 20 A I'm aware. 21 Q And are you aware that at that complex there 22 are eleven separate buildings as part of the 23 headquarters of the Social Security Administration? 24 A No, I wasn't aware of that. 25 Q And that all of those buildings are owned by</p>

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<p>1 the Federal Government, the United States Government.</p> <p>2 A No, I didn't know that.</p> <p>3 Q And are you aware that there is not a single</p> <p>4 address that applies to all of eleven buildings?</p> <p>5 A I am not aware of that.</p> <p>6 Q The building that you identified in the</p> <p>7 picture though is what you and your colleagues called</p> <p>8 the Social Security building, correct?</p> <p>9 A That is correct.</p> <p>10 Q You of course couldn't tell us which of the</p> <p>11 eleven buildings is the one that you and your</p> <p>12 colleagues have designated by your own name for it,</p> <p>13 could you?</p> <p>14 A I've identified a building (inaudible)</p> <p>15 THE COURT: I'm sorry. Wait a minute, sir.</p> <p>16 You've got to -- you have to understand this is a</p> <p>17 recording device and the mics pick up what you're</p> <p>18 saying and record it, so if you speak softly I can't</p> <p>19 hear and I bet the mics not picking up what you're</p> <p>20 saying. So I need you to keep your voice up. Now, she</p> <p>21 asked you about how you could identify that building</p> <p>22 and your answer is?</p> <p>23 MR. WARANOWITZ: I could identify it by the</p> <p>24 AT&T equipment on the roof of the building.</p> <p>25 THE COURT: Very well. Your next question.</p>	<p>1 A Correct.</p> <p>2 Q And are you aware of the street address of</p> <p>3 that mall?</p> <p>4 A No, I am not.</p> <p>5 Q No, and Security Square Mall doesn't appear</p> <p>6 here, does it?</p> <p>7 A No, it does not.</p> <p>8 Q And the 4703 Gateway Terrace address that you</p> <p>9 were both told about and taken to, were you not?</p> <p>10 A I'm sorry, say again.</p> <p>11 Q The 4703 Gateway Terrace, the address that</p> <p>12 Mr. Urick questioned you about extensively just moments</p> <p>13 ago, do you recall that?</p> <p>14 A Yes.</p> <p>15 Q And that doesn't appear in this column, does</p> <p>16 it?</p> <p>17 A No, it does not.</p> <p>18 Q And the Lincoln Park, what you referred to</p> <p>19 burial site, does that have an address?</p> <p>20 A No, it does not.</p> <p>21 Q And incidentally you went there, did you not?</p> <p>22 A I was taken there, yes.</p> <p>23 Q You were taken there by Mr. Urick?</p> <p>24 A I was taken by Ms. Murphy.</p> <p>25 Q Okay. And you were shown a location,</p>
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<p>1 BY MS. GUTIERREZ:</p> <p>2 Q But you, sir, couldn't differentiate that</p> <p>3 building if you couldn't see the antennas from the</p> <p>4 other ten buildings as part of the complex?</p> <p>5 MR. WARANOWITZ:</p> <p>6 A I'm sorry. Rephrase that again.</p> <p>7 Q Sir, you could not differentiate that</p> <p>8 building without seeing the antennas from the other ten</p> <p>9 buildings in the complex, could you?</p> <p>10 A No.</p> <p>11 Q Now, and, sir, could you tell us without</p> <p>12 seeing the antenna what the street address of the</p> <p>13 building that contains the antennas that you tell us</p> <p>14 you could recognize is?</p> <p>15 A I don't know exactly.</p> <p>16 Q Now, while you're still up here and then I'll</p> <p>17 let you sit down. Let me ask you about other addresses</p> <p>18 that Mr. Urick gave you to conduct your test. One of</p> <p>19 those was Rolling Road at I70, was it not?</p> <p>20 A Yes.</p> <p>21 Q And Rolling Road at I70 doesn't appear in</p> <p>22 this column, does it?</p> <p>23 A No, just the map.</p> <p>24 Q Another address that you had given was</p> <p>25 Security Square Mall, correct?</p>	<p>1 correct?</p> <p>2 A Yes.</p> <p>3 Q And you were told information about that</p> <p>4 location, were you not?</p> <p>5 A A little bit, yes.</p> <p>6 Q And that location, sir, was located a good</p> <p>7 distance from the road, was it not?</p> <p>8 A No, it was right off the road.</p> <p>9 Q Right off the road. Could you tell us the</p> <p>10 distance off the road that you were shown and told a</p> <p>11 body had been buried?</p> <p>12 A I was told that the body was buried behind</p> <p>13 the concrete barriers.</p> <p>14 Q And you saw those concrete barriers, did you</p> <p>15 not?</p> <p>16 A Yes, I did.</p> <p>17 Q Were you actually taken into the wood and</p> <p>18 shown an exact spot and told this is where a body was</p> <p>19 buried?</p> <p>20 A No.</p> <p>21 Q So, you were just taken up to the area that</p> <p>22 surrounded by concrete barriers?</p> <p>23 A Yes.</p> <p>24 Q We call them Jersey walls or the construction</p> <p>25 industry calls them Jersey walls, are you aware of</p>

<p style="text-align: right;">Page 65</p> <p>1 that?</p> <p>2 A Yes, Jersey walls.</p> <p>3 Q Okay. And you were taken there and then you</p> <p>4 said the body was buried behind here, correct?</p> <p>5 A Correct.</p> <p>6 Q And you weren't taken over those concrete</p> <p>7 barriers, were you?</p> <p>8 A No, I was not.</p> <p>9 Q There wasn't any ready way to get over the</p> <p>10 concrete barriers without climbing over them, was</p> <p>11 there?</p> <p>12 A No, I don't remember.</p> <p>13 Q You weren't taken to a place, were you?</p> <p>14 A I'm sorry.</p> <p>15 Q You weren't taken to a place, were you?</p> <p>16 A I was taken to that location.</p> <p>17 Q Where the Jersey walls are.</p> <p>18 A Yes.</p> <p>19 Q And the Jersey walls are located immediately</p> <p>20 adjacent to the road, are they not?</p> <p>21 A Yes.</p> <p>22 Q And that's where you were then said, what was</p> <p>23 said to you was that the body was buried beyond here,</p> <p>24 is that correct?</p> <p>25 A That is my understanding.</p>	<p style="text-align: right;">Page 67</p> <p>1 Q But you don't remember the date, sir. Your</p> <p>2 definition of fall, sir, includes October?</p> <p>3 A Yes.</p> <p>4 Q And November?</p> <p>5 A Yes.</p> <p>6 Q And parts of December?</p> <p>7 A I'm not sure.</p> <p>8 THE COURT: I'm sorry, I couldn't hear you.</p> <p>9 MR. WARANOWITZ: I'm not sure.</p> <p>10 BY MS. GUTIERREZ:</p> <p>11 Q But it could, could it not?</p> <p>12 MR. WARANOWITZ:</p> <p>13 A It might be.</p> <p>14 Q And parts of September, correct?</p> <p>15 A Yes.</p> <p>16 Q And your test could have occurred because you</p> <p>17 don't recall sometime at the end of September?</p> <p>18 A I don't remember the exact date.</p> <p>19 Q Well, my question, sir, could it occur</p> <p>20 sometime at the end of September?</p> <p>21 A Yes.</p> <p>22 Q Any day in October?</p> <p>23 A Yes.</p> <p>24 Q Any day in November?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 66</p> <p>1 Q And, sir, did you explore the terrain beyond</p> <p>2 the Jersey walls?</p> <p>3 AA No, I did not.</p> <p>4 Q You could have if you wanted to, couldn't you</p> <p>5 have?</p> <p>6 A Yes.</p> <p>7 Q Nobody stopped you from exploring, did they?</p> <p>8 A No.</p> <p>9 Q And were you taken anywhere from that place</p> <p>10 that led you to the edge of stream?</p> <p>11 A No.</p> <p>12 Q Or were you told that a stream meandered back</p> <p>13 there behind the Jersey wall?</p> <p>14 A No.</p> <p>15 Q And the body wasn't there when you did this,</p> <p>16 was it?</p> <p>17 A No, it was not.</p> <p>18 Q This part of this test that you tell us about</p> <p>19 you conducted in the fall, did you not?</p> <p>20 A Yes.</p> <p>21 Q The exact date?</p> <p>22 A I don't remember the exact date.</p> <p>23 Q And you didn't write it down?</p> <p>24 A I wrote it down somewhere, I don't remember</p> <p>25 the date.</p>	<p style="text-align: right;">Page 68</p> <p>1 Q And perhaps, but not necessarily a day in</p> <p>2 early December, is that correct?</p> <p>3 A It's possible.</p> <p>4 Q And that right now you don't recall the date</p> <p>5 this test occurred?</p> <p>6 A No, I do not recall the date the test</p> <p>7 occurred.</p> <p>8 Q And you may have written it down, but you</p> <p>9 didn't bring any of that material with you?</p> <p>10 A No.</p> <p>11 Q And on the day whenever it was during any of</p> <p>12 the those four months, sir, were you always accompanied</p> <p>13 by Ms. Murphy or Mr. Urick?</p> <p>14 A I'm sorry, could you ask that again?</p> <p>15 Q On whatever day it may have been sometime</p> <p>16 during the month of September, October, November or</p> <p>17 December that you conducted the test about which you've</p> <p>18 testified, sir, were you always accompanied?</p> <p>19 A By Ms. Murphy.</p> <p>20 Q By Ms. Murphy. So, any address that you were</p> <p>21 asked to conduct a test on was given to you by her?</p> <p>22 A Yes.</p> <p>23 Q And --</p> <p>24 THE COURT: Ms. Gutierrez, may the witness</p> <p>25 return to the witness stand?</p>

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<p>1 MS. GUTIERREZ: I'm just going to finish 2 these. I have a couple more addresses. 3 THE COURT: With regard to the Exhibit 34? 4 BY MS. GUTIERREZ: Yes. 5 Q In regard to the address column, sir, you 6 were also given an address of Briar Cliff Road, were 7 you not? 8 MR. WARANOWITZ: 9 A I don't recall that address. 10 Q Well, did you speak to Mr. Murphy -- Ms. 11 Murphy and Mr. Urick after you conducted the test? 12 A Yes. 13 Q And did you give them a report of your 14 findings? 15 A No. 16 Q You didn't report your findings to them? 17 A I verbally gave Ms. Murphy my readings as we 18 conducted the test. 19 Q Okay. So, you don't consider that to be a 20 report? 21 A (inaudible) reports. 22 Q And -- 23 THE COURT: Ms. Gutierrez, I'm going to ask 24 the witness -- you may return to the witness stand and 25 at which time you need him to return to the --</p>	<p>1 addresses they asked you to test about, would you not? 2 A Yes. 3 Q And if Briar Cliff Road were in the list that 4 they told me about that would not be a surprise to you, 5 would it? 6 A I'm sorry, could you ask that again? 7 Q If Briar Cliff Road, the address you don't 8 remember appeared in their list to me about the 9 addresses they asked you to test that would not be a 10 surprise to you, would it? 11 A If that address was given to me. 12 Q You just can't remember whether it was, can 13 you? 14 A I don't remember exactly where it was. 15 Q If it appeared in their list it would be fair 16 to say that it was among the addresses that they gave 17 you, would it not? 18 A Yes. 19 Q And Briar Cliff Road, any number on Briar 20 Cliff Road doesn't appear in this column, does it? 21 A No, it does not. 22 Q Best Buy, whatever it's address or location 23 is, that also doesn't appear as an address, does it? 24 A No. 25 Q I70, Interstate 70 Park and Ride doesn't</p>
Page 70	Page 72
<p>1 MS. GUTIERREZ: Okay. Thank you, Judge. 2 THE COURT: To the exhibit then we'll have 3 him do that. 4 BY MS. GUTIERREZ: 5 Q Would you be surprised, sir -- 6 THE COURT: Ms. Gutierrez, if you could 7 return to the trial table or -- 8 MS. GUTIERREZ: Well, I need to focus on 9 this. Thank you. 10 THE COURT: All right. If you're going to 11 use that exhibit. 12 BY MS. GUTIERREZ: 13 Q Would you surprised, sir, that Ms. Murphy or 14 Mr. Urick reported to me what the results of your 15 findings were in regard to specific addresses? 16 MR. WARANOWITZ: 17 A I am not surprised. 18 Q And if they did so you of course would have 19 expected them to be accurate as to the addresses, 20 correct? 21 A Yes. 22 Q And that wouldn't be a surprise to you, would 23 it? 24 A No. 25 Q You'd expect them to accurately tell me what</p>	<p>1 appear on the address column anywhere, does it? 2 A No. 3 Q And Crosby, if that's a street, road or lane, 4 whatever at Interstate 695, it doesn't appear anywhere 5 in this address list, does it? 6 A No. 7 Q Route 40 and Cooks Lane up to Forest Park 8 doesn't appear on this, does it? 9 A No. 10 Q And West Hill doesn't appear, does it? 11 A No. 12 Q And Forest Park/Park and Ride, it's nowhere 13 in this column, isn't it? 14 A No. 15 Q It's not the address of a cell site, is it? 16 A No, it is not. 17 Q Forest Park, four blocks east, whatever 18 direction that may be of Security Boulevard is not an 19 address that appears here, is it? 20 A No, it is not. 21 Q And Gelston Park, west of Rolling Road 22 doesn't appear in this column, does it? 23 A No. 24 Q And Woodlawn High School doesn't appear in 25 this column, is it?</p>

<p style="text-align: right;">Page 73</p> <p>1 A No.</p> <p>2 Q The address of Woodlawn High School doesn't</p> <p>3 appear in this column, does it?</p> <p>4 A No.</p> <p>5 Q You are aware, sir, that Woodlawn High School</p> <p>6 is around the corner from the headquarters of the</p> <p>7 Social Security Administration, are you not?</p> <p>8 A Yes.</p> <p>9 Q And you're aware, sir, based on your own</p> <p>10 report that Woodlawn High School in your words would</p> <p>11 trigger 65L, 651A, are you not?</p> <p>12 A Correct.</p> <p>13 Q And L651A is written on this exhibit tat you</p> <p>14 prepared in the middle of three differing areas</p> <p>15 outlined in different colors, are you not?</p> <p>16 A Correct.</p> <p>17 Q And the high school is the pink A, B or C?</p> <p>18 A The pink would be C.</p> <p>19 Q And the orange, would that be a correct</p> <p>20 designation of that color?</p> <p>21 A That would be sector A.</p> <p>22 Q That would be A and the purple and I note a</p> <p>23 different color purple then what you described as</p> <p>24 purple 653, that would be B?</p> <p>25 A That would be sector B, correct.</p>	<p style="text-align: right;">Page 75</p> <p>1 A Correct.</p> <p>2 Q Now, Sir, you were asked a lot of questions</p> <p>3 about these maps that you say, again your computer</p> <p>4 generated State's Exhibit 44 and 45?</p> <p>5 A Yes.</p> <p>6 Q And one of them, I don't recall which, Sir,</p> <p>7 perhaps if you look at my copy you could tell us,</p> <p>8 designates Rolling Road, does it not?</p> <p>9 A Rolling Road is not written on this map.</p> <p>10 Q Well, you, Sir, testified about Rolling Road</p> <p>11 though, didn't you?</p> <p>12 A I know that that road is Rolling Road.</p> <p>13 Q And you know that from your own knowledge,</p> <p>14 right?</p> <p>15 A Yes.</p> <p>16 Q But the map you forwarded doesn't say Rolling</p> <p>17 Road on it, does it?</p> <p>18 A No.</p> <p>19 Q So, if we aren't you we wouldn't know that</p> <p>20 Rolling Road appears on that map, would we?</p> <p>21 A If you were familiar with the area you would</p> <p>22 know.</p> <p>23 Q If we were familiar with the area and the</p> <p>24 streets without their names being printed, correct?</p> <p>25 A Correct.</p>
<p style="text-align: right;">Page 74</p> <p>1 Q And it would be fair to say, sir, that those</p> <p>2 areas by those three colors all cover different sizes</p> <p>3 of geography, would it not?</p> <p>4 A Yes.</p> <p>5 Q And you would expect, Sir, Woodlawn High</p> <p>6 School to be within one of those boundaries, would you</p> <p>7 not?</p> <p>8 A Correct.</p> <p>9 Q And because it would trigger that cell site,</p> <p>10 you'd expect it to be there, correct?</p> <p>11 A Yes.</p> <p>12 Q As 651A appears on this map, does it not?</p> <p>13 A Yes.</p> <p>14 Q And the address in the column listed as</p> <p>15 addresses for 651A is 1500 Woodlawn Drive, is it not?</p> <p>16 A Correct.</p> <p>17 Q And that's the cell site that you've</p> <p>18 indicated to us that you triggered for the antenna on</p> <p>19 top of the Social Security building, would it not?</p> <p>20 A Yes.</p> <p>21 Q And you are aware, Sir, that the building</p> <p>22 faces Security Boulevard, are you not?</p> <p>23 A Yes.</p> <p>24 Q And you aware, Sir, that Security Boulevard</p> <p>25 is a separate and distinct street then Rolling Road?</p>	<p style="text-align: right;">Page 76</p> <p>1 Q You also were asked about a place that</p> <p>2 appears on one of these maps that you refer to as</p> <p>3 Gelston Park, do you recall that?</p> <p>4 A Yes.</p> <p>5 Q Now, Gelston Park doesn't appear, it's not</p> <p>6 printed on either of these maps, is it?</p> <p>7 A It is not printed on these maps, no.</p> <p>8 Q And you didn't print it in to designate it</p> <p>9 perhaps for people who weren't familiar with that</p> <p>10 location, did you?</p> <p>11 A No, I did not note that in.</p> <p>12 Q And there's -- your name doesn't appear on</p> <p>13 this, does it?</p> <p>14 A No, my name is not on there.</p> <p>15 Q And there's nothing on either of these maps</p> <p>16 that in fact designate all of the things that the map</p> <p>17 shows, is there?</p> <p>18 A I'm sorry. Could you ask the question again?</p> <p>19 Q No. I won't bother. Gelston Park, Mr.</p> <p>20 Waranowitz also doesn't appear in the address list,</p> <p>21 does it?</p> <p>22 A No, it does not.</p> <p>23 Q Now, let me get this straight. The cell site</p> <p>24 is a location where the antenna actually exists,</p> <p>25 correct?</p>

<p style="text-align: right;">Page 77</p> <p>1 A Correct.</p> <p>2 Q So, and what you called the site is that</p> <p>3 which emanates the signal, correct?</p> <p>4 A Yes.</p> <p>5 Q The only importance of it, why it needs a</p> <p>6 name is because it emanates or receives a signal, isn't</p> <p>7 it?</p> <p>8 A Yes.</p> <p>9 Q And the addresses you defined that as in this</p> <p>10 column is the address of essentially the property, the</p> <p>11 real estate on which the antenna is located, is that</p> <p>12 correct?</p> <p>13 A Yes, that is my understanding.</p> <p>14 Q But a cover -- well, it's not your</p> <p>15 understanding --</p> <p>16 MR. URICK: Objection.</p> <p>17 BY MS. GUTIERREZ:</p> <p>18 Q You've testified to it about as an expert,</p> <p>19 have you not?</p> <p>20 THE COURT: Sustained.</p> <p>21 BY MS. GUTIERREZ:</p> <p>22 Q The coverage area is an area larger than the</p> <p>23 cell site, is it not?</p> <p>24 MR. WARANOWITZ:</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 79</p> <p>1 three years ago, correct?</p> <p>2 A Yes.</p> <p>3 Q Okay. Was there something hard about that</p> <p>4 questions?</p> <p>5 MR. URICK: Objection.</p> <p>6 THE COURT: Sustained.</p> <p>7 BY MR. GUTIERREZ:</p> <p>8 Q Is there any reason you hesitated to answer?</p> <p>9 MR. WARANOWITZ:</p> <p>10 A I was listening for more of the question.</p> <p>11 Q But there's no dispute that the network is</p> <p>12 relatively new, isn't that correct?</p> <p>13 A That is correct.</p> <p>14 Q And you told us that you were in on it from</p> <p>15 the beginning, correct?</p> <p>16 A From -- from before it was launched, yes.</p> <p>17 Q Okay. And by launched you mean started,</p> <p>18 right?</p> <p>19 A Yes.</p> <p>20 Q Launched meant it was operational, correct?</p> <p>21 A Correct.</p> <p>22 Q Meaning people with phones who were</p> <p>23 subscribers could use the network to make sure their</p> <p>24 phone calls got to where ever it was they were calling,</p> <p>25 correct?</p>
<p style="text-align: right;">Page 78</p> <p>1 Q Whether that cell site is a separate tower or</p> <p>2 placed on an existing structure, correct?</p> <p>3 A Yes.</p> <p>4 Q The coverage area in regard to 651 would</p> <p>5 include all the purple area, right?</p> <p>6 A Yes.</p> <p>7 Q All the orange area, right?</p> <p>8 A Yes.</p> <p>9 Q And all the pink area, correct?</p> <p>10 A Correct.</p> <p>11 Q And you would agree that that area is a</p> <p>12 considerable larger geographical location than the</p> <p>13 simple address of the cell site, would you not?</p> <p>14 A Correct.</p> <p>15 Q And the column marked address is only for the</p> <p>16 purpose of the designating the address of the real</p> <p>17 estate on which the cell site as listed is located,</p> <p>18 correct?</p> <p>19 A Correct.</p> <p>20 Q And in no way indicates that that address is</p> <p>21 the coverage area for what that cell site ideally is</p> <p>22 designed to cover?</p> <p>23 A Correct.</p> <p>24 Q Now, you were asked yesterday, Mr. Waranowitz</p> <p>25 and you indicated, well this network went up two or</p>	<p style="text-align: right;">Page 80</p> <p>1 A Yes.</p> <p>2 Q That's the meaning of the word launching the</p> <p>3 network, correct?</p> <p>4 A Correct.</p> <p>5 Q And you were involved in the design, correct?</p> <p>6 A Yes.</p> <p>7 Q You weren't the only one, correct?</p> <p>8 A Correct.</p> <p>9 Q And you would agree because you told us</p> <p>10 yesterday that even today 25% of your time is connected</p> <p>11 to design, correct?</p> <p>12 A Correct.</p> <p>13 Q And the design involves a process about which</p> <p>14 you told us selecting your cell sites are, correct?</p> <p>15 A Yes.</p> <p>16 Q And in the two or three years from the first</p> <p>17 time that cell sites were selected some of them have</p> <p>18 been replaced, have they not?</p> <p>19 A There have been a few, yes.</p> <p>20 Q And that's because whether you designed those</p> <p>21 cell sites to be the optimum of cell sites, in some</p> <p>22 cases it turns out that your design was wrong in that</p> <p>23 regard, did it not?</p> <p>24 A That would not indicate that my design was</p> <p>25 wrong.</p>

<p style="text-align: right;">Page 81</p> <p>1 Q Your design, sir, was correct from the 2 beginning? 3 A I'm sorry, was that a question? 4 Q Yes, it was. 5 A The network is a changing entity in terms of 6 capacity and coverage. We design for what we need at 7 the time. 8 Q By coverage, sir, you're using that term in 9 the same way to describe the coverage that is expected 10 to be gotten from the cell site signal, is it not? 11 A Yes. 12 Q And by coverage, you're using that term in 13 the same way as we describe to encompass the actual 14 geographical location of the A, B and C sectors, 15 correct? 16 A Correct. 17 Q All right. And, sir, you weren't normally on 18 that design that sector, were you? 19 A No, I worked with team of engineers. 20 Q Engineers like you, correct? 21 A Yes. 22 Q All right. Now, sir, one of the things that 23 you described doing yesterday was troubleshooting, did 24 you not? 25 A Yes.</p>	<p style="text-align: right;">Page 83</p> <p>1 they not? 2 A Not necessarily. 3 Q Not necessarily. They have to meet certain 4 requirements, do they not? 5 A Yes. 6 Q It has to be a phone of sufficient quality, 7 does it not? 8 A It would have to have sufficient -- it would 9 have to have the same capability to talk to our 10 network. 11 Q Well, to talk to your network really boils 12 down to triggering a signal in your cell towers or have 13 that cell tower being able to send a signal to it, does 14 it not? 15 A Correct. 16 Q All right. And there are many phones varying 17 in defection that meet that capacity, are there not? 18 A Yes. 19 Q Some are manufactured by Motorola, correct? 20 A Yes. 21 Q Some are manufactured by Erickson, right? 22 A Yes. 23 Q Some are sold by AT&T under other names of 24 the -- not manufactured by AT&T? 25 A Yes.</p>
<p style="text-align: right;">Page 82</p> <p>1 Q And troubleshooting was because there would 2 be a constant, daily borage of complaints from 3 customers, correct? 4 A There are complaints from customers, correct. 5 Q That's a daily event, is it not? 6 A Yes, yes. 7 Q Even now, is it not? 8 A Yes. 9 Q And the complaints from customers would be 10 connected with whether or not they could get their 11 calls through, correct? 12 A Yes. 13 Q And to this thing that you call dropped 14 calls, correct? 15 A Yes. 16 Q And whether or not they could hear calls 17 being made to them? 18 A Yes. 19 Q Sufficiently to participate in the 20 conversation, correct? 21 A Correct. 22 Q Now you, sir, testified that AT&T doesn't 23 require a subscriber to use an AT&T phone, correct? 24 A Correct. 25 Q A subscriber can use any phone they want, can</p>	<p style="text-align: right;">Page 84</p> <p>1 Q Some are manufactured by a company by the 2 name of Nokia, isn't that correct? 3 A Yes. 4 Q And Nokia phones just like all other phones 5 come in varying quality, do they not? 6 A Yes. 7 Q And they are varying types of phones, are 8 they not? 9 A Yes. 10 Q Some are cheaper, some are more expensive? 11 A Yes. 12 Q Some have more features than others? 13 A Correct. 14 Q And that may run throughout a lot of the 15 phones produced and manufactured by the same 16 manufacturer -- 17 A Correct. 18 Q Would it not? And AT&T doesn't forbid it's 19 subscribers from employing any phone as long as it can 20 receive the signal, correct? 21 A Correct. 22 Q Even if the receipt to that signal might be 23 less strong than another phone, is that correct? 24 A Yes. 25 Q And I imagine, sir, based on what you've told</p>

<p style="text-align: right;">Page 85</p> <p>1 us that the receipt of signals among phones on your 2 network still varies, correct? 3 A Yes, it does. 4 Q And I'm sure, sir, that you and the we that 5 you refer to, your colleagues have an opinion as to 6 what is the best phone to be used in your network, do 7 you not? 8 A Yes. 9 Q And what phone is that? 10 A That would be the Nokia 6160. 11 Q The 6160. The same phone that your company 12 issues to your engineers, correct? 13 A Yes. 14 Q Although you currently use a Motorola, 15 correct? 16 A Yes. 17 Q And, sir, in the testing that you do, sir, 18 you're still dealing with complaints of dropped calls, 19 are you not? 20 A Correct. 21 Q And some of those dropped call complaints 22 come from customers that are utilizing a Nokia phone, 23 are they not? 24 A Yes. 25 Q A Nokia 6160?</p>	<p style="text-align: right;">Page 87</p> <p>1 deemed low, would it not? 2 A Yes. 3 Q And if they were unable to receive a signal 4 sent to them, their performance would be deemed low, 5 would it not? 6 A Yes. 7 Q And if a signal were sent from a cell site to 8 a poor performing phone the owner of which because of 9 the poor performance could not hear, the signal relay 10 would still be tripped, would it not? 11 A No, it may not be. 12 Q But it might be? 13 A It can be. 14 Q It can be. And that again would depend on 15 the quality of the signal, correct? 16 A Yes. 17 Q And the quality of the phone for which the 18 signal is wasn't handled, correct? 19 A Yes. 20 Q Now, that phones perform differently there is 21 an ideal performance for cell phones, is there not? 22 A Cell phones should perform within certain 23 specifications. 24 Q Okay. And within those specifications 25 relates to the quality of the radio sound, does it not?</p>
<p style="text-align: right;">Page 86</p> <p>1 A Yes. 2 Q Because you can, sir, from your statistical 3 monitoring always determine what phone the customer is 4 using, can you not? 5 A Yes. 6 Q Yes, and that is because your computer has 7 the capability to distinguish the signals, correct? 8 A Correct. 9 Q Now lets talk about this test that you do, 10 sir. Well, let me make sure, I forgot. So, are we 11 clear that in your experience in your own network on 12 whatever phones you've had experience with, phones 13 perform at different levels. 14 A Correct. 15 Q Correct? That's a truism, is it not? 16 A Could you rephrase that? 17 Q Well, by saying phones perform at different 18 levels the only performance the phones have to do is 19 receive or send the call, correct? 20 A No. 21 Q Well, they have to be able to be heard, 22 correct? 23 A Yes. 24 Q And if they're unable to see as the term 25 you've used it, a signal their performance would be</p>	<p style="text-align: right;">Page 88</p> <p>1 A Yes. 2 Q And the ability to make a connection if one 3 chooses to dial a number on the cell phone seeing 4 communication with another number? 5 A Yes. 6 Q Whether that number be a land line or another 7 cell phone, correct? 8 A Correct. 9 Q And the ability of the phone connection to 10 remain open for however long the use wants it, correct? 11 A Yes. 12 Q And for nothing to interfere with the call, 13 correct? 14 A Correct. 15 Q And the quality of sound in whatever 16 connection for however long to be sufficient that each 17 party can plainly hear each other. 18 A Yes. 19 Q And that there be no interference, correct? 20 A Correct. 21 Q But even though the ideal is to meet that 22 standard of performance you would agree that because 23 phones differ all phones don't always perform up to the 24 ideal, correct? 25 A Correct.</p>

1 Q And back on whatever day that is was over the
2 time period of the call whatever months, fall included,
3 you knew all of that, did you not?

4 A Yes.

5 Q And the test that you keep referring to as an
6 origination test, is that correct?

7 A An origination test.

8 Q Okay. And that test occurs as a scientific
9 test?

10 A What do mean by scientific?

11 Q Well, is there a protocol for it?

12 A Yes.

13 Q Is there a manual written as to how to
14 perform the test?

15 A Yes, there are.

16 Q The results of what happens when you do the
17 test is you make a phone call or you cause one to be
18 made to you, isn't that right?

19 A There can be more to it.

20 Q Well, it includes that, does it not?

21 A Yes.

22 Q In fact, to originate one must make a call or
23 cause one to be made to you, correct?

24 A Yes.

25 Q And when one is doing this origination test

1 you dial the numbers just like the rest of us, don't
2 you?

3 A No.

4 Q And, sir, when you did that origination test,
5 sir, you dialed a certain number, did you not?

6 A I dialed a code, yes.

7 Q And you dialed it from a certain location,
8 did you not?

9 A Yes.

10 Q And that location was determined by Ms.
11 Murphy, was it not?

12 A Yes.

13 Q And when you did this origination test you
14 already knew all these things about the differences in
15 phones, did you not?

16 A Yes.

17 Q And you were aware that the information that
18 Ms. Murphy gave you because of what she told you
19 involved an actual phone, were you not?

20 A Yes.

21 Q And an actual number, correct?

22 A Yes.

23 Q And you were aware that that actual number
24 belonged to a person who subscribed to your network?

25 A Yes.

1 Q Isn't that true? And the AT&T wireless
2 network, correct?

3 A Yes.

4 Q And you were aware that the addresses you
5 were given didn't appear on the phone bill?

6 A Yes.

7 Q And they didn't appear -- the addresses you
8 were given didn't appear as significant addresses in
9 phone records other than the phone bill, were you not?

10 A I'm sorry, could you rephrase that?

11 Q The addresses you were given didn't appear as
12 a list inside A&T records, did they?

13 A No.

14 Q Anywhere, right?

15 A No.

16 Q Not in billing and not in anywhere else,
17 correct?

18 A Correct.

19 Q And you were aware that what you would be
20 asked to in your words was to check what happened and
21 you made a phone call, not in the ordinary way, from a
22 phone at a address that Ms. Murphy determined, correct?

23 A No.

24 Q No. That's what you were asked to do, isn't
25 that correct?

1 A I was asked to do that, yes.

2 Q Okay.

3 A The process is different.

4 Q And you, sir, you didn't decide what it was,
5 did you? Your test. Did you make up this test?

6 A No, I did not make it up.

7 Q You, sir, consulted with the manual that
8 outlines how this test should be performed, is that
9 correct?

10 A No, I did not consult with a manual.

11 Q No, you didn't. And did you consult with
12 anyone else?

13 A No.

14 Q And, sir, you of course were made aware that
15 the phone -- you reviewed the billing records of this
16 phone, did you not?

17 A Yes.

18 Q And that's how a list of the cell sites
19 appear, is it not?

20 A Yes.

21 Q Because the cell sites appear on the record,
22 correct?

23 A They appear on the billing records I was
24 provided, yes.

25 Q Okay. And you looked at them before doing

<p style="text-align: right;">Page 93</p> <p>1 this test, did you not?</p> <p>2 A Yes.</p> <p>3 Q And you, sir -- you were aware, sir, that the</p> <p>4 cell phone to the records you were using still existed,</p> <p>5 were you not?</p> <p>6 A I'm sorry, could you say that again?</p> <p>7 Q You were aware at the time you reviewed the</p> <p>8 records of the specific cell phone that the cell phone</p> <p>9 attached -- to which that number was attached still</p> <p>10 existed, were you not?</p> <p>11 A I was not aware if that phone was still in</p> <p>12 use.</p> <p>13 Q Did you ask?</p> <p>14 A No, I did not.</p> <p>15 Q And this phone, 6160 Nokia is a different</p> <p>16 phone than your Erickson, right?</p> <p>17 A Yes.</p> <p>18 Q And your experience you believe that they</p> <p>19 perform comparably, right?</p> <p>20 A Yes.</p> <p>21 Q In an ideal way, correct?</p> <p>22 A In the real world they perform comparably.</p> <p>23 Q And by comparably that doesn't mean exactly</p> <p>24 the same, does it?</p> <p>25 A No, it does not.</p>	<p style="text-align: right;">Page 95</p> <p>1 Q Whether it was dropped during manufacture?</p> <p>2 A No.</p> <p>3 Q Or packaging?</p> <p>4 A No.</p> <p>5 Q Or shipping?</p> <p>6 A Nope.</p> <p>7 Q Or prior to sale while it sat in the store?</p> <p>8 A No.</p> <p>9 Q You've never examined this phone to see if</p> <p>10 it's capable of functioning, have you?</p> <p>11 A No, I have not.</p> <p>12 Q Or how it acts once it's turned on, if it</p> <p>13 could be turned on, have you?</p> <p>14 A No, I have not tested it.</p> <p>15 Q You could have, couldn't you?</p> <p>16 A I was not aware that I could.</p> <p>17 Q Well, you could have though physically, could</p> <p>18 you have not?</p> <p>19 A I could do that, yes.</p> <p>20 Q And you could have back then, could you have</p> <p>21 not?</p> <p>22 A I could have.</p> <p>23 Q Back then, whatever day it was this phone</p> <p>24 call, you knew all that you told us about different</p> <p>25 phones might act differently, did you not?</p>
<p style="text-align: right;">Page 94</p> <p>1 Q And, sir, this phone isn't activated, is it?</p> <p>2 A I don't know.</p> <p>3 Q As far as looking at it, it appears to be</p> <p>4 capable of functioning in an ideal way, does it not?</p> <p>5 A Would do mean by that?</p> <p>6 Q By looking at it you can tell it's capacity</p> <p>7 for functioning, can you not?</p> <p>8 A I can not tell.</p> <p>9 Q Well, you just told us that based on your</p> <p>10 experience a phone such as this would perform</p> <p>11 comparably to the phone you used at whatever day you</p> <p>12 used it to perform what you call, your origination</p> <p>13 test.</p> <p>14 A Yes.</p> <p>15 Q Did Ms. Murphy advise you that this phone was</p> <p>16 available?</p> <p>17 A No.</p> <p>18 Q And if it's not functioning, sir, it would be</p> <p>19 a very simple matter to activate it, would it not?</p> <p>20 A Yes.</p> <p>21 Q And you, sir, you can't tell by looking</p> <p>22 whether or not it was dropped anywhere?</p> <p>23 A No, I can not.</p> <p>24 Q By anyone, can you?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 96</p> <p>1 A Yes.</p> <p>2 Q That's not new knowledge you've gained since</p> <p>3 the time you did this test, is it?</p> <p>4 A No, it's not.</p> <p>5 Q And you designed the test based on what Ms.</p> <p>6 Murphy told you, correct?</p> <p>7 A Yes.</p> <p>8 Q You designed the test yourself, correct?</p> <p>9 A Yes.</p> <p>10 Q And you of course advised them that, well, we</p> <p>11 better use the same phone since phones perform</p> <p>12 differently, did you not?</p> <p>13 A No, I did not.</p> <p>14 Q So, you of course asked where was the phone</p> <p>15 attached to the number, the records of which you were</p> <p>16 asked to review, did you not?</p> <p>17 A I did not ask.</p> <p>18 Q You didn't, exactly. You didn't even suggest</p> <p>19 that?</p> <p>20 A No, I did not.</p> <p>21 Q And the phone you tested, this origination</p> <p>22 test to which you looked at not a manual, but the how</p> <p>23 you did it was an Erickson phone, was it not?</p> <p>24 A Yes it was.</p> <p>25 Q Your own Erickson phone, was it not?</p>

<p style="text-align: right;">Page 97</p> <p>1 A It was one of our test phones.</p> <p>2 Q And the addresses from which you tested your</p> <p>3 Erickson phone did not include an address listed as a</p> <p>4 cell site, did it?</p> <p>5 A Not that I know of.</p> <p>6 Q And you, of course didn't go to any place</p> <p>7 that Ms. Murphy didn't tell you to go, did you?</p> <p>8 A No.</p> <p>9 Q But when you reported the results of your</p> <p>10 test to her or Mr. Urick you essentially gave the</p> <p>11 information that at the addresses that you were asked</p> <p>12 to check, that a cell phone at any specific address</p> <p>13 would trigger two different cell sites, did you not?</p> <p>14 A There are two different possibilities, but</p> <p>15 they would not trigger the same cell site at the same</p> <p>16 time.</p> <p>17 Q Sir, I only asked you, did you report to them</p> <p>18 that a cell phone used for instance, at Rolling Road</p> <p>19 and I70, an address provided to you by Ms. Murphy</p> <p>20 triggers, with an S at the end of it, cell site L651C</p> <p>21 or L698A, is that correct?</p> <p>22 A That is correct.</p> <p>23 Q And, sir, you would agree that 69 --651C and</p> <p>24 that's the pink?</p> <p>25 A Correct.</p>	<p style="text-align: right;">Page 99</p> <p>1 A Correct.</p> <p>2 Q And during the test as you were reporting</p> <p>3 ongoing results, Ms. Murphy didn't say, oh, that's not</p> <p>4 good enough, did she?</p> <p>5 A She did not say anything like that.</p> <p>6 Q Nothing like that, right? She didn't suggest</p> <p>7 to you other things that you could do, did she?</p> <p>8 A No.</p> <p>9 Q She didn't suggest to you that there should</p> <p>10 be or that you should find a way to report to her that</p> <p>11 a certain address would only trigger one cell site, did</p> <p>12 she?</p> <p>13 A No, I explained --</p> <p>14 Q As to --</p> <p>15 MS. MURPHY: Objection.</p> <p>16 THE COURT: Sustained.</p> <p>17 BY MS. GUTIERREZ:</p> <p>18 Q As to Rolling -- so, you explained it to her,</p> <p>19 your results?</p> <p>20 MR. WARANOWITZ:</p> <p>21 A Yes.</p> <p>22 Q As they went along.</p> <p>23 A Yes.</p> <p>24 Q And you recall that in your reporting, would</p> <p>25 you not?</p>
<p style="text-align: right;">Page 98</p> <p>1 Q Correct, on -- is there a do north on this</p> <p>2 map?</p> <p>3 A Yes.</p> <p>4 Q Is north to the top?</p> <p>5 A That is correct.</p> <p>6 Q So, the pink would be the western edge of the</p> <p>7 map, correct?</p> <p>8 A Correct.</p> <p>9 Q All right. And the other cell site that it</p> <p>10 could trigger would be L698A, is that correct?</p> <p>11 A That is correct.</p> <p>12 Q So, your report to them said, well if I went</p> <p>13 and used a cell phone at this address you told me about</p> <p>14 either it would put a signal over here, correct?</p> <p>15 A Correct.</p> <p>16 Q Or a signal over here, correct?</p> <p>17 A Correct.</p> <p>18 Q And, in fact, as to each address they gave</p> <p>19 you, you reported similarly that it would trigger two</p> <p>20 different cell sites, one or the other, correct?</p> <p>21 A Correct.</p> <p>22 Q And this was after you did the test, correct?</p> <p>23 A No, that was during the test.</p> <p>24 Q During the test as you reported them to her,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 100</p> <p>1 A Yes.</p> <p>2 Q And you explained it to her in great deal,</p> <p>3 did you not?</p> <p>4 A I explained my results.</p> <p>5 Q And you explained to her more then the simple</p> <p>6 reporting of a cell phone at Rolling Road at I70</p> <p>7 triggers cell site L651C or L698A, did you not?</p> <p>8 A Yes.</p> <p>9 Q Your conversation was more then that with Ms.</p> <p>10 Murphy, was it not?</p> <p>11 A Yes.</p> <p>12 Q You answered any questions she had, did you</p> <p>13 not?</p> <p>14 A Yes.</p> <p>15 Q And that was part of your reporting and you</p> <p>16 explaining the test as it went along?</p> <p>17 A Yes.</p> <p>18 Q And you so reported and explained to her</p> <p>19 after each single address, did you not?</p> <p>20 A I reported it at the address.</p> <p>21 Q Now, sir, your map that you tell us you</p> <p>22 carefully prepared doesn't indicate where Rolling Road</p> <p>23 at I70 exists, does it?</p> <p>24 A No, it does not.</p> <p>25 Q There's not a place that flags it either on</p>

<p style="text-align: right;">Page 101</p> <p>1 33A, the underlying map, right?</p> <p>2 A No.</p> <p>3 Q And certainly not on the overlay?</p> <p>4 A No.</p> <p>5 Q And on the map, the address 1208 Macado isn't</p> <p>6 flagged either?</p> <p>7 A Correct?</p> <p>8 Q Nor is Security Square Mall?</p> <p>9 A Correct.</p> <p>10 Q And nor is 4703 Gateway Terrace?</p> <p>11 A Correct.</p> <p>12 Q Or --</p> <p>13 A Oh, I put Gateway Terrace on there a few</p> <p>14 minutes ago.</p> <p>15 Q You put that on yesterday or this morning.</p> <p>16 A This morning.</p> <p>17 Q This morning. It wasn't on the map in it of</p> <p>18 itself?</p> <p>19 A No.</p> <p>20 Q On either A?</p> <p>21 A No.</p> <p>22 Q Or B?</p> <p>23 A No, it was not.</p> <p>24 Q And Briar Cliff Road, without an address,</p> <p>25 that's not indicated on A or B either?</p>	<p style="text-align: right;">Page 103</p> <p>1 where it was before you testified, did you?</p> <p>2 A Well, I know where it is.</p> <p>3 Q That's not my question, sir. This isn't a</p> <p>4 quiz.</p> <p>5 MR. URICK: Objection.</p> <p>6 THE COURT: Ms. Gutierrez.</p> <p>7 BY MS. GUTIERREZ:</p> <p>8 Q Did you put a designation of where Woodlawn</p> <p>9 High School was --</p> <p>10 MR. WARANOWITZ:</p> <p>11 A No.</p> <p>12 Q On the underlying map?</p> <p>13 A No.</p> <p>14 Q Did you put such a designation on the</p> <p>15 overlaying --</p> <p>16 A No.</p> <p>17 Q You also prepared?</p> <p>18 A No.</p> <p>19 Q Were you ever asked to do so before today?</p> <p>20 A No, I was not.</p> <p>21 Q No. If I may have a moment, Your Honor.</p> <p>22 THE COURT: Certainly.</p> <p>23 MR. WARANOWITZ: Can we take a break, Your</p> <p>24 Honor?</p> <p>25 THE COURT: Pardon.</p>
<p style="text-align: right;">Page 102</p> <p>1 A No.</p> <p>2 Q Or Best Buy, whatever it may be located?</p> <p>3 A Nope.</p> <p>4 Q And Crosby, where ever that is?</p> <p>5 A No.</p> <p>6 Q And I70 Park and Ride?</p> <p>7 A No.</p> <p>8 Q Cooks Lane up to Forest Park?</p> <p>9 A No.</p> <p>10 Q And Forest Park, four blocks east of Security</p> <p>11 Boulevard?</p> <p>12 A No.</p> <p>13 Q Nor put Gelston Park?</p> <p>14 A I put Gelston Park on this morning.</p> <p>15 Q You put it on.</p> <p>16 A That's correct.</p> <p>17 Q It didn't appear independently on the 33A</p> <p>18 map that you said you, yourself drew up?</p> <p>19 A No, it did not.</p> <p>20 Q And it doesn't appear on the overlay?</p> <p>21 A No.</p> <p>22 Q Or Woodlawn High School doesn't appear on the</p> <p>23 map?</p> <p>24 A I'm not sure where that is.</p> <p>25 Q You didn't make an independent designation</p>	<p style="text-align: right;">Page 104</p> <p>1 MR. WARANOWITZ: Can we take a break?</p> <p>2 THE COURT: We are going to take a break. I</p> <p>3 may be able to finish with you. Can you give me ten</p> <p>4 minutes?</p> <p>5 MR. WARANOWITZ: I can wait.</p> <p>6 THE COURT: Is that --</p> <p>7 MR. WARANOWITZ: Thank you, Your Honor.</p> <p>8 THE COURT: Ms. Gutierrez, do you expect to</p> <p>9 be any longer then about ten minutes?</p> <p>10 MS. GUTIERREZ: I do, Judge. I'll try to</p> <p>11 shorten it, but I do need more time.</p> <p>12 THE COURT: That's all right. Can you come</p> <p>13 up for scheduling purposes?</p> <p>14 (Counsel approached the bench and following</p> <p>15 ensued:)</p> <p>16 THE COURT: Mr. Waranowitz, Mr. Waranowitz,</p> <p>17 you may step down and wait in the hall. What I'm</p> <p>18 trying to engage is whether or not we would finish with</p> <p>19 this witness on or by like 11:30, 11:20?</p> <p>20 MS. GUTIERREZ: I don't know, Judge.</p> <p>21 THE COURT: Okay.</p> <p>22 MS. GUTIERREZ: I know I'm long winded. I'm</p> <p>23 not fast.</p> <p>24 THE COURT: No, I'm not trying to rush you.</p> <p>25 I'm just trying to get --</p>

<p style="text-align: right;">Page 105</p> <p>1 MS. GUTIERREZ: I'm a terrible estimate of 2 time. 3 THE COURT: I have Counsel that would like to 4 do a postponement and -- 5 MS. GUTIERREZ: It's just that because of 6 this witness I know that I'm not rushing with it. So, 7 I -- 8 THE COURT: No. You're not asked to. 9 MS. GUTIERREZ: I don't think I'm going to be 10 finished by then. 11 THE COURT: By 11:30? 12 MS. GUTIERREZ: No, I don't. 13 THE COURT: Okay. All right. 14 MS. GUTIERREZ: So, if you want to -- 15 THE COURT: To take the postponement request? 16 MS. GUTIERREZ: That's fine. 17 THE COURT: Do you have a question, issue? 18 MR. URICK: She wanted to know that means 19 we're going to take a brief break? She would like one. 20 THE COURT: Yes. We all can take a brief 21 break. 22 MS. GUTIERREZ: Okay. 23 THE COURT: And I'll have Counsel -- and I'll 24 have Counsel bring up -- all right. 25 (Counsel returned to the trial tables and</p>	<p style="text-align: right;">Page 107</p> <p>1 him here because we're not going to take a break that 2 long. Counsel, if you would like to take a recess or 3 step back, use the facilities please do so. I'm going 4 to remain on -- actually, I'm going to take a brief 5 break myself, but I'm going to ask that as soon as 6 Danny Marcus and Lynn Stewart, the attorneys in that 7 other case arrive and the Defendant who's being brought 8 up arrives we will proceed. Ms. Connelly, will you let 9 me know when Mr. Marcus and Ms. Stewart as well as the 10 Defendant in the other matter arrive so that we can do 11 this postponement request. The Court stands in recess. 12 THE CLERK: All rise. 13 (Brief recess.) 14 (Case hears other matters, case resumes as 15 follows:) 16 (Jury not present upon reconvening.) 17 THE COURT: Mr. Urick, Ms. Murphy and Ms. 18 Gutierrez, if you'll step back up, we can resume the 19 Syed case with a few more questions and then I will 20 send the jurors to lunch allowing juror number two to 21 take care of the business he's indicated he must 22 acquire. I would note that we would be resuming at 23 about 1:30. You're frowning. 24 MR. URICK: If I may inquire. Did the Court 25 anticipate finishing this witness before breaking for</p>
<p style="text-align: right;">Page 106</p> <p>1 the following ensued:) 2 THE COURT: Ladies and gentlemen, we're going 3 to take a brief recess. Allow you to use the 4 facilities and then we'll bring you back and continue 5 with this witness. I'm going to ask at this time that 6 you leave your note pads face down, that you leave them 7 there because we're going to come back and resume and 8 continue with testimony for just a brief time after the 9 break. Scheduling wise there has been a request by one 10 of the jurors to do some things with his job, so 11 therefore, what we're going to do is take a little 12 longer lunch break then we would normally do to allow 13 that juror to be accommodated, but I'm going to ask 14 that you do come back with a few moments and at that 15 time we'll give a better guesstimate as how the morning 16 will go. 17 At this time will you go with the Deputy Sheriff 18 Church who will walk you around to the jury room, he is 19 at the door. Do not discuss the testimony you've heard 20 this morning or any other day during the trial. Do not 21 discuss it amongst yourselves or with anyone, you have 22 not heard the entire case yet. You can go with Deputy 23 Chief -- Deputy Church at this time. 24 (The jury was excused from the courtroom.) 25 THE COURT: Mr. Gilmore, you're free to leave</p>	<p style="text-align: right;">Page 108</p> <p>1 lunch? 2 THE COURT: No. You have a juror as you 3 heard that needs more then the hour lunch break in 4 order to take care of his business. What I had 5 suggested when we spoke to juror number two is that 6 we'd break at 11:30 so then he would have from 11:30 to 7 12:30 and 12:30 to 1:30 to take care of his business. 8 Are you suggesting that we break at another time? 9 MR. URICK: Yes, I would request that Mr. 10 Waranowitz was able to revise his flight plans for 11 today, but that he would have to take a 3:30 flight 12 this afternoon. We would request that he'd be allowed 13 to finish his finish his testimony so that he could get 14 to the airport on time. 15 THE COURT: And how do you propose that I 16 accommodate your juror number two? 17 MR. URICK: Just move it up into the 18 afternoon because the BC -- University -- Baltimore 19 City College is open to 4:30. If he goes there before 20 the lunch break or after lunch break he can still at 21 either time -- 22 THE COURT: Do you know that? 23 MR. URICK: I know he didn't specify a 24 particular time that he had to be there. He just said 25 he had to be there around -- he just needed time around</p>

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1 lunch.

2 THE COURT: Perhaps we ought to ask him that

3 rather than just arbitrarily make a decision. Would

4 note that from 12:30 to two o'clock this Court sits

5 part of a three judge panel with Judge Quarles and

6 Judge Cannon to review other cases involving

7 sentencing. So, I am not available although the rest

8 of you will be at lunch I will be part of a three judge

9 panel from 12:30 to two o'clock and so we can take a

10 longer lunch break, but we'd have to accommodate this

11 Court in that fashion. That's why I suggested --

12 MS. GUTIERREZ: Judge, my only concern -- I'd

13 object to further questioning the jury. Mr. Urick

14 again, knew this ahead of time, we didn't know. There

15 was ample opportunity. We've already brought it to

16 this juror's attention. I think that we are rightfully

17 concerned and not make more of it then there is and to

18 put the juror at ease as to whatever concerns the juror

19 may have. We've had a conversation with him, we've

20 inquired, we've asked and we gave him a specific

21 alternative.

22 Now, in light of what's happened in this trial is

23 not being able to move expectations all the time

24 because I think that they're unreasonable to try to

25 presume what will happen. You know, I'd object to any

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1 further questioning of the juror. We've already given

2 the juror a way out and, you know, reasonably I think

3 it is likely that if we come back at 1:30 or two that

4 we would finish this witness in time for him to get his

5 plane, but frankly, Judge that was a decision that they

6 made last Thursday when they chose not to call a witness

7 who had these constraints knowing that they were

8 calling a witness who would take forever and they made

9 that. You know at some point they've got to live with

10 it and I would object to any further interference in

11 regard to this juror who is now counted on and as to

12 what it is he can do.

13 THE COURT: Mr. Urick, Ms. Murphy and Ms.

14 Gutierrez, this Court has attempted, I think I've bent

15 over backwards to accommodate you both with your

16 personal schedules, with the Court's schedules, with

17 the witness's schedules and I would ask in the future

18 where you are aware of some scheduling difficulty and

19 the Court makes a special effort to accommodate

20 someone, whether that be your witness, a juror or

21 anyone else that you provide the Court with all the

22 information you have available, so that when I make a

23 decision I don't have to continually change it. That

24 would have been helpful this morning when I was talking

25 to the juror. I even asked, do you have any other

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1 questions, but in light of that I'm going to ask that

2 the juror be -- the jury be brought back in and I will

3 speak to juror number two whether it differs to him

4 whether we break at 11:30 to 1:30 or 12:30 to 2:30.

5 (The jury returned to the courtroom.)

6 THE COURT: Juror number two, if you would

7 just step up here for just one moment. Will the rest

8 of the jurors please have a seat as you come in. With

9 the regard to the scheduling issue we just have one

10 question for you. Does it matter if you break at -- if

11 we break at 11:30 versus 12:30?

12 JUROR: No.

13 THE COURT: Okay. Very well, you may have a

14 seat with everyone else. We are going to continue.

15 MR. URICK: Can I ask the Deputy to bring the

16 witness in at this time?

17 THE COURT: Yes.

18 MR. URICK: Can you ask Mr. Waranowitz to

19 step back in?

20 THE COURT: Thank you. One moment. All

21 right. You may proceed, MS. Gutierrez.

22 BY MS. GUTIERREZ:

23 Q Yes, Mr. Waranowitz, we were talking about

24 what has been referred to as the burial site, do you

25 recall that?

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1 MR. WARANOWITZ:

2 A Yes.

3 Q And that's where you were taken to the area

4 right off the road that a concrete Jersey wall

5 barriers, correct?

6 A Yes.

7 Q And, sir, you recall also that you told us

8 this morning that because of the things that might

9 effect the strength of the signal and as to how it was

10 sent or received that winter is generally a better time

11 to make a call than summer, correct?

12 A Correct.

13 Q And that seasonal difference, sir, you

14 attributed to that in winter trees that have leaves on

15 them that fall are likely not to have leaves on them,

16 correct?

17 A Correct.

18 Q And so, therefore the leaves couldn't be

19 interference, correct?

20 A Correct.

21 Q Now, sir, when you went to that place and

22 again, to make sure, you were on the road side of the

23 Jersey wall barriers, correct?

24 A Yes.

25 Q And you were asked to conduct an origination

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<p style="text-align: right;">Page 113</p> <p>1 test, were you not?</p> <p>2 A Yes.</p> <p>3 Q And your origination test was essentially</p> <p>4 causing a call to be made, correct?</p> <p>5 A A test call.</p> <p>6 Q A test call, right?</p> <p>7 A Yes.</p> <p>8 Q But a call, right?</p> <p>9 A Yes.</p> <p>10 Q Meaning a call to be that would emanate from</p> <p>11 your phone that you were using to conduct that test to</p> <p>12 have a call go out from your phone to seek whatever</p> <p>13 signal it would seek, correct?</p> <p>14 A Correct.</p> <p>15 Q Now, sir, have you ever driven through</p> <p>16 Lincoln Park before?</p> <p>17 A Yes, I have.</p> <p>18 Q And, sir, you are familiar with the road that</p> <p>19 goes through there, are you not?</p> <p>20 A I am familiar with the coverage on the road,</p> <p>21 yes.</p> <p>22 Q No, sir. That wasn't my question.</p> <p>23 A I am familiar with the road.</p> <p>24 Q I didn't ask you about the coverage zone, I</p> <p>25 asked you, were you familiar with the road.</p>	<p style="text-align: right;">Page 115</p> <p>1 Q You only know about your network?</p> <p>2 A Yes.</p> <p>3 Q And you are familiar with the difficulty that</p> <p>4 your network has for its users, are you not?</p> <p>5 A Yes.</p> <p>6 Q And that's not a surprise to you, is it?</p> <p>7 A No, it is not.</p> <p>8 Q Because the terrain in Lincoln Park is</p> <p>9 difficult, is it not?</p> <p>10 A Yes, it is.</p> <p>11 Q It's difficult in fall?</p> <p>12 A Yes.</p> <p>13 Q It's difficult in summer?</p> <p>14 A Yes.</p> <p>15 Q In spring?</p> <p>16 A Yes.</p> <p>17 Q And, in fact, it's difficult in winter, is it</p> <p>18 not?</p> <p>19 A Yes, it is.</p> <p>20 Q The terrain in Lincoln Park goes to terrain</p> <p>21 that is much, much higher than the terrain of the road</p> <p>22 who's name you don't remember, is it not?</p> <p>23 A Yes.</p> <p>24 Q And there's a major stream or waterway that</p> <p>25 runs through Lincoln Park, is there not?</p>
<p style="text-align: right;">Page 114</p> <p>1 A Yes.</p> <p>2 Q And what's the name of the road?</p> <p>3 A I'd have to look it up.</p> <p>4 Q So, sir, whatever familiarity you have with</p> <p>5 the road you don't recall its name?</p> <p>6 A That is correct.</p> <p>7 Q That road, however familiar you are with it,</p> <p>8 runs the breath of Lincoln Park throughout Baltimore</p> <p>9 City, does it not?</p> <p>10 A I think so, yes.</p> <p>11 Q And, sir, are you aware of the difficulty any</p> <p>12 cell phone user has regardless of phone, regardless of</p> <p>13 network of actually speaking on the phone while one is</p> <p>14 in Lincoln Park?</p> <p>15 A Yes.</p> <p>16 Q And are you aware of the difficulty any cell</p> <p>17 phone user, regardless of the phone, regardless of what</p> <p>18 network is utilized, has in receiving a phone call if</p> <p>19 they at the time are in Lincoln Park?</p> <p>20 A I'm sorry, could you rephrase that?</p> <p>21 Q You are aware, are you not, of the difficulty</p> <p>22 any cell phone user no matter what cell phone is used</p> <p>23 in actually or what network is utilized in actually</p> <p>24 receiving a call while one is in Lincoln Park?</p> <p>25 A I don't know about other networks.</p>	<p style="text-align: right;">Page 116</p> <p>1 A Yes.</p> <p>2 Q And you're aware that the banks of the</p> <p>3 waterway because the terrain is uneven is often times</p> <p>4 below what we call street level, referring to the level</p> <p>5 of the street who's name you don't remember?</p> <p>6 A Yes.</p> <p>7 Q And none of that information is a surprise to</p> <p>8 you, is it?</p> <p>9 A No.</p> <p>10 Q And notwithstanding that, your network has</p> <p>11 been launched now for maybe up to three years. Lincoln</p> <p>12 Park as a coverage area, it's always been difficult,</p> <p>13 has it not?</p> <p>14 A That is true.</p> <p>15 Q All year long?</p> <p>16 A Yes.</p> <p>17 Q Regardless of what phones people use?</p> <p>18 A Yes.</p> <p>19 Q And that that difficulty has persisted</p> <p>20 whether the phone being used is the one making the call</p> <p>21 or the phone being used is the one receiving the call,</p> <p>22 isn't that correct?</p> <p>23 A Yes.</p> <p>24 Q And, sir, that existed back in fall when you</p> <p>25 conducted your origination test, did it not?</p>

1 A Yes.

2 Q There's no magic change that altered the
3 level of difficulty in regard to making or receiving
4 calls in Lincoln Park during that time, was there?

5 A Between what time frame?

6 Q Whenever you made the test, which day you
7 can't tell us.

8 A No, there is no big change, other than the
9 trees.

10 Q Other than the trees. That may have lost
11 their leaves, correct?

12 A Yes.

13 Q And you, of course, can't tell us whether all
14 the trees surrounding the burial site lost their leaves
15 if they had leaves to loose because you never actually
16 visited the burial site, did you?

17 A I visited the location that I was taken to.
18 I don't know the status of the leaves.

19 Q You weren't taken outside of the Jersey
20 walls, were you?

21 A No.

22 Q And you weren't told that the body was buried
23 inside those Jersey walls, were you? And you didn't
24 ask for any further information about the burial site,
25 did you?

1 A No, I did not.

2 Q You didn't inquire as to what day the burial
3 took place?

4 A I was told the day the burial took place was
5 the date of the billing records.

6 Q Was the date of the phone calls?

7 A Yes.

8 Q That's what you were told?

9 A Yes.

10 Q And by Ms. Murphy?

11 A Either Ms. Murphy or Mr. Urick.

12 Q You accepted that information, did you not?

13 A Yes.

14 Q The phone numbers indicate phone calls that
15 occur on the 13th, correct?

16 A I'd have to look at the billing records to
17 see what the date is on it.

18 Q Well, the billing records that you were asked
19 to look at were the billing records a certain Nokia
20 phone, were they not?

21 A Yes.

22 Q Not a -- your phone?

23 A Correct.

24 Q And not of any other kind of phone other than
25 the Nokia, correct?

1 A Right.

2 Q And you accepted all of the information that
3 you received, correct?

4 A Yes.

5 Q You didn't receive any other independent
6 information that established on the billing records the
7 burial of a body occurred on that date, did you?

8 A From an independent, I mean from another
9 source?

10 Q From any source, sir?

11 A No.

12 Q And, sir, did you inquire as to what the
13 weather was?

14 A No, I did not?

15 Q And did you make any attempt to duplicate the
16 weather conditions --

17 A No.

18 Q That are alleged to have occurred on the date
19 you were told the body was buried?

20 A No.

21 Q And were you aware that Ms. Murphy or Mr.
22 Urick based their information as to the date of the
23 burial from one source, from a man named, Jay Wiles?

24 A I don't know where their source was.

25 Q And did you hear that name?

1 A I have heard the name.

2 Q And you, of course, would have heard that
3 from Mr. Urick or Ms. Murphy?

4 A Yes.

5 Q You don't have any other source of
6 information connected to this case, do you?

7 A No.

8 Q Now, sir, you were told by Ms. Murphy
9 whatever information you were told and you then
10 conducted an origination test inside the Jersey wall
11 area that you were shown to, did you not?

12 A Yes.

13 Q And that origination test was to cause a
14 phone call to be made?

15 A Yes.

16 Q Because you were informed that it is alleged
17 that whoever had that cell phone, which you didn't
18 examine, is alleged to have made a call from Lincoln
19 Park, were you not?

20 A That's my understanding, yes.

21 Q And it was based on that information that you
22 conducted your test?

23 A Yes.

24 Q And only from that information?

25 A Yes.

<p style="text-align: right;">Page 121</p> <p>1 Q After you conducted your test you reported to 2 Ms. Murphy that a cell phone dialing out from that 3 location, meaning what you were pointed out to be the 4 burial site, would trigger either one site or another 5 site, were you not? 6 A I thought it was only one site at the burial. 7 Q And that burial site, cell site number that 8 you've indicated was 689B, correct? 9 A Correct. 10 Q And 689B sits where? 11 A It sits on the building called Govins Manor. 12 Q That's an apartment complex, is it not? 13 A I think it is. 14 Q And that apartment complex I believe as 15 you've discussed before, is up near the intersection of 16 Windsor Mill Road and Forest Park Avenue, is it not? 17 A Let me verify that please. 18 Q May I note for the record, sir, that you are 19 looking through a map book, is that correct? 20 A Yes it is. 21 Q And that map book covers what geographical 22 area? 23 A The greater Baltimore area. 24 Q Sir, I'm going to show you what's been marked 25 into evidence as State's Exhibit 17. That is a greater</p>	<p style="text-align: right;">Page 123</p> <p>1 BY MS. GUTIERREZ: 2 Q The apartment complex -- you are familiar 3 with the road, Security Boulevard, are you not? 4 MR. WARANOWITZ: 5 A Yes. 6 Q And you are familiar that the road by the 7 name of Windsor Mill Road does not intersect the 8 Security Boulevard, are you not? 9 A Yes. 10 Q You are aware that Windsor Mill Road runs at 11 a distance in a parallel fashion to Security Boulevard, 12 are you not? 13 A. I don't know the extents of Windsor Mill off 14 hand. 15 Q Windsor Mill Road is not the name of the road 16 that you were on off of which your Jersey Wall barriers 17 are, is it? 18 A No, I was down in Lincoln Park. 19 Q Down in Lincoln Park and from what you know 20 of Windsor Mill Road it's up above Lincoln Park, is it 21 not? 22 A Yes it is. 23 Q At least on that end of it, correct? 24 A It is higher, yes. 25 Q And you are aware that north Forest Park is a</p>
<p style="text-align: right;">Page 122</p> <p>1 Baltimore area map book, is it not? 2 A Yes. 3 Q It in fact, contains this same cover as the 4 one you are looking at, does it not? 5 A Yes it does. 6 Q And it's page are also the same? 7 A I don't know. 8 Q You carry that book with you? 9 A Yes, I do. 10 Q As part of your job? 11 A Yes. 12 Q Were you able to locate places with which you 13 might not be familiar? 14 A Yes. 15 Q And you use it often, do you not? 16 A Yes. 17 Q And you're aware that you're not the only 18 person that might carry map book with them, are you 19 not? 20 MR. URICK: Objection. 21 THE COURT: Sustained. 22 BY MS. GUTIERREZ: 23 Q Is that map book issued to you by AT&T? 24 MR. URICK: Objection. 25 THE COURT: Sustained.</p>	<p style="text-align: right;">Page 124</p> <p>1 road that is connected at one end to Security Boulevard 2 and at another end it continues to go through the 3 intersection at Windsor Mill Park, are you not? 4 A I think so. 5 Q And so it runs perpendicular to Security 6 Boulevard? 7 A Yes. 8 Q And perpendicular to Windsor Mill Road? 9 A Yes. 10 Q And you are aware that north Forest Park 11 Avenue does not run through Lincoln Park, are you not? 12 A I'd have to check on that. 13 Q You'd have to check you own maps? 14 A Yes. 15 Q And could you now? 16 A Forest Park Avenue does not appear to run 17 through Lincoln Park. 18 Q And that's according to your knowledge, 19 correct? 20 A Yes. 21 Q A map upon which you rely almost on a daily 22 basis? 23 MR. URICK: Objection. 24 THE COURT: Well, Mr. Urick, you didn't 25 object to him using the map, so why don't we have the</p>

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<p style="text-align: right;">Page 125</p> <p>1 map marked as evidence since it is the map that the 2 witness is using to testify to and then we'll have in 3 evidence what it is that the witness is indicating is 4 his recollection or his information. For the record, 5 is that the same map that you used during the testing 6 process that you've outlined for this Court? 7 MR. WARANOWITZ: I believe it was. 8 THE COURT: Very well. Thank you very much. 9 MR. URICK: Do you want a State's number or a 10 Defense number for the exhibit? 11 THE COURT: Why don't we make a Court's 12 number and that way we have it as a Court's exhibit 13 since I'm requesting that it be placed in evidence. 14 And if you would, Mr. Clerk, just tab the page that the 15 witness was referring to so that the jurors -- or you 16 can open it to that page, either way. You may 17 continue, Ms. Gutierrez. 18 BY MS. GUTIERREZ: Thank you, Your Honor. 19 Q Sir, before the break we spoke about a 20 location called Woodlawn High School. 21 MR. WARANOWITZ: 22 A Yes. 23 Q And, sir, you are aware of where that is 24 located? 25 A Yes.</p>	<p style="text-align: right;">Page 127</p> <p>1 A Yes. 2 Q And that section of Woodlawn Drive runs 3 between -- it may run further, but it at least runs 4 between Security Boulevard and Dogwood Road, does it 5 not? 6 A What road was that? 7 Q Dogwood, D-O-G-W-O-O-D. 8 A Right, Dogwood intersects Woodlawn Drive. 9 Q And on the other end Woodlawn Drive 10 intersects Security Boulevard, does it not? 11 A Yes. 12 Q And if one follows Dogwood Road, one 13 determines that it changes its name below the bridge 14 that is Forest Park Avenue as it approaches the city 15 line, does one not? 16 A Yes. 17 Q And the name to which Dogwood Road changes 18 into is a road by the name of Franklinton, is it not? 19 A Yes. 20 Q And Franklinton is the road that you drove 21 off of which the Jersey barrier concrete walls existed 22 when Ms. Murphy took you, isn't that correct? 23 A I believe so, yes. 24 Q And from the map, that's not a great deal of 25 distance, is it?</p>
<p style="text-align: right;">Page 126</p> <p>1 Q And that it is located on Woodlawn Drive? 2 A I'd have to verify that. 3 MS. GUTIERREZ: Can we show the witness our 4 map so that he (inaudible). 5 THE COURT: Is there an object to any of 6 this? I mean -- no. 7 MS. GUTIERREZ: Objection. 8 THE COURT: Good point, Ms. Gutierrez. Your 9 objection is overruled. You may ask -- continue to ask 10 your questions. 11 BY MS. GUTIERREZ: Thank you. 12 Q Can you see that, sir? Can you locate 13 Woodlawn Drive in the map book? 14 MR. WARANOWITZ: 15 A Woodlawn Drive? 16 Q Yes, sir. 17 A Woodlawn High School? 18 Q Yes, sir. 19 A I've located it. 20 Q Okay. And Woodlawn High School, in fact, is 21 on Woodlawn Drive, is it not? 22 A It appears to be, yes. 23 Q And it appears to be in your map, correct? 24 A Yes. 25 Q The same map upon which you rely, correct?</p>	<p style="text-align: right;">Page 128</p> <p>1 MR. URICK: Objection. 2 THE COURT: Overruled. 3 MR. WARANOWITZ: It is not far. 4 BY MS. GUTIERREZ: 5 Q No. And Woodlawn High School is not a 6 location that Ms. Murphy directed you to, was it? 7 MR. WARANOWITZ: 8 A I was taken to Woodlawn High School. 9 Q And did you do an origination test there? 10 A Yes. 11 Q And that was to make a call from that 12 location? 13 A Yes. 14 Q To determine, what if any, cell site such a 15 call would trigger, is that correct? 16 A Yes. 17 Q And the cell site that such a call would 18 trigger on your phone, the Erickson, on the date that 19 you did the test was what? 20 A It was either 651A or 651C. 21 Q 651A, would that be the orange? 22 A Yes. 23 Q Or not that one, but the pink one, correct? 24 A Correct. 25 Q Is that correct?</p>

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<p style="text-align: right;">Page 129</p> <p>1 A Correct.</p> <p>2 Q Either one or the other, right?</p> <p>3 A Yes.</p> <p>4 Q And, sir, the address on that cell phone</p> <p>5 tower, the same cell phone tower would be the same</p> <p>6 whether it was orange, right?</p> <p>7 A Yes.</p> <p>8 Q Or pink, right?</p> <p>9 A Yes.</p> <p>10 Q The cell phone tower's address is -- what you</p> <p>11 are referring to now is your copy of this blown up</p> <p>12 version of State's Exhibit 34, is it not?</p> <p>13 A Yes.</p> <p>14 Q And the cell phone, cell site address is 1500</p> <p>15 Woodlawn Drive, is it not?</p> <p>16 A Yes.</p> <p>17 Q And that same address is whether or not the</p> <p>18 call was made by a cell phone in 651A, right?</p> <p>19 A Yes.</p> <p>20 Q Or whether or not it was made in 651C, is</p> <p>21 that correct?</p> <p>22 A Yes.</p> <p>23 Q And if it were made in A on your map which</p> <p>24 you prepared it includes more than one designated</p> <p>25 neighborhood, does it not?</p>	<p style="text-align: right;">Page 131</p> <p>1 several different neighborhoods, does it not?</p> <p>2 A Yes.</p> <p>3 Q Those being residential, correct?</p> <p>4 A Residential and commercial.</p> <p>5 Q And commercial, but does include residential,</p> <p>6 correct?</p> <p>7 A Yes.</p> <p>8 Q And includes a broader geographical range</p> <p>9 then does A, does it not?</p> <p>10 A The coverage does go off the map.</p> <p>11 Q So, in regard to what you call coverage,</p> <p>12 again, you are referring to the coverage that one would</p> <p>13 expect in an ideal situation to include an area much</p> <p>14 larger than just the location of this cell site,</p> <p>15 correct?</p> <p>16 A Yes.</p> <p>17 Q And the coverage area, although this be the</p> <p>18 ideal that you drew for us to help you explain, in</p> <p>19 reality doesn't look like this, does it?</p> <p>20 MR. URICK: Objection.</p> <p>21 THE COURT: Overruled.</p> <p>22 MR. WARANOWITZ: It doesn't look like that,</p> <p>23 no.</p> <p>24 BY MS. GUTIERREZ:</p> <p>25 Q Now, sir, in regard to the apartment building</p>
<p style="text-align: right;">Page 130</p> <p>1 A I'm sorry, could you rephrase that?</p> <p>2 Q On your map which you prepared, if it were</p> <p>3 originated from 651A, A is the orange?</p> <p>4 A Yes.</p> <p>5 Q All right. If the cell phone was located in</p> <p>6 651, that area would include several different</p> <p>7 neighborhoods, would it not?</p> <p>8 A Neighborhoods, yes.</p> <p>9 Q Yes. And those neighborhoods would include</p> <p>10 several different defined subdivisions and listings of</p> <p>11 different neighborhoods, would it not?</p> <p>12 MR. URICK: Objection.</p> <p>13 THE COURT: Do you whether that would include</p> <p>14 several different neighborhoods in that area or not?</p> <p>15 MR. WARANOWITZ: Yes it would.</p> <p>16 BY MS. GUTIERREZ:</p> <p>17 Q And that would also be true --</p> <p>18 THE COURT: Overruled.</p> <p>19 BY MS. GUTIERREZ:</p> <p>20 Q If the cell phone, your Erickson cell phone</p> <p>21 were used to make a call if it had been located</p> <p>22 anywhere in 651C, that's the pink, right?</p> <p>23 MR. WARANOWITZ:</p> <p>24 A Right.</p> <p>25 Q And that whole area, that pink also includes</p>	<p style="text-align: right;">Page 132</p> <p>1 that's located near the intersection of Windsor Mill</p> <p>2 Road and Forest Park Avenue, you call that apartment</p> <p>3 complex?</p> <p>4 MR. WARANOWITZ:</p> <p>5 A No, we call that Govins Manor.</p> <p>6 Q Okay. You recalled that one, correct?</p> <p>7 A Yes.</p> <p>8 Q The cell site are antennas on top of the</p> <p>9 apartment complex, correct?</p> <p>10 A Yes.</p> <p>11 Q And the apartment complex contains more than</p> <p>12 one building, does it not?</p> <p>13 A I don't recall.</p> <p>14 Q But the antenna is on top, is it not?</p> <p>15 A Yes.</p> <p>16 Q And, sir, do you recall how high, how many</p> <p>17 stories the apartment complex is?</p> <p>18 A I don't recall.</p> <p>19 Q You didn't make a notation of that, did you?</p> <p>20 A No.</p> <p>21 Q And, sir, the apartment complex upon which</p> <p>22 your site antennas are covers almost, in addition to</p> <p>23 other areas, almost the entirety of the western edge of</p> <p>24 Lincoln Park, does it not?</p> <p>25 A Correct.</p>

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1 Q Now that coverage area would exist whether or
2 not it actually covers, would it not?
3 A I understand your question.
4 Q Well, you and your company designate what
5 under ideal circumstances that cell site, wherever it
6 may be, should cover in three directions, correct?
7 A We design within consideration of the
8 terrain. We do not design to an ideal diagram that I
9 demonstrated here.
10 Q And so the original design of the network
11 would have expected that that was the best location for
12 the site to cover, would it not?
13 A Yes.
14 Q And notwithstanding that hopeful expectation,
15 actual coverage, meaning receipt and sending of calls
16 throughout Lincoln Park still remains difficult, does
17 it not?
18 A Yes it does.
19 Q And that's because of the terrain, correct?
20 A Yes.
21 Q And that's in spite of your expectation that
22 a tower on an apartment building of some undetermined
23 height would provide adequate coverage for an area that
24 you knew to designated as Lincoln Park, correct?
25 A Well, we do take into consideration the

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1 limitations of a cell site system.
2 Q Sir, my question was not withstanding your
3 expectation in the design of your network, that you
4 were selecting the optimum site for your cell tower to
5 receive and send cellular signals seen, to be seen by
6 all manner of cellular phones that the coverage area
7 designated was expected to cover what you so
8 designated. The difficulties in sending and receiving
9 phone calls throughout the coverage area that includes
10 the designated parts of Lincoln Park continue to
11 problematical, do they not?
12 MR. URICK: Objection.
13 THE COURT: Sustained. You do not have to
14 answer that question and Counsel, if you would like to
15 restate it and phrase it, not in a compound fashion and
16 in a different tone the Court might consider it.
17 MS. GUTIERREZ: I appreciate that offer,
18 Judge, but I will pass.
19 THE COURT: Very well.
20 BY MS. GUTIERREZ:
21 Q Mr. Waranowitz, in regard to whatever
22 validity your test has, all it involved was your
23 attempt to calls to be made, lets take the Jersey wall
24 area. A call to be made from a particular location,
25 correct?

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1 MR. WARANOWITZ:
2 A Yes.
3 Q And then your test included notating what
4 cell site tower or cell site it triggered when you made
5 that call?
6 A Yes.
7 Q And that was on your Erickson phone, correct?
8 A Yes.
9 Q Under circumstances of terrain or weather or
10 leaves that you didn't investigate.
11 A Yes, with an explanation.
12 Q Okay. You just showed up at the location you
13 were shown to, right?
14 MR. URICK: Objection.
15 THE COURT: Objection to the last question or
16 to the previous witness not being able to complete his
17 answer to the last -- the previous question.
18 MR. URICK: Not being able to complete his
19 answer.
20 THE COURT: All right. First, Mr.
21 Waranowitz, you said yes with an explanation. Can you
22 complete your explanation?
23 MR. WARANOWITZ: Yes.
24 THE COURT: Go right ahead.
25 MR. WARANOWITZ: We do not take weather into

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1 consideration in our network design.
2 BY MS. GUTIERREZ:
3 Q So the answer to my question is yes, you
4 didn't do anything to match any conditions to any date,
5 correct?
6 MR. WARANOWITZ:
7 A No, I did not.
8 Q And you didn't even attempt to do so, did
9 you?
10 A No, with an explanation.
11 Q And you didn't make --
12 MR. URICK: Objection.
13 THE COURT: Well, Mr. Waranowitz, one moment,
14 Counsel. What is your explanation?
15 MR. WARANOWITZ: The 689B is the strongest
16 and in most cases the only site that gets in that area
17 regardless of where you are located. Only 689B gets
18 into that burial area strong enough to make a phone
19 call.
20 THE COURT: I'm sorry, I didn't hear the end
21 of that.
22 MR. WARANOWITZ: Strong enough to make a
23 phone call.
24 THE COURT: Strong enough to make a phone
25 call. Very well, your next question.

<p style="text-align: right;">Page 137</p> <p>1 BY MS. GUTIERREZ:</p> <p>2 Q So, if you can't reach that cell site you're</p> <p>3 not able to make a cell phone call, right?</p> <p>4 MR. WARANOWITZ:</p> <p>5 A That is correct.</p> <p>6 Q And, sir, as you've told us before, different</p> <p>7 phone perform differently, correct?</p> <p>8 A Yes.</p> <p>9 Q And part of what that perform differently in,</p> <p>10 is related to what you have referred to is the ability</p> <p>11 of the phone to see the signal, correct?</p> <p>12 A Yes.</p> <p>13 Q The seeing of the signal refers to the signal</p> <p>14 that emanates from the tower, correct?</p> <p>15 A Yes.</p> <p>16 Q And that varying phones of varying quality</p> <p>17 would be able to see or not see the phone, correct?</p> <p>18 A Correct.</p> <p>19 Q And the difference in phones might mean that</p> <p>20 at sometimes a certain phone might see a signal,</p> <p>21 correct?</p> <p>22 A Yes.</p> <p>23 Q At other times that phone might not see the</p> <p>24 same signal it was able to see at some other designated</p> <p>25 time?</p>	<p style="text-align: right;">Page 139</p> <p>1 belonged to an AT&T wireless customer, did you not?</p> <p>2 A Yes.</p> <p>3 Q Can I see the file? I think they're 31.</p> <p>4 Yes. Thank you. May I approach the witness?</p> <p>5 THE COURT: Yes, you may.</p> <p>6 BY MS. GUTIERREZ:</p> <p>7 Q I'm going to show you what's already been</p> <p>8 marked as State's Exhibit 31. Those are the phone</p> <p>9 records that you reviewed, are they not?</p> <p>10 MR. WARANOWITZ:</p> <p>11 A They appear to be, yes.</p> <p>12 Q And those phone records are produced for the</p> <p>13 company you work for, right?</p> <p>14 A Yes.</p> <p>15 Q And they indicate there the phone records for</p> <p>16 a certain cell phone number, do they not?</p> <p>17 A Yes.</p> <p>18 Q And they indicate that that phone is billed</p> <p>19 to an account number with the name Balial Alned, does</p> <p>20 it not?</p> <p>21 A This does show that.</p> <p>22 Q Okay. And the phone number to which these</p> <p>23 records refer is listed as area code, 443-253-9023,</p> <p>24 does it not?</p> <p>25 A Yes it does.</p>
<p style="text-align: right;">Page 138</p> <p>1 A Time probably wouldn't be a factor.</p> <p>2 Q Because time isn't a factor you, of course,</p> <p>3 made no effort to conduct your test when the alleged</p> <p>4 calls that you were conducting this test to make an</p> <p>5 opinion actually occurred, did you?</p> <p>6 A I'm sorry, could you say that again?</p> <p>7 Q You didn't attempt to construct your test</p> <p>8 according to the times that your own phones records</p> <p>9 indicated certain calls were made, did you?</p> <p>10 A My phone records?</p> <p>11 THE COURT: Mr. Waranowitz, if you can't</p> <p>12 answer a question say, I do not understand the</p> <p>13 question, I'm sorry, I can't answer the question and</p> <p>14 then Counsel will rephrase the question, okay? At this</p> <p>15 point I assume you can't answer the question?</p> <p>16 MR. WARANOWITZ: I don't understand the</p> <p>17 question.</p> <p>18 THE COURT: You don't understand the</p> <p>19 question. Very well, your next question.</p> <p>20 BY MS. GUTIERREZ:</p> <p>21 Q When you reviewed the phone records of the</p> <p>22 certain cellular phone, did you not?</p> <p>23 MR. WARANOWITZ:</p> <p>24 A Yes.</p> <p>25 Q And you understood that those phone records</p>	<p style="text-align: right;">Page 140</p> <p>1 Q And attached to those pages, sir, are three</p> <p>2 pages on which are listed: dates, times, duration of</p> <p>3 call, are there not?</p> <p>4 A Yes.</p> <p>5 Q And you expect based on your experience for</p> <p>6 those records to be accurate, do you not?</p> <p>7 A Yes.</p> <p>8 Q And you're aware of these records as part of</p> <p>9 the way to do your so called, origination test, were</p> <p>10 you not?</p> <p>11 A Yes.</p> <p>12 Q And were you asked to conform your test in</p> <p>13 any way to the times in which calls were alleged to</p> <p>14 have been made?</p> <p>15 A Time.</p> <p>16 Q Do you not understand that question, sir?</p> <p>17 A Please rephrase it.</p> <p>18 Q Were you asked by anyone to conform your</p> <p>19 test, i.e., the structure, your test in a way that</p> <p>20 conformed to the information concerning actual calls</p> <p>21 that were made?</p> <p>22 A No, I was not.</p> <p>23 Q And you didn't do so, did you?</p> <p>24 A No.</p> <p>25 Q And you were not asked to structure your test</p>

1 to conform to the order in which calls were made, were
2 you?

3 A No.

4 Q And you didn't do so, did you?

5 A No.

6 Q Now, in regard to what you can tell us is
7 from your Erickson phone, whatever model that may be,
8 when you attempted to originate a call, whatever day
9 you did so in the fall of 1998 it triggered that cell
10 site up by the intersection of Windsor Mill Road and
11 north Forest Park, did it not?

12 A I'm sorry, could you use shorter questions?

13 Q Sir, in the middle of that Jersey wall
14 section where you were directed to by Ma. Murphy, you
15 were asked to conduct the test that you keep calling
16 origination test, correct?

17 A Yes.

18 Q And that origination test meant that you
19 caused a phone call to be made from you Erickson phone,
20 correct?

21 A Yes.

22 Q Not a Nokia phone, correct?

23 A Yes.

24 Q Of any model, correct?

25 A Yes.

1 Q And when you caused that phone to make a
2 phone call based on whatever you did then, whatever day
3 that may have been it triggered the cell site that's
4 located on the apartment building, of indeterminate
5 height that is located where the intersection of
6 Windsor Mill Road and north Forest Park Avenue,
7 correct?

8 A Yes.

9 Q Your origination test can't tell us where the
10 cell phone, whatever model or make it may have been
11 was, physically when it made a call on January 13th,
12 '99, can it?

13 A No, it can not.

14 Q And it can only tell us that if it was where
15 you were standing, on whatever day it was you were
16 standing inside those Jersey wall embankments, that you
17 would expect it to trigger that same cell site on top
18 of the apartment building, correct?

19 A Yes.

20 Q But you can't tell us if it did, can you?

21 A It did.

22 Q Well, sir, let us backtrack here. All you
23 can tell us is what your cell phone did, correct?

24 A Correct.

25 Q On whatever day you did something with your

1 cell phone, correct?

2 A Yes.

3 Q You can't tell us what another cell phone did
4 on any date, can you?

5 A I can tell some information.

6 Q You can tell us what you would expect a cell
7 phone to do if it was in a certain place, correct?

8 A Yes.

9 Q But you can't tell us it did that, correct?

10 A No.

11 Q Whether some other cell phone that was a
12 Motorola was involved, correct?

13 A I'm sorry, say that question again.

14 Q Whether or not the cell phone involved was a
15 Motorola, correct?

16 A I don't understand what you're referring to.

17 Q Well, sir, you used an Erickson, right?

18 A Yes.

19 Q And based on what your cell phone did or does
20 you'd expect all other similar Ericksons to act the
21 same way, right?

22 A Yes.

23 Q If they were in the same place, correct?

24 A Correct.

25 Q But notwithstanding, notwithstanding your

1 high expectations for the performance of phones, you've
2 come across bad phone, have you not?

3 A Yes.

4 Q Phones that do not perform according to your
5 expectations about them, correct?

6 A Yes.

7 Q Because phones don't always perform according
8 to specification?

9 A Yes.

10 Q Your model number for your Erickson phone is
11 what, sir?

12 A I don't recall the number. Oh, the model
13 number is ED398.

14 Q And, sir, would it be fair to assume if there
15 are more phones at that same manufacture by Erickson?

16 A Yes.

17 Q And, sir, all you can tell us in regard to
18 other similar model number Erickson phone, is that you
19 would expect it to perform like yours, correct?

20 A Yes.

21 Q But it may not, correct?

22 A Yes.

23 Q Because it could be a bad quality Erickson of
24 that number, right?

25 A Yes.

1 Q And, sir, where ever another phone was that
2 made a call that you are trying to duplicate the input,
3 if it made a call in a specific location within a
4 designated A, B or C sector, if it were in C it would
5 trigger the same site whether it was at the northern
6 most portion of C, correct?

7 A Yes.

8 Q Or the southern most portion?

9 A Yes.

10 Q Correct? Or the middle?

11 A Yes.

12 Q Or the western most edge?

13 A Yes.

14 Q Whatever one of the numerous neighborhoods,
15 it might exist, it would still signal the same cell
16 site, correct?

17 A Yes.

18 Q So, all that you can tell us about is what
19 your phone, whatever model it was, did when you made a
20 call at a location you were directed to, right?

21 A Yes.

22 Q You can not tell us where the cell phone that
23 made any call on that exhibit, I believe is still in
24 your hands, was at any point any call was made, can
25 you?

1 A No.

2 Q Did you hesitate (inaudible)?

3 A Yes, I did.

4 Q But your answer is no, isn't it?

5 A My answer is no, I can not tell where a cell
6 site -- a cell phone is when it originates a call based
7 on the billing records.

8 Q And your test can't tell us where the cell
9 phone was physically when the call from the line was
10 made?

11 A No, it can not.

12 Q And it can only tell us that where ever it
13 was, when it made this call that it triggered the
14 signal that you've located as cell site L651C, correct?

15 A Correct.

16 Q And 651C would be the purple blob on the
17 right hand side --

18 A No.

19 Q Of 651?

20 A No.

21 Q It would be the pink?

22 A Correct.

23 Q Okay. B is the purple, right?

24 A Yes.

25 Q So that that cell phone, that was utilized in

1 describing call one could have been anywhere, correct?

2 A Yes.

3 Q And it still would have signaled the same
4 cell site?

5 A Yes.

6 Q And your test can't help us with picking a
7 spot where it might have been, correct?

8 A My test can show that if you were in a
9 certain location, with a certain phone, that you would
10 originate on a certain cell site.

11 Q And the certain location that you did this
12 originating test was selected by Ms. Murphy, correct?

13 A Yes.

14 Q You didn't select any location to make a
15 certain call, correct?

16 A Correct.

17 Q And your certain phone call made a designated
18 location can't tell us where this phone was when the
19 call was made, can it?

20 A No, it can not.

21 Q It can only tell us that where ever it was it
22 triggered this cell site tower signal, correct?

23 A Correct.

24 Q And that would hold true for every single one
25 of these entries, would it not?

1 A Correct.

2 Q And, sir, it would be very easy, the cell
3 phone I showed you that you opened up and identified as
4 a Nokia, sir?

5 A Yes.

6 Q That cell phone, other than what you did on
7 the stand, you never really examined?

8 A No, I have not examined that particular
9 phone.

10 Q And you didn't conduct any test on that one,
11 correct?

12 A No, I did not.

13 Q And the fact that may have examined other
14 Nokia phones at other times, which you may or may not
15 remember, only tells you what you might expect a
16 similar model of the Nokia to act like?

17 A Yes.

18 Q And to act like means, how it performs,
19 correct?

20 A Yes.

21 Q And that includes how it sees signals,
22 correct?

23 A Yes.

24 Q Because different phones, though they may be
25 of the same model, of the same manufacturer may perform

<p style="text-align: right;">Page 149</p> <p>1 outside of what one it expects it to perform, correct?</p> <p>2 A Yes.</p> <p>3 Q And some phones, although it may come from</p> <p>4 the same manufacturer's batch and model number, some</p> <p>5 phones might see a signal and other phones might not,</p> <p>6 correct?</p> <p>7 A Correct.</p> <p>8 Q And if a phone doesn't see a signal then it</p> <p>9 doesn't trigger, correct?</p> <p>10 A Correct.</p> <p>11 Q And whether a phone is a good performance</p> <p>12 phone or a bad performance phone doesn't add to your</p> <p>13 ability to tell where it was when it sent out a signal,</p> <p>14 does it?</p> <p>15 A No.</p> <p>16 Q And your test can't help us with that, can</p> <p>17 it? Can it?</p> <p>18 A I disagree.</p> <p>19 Q Sir, your test -- lets deal with 651,</p> <p>20 correct? And lets us assume for the purpose of this</p> <p>21 question, that the cell tower is located in the middle</p> <p>22 of the bottom circle of the five, okay? Can you assume</p> <p>23 that?</p> <p>24 A Yes.</p> <p>25 Q All right. If a cell phone is physically</p>	<p style="text-align: right;">Page 151</p> <p>1 be located somewhere with it appears pink, right?</p> <p>2 A Yes.</p> <p>3 Q But no way can it tell us exactly where it</p> <p>4 was, can it?</p> <p>5 A No.</p> <p>6 Q Or give us an address to name the place where</p> <p>7 the cell phone was, correct?</p> <p>8 MR. URICK: Objection.</p> <p>9 THE COURT: This question has been asked and</p> <p>10 answered and Mr. Waranowitz I'll let you answer it one</p> <p>11 more time and your answer to that question is, it can't</p> <p>12 give you an address of where the phone was, can it?</p> <p>13 MR. WARANOWITZ: No, it can not give you an</p> <p>14 address of where the phone was.</p> <p>15 THE COURT: Very well. Your next question.</p> <p>16 BY MS. GUTIERREZ:</p> <p>17 Q On any day, right?</p> <p>18 MR. WARANOWITZ:</p> <p>19 A On any day.</p> <p>20 Q Now, sir, when you made the origination test</p> <p>21 you said you caused a phone call to be made, correct?</p> <p>22 A Yes.</p> <p>23 Q You didn't have to dial the phone numbers</p> <p>24 into the phone correct?</p> <p>25 A I dialed a code.</p>
<p style="text-align: right;">Page 150</p> <p>1 located in it's entirety, somewhere inside the</p> <p>2 geographical area outlined and what appears in the hot</p> <p>3 pink. That's L5 -- 651C, right?</p> <p>4 A Yes.</p> <p>5 Q You would expect that cell phone to trigger</p> <p>6 that signal inside the five, correct?</p> <p>7 A Correct.</p> <p>8 Q And for your records to be able to tell us</p> <p>9 that, correct?</p> <p>10 A Yes.</p> <p>11 Q But your records, based on receipt of the</p> <p>12 signal can't tell us exactly where the cell phone was</p> <p>13 when it made that, can it?</p> <p>14 A No, it can not.</p> <p>15 Q And it can't tell us, for instance, if it's a</p> <p>16 good performance phone, correct?</p> <p>17 A No.</p> <p>18 MR. URICK: Objection.</p> <p>19 BY MS. GUTIERREZ:</p> <p>20 Q Or a bad performance phone, correct?</p> <p>21 MR. WARANOWITZ:</p> <p>22 A No.</p> <p>23 Q And from your expertise, what the records can</p> <p>24 tell us is that you would expect the phone that made</p> <p>25 the call, that triggered the signal inside the five to</p>	<p style="text-align: right;">Page 152</p> <p>1 Q You dialed a code which is not the phone</p> <p>2 number, correct?</p> <p>3 A It could be considered a phone number.</p> <p>4 Q Okay. But it wasn't the phone number that</p> <p>5 you were dialing, right?</p> <p>6 A It does the same thing a phone number does.</p> <p>7 Q It does the same thing meaning it triggers</p> <p>8 the signal at the cell site, correct?</p> <p>9 A Yes.</p> <p>10 Q But you weren't asked when you did your</p> <p>11 origination test to actually dial the same numbers that</p> <p>12 you knew to have been dialed back on January 13th,</p> <p>13 1999?</p> <p>14 MR. URICK: Objection.</p> <p>15 BY MS. GUTIERREZ:</p> <p>16 Q Were you?</p> <p>17 THE COURT: Overruled.</p> <p>18 MR. WARANOWITZ: No, with an explanation.</p> <p>19 BY MS. GUTIERREZ:</p> <p>20 Q Well, my question only asked for a yes or</p> <p>21 not.</p> <p>22 MR. URICK: Objection.</p> <p>23 THE COURT: Overruled or sustained. I'm</p> <p>24 going to allow the witness to explain his answer and if</p> <p>25 you would explain your answer. You do not have to</p>

<p style="text-align: right;">Page 153</p> <p>1 answer a yes or no and you don't have to say with an 2 explanation, just answer the question would be fine. 3 MR. WARANOWITZ: Yes, ma'am. 4 THE COURT: You may now provide your answer. 5 MR. WARANOWITZ: The phone number that you 6 are dialling on a cell phone does not effect what cell 7 site you originate on, whether it's long distance, 8 local or your voice mail. It does not effect how you 9 access that cell site. 10 BY MS. GUTIERREZ: 11 Q Well, sir, so the answer to my question is 12 no, you weren't asked to dial these numbers? 13 MR. WARANOWITZ: 14 A No, I was not asked to dial those numbers. 15 Q And you didn't, did you? 16 A No. 17 Q You didn't dial call number one to that 18 number, did you? 19 A No, it was not necessary. 20 Q And you didn't dial -- I didn't ask you that, 21 sir. 22 THE COURT: Ms. Gutierrez. 23 BY MS. GUTIERREZ: 24 Q Did you dial -- 25 THE COURT: Ms. Gutierrez, one moment. Your</p>	<p style="text-align: right;">Page 155</p> <p>1 phone numbers. 2 Q So, your answer to my question is, yes. You 3 then said, it wasn't necessary, right? 4 MR. URICK: Objection. 5 THE COURT: The objection is sustained. Mr. 6 Waranowitz, we're sitting here, why don't you tell us 7 why it wasn't necessary. 8 MR. WARANOWITZ: I just did. 9 THE COURT: No, tell us why it wasn't 10 necessary for you not to dial the numbers. Ms. 11 Gutierrez is asking you that question, if you could 12 just answer it. 13 MR. WARANOWITZ: It is not necessary to dial 14 those phone numbers because they do not effect what 15 cell site you originate on. 16 THE COURT: All right. Very well. Next 17 question. 18 BY MS. GUTIERREZ: 19 Q So, the only impact would have been to your 20 origination test, right? 21 MR. WARANOWITZ: 22 A Impact? 23 Q Of dialing or not dialing the numbers would 24 have been to your origination test, correct? 25 A I'm sorry, I don't understand.</p>
<p style="text-align: right;">Page 154</p> <p>1 answer, sir, was, I was not asked to do that, is that 2 what you said? 3 MR. WARANOWITZ: That is correct. I was not 4 asked to do that and it is not necessary to do that. 5 BY MS. GUTIERREZ: 6 Q It's not necessary to conduct your 7 origination test, correct? 8 THE COURT: Do you understand the question? 9 MR. WARANOWITZ: Could you ask that again 10 please? 11 BY MS. GUTIERREZ: 12 Q You answered it wasn't necessary to dial the 13 number I asked you if you dialed correct, right? 14 MR. WARANOWITZ: 15 A Right. 16 Q And your answer was you didn't dial it, 17 right? 18 A No. 19 Q Well, did you dial it or didn't you? 20 A No, I did not dial it. 21 Q All right. And then you said you needed to 22 explain why not, correct? 23 A Yes. 24 Q And you said it wasn't necessary, right? 25 A It was not necessary to dial those specific</p>	<p style="text-align: right;">Page 156</p> <p>1 Q Mr. Waranowitz, lets go back to the 2 triangular -- 3 MR. URICK: Objection. 4 BY MS. GUTIERREZ: 5 Q Up here on cell site 651, correct? 6 THE COURT: The objection is overruled. The 7 witness has indicated he does not understand Counsel's 8 question, so Counsel may clarify the question and Mr. 9 Waranowitz, if you would follow her direction and 10 again, if you don't understand her question, just say, 11 I do not understand the question. 12 MR. WARANOWITZ: Yes, Your Honor. 13 THE COURT: All right. Very well. 14 BY MS. GUTIERREZ: 15 Q The test that you performed, you performed it 16 you told us in may different locations, correct? 17 MR. WARANOWITZ: 18 A Yes. 19 Q And the test that you performed was the same 20 at every location, was it not? 21 A Yes. 22 Q And it was always performed under your phone, 23 correct? 24 A Yes. 25 Q Your Erickson phone, correct?</p>

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<p>1 A Yes.</p> <p>2 Q Not a Nokia, correct?</p> <p>3 A Correct.</p> <p>4 Q Not a Nokia of this certain model, correct?</p> <p>5 A Correct.</p> <p>6 Q And the purpose when you performed that test</p> <p>7 was to determine when you performed the test on the day</p> <p>8 that you did so, what if any cell site it would signal,</p> <p>9 correct?</p> <p>10 A Yes.</p> <p>11 Q It was the only purpose of your test,</p> <p>12 correct?</p> <p>13 A Yes.</p> <p>14 Q Now, you never dialed the number, 869-9498 --</p> <p>15 MR. URICK: Objection.</p> <p>16 BY MS. GUTIERREZ:</p> <p>17 Q Did you?</p> <p>18 THE COURT: Overruled.</p> <p>19 MR. WARANOWITZ: No, I did not dial that</p> <p>20 number.</p> <p>21 BY MS. GUTIERREZ:</p> <p>22 Q And you weren't asked to do so, were you?</p> <p>23 MR. WARANOWITZ:</p> <p>24 A No, I was not asked to do so.</p> <p>25 Q By anyone?</p>	<p>1 A No.</p> <p>2 Q Eighteen?</p> <p>3 A No.</p> <p>4 Q Twenty-two?</p> <p>5 A No.</p> <p>6 Q Twenty-three, twenty-four, twenty-five?</p> <p>7 A No.</p> <p>8 Q Twenty-six?</p> <p>9 A No.</p> <p>10 Q Thirty?</p> <p>11 A No.</p> <p>12 Q Thirty-one through thirty-four?</p> <p>13 A No.</p> <p>14 Q You were never asked to dial any of those</p> <p>15 numbers, correct?</p> <p>16 A Correct.</p> <p>17 Q And you did not do so, correct?</p> <p>18 A Correct.</p> <p>19 Q And you didn't dial any of your calls at any</p> <p>20 of the locations you were taken by Ms. Murphy at any of</p> <p>21 the specific times listed in call time, were you?</p> <p>22 A No.</p> <p>23 Q No. After you completed all of the tests at</p> <p>24 the locations that don't appear on the chart, after you</p> <p>25 completed them you had reported all of your findings to</p>
Page 158	Page 160
<p>1 A By anyone.</p> <p>2 Q But when you didn't dial 340-7374, did you?</p> <p>3 A No.</p> <p>4 Q And if you would look at your sheet, you</p> <p>5 didn't dial the phone number listed in four, did you?</p> <p>6 MR. URICK: Objection.</p> <p>7 MR. WARANOWITZ: No.</p> <p>8 THE COURT: Overruled.</p> <p>9 BY MS. GUTIERREZ:</p> <p>10 Q Or in five?</p> <p>11 MR. WARANOWITZ:</p> <p>12 A No.</p> <p>13 Q Or in six?</p> <p>14 A No.</p> <p>15 Q Or in seven?</p> <p>16 A No.</p> <p>17 Q Or in eight?</p> <p>18 A No.</p> <p>19 Q Or in nine?</p> <p>20 A No.</p> <p>21 QQ Or in twelve?</p> <p>22 A No.</p> <p>23 Q Thirteen?</p> <p>24 A No.</p> <p>25 Q Seventeen.</p>	<p>1 Ms. Murphy because she was there in the car with you,</p> <p>2 right?</p> <p>3 A I reported them as I saw them, yes.</p> <p>4 Q Okay. So, as you went along, you gave her</p> <p>5 the heads up, right?</p> <p>6 A Yes.</p> <p>7 Q And at no time during that day, at any time</p> <p>8 did you tell Ms. Murphy, I did this test, Ms. Murphy,</p> <p>9 and I can tell you --</p> <p>10 THE COURT: Ms. Gutierrez, at this point</p> <p>11 we're going to interrupt because I note that it is now</p> <p>12 12:30. I'm going to take a lunch and recess at this</p> <p>13 time and you will come back after lunch and continue</p> <p>14 with this questioning. Ladies and gentlemen, we have a</p> <p>15 number of things that are going to be taken place at</p> <p>16 lunch time. This Court will be tied up at lunch time</p> <p>17 as well.</p> <p>18 So, we're going to recess from this time until</p> <p>19 2:15 at which time we will return with the continued</p> <p>20 questioning of this witness. Ladies and gentlemen, as</p> <p>21 you go out please leave your note pads face down.</p> <p>22 Please do not discuss the testimony of this witness or</p> <p>23 anyone else, amongst yourselves or with anyone. Your</p> <p>24 note pads will be locked away by the Clerk and returned</p> <p>25 to your chairs after the lunch and recess. Please go</p>

<p style="text-align: right;">Page 161</p> <p>1 with Deputy Church and he will take you back to the 2 jury room. I'm sorry. Yes, you may go over to the 3 jury assembly room any time now -- between now and 4 1:30, they are ready for you. Any time between now and 5 1:30 you may go to jury assembly and be paid. They're 6 expecting you to come over any time between now and 7 1:30. It's up to you. You can go first or not, it's 8 up to you. 9 MS. GUTIERREZ: The courtroom will be locked 10 again? 11 THE COURT: The courtroom will be locked 12 during the recess. 13 MS. GUTIERREZ: Thank you. 14 THE COURT: If Counsel will wait one moment 15 until all of out jurors leave. 16 (The jury was excused from the courtroom.) 17 THE COURT: Mr. Waranowitz, I understand you 18 have made changes or adjustments to your travel 19 schedule? 20 MR. WARANOWITZ: Yes. 21 THE COURT: To depart at 3:30. I need to 22 advise you I have no idea what time you're going to 23 finish. I do not want you to be misled in anyway that 24 I know or am aware of what time you will be done. 25 Counsel has the right to ask you questions and I can't</p>	<p style="text-align: right;">Page 163</p> <p>1 examination, but I'd ask that you adjust your tone with 2 this witness. This witness is a witness subpoenaed by 3 the State. He is not here of his own accord, he is 4 already as you know, being inconvenienced as to his 5 work or personal schedule. 6 That has nothing to do with you, but I'd ask that 7 common courtesy be afforded the witness and I'd ask 8 that of all witnesses that come into this Court. 9 However, you have absolute right to cross examine the 10 witness and I'd ask that you continue to do that, but I 11 would just ask that you be mindful of those things and 12 I would ask that all of us be mindful of common 13 courtesy. Not only with the witnesses, with the jurors 14 and with each other, and with that this Court will 15 stand in recess until 2:15. 16 BAILIFF: All rise. 17 (Lunch recess.) 18 (Jury not present upon reconvening.) 19 THE COURT: We have called for the Defendant 20 to be brought up, he should be here shortly. Ms. 21 Gutierrez, your client should be here shortly. Once he 22 is settled in we will have the jury brought back. 23 MS. GUTIERREZ: Judge, can we approach the 24 bench? 25 THE COURT: Certainly, please come up. Is</p>
<p style="text-align: right;">Page 162</p> <p>1 anticipate or expect what that will entail. 2 Unfortunately, from 12:30 to two o'clock at least, this 3 Court is tied up in a sentencing hearing involving 4 three other judges. I am already late, I am going 5 directly there. We will resume promptly at 2:15 at 6 which time we will continue with the questions of Ms. 7 Gutierrez. Also let me advise you during the break, 8 you may not discuss your testimony with either the 9 State's attorneys or the Defense. They should have no 10 conversations with you regarding your testimony and you 11 should have no conversations with anyone else. You are 12 a sequestered witness, do you understand? 13 MR. WARANOWITZ: Yes, Your Honor. 14 THE COURT: Very well. This Court then 15 stands in recess until 2:15. 16 MR. URICK: Your Honor, before we go off the 17 record we would just like to note for the record that 18 Ms. Gutierrez pounded very heavily on Ms. Murphy's 19 chair at their last questioning in her questioning and 20 there was no reason for that display towards Ms. 21 Murphy. 22 THE COURT: Ms. Gutierrez, I'm going to ask 23 that you not pound on any chairs whether it be your 24 chair or anyone else's chair. I would also ask that 25 you will have an absolute right to conduct cross</p>	<p style="text-align: right;">Page 164</p> <p>1 this something we need to discuss with your client? 2 (Counsel approached the bench and the 3 following ensued:) 4 MS. GUTIERREZ: No, I don't think so. 5 THE COURT: Is it a scheduling matter? 6 MS. GUTIERREZ: Sort of. 7 THE COURT: You're sure you don't need your 8 client here? 9 MS. GUTIERREZ: I don't need my client here. 10 Judge, the rest of my cross is not going to be that 11 long on this witness. Over the break I went and I ate 12 lunch, I don't know if the Court's aware, I'm a 13 diabetic? 14 THE COURT: Are you okay? 15 MS. GUTIERREZ: Well, I'm not sure. I don't 16 -- I had lunch, things seemed to be fine. I was going 17 to say something to the Court anyway because yesterday 18 eating so late is something that throws me off -- 19 THE COURT: Okay. 20 MS. GUTIERREZ: And I should have stopped and 21 I didn't, I felt fine, but often times I just have bad 22 reactions a day or so later. I was fine, I left, we 23 walked back and by the time I got in the building I was 24 overwhelmed and had to vomit. I didn't feel like 25 walking up to my office where my blood sugar tester is,</p>

<p style="text-align: right;">Page 165</p> <p>1 so I would like to do is to finish cross of this</p> <p>2 witness which I don't think will take long, let them do</p> <p>3 whatever redirect and then ask the Court to take a</p> <p>4 short break. I would like to walk up to my office --</p> <p>5 THE COURT: That's fine.</p> <p>6 MS. GUTIERREZ: And test my blood sugar and</p> <p>7 see if there's anything I can do, my medication is up</p> <p>8 there and see if I can clear it up.</p> <p>9 THE COURT: That will be fine. I have no --</p> <p>10 you have no problem with that, do you?</p> <p>11 MR. URICK: No.</p> <p>12 THE COURT: And I would tell you that if you</p> <p>13 want depending on what is going on we can stop.</p> <p>14 MS. GUTIERREZ: Yes, I know, but I'm not -- I</p> <p>15 just don't know and it's early enough that if I walk up</p> <p>16 it may pass and I'll be fine.</p> <p>17 THE COURT: Fine.</p> <p>18 MR. URICK: Shouldn't we have the Defendant</p> <p>19 present?</p> <p>20 THE COURT: I really would like the Defendant</p> <p>21 here.</p> <p>22 MS. GUTIERREZ: Okay. All right.</p> <p>23 THE COURT: When it is scheduled --</p> <p>24 MS. GUTIERREZ: We can do it afterwards or</p> <p>25 something.</p>	<p style="text-align: right;">Page 167</p> <p>1 THE COURT: Mr. Syed, we were discussing</p> <p>2 scheduling for Friday. We have a juror that has</p> <p>3 indicated that they had a vacation planned and they</p> <p>4 would be departing a 6:00 a.m. on Friday. We --</p> <p>5 MS. GUTIERREZ: It's juror number twelve, is</p> <p>6 it?</p> <p>7 THE COURT: I thought it was six.</p> <p>8 MR. URICK: I think six.</p> <p>9 MS. GUTIERREZ: Okay.</p> <p>10 THE COURT: And that juror doesn't -- has</p> <p>11 planned to leave at 6:00 a.m. on Friday and we weren't</p> <p>12 sure whether we were going to have, to sit on Friday</p> <p>13 depending upon how the case progressed. What Counsel</p> <p>14 and I are now about to discuss, we were waiting for</p> <p>15 you, is what the State and the Defense's pleasure is.</p> <p>16 The choices are as follows: we can continue on</p> <p>17 Friday which would mean that juror number six would be</p> <p>18 struck from the panel by agreement, alternate number</p> <p>19 would take that seat because we can't take testimony</p> <p>20 with a missing juror and juror number six would be</p> <p>21 excused or we can stop the testimony altogether on</p> <p>22 Friday and resume with the testimony on Monday when all</p> <p>23 the jurors that are currently in the panel will be</p> <p>24 present.</p> <p>25 So, those are the choices. You can talk to your</p>
<p style="text-align: right;">Page 166</p> <p>1 THE COURT: To the witnesses or something.</p> <p>2 MR. URICK: What are your plans for Friday</p> <p>3 with the juror who wants to go on the weekend trip?</p> <p>4 THE COURT: Well, today is?</p> <p>5 MR. URICK: Wednesday.</p> <p>6 MS. GUTIERREZ: Wednesday.</p> <p>7 MR. URICK: Tomorrow is Thursday.</p> <p>8 THE COURT: Tomorrow is Thursday, we're not</p> <p>9 going to finish by tomorrow. So, why don't you guys</p> <p>10 think about --</p> <p>11 MS. GUTIERREZ: I need to talk to my client -</p> <p>12 THE COURT: Yeah, talk to him.</p> <p>13 MS. GUTIERREZ: but I don't think he'll have</p> <p>14 any objection to that.</p> <p>15 THE COURT: And the choice would be, we</p> <p>16 continue through Friday or we stop and we continue on</p> <p>17 Monday.</p> <p>18 MS. GUTIERREZ: Right.</p> <p>19 THE COURT: Just --</p> <p>20 MR. URICK: We have --</p> <p>21 THE COURT: You guys think about what you</p> <p>22 want to do. Actually, he's here. So, why don't we</p> <p>23 just bring him up.</p> <p>24 MS. GUTIERREZ: Mr. Syed, come up for a</p> <p>25 minute.</p>	<p style="text-align: right;">Page 168</p> <p>1 attorney and indicate your feeling one way or another.</p> <p>2 Have you already discussed this and are prepared to</p> <p>3 tell me what your choice is?</p> <p>4 MR. URICK: I think we have a slight</p> <p>5 preference not to sit Friday.</p> <p>6 MS. MURPHY: Our witnesses need to go to</p> <p>7 work.</p> <p>8 MR. URICK: And also being in Felony</p> <p>9 narcotics, I've got so much other work, another day out</p> <p>10 of Court would give me a chance to get caught up.</p> <p>11 THE COURT: Well, maybe we can do something</p> <p>12 by agreement. It would be nice if we could do it by</p> <p>13 agreement then that way --</p> <p>14 MR. URICK: We're not going to disagree one</p> <p>15 way or the other. We would prefer Friday.</p> <p>16 THE COURT: Okay. Whichever --</p> <p>17 MS. GUTIERREZ: Judge, we would like to delay</p> <p>18 the decision making until the jury comes out and we an</p> <p>19 picture --</p> <p>20 THE COURT: Who?</p> <p>21 MS. GUTIERREZ: Right, who's who and --</p> <p>22 THE COURT: Okay.</p> <p>23 MS. GUTIERREZ: And then so if we could come</p> <p>24 up at the end of this witness we could then give you</p> <p>25 our answer --</p>

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<p>1 THE COURT: Very well.</p> <p>2 MS. GUTIERREZ: In regard to that.</p> <p>3 THE COURT: That will be fine. We'll start</p> <p>4 as soon as we can have the jury brought back. Thank</p> <p>5 you.</p> <p>6 (Counsel and Defendant returned to the trial</p> <p>7 tables and the following ensued:)</p> <p>8 MR. URICK: Should we ask the witness to step</p> <p>9 back in at this time?</p> <p>10 THE COURT: Yes, please. And I'll have --</p> <p>11 Deputy Church, if you could have the witness, Mr.</p> <p>12 Waranowitz come back in the courtroom.</p> <p>13 (A bell sounded.)</p> <p>14 THE COURT: That's probably the jury telling</p> <p>15 us that they're ready.</p> <p>16 (The jury returned to the courtroom.)</p> <p>17 THE COURT: Please be seated everyone. Ms.</p> <p>18 Gutierrez, you may continue.</p> <p>19 MS. GUTIERREZ: Yes, Your Honor.</p> <p>20 THE COURT: And if I may just, for the</p> <p>21 record, just indicate your name, sir.</p> <p>22 MR. WARANOWITZ: My name is Abraham John</p> <p>23 Waranowitz.</p> <p>24 THE COURT: I'm reminding you you're still</p> <p>25 under oath from this morning. You may continue.</p>	<p>1 1208 Macado again, you listed two separate cell sites,</p> <p>2 did you not?</p> <p>3 A Yes.</p> <p>4 Q And as for the Security Mall site, sir?</p> <p>5 A Yes.</p> <p>6 Q You also listed two separate cell sites?</p> <p>7 A I believe I did, yes.</p> <p>8 Q And, sir, you were in what specific location</p> <p>9 at Security Mall?</p> <p>10 A We drove around the mall.</p> <p>11 Q Around the mall?</p> <p>12 A Yes.</p> <p>13 Q Not inside the mall?</p> <p>14 A Correct.</p> <p>15 Q So the phone call that you caused to be</p> <p>16 originated was made from outside the mall?</p> <p>17 A Yes.</p> <p>18 Q And, sir, after you reported these findings</p> <p>19 to Ms. Murphy you didn't then generate on top of that a</p> <p>20 written report, did you?</p> <p>21 A No.</p> <p>22 Q No, and you've generated no written report,</p> <p>23 did you?</p> <p>24 A No, I did not.</p> <p>25 Q And there's no information generated by your</p>
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<p>1 BY MS. GUTIERREZ:</p> <p>2 Q Mr. Waranowitz, just to clarify, you</p> <p>3 indicated that you reported your findings based on what</p> <p>4 you called your origination test as they occurred to</p> <p>5 Ms. Murphy?</p> <p>6 MR. WARANOWITZ:</p> <p>7 A Yes.</p> <p>8 Q Is that correct? And your findings could be</p> <p>9 categorized essentially as a statement that a certain</p> <p>10 address would trigger a certain site, is that not</p> <p>11 correct?</p> <p>12 A No.</p> <p>13 Q Well, sir, did you report your findings to</p> <p>14 Ms. Murphy in regard to all of the addresses that she</p> <p>15 pointed out and she took you to as to whether or not</p> <p>16 they trigger a site or sites?</p> <p>17 A Yes.</p> <p>18 Q So, you reported that information, correct?</p> <p>19 A Yes.</p> <p>20 Q And that information would fairly be</p> <p>21 characterized if it were written as if a cell phone at</p> <p>22 Rolling Road at I70 triggers cell site L651C or L698A,</p> <p>23 is that correct?</p> <p>24 A Yes.</p> <p>25 Q Okay. And in fact, on many of the addresses,</p>	<p>1 company, such as would be generated when a real sell</p> <p>2 phone user using any type of phone would make such a</p> <p>3 call and the computer would record it and then at</p> <p>4 billing print out the length of the call that your --</p> <p>5 the time the call was made and the cell site that it</p> <p>6 triggered?</p> <p>7 A The test calls are not billable.</p> <p>8 Q Okay. So, the answer to my question then,</p> <p>9 sir, is no.</p> <p>10 A No.</p> <p>11 Q And in regard to the Briar Cliff Road</p> <p>12 address, again you indicated to Ms. Murphy that that</p> <p>13 also triggered two sites, is that correct?</p> <p>14 A I'd like to see the report on that.</p> <p>15 Q Well, sir, you didn't write a report, did</p> <p>16 you?</p> <p>17 A No, I did not.</p> <p>18 Q And did you take notes?</p> <p>19 A No, Ms. Murphy took notes for me.</p> <p>20 Q Ms. Murphy took notes. You took no notes of</p> <p>21 your own origination test, correct?</p> <p>22 A Correct.</p> <p>23 Q And did you check her notes for accuracy?</p> <p>24 A I reviewed her notes and it was consistent.</p> <p>25 Q And were they --</p>

<p style="text-align: right;">Page 173</p> <p>1 THE COURT: One moment, I'm sorry.</p> <p>2 MR. WARANOWITZ: I reviewed her notes, I'm</p> <p>3 sorry, Your Honor.</p> <p>4 THE COURT: You said, I reviewed her notes</p> <p>5 and --</p> <p>6 MR. WARANOWITZ: I reviewed her notes and</p> <p>7 they were consistent with what I say that date.</p> <p>8 BY MS. GUTIERREZ:</p> <p>9 Q Did you review her notes as she took them?</p> <p>10 MR. WARANOWITZ:</p> <p>11 A No, I did not.</p> <p>12 Q You reviewed them after you were all done,</p> <p>13 correct?</p> <p>14 A Yes.</p> <p>15 Q I gather to say you went to visit a number of</p> <p>16 addresses, did you not?</p> <p>17 A Yes.</p> <p>18 Q Thirteen in fact, isn't that correct?</p> <p>19 A Yes.</p> <p>20 Q And that took you a little while, didn't it?</p> <p>21 A Yes.</p> <p>22 Q And you reviewed her notes after you finished</p> <p>23 visiting and performing your origination test at those</p> <p>24 locations, correct?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 175</p> <p>1 A Yes.</p> <p>2 Q But you never tested any of these addresses</p> <p>3 before, did you?</p> <p>4 A No.</p> <p>5 Q You weren't asked ever before by Ms. Murphy</p> <p>6 or anyone to go to that specific list of thirteen</p> <p>7 locations, were you?</p> <p>8 A I'm sorry. Ask that question again.</p> <p>9 Q You were never asked before by Ms. Murphy or</p> <p>10 by anyone to go to that list of thirteen locations,</p> <p>11 were you?</p> <p>12 A No.</p> <p>13 Q Nor to perform tests?</p> <p>14 A No.</p> <p>15 Q And that none of the thirteen locations did</p> <p>16 you, yourself take notes?</p> <p>17 A No, I did not.</p> <p>18 Q You relied on her to take notes, right?</p> <p>19 A Yes.</p> <p>20 Q And then later after you were all done all</p> <p>21 thirteen locations you checked her notes for accuracy,</p> <p>22 correct?</p> <p>23 A Yes.</p> <p>24 Q All right. Now, Crosby on your list you</p> <p>25 listed as also triggering two separate cell sites, did</p>
<p style="text-align: right;">Page 174</p> <p>1 Q And at that time you recalled that her notes</p> <p>2 appeared to be accurate, correct?</p> <p>3 A Yes.</p> <p>4 Q Now, sir, you don't know the cell site names</p> <p>5 and numbers off the top of your head ordinarily, do</p> <p>6 you?</p> <p>7 A No, I do not have them memorized.</p> <p>8 Q And you don't know their addresses, do you?</p> <p>9 A No, I do not work with addresses on a daily</p> <p>10 basis.</p> <p>11 Q So, the answer to my question is no?</p> <p>12 A No.</p> <p>13 Q And, sir, yesterday when you were asked you</p> <p>14 were given a list of addresses and identities of all</p> <p>15 cell sites in the network, were you not?</p> <p>16 A Yes.</p> <p>17 Q When you were asked questions about the</p> <p>18 location you merely looked them up, did you not?</p> <p>19 A Yes.</p> <p>20 Q They didn't refresh your lost memory off</p> <p>21 where those cell sites were, was it?</p> <p>22 A No, I know where the cell sites are from</p> <p>23 experience.</p> <p>24 Q From experience of having tested them before,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 176</p> <p>1 you not?</p> <p>2 A I believe so.</p> <p>3 Q And Crosby, is that a name of a building or a</p> <p>4 street perhaps?</p> <p>5 A Crosby I believe is a street that crosses</p> <p>6 695.</p> <p>7 Q And I70 Park and Ride you listed as</p> <p>8 triggering two separate cell sites depending upon where</p> <p>9 you were at that location, correct?</p> <p>10 A Yes.</p> <p>11 Q And Route 40 at Cooks Lane up to Forest Park</p> <p>12 triggered, in fact, depending again on where you were</p> <p>13 on one of those roads, three separate cell sites, did</p> <p>14 it not?</p> <p>15 A I'd have to review the notes.</p> <p>16 Q Okay. You don't recall that off hand?</p> <p>17 A I don't recall off hand exactly.</p> <p>18 Q Okay. And, sir, it would be fair to say that</p> <p>19 a location triggering three cell sites, not two cell</p> <p>20 sites was unusual even from your list of thirteen</p> <p>21 properties, wasn't it?</p> <p>22 A It is not unusual.</p> <p>23 Q No, but now, sir, in regard to Gelston Park,</p> <p>24 again, you indicated to Ms. Murphy that that location</p> <p>25 would trigger three separate cell sites, did you not?</p>

<p style="text-align: right;">Page 177</p> <p>1 A I recall two cell sites.</p> <p>2 Q Two cell sites. And, sir, as to the only</p> <p>3 other location was Woodlawn High School, correct?</p> <p>4 A I don't remember if there are more at this</p> <p>5 point.</p> <p>6 Q Well, sir, do you recall that Ms. Murphy</p> <p>7 listed thirteen locations that you reported to her</p> <p>8 orally on?</p> <p>9 A Yes.</p> <p>10 Q And are you aware that of the list I just</p> <p>11 read you, that Woodlawn would be the thirteenth</p> <p>12 location?</p> <p>13 A Woodlawn High School?</p> <p>14 Q Yes, sir.</p> <p>15 A Yes.</p> <p>16 Q And, sir, that's the Woodlawn High School</p> <p>17 that we discussed and you looked up on your map book,</p> <p>18 correct?</p> <p>19 A Yes.</p> <p>20 Q And that was a place that Ms. Murphy took</p> <p>21 you, correct?</p> <p>22 A Yes.</p> <p>23 Q On that day, that you don't recall when it</p> <p>24 was?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 179</p> <p>1 Q On each occasion that you visited these</p> <p>2 thirteen locations, correct?</p> <p>3 A Yes.</p> <p>4 Q But you know that because you were there,</p> <p>5 right?</p> <p>6 A Yes.</p> <p>7 Q You knew who had that cell phone in their</p> <p>8 hand, did you not?</p> <p>9 A Which cell phone?</p> <p>10 Q Cell phone you were using, sir.</p> <p>11 A Yes.</p> <p>12 Q Okay. There isn't any other cell phone that</p> <p>13 we don't know about, is there?</p> <p>14 A No.</p> <p>15 MR. URICK: Objection.</p> <p>16 BY MS. GUTIERREZ:</p> <p>17 Q There isn't a hidden cell phone here, is</p> <p>18 there?</p> <p>19 THE COURT: Sustained.</p> <p>20 BY MS. GUTIERREZ:</p> <p>21 Q You didn't conduct the test on any other cell</p> <p>22 phone then your own Erickson that you used at the time,</p> <p>23 correct?</p> <p>24 MR. WARANOWITZ:</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 178</p> <p>1 Q Now, sir, this morning and we discussed again</p> <p>2 that, of course, on the test that you did, you knew</p> <p>3 where you were when you were doing the test, right?</p> <p>4 A Yes.</p> <p>5 Q And you knew where the cell phone was</p> <p>6 physically located that you caused to originate a phone</p> <p>7 call, correct?</p> <p>8 A Yes, the test phone call.</p> <p>9 Q That what you did was punch in a code as you</p> <p>10 said, correct?</p> <p>11 A Yes.</p> <p>12 Q Not a phone number, correct?</p> <p>13 A Not a standard phone number.</p> <p>14 Q And in any event, not a phone number on</p> <p>15 State's Exhibit 34, correct?</p> <p>16 A Yes.</p> <p>17 Q And you knew the location of the cell phone</p> <p>18 that would processing the signal, whatever code you</p> <p>19 entered into it, were it was, right?</p> <p>20 A Yes.</p> <p>21 Q It was in your hand, right?</p> <p>22 A Yes.</p> <p>23 Q And your hand was next to the physical</p> <p>24 presence of Ms. Murphy, was it not?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 180</p> <p>1 Q And, sir, at the time you conducted this test</p> <p>2 you were an engineer for AT&T, were you not?</p> <p>3 A Yes.</p> <p>4 Q You were using an Erickson phone, correct?</p> <p>5 A Yes.</p> <p>6 Q Although you told us that AT&T had issued its</p> <p>7 engineers Nokias, correct?</p> <p>8 A Yes.</p> <p>9 Q You chose the Erickson phone for the test</p> <p>10 that you were going to administer at Ms. Murphy's</p> <p>11 directions, did you not?</p> <p>12 A Yes.</p> <p>13 Q She didn't chose it for you, did she?</p> <p>14 A No she did not.</p> <p>15 Q And you never substituted another phone for</p> <p>16 any of these tests, did you?</p> <p>17 A No.</p> <p>18 Q No, sir, you were asked by Mr. Murphy this</p> <p>19 morning that based on your experience with Nokias in</p> <p>20 your business, whether or not a Nokia would perform</p> <p>21 competently, comparably to the Erickson, correct?</p> <p>22 A Yes.</p> <p>23 Q And you answered that you thought so, that</p> <p>24 was your opinion, right?</p> <p>25 A Yes.</p>

<p style="text-align: right;">Page 181</p> <p>1 Q And by comparably you meant that they'd</p> <p>2 perform exactly the same?</p> <p>3 A They perform almost exactly the same.</p> <p>4 Q And, sir, is that your opinion as to every</p> <p>5 Erickson and every Nokia?</p> <p>6 A Generally.</p> <p>7 Q Generally, ideally, right?</p> <p>8 A Yes.</p> <p>9 Q What you'd expect them to perform, correct?</p> <p>10 A Yes.</p> <p>11 Q But it's fair to say based on your earlier</p> <p>12 statements that phones perform in a different fashion,</p> <p>13 do they not?</p> <p>14 A Yes.</p> <p>15 Q And it would be fair to say that among Nokias</p> <p>16 on any model number, some are very good performers, are</p> <p>17 they not?</p> <p>18 A I am familiar with the Nokia 6160.</p> <p>19 Q Only as to the 6160. Out of the thousands of</p> <p>20 Nokia 6160 some are good performers, are they not?</p> <p>21 A Yes.</p> <p>22 Q Some exceed expectations, do they not?</p> <p>23 A Yes.</p> <p>24 Q And some are mediocre performers, are they</p> <p>25 not?</p>	<p style="text-align: right;">Page 183</p> <p>1 Q And the readings one gets from phones that</p> <p>2 are translated to the computer records are related to</p> <p>3 the phones seeing a signal or not, are they not?</p> <p>4 A I'm sorry, could you ask that again?</p> <p>5 Q A phone either sees a signal or it does not,</p> <p>6 correct?</p> <p>7 A Yes.</p> <p>8 Q And the seeing part of the signal is the</p> <p>9 ability to recognize and communicate with the signal,</p> <p>10 correct?</p> <p>11 A Yes.</p> <p>12 Q So, two phones that are side by side in</p> <p>13 equate distance from a signal being sent from the cell</p> <p>14 phone tower, one could read it and one could not,</p> <p>15 correct?</p> <p>16 A Yes.</p> <p>17 Q And one of them could read one signal that's</p> <p>18 actually closer to both phones, correct?</p> <p>19 A Yes.</p> <p>20 Q And one phone couldn't read that signal</p> <p>21 that's closest, correct?</p> <p>22 A Yes.</p> <p>23 Q In fact, for some reason one phone could see</p> <p>24 a signal that's further away but not see a signal</p> <p>25 that's closer, could it not?</p>
<p style="text-align: right;">Page 182</p> <p>1 A Yes.</p> <p>2 Q And some are poor performers, are they not?</p> <p>3 A Yes.</p> <p>4 Q You couldn't tell which category any Nokia</p> <p>5 6160 fell into by looking at it, could you?</p> <p>6 A No.</p> <p>7 Q You'd have to test that individual phone to</p> <p>8 know what type of performer it was, would you not?</p> <p>9 A Yes.</p> <p>10 Q To find out whether it met expectations and</p> <p>11 performed as it was expected to do, correct?</p> <p>12 A Yes.</p> <p>13 Q Or whether it fell below that line and</p> <p>14 performed poorly.</p> <p>15 A Yes.</p> <p>16 Q Isn't that correct? And part of performance</p> <p>17 in the differences of phones are that some phones are</p> <p>18 able to see some signals and other phones can not,</p> <p>19 isn't that correct?</p> <p>20 A Some phones would be able to see signals at</p> <p>21 different levels than other phones.</p> <p>22 Q And the level at which a phone sees a signal</p> <p>23 you would characterize in terms of strength or</p> <p>24 weakness, would you not?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 184</p> <p>1 A No.</p> <p>2 Q Well, sir, the ability to see a signal is</p> <p>3 part of what you would call its performance, correct?</p> <p>4 A Yes.</p> <p>5 Q Now, sir, in regard to the same thing that</p> <p>6 we're talking about, your test you can only tell us</p> <p>7 that that phone was in your hand because you did it,</p> <p>8 right?</p> <p>9 A Yes.</p> <p>10 Q And you were there, right?</p> <p>11 A Yes.</p> <p>12 Q And Ms. Murphy was there and saw you did it,</p> <p>13 right?</p> <p>14 A Yes.</p> <p>15 Q In regard to the AT&T records, the billing</p> <p>16 records, do you recall those billing records that I</p> <p>17 showed this morning?</p> <p>18 A Yes.</p> <p>19 Q They print out the existence of a call, do</p> <p>20 they not?</p> <p>21 A Yes.</p> <p>22 Q They print out the number the call was made?</p> <p>23 A Yes.</p> <p>24 Q And the records are set up so that it is</p> <p>25 clear that it is the cell phone whose bill it is that</p>

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<p style="text-align: right;">Page 185</p> <p>1 is suppose to have made those calls, correct?</p> <p>2 A Yes.</p> <p>3 Q Okay. And they also print out the time the</p> <p>4 calls were made?</p> <p>5 A Yes.</p> <p>6 Q And the duration of the call?</p> <p>7 A Yes.</p> <p>8 Q And the cell site it triggered, correct?</p> <p>9 A Yes.</p> <p>10 Q Okay. Those billing records can never tell</p> <p>11 you who had the cell phone in their hand when they made</p> <p>12 the call the computer registers, can they?</p> <p>13 A That is true.</p> <p>14 Q And they never attempt to do so, do they?</p> <p>15 A No.</p> <p>16 Q And all the records from your company or</p> <p>17 anywhere else regarding testing a phone, the records</p> <p>18 don't reveal who had the phone, do they?</p> <p>19 A No.</p> <p>20 Q Or who dialed the numbers?</p> <p>21 A No.</p> <p>22 Q Nor who they were next to, if anyone?</p> <p>23 A No.</p> <p>24 Q And they can't tell us the location of</p> <p>25 whoever it was that may have caused a phone call to be</p>	<p style="text-align: right;">Page 187</p> <p>1 Q And their's bill may bill them if they called</p> <p>2 me on their cell phone too, might they not?</p> <p>3 A Yes.</p> <p>4 Q And that would be even if my cell phone</p> <p>5 network billed me, correct?</p> <p>6 A I believe so.</p> <p>7 Q But my cell phone record can only bill the</p> <p>8 number that dialed my number, correct?</p> <p>9 A I don't know.</p> <p>10 Q Well, my cell phone records would list the</p> <p>11 number just like it listed in the records you reviewed</p> <p>12 this morning, would it not?</p> <p>13 MR. URICK: Objection.</p> <p>14 THE COURT: Sustained.</p> <p>15 BY MS. GUTIERREZ:</p> <p>16 Q Now, sir, those records, whatever it is they</p> <p>17 list, can never tell me who actually dialed the number,</p> <p>18 can it?</p> <p>19 MR. URICK: Objection.</p> <p>20 THE COURT: Sustained. This has been asked</p> <p>21 and answered at least twice.</p> <p>22 BY MS. GUTIERREZ:</p> <p>23 Q Sir, if I looked at my records and it</p> <p>24 designated a call, if I recalled making that call then</p> <p>25 I would know I made it, correct?</p>
<p style="text-align: right;">Page 186</p> <p>1 made --</p> <p>2 A No.</p> <p>3 Q From that particular phone, correct?</p> <p>4 A Correct.</p> <p>5 Q Just like your testing on your phone, that</p> <p>6 day that you don't remember, you can only tell us what</p> <p>7 your phone did according to you, right?</p> <p>8 A Correct.</p> <p>9 Q And the records also can't tell us, they</p> <p>10 record, cell phone records record when, if I own a cell</p> <p>11 phone and somebody calls me on my telephone, I don't</p> <p>12 ask them to call me, but they call me anyway, I pay for</p> <p>13 that, don't I?</p> <p>14 A I think so.</p> <p>15 Q If I'm charged by the minute of use, right?</p> <p>16 A I think so.</p> <p>17 Q Even if I don't know the person and it's a</p> <p>18 wrong number, they reach me on my cell phone and I have</p> <p>19 to talk to them for thirty seconds to figure out they</p> <p>20 dialed the wrong number, I still get billed for that</p> <p>21 thirty seconds, do I not?</p> <p>22 A Yes.</p> <p>23 Q Even though I don't know the person who</p> <p>24 originated the call on another unknown phone, correct?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 188</p> <p>1 MR. URICK: Objection.</p> <p>2 THE COURT: Sustained.</p> <p>3 BY MS. GUTIERREZ:</p> <p>4 Q Sir, if I didn't recall making the call and I</p> <p>5 enquired of your network to tell me who made the call</p> <p>6 from my cell phone it couldn't tell me that, could it?</p> <p>7 MR. URICK: Objection.</p> <p>8 THE COURT: Sustained. We've asked and</p> <p>9 answered this line of questioning, please move on.</p> <p>10 BY MS. GUTIERREZ:</p> <p>11 Q Sir, many phones of many makes and models</p> <p>12 have memory capability, do they not?</p> <p>13 MR. WARANOWITZ:</p> <p>14 A Yes.</p> <p>15 Q That record within the phone itself, a list</p> <p>16 of numbers that's called, does it now?</p> <p>17 A Yes.</p> <p>18 Q And that would include Erickson phones that</p> <p>19 have memory capability, correct?</p> <p>20 A Yes.</p> <p>21 Q And Motorola phones that have memory</p> <p>22 capability, correct?</p> <p>23 A Yes.</p> <p>24 Q And Nokia phones that have memory capability,</p> <p>25 correct?</p>

<p style="text-align: right;">Page 189</p> <p>1 A Yes.</p> <p>2 Q If the phone has memory capability if can</p> <p>3 print up or display the identity of numbers that have</p> <p>4 either called that phone or been called by that phone,</p> <p>5 can it not?</p> <p>6 A In most cases, yes.</p> <p>7 Q But that's the limit of what it can tell you,</p> <p>8 isn't that correct?</p> <p>9 A Yes.</p> <p>10 Q It can't tell you who placed the calls, can</p> <p>11 it?</p> <p>12 MR. URICK: Objection.</p> <p>13 THE COURT: Sustained.</p> <p>14 BY MS. GUTIERREZ:</p> <p>15 Q As to the memory capability, sir, can it?</p> <p>16 MR. URICK: Objection.</p> <p>17 THE COURT: Overruled. As the memory</p> <p>18 capabilities of the phone can it tell you who made the</p> <p>19 call?</p> <p>20 MR. WARANOWITZ: No, it can not.</p> <p>21 BY MS. GUTIERREZ:</p> <p>22 Q And it can not tell you as to the memory</p> <p>23 capability the identity of who received the call, can</p> <p>24 it?</p> <p>25 MR. WARANOWITZ:</p>	<p style="text-align: right;">Page 191</p> <p>1 examine the memory of this phone?</p> <p>2 A Before now, no.</p> <p>3 Q And you, of course, did not, did you?</p> <p>4 A I did not.</p> <p>5 MS. GUTIERREZ: Nothing further.</p> <p>6 THE COURT: Anything further from the State?</p> <p>7 MR. URICK: Extremely briefly, Your Honor.</p> <p>8</p> <p>9 REDIRECT EXAMINATION</p> <p>10 BY MR. URICK:</p> <p>11 Q Lets cut to the chase here.</p> <p>12 MS. GUTIERREZ: Objection.</p> <p>13 THE COURT: Mr. Urick, without the added</p> <p>14 commentary you make ask your first question.</p> <p>15 BY MR. URICK:</p> <p>16 Q Cell phone records are computer records</p> <p>17 maintained by the AT&T Wireless Corporation, are they</p> <p>18 not?</p> <p>19 MR. WARANOWITZ:</p> <p>20 A Yes.</p> <p>21 Q They show that a particular number on a</p> <p>22 particular date either dial up or received a call, is</p> <p>23 that correct?</p> <p>24 A Correct.</p> <p>25 Q That that call went through a particular cell</p>
<p style="text-align: right;">Page 190</p> <p>1 A No it can not.</p> <p>2 Q Given what you've described as your</p> <p>3 familiarity with Nokia phones, sir, I'm going to show</p> <p>4 you what's in evidence. Can you tell us if that phone</p> <p>5 has memory capability?</p> <p>6 A I've had a Nokia 6160 and it has memory</p> <p>7 capability.</p> <p>8 Q Your Nokia 6160 has memory capabilities, is</p> <p>9 that correct?</p> <p>10 A The Nokia that I -- the Nokia 6160s that I</p> <p>11 have used all have memory capability.</p> <p>12 Q Well, sir, I'm asking you, can you look at</p> <p>13 this particular 6160 and tell us if it has memory.</p> <p>14 MR. URICK: Objection.</p> <p>15 THE COURT: Overruled. Can you tell if this</p> <p>16 particular exhibit, whether it has memory or not?</p> <p>17 MR. WARANOWITZ: I can not do that because</p> <p>18 the battery is dead.</p> <p>19 BY MS. GUTIERREZ:</p> <p>20 Q Were you never asked to examine its memory</p> <p>21 capabilities which you believe it would have?</p> <p>22 MR. WARANOWITZ:</p> <p>23 A I'm sorry. Could you ask that question</p> <p>24 again?</p> <p>25 Q Were you personally ever asked by anyone to</p>	<p style="text-align: right;">Page 192</p> <p>1 site tower or structure, correct?</p> <p>2 A Correct.</p> <p>3 Q And in order for that to have occurred the</p> <p>4 phone had to be somewhere within the coverage area for</p> <p>5 that particular cell site sector?</p> <p>6 A Correct.</p> <p>7 Q And if somebody, drawing your attention now</p> <p>8 to my ten and eleven, what is now in evidence as</p> <p>9 State's 34. If somebody were in Lincoln Park with an</p> <p>10 AT&T wireless subscriber phone and two calls those</p> <p>11 calls would be recorded in the computer records,</p> <p>12 correct?</p> <p>13 A Correct.</p> <p>14 Q And the would indicate the cell site for</p> <p>15 Lincoln Park, which L689C, is that correct?</p> <p>16 A Correct.</p> <p>17 Q Can I see State's 31 please. Now, Ms.</p> <p>18 Gutierrez showed you the business records for the cell</p> <p>19 phone, showed to you the account billing date. I'd</p> <p>20 like you to look on there and see if you can see a</p> <p>21 listing for the service user.</p> <p>22 A Next to the text service user I see Adrian M.</p> <p>23 Syed.</p> <p>24 Q And does there -- that record indicate when</p> <p>25 the order was placed or the service was started?</p>

<p style="text-align: right;">Page 193</p> <p>1 A I see an order date of January 1st -- January 2 11th, 1999.</p> <p>3 Q Thank you. If I may have the Court's 4 indulgence for just second.</p> <p>5 THE COURT: Certainly.</p> <p>6 MR. URICK: No further questions. Thank you.</p> <p>7 THE COURT: Anything further, Ms. Gutierrez?</p> <p>8 MS. GUTIERREZ: Yes, Your Honor.</p> <p>9</p> <p>10 RE CROSS EXAMINATION</p> <p>11 BY MS. GUTIERREZ:</p> <p>12 Q With regard to, the question you were asked 13 about Lincoln Park, sir.</p> <p>14 MR. WARANOWITZ:</p> <p>15 A Yes.</p> <p>16 Q The cell site that you say would be triggered 17 if one were in Lincoln Park and made a phone call, 18 isn't in Lincoln Park, is it?</p> <p>19 A It is not.</p> <p>20 Q It isn't even near a street that goes through 21 Lincoln Park, is it?</p> <p>22 A No it is not.</p> <p>23 Q And the cell site that you say was triggered, 24 would be triggered from any number of places in the 25 coverage area, correct?</p>	<p style="text-align: right;">Page 195</p> <p>1 Q And shown and told that this is where a body 2 was buried, correct?</p> <p>3 A Correct.</p> <p>4 Q And you barely had to go inside the area 5 bounded by the Jersey walls, correct?</p> <p>6 A I did not go behind the Jersey walls.</p> <p>7 Q Okay. And you didn't go outside of them in 8 anyway?</p> <p>9 A No.</p> <p>10 Q And you caused a phone called to be 11 originated by punching a code, right?</p> <p>12 A Yes.</p> <p>13 Q So, as to that date, the date which you do 14 not currently remember, you can tell us what your phone 15 did, correct?</p> <p>16 A Yes.</p> <p>17 Q But because it wasn't a billable call you 18 have no record of that phone call, correct?</p> <p>19 A No, I do not.</p> <p>20 Q Of the cell site it triggered?</p> <p>21 A No, I do not.</p> <p>22 Q Of the duration of the call?</p> <p>23 A No, I do not.</p> <p>24 Q Of the time that you made that call, correct?</p> <p>25 A No, I do not.</p>
<p style="text-align: right;">Page 194</p> <p>1 A Yes.</p> <p>2 Q If the cell site were functioning properly, 3 correct?</p> <p>4 A Correct.</p> <p>5 Q And if the cell phone were operating at a 6 good level, correct?</p> <p>7 A Correct.</p> <p>8 Q And that could literally thousands of 9 location inside a sector, one of three sectors serviced 10 for coverage by that cell site, correct?</p> <p>11 A Correct.</p> <p>12 Q There is no cell site tower inside of Lincoln 13 Park, is there?</p> <p>14 A No there is not.</p> <p>15 Q And there's no building upon which an antenna 16 that becomes a cell site is erected that is inside 17 Lincoln Park, is there?</p> <p>18 A No.</p> <p>19 Q And there's no water tower pr other structure 20 to which an antenna or antennas are attached, is there?</p> <p>21 A No.</p> <p>22 Q So all you can tell us about Lincoln Park is 23 that you were taken to a location inside there by MS. 24 Murphy, correct?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 196</p> <p>1 Q But you can tell us about it because you did 2 it, right?</p> <p>3 A Yes.</p> <p>4 Q And you told Ms. Murphy about what we did, 5 correct?</p> <p>6 A Yes.</p> <p>7 Q And you relied on her to write down your 8 information as you told it, correct?</p> <p>9 A Yes.</p> <p>10 Q You never wrote down your own information, 11 correct?</p> <p>12 A Correct.</p> <p>13 Q And you never generated any documentation 14 that would show that what you told us?</p> <p>15 MR. URICK: Objection.</p> <p>16 THE COURT: I'm sorry, I didn't hear the end 17 of that question.</p> <p>18 MS. GUTIERREZ: You never doc -- you never 19 generated any documentation to that effect, that which 20 you told us, did you?</p> <p>21 THE COURT: Overruled.</p> <p>22 MR. WARANOWITZ: Correct.</p> <p>23 THE COURT: And the answer is correct.</p> <p>24 BY MS. GUTIERREZ:</p> <p>25 Q And, sir, if you had generated the</p>

<p style="text-align: right;">Page 197</p> <p>1 documentation that would have been generated if it were 2 a billable call being made by the subscriber it still 3 would not have indicated on that documentation who 4 physically you were, would it of? 5 MR. WARANOWITZ: 6 A Can you ask that again? 7 Q If, sir, you were making a billable call as a 8 subscriber standing where you said you were when you 9 were directed to stand by Ms. Murphy and if because you 10 were a subscriber and because you were making a 11 billable call, the call generated records in your 12 network, those records would not have documented where 13 you were standing when Ms. Murphy directed you, would 14 they have? 15 A Correct. 16 Q There wouldn't have been a line or a separate 17 piece of paper that got spit of the computer that said, 18 this subscriber was standing in this location, would it 19 have? 20 A Correct. 21 Q All it would have done is indicated that a 22 certain cell site was triggered, correct? 23 A Correct. 24 Q And based on your expectation for your 25 network that would indicate to you that it was probable</p>	<p style="text-align: right;">Page 199</p> <p>1 expertise, right? 2 A In this situation I would not. 3 Q Well, sir, you said that one of the things 4 that you continue to do within three years after the 5 launch of this network is troubleshoot, isn't that 6 correct? 7 A Yes. 8 Q And that involves answering and trying to 9 figure out when you get customer complaints, isn't that 10 correct? 11 A Yes. 12 Q And all of the time that you're doing this 13 since the launch of this network you have received, 14 have you not, troubleshooting complaints involving 15 customers who's ordinary location would be in one of 16 the catchment areas near or next to Govins Manor, would 17 it not? 18 A I'm sorry, can you say that louder. 19 Q Sir, all of the complaints that you have 20 troubleshooted in the three years since the launch of 21 the network, that would include complaints from 22 customers whose primary location, specifically, their 23 place of residence included being within the catchment 24 area of the same cell site on top of the Govins Manor 25 apartment building, would it not?</p>
<p style="text-align: right;">Page 198</p> <p>1 that the cell phone, at least, was within the coverage 2 area designated, is that correct? 3 A Yes. 4 Q And the coverage area for the cell site that 5 you tell us was generated by your making a call from 6 Lincoln Park is located near the intersection of Forest 7 Park Avenue and Windsor Mill Road, is it not? 8 A Yes. 9 Q And it includes at least three separate 10 apartment complexes that border Govins Manor, does it 11 not? 12 A I don't know how many buildings there are. 13 Q You're aware several buildings do border it, 14 are you not? 15 A I don't recall. 16 Q And you of course didn't investigate, did 17 you? 18 A No. 19 Q You would agree that if there were apartment 20 buildings that border Govins Manor, that that would 21 involve a significant amount of people in close 22 proximity to that cell site, would you not? 23 A I don't normally take apartment buildings and 24 population densities into my design. 25 Q Okay. Because that's outside of your</p>	<p style="text-align: right;">Page 200</p> <p>1 A I don't recall any specific customer 2 complaints from -- 3 Q And, sir, -- 4 A That neighborhood. 5 Q Well, sir, your records keep track of that, 6 do they not? 7 A We have customer complaint records, yes. 8 Q And so if there were customers that had made 9 complaints about your networks performance, your 10 company records would be looked at, would they not? 11 MR. URICK: Objection. 12 THE COURT: Overruled. 13 MR. WARANOWITZ: Yes. 14 BY MS. GUTIERREZ: 15 Q And, sir, in regard to your preparation for 16 this cases's testimony were you asked to see how 17 trouble free or troubled that cell site location was? 18 MR. WARANOWITZ: 19 A No. 20 Q And did you do so? 21 A No. 22 THE COURT: Nothing. 23 MS. GUTIERREZ: No. 24 THE COURT: Very well. Anything further? 25 MR. URICK: No, thank you.</p>

<p style="text-align: right;">Page 201</p> <p>1 THE COURT: May this witness be excused at 2 this time, Mr. Urick? 3 MR. URICK: At this time. 4 MS. GUTIERREZ: Yes, Your Honor. 5 THE COURT: And released from the summons of 6 subpoenas? 7 MR. URICK: Not from the State, Your Honor. 8 THE COURT: Not for the State? 9 MR. URICK: No. 10 THE COURT: And for Ms. Gutierrez? 11 MS. GUTIERREZ: I don't believe I issued a 12 subpoena, I'm not sure. If I did, yes he's released. 13 THE COURT: All right. So, you may need to 14 call him again, is that what you're saying? 15 MR. URICK: Yeah, I just -- I don't know what 16 I might -- if anything in rebuttal, so I don't want to 17 release this witness. 18 THE COURT: Very well. I must advise you, 19 sir, that you may not discuss your testimony with 20 anyone. You must leave this courtroom at this time, 21 you are a sequestered witness and based on what Mr. 22 Urick is saying you may be called again. So, since the 23 State would be calling you, please keep in contact with 24 the State's attorney's office to find out when you'll 25 be called. May he be released today? Will you need</p>	<p style="text-align: right;">Page 203</p> <p>1 because that's the page that you had him reference. 2 MS. GUTIERREZ: Well, I object to that. That 3 marking was not made at the time of questioning. I'd 4 object. 5 THE COURT: No, I'm not asking that any 6 markings be made on the map, but it is going to be 7 marked as an exhibit at my request and the page that 8 was referenced by the witness at the time the witness 9 testified will be noted for the record and I'm asking 10 the clerk to do that. 11 MS. GUTIERREZ: I'm not clear, Judge, if I 12 did not do so I would move that exhibit into evidence. 13 THE COURT: Any objection to that Court's 14 exhibit being made part of the evidence? 15 MR. URICK: No. 16 THE COURT: Very well. Let it be admitted. 17 All right. And, sir, you may then go. 18 MR. WARANOWITZ: Pages 32, 33 and 34. 19 THE COURT: Very well. 20 MR. WARANOWITZ: Let me make sure. 21 THE COURT: For the record the witness is 22 flipping through to make sure there are no personal 23 papers belonging to him contained in the book. 24 MR. WARANOWITZ: Is this the Defense? 25 THE COURT: The was the Court's.</p>
<p style="text-align: right;">Page 202</p> <p>1 him back today? 2 MR. URICK: No, no. 3 THE COURT: So, he can be released today? 4 MR. URICK: Yeah. May I speak to him for 5 just a moment as he walks out? 6 THE COURT: You're going to let him know in 7 terms of scheduling? 8 MR. URICK: Yeah. 9 THE COURT: Very well, you may speak to Mr. 10 Urick with regard to any scheduling. Thank you very 11 much, sir. 12 MR. WARANOWITZ: Thank you, Your Honor. 13 THE COURT: Yes. 14 MR. WARANOWITZ: Does the Court need 15 information (inaudible) 16 THE COURT: Those items that have been marked 17 must remain. 18 MR. WARANOWITZ: Should I mark the pages in 19 here that I looked at? 20 THE COURT: Yes. 21 MS. GUTIERREZ: Your Honor, I'm going to 22 object to the witness now marking the exhibit. 23 THE COURT: No, these were the exhibits that 24 were already marked. He's just showing the clerk which 25 page it was that he opened and I ask that he do that</p>	<p style="text-align: right;">Page 204</p> <p>1 MR. WARANOWITZ: It is Court's. 2 THE COURT: Court's exhibit because I asked 3 that it be marked and I'd asked that it be noted and 4 now the Defense is asking that it moved in, so you can 5 make it Defense number -- what would be the Defense 6 next number? 7 MS. GUTIERREZ: I think it's one, Judge, but 8 I'm not. 9 THE COURT: Defense one. 10 (Defendant's Two was received 11 into evidence.) 12 MS. GUTIERREZ: Another -- 13 THE COURT: I'm not sure whether or not it 14 is. 15 MS. GUTIERREZ: I think this is the first 16 one. 17 THE COURT: You are excused at this time. 18 Thank you very much, sir. 19 THE CLERK: The medical (inaudible)? 20 MS. GUTIERREZ: Oh, yeah, so this would be 21 Two, yes. 22 THE COURT: Defense Two. All right. Are we 23 need in those charts to remain where they are? 24 MR. URICK: No, I believe that can be put 25 back.</p>