

1 may be excused.

2 WITNESS: Thank you, Your Honor.

3 THE COURT: Call your next witness.

4 MS. ALLEN: Eric Powell.

5 THE BAILIFF: Judge, this witness has not
6 been sworn.

7 THE COURT: All right. Raise your right
8 hand to be sworn, please.

9 (Witness sworn.)

10 THE COURT: You may be seated.

11 Ms. Allen, you may proceed.

12 MS. ALLEN: Thank you, Your Honor.

13 **ERIC POWELL,**

14 having been first duly sworn, testified as follows:

15 **DIRECT EXAMINATION**

16 BY MS. ALLEN:

17 Q. Would you please state your name for the record
18 and the ladies and gentlemen of the jury?

19 A. Eric Powell.

20 Q. Mr. Powell, how are you employed?

21 A. I'm with the Houston Police Department. I work
22 in the criminal intelligence division.

23 Q. And are you a peace officer?

24 A. I am.

25 Q. How long have you been with HPD, Officer

1 Powell?

2 A. 15 years.

3 Q. And you went through the academy like other HPD
4 officers who have testified?

5 A. Correct.

6 Q. And have you kept up your TCLEOSE
7 certification?

8 A. I have.

9 Q. And what is your current assignment?

10 A. I work in the criminal intelligence division
11 the communication intelligence unit of that division.

12 Q. Communication intelligence, what does that deal
13 with?

14 A. We deal with the cell phones, cell phone
15 records, mapping of records.

16 Q. And what is your, who do you most commonly work
17 with regarding other police officers?

18 A. We primarily work with major cases, homicide,
19 robbery, major offender, kind of the bigger felony
20 cases.

21 Q. And more serious, violent?

22 A. More serious, violent, correct.

23 Q. What kind of training have you had regarding
24 cell phones and cell sites and the interpretation of
25 such records?

1 A. I've done over, like, 200 hours of actual
2 training and then, like, 90 to about 100 hours of
3 informal training.

4 Q. And what kind of training, formal training have
5 you received?

6 A. We've done about how cell sites or cellular
7 networks operate the towers, the mapping and the records
8 of different carriers.

9 Q. And have you also -- how long have you been in
10 the criminal intelligence?

11 A. I've been there almost three years.

12 Q. So, do you have day-to-day experience in
13 working with information obtained from cell phone
14 companies and using that to help officers investigate
15 crimes?

16 A. I do, yes.

17 Q. What kind of information can you get from cell
18 phone companies regarding cellular phones used by
19 people?

20 A. You can get subscriber information. You can
21 get the call detail records, which show cell sites, it
22 will actually give you the cell towers that these
23 records are on and the side of the tower that they
24 processed the call off of.

25 Q. And in that regard, did you obtain information

1 for a phone that had a subscriber of Damian Flores?

2 A. I did.

3 MS. ALLEN: Your Honor, at this time I
4 would tender to Defense counsel State's Exhibit 117 and
5 118. 117 being a copy of the notice of filing business
6 records affidavit and the affidavit, and 118 being a
7 disc, a duplicate of what was filed with the Court, and
8 ask that both of them be admitted into evidence.

9 (State's Exhibit Nos. 117 and 118 offered.)

10 THE COURT: Is there any objection, Mr.
11 Davis?

12 MR. DAVIS: May I have one moment, Judge?

13 I object to relevance, Your Honor. There's
14 nothing in these documents that says this phone is
15 Damian Flores' telephone number.

16 MS. ALLEN: It's in Disc No. 1.

17 MR. DAVIS: I would object to the
18 introduction of this document as being irrelevant, Your
19 Honor.

20 MS. ALLEN: Which document?

21 MR. DAVIS: To the document as well the
22 cell phone, the information on the disc.

23 THE COURT: Your objection is overruled.
24 State's Exhibits 117 and 118 are admitted.

25 (State's Exhibit Nos. 117 and 118

1 admitted.)

2 Q. (BY MS. ALLEN) Did you obtain this information
3 from the cell phone provider of the number given to you
4 that was Mr. Flores'?

5 A. Yes, correct.

6 Q. And did the cell phone provider send you the
7 data on a disc, or how did they send you the data?

8 A. They sent it to us electronically. I believe
9 they sent us a disc, too. They may have sent us a disc,
10 too, but it's in a Ziploc.

11 Q. And did you request information for the cell
12 phone with telephone number --

13 MR. DAVIS: May I reposition myself?

14 Q. MS. ALLEN: -- (832) 212-4213?

15 A. Yes.

16 Q. And is that number shown right here in the
17 records?

18 A. It is.

19 Q. And does it show that the billing address and
20 the name is Damian Flores on Grapevine Street?

21 A. It does.

22 MS. ALLEN: Mr. Davis, I'm about to turn
23 that off. Are you done?

24 MR. DAVIS: Yes.

25 Q. (BY MS. ALLEN) After you received the data

1 from the cell phone company, did or when you received
2 it, did it include phone calls made to and from Mr.
3 Flores on May 5th of 2010?

4 A. It did.

5 Q. Did it also give you information regarding cell
6 towers that were used or that are used by Sprint?

7 A. Yes.

8 Q. And the location of those towers?

9 A. Correct.

10 Q. After you received the information, did you
11 prepare a PowerPoint presentation about cell phones in
12 general and specifically Mr. Flores' cell phone records?

13 A. I did.

14 MS. ALLEN: May I approach the witness,
15 Your Honor?

16 THE COURT: You may.

17 Q. (BY MS. ALLEN) I'd like to show you what I've
18 marked as State's Exhibit No. 119. Is this a disc
19 containing the PowerPoint prepared by you?

20 A. It is.

21 Q. And is it your opinion that the PowerPoint
22 presentation would assist the jury in understanding the
23 testimony you are about to give regarding cell phones
24 and Mr. Flores' cell phone information?

25 A. It would.

1 MS. ALLEN: Your Honor, at this time I
2 would move to introduce the presentation contained on
3 State's Exhibit 119.

4 (State's Exhibit No. 119 offered.)

5 MR. DAVIS: To the extent that I think this
6 presentation contains information from the documents
7 that have already been introduced, there is no
8 objection. But I'd at least like to reserve the right
9 to object if there is something that's shown that isn't
10 contained in those documents as to hearsay.

11 THE COURT: All right. With that
12 understanding, State's Exhibit No. 119 is admitted.

13 (State's Exhibit No. 119 admitted.)

14 MS. ALLEN: If I can have just a moment,
15 technical difficulties, Your Honor?

16 Q. (BY MS. ALLEN) So, the first couple slides
17 talk about the, what the case was involving; is that
18 correct?

19 A. Yes, correct.

20 Q. And you did verify that Mr. Flores' telephone
21 number is (832) 212-4213; is that correct?

22 A. I did.

23 Q. And why, in your understanding, why was this
24 telephone number important?

25 A. This was, for a prior case for a capital murder

1 or attempted capital murder case.

2 MR. DAVIS: Objection, Your Honor, to
3 relevance.

4 THE COURT: Sustained.

5 MS. ALLEN: I'll rephrase.

6 MR. DAVIS: I'd ask that the jury be
7 instructed to disregard that comment.

8 THE COURT: Ladies and gentlemen, disregard
9 the last statement of the witness.

10 MR. DAVIS: And I respectfully move for a
11 mistrial.

12 THE COURT: Denied.

13 Q. (BY MS. ALLEN) Did you-all believe that the
14 number belonged to a suspect in a shooting?

15 A. Yes.

16 Q. And what was the purpose of your looking at
17 certain sites regarding this cell phone?

18 A. To see if it was in the area of that shooting
19 during the time that it happened.

20 Q. And are you an engineer?

21 A. No, I'm not.

22 Q. But do you have a college degree?

23 A. I do.

24 Q. And do you understand in general how the
25 technology of cell phones work?

1 A. I do.

2 Q. Could you tell me what is geolocating?

3 A. Geolocating is when the actual hand set, the
4 cellular phone provides a latitude and longitude of its
5 location.

6 Q. And what does that mean in English?

7 A. Well, it gives you, it can pinpoint your
8 location anywhere within a margin of error like a,
9 sometimes it can be a small error, sometimes it's a
10 bigger error.

11 Q. But it's a way of locating where the phone is
12 at a particular time; is that correct?

13 A. Correct.

14 Q. And what is the difference between geolocation
15 data and historical data?

16 A. Geolocation data is live data -- well, it gives
17 precise location of the hand set versus an area, like
18 where the call may have processed off of, like a tower
19 location.

20 Q. So, if someone is a suspect, like I'm a suspect
21 right now and y'all know what my cell phone telephone
22 number is, could you go to the cell phone provider,
23 request data that would give you where my phone is as
24 I'm speaking?

25 A. Depending on the phone type, yes.

1 Q. However, historical, if you wanted to know
2 where I was yesterday, could you request data from the
3 cell phone company and get that -- or where my phone was
4 yesterday and get that information from them?

5 A. Not the exact location of the phone, but the
6 tower and the side of the tower that the call was
7 processed off of.

8 Q. And have you worked with and done that on many
9 occasions in dealing with different police
10 investigations?

11 A. I have.

12 Q. What purpose does a cellular antenna provide,
13 or what is its purpose?

14 A. The purpose of it is to, it's like a radio
15 receiver. It receives your phone call. It's like an
16 antenna. It picks up your phone signal.

17 Q. And is it always easy to see where those
18 antennas are?

19 A. No, not always. They're all over the place.
20 As you can see on the slide, up in trees, on buildings,
21 up on towers, houses.

22 Q. Do different cell phone providers use their own
23 towers, or do they share towers?

24 A. Some have their own towers; some share towers.
25 It just depends on the location.

1 Q. Do you know how cell phone providers decide
2 where they're going to put their antennas?

3 A. It usually has to do with the population of an
4 area, maybe how many people are in the area. It depends
5 on how close the tower may be.

6 Q. So, does this slide show, is that
7 representative of towers that may be owned by Sprint and
8 used in their regular operations?

9 A. Yes.

10 Q. And is that representative of the numbers of
11 cell towers used by Sprint in the Houston area?

12 A. It is.

13 Q. How did you determine what cell phone provider
14 the number assigned to Mr. Flores was?

15 A. I run it through a website. It's New Star, and
16 they're responsible for maintaining all the carriers for
17 the United States. They keep a record of which phone
18 belongs to which carrier.

19 Q. So, did you then attempt to get -- well, what
20 type of data did you want to get from the cell provider?

21 A. We wanted to get the subscriber information.
22 We wanted to get the call detail records, the incoming
23 and outgoing calls, with the cell tower associated with
24 them.

25 Q. And what other type of information do cellular

1 phone companies keep?

2 A. They keep the date, the time of the call, the
3 duration of the call, the -- which, if it's incoming,
4 outgoing and who they called.

5 Q. And what is the main purpose that cell phone
6 providers have for keeping these records?

7 A. They keep it to bill the customer; so if
8 there's any questions on any kind of billing, they can
9 contact them on that.

10 Q. So, it's all about the money?

11 A. It's all about the money, yes.

12 Q. How do you go about obtaining this information
13 from a cell phone company?

14 A. We draft up a Court order for that number, get
15 a district court Judge to signed it and provide it to
16 the carrier with what we're requesting.

17 Q. And why exactly do cell phone companies keep
18 historical data?

19 A. It helps, you know, it helps, they use it for
20 statistical purposes. They use it for, you know, to
21 expand their customers.

22 Q. In deciding where --

23 A. In deciding where, yes, the best.

24 Q. And what information particularly did you
25 obtain from Sprint in this case?

1 A. I obtained the subscriber and the call detail
2 records with the cell sites.

3 Q. Did they also give you information regarding
4 where the antennas are located here in the Harris County
5 area?

6 A. Yes, they did provide that list.

7 Q. And then did they tell you how they are
8 configured?

9 A. They did.

10 Q. Could you explain to the ladies and gentlemen
11 of the jury what a full duplex radio regarding cell
12 phones is?

13 A. Full duplex is when you can talk, you talk and
14 receive at the same time, like a radio transmission is
15 like a half duplex where when you key it, you can only
16 talk one time, one direction you have to release it and
17 listen. You can't talk and listen at the same time.

18 Q. And what difference does that make regarding
19 the cell phone and cell phone records that we received
20 in this case?

21 A. Whenever you initiate a call, it tells you
22 which tower, which tower and which side of the tower the
23 call processed off of. And then when you hang up, it
24 tells you the other tower, if it's been moved or
25 whatever, it will tell you the tower that it's moved to

1 on that.

2 Q. And is that because it's the full duplex radio
3 that you can do that?

4 A. Right, yes, correct.

5 Q. So, in this case, you got the subscriber
6 information regarding Damian Flores on Grapevine with
7 the target telephone number of (832) 212-4213; is that
8 correct?

9 A. Correct.

10 Q. And what do those records show you?

11 A. It shows the subscriber, it shows the target
12 number and then the subscriber information.

13 Q. Okay. And then what do the records about the
14 actual call show?

15 A. Oh, I'm sorry. It shows the call, the numbers
16 who was called or received a call from. It shows the,
17 you know, the dialed, of course, the dialed digits and
18 the direction, if it's incoming or outgoing call and the
19 beginning and the ending of the call, be the time and
20 date.

21 Q. What else?

22 A. The duration, how long the call lasted, and it
23 will show you -- in Sprint you have a repoll number,
24 which is an actual, it's like a group of towers they
25 assign to a repoll number.

1 Q. What do you mean by that?

2 A. Well, it's like they'll assign different
3 sections of the city or area, like, maybe I don't know
4 the exact number, but it's a group of towers will have
5 the same repoll number. It's like an area code for that
6 group of towers.

7 Q. So the repoll number can give you a general
8 area in town of where the antenna was located?

9 A. Correct. And then you also have the first and
10 last cell sites. That's the actual -- that specifies it
11 down to the exact antenna that was used, and then the
12 side or the sector of that antenna.

13 Q. And how many sectors is the antenna divided
14 into?

15 A. Typically it's three, but there are some that
16 have six sides.

17 Q. And is this a copy of the calling and called
18 numbers and the duration and the repoll of what you
19 received from Sprint; and it's going to be clear later
20 on, correct?

21 A. Correct.

22 Q. Now, did you receive a list of the -- from
23 Sprint of the towers in Houston, Harris County area,
24 that could possibly be listed in these records?

25 A. I did.

1 Q. And what does that tower list tell you?

2 A. It tells you the cell ID of the tower.

3 Q. And is that what will correspond with the
4 records that you received?

5 A. It does.

6 Q. And what else?

7 A. The repoll number and that gives you the area
8 code of that group of antennas.

9 Q. So the repoll could give you a general area,
10 and then the cell ID would give you a more specific
11 area?

12 A. Correct. It will give you the actual tower and
13 then, of course, the latitude and longitude of the
14 individual tower.

15 Q. And how pinpointed is that?

16 A. That's right on it. I mean, they check it.

17 Q. Then what else does it tell you?

18 A. And then it gives you the sector, tells you
19 which sector the call was processed off of, the side of
20 the tower.

21 Q. So, would that narrow down what area the phone
22 was in when it was using that antenna?

23 A. Right, that section, yes.

24 Q. What is an azimuth?

25 A. The azimuth is the angle in which the antennas

1 are aligned. You have three sides of a tower.
2 Typically, like Side 1 is 0 degrees is the azimuth.
3 It's like a compass wheel. And then Side 2 is at 120.
4 And the Side 3 is at 270.

5 Q. How is an azimuth different than the sector?

6 A. The azimuth has to do with the position of the
7 sector. It's like you don't, you could say Sector 1,
8 but you don't know which in a 360 degree compass, you're
9 not sure which degree or which angle that it would be
10 at. So, you refer to the azimuth that gives you the
11 actual compass degree heading of that sector.

12 Q. So, it's a little more specific?

13 A. It's a little more specific, yes.

14 Q. What other data does the tower list give you?

15 A. It can give you, sometimes some towers will
16 give you the height. Sometimes it will give you other
17 technical information about the tower that we're really
18 not -- the type of switch and stuff. It doesn't really
19 affect much.

20 Q. So, you get the list of towers; and what
21 information on that list is important to you?

22 A. The repoll number, the cell number, the
23 latitude and longitude, the sector and the azimuth.

24 Q. So the cell number is listed here; is that
25 correct?

1 A. Correct.

2 Q. The repoll here?

3 A. Correct.

4 Q. The sector here?

5 A. Yes.

6 Q. And the latitude and longitude here?

7 A. Correct.

8 Q. And that is on every cell site used; is that
9 correct?

10 A. Yes.

11 Q. And you explained about the azimuth earlier,
12 and that's also contained in the records; is that
13 correct?

14 A. Correct.

15 Q. Could you show -- explain how that works?

16 Well, you've already done that, never mind. I'm not
17 very good at these PowerPoint thing.

18 A. You can see like the 240 mark it's going to be
19 that sector, that Sector 3 of the tower, that's how it
20 references.

21 Q. So, Sector 1 would be the top one; is that
22 correct?

23 A. Correct.

24 Q. Sector 2 would be the bottom right?

25 A. Correct.

1 Q. Sector 3 would be the bottom left?

2 A. Exactly.

3 Q. So, you know that it's the phone call that's
4 shown on the bottom line of this was in Sector 3 and
5 azimuth 240, so you'd narrow it down instead of this
6 whole area that it's just this single red line; is that
7 correct?

8 A. Correct, the highlighted area, yes.

9 Q. How exactly do you determine, which calls were
10 made from -- which calls used which antenna at which
11 latitude and longitude?

12 A. We load the list that's provided by us from the
13 carrier. We import it into MapPoint software, off the
14 shelf, it's available. We import everything and it maps
15 all the towers by the latitude and longitude, and then
16 we have it referenced, the repoll number and the cell
17 number of that list.

18 Q. And are there other software things used by law
19 enforcement?

20 A. Yes, we use several other deals. We use the
21 Sprint protractor, that gives us our compass direction
22 so we can map it accurately. PEN-LINK helps us analyze
23 the calls. We can load that, the call detail records
24 into PEN-LINK, and it can do some analysis for us.

25 Q. And how do you use PEN-LINK?

1 A. PEN-LINK, we can load PEN-LINK into -- load the
2 records into PEN-LINK. It can give us hot lists, like
3 show us the top number of calls that's made. Kind of
4 puts it into a master format. It can sometimes provide
5 subscriber information that we have in a database that
6 are maintained, and other reports that we can run.

7 Q. Does it also allow you to put it into a format
8 that can be used in a trial like this?

9 A. It does.

10 Q. So, you got the information from Sprint, and
11 the individual calls cannot be seen on this, but did you
12 map the individuals' calls that were made at important
13 times in the investigation of the shooting of Yvonne
14 Stern on May 5th?

15 A. I did.

16 Q. Specifically from about 9 o'clock until about
17 noon; is that correct?

18 A. Correct.

19 Q. And were you given the address of the Yvonne
20 Stern residence at 4550 North Braeswood?

21 A. I was.

22 Q. And is that reflected in this slide?

23 A. It is.

24 Q. And then were you also given the address of
25 Damian Flores at 4203 Dragonwick?

1 A. I was.

2 Q. And is that in the little red dot pointed to by
3 the black?

4 A. Yes.

5 Q. Did you map the cell sites that were used by
6 the Damian Flores phone on May 5th, 2010?

7 A. I did.

8 Q. And are those indicated on this slide with the
9 big triangular?

10 A. Yes.

11 Q. What did the cell records tell you? Where did
12 the cell records tell you Damian Flores' phone was at
13 9:10 a.m. on May 5th, 2010?

14 A. It shows in the general area, which is
15 consistent with his house or with his residence.

16 Q. That would be this?

17 A. The green, the green section.

18 Q. I'm sorry?

19 A. It's showing the call, it looks like a call was
20 received and he was there, and it appears he was
21 traveling over into the red section where the call
22 ended.

23 Q. So, he was going in a westerly direction?

24 A. Correct.

25 Q. Well, I guess, north westerly?

1 A. Kind of north westerly.

2 Q. Then the next phone call, where was the cell
3 site that the phone call made on May 5th at 9:28, where
4 was that?

5 A. Puts it over in the area of the Yvonne Stern's
6 residence.

7 Q. And that call lasted from 9:28 to 10:37; is
8 that correct?

9 A. Well, there was phone activity, so there was
10 many calls during that time. It's not necessarily one
11 call; it was a bunch of different calls, same tower.

12 Q. Okay. So, but from 9:28 till 10:37, the phone
13 assigned to Damian Flores hit on the same cell phone
14 tower; is that correct?

15 A. Yes, correct.

16 Q. Was it in the same sector?

17 A. It was.

18 Q. Was it in the same azimuth?

19 A. Yes, it was.

20 Q. What does that indicate to you regarding
21 whoever was using that phone?

22 A. That they were stationary in that area for a
23 period of time.

24 Q. Did you then -- were you able to track any
25 other calls made by Mr. Flores?

1 A. Yes, there was several other calls made.

2 Q. The last --

3 A. So, I guess, the 10:38 call started and the
4 call ended at 10:40 and switched towers over to the next
5 tower over.

6 Q. So, what does that indicate to you regarding
7 whoever was using that phone?

8 A. Appears that it was traveling, moving westerly.

9 Q. Did you track further phone calls made by that
10 phone?

11 A. I did.

12 Q. And what direction did the phone appear to be
13 traveling?

14 A. South, appeared to go south and then ultimately
15 back up at the -- in the area consistent with the 4203
16 Dragonwick address.

17 Q. So, is it accurate to say that the records
18 provided to you by Sprint show that the phone assigned
19 to Mr. Flores left the Dragonwick area, went north to
20 the Braeswood area, and then south again to the
21 Dragonwick area all within about a two hour plus period
22 of time on May 5th, 2010?

23 A. It does.

24 Q. Did you also obtain the phone records for
25 Faustino Posada?

1 A. I did.

2 Q. And were those obtained in the same way you
3 obtained the ones for Damian Flores?

4 A. They were.

5 Q. And did you look at his phone and where it was
6 located at the same timeframe of 10:30ish on May 5th,
7 2010?

8 A. I did.

9 Q. And where did it indicate that his phone was?

10 A. He was way off Texarkana Street, way up on the
11 east side.

12 Q. And is that anywhere near the Braeswood
13 location where Ms. Stern was shot?

14 A. No, it was not.

15 Q. And is that a map comparing where Faustino
16 Posada's phone was versus where Ms. Stern was shot?

17 A. It is.

18 MS. ALLEN: Your Honor, I have no further
19 questions. I'll pass the witness.

20 THE COURT: All right, Mr. Davis.

21 **CROSS-EXAMINATION**

22 BY MR. DAVIS:

23 Q. Sir, now, you don't know who was using those
24 cell phones?

25 A. No, I don't.

1 Q. In terms of Mr. Posada's cell phone, you don't
2 know where that cell phone was used or carried, right?

3 A. On Mr. Posada?

4 Q. The last one?

5 A. No, I don't.

6 Q. It appeared to be stationary during, like,
7 business hours or work hours?

8 A. You're talking, which phone are you talking
9 about?

10 Q. I'm talking about the phone for Mr. Posada?

11 A. Yes.

12 Q. Is that right?

13 A. Yes.

14 Q. Now, in regards to this cell phone, there
15 actually were a couple other names at Grapevine that the
16 cell phone had been registered to; is that correct?

17 A. I believe it was something on the records, yes.

18 Q. It was registered to another person with the
19 last name of Flores; did you notice that?

20 A. Yes.

21 Q. And the cell phone actually changed to Damian
22 Flores' name at a later time, right?

23 A. I'd have to look at it again, but I believe so.

24 Q. Usually the name that's listed on the cell
25 phone is generally the person that's paying the bill?

1 A. Not necessarily, I wouldn't agree with that.

2 Q. So, if I am not paying the bill on a phone, and
3 someone else is paying the bill, they would register the
4 cell phone in my name?

5 MS. ALLEN: I object, that's speculative.

6 THE COURT: Sustained.

7 Q. (BY MR. DAVIS) Do you know, I mean, one of the
8 things you looked at --

9 THE COURT: Mr. Davis, just ask another
10 question. And you may rephrase the one that you asked.

11 MR. DAVIS: Yes, Your Honor.

12 Q. (BY MR. DAVIS) Do you know whether or not the
13 cell phones are registered in different people's names,
14 if that's associated with who's paying the bill?

15 A. I've obtained a lot of subscriber information
16 and probably 90 percent of them don't match up with who
17 is actually paying the bill.

18 Q. So, in other words, the names aren't associated
19 with the people who are actually using the phone?

20 A. Not always, but sometimes it is.

21 Q. So, you might have a phone that's registered in
22 Damian Flores' name that someone else is using and
23 paying the bill?

24 A. That's possible.

25 Q. You just testified that 90 percent of them that

1 you've seen are like that?

2 A. Right, most of them aren't real names.

3 Q. In this particular situation, it's not uncommon
4 for a person to use a cell phone in the area in which
5 they live?

6 A. Correct.

7 Q. In other words, Grapevine address is in the
8 same area that that Braeswood address is in, right?

9 A. Not exactly sure. I think Grapevine is further
10 south; is that correct?

11 Q. It's all in that pretty much southwest area.
12 Would you agree with me that it's within a five-mile
13 radius?

14 A. I would have to see a map just to be sure.

15 MS. ALLEN: Your Honor, for the record.
16 I'll tender State's Exhibit 120 to Defense counsel, it
17 being a paper copy of the PowerPoint presentation.

18 MR. DAVIS: May I approach the witness,
19 Your Honor?

20 THE COURT: You may.

21 Q. (BY MR. DAVIS) All right. You remember that
22 slide?

23 A. Yes, I do.

24 Q. Now, on this slide, sir, you look at it you'll
25 see the area where you've listed as Mr. Flores' address

1 and the address of Yvonne Stern and this is generally in
2 the same area; would you agree with that?

3 A. Correct.

4 Q. Within a five-mile radius, right?

5 A. I mean, I don't know the exact number of miles
6 between the two. Are you talking about between his
7 residence and -- it would probably be a little more than
8 that, but just a guess. Are you talking about from
9 Yvonne's residence and his residence?

10 Q. Yes.

11 A. I don't know the exact.

12 Q. You don't know the exact distance?

13 A. It seems like it was more like 10 miles or
14 something, maybe.

15 Q. From --

16 A. Just a guess.

17 Q. From Braeswood to South Post Oak?

18 A. I don't know. It's just a guess.

19 Q. I understand. Nevertheless, that area around
20 where Braeswood is it's an area that's heavily populated
21 with a lot of different activities, you agree?

22 A. Correct.

23 Q. I mean, there are a lot of stores, right?

24 A. Yes.

25 Q. There's Meyerland Plaza there?

1 A. Correct.

2 Q. And there's also, I think like a Lowe's with a
3 long strip with a bunch of stores and restaurants.

4 A. I believe so.

5 Q. It's a heavily populated area?

6 A. Correct.

7 Q. It's an area that's frequently traveled?

8 A. Yes.

9 Q. And a person who lives in that general area, do
10 you think that they might go to a store and spend some
11 time at a store?

12 A. Possibly.

13 Q. In terms of cell phone towers, you can't really
14 say a 100 percent which cell phone towers are closer;
15 isn't that right?

16 A. Which cell phone towers were closer?

17 Q. Exactly, to the use of the cell phone?

18 A. No, with relationship to the other towers, no.

19 Q. Isn't it true that someone could be using a
20 cell phone tower here and could be pinging off of a
21 tower up north in Houston?

22 A. That's not true.

23 Q. So, is it your recollection or your
24 understanding that when someone is using a cell phone
25 tower that it could potentially ping or have a signal on

1 multiple different cell phone towers, some that are even
2 further away than a tower closest to it?

3 A. Oh, it does, it's always in communication with,
4 you know, five or six towers at one time.

5 Q. So, in other words, you might have a person who
6 might be driving in a direction and their cell phone
7 could be actually pinging off towers that are close to
8 it and some that are further away from that cell phone
9 tower; isn't that true?

10 A. Well, it sees those towers.

11 Q. Yes, sir. And in terms of the information you
12 might receive, you might receive it actually sending
13 signals or calls through other towers; isn't that right?

14 A. It's going to go for the strongest tower that
15 it sees.

16 Q. And that's because if it's got a system, if
17 it's in an area that's heavily populated and a cell
18 phone tower in a heavily populated area receiving too
19 many calls, it will jump to the next signal; isn't that
20 right?

21 A. It could.

22 Q. And usually when that happens, it may show a
23 signal in this area and the other area as well; isn't
24 that true?

25 A. Typically you'll see it, say in between two

1 towers and it's kind of in the middle, it will jump
2 between the two back and forth.

3 Q. You would agree with me that cell phone
4 interpretation isn't a science?

5 A. No, well, I guess how you interpret science.

6 Q. Right, it's not like chemistry where you have
7 like certain tests you can use to measure precision;
8 isn't that right?

9 A. For my part of it, no.

10 Q. It's just something and kind of help you with
11 probability?

12 A. Correct.

13 Q. Now, in this particular situation it isn't as
14 easy as if you were trying to track whether or not
15 someone who is saying that they were at home as opposed
16 to being at the airport, it isn't that kind of
17 situation; isn't that right?

18 A. Correct.

19 Q. Usually you have this, you used this
20 technology -- and I think I had you in a case before,
21 where using the situation where somebody says I wasn't
22 in that area of town, nowhere near there, and then their
23 cell phone may be pinging off of multiple towers leading
24 up to that particular area; isn't that right?

25 A. Are you asking me if I was in a case?

1 Q. No, I'm not asking you about the case. I'm
2 asking you about usually when you're using cell phone
3 tower information, you're usually trying to track
4 someone who is moving to refute them saying they were
5 someplace else?

6 A. Well, usually we look for the time and the date
7 of the incident; and we see where their cell phone was
8 in that general area, if it was in the area.

9 Q. You would agree with me that it doesn't always
10 indicate movement when a cell phone is pinging off of
11 different towers; isn't that right?

12 A. True.

13 Q. What could affect it is the greater distance of
14 the area. In other words, let me see if I can make it a
15 little clearer, the area in which you have to analyze
16 affects how accurate you can be, right? In other words,
17 if you're looking at the entire City of Houston, and
18 you're looking at how cell phones are pinging off
19 particular towers in an entire area of Houston, it would
20 help you be more accurate than a small state?

21 MS. ALLEN: I'd object there is no
22 question, and Mr. Davis is testifying.

23 THE COURT: Could you please rephrase --
24 turn your statement into a question or ask the witness a
25 question.

1 MR. DAVIS: Okay.

2 Q. (BY MR. DAVIS) I'll try to do it this way.

3 THE COURT: Just allow the witness to
4 testify, Mr. Davis. You ask the question.

5 MR. DAVIS: Well, Judge, I'm trying to ask
6 questions consistent with Rule 611, which allows me to
7 lead him. I won't lead him, but I'll do it, I guess, in
8 more of a form of a question.

9 THE COURT: Or some attempt to elicit
10 information from the witness.

11 Q. (BY MR. DAVIS) All right. Now, the
12 information I'm trying to elicit from you, and I think
13 you've already established, without talking -- am I
14 correct in that you've established that oftentimes the
15 cell phone tower that's closest to a cell phone isn't
16 the one that will register the signal, correct?

17 A. The one that's closest to the tower?

18 Q. Isn't always the one that will register the
19 signal?

20 A. Typically, it is.

21 Q. I understand, but it isn't always the one?

22 A. Right.

23 Q. Some of that can depend on the population of
24 the area where the tower is?

25 A. True.

1 Q. If it's near a shopping mall where there are a
2 lot of cell phones being used, a lot of people
3 frequenting and traveling around, that tower might be
4 overloaded and it may register to a different one?

5 A. Correct.

6 Q. Now, my question to you is, is it more accurate
7 in terms of doing this type of analysis, this
8 unscientific analysis when you're looking at a larger
9 area?

10 A. It's more -- I'm not sure what your question
11 is. But typically if it's going to be pushed off the
12 next tower, it's usually the adjacent tower next to it.

13 Q. And so, when you're trying to pinpoint an area
14 that's closed in, it's less accurate than when you're
15 looking at an area that's open?

16 A. Correct.

17 Q. If you're looking at an area that's open when
18 you've got six towers over here and there's a distance
19 of about 16 towers over here, there isn't a whole lot of
20 play in terms of it being thrown off by different
21 towers?

22 A. Correct.

23 Q. But here we're looking at a very close area,
24 true?

25 A. I mean, I mean, I wouldn't say it would be a

1 close area.

2 Q. Do you know the ZIP code in this area?

3 A. No, I don't.

4 Q. Do you know -- would it surprise you if it was
5 the same ZIP code?

6 A. No, it wouldn't surprise me.

7 Q. All right. Now, you would agree with me that
8 ZIP codes are usually pretty defined small areas?

9 A. Well, the way I look at it, I look at how many
10 towers are in that area, and the number of towers has to
11 do with the accuracy in this case.

12 Q. Something I want to ask you, this type of
13 analysis is different than the analysis as if you were
14 trying to pinpoint exactly where someone was, and you
15 did it in realtime, correct?

16 A. Correct.

17 Q. It's dependent upon somebody's use of the cell
18 phone?

19 A. Yes, correct.

20 Q. It is possible that someone can use a cell
21 phone in one area at one time, leave that area and then
22 come back to that same area and the cell phone still be
23 registering only in that area?

24 A. That's true.

25 Q. In other words, when we're looking at this and

1 you're making this analysis that the cell phone was
2 stationary, you're assuming that the cell phone was
3 being used only in one area; isn't that right?

4 A. Correct.

5 Q. And that's only because you could only track
6 where the cell phone is when the cell phone is being
7 used?

8 A. Correct.

9 Q. So, if I'm driving an area, and I use my cell
10 phone and I stop, I use my cell phone that's hitting off
11 of a tower and I end the call. And I continue driving
12 on. And then I come back to the area and use my cell
13 phone in the general area, general vicinity again, then
14 it would show what we just saw before?

15 A. Correct.

16 Q. So, you can't really be certain that that cell
17 phone was stationary for that period of time?

18 A. Well, I can because of the calls and the time
19 between. I mean, it could have moved around in the
20 general area, but with a minute or two minutes apart, I
21 mean, you don't have much time between phone calls.

22 Q. There were some lengthy periods of time in
23 there where someone could have driven off as well; isn't
24 that right?

25 A. From what I remember it seemed like there were

1 a bunch of calls during that hour. I'm sure there were
2 gaps.

3 Q. And so if someone's touring around in that
4 area, going to the bank, going to a restaurant, going to
5 a clothing store, and they're going into some of the
6 other things, maybe to JC Penneys that's there, or to
7 the Best Buy, it would be pinging off of that tower?

8 A. Possibly.

9 Q. And you can't tell where exactly a person was
10 except that they may have been in that range or a range
11 close thereto?

12 A. Correct.

13 MR. DAVIS: One second, Judge?

14 THE COURT: Yes.

15 Q. (BY MR. DAVIS) It's not unusual for somebody
16 who lives in an area to have their cell phone ping off
17 of towers in the area that they live?

18 A. Well, right, correct.

19 Q. Now, you don't live in this part of town?

20 A. No, I don't.

21 Q. So, you're not really familiar with the
22 distances and everything?

23 A. I'm pretty familiar. I used to work southwest.

24 Q. So, you've worked that area. Are you familiar
25 with where South Post Oak is?

1 A. I am.

2 Q. And you know how close South Post Oak is to
3 where the Stern's residence is?

4 A. Pretty close, I believe.

5 Q. It's walking distance?

6 A. Yes.

7 Q. And Grapevine is right down South Post Oak,
8 less than a mile?

9 MS. ALLEN: I'd object to Defense counsel
10 testifying.

11 Q. (BY MR. DAVIS) Isn't it less than a mile down
12 South Post Oak?

13 A. I don't know the exact distance.

14 Q. It's less than a mile from 610.

15 MS. ALLEN: Again, I object.

16 THE COURT: He's answered your question.

17 MR. DAVIS: I don't have anything else,
18 Judge.

19 THE COURT: So you're passing the witness,
20 Mr. Davis?

21 MR. DAVIS: Yes.

22 THE COURT: Ms. Allen, is there anything
23 further?

24 MS. ALLEN: Just a couple.

25 **REDIRECT EXAMINATION**

1 BY MS. ALLEN:

2 Q. So, the cell phone data shows that a call was
3 made or received from his phone at 9:28 using the first
4 cell site 3214 and the last cell 3214; is that correct?

5 A. Correct.

6 Q. Was another phone call made at 9:30 with the
7 same, either, when I said "made," I'm talking about call
8 or received, okay? So, at 9:30 another call began and
9 terminated in the same cell site location, correct?

10 A. Correct.

11 Q. Again at 9:54 the same cell site location?

12 MR. DAVIS: I object to that as a
13 mischaracterization, Your Honor. That's not what the
14 exhibit says. It says 9:55.

15 MS. ALLEN: It says 9:54.

16 MR. DAVIS: Does it?

17 MS. ALLEN: Yes, it does.

18 MR. DAVIS: Oh, I'm sorry.

19 THE COURT: I think the exhibit will speak
20 for itself.

21 MR. DAVIS: Yes, ma'am.

22 Q. (BY MS. ALLEN) Again at 10:01 the same cell
23 site of 3214?

24 A. It does.

25 Q. 10:02, the same?

1 A. No, well, that one is, oh, yes, 10:02, yes.

2 Q. 10:06?

3 A. Yes.

4 Q. 10:08?

5 A. Yes.

6 Q. 10:13?

7 A. Yes.

8 Q. 10:16?

9 A. Yes.

10 Q. 10:26?

11 A. Yes.

12 Q. 10:28?

13 A. Yes.

14 Q. And then the phone changes on the 10:39 phone
15 call where it starts at the same cell site and ends at a
16 different one; is that correct?

17 A. Correct.

18 Q. Based on that information would you expect that
19 phone to have been moved to the Best Buy and the Lowe's
20 and the Home Depot and all that that's over there?

21 A. No, I wouldn't.

22 Q. Would that information indicate to you that the
23 cell phone remained in a very short close proximity the
24 entire time?

25 A. It would.

1 MS. ALLEN: No further questions, Your
2 Honor.

3 **RECROSS-EXAMINATION**

4 BY MR. DAVIS:

5 Q. They're all in the same area. The Best Buy and
6 Lowe's, they're all in the same area.

7 MS. ALLEN: Your Honor, I object to Mr.
8 Davis testifying.

9 Q. (BY MR. DAVIS) Isn't it true that they're all
10 in the same area?

11 A. I would have to see exactly where the map, I
12 would have to map them all.

13 Q. You've been to Meyerland Plaza. You've worked
14 in that area, right?

15 A. Correct.

16 THE COURT: And I understand. You can sit
17 down, Mr. Davis. And then if you'd like to ask him
18 another question without assuming facts that aren't in
19 evidence.

20 Q. (BY MR. DAVIS) You've worked in that area,
21 right?

22 A. Well, I worked further over, but I was in the
23 general southwest. I passed by there a couple times
24 during my work.

25 Q. That apartment is right there on that corner of

1 610 and Braeswood; isn't that correct?

2 A. Correct.

3 Q. And also in that area are a bunch of strip
4 malls; you've established that?

5 A. Yes.

6 Q. If you're at that strip mall, moving to
7 different stores, you're going to hit off of that cell
8 phone tower; isn't that correct?

9 A. Possibly.

10 Q. You're right because it is possible you could
11 ping off of some other towers that are further away if
12 it's overloaded. But if you're in that area moving
13 around, you're going to hit off of that tower; isn't
14 that right?

15 A. I couldn't say for sure.

16 Q. Of course, you can't say for sure where the
17 cell phone was?

18 A. Correct.

19 Q. But aside from that you're giving us your
20 educated guess, even though you can't say for sure,
21 you're giving us your educated guess that it was hitting
22 off of that particular tower because it was near it,
23 right?

24 A. Correct.

25 Q. And I know you can't say for sure with any

1 certainty, but if a cell phone is in that area, moving
2 around to different stores, it could ping off of the
3 same tower, true?

4 A. True.

5 Q. And it could be two towers over moving around
6 but still pinging off of that same tower?

7 A. Occasionally, it may.

8 Q. It depends on whether or not there's a lot of
9 volume on the towers in the area around it, right?

10 A. True, but for it to be consistent like that,
11 it's typically you're in the same general tight area.

12 Q. You're generally moving around like in a
13 shopping mall?

14 MS. ALLEN: Your Honor, I object. He's
15 misstating what the witness is answering, and then
16 claiming it to be the fact.

17 THE COURT: The objection is sustained.

18 Q. (BY MR. DAVIS) You're generally moving around
19 in an area, and let's assume hypothetically that there
20 was a shopping mall in that area?

21 MS. ALLEN: I'd object, this has been asked
22 and answered.

23 THE COURT: Your objection is sustained.

24 MR. DAVIS: I don't have anything else,
25 Your Honor.

1 MS. ALLEN: Nothing further, Your Honor.

2 THE COURT: All right. May Officer Price
3 be excused?

4 MS. ALLEN: Powell.

5 THE COURT: Powell, I'm sorry. Thank you,
6 Officer. You may step down.

7 WITNESS: Thank you.

8 MS. ALLEN: Your Honor, at this time I
9 would tender State's Exhibit 58A to Defense counsel,
10 those being the documents that were taken from the
11 State's Exhibit 58, and ask that they be admitted into
12 evidence.

13 (State's Exhibit No. 58A offered.)

14 THE COURT: Is there any objection to
15 State's Exhibit 58A?

16 MR. DAVIS: Judge, there is an objection to
17 some of the contents of 58A as not being properly
18 authenticated; but there is no objection to some of the
19 other items that are inside.

20 THE COURT: All right.

21 MR. DAVIS: I can pull out the ones we have
22 an objection to.

23 THE COURT: Do you intend to publish any of
24 these documents to the jury at this time, Ms. Allen?

25 MS. ALLEN: Not at this time, Your Honor.