

**Excerpt: Post-Conviction Hearing
Testimony from Special Agent Chad
Fitzgerald, part 1
(2/5/2016) (Pages 165-209)**

THE EVIDENCE

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1 seated, everyone. And we'll wait for -- thank you.

2 (At 2:28:31 p.m., witness entered courtroom.)

3 THE COURT: And it's my understanding, Mr.
4 Vignarajah, that the State does have a request
5 procedurally; is that correct?

6 MR. VIGNARAJAH: We do, Your Honor. At this
7 time the State would ask to call Special Agent Chad --

8 THE COURT: Well, but the request is that we --

9 MR. VIGNARAJAH: That's right. Suspend the case
10 for a moment to accommodate Special Agent Fitzgerald's
11 schedule and to call him at this time for direct and cross
12 examination.

13 THE COURT: Okay, and any objection, Mr. Brown,
14 in proceeding in that fashion?

15 MR. BROWN: No, Your Honor.

16 THE COURT: All right, so we will. So we will
17 suspend with the Petitioner's case and the State is
18 prepared to start its case.

19 MR. VIGNARAJAH: We certainly are, Your Honor.
20 At this time the State would call Special Agent
21 Fitzgerald.

22 THE CLERK: Step over to the witness stand,
23 remain standing and raise your right hand. Do you hereby
24 solemnly declare or affirm under the penalties of perjury
25 that the testimony you shall give shall be the truth, the

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1 whole truth and nothing but the truth?

2 SPECIAL AGENT FITZGERALD: I do.

3 THE CLERK: You may lower your hand. Please be
4 seated. And please state your full name and professional
5 affiliation for the record.

6 SPECIAL AGENT FITZGERALD: Chad Fitzgerald,
7 Federal Bureau of Investigation.

8 THE CLERK: Thank you. He's been sworn.

9 THE COURT: Thank you.

10 MR. VIGNARAJAH: Thank you, Your Honor.

11 Good afternoon, Special Agent Fitzgerald. How
12 are you?

13 SPECIAL AGENT FITZGERALD: Hi, good.

14 MR. VIGNARAJAH: The Court and Defense Counsel
15 have been kind enough to accommodate your schedule. Thank
16 you for being here from the State.

17 SPECIAL AGENT CHAD FITZGERALD

18 (A witness produced on call by the State, having
19 first been duly sworn according to law, takes the witness
20 stand and testifies as follows:)

21 DIRECT EXAMINATION

22 BY MR. VIGNARAJAH:

23 Q With whom are you currently employed?

24 A The Federal Bureau of Investigation, or the FBI.

25 Q And how long have you been with the FBI?

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1 A Nineteen years.

2 Q When did you begin with the FBI?

3 A '96.

4 Q And what were you doing before that?

5 A I was an engineer.

6 Q What kind of an engineer?

7 A I worked for Hughes Aircraft Company doing
8 circuit design and for systems that communicate to
9 satellites, like command and control of satellites.

10 Q How long were you doing that?

11 A A couple years.

12 Q And when you got to the FBI what kind of work
13 did you do?

14 A I started out working -- well, when I first got
15 there I did applicants, the very first part just applicant
16 background checks. After that, soon after that started I
17 was assigned to the violent crimes squad and have been
18 there or attached to a violent crimes squad ever since.
19 And we're responsible for investigating armed robberies,
20 bank robberies, fugitive cases, kidnappings.

21 Q And I'm going to take you back for a moment to
22 your work as an engineer. You've indicated that you've
23 worked on communications systems of some kind. Can you
24 elaborate on that for the Court, please?

25 A For all the communications satellites that are

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1 in orbit they have to -- there has to be some type of
2 communication, see the life of the satellite, get
3 readings, telemetry from the satellites, and we designed
4 the box that would do that.

5 Q And with respect to your work since you joined
6 the FBI, how many hours of training have you had to do
7 with communications and/or cell phone technology?

8 A Since getting in the FBI?

9 Q Since joining the FBI.

10 A I mean it's weeks, you know, several weeks that
11 would go into months. It was like, for example I flew
12 from Denver here. I probably did 30, 40 weeks or 30, 40
13 hours of training this week with all the cell phone
14 providers this week alone.

15 Q And when was that? Was that scheduled before
16 you were contacted about your potential work in this case?

17 A Right. It's been scheduled for -- it's a
18 mandatory training for our unit that's been scheduled for
19 months.

20 Q And are there mandatory trainings on a regular
21 basis with the FBI in relation to the work that you do?

22 A In our unit, yes.

23 Q And what is the name or nature of your unit?

24 A I'm on the Cellular Analysis Survey Team, or
25 CAST.

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1 Q And what does that team do?

2 A We're responsible -- we're trying to -- we were
3 created to help analyze all the different types of phone
4 records and kind of be that bridge between receiving the
5 records, getting the records, and the engineers in
6 explaining it not only to investigators, but to juries and
7 prosecutors.

8 Q And this is a team within the Federal Bureau of
9 Investigation?

10 A That's correct. I helped start the team.

11 Q And when was that?

12 A We were an ad hoc unit, just a bunch of guys
13 doing cell phone analysis. We probably started linking up
14 with each other back in 2006 time frame. I think we
15 became like an initiative not too far after that and then
16 an official unit within the FBI right around 2010 time
17 frame.

18 Q And back in 1996, 1997 what kind of work were
19 you doing?

20 A In '97 was when I started on the bank robbery
21 squad.

22 Q Okay. And were you doing work related to cell
23 phone analysis back then?

24 A Yes. I would do a lot of phone analysis for our
25 squad. I mean the first time I definitely remember doing

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1 something related -- we did a lot of land line stuff back
2 then also, but the first time I specifically remember
3 dealing with cell phone or a tower dump was in '98 was the
4 first time.

5 Q 1998?

6 A Yes.

7 Q That was when the field of forensic analysis of
8 cell phones was beginning; is that about right?

9 A I don't know when it began but that's when I
10 began.

11 Q And have you been doing work related to that
12 ever since?

13 A Of course, yes.

14 Q Now have you done analyses in criminal cases
15 over the course of your time with the FBI exclusively,
16 criminal cases that is?

17 A Oh, no.

18 Q What other kind of cases have you done?

19 A Terrorism cases.

20 Q And in the work that you've done, how many cases
21 approximately have you done a cell phone analysis of your
22 own?

23 A I work with phone records every single day,
24 usually multiple sets of phone records so it --

25 Q For the last 19 years?

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1 A I can't say every day for the last 19 years, but
2 ever since I've been involved with CAST I'd say I probably
3 look at phone records every single day assuming I'm not
4 doing firearms or something like that.

5 Q And have you testified as an expert in the field
6 of cellular forensics and cell phone analysis and cell
7 tower analysis?

8 A Yes.

9 Q And how many times have you been certified as an
10 expert in state or federal court?

11 A I don't even know a number, but it's definitely
12 more than 30, probably close to 50.

13 Q And how many have you done, approximately, in
14 2015?

15 THE COURT: How many times he's been found to be
16 an expert?

17 MR. VIGNARAJAH: Yes. Forgive me, Your Honor.
18 How many times have you been designated an expert in those
19 fields, approximately, in 2015?

20 SPECIAL AGENT FITZGERALD: Just taking a guess
21 I'd say right around a dozen, maybe more.

22 BY MR. VIGNARAJAH:

23 Q And have you been involved in cases that have
24 gotten a significant amount of media attention?

25 A Yes.

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1 Q Could you tell the Court any examples of that
2 recently?

3 A Well, most recent, well, about a year ago I
4 believe it was, I went to the Boston Marathon bombing
5 trial. I've done death penalty cases out in California.
6 I've done death penalty cases in the State of Georgia.

7 Q And Agent Fitzgerald, is it fair to say that
8 you've also done work on cases that don't receive as much
9 attention from the public and from the press?

10 A That would be the bulk of the work, yes.

11 Q Now in this particular case are you being paid
12 by the State of Maryland for your testimony?

13 A No. Our unit is budgeted and maintained within
14 the FBI.

15 Q And did the State of Maryland approach the FBI
16 or did the FBI approach the State of Maryland to engage on
17 this particular case?

18 A I believe the State of Maryland talked to one of
19 our CAST members which then ended up with me.

20 Q And you said you've done a number of analyses of
21 your own. Have you also performed peer reviews of other
22 analyses by other cell phone experts?

23 A Right. All of our work gets peer reviewed
24 before it goes to trial, so yes that's part of the job.

25 Q How many of those have you done?

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1 A They kind of come and go, so -- but, you know,
2 on average maybe one or two a month.

3 Q And have you taught any classes or taught any
4 seminars related to this work?

5 A Yes.

6 Q How many and what kind?

7 A I mean I probably did four or five last year
8 each with a hundred -- well, each class has 50 people; we
9 usually do two classes a week, a hundred a week. I mean,
10 and I probably went to about four or five of those plus I
11 help train and certify the new CAST members that are
12 coming on board.

13 But I think our unit over time since it's been
14 in existence we've trained more than 6,000 people not only
15 in the United States but overseas also.

16 Q And in order to get a certification under your
17 program what types of things does an agent need to do?

18 A Just our unit alone puts on four weeks of
19 training, you know, broken up by two 2-week sessions and
20 that includes training from all the providers. They fly
21 into our class and provide training both from the
22 engineering side as well as the law enforcement relations
23 groups or the subpoena compliance groups.

24 And in addition to that there's a couple other
25 weeks and on the job training that a new member would have

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1 to go through before they get certified by CAST.

2 (Fitzgerald CV marked for identification as State's
3 Exhibit No. 7.)

4 MR. VIGNARAJAH: I'm going to show the witness
5 what's been marked for identification as State's Exhibit
6 7.

7 Do you recognize that, Special Agent Fitzgerald?

8 SPECIAL AGENT FITZGERALD: Yes.

9 BY MR. VIGNARAJAH:

10 Q What is that?

11 A This is my CV.

12 MR. VIGNARAJAH: Your Honor, at this time I
13 would just move State's Exhibit 7 into evidence.

14 THE COURT: Any objection to its introduction?

15 MR. BROWN: No objection.

16 THE COURT: So admitted then as State's Exhibit
17 Number 7.

18 (Fitzgerald CV received into evidence as State's
19 Exhibit No. 7.)

20 MR. VIGNARAJAH: Your Honor, at this time the
21 State would ask that the Court recognize Agent Fitzgerald
22 as an expert witness in cellular forensics as well as cell
23 tower analysis or cellular telephone towers.

24 SPECIAL AGENT FITZGERALD: Yeah. I'm not a
25 forensics guy like traditional computer forensics.

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1 THE COURT: So the motion again then is --

2 MR. VIGNARAJAH: An expert witness in cellular
3 telephone tower analysis, cellular telephone analysis.

4 THE COURT: Any voir dire?

5 MR. BROWN: No, Your Honor.

6 THE COURT: Any objection?

7 MR. BROWN: Just to the forensics part, but I
8 think that was withdrawn.

9 THE COURT: Right. That motion was changed.

10 MR. BROWN: Okay.

11 THE COURT: The Court will grant the motion and
12 the Court does find that Agent Fitzgerald is in fact an
13 expert in the field of cell tower analysis.

14 MR. VIGNARAJAH: May I proceed, Your Honor?

15 THE COURT: You may.

16 BY MR. VIGNARAJAH:

17 Q Agent Fitzgerald, just very briefly, are you
18 familiar with an individual named Gerald Grant?

19 A Yes.

20 Q And how are you familiar with him?

21 A I met him outside during the lunch break and
22 I've heard his name before too.

23 Q Have you ever testified opposite him in any
24 other cases?

25 A I think he was at the Boston Marathon bombing,

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1 if I remember correctly.

2 Q And have you had an opportunity to review his CV
3 and certifications in the related fields?

4 A I saw it back then during that trial.

5 Q Okay. And are you familiar with a certification
6 referred to as the Paraben Corporate Mobile Training Level
7 3 - GPS & Cell Site Analysis.

8 A I've done some research on that class and
9 searched for it online, yes.

10 Q And how about the Cyber Forensics 360 Cellular
11 Triangulation; are you familiar with that?

12 A I've seen it just like the description of the
13 course online.

14 Q Were there any other items besides those two on
15 his resume that indicated trainings related to cellular
16 telephone analysis or cellular telephone tower analysis?

17 A No. I couldn't get too many details on the
18 second one, but on the first one it was pay right around
19 \$300 to watch ten hours of a video. It's like online
20 videos like YouTube.

21 Q And have you reviewed his testimony in this
22 case?

23 A I watched some of it this morning, yes.

24 Q And you and I have spoken on the phone and in
25 person in preparation for your testimony, correct?

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1 A Yes.

2 Q And approximately in total how much time have we
3 spoken in preparation for your testimony?

4 A During trial other than the initial like
5 introduction call about a month ago I'd say maybe two
6 hours.

7 Q And today before you took the stand how much
8 time did we spend preparing?

9 A Twenty minutes maybe.

10 Q Now Special Agent Fitzgerald, in those initial
11 conversations the State did provide you with a number of
12 documents related to this particular case, correct?

13 A Yes.

14 Q Do you recall that we sent you all of the
15 transmissions and all of the cell phone records that were
16 in the State's file as well as in the Defense file?

17 A Yes. I got a stack of different types of
18 reports and certification cover sheets and what not.

19 (Enlargements marked for identification as State's
20 Exhibit Nos. 4-6.)

21 MR. VIGNARAJAH: Okay. And these included
22 reports that -- and for a moment, Your Honor, if I could
23 just ask that State's Exhibits 4, 5 and 6 be entered into
24 evidence. Mr. Brown and I have discussed the underlying
25 documents are already in evidence. These are enlargements

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1 of specific pages.

2 THE COURT: Okay. But it may be helpful for the
3 Court's benefit if they're in which binder, or is that --

4 MR. VIGNARAJAH: I certainly can tell you that
5 they're in Binder 2 near the end, if that would -- the
6 last half.

7 THE COURT: Of B?

8 MR. VIGNARAJAH: In B.

9 THE COURT: All right.

10 MR. VIGNARAJAH: Thank you, Your Honor.

11 THE COURT: All right. Well, and there's no
12 objection because I assume what for our purposes at least
13 today we can use these, but there's no objection from
14 Petitioner's Counsel?

15 MR. BROWN: I'm sorry. No, Your Honor. Those
16 are already in evidence.

17 THE COURT: Okay. But it would be helpful to me
18 that sometime before we close today that you're able to
19 relate those back to the specific pages in Binder B.

20 (Enlargements received into evidence as State's
21 Exhibit Nos. 4-6.)

22 MR. VIGNARAJAH: We certainly will, Your Honor.

23 Agent Fitzgerald, looking first at what's been
24 entered into evidence as State's Exhibit 4, did you review
25 a number of pages that were fax cover sheets that had a

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1 key at the bottom of the fax cover sheet that resembled
2 State's Exhibit 4?

3 SPECIAL AGENT FITZGERALD: Yes.

4 BY MR. VIGNARAJAH:

5 Q And did you receive a number of documents that
6 resembled State's Exhibit 5 with blacked out columns?

7 A Yes.

8 Q And did you receive a number of documents that
9 resembled State's Exhibit 6 without unredacted columns in
10 these four fields, these four columns?

11 A Yes.

12 Q And in the industry what are these referred to
13 as?

14 A Call detail records or CDRs.

15 Q And in the industry what are these referred to
16 as?

17 A Well, with the blacked out columns they're which
18 is what they used to do back in that time frame to redact
19 it just with a black marker that would just pretty much be
20 toll records or, you know, who's calling who, dates and
21 times.

22 Q Okay. And back then were you working with cell
23 phone records?

24 A Yes.

25 Q Do you recall seeing records like this with

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1 blacked out columns?

2 A Oh, absolutely. Yes.

3 Q And why did they have to use a marker back then
4 to black them out?

5 A I guess they didn't have any way to redact it
6 otherwise. Like there were some companies that -- well, I
7 don't know in the '90s. But there were some companies in
8 the 2000s that could when they ran their queries on the
9 system that column would be redacted automatically.

10 MR. VIGNARAJAH: And Court's indulgence.

11 When you reviewed the transmissions back and
12 forth between the detectives and the agents, I'm sorry --
13 between the detectives and the company and the company
14 back to the agents, did you notice that a number of these
15 documents had a fax cover sheet from AT&T?

16 SPECIAL AGENT FITZGERALD: Yeah. There was
17 multiple fax cover sheets. Since I was just doing the
18 analysis I didn't pay too much attention to, you know, who
19 was it going to and who it was coming from or what they
20 were writing on it or the dates.

21 BY MR. VIGNARAJAH:

22 Q But you did have an opportunity to take a look
23 at the fax cover sheet itself, correct?

24 A Right. I think Baltimore Police, the detective,
25 used the same fax cover sheet just like the AT&T person

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1 used the same fax cover sheet.

2 Q And based on your review of the documents did it
3 matter what accompanied the document or was it just the
4 generic fax cover sheet that came from AT&T?

5 A I mean, I don't know what the person was
6 thinking, but it just looked like, like I keep a stack of
7 fax cover sheets, you know, from the FBI with my name
8 already filled out and phone number and I fill in who it
9 goes to and that's what I use for my fax cover sheet.

10 Q Very good. Did you also have an opportunity to
11 review, in addition to the documents that were in the
12 Defense file and the documents that were in the State's
13 file did you have an opportunity to review the testimony
14 of Abe Waranowitz from the original trial?

15 A I read the transcripts, yes.

16 Q Did you read the transcript of the direct
17 examination as well as the cross examination?

18 A I did.

19 Q And based on your review of those items did you
20 then conduct an analysis of your own as to the veracity
21 and integrity of the cell phone records that were used at
22 the 1999 -- excuse me, the 2000 trial of Mr. Adnan Syed?

23 A Yes. I took notes while I was reading the
24 transcript and actually started plotting out what was
25 being discussed as best I could.

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1 Q And have you formed an opinion as to whether the
2 conclusions that were presented by Mr. Waranowitz to a
3 jury in 2000 were accurate and fair? Have you formed an
4 opinion on that?

5 A Yes.

6 Q And what is your opinion?

7 A I think he did a very good, fairly thorough, you
8 know, pretty much about as thorough as you can get short
9 of one little step, maybe half a step. And, you know,
10 especially for 1999 I thought it was good.

11 Q And with respect to the tower locations that
12 were linked to particular phone calls on January 13th, did
13 you come to the conclusion that the same tower locations
14 would have been used by Mr. Syed's phone corresponding to
15 his particular calls?

16 A Well, I was able to not only kind of follow
17 along in a transcript and, you know, plot things on a map
18 based on what was being said, later, I think earlier this
19 week actually, I got the actual cell tower list that was
20 included in somebody's file, I guess the State's file.

21 And I went back and verified the information
22 that I had written down while reading the transcript and
23 it looked, it was very reasonable. There were a couple
24 addresses that they just mentioned it by name of the
25 residents like the person's name, and I didn't have the

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1 actual address. So there were a few things that I
2 couldn't verify that was talked about in the case.

3 Q And you didn't know the address of Kristi
4 Vincent or something like that?

5 A I think the lady's name, the one that I wanted
6 to get the address for that I didn't know was, I think it
7 started with a P, Pusateri or something to that effect.

8 Q Okay. And the cell tower comparison list, did
9 it look something like this? I'm referring to B0460.

10 A Yes. This is it.

11 Q And it wrote -- had Maryland cell sites at the
12 top? This B0460, it had said Maryland cell sites at the
13 top?

14 A Yes, but they include cell sites not only in
15 Maryland but D.C., Virginia.

16 Q It's a group of them?

17 A Yes. It looked like two switches to me.

18 Q So based on your independent analysis of the
19 call detail records that were presented at the trial, did
20 you find that any of the tower locations with effect to
21 any of the phone calls was improperly or inaccurately
22 represented by Mr. Waranowitz?

23 A I did not.

24 Q Not a single one?

25 A No.

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1 Q Incoming calls, outgoing calls, any distinction
2 between them in his analysis?

3 A No. I didn't see any errors as far as the cell
4 site is.

5 Q With respect to what your testimony would be or
6 would have been as to what towers were being used by which
7 phone call corresponding to Mr. Syed's January 13th call,
8 do you agree to the same conclusions today?

9 A Yes.

10 Q Now Special Agent Fitzgerald, I want to ask you
11 if you can perhaps help understand what this key on the
12 AT&T fax cover sheet refers to. Have you had an
13 opportunity to take a look at that?

14 A I did, yes.

15 Q And in your expert -- excuse me. Based on your
16 work in 1999, based on your experience since then have you
17 formed an opinion as to what this refers to?

18 A Yes.

19 Q And does this key refer to information found on
20 a call detail record?

21 A Not the one on the right. No, I do not believe
22 it refers to that.

23 Q Does it refer in your expert opinion to the
24 report to your left?

25 A Yes.

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1 MR. VIGNARAJAH: With the Court's permission,
2 Your Honor, I'm just going to ask the agent to come up
3 here and identify specifically what on the legend leads
4 him to that conclusion.

5 THE COURT: You may.

6 MR. VIGNARAJAH: Agent. I'm going to give you
7 some highlighters if that's okay.

8 SPECIAL AGENT FITZGERALD: All right.

9 BY MR. VIGNARAJAH:

10 Q Do you see a reference to type codes on the key
11 or the legend on Exhibit 4?

12 A Yes.

13 Q Would you go ahead and highlight where it says
14 "type codes are defined as" and --

15 A Do you want me to highlight the type codes?

16 Q Yes, please. And for the record, you're using a
17 yellow highlighter, correct?

18 A Yes.

19 Q Okay. And on the call detail records could you
20 use your yellow highlighter to highlight any columns or
21 any references to type codes? Excuse me. No, on the call
22 detail records, on the State's Exhibit 6, starting with
23 that.

24 A There's not a type code column.

25 Q So there's nothing to highlight on this

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1 document?

2 A No.

3 Q What about on State's Exhibit 5?

4 A Yes, there's a column.

5 Q Could you use -- can I give you a different
6 yellow highlighter? Could you highlight that column?

7 SPECIAL AGENT FITZGERALD: Not showing up too
8 good.

9 THE COURT: I'm not sure whether I can see it.

10 MR. VIGNARAJAH: Forgive me, Your Honor, it's
11 the letters?

12 SPECIAL AGENT FITZGERALD: (Inaudible)
13 highlighter.

14 THE COURT: Thank you.

15 MR. VIGNARAJAH: Your Honor, can you see that?

16 THE COURT: Yes, I can.

17 BY MR. VIGNARAJAH:

18 Q I will now give you a blue highlighter and ask
19 you to highlight the first sentence that starts "when SP
20 is noted in the type column." You can highlight that
21 whole sentence, actually. And could you read that for the
22 record?

23 A When SP is noted in the type column and then the
24 dialed number column shows a number sign and the target
25 phone number, for instance, number sign 718222555 -- oh,

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1 you want -- this is an incoming call that was not answered
2 and then forwarded to voice mail.

3 Q And on the State's Exhibit 6 which you refer to
4 as a call detail record, do you see anything that
5 corresponds to SP or type or any of that?

6 A The only thing I see is the number sign with the
7 phone number is there but there's no SP or type column.

8 Q Okay. Where do you see the number sign?

9 A Right here.

10 Q Just that one call?

11 A Right.

12 MR. VIGNARAJAH: And how about on the State's
13 Exhibit 7 -- excuse me, State's Exhibit 5?

14 Forgive me, Your Honor, State's Exhibit 5.

15 SPECIAL AGENT FITZGERALD: Right. There's
16 several types SP.

17 BY MR. VIGNARAJAH:

18 Q Okay. Could you -- and there are any
19 indications of hashtag or a number sign and the target
20 phone number --

21 A Yes.

22 Q -- corresponding to those SPs?

23 A Yes.

24 Q Okay. And could you highlight those in blue?

25 A All right.

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1 Q I'm going to give you an orange highlighter to
2 highlight the next sentence on this report that says "the
3 preceding row which is incoming call," could you read that
4 out for the record and also highlight it in orange?

5 A The preceding row which is an incoming call will
6 also indicate CFO in the feature column.

7 Q Could you highlight that in orange, please? And
8 could you indicate whether or not you see any feature
9 columns or CFOs in State's Exhibit 6 to your right over
10 here?

11 A There's no feature column.

12 Q And there are any references to CFO?

13 A No.

14 Q What about on State's Exhibit 5?

15 A Yes, there is a feature (inaudible).

16 Q Could you go ahead and highlight that? I'm now
17 going to ask you to jump to the bottom for a moment. The
18 last line reads "black out areas on this report, if any,
19 are cell site locations which need a court order signed by
20 a judge in order for us to provide" -- do you see that?

21 A Yes.

22 Q Could you highlight that in pink? And do you
23 see any blacked out columns in State's Exhibit 6 to your
24 right?

25 A No.

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1 Q On State's Exhibit 5 to your left do you see any
2 blacked out columns and, if so, could you highlight them
3 with your pink highlighter or draw a box around them?

4 And Agent Fitzgerald, I'm going to give you a
5 green highlighter which is our last color, if you could
6 highlight the sentence that reads outgoing calls only and
7 read that aloud for the record?

8 A It says "outgoing calls only are reliable for
9 location status. Any incoming calls will not be
10 considered reliable information for locations."

11 Q And could you highlight that please? And do you
12 see any columns to your right that include title location
13 or location information?

14 A No. There is nothing about location on that
15 call detail.

16 Q And what about State's Exhibit 5, the exhibit to
17 your left? Do you see anything that would correspond to
18 that reference in the key?

19 A Yes. There's a location column.

20 Q Could you highlight that column? Now could you
21 explain to the Court how it is that you concluded that the
22 key on the AT&T fax cover sheet that accompanied all the
23 transmissions from AT&T in this case referred to the
24 report on the left titled Subscriber Activity as opposed
25 to what you refer to as a call detail record?

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1 A So as you can see, there's everything that's
2 talked about in that key can be highlighted on State's
3 Exhibit 5. The only thing, there's nothing highlighted on
4 the call detail record, State's Exhibit 6. You see a
5 phone number that's, you know, the hashtag. That's all
6 you see.

7 Q And why don't we, just too in blue highlight
8 that single hashtag.

9 A You only want the 13th?

10 Q Yeah, that's fine. All of them.

11 A I think that's it.

12 Q Agent Fitzgerald, does the presence of a couple
13 of hashtags on the call detail records change your
14 conclusion that the key refers to State's Exhibit 5 and
15 not State's Exhibit 6?

16 A No.

17 Q Now you had an opportunity to review not just
18 the pages that were introduced at trial but also the full
19 document that was received from AT&T back in 1999,
20 correct?

21 A That's correct.

22 MR. VIGNARAJAH: Mr., Agent Fitzgerald, excuse
23 me, you can return to your seat with the Court's
24 permission.

25 You've had an opportunity to review the full

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1 document; is that right?

2 SPECIAL AGENT FITZGERALD: Yes.

3 BY MR. VIGNARAJAH:

4 Q And have you seen the last page of the report
5 that says Subscriber Activity at the top?

6 A Yes.

7 Q Does that change your conclusion that the key
8 refers to State's Exhibit 5 as opposed to State's Exhibit
9 6?

10 A No.

11 Q Why not?

12 A Just reading, I mean it seems to me it's fairly
13 logical. You read the key, you can match everything up
14 that's being talked about onto the report, the State's
15 Exhibit 5. You can't match up what's being talked about
16 on anything really on 6.

17 Q Now have you had an opportunity to talk with
18 individuals that work for the cell phone companies, AT&T
19 at the time as well as more recently, as to your
20 conclusion?

21 A Yes. In the last month I've talked to my
22 contacts at AT&T in the Subpoena Compliance Group. They
23 in turn found people that were working back then to kind
24 of review it in their group at AT&T as well as I with
25 AT&T, like I say, earlier this week and we briefly

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1 discussed it with the guys that showed up there too.

2 Q And is your conclusion to the Court consistent
3 with your conversations with those individuals at AT&T
4 both more recently as well as individuals who were working
5 at AT&T in 1999?

6 A Well, to be fair I didn't specifically say, you
7 know, let's go through the entire subscriber activity
8 report key and compare it to this, we just talked why that
9 sentence would have been on the subscriber activity report
10 and kind of logically why we thought it would be on there.

11 Q Was anything that they shared with you
12 inconsistent with your conclusion?

13 A No.

14 Q And didn't you -- is this consistent with your
15 memory of your work in 1999 as to the incoming calls and
16 blacked out columns and what was happening at the time of
17 the cell phone records and cell phone tower analysis?

18 A I believe what they're referring to still
19 happens today with some of the providers.

20 Q Special Agent Fitzgerald, this reference to
21 location information not being reliable for incoming
22 calls, do you know based on your experience, your
23 training, your conversations why it is that that
24 qualification is included on the fax cover sheet?

25 A I believe I do, yes.

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1 Q Could you tell the Court why that is?

2 A Well, I think the best way to explain it is
3 through an example. So whenever, so my phone in my pocket
4 is provisioned for the Atlanta switch since I'm from
5 Atlanta, Georgia, so my phone is provisioned for the
6 Atlanta switch.

7 Any incoming call that comes to, if you dialed
8 my phone right now it's going to have to go be handled by
9 the Atlanta switch. It's going to be routed down to the
10 Atlanta switch. If I'm on network and they realize I'm in
11 the Baltimore, Maryland area, the phone call will then get
12 transferred up to Baltimore, Maryland, out through a cell
13 site and to my phone.

14 If I never powered up my phone or was off
15 network and you tried to make that same call, because
16 these call records and some call records still do it today
17 where they capture every leg of the call, if I was off
18 network it would show that call going down to the Atlanta
19 switch and being handled by the Atlanta switch and then
20 going to the voice mail platform.

21 And if it was handled by the Atlanta switch and
22 I'm in Baltimore that does not mean that you would see the
23 Atlanta switch on the report and that does not mean that
24 I'm in Atlanta. I'm actually physically in Baltimore, I
25 just wasn't on network.

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1 Q Okay. So just to be clear, if your phone is off
2 and an incoming call comes in it might not go to -- it
3 would redirect your home switch, is that fair, or the
4 switch you were closest to?

5 A On all incoming calls the first thing that's
6 going to touch that call is your provision switch, your
7 home switch.

8 Q Does that switch information contained in the
9 location column always correspond or ever correspond to
10 the cell site tower data on which Mr. Waranowitz's
11 testimony was based?

12 A Well, the cell sites are connected to the
13 switch.

14 Q How's that?

15 A Well, so you have multiple cell sites, back then
16 not so many cell sites across the metro area, and those
17 cell sites are in turn connected to a switch. The switch
18 will handle hundreds if not thousands of cell sites and
19 they're pretty much the brains behind the operation.
20 They're the ones deciding, helping route the calls;
21 they're the ones helping hand calls off from tower to
22 tower, sector to sector.

23 So the switch, the call activity has to go
24 through the switch, but like I said on an incoming call to
25 be more efficient they're going to want to always route

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1 your call to the home switch because that's where your
2 home is and most likely where you are.

3 Q And if you were to analyze the call tower data
4 once you got the unredacted call detail record, would
5 there be any distinction between the reliability of
6 incoming and outgoing calls with respect to the cell site
7 information, the cell tower information?

8 A So there's a column on State's Exhibit 5, two
9 columns. One is I-cell or initial cell; the other one is
10 L-cell or last cell. So if you have the initial cell when
11 the call was set up and you have the cell that was used
12 when the call was terminated, if those were unredacted at
13 least on the I-cell column they would match up to the --
14 just like the calls match up, they would match up the cell
15 tower on the call detail report, State's Exhibit 6.

16 Q In the cell site column?

17 A In the cell site column.

18 Q Okay.

19 A That would be, if you're comparing apples to
20 apples that would be the I-cell on State's Exhibit 5.

21 Q And is that the information upon which you do
22 your cell tower analysis today?

23 A Yes.

24 Q And is that the information upon which Mr.
25 Waranowitz relied to determine his cell tower analysis?

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1 A Yes.

2 Q Did anybody rely on the location information and
3 try to figure out which cell tower Mr. Syed's cell phone
4 was hitting on particular calls?

5 A Those aren't -- those wouldn't -- it's such --
6 number one, it's such a large area you can see the first
7 column all says D.C., so that's for the D.C. market. And
8 it would be -- I mean I don't know how many it would have
9 been back there, but you handed me the list prior. It
10 was, you know, a half an inch thick of towers.

11 Q Those are the Maryland cell sites? The one that
12 was handwritten Maryland Cell Sites at the top?

13 A Right. Those would be included in that -- all
14 those.

15 Q Now when you, you said earlier you had an
16 opportunity to review Mr. Waranowitz's testimony. He
17 conducted a number of steps in reaching his conclusions as
18 to what towers were being used by Mr. Syed's phone on
19 January 13th; is that correct?

20 A Yes.

21 Q Now what are the different ways that cell tower
22 analysts today, yourself included, would potentially
23 connect a particular phone call to a particular tower?
24 What are the different ways in which that can be done
25 today?

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1 A Like the different levels that you could do?

2 Q Sure.

3 A Of analysis?

4 Q Yeah, like have you heard of a drive test?

5 A Of course. So that would be the most complete
6 to do a drive test, but let me start at the -- kind of
7 work my way up. You could do a very basic analysis by
8 just taking the towers, plotting the location of the
9 towers.

10 So the towers that are listed, the cell site
11 locations or the I-cell in the other, State's Exhibit 5,
12 you could take those and you could just plot the physical
13 locations of where those are. Like if you wanted to see
14 if your guy traveled, you know, from Baltimore down to
15 Florida you could easily just plot the cell tower
16 locations and just get a general idea of the movement of
17 the phone throughout a day.

18 The next step I would say would be utilizing
19 kind of the far right digit or the sector, which is in
20 these type records is A through C, AB or C sector, and
21 that would tell you what direction from the tower
22 location. So the tower, cell site tower list would give
23 us just a point on earth where there is a, you know, a
24 pole in the ground basically. The sector would tell us
25 which direction from that tower the antenna's providing

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1 service to.

2 So just think of it no different than if you had
3 a man with a spotlight at the top of that tower pointing
4 it in a certain direction. That's what the sectors. So
5 then we would know, kind of on that second level we would
6 know the direction from tower that that tower is providing
7 service to giving us a general area of where the phone
8 would be located.

9 Q Agent, let me just stop you for a moment. So
10 the first type of analysis, type 1 analysis, the most
11 basic one would be what tower is being used by a
12 particular call at a particular time; is that right?

13 A You are correct.

14 Q And the second analysis or the level 2 analysis
15 would not just look at what tower but also which sector
16 that call was coming from, either the northeast, you know,
17 sector to the southeast; that kind of thing. So
18 directional vector; is that fair to say?

19 A Correct, or the azimuth off of that tower that
20 the antenna is pointing.

21 Q Is there an even more sophisticated or sort of
22 higher level analysis that could be done with this
23 information?

24 A So I would say probably kind of next step up
25 from that would be actually going out and spot checking.

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1 So you can go out, spot check, make some calls, receive
2 some calls, whatever at certain locations to see if you
3 could determine what tower was handling the call and what
4 sector.

5 Q And is there something higher than that?

6 A Right. And then, well, like we mentioned
7 earlier is the drive test. So then you would go out into
8 the area of your crime scene or the area of interest and
9 you would drive as many if not all of the streets in that
10 area.

11 Sometimes, you know, you have to -- dirt roads,
12 whatever -- drive as much as you can in the area of
13 interest or the crime scene or the sector that you're
14 interested in and then you can plot out the actual
15 footprint of that tower and sector.

16 Q So if that was 1, 2, 3 and 4, those are
17 increasingly sophisticated ways of analyzing cell tower
18 data; is that fair to say?

19 A Yes.

20 Q Okay. Based on your review of what Mr.
21 Waranowitz did, what his job was, his testimony at trial,
22 what level of analysis did Mr. Waranowitz do in the trial
23 of Adnan Syed?

24 A Well, we're classifying it 1 through 4 -- 1
25 being just the tower location, 4 being the drive test --

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1 I'd say he was right at 3.5, because he went to, not only
2 did he do spot checking he also went in and got their
3 propagation map models which includes some drive test data
4 but not -- it also includes you load models depending on
5 the time of year you're looking at, population densities
6 in some software and it will -- you know, information, the
7 specs on your antennas that are being used -- and it will
8 provide a propagation map.

9 So to my knowledge at least reading the
10 testimony he didn't go out and drive test specifically for
11 this case other than spot checks.

12 Q So that's why it's not a 4 because he didn't do
13 the drive test in this particular case?

14 A Correct. Not that I could tell.

15 Q Now do you know what job he had at the time of
16 his testimony, what his position was with AT&T?

17 A He's an RF engineer, and I think at some point
18 in the testimony he even mentioned that he designed and
19 helped roll out that network in this area.

20 Q Okay. And among his responsibilities as an RF
21 engineer was one of those responsibilities generally doing
22 drive tests every day?

23 A I'm sure. I mean I don't know about every day,
24 but definitely when you're starting up a cell site or
25 testing a cell site you're going to be doing some drive

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1 tests. If you're troubleshooting you're going to be doing
2 drive tests. And they just -- I know at least nowadays
3 they even do drive tests just on a fairly regular basis
4 just to see the health of their network.

5 Q Now you observed a number of experts testify
6 with respect to cell tower analysis even in 2015, 2016; is
7 that fair to say?

8 A Yes.

9 Q I don't know about 2016, but 2015?

10 A Yes.

11 Q And are there experts that are called by
12 prosecutors that only do a level 1 analysis that are
13 presented to courtrooms, criminal courtrooms across the
14 country?

15 A Right. I would say I've seen experts do the
16 whole gamut.

17 Q And are there some that only do level 1 analysis
18 but present that to a court?

19 A I'm sure, yes. I mean, I think I've personally
20 done that where I'm just trying to show the general
21 movement over a large area so I didn't want to sit there
22 and plot every sector; just kind of show the general
23 movement of towers used.

24 Q What standard does today in 2015, the FBI use?

25 A We do everything from, you know, showing the

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1 general movement, like if it's, you know, they're bringing
2 drugs up from Mexico we might show the general movement of
3 the phone all the way up to drive testing. So I mean,
4 I've been working on drive testing already this year.

5 Q And are there some agencies and some experts
6 that don't expect to do spot checking or drive testing in
7 a particular case before testifying?

8 A You mean like prosecutors that don't require it?

9 Q Yeah. Are there other agencies that aren't
10 quite as good as the FBI that do only level 1 or level 2
11 analyses before they present their experts at trial?

12 A I'm sure they're just as good. But yeah,
13 there's people that do just plot the tower in sector and
14 show the direction that that -- to give the general
15 geographic of the phone. I mean, I do that still myself
16 in some cases and there's some that do spot checking and
17 some that do drive testing even.

18 Q And in 1999, Mr. Waranowitz -- correct me if I'm
19 wrong -- was doing the kind of analysis that even in 2015
20 and 2016 is being used to link phone calls to cell towers
21 and present it in court; is that a fair statement of his
22 analysis?

23 A I think it would be very fair, yes.

24 Q Now on -- did you have an opportunity to review
25 the cross examination of Ms. Gutierrez of Mr. Waranowitz

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1 during that 2000 trial?

2 A I did.

3 Q Did you have an opportunity to review the lines
4 of attack that she took?

5 A Right. I read the transcript and saw how she
6 questioned him.

7 Q Have you heard those kinds of lines of attack
8 before?

9 A Yeah. We still, as recently as last year we
10 hear those.

11 Q Do you recall questions about not using the same
12 phone for the spot test or the test calls as the original
13 phone of the Defendant?

14 A Yes.

15 Q That kind of line of attack on cross examination
16 that Ms. Gutierrez did back in 1999, have you heard that
17 in cross examination of yourself or your colleagues in the
18 years since 1999?

19 A Yes.

20 Q Do you still encounter those kinds of lines of
21 attack today?

22 A We hear it all I think, so yes. I couldn't tell
23 you the last time I've heard that but definitely amongst
24 our team that has been a question that has been answered.

25 Q And what about her line of question with respect

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1 to damage and weather conditions and different conditions
2 when you do the spot checks? Have you encountered
3 questions relating to those confounding circumstances on
4 cross examination in the years since 1999?

5 A Right. They'll ask if we did the drive test
6 with, you know, the suspect's phone or the defendant's
7 phone. Yes, weather, they always bring that up.

8 Q And do they still bring that up today, the stuff
9 that Ms. Gutierrez was bringing up in 1999?

10 A Absolutely, yes.

11 Q And what about the reliability of the records?
12 Did you see discussion in the cross examination by Ms.
13 Gutierrez of the reliability of the records themselves?

14 A Yes.

15 Q And is that a line of cross examination that is
16 used by defense attorneys in trials today?

17 A Trials, Daubert hearings, yes.

18 Q And what about the cross examination line that
19 Ms. Gutierrez used with respect to not being able to place
20 a particular phone in a particular place but only linking
21 it to the tower? Did you observe Ms. Gutierrez make that
22 line of attack of Mr. Waranowitz?

23 A Yes.

24 Q And is that a line of attack that you have heard
25 in the years since and through 2015?

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1 A I don't know that that would be an attack, but
2 it is brought up. We even testified to it on -- and we
3 can't say it's in a particular room of a house or on a
4 particular street. We know the general geographic area
5 and then we can marry that up with the actual coverage
6 area of the cell tower and sector.

7 Q In other words you couldn't say that a
8 particular individual was at the burial site of a body,
9 you could only say that the phone call was pinging off of
10 a tower close to that location; is that right?

11 A We could say that the cell site and sector that
12 was utilized during a certain time period provided
13 coverage to that burial site, you know, and obviously Abe
14 tested, was in that general area and made some calls and
15 saw that it did utilize resources from that tower and
16 sector.

17 Q So that is precisely how Mr. Waranowitz
18 presented that testimony to a court in 1999?

19 A Right. He never said that they were on this
20 street, at the burial site, or he didn't testify to a
21 precise location.

22 Q And Ms. Gutierrez made that clear to the jury?

23 A That's correct, yes.

24 Q Now the line of criticism or cross examination
25 that we discussed with respect to this outgoing calls are

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1 reliable for location status, any incoming calls will not
2 be considered reliable information for location. We've
3 talked about the possible line of attack as to how this
4 doesn't, this undermines the reliability of incoming
5 calls. Yes, we've talked about that potential line of
6 cross examination?

7 A Yes, yes.

8 Q Have you ever encountered that line of cross
9 examination yourself with respect to records at any point
10 in any of your trials?

11 A Distinguishing like --

12 Q Incoming call.

13 A -- the accuracy of the cell tower and sector,
14 incoming versus outgoing?

15 Q Yeah, based on something like this?

16 A No.

17 Q Have you ever had any other expert that you know
18 of cross examined on that basis?

19 A Not that I know of. I mean, I guess Mr. Grant
20 got it this morning, got to talk about it or whenever he
21 testified.

22 Q Now have you heard the explanation or heard the
23 theory that incoming calls and outgoing calls might be of
24 varying degrees of reliability because sometimes the
25 incoming call information is based on the location of the

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1 caller as opposed to the callee? Have you heard that
2 distinction suggested?

3 A There are providers even to this day that will
4 provide both legs of the call. So if, you know, I'm a T-
5 Mobile subscriber and you're a T-Mobile subscriber, we
6 call each other, there are occasions where you will see
7 the tower I'm using and you'll see the tower you're using
8 even though your records are the ones that are being
9 requested.

10 So you will see in some cases, and over the
11 years it's been different providers have provided when
12 it's within their network that you will see both sides of
13 the call, both the towers for both the caller and the
14 callee.

15 Q Is that what's reflected in the records from
16 1999 on any of the information, the caller's location?

17 A No. I did not see any of that.

18 Q And the line of attack based on the fax cover
19 sheet, have you ever heard that cross examination being
20 used in any state or federal court in any jurisdiction in
21 America at any point recently or going back to 1999, have
22 you ever heard that line of cross examination before?

23 A As far as saying one direction is reliable and
24 one direction is not?

25 Q Right.

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1 A No. I would assume they would attack both
2 directions.

3 Q And when you did your analysis of what Mr.
4 Waranowitz did, did you find that the testimony presented
5 was fair and accurate and not misleading with respect to
6 both incoming calls and outgoing calls?

7 A I believe the level of thoroughness back in 1999
8 that he went through was very impressive. It's still
9 things that we do today.

10 MR. VIGNARAJAH: Thank you, Agent Fitzgerald.
11 Thank you, Your Honor. No further questions at
12 this time.

13 THE COURT: And any cross examination?

14 MR. BROWN: Yes, Your Honor. I'd like to
15 request a few minutes to consult with my expert.

16 THE COURT: You may.

17 MR. BROWN: Thank you, Your Honor.

18 THE COURT: And do you want us to stay here and
19 wait for you or --

20 MR. BROWN: Ten minutes, is that reasonable?

21 THE COURT: Let's try to do five. Let's try it
22 as fast as we can.

23 MR. BROWN: Five, okay.

24 THE COURT: The Court will take a very brief
25 recess. And you should step down, Agent Fitzgerald, and

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1 not to discuss your testimony.

2 THE CLERK: All rise.

3 (At 3:26:59 p.m., recess in proceedings.)

4 THE CLERK: All rise. Part 97 is back in
5 session.

6 THE COURT: You may be seated, everyone.
7 You may resume.

8 MR. BROWN: Thank you, Your Honor.

9 THE COURT: And again, Agent Fitzgerald, you can
10 state your name for the record, please.

11 SPECIAL AGENT FITZGERALD: Chad Fitzgerald.

12 THE COURT: And remind you, Agent, that you're
13 still under oath.

14 Mr. Brown, any cross examination?

15 MR. BROWN: Thank you. Thank you for giving me
16 a little time, Your Honor.

17 THE COURT: Certainly.

18 MR. BROWN: I appreciate it.

19 SPECIAL AGENT CHAD FITZGERALD

20 (A witness produced on call by the State, having been
21 previously sworn according to law, retakes the witness
22 stand and testifies as follows:)

23 CROSS EXAMINATION

24 BY MR. BROWN:

25 Q Mr. Fitzgerald, I want to just talk you a little

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