

1 THE COURT: All right. Go ahead.

2 J.C. GALINDO,
3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. STAYTON:

6 Q. Sir, would you please introduce yourself for
7 the Court?

8 A. I'm Justin Galindo. I'm an officer with the
9 Houston Police Department. And I'm currently assigned
10 to the Houston Forensics Science Center.

11 Q. And how long have you been a certified peace
12 officer with the Houston Police Department?

13 A. Since 2008.

14 Q. And prior to 2008, do you have any other law
15 enforcement experience?

16 A. No, sir.

17 Q. Or military experience?

18 A. No, sir.

19 Q. Can you, for the record, tell us about your
20 training and education that prepared you for the work
21 that you do?

22 A. I started taking coursework in 2010 in digital
23 forensics, primarily through some law enforcement
24 grants, where they were working on trainings of law
25 enforcement officers. And then in 2011, I moved to the

1 Digital Forensics Lab and started doing casework
2 full-time. I've been there since then.

3 Q. What is your current title within the Digital
4 Forensics Laboratory?

5 A. Forensic analysis.

6 Q. Did you have an occasion to perform an
7 examination of two cellular telephones in connection
8 with a capital murder investigation of a defendant,
9 Jamon Walker?

10 A. Yes, sir.

11 Q. Before I ask you questions about that
12 examination and your findings, did you -- as you were
13 conducting the analysis and then subsequent to the
14 analysis, did you have an opportunity to create a report
15 that documented your work and your findings?

16 A. Yes, sir.

17 Q. And did you, prior to your testimony today,
18 have an occasion to review, on one or more occasions,
19 the report that you created to refresh your memory in
20 preparation for testimony today?

21 A. Yes, sir.

22 Q. In -- when you conducted an analysis of the --
23 of two telephones connected with this capital murder
24 investigation, did you or your department or division
25 assign a particular number to the analysis, like a

1 laboratory number, or is it simply the unique HPD
2 incident number that had already been assigned to this
3 investigation?

4 A. Yes, there's a lab incident number. It is
5 201322882.

6 Q. And I said "unique," but is it a number that's
7 unique to the investigation in this case?

8 A. That's correct.

9 Q. On your report, is there an indication, also,
10 of the HPD incident number connected with this capital
11 murder investigation?

12 A. Yes, there is.

13 Q. Would you read that out, please?

14 A. 089033513.

15 Q. When you -- just a couple of general questions
16 before I ask you specific questions about what you did.
17 When you are given a cellular telephone and asked to do
18 a -- what is sometimes called a phone dump, can you
19 describe how it is that you do that, how do you go about
20 doing that?

21 A. When we receive the phone, the first thing
22 we'll do is verify the investigator has legal authority
23 to search the device by either a consent form or a
24 search warrant, or if it is in the case of a dead
25 complainant or abandoned property. Once we know that

1 they have authority to search the phone, it's checked
2 into our evidence. When it's assigned to an examiner,
3 it will be removed, it's photographed. The phone,
4 before it's powered on, is put in a shielded enclosure
5 where it's isolated from the network. Once we examine
6 the phone, it's never allowed to touch the network
7 again, so that we minimize any changes to the phone.
8 And we don't allow any remote access to the device.
9 From that point, we have different software products
10 that we use to remove data from the phone.

11 Q. And, again, just before we talk about the
12 specifics of your examination of the telephones in this
13 case, of the cellular phones, what -- can you make a
14 brief statement about what you can find from this kind
15 of examination and what you cannot find?

16 A. It's very individual to the device on most
17 phones. It has to do with the software products we use
18 and the amount of support that they've put out to those
19 devices. So, devices that are less common -- for
20 example, Windows phones will not be as well supported as
21 an Android phone or an Apple iPhone.

22 Q. And what can you say about your ability to
23 recover data -- and if I use a term wrong and you would
24 prefer to use something different, please let me know.
25 But what can you say about your ability, as part of your

1 examination, to recover data from a phone that has --
2 where the user or a user has attempted to delete certain
3 pieces of data?

4 A. It's often the case that we can recover things
5 that have been deleted by the user because it's actually
6 not deleted by the file system. The evidence -- the
7 file, whether it's a message call, et cetera, would
8 still exist in the database, but a user might not see
9 that interacting with the phone. So, there's a
10 difference between the user deleting something and it
11 truly being removed from the device.

12 Q. But it is also possible that data can truly be
13 deleted from a phone and then it would not be
14 recoverable; is that correct?

15 A. That's true. Once it's in that area of the
16 database which is no longer in use because it has been
17 deleted by the user, the data will remain there until
18 it's overwritten by new data.

19 MR. STAYTON: Approach the witness, Judge?

20 THE COURT: Okay.

21 Q. (By Mr. Stayton) I want to show you what's been
22 marked and admitted into evidence as State's Exhibits 92
23 and 93. Do you recognize those envelopes that are
24 marked as State's 92 and 93, I believe I said
25 (indicating)?

1 A. Yes, these are the two phones that I examined.

2 Q. And how do you -- or at least the envelopes
3 indicate that to you. Are they -- how is it that you
4 recognize those envelopes?

5 A. I wrote the LIMS number on the outside, date
6 and initial, and they're both still sealed with my
7 signature on them.

8 Q. So, you recognize your own handwriting on the
9 outside of both State's 92 and 93?

10 A. That's correct.

11 Q. In a minute, I'm going to -- I'm not prepared
12 here. I need a pair of scissors to open that up.

13 While we're getting a pair of scissors for
14 you to open those envelopes, on your report did you
15 indicate -- or as part of your examination of a
16 particular telephone, are you able to determine a
17 unique, I guess what we would call a telephone number
18 that is connected with a particular telephone?

19 A. Yes. On the first phone, the first phone
20 utilizes a SIM card. And that's where the phone number
21 is stored for that device. Would you like me to tell
22 you the number or --

23 Q. Here, if you would -- in a moment. Would you
24 please open those two envelopes marked State's 92 and 93
25 (indicating).

1 MR. STAYTON: Well, the --

2 THE COURT: They're already in evidence.
3 If you want to mark them, that's fine. As part of the
4 record, they're marked, but they're already into
5 evidence.

6 Q. (By Mr. Stayton) Officer Galindo, can you
7 please describe what you did with each of these phones?
8 And let's begin with the phone that is marked State's
9 92-A.

10 A. 92-A is a T-Mobile phone that uses the Windows
11 operating system. That one, the SIM card was removed,
12 examined, determined with a Cellebrite UFED for PC.
13 It's an acronym, UFED for PC.

14 It's a software product that we use. All
15 it does is just go to the area where the phone number is
16 allocated. 281-451-5328 was the phone number for this
17 device. It was put in a shielded enclosure, powered on,
18 placed into airplane mode, and I conducted an extraction
19 with that -- with the same program.

20 Now, on this phone, it's not well
21 supported. And the only thing you have were images.
22 So, after that I conducted a manual examination where I
23 looked at the data on the phone and I photograph it
24 using a still-mounted camera. And I photographed -- on
25 this one, there were text messages and call logs, but

1 there were no saved contacts on the phone. And I did
2 not notice any third party applications like Kik or
3 Facebook that had been set up.

4 Q. Can you describe the same for what you did with
5 the telephone that's marked State's 93-A?

6 A. Okay. On the other phone, it's an Android. It
7 has a SD memory card in it. The media card was removed.
8 I imaged it, then analyzed that image. That's -- on the
9 Android phones, that media card is where the majority of
10 pictures and videos are stored. Those are all included
11 in the report.

12 Let's see. This phone is a CMA phone, so
13 it does not have a SIM card. It was plugged into
14 Cellebrite UFED for PC. I was able to do a physical
15 extraction, get a little more data that way, a little
16 more support. So, on this one you have call logs, SMS.
17 Your extraction is a lot more complex.

18 Q. With regard to the report that you prepared
19 following your extraction of data from State's 93-A,
20 were you able to extract information about incoming and
21 outgoing phone calls and incoming -- incoming and
22 outgoing text messages from State's 93-A?

23 A. That's correct.

24 Q. Can you say, what was the time period that that
25 covered from the -- the earliest to the last or latest

1 either phone call or text message, by date and time if
2 that's something that you have available?

3 A. One second. I'm going to have to reference the
4 report.

5 MR. WENTZ: Your Honor, just for the sake
6 of the record, we are renewing all of our objections
7 relating to our motion from the outset throughout the
8 testimony.

9 THE COURT: All right. And it will
10 continue to be overruled. Motion denied. And I'll
11 grant you an ongoing objection to any testimony
12 regarding the contents with the same ruling.

13 Go ahead.

14 A. It looks like May 24th of 2013 would be the
15 earliest records. Sorry. I'm going through several
16 hundred records here on the fly, but it looks like 7-18,
17 July 18th of 2013 -- oh, sorry -- there's July 19th
18 activity. July 19th would be the last activity.

19 Q. (By Mr. Stayton) July 19th?

20 A. Of 2013.

21 Q. As part of the report that you prepared
22 following the extraction of data and information from
23 State's 93-A, did you also have an occasion to place
24 data about phone calls and text messages, both incoming
25 and outgoing, into a timeline?

1 A. That's correct. The report that I provide
2 provides all the messages delineated by type, and then
3 also there's a section where it's given a timeline with
4 all of the activity.

5 MR. STAYTON: May I approach the witness,
6 Judge?

7 THE COURT: Yes.

8 Q. (By Mr. Stayton) I'll show you what's been
9 premarked here as State's Exhibit No. 111, and ask if
10 you would just take a look at that and see if you
11 recognize that as a timeline that we're talking about
12 that's connected with data information about text
13 messages and phone calls related to State's Exhibit 93-A
14 (indicating)?

15 A. That's correct. It's a timeline from that
16 report.

17 MR. STAYTON: Offer this into evidence,
18 State's Exhibit 111, and tender to counsel for
19 inspection. Also, I have an identical copy that I will
20 provide to defense counsel during this witness'
21 testimony.

22 **(State's Exhibit No. 111 Offered)**

23 MR. WENTZ: May I have just one second,
24 Your Honor?

25 THE COURT: Yes.

1 (Pause)

2 MR. WENTZ: We have no objection, Your
3 Honor, with regards to -- we're renewing our objection,
4 but having been tendered, I'm allowing it in.

5 THE COURT: Okay. 111 is admitted.

6 **(State's Exhibit No. 111 Admitted)**

7 Q. (By Mr. Stayton) All right. Looking at the
8 timeline that has now been admitted as State's 111, you
9 testified to the phone number that was connected with
10 State's 92-A as 281-451-5328; is that correct?

11 A. That's correct.

12 Q. And what was the -- was there a phone number
13 that was connected with 93-A?

14 A. No. I was not able to recover that phone
15 number for 93-A. A CMA phone gets its number when it
16 connects to the phone network. Since we view it in an
17 isolated environment, unless it's stored somewhere in
18 there, we often don't see that number.

19 Q. How is it, then, that you're able to determine
20 with that type of phone that -- or let me make it very
21 specific. Not that type of phone. How were you able to
22 determine with State's Exhibit 93-A that particular
23 calls or text messages were outgoing from that phone if
24 it was not connected with a phone number?

25 A. Right. It's the way in which the messages are

1 stored and the format. If you want me to get down to
2 the nitty-gritty, there's a flag, essentially. It's a
3 byte that's flipped in the file that tells you whether
4 it's outgoing or incoming. They're stored, essentially,
5 in a database, like an excel spreadsheet, with columns
6 and categories. So, the fact that it's categorized as
7 incoming or outgoing by the file system tells you what
8 it is, regardless of knowing the phone number of the
9 device.

10 Q. I'm going to refer you to -- there are page
11 numbers on the bottom of State's 111. I believe State's
12 111 begins at Page 60 and continues through Page 92. Is
13 that -- do you have those as the first and last pages in
14 State's 111?

15 A. That's correct.

16 Q. All right. And I would ask you to look at Page
17 70 in that timeline. And on Page 70, if you would, can
18 you tell us, what was the first contact between the
19 telephone that -- the telephone number that you've
20 identified as belonging to State's 92-A and the
21 telephone marked 93-A? And what was -- what was the
22 nature of it? Was it a phone call or a text message?

23 A. There is an outgoing text message on June 24th,
24 2013 at 2:09 a.m. to that phone number, 281-451-5328,
25 which is saved as a contact. Just identified by the

1 letter "G." Content of the text message says: This
2 Tim.

3 Q. I have an identical copy that I can give to you
4 so that we can make this available for the Judge to view
5 while you're testifying, sir.

6 THE COURT: Makes sense because I don't
7 have magic powers or x-ray vision, so...

8 Q. (By Mr. Stayton) All right. So, on the report
9 there are numbers -- on this timeline, there are numbers
10 on the column on the far left. Are those numbers that
11 you assigned to -- chronologically to each of these
12 calls and text messages?

13 A. They're not chronological. It's just
14 sequential, in order within the chart.

15 Q. Or sequential. That's -- yes, sir. That's
16 what I meant. I'm sorry. Sequential.

17 So, what is the number that's connected
18 with that first contact between these telephones?

19 A. Record 454.

20 Q. Also, on that same page if you -- sequentially,
21 can you tell us what were the next communications
22 between these telephones? If you look at 463 --

23 A. That's correct. There's an incoming text
24 message on June 24th, 2013, 12:59 p.m. from contact "G."
25 Content says: What's up.

1 Q. And then I believe -- and correct me if I'm
2 wrong, but in the next three, 464, 465, and 466,
3 continue to be text messages between these telephones;
4 is that correct?

5 A. That's correct.

6 Q. And can you read what the text messages
7 consisted of?

8 A. Record 464 is an outgoing text message at
9 1:11 p.m., with contact "G," content: I'm ready when
10 you ready.

11 Record 465 is an incoming text message.
12 1:15 p.m., contact "G," content is: Call me.

13 Record 466 is an outgoing text message at
14 1:17 p.m. with contact "G," the content: All right.
15 Let me get to a phone. I'm right here by the GP mall.

16 Q. And if you would turn to the next page, Page
17 71. And at the top of the page in Record No. 477, do
18 you see another contact or attempted contact between
19 these phones?

20 A. There's an incoming call from contact "G" at
21 2:27 p.m. on June 24th, 2013.

22 Q. Was that -- do you have any way of knowing
23 whether that was a missed call or were you able to
24 determine a specific duration of the call?

25 A. It's not on the timeline. I can go back and

1 look at the individual call record, if you would like.

2 Q. That's okay. We may in a minute, sir.

3 Go forward to Record No. 489. And could
4 you tell us what you found there and recorded?

5 A. It's an outgoing text message on June 24th,
6 5:54 p.m. to contact "G." Content: No word on third
7 man.

8 Q. Then if you look at the bottom of Page 71 in
9 record No. 515.

10 A. That's an incoming call on June 25th at 10:19
11 a.m. from contact "G."

12 Q. Then turn to the next page, Page 72, and
13 beginning with Record No. 518.

14 A. 518 is an incoming call on June 25th, 12:04
15 p.m., from contact "G." Do you want me to continue?

16 Q. Yes, sir, because there's just a few more, I
17 believe, at the top of that page.

18 A. 519, incoming call from contact "G" at
19 June 25th, 12:26 p.m. Followed by Record 520, an
20 outgoing call, June 25th, 12:26 p.m. from Contact "G" --
21 to contact "G." Sorry.

22 Q. And 522.

23 A. 522, outgoing call, June 25th, 12:34 p.m. to
24 contact "G," followed by an incoming call June 25th,
25 2:29 p.m. from contact "G."

1 Q. Then, if you would look at your report on Page
2 84 in record number -- is it 104 or 1047?

3 A. 1047.

4 Q. 1047.

5 A. That is an outgoing call on July 14th, 2013,
6 12:30 p.m. to contact "G."

7 Q. And I think you said it, but just to clear this
8 up, when you're talking about contact "G," was there a
9 phone number that was connected with contact "G"?

10 A. That is 281-451-5328.

11 Q. Which is the phone number that you say was
12 assigned to State's 92-A, correct?

13 A. That's correct.

14 Q. Okay. Now, the last record that you -- or line
15 item that you read from, that would be Record No. 523 on
16 Page 72 of your timeline. The date listed on that
17 record number was -- that you testified to was June 25th
18 of 2013 at 12:34 p.m., correct?

19 A. Record 523?

20 Q. Yes, sir.

21 A. June 25th, 2:29 p.m.

22 Q. And prior to testifying today, you had an
23 opportunity to then look and see when -- following
24 record No. 523, when was the next time, the next contact
25 between these telephones? I believe that's what you

1 just testified to on Page 84 in Record No. 1047. Is
2 that correct?

3 A. That's correct.

4 Q. So, between June 25th and July 14th, there --
5 you did not recover any evidence of contact between
6 those two phones, correct?

7 A. That's correct.

8 Q. And the contact that started, again, between
9 these two phones on July 14th, which -- from which phone
10 did that contact initiate?

11 A. From 93-A, State's Exhibit 93-A. Are you
12 referring to the 1047 record?

13 Q. Yes, sir.

14 A. Okay. That's an outgoing call from State's
15 Exhibit 93-A.

16 Q. In your -- in this timeline that you prepared
17 from the data extracted from the phones -- or from 93-A,
18 I want you to look at Page 77 and Record No. 733. And
19 can you tell the Court about that entry?

20 A. Record 733 was an outgoing text message on
21 July 3rd, 2013, at 10:35 p.m. to number 832-248-0791.
22 No associated contact name. The content is: I got a
23 20-gauge shotgun for sale. I'm trying to get my hands
24 on a pistol. And that was a deleted message that was
25 recovered.

1 Q. And, again, that happened on July 3rd, which
2 was between the period of time from June 25th to July
3 14th when there was a resumed connection between these
4 two telephones in 92-A and 93-A; is that correct?

5 A. Yes, that date is between those two dates.

6 Q. Now, looking again on Page 84 of your timeline
7 in State's 111, at the -- toward the bottom of the page
8 in Record No. 1057, do you see and can you tell the
9 Court about the connection between these two telephones
10 that's indicated in your report?

11 A. Record 1057 is an incoming call on July 14th,
12 2013 at 5:09 p.m. from contact "G."

13 Q. And from Record No. 1057, 1058, 1059, and 1060,
14 are those also calls to and from -- or between these two
15 telephones on July 14th?

16 A. That's correct.

17 Q. Turn the page to Page 85. Again, on July 14th
18 in records No. 1063, 1065, and 1066, would you agree
19 with me that those are telephone calls -- indications of
20 telephone calls made from State's 92-A to 93-A?

21 A. That's correct.

22 Q. And then on 1080, Record No. 1080, also on Page
23 85 of your timeline, can you tell us about that entry?

24 A. That's an outgoing text message, July 14th,
25 2013, 11:06 p.m. to phone number 281-638-9078, no

1 associated contact name. Content: I want to see you
2 tonight, but I'm going to be getting me a car real soon.

3 Q. If you would move ahead to the next contact
4 between these telephones on -- which you've documented
5 on this timeline on Page 87. And in Record No. 1172 --
6 in 1172, 1173, and 1174, on July 15th, beginning at
7 11:24 a.m. to -- and continuing to 11:26 a.m., just for
8 a couple of minutes there, are those phone calls that
9 were made from 93-A to 92-A?

10 A. That's correct.

11 Q. And then in 1175, a phone call from 92-A to
12 93-A?

13 A. Yes, that's correct.

14 Q. And then further on down Page 87 in Record
15 No. 1184, 1186, and 1189 through 1192, those were also
16 telephone calls to and from and between 92-A and 93-A?

17 A. That's correct.

18 Q. And then turning the page on the timeline in
19 State's 111 to Page 88, that's marked Page 88 at the
20 bottom, beginning with the very first entry in Record
21 No. 1195, can you tell us what you found and recorded
22 there?

23 A. 1195 is an outgoing text message on July 16th,
24 2013, at 9:28 a.m. to contact "G." Content is: I'll be
25 back in Houston in about an hour.

1 MR. STAYTON: May I approach the witness,
2 Judge?

3 THE COURT: Okay.

4 Q. (By Mr. Stayton) I'm showing you what's been
5 marked as Exhibit 107, and ask if you can recognize that
6 and whether you've had a chance to review that document
7 and make some marks in your own handwriting prior to
8 your testimony today (indicating)?

9 A. Yes. This is communication between the two
10 State exhibit phones, text communication that's been
11 recorded. You also have one other device in here as
12 well.

13 Q. By "device," you mean telephone?

14 A. Yes. There's an additional telephone number
15 for a contact Karen.

16 Q. And would it help you in your testifying --
17 what I want to do, sir, is I want to ask, then, about
18 the final communications that you extracted in your
19 analysis of these two telephones, the final
20 communications by text message that occurred between
21 these two items.

22 So, as we do that, would it assist you in
23 your testimony to use what's been marked as State's 107
24 in addition to the timeline that you created?

25 A. That's correct.

1 Q. And would you also take a look at State's --
2 what I'm marking as State's 96, 97, and 98 --

3 MS. COLLINS: Judge, let me clarify. I
4 believe we have those exhibits already in evidence. I
5 believe the correct numbers will be 108, 109, and 110.

6 Q. (By Mr. Stayton) Correction. Looking, sir, at
7 State's 108, 109 and 110, are they exact copies, but
8 larger, of what I've handed to you and what you've
9 previously seen as -- marked as State's 107
10 (indicating)?

11 A. It appears to be so.

12 MR. STAYTON: Offer into evidence, for
13 purposes of his testimony -- I guess it's already in --
14 obviously, the phone records are in evidence. These
15 come from the phone records, but just for purposes of
16 his testimony and for the Court to be able to see these
17 and for us to talk about State's 107, 8, 9, and 10.
18 Again, these are the final text messages between these
19 two telephones marked State's 92-A and 93-A.

20 **(State's Exhibit No. 107 through 110**
21 **Offered)**

22 MR. WENTZ: We simply renew our objection.

23 THE COURT: That will be overruled. 107
24 and 108 and 109 and 110 are admitted.

25 **(State's Exhibit No. 107 through 110**

1 **Admitted)**

2 Q. (By Mr. Stayton) All right. Officer, you're
3 looking at State's Exhibit 107, I believe. Correct?

4 A. That's correct.

5 Q. All right. So, I'm showing -- what I've got up
6 on the board here is State's Exhibit 110. State's
7 Exhibit 107 contains three separate pages; is that
8 correct?

9 A. That's correct.

10 Q. State's 110 is the blown-up version of the
11 first page of State's 107; is that correct?

12 A. Yes, it is.

13 Q. So, again, we're looking at the final text
14 message communications between State's 92-A and 93-A
15 based on the evidence that you extracted from State's
16 93-A. Correct?

17 A. That is correct, but you do have another phone
18 number listed right there.

19 Q. Yeah. There is a third phone number in part of
20 this, correct?

21 A. Yes. And a fourth right at the beginning on
22 the first entry.

23 Q. Correct. There's a fourth number, too, on the
24 first entry. This is one you've already testified to
25 from the timeline.

1 A. Yes, that's correct.

2 Q. The time here is -- that's listed, you've
3 had -- as you've reviewed that time, the time that we're
4 looking at on this document, is this the time that would
5 have been local Houston time in July of 2013?

6 A. No. On the chart, you have it in coordinated
7 universal time, also known as UTC. It is an offset
8 time. Actually, it's a zero time. We're the offset
9 time. We're minus six here in standard time. And in
10 July, we would be minus five because we would be in
11 Daylight Savings Time.

12 Q. So, does that mean with relation to the time
13 column that each of these times -- for example, the
14 first column here that says 3:35:24 a.m., what we would
15 need to do -- that would have been zero time, correct?

16 A. That's the time without an offset correction.

17 Q. Time with no offset correction.

18 So, Houston time in July of 2013 would have
19 been minus five --

20 A. Correct.

21 Q. -- is that right?

22 So, on the timeline that has been
23 previously admitted into evidence, did you make that
24 adjustment and is the time that's reflected in the
25 timeline that you referred to and read from earlier, is

1 that time adjusted to zero time for Houston time in July
2 of 2013?

3 A. Yes, my timeline is adjusted for local time.

4 Q. All right.

5 THE COURT: I'm just saying I have no idea
6 what that means. So, unless you can explain it better,
7 I have no idea what that means.

8 A. I can explain it further, if you would like.

9 Q. (By Mr. Stayton) Sure.

10 A. Okay. Every time zone is just an offset from a
11 central time zone that has no offset. So, eastern time
12 is not the same time in New York as it is now in
13 Houston, for example.

14 THE COURT: Okay.

15 A. So, coordinated universal time is just a more
16 scientific version of Greenwich Mean Time. They adjust
17 it by fractions of a second every year. So, that is the
18 scientific standard. Everyone else is offset from that
19 based on time zone.

20 So, we're in central. Central is minus six
21 hours from UTC at all times, unless it is Daylight
22 Savings Time, which only certain parts of the world do,
23 between March and November, and we're at minus five
24 during that time. So, five hours earlier than that.
25 So, on that first entry, that would be July 3rd at

1 10:35 p.m.

2 THE COURT: Okay. Well, that's helpful.
3 You just weren't saying hours, so I didn't know what
4 minus five or minus six meant, other than it being
5 algebra that I've long forgotten. Okay. All right.
6 So, it's hours.

7 MR. STAYTON: My apologies.

8 Q. (By Mr. Stayton) Each of these times -- local
9 time in Houston would be five hours earlier than what's
10 reflected in this column; is that correct?

11 A. That's correct.

12 Q. Okay. Before we talk about the text messages
13 that went back and forth between these two telephones
14 and the other two telephones that are also part of this
15 exhibit, there were other phone calls that went back and
16 forth or -- and some missed calls and -- between
17 these -- 92-A and 93-A during this time period of --
18 that's shown in the text messages; is that correct?

19 A. That's correct. You just have text messages
20 displayed on there.

21 Q. I believe you said the first column here or
22 first row is one that you've already testified to. And
23 what's the date on this one, sir, the very first text
24 message (indicating)?

25 A. You want the adjusted date, current local time?

1 Q. Yes, sir.

2 A. Local time would be July 3rd, 2013 at
3 10:35 p.m.

4 Q. And that was the text message that was an
5 outgoing or incoming?

6 A. Outgoing.

7 Q. So, on this diagram where it says "sent," would
8 that be the same as outgoing?

9 A. Yes.

10 Q. And where -- in this column of status, where it
11 says "read," would that be incoming?

12 A. Those would be incoming.

13 Q. So, outgoing from 93-A and incoming to 93-A,
14 State's Exhibit 93-A?

15 A. That's correct.

16 Q. All right. Beginning with the second row, can
17 you read for the Court the communications that went --
18 and the text message communications between these two
19 telephones? And let us know whether they were out
20 coming or in going.

21 A. Do you just want the status in the message box
22 or do you want me to be saying --

23 Q. I think just the status and -- I'm sorry for
24 talking over you, sir.

25 Just the status and the message.

1 A. All right. A sent message: Ey bro. My phone
2 off. Come get me early so we can knock this shit out
3 already.

4 Sent message: I got the heat and
5 everything. Let's do it and move on homie.

6 Read or incoming message: You have heat.

7 Sent: Yeah, I got it.

8 Sent: Say bro, I'm really trying to make
9 that shit happen tonight.

10 Incoming: It's going to happen tomorrow
11 bet.

12 Sent: I got you.

13 Incoming: Maybe tonight. We will see.

14 Sent: Come through tonight.

15 Incoming: Call me.

16 Sent: I just called you.

17 Incoming: I know. At work. Couldn't
18 answer.

19 Incoming message: I got a
20 10-minute call -- I got a ten-minute break. Call me if
21 you can.

22 Sent: I'm ready. What's up?

23 Read, incoming: Man, what time I told you
24 I get off.

25 Incoming: Call me ASAP.

1 Incoming: Call me.

2 Sent: On my way to a pay phone.

3 Incoming: It's not cool tonight. In the
4 morning 8:30.

5 Q. Before you read the next one, the next one
6 is -- is it a communication between these two
7 telephones, 92-A and 93-A, or is it different?

8 A. No. It's a communication with 93-A and a third
9 party.

10 Q. And for the next four entries, is it the same
11 telephone -- this other party that you're referring to,
12 is it the same telephone number that's connecting with
13 State's 93-A in text messages?

14 A. Are they the same number --

15 Q. In these four, in these next four, is the
16 communication happening between multiple phones or just
17 two phones, 93-A and this other telephone?

18 A. It's between 93-A and that number.

19 Q. And what is that number?

20 A. 281-408-6378. Saved contact name is Karen,
21 K-a-r-e-n.

22 Q. All right. And the first of those entries, can
23 you tell us what time -- actual local Houston time that
24 text message was incoming to State's 93-A?

25 A. The first message was 7-18-2013 at 12:33 a.m.

1 local time.

2 Q. And how much -- strike that.

3 Can you read again as you were doing
4 previously the status, whether incoming or outgoing, and
5 the next four text messages?

6 A. Incoming: What are you up to?

7 Sent: Dollar sign, dollar sign, dollar
8 sign.

9 Incoming: You know what I'm talking about.

10 Sent: No. What you talking about?

11 Incoming: Don't play.

12 Q. And after that text message was sent to State's
13 93-A, are the remaining -- or the following
14 communications are, again, between 92-A and 93-A; is
15 that correct?

16 A. That's correct.

17 Q. Would you pick back up on that by reading the
18 status and the message?

19 A. Sent: Where you at?

20 Read: Where are you?

21 Sent: I'm at the sto.

22 Sent: You at the Chevron?

23 Q. Wait a second, sir.

24 A. Incoming: Don't know what sto.

25 Sent: Just meet me at Walgreen's.

1 Incoming: Where the fro?

2 Sent: Lockwood and I-10.

3 Incoming: I'm at Walgreen's.

4 Incoming: The letter Y.

5 Q. And the final date and time, local time,
6 Houston time in July -- in July of 2013, what would that
7 have been, sir?

8 A. July 18th, 2013, 1:19 a.m.

9 Q. And the final two items here, the final two
10 text messages were both incoming to State's 93-A; is
11 that correct?

12 A. That's correct.

13 MR. STAYTON: May I approach, Judge?

14 THE COURT: Yes.

15 Q. (By Mr. Stayton) I'm going to show you what's
16 been marked as State's Exhibit 112 and ask if you would
17 look through the pages that are part of State's 112
18 (indicating).

19 A. (Witness complies).

20 Q. Do you recognize those, sir?

21 A. Yes. This is the photographed call history and
22 stored text messages from State's Exhibit 92-A.

23 Q. And how is it that you recognize those
24 photographs?

25 A. I --

1 Q. Did you take them?

2 A. Yeah, I took them. I looked at them earlier,
3 the content is the same. This is my desk that's beneath
4 it.

5 Q. And those photographs, were they included
6 within your report that you prepared as a part of your
7 analysis?

8 A. Yes. These were returned on DVD to the
9 investigator.

10 MR. STAYTON: I'll offer State's 112 into
11 evidence and tender to defense counsel for inspection.

12 **(State's Exhibit No. 112 Offered)**

13 MR. WENTZ: We simply renew all of our
14 prior objections, Your Honor.

15 THE COURT: That will be overruled. 112 is
16 admitted.

17 **(State's Exhibit No. 112 Admitted)**

18 Q. (By Mr. Stayton) Why did you take the
19 photographs of State's 92-A that are in State's Exhibit
20 112?

21 A. The Windows phone is not well supported for
22 extraction. So, in this instance the best we can do is
23 actually photograph the screen as it's displayed as the
24 user would see it.

25 Q. And what does that tell you when you look at

1 the screen as the user would see it?

2 A. The beginning pages you have are the call
3 history. This tells you the direction of the call, the
4 number, and the date.

5 Q. What could you not tell from that?

6 A. You don't get a time of day on the Windows
7 phone in the call history.

8 Q. But you get the date and call history connected
9 with that phone, just not the time --

10 A. Right.

11 Q. -- connected with each entry.

12 I want to talk about some of those
13 photographs so we can show it on the -- for the Court to
14 see. What were your findings from your examination of
15 State's 92-A that are reflected in State's Exhibit 112?

16 A. On this page you're looking at call history.
17 You have some missed calls, some incoming, all on
18 July 19th, 2013.

19 Q. And, again, you said on which date?

20 A. July 19th, 2013.

21 Q. And as you examined the photographs that you
22 took of 92-A and that are part of State's Exhibit 112,
23 do you know how many of those calls were made from that
24 telephone, State's 92-A, on July 19th? You can't see
25 what time it is, I think you said, but if you examined

1 112, could you -- would you be able to tell that? Is
2 that contained within State's 112?

3 A. That's correct.

4 Q. Do you have a copy in front of you of those
5 photographs or -- with your report or would you need to
6 look at State's 112?

7 A. I would need to look at your copy.

8 Q. Will you look at State's 112, the photographs
9 that you took of the cell phone marked 92-A, and tell
10 the Court how many calls were made from that phone on
11 July 19th?

12 A. You have 16 outgoing calls on July 19th.

13 MR. STAYTON: I have no further questions
14 for this witness at this time.

15 THE COURT: Mr. Wentz.

16 MR. WENTZ: May it please the Court?

17 THE COURT: All right.

18 **CROSS-EXAMINATION**

19 **BY MR. WENTZ:**

20 Q. I'm not sure I'm going to be able to use all of
21 the times that you have listed in yours, so I'm going to
22 try and make reference to days and direct you to an
23 approximate place. Okay?

24 A. That's fine.

25 Q. When you say extraction not well supported from

1 92-A, what do you mean by that? In layman's language,
2 please.

3 A. In layman's language, every operating system
4 has a basic structure. And so, different items are in
5 different places. When it's not well supported, it
6 means the software provider has not spent much time
7 reverse-engineering that particular operating system
8 because it's not -- it's not popular enough.

9 Q. In all of the records that you've given us,
10 there are multiple telephones involved. Would you agree
11 with me?

12 A. Multiple telephone numbers?

13 Q. Yes, multiple telephone numbers.

14 A. That's correct.

15 Q. And at any one given time, we do not know who
16 is holding or using that particular telephone. Would
17 you agree with me?

18 A. That's correct.

19 Q. And as you have gone through in compiling all
20 of these records for us, you've seen evidence where
21 other people are using other people's telephones. Would
22 you agree with me?

23 A. That's correct.

24 Q. For example, let me have you make reference to
25 July 18th, 2013, an outgoing call at approximately

1 11:50, a text message --

2 A. 11:50 p.m. or a.m.?

3 Q. I really don't know.

4 A. It will be in the middle column right after the
5 time.

6 Q. The message is: I'm calling you from Karen
7 phone, baby.

8 A. On the 18th?

9 Q. Yes.

10 A. Sorry. I'm having to read these records
11 individually to locate what you're looking for.

12 Okay. There's an outgoing text on the
13 18th. It's 1:50 p.m., not 11:00.

14 Q. Can you see that (indicating)?

15 A. Yes.

16 Q. That would certainly be an indication of
17 somebody using somebody else's telephone, correct?

18 A. That's correct.

19 Q. I think you've indicated that the first
20 communication between these two phones, 92-A and 93-A,
21 come sometime around June 15th; is that correct?

22 A. Would you be more specific on the time or the
23 record you're referring to?

24 MR. WENTZ: You'll have to excuse me, Your
25 Honor. I'm making reference to three different sets of

1 records here.

2 THE COURT: It's okay.

3 MR. STAYTON: I think it's indicated in
4 State's 111 at Record No. 454.

5 A. On the 24th, that's correct.

6 MR. STAYTON: That would be the timeline.

7 Q. (By Mr. Wentz) "I'm Tim." Is that correct?

8 A. Sir?

9 Q. The message is something to the effect: I'm
10 Tim. Is that correct?

11 A. Again, I need to know -- I'm not sure what
12 you're referencing. I don't see a communication on the
13 15th between these two devices.

14 Q. I'm sorry. The 24th.

15 A. And what message are you referring to on the
16 24th?

17 Q. This is at approximately -- outgoing,
18 approximately 1:09. There might be a correction for
19 that.

20 A. Again, 1:09 p.m., a.m.?

21 Q. I'm going to assume it's a.m.

22 A. June 24th, 2:09 a.m. local time, there's an
23 outgoing message to 281-451-5328: This Tim.

24 Q. And from that message, there's no incoming
25 message "do not call me," is there?

1 A. Are you referring to in the next day or in the
2 rest of the timeline?

3 Q. Within the next six hours.

4 A. No.

5 Q. No indication of: I'm not interested, don't
6 call me?

7 A. No.

8 Q. With regards to the grouping, would you agree
9 with me that most of these messages do come frequently
10 in terms of grouping one or two calls at or near the
11 same time?

12 Let us go down to the 24th, later in that
13 day. There are approximately four telephone calls in
14 rapid succession, correct?

15 A. That's correct.

16 Q. At no time is there any indication from
17 No. 5328, phone number 92-A: I'm not interested, don't
18 call me?

19 A. That's correct.

20 Q. And with regards to the groupings of telephone
21 calls in July, approximately the 14th or 15th, there's
22 no indication from phone number last four digits 5328,
23 92-A for your purposes: Not interested, don't call me?

24 A. No, there's no message that says that.

25 Q. There's no messages for July 17th or July 18th:

1 Not interested, don't call me?

2 A. 17th, I do not believe so. Sorry. Uses the
3 phone quite a bit. It's taking a while to review each
4 day. No, I don't see anything that says that.

5 Q. There's never any message with regards to the
6 effect "not coming to pick you up," is there? At any
7 time --

8 A. There is a message where he asks to be picked
9 up. I don't recall where the date is on that.

10 Q. My question to you is: There is never any
11 message from Phone No. 5328, 92-A, "I'm not coming to
12 pick you up," is there?

13 A. From -- so, they're from 93-A. So, outgoing --

14 Q. 92-A.

15 A. 92-A.

16 Okay. So, there's no incoming message that
17 says: I'm not coming to pick you up. No, there is not.

18 Q. And, in fact, the last message is that he is
19 going to pick him up, correct?

20 A. The last message is "Y."

21 Q. And right before that: I'm at Walgreen's. Y.
22 And Y is an incoming call, correct?

23 A. It's an incoming text message.

24 Q. I'm sorry. Text message.

25 And that is from a number attributed to

1 "G," correct?

2 A. That's correct.

3 MR. WENTZ: I'll pass the witness, Your
4 Honor.

5 THE COURT: Mr. Stayton.

6 MR. STAYTON: Nothing further.

7 THE COURT: You may step down. Okay.

8 MS. COLLINS: Your Honor, at this time, the
9 State would rest.

10 THE COURT: Okay. We're going to break for
11 lunch for an hour.

12 (Lunch recess)

13 (Open court, defendant and jury present)

14 THE COURT: Are you ready?

15 MR. WENTZ: I'm sorry, Your Honor?

16 THE COURT: Are you ready?

17 MR. WENTZ: Yes, Your Honor.

18 THE COURT: Okay. State having rested,
19 what says the defense?

20 MR. WENTZ: We would make our motion for an
21 instructed verdict -- or directed verdict of not guilty
22 based on the failure of the State to prove each of the
23 allegations beyond a reasonable doubt.

24 THE COURT: That will be denied.

25 MR. WENTZ: Your Honor, at this time, upon