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REDIRECT EXAMINATION

Q. (BY MS. GAIDO) How many other people were present at the scene and being detained?

A. There were two. Three, including Mr. Horhn.

Q. If you know, were they close enough to hear your discussion with Mr. Horhn regarding the cell phone?

A. I don't believe so.

THE COURT: Anything else?

MS. GAIDO: Pass the witness.

THE COURT: May the witness be excused?

MS. MEADOR: He may, Your Honor.

THE COURT: You're excused.

Call your next.

MS. GAIDO: Officer Wilson.

THE BAILIFF: Your Honor, the witness has been sworn.

THE COURT: Let the record reflect the witness has been sworn.

State.

MS. GAIDO: Thank you, Your Honor.

MARK WILSON,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

Q. (BY MS. GAIDO) Good morning.

A. Good morning.

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1 Q. Please introduce yourself to our jury.

2 A. I'm Officer Mark Wilson. I'm employed by HPD,
3 assigned to the digital forensics lab.

4 Q. Officer Wilson, where are you from originally?

5 A. Los Angeles.

6 Q. Did you go to school out there?

7 A. I did.

8 Q. What did you do upon graduating from high
9 school?

10 A. I started college.

11 Q. Where did you go to college?

12 A. I went to Los Angeles City College and got a
13 degree in cinema production.

14 Q. What did you do after that?

15 A. I moved to Texas and continued school.

16 Q. Did you continue school here in Houston?

17 A. Yes.

18 Q. And where did you go?

19 A. I went to Kingwood College and got an
20 associate's of science degree. I then went to Sam
21 Houston and got a bachelor's of science degree.
22 Continued at Sam Houston and got my master's degree
23 majoring in digital forensics.

24 Q. Can you talk to the jury briefly about getting
25 your master's in digital forensics? What does that

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1 entail?

2 A. First of all, digital forensics is the
3 extraction of data from different devices, whether that
4 be computers, cell phones, GPS, cameras, gaming systems,
5 whatever. Whatever can hold digital media, we extract
6 it and we process that information for prosecution.
7 During my master's degree program, it's a lot of theory,
8 but they put us in front of a computer and we pulled
9 information, deleted stuff or stuff that was still on
10 there.

11 Q. Did you complete your master's?

12 A. Yes.

13 Q. When did you complete your master's?

14 A. It was in 2011.

15 Q. What did you do upon completing your master's
16 degree in digital forensics?

17 A. Actually the day that I was awarded my degree,
18 I was offered a job in the Digital Forensics Unit. I
19 was in law enforcement during that whole time.

20 Q. When you say "law enforcement," were you with
21 the Houston Police Department?

22 A. I'm sorry. Yeah, I was with HPD the whole
23 time.

24 Q. When did you join HPD?

25 A. In 2008.

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1 Q. So, it's safe to say that you were going to
2 school and working at the police department at the same
3 time?

4 A. Yes, ma'am.

5 Q. When you joined the Houston Police department,
6 did you join as a digital forensics analyst or did you
7 join as a peace officer doing normal peace officer
8 things?

9 A. As a peace officer.

10 Q. Did you go to the academy?

11 A. Yes, ma'am.

12 Q. What did you do after graduating from the
13 academy? Where were you assigned?

14 A. I was assigned to Westside night shift patrol.
15 I was there for about five years. I still voluntarily
16 go back and work patrol.

17 Q. And you're allowed to do that?

18 A. Yes, ma'am.

19 Q. You said that the day you got your master's,
20 you immediately went to the Digital Forensics Unit.

21 A. Yes, ma'am.

22 Q. Where is that unit -- is there one location
23 where you do your work?

24 A. HPD, we work out of the Secret Service office
25 off Allen Parkway.

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1 Q. How many digital analysts work with the
2 Houston Police Department?

3 A. We currently have four officers and one
4 sergeant.

5 Q. If you know, has that number been growing?

6 A. Officers or caseload?

7 Q. We'll say caseload.

8 A. Caseload, definitely. It grows exponentially
9 every year.

10 Q. So, by caseload, so we're clear, the number of
11 digital devices that you are asked to analyze?

12 A. Yes, ma'am.

13 Q. When you joined that particular division of
14 the Houston Police Department, did they give you
15 training as well?

16 A. Yes.

17 Q. Can you describe that training for the jury?

18 A. I've been assigned to this particular unit
19 just over two years. In that two years, I've received
20 over 500 hours of training, the majority being in cell
21 phone forensics. It requires me to fly all over the
22 nation and get trained by different police departments
23 and also third-party computer vendors.

24 We've studied cell phone repair so in the
25 event that a cell phone is found in a bayou or

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1 waterlogged or something, we are able to repair it and
2 pull the data off it.

3 We've also studied advanced forensics
4 technique such as taking the entire phone apart with
5 soldering wires directly to the circuit board to extract
6 the data that way, rather than just plugging it in and
7 then seeing what we would get.

8 Q. Is your education ongoing?

9 A. Yes, ma'am.

10 Q. You said you work with four other officers
11 there.

12 A. Yes, ma'am.

13 Q. Who brings you the devices that you are
14 looking at?

15 A. The lead case agent, whoever is the lead
16 officer in the case, whether it be Homicide or Gang
17 Division or Burglary and Theft. They bring the evidence
18 to us and then we take it for the chain of custody.

19 Q. Can you describe chain of custody for our jury
20 for anyone who doesn't know exactly what that is?

21 A. When an officer collects a piece of evidence
22 on scene, they can bring it to us. We'll sign for it
23 saying that we now have it. We'll do our exam. We will
24 contact that same officer back to give it back to them.
25 They'll sign for it saying they have it. Someone is

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1 always in ownership of this evidence.

2 MS. GAIDO: Your Honor, may I approach?

3 THE COURT: Yes.

4 Q. (BY MS. GAIDO) Officer, I'm showing you what's
5 been marked and admitted as State's Exhibit No. 8.

6 Do you recognize that?

7 A. Yes.

8 Q. Can you tell the jury what that is?

9 A. This is an Apple iPhone 4 that's severely
10 damaged.

11 Q. Have you seen State's Exhibit No. 8 before?

12 A. Yes.

13 Q. When did you come into contact with it?

14 A. I don't recall the exact date. It was
15 approximately two years ago.

16 Q. Do you remember who brought you State's
17 Exhibit No. 8?

18 A. Not offhand.

19 Q. As I approached you, I have a manila envelope.

20 A. Uh-huh.

21 Q. Can you describe to the jury what this is?

22 A. It's a -- when officers take evidence, they
23 generally take it to the property room. The property
24 room packages it up nicely for us. When the officer
25 wishes to retrieve that evidence to bring it to me, it

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1 stays in the manila envelope. We generally just keep it
2 in there because we don't want to throw away a bunch of
3 envelopes. We hand it back to the officer. It clearly
4 has an incident number, who took the property out, who
5 initially tagged it.

6 Q. On State's Exhibit No. 8, was this in your
7 chain of custody?

8 A. Yes.

9 Q. When you were given State's Exhibit No. 8, are
10 you given instructions by the person that submits it to
11 you?

12 A. Yes. They make a request of whatever they're
13 looking for, whether they're looking for pictures in
14 particular or call logs or whatever.

15 Q. Do you remember what request was made of this
16 specific phone?

17 MS. MEADOR: Objection, hearsay.

18 THE COURT: It's overruled.

19 A. Generally what's requested are contacts, call
20 logs, text messages, multimedia messages.

21 Q. (BY MS. GAIDO) Are some phones -- back up.

22 Do y'all have a priority on which cases you
23 work on, which devices you analyze first?

24 A. Not necessarily. If the case agent wishes to
25 say that their evidence is a priority, they can either

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1 call or e-mail my sergeant and explain why it's such a
2 priority. Generally they're homicide cases. But
3 they'll go through the sergeant and he'll determine
4 whether it should be a priority or not.

5 Q. But generally it's first come, first serve?

6 A. Right.

7 Q. Are there some cell phone devices, since we're
8 talking about State's Exhibit No. 8 being a cell phone,
9 that are more difficult to get into and analyze than
10 others?

11 A. Absolutely.

12 Q. Can you talk to the jury about that? Which
13 ones are you having a hard time with? Which ones are
14 pretty regularly analyzed?

15 A. Older-style flip phones that I'm sure just
16 about everybody remembers. They're a real pain for us,
17 because most of the time our newer computer programs
18 don't support the old stuff. So, we're forced to
19 actually take photographs of the screen, in order to
20 capture it. If data has been deleted off of these
21 phones, we can't get that back because we're stuck
22 taking pictures. If it's not on the screen, we're kind
23 of dead in the water.

24 Apple, as well, has been a little bit of
25 a thorn in our side. With the newer Apple devices, we

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1 also can't retrieve deleted information, and if it's
2 pass-coded, we can't get into that either.

3 This particular device, being an iPhone
4 4, we're able to crack the code and to show our -- we're
5 able to show ourselves in the databases.

6 Q. If you know, was there a search warrant
7 involved with this phone?

8 A. I believe there was, yes.

9 Q. Can you tell the jury generally how you go
10 about analyzing a phone?

11 A. Sure. When the investigating officer submits
12 evidence to our lab, we take it and we lock it up in a
13 digital evidence vault. Just a whole bunch of phones
14 and computers in there. When we're ready to analyze it,
15 we pull it out of the vault. We put it into a Faraday
16 box. A Faraday box is a large metal box. We put the
17 phone inside and close the lid. It has gloves and a
18 window. So, I can interact with the phone and the box
19 ensures that the phone can't contact a wireless network
20 or cellular network. So, for me, it's off of the
21 network. It won't receive incoming texts. It won't
22 receive incoming calls. I can't send calls. So, no
23 data ever gets changed while it's inside the box.

24 Q. I want to interrupt you for just a second.

25 Why is it important that no data come in

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1 or go out while you're analyzing a phone like State's
2 Exhibit No. 8?

3 A. In this particular case, Apple iPhones, they
4 are able to be erased remotely. So, we've seen a
5 handful of times when a defendant is arrested, he can
6 make a phone call from jail. Maybe he or she calls a
7 girlfriend or boyfriend and politely asks that person,
8 Hey, can you please log on to the computer and erase my
9 phone.

10 If that phone is not off of the network,
11 then he'll get that kill band and we won't get data off
12 of the phone. So, it's important that it remains off of
13 the network.

14 Q. Has that happened to you before?

15 A. A handful of times.

16 Q. In this particular case, did you place State's
17 Exhibit No. 8 into the box that you're describing?

18 A. Yes, ma'am. The entire examination was done
19 while it was in that box.

20 Q. What do you do next?

21 A. We hook it up to a Cellebrite UFED. A UFED is
22 a universal forensics extraction device. It plugs in
23 just by the regular port on the iPhone. It pulls all of
24 the user data and it pulls it directly into my forensic
25 computer. And using another software program, it's able

1 to collect all of the contacts and all of the call logs.

2 MS. GAIDO: Your Honor, may I approach
3 the witness?

4 THE COURT: Yes.

5 Q. (BY MS. GAIDO) Looking at State's Exhibit
6 No. 8 again -- it would be helpful for the jury -- can
7 you show them the port that you're talking about on the
8 iPhone?

9 A. Most people just know it as the charging port
10 on the bottom, but we have a special plug -- well, it's
11 not so special anymore. But when you plug it in, it
12 converts it to a regular USB device and that plugs into
13 my UFED or a computer or whatever.

14 Q. You talked about Cellebrite?

15 A. Yes.

16 Q. Is that the brand name?

17 A. Yes, I'm sorry. That's the brand name that
18 makes this forensic device.

19 Q. Is the forensic device going to be different
20 for different makes and models of cellular phones or can
21 you use the Cellebrite for lots of different phones?

22 A. The Cellebrite, it supports multiple brands,
23 makes and models. So, that's kind of our go-to tool.
24 If a particular phone is not supported by that
25 particular device, then we have additional tools on our

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1 computers that can pull something.

2 Q. Were you able to use the Cellebrite for
3 State's Exhibit No. 8?

4 A. Yes, ma'am.

5 Q. What happens after you plug the phone into
6 Cellebrite?

7 A. After we get all of the data that the
8 investigator requests, we burn a CD -- looks like this
9 one -- and then we'll call up the investigator and say,
10 Hey, come get your original evidence, be it the phone
11 and a CD of the entire dump of the phone. And they can
12 examine it themselves.

13 Q. While you are examining the phone, are you
14 able to see anything that's happening? How do you
15 oversee the process or do you just sort of let the
16 Cellebrite do its thing?

17 A. The Cellebrite is -- it's an automated device;
18 so, it more or less does its own thing. However,
19 through all of my training, I've been trained to kind of
20 know what's going on in the background.

21 Q. And the background, are these things that
22 you're seeing on a computer screen?

23 A. Yes, for all intents and purposes. The
24 Cellebrite has a small touch screen on it and it kind of
25 shows what's going on.

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1 Q. About how long, if you remember, did it take
2 to extract the data from State's Exhibit No. 8?

3 A. I don't recall. Different phones take
4 different amounts of time.

5 Q. Can you tell the jury about what would be --
6 is there such thing as an average time?

7 A. Sort of.

8 Q. Sort of? Okay. What's a general range for
9 how long this would take?

10 A. Depending on the size of an iPhone, they'll
11 vary. If an iPhone is 8 gigabytes versus 32 gigabytes,
12 naturally the more space, it will just take longer to
13 extract the data.

14 I always cringe when I get a pink iPhone
15 because I know it's a teenage girl's phone and all they
16 do is text. So, I'll get thousands and thousands of
17 text messages and it takes longer than, you know, your
18 average 50-year old male.

19 Q. Are we talking minutes or hours?

20 A. Once again, it can vary. It's not unusual for
21 an iPhone to take hours.

22 Q. Are you the only one involved in this process
23 or do several analysts work on one phone?

24 A. No. In this case, I was the only one that
25 worked on it.

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1 Q. What did you -- well, you said that you made a
2 CD, correct?

3 A. Correct.

4 Q. Do you see that in the courtroom today?

5 A. Not my original CD, but I'm assuming this is a
6 copy.

7 MS. GAIDO: May I approach the witness,
8 Your Honor?

9 THE COURT: You may.

10 Q. (BY MS. GAIDO) When you make that CD, what is
11 contained on the CD?

12 A. We create a Web page with Web links showing
13 pictures of the phone itself, my report that I write,
14 what I did, basically explaining the methodology that
15 I've already told you, put it in the box, do the exam,
16 pull the extraction and the extraction itself.

17 So, with this particular phone, the call
18 logs, contacts, images and so on and so forth.

19 Q. Is anyone able to go into a phone and, for
20 lack of a better phrase, put things on there that the
21 user would not know was on there? Does that make sense?

22 Can anyone tamper with a phone in a way
23 that they would have hidden data that no one -- a
24 regular user of the phone would not be able to see or
25 access?

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1 A. While it's in police possession?

2 Q. Well, initially, yes.

3 A. As soon as it's off of the network and whether
4 the collecting officer turns it off or pulls the battery
5 or whatever or when it comes to us and it's off of the
6 network, no, no data can be changed.

7 Q. Is there a way to hide photos on an iPhone?

8 A. Yes.

9 Q. Would you be able to tell in your digital
10 forensics that the photos had been hidden?

11 A. Yes.

12 Q. So, you would be able to tell through your
13 analysis if they had been hidden?

14 A. Yes.

15 MS. GAIDO: May I approach the witness
16 again?

17 THE COURT: Yes.

18 Q. (BY MS. GAIDO) Officer Wilson, I'm showing you
19 what's been premarked as State's Exhibit No. 7A, 7B and
20 State's Exhibit No. 11.

21 Do you recognize those things?

22 A. Definitely No. 11.

23 Q. Would you like some time?

24 A. Actually just one second. I'll match them up.

25 Yes. 7A and 7B, I recognize those.

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1 Q. Tell the jury what 7A and 7B are.

2 A. This is the entire printout of an extraction.
3 This contains contacts, text messages, calendar, notes,
4 tasks, call logs, multimedia messages, instant messages,
5 images and videos.

6 Q. And can you tell this jury what State's
7 Exhibit No. 11 is?

8 A. No. 11 is my very short forensic report saying
9 how I processed this phone.

10 Q. Tell the jury if what has been marked State's
11 Exhibits 7A, 7B come from State's Exhibit No. 8. In
12 other words, is that the result of your analysis of
13 State's Exhibit No. 8?

14 A. This is a direct extraction from the phone,
15 so, yes.

16 MS. GAIDO: Your Honor, State offers
17 State's Exhibit 11, 7A and 7B to Defense Counsel. It
18 has been previously tendered, and offers into evidence.

19 MS. MEADOR: May we approach?

20 THE COURT: Yes.

21 (At the Bench, on the record.)

22 MS. MEADOR: 7A and 7B contain the entire
23 extraction of the phone including numerous, like,
24 hundreds and hundreds of text messages and photo images.
25 I would have to go through a lot of objections to

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1 particular ones. Some of them appear to be irrelevant
2 and prejudicial. It will take a little while. But I do
3 object to it as a whole. I know some of the pictures
4 are extremely prejudicial and irrelevant.

5 THE COURT: I'll give you a few minutes
6 to take a look at it and then I'll need to know
7 specifically what objections have you.

8 (In open court.)

9 THE COURT: Ladies and gentlemen, at this
10 time I ask you to step back to the jury room for a
11 moment. Same instructions apply. Do not discuss the
12 case amongst yourselves or with anyone else. Please
13 step back with the bailiff.

14 (Jury exits courtroom.)

15 THE COURT: So I'm clear, is there an
16 objection to 11?

17 MS. MEADOR: I do object to 11. There is
18 a report -- mine says offense report. I'm not aware of
19 any exception.

20 MS. GAIDO: Your Honor, I believe it
21 comes in under the same guise or the same reason that
22 autopsy reports come in. It's not an opportunity for it
23 to raise analysis on what was done.

24 THE COURT: I'll give you a chance to
25 give me some case or something with regard to that,

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1 Ms. Meador, if you have it, and I'll take a look at it.
2 I'll deal with that when I get back, but what I would
3 like to make sure is done on 7A and 7B -- everybody else
4 can be seated -- is that if you can identify which ones
5 you specifically have an objection to.

6 State, you be able to take the specific ones.
7 If there is agreement on how to deal with certain ones of
8 that, I'll deal with it that way; but whatever there is
9 disagreement over, then I want to deal with them
10 specifically when we get back. All right?

11 MS. GAIDO: Thank you, Judge.

12 (Recess.)

13 MS. MEADOR: I apologize for the delay.
14 When I was given discovery by the State, I did not
15 prepare for them to offer a blanket admission. There
16 are 4,760 text messages. There are thousands of
17 pictures. I do have specific objections to some of
18 them, but I did not list specific objections to every
19 irrelevant text message. I can give you the ones that I
20 have, but if you would like me to go through and object
21 on each individual one, it's going to take awhile.

22 THE COURT: Well, I presume they've
23 offered it. Has it been provided?

24 MS. MEADOR: We have discovery and I do
25 have objections prepared. I just didn't make objections

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1 to each of the 4,000 text messages, each particular one.
2 I made a general objection.

3 THE COURT: I assume that some are
4 probably --

5 MS. MEADOR: There are some that talk
6 about syrup lortabs, extraneous offenses. There's some
7 that use language that jurors are going to find
8 offensive that don't have anything to do with the
9 allegations in this case.

10 MS. GAIDO: Your Honor, part of the issue
11 with the case, as you can probably already tell, is the
12 way the cross-examination has come out after opening
13 statement is that this phone didn't belong to him and
14 was not even used during certain times. Therefore, it
15 is important that the State admit the entirety of the
16 forensic analysis not to prejudice the jury based on the
17 contents. I would be shocked if they go back and read
18 all of this. And I have no intention --

19 THE COURT: I got it. I am not going to
20 deal with it under that scenario. I'm going to deal
21 with it assuming that they do look at it because there
22 is no way that can I fix that if there's something that
23 needs to be fixed on the back end. So, therefore, I
24 want to get it right now with regard to it.

25 MS. GAIDO: Of course. The State's

1 opinion based on the clear defense that is being taken
2 is that all of these text messages and photographs are
3 important to show that this phone was in use by this
4 defendant for a considerable period of time, both before
5 and after the pictures that were taken on February 20th.

6 THE COURT: I get all that. The
7 question, though, is: Are there specific texts or
8 anything that you have objections to or photos that you
9 have an argument that they are either not relevant or
10 you have a 403 objection to it?

11 Clearly, I'm going to allow the State to get
12 into the forensic analysis of -- I know you've made
13 objection to the search and everything. In terms of does
14 the jury get everything in those two voluminous exhibits,
15 you-all know better than I do what the disagreement is over
16 with regard to this.

17 MS. MEADOR: Part of my argument is also
18 text messages. Not a single one has been authenticated.
19 So, whether -- they're saying that it came from the
20 phone. We don't argue it came from this phone, but
21 there's nothing in any of these texts to authenticate
22 who wrote them, that it was William Horhn that wrote
23 them. So, I don't --

24 THE COURT: Well, what inference the jury
25 draws from that one way or the other, I mean, I don't

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1 think there's a dispute presumably that they came from
2 that phone.

3 MS. MEADOR: Right. I think, though,
4 because it can't be authenticated, it will go towards
5 our hearsay confrontation objection.

6 THE COURT: Well, I'll let you make your
7 argument with regard to that, but I would overrule the
8 objection with regard to that.

9 Now, if you have specific objections as to
10 you've alluded to matters being discussed or photos that
11 don't speak to something other than, I'll need to deal with
12 those. But I can't deal with those in a blanket matter. I
13 need something specific. If I'm going to order that the
14 State -- that it be admitted or certain parts of it be
15 removed or redacted, I've got to at least be pointed as to
16 what those are.

17 MS. MEADOR: If I may say Exhibit 7A and
18 7B.

19 THE COURT: And let me say this also.
20 Presumably if 7A or 7B are admitted, or some portions of
21 it, I assume that the State would not at this point
22 intend to show or display every single one.

23 MS. GAIDO: Of course not, Your Honor.
24 What we have done --

25 THE COURT: Let me finish.

1 If there is an agreement over, at least at
2 this point, if those could be identified as to which ones
3 you're going to actually publish, I would deal first with
4 what the objections are with regard to those. Then I can
5 sort that out. Then if need be, as long as it's not given
6 to the jury, I can certainly deal with removing things,
7 sustaining objections to things that aren't published before
8 anything ever goes back and I think we could make the record
9 clear on that.

10 At this point if we could at least, for the
11 sake of time to get started, deal with -- if I admit them, I
12 can put on the record outside the presence of the jury that
13 there may be further objections that the Court may entertain
14 before they go back to the jury and we can make a record of
15 that, but let's deal specifically with which ones the State
16 intends to publish at this point. That way, I can at least
17 sort that out and the jury's not seeing anything that I
18 either have or would sustain an objection to.

19 MS. MEADOR: So, right now, do you want
20 us just to discuss those, hear objections on those?

21 THE COURT: Yes. State, I would like you
22 to go through specifically which items out of that group
23 that you're going to want to show to this jury and what
24 objections there are to those. Then I will give you
25 time to sort out before anything ever goes back to

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1 whether or not there are further things that need to be
2 done. We can be very clear for the record on what the
3 jury is actually shown or not shown. Fair enough?

4 MS. GAIDO: Fair enough.

5 (Recess.)

6 THE COURT: Are you offering the boards
7 or each one specifically or just publishing them out of
8 those?

9 MS. GAIDO: Just publishing them in a way
10 that it is easy for the jury to understand. And the
11 dates that are on them will be testified to by the
12 witness that's on the stand right now.

13 THE COURT: In some way, shape, or form,
14 that's going to have to be, I presume, marked or
15 something so that it's clear for the record what we're
16 talking about.

17 MS. GAIDO: Your Honor, I'll mark them.

18 THE COURT: I'll give you a chance to do
19 that once I've ruled on them. For purposes of the
20 record, we're outside the presence of the jury. The
21 State has offered 7A and 7B, which I believe are
22 extractions, according to the witness, from the cell
23 phone at issue. It appears to be pretty voluminous, the
24 information from that.

25 I understand, Ms. Meador, that you have some

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1 objections to some specific items within that. In order to
2 at least move the matter along but also give you a chance to
3 make objections, the State has in front of the Court here
4 three poster boards with various pictures or photos on those
5 that appear to be the ones that, State, you were going to
6 attempt to or want to publish to the jury at this point; is
7 that correct?

8 MS. GAIDO: Yes, Your Honor. Each of
9 these is also contained in 7A and 7B.

10 THE COURT: These are the sum total of
11 the ones that you want to publish at this point,
12 correct?

13 MS. GAIDO: At this point, yes, Your
14 Honor.

15 THE COURT: For purposes of the record, I
16 want to deal with objections to these. Whatever I rule
17 is admissible, I will allow to be published. Whatever I
18 rule is inadmissible, I won't. But then I will at a
19 later time -- we will probably break a little bit early
20 today, give you a chance to go back through the entirety
21 of 7A and 7B, Ms. Meador, and I'll rule on specific
22 objections and let each side be heard with regard to
23 that so long as it can be done before those two items
24 would ever be provided to the jury, if they ask for them
25 during deliberations.

1 But just for the record, the only thing out
2 of those that's going to be shown to the jury at this point,
3 depending on the ruling, are the matters that are depicted
4 on the three boards, which the State will mark at some point
5 depending on the Court's rulings for purposes of the record.

6 Go ahead.

7 MS. MEADOR: I'm going to refer first to
8 what's marked on the first poster board as 1, 2, 3, 4,
9 and 5. So, 1, 2, 3 and 4 are pictures of what appears
10 to be spreadsheets and No. 5 is a, I believe, screen
11 shot of images going back and forth with some texts
12 also.

13 First of all, I think all five are hearsay
14 and they are a violation of the confrontation clause. They
15 haven't been authenticated. I don't know who authored
16 those.

17 I do have a little case law from the 13th
18 Court of Appeals that discuss how you would authenticate
19 text messages, and it requires more than just to show that a
20 text was on a phone. They give examples like a sender
21 admitting authorship, business records from a cell phone
22 company showing that it originated from that phone under
23 circumstances that they believe that only the reported
24 sender could have sent it. Contained information that only
25 the purported sender would have known. None of that has

1 been presented here.

2 (State's Exhibits 1 through 4 were not
3 marked as individual exhibits but are
4 contained within State's Exhibit No.
5 12A.)

6 THE COURT: Just so I'm clear, 1 through
7 3 and 4, and they're dated February 15th, those are
8 screen shots, whatever the right way to say that is, of
9 some kind of spreadsheet; is that right?

10 MS. MEADOR: I think they're photographs
11 of the spreadsheet.

12 THE COURT: Those are not dealing with
13 text messages, but 5 is; is that correct?

14 MS. MEADOR: Right. The first four are
15 pictures of documents.

16 THE COURT: Right.

17 MS. MEADOR: And my objection would apply
18 to those documents as well, seeing as there's very
19 little difference between what's written on the text and
20 when taking a picture of a writing as well. It would
21 still be hearsay and subject to the confrontation
22 clause.

23 THE COURT: State, I'll let you respond,
24 first of all, to 1 through 4.

25 MS. GAIDO: Well, Your Honor, first of

1 all, they're not hearsay. They're not being offered for
2 the truth of the matter asserted. They are not
3 statements. They are just numbers. They are dates of
4 birth. They are social security numbers. That doesn't
5 fall within what the law is in terms of hearsay. It
6 doesn't violate the confrontation clause and they're
7 actually just photographs, like anything else. They've
8 been authenticated through this witness as having come
9 from a particular device and they're admissible.

10 MS. MEADOR: Briefly, I do have a case on
11 point for the record. The 2nd Court of Appeals, *Black*
12 *v. State*, actually dealt with information on a phone,
13 text messages about a desire to engage in a drug
14 transaction in a drug case and the State also said they
15 weren't offering it for the truth of the matter
16 asserted. And the Court found that no hearsay exemption
17 justified it. There was no showing -- well, first of
18 all, there was no showing that the defendant had wrote
19 or ratified any of the statements, but they were
20 messages purported to be an expression of a desire to
21 engage in a drug transaction in a drug case.

22 I think that is exactly what this is showing,
23 that these are people's names, dates of birth and social
24 security numbers in a case about identifying information and
25 I do think it's being offered for the truth of the matter

1 asserted.

2 THE COURT: With regard to 1 through 4,
3 I'll overrule the objection.

4 With regard to 5, what specifically is 5?

5 MS. GAIDO: Your Honor, 5 is a screen
6 shot that's part of a report that was made by this
7 analyst. It is a list of dates, numbers that are
8 sending text messages, numbers that are receiving the
9 text messages. There are statements, text messages, and
10 specifically on this second to right-hand column, you
11 have Image 4220 dot jpg, which the witness will testify
12 indicates that a particular image is being sent by the
13 cellular device that is State's Exhibit No. 8. Those
14 three images are what you see in State's Exhibit No. 1,
15 2, and 3.

16 (State's Exhibit 5 was not marked as an
17 individual exhibit but is contained
18 within State's Exhibit No. 12A.)

19 THE COURT: So, 5 is generated by this
20 witness?

21 MS. GAIDO: It is, Your Honor, but it's
22 contained in 7A and 7B. It's part of the extraction of
23 the cell phone.

24 THE COURT: And what's your objection to
25 that?

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1 MS. MEADOR: Again, hearsay and
2 confrontation because we can't authenticate who wrote
3 any of those and I can't cross-examine them.

4 THE COURT: It's overruled.

5 MS. MEADOR: And, Your Honor, just to
6 make clear also on 1, 2, 3 and 4, every single one of
7 those images contains people -- alleged people's names,
8 dates of birth and socials that are not listed
9 complainants. So, I would argue that those are
10 extraneous and that it doesn't fall under a same
11 transactional context exception because it's not
12 necessary to the jury's understanding of the incident
13 offense. Those could easily be redacted.

14 THE COURT: State?

15 MS. GAIDO: Your Honor, with regard to
16 that, it goes directly to what we were talking about in
17 voir dire yesterday. In order to prove this charge, I
18 have to prove that he did not have consent and that he
19 intended to defraud. I am allowed to do that if I can
20 show that he contained more than three people's
21 information and by circumstantial evidence.

22 The extraneous complainants, as the Defense
23 calls them here, are circumstantial evidence. It goes to
24 the fact that this was being kept in a spreadsheet. They
25 were people that he did not know.

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1 THE COURT: Your objection is overruled.

2 Let me deal with the rest.

3 What is 6 and the second board that
4 has -- go ahead.

5 (State's Exhibit 6 was not marked as an
6 individual exhibit but is contained
7 within State's Exhibit No. 12A.)

8 MS. MEADOR: Sure. We would object to
9 No. 6, as well as the second board, again on relevance,
10 the fact that he has pictures of him on a phone doesn't
11 mean it's his phone. I have a ton of pictures of my
12 kids on my phone and it is not their phone.

13 Specifically -- that's one objection.

14 Specifically this picture that's in the
15 center of the board, where it appears to be Mr. Horhn giving
16 the middle finger with both hands, I don't think it survives
17 403. That is substantially more prejudicial and it would
18 help to confuse the jury and mislead them, as well as the
19 picture directly below it, which shows a hand gesture which
20 could be interpreted to be a gang sign. Also, the
21 prejudice -- any probative value is substantially outweighed
22 by the risk of unfair prejudice, those two specifically.

23 THE COURT: State?

24 MS. GAIDO: Your Honor, with regard to
25 the photos not meaning that they belong to the

1 defendant, that's a great jury argument. But it has
2 nothing to do with their admissibility. They are what
3 was found in State's Exhibit No. 7A and 7B.

4 THE COURT: Just so I'm clear, you have
5 three photos on there that have -- separate from the
6 middle one that Ms. Meador has pointed out with regard
7 to where he appears to be displaying his two middle
8 fingers, there are three other photos that appear to
9 depict the same individual, same shirt. I will sustain
10 the objection as to the middle one.

11 MS. GAIDO: May I respond briefly?

12 THE COURT: You may.

13 MS. GAIDO: The only reason that these
14 were included was because I was concerned that based on
15 their argument, they would say someone else has taken
16 this photo. I think the argument to the jury for the
17 State will be it's much less likely that someone would
18 have taken all of these different photos of him posing.
19 The State took lengths to make sure that he was not in
20 his gang colors and that he was not throwing gang signs
21 and this was the only batch of repeated photographs that
22 the State was able to find that we believed were the
23 least prejudicial, should this have been an argument.
24 Obviously if the Court decides, we'll take out the
25 middle one, but that is why it was included.

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1 THE COURT: I'll overrule the objection
2 to the other ones, but I'll sustain it as to the middle
3 one.

4 MS. GAIDO: Okay. Thank you, Your Honor.

5 THE COURT: I'll let y'all fix that in a
6 moment. Go through the rest.

7 MS. MEADOR: The rest, again, just for
8 relevancy, we're not sure in that --

9 THE COURT: Let me make sure I'm dealing
10 with -- there's a top one of October 3rd, 2012, appears
11 to have a male and a female. And then below
12 February 7th, there is a picture, and then above
13 February 2nd, 2013, picture of male and female and then
14 another picture above January 28th, 2013. Just so I'm
15 clear for the record what we're discussing.

16 Go ahead.

17 MS. MEADOR: The same objection to those
18 as to relevance and authentication.

19 THE COURT: I'll overrule the objection
20 with regard to those. So, with regard to the first two,
21 the objections are overruled with the exception of the
22 middle photograph, which needs to be removed.

23 Okay. The third poster board.

24 MS. MEADOR: The third poster board, the
25 first three, which are dated February 23rd, 2013, and

1 April 9th. The one on the left says: "I am a father,
2 not a baby daddy." Those three, Ms. Gaido said she's
3 using them to show there was service and no service.
4 However, it shows there is service, but there's no date
5 on the actual picture. I'm not sure how they're going
6 to prove there was service on a certain date.

7 Secondly, saying there was no service doesn't
8 prove that he didn't have his contract. His phone could
9 have been somewhere where there was no service. It shows
10 the same on some cell phones when you just can't hook up to
11 the wireless network. I'm just not sure of the relevance of
12 any of these.

13 THE COURT: State?

14 MS. GAIDO: Your Honor, there is a gap in
15 the records of 7A and 7B. As you know, the offense date
16 is April 11, 2013, which is when they find the defendant
17 and they arrest Mr. Horhn. There are no calls or text
18 messages made, which is indicated in the report, after
19 about February 25th up until April 9th, which is right
20 around when the defendant was arrested.

21 It is obvious that the Defense Counsel's
22 argument is that he was not possessing the phone. I imagine
23 that is also going to mean that he was not using the phone.
24 These exhibits on the third board are meant to show, one,
25 that the phone was still being used to screen capture things

1 and to show that the phone can be used for more than just
2 text messages. It can be used to access the Internet, which
3 my witness will testify is being done here as is indicated
4 by these bars. The reason that we have these two and these
5 two is to show, and the witness will testify, here this
6 phone is obviously getting wireless service through H2O,
7 just like an AT&T, just like a Verizon carrier. And here on
8 April 9th when we're not getting any text messages coming or
9 going or any phone calls coming or going, the phone is still
10 being used, even if it's just being used to access the
11 Internet or as a way to take photos.

12 This specifically shows screen captures that
13 were the least prejudicial. We have photos of children.
14 And we have a screen capture that says: "I'm a father, not
15 a baby daddy." This one was the only other screen capture
16 that I was able to get that had the no service around this
17 time. If it is prejudicial, it is certainly outweighed by
18 its probative value based on what the Defense Counsel was
19 arguing.

20 MS. MEADOR: And to be clear, I haven't
21 made my objections to that one yet. I was just
22 referring to these three. I think that one does have a
23 403 objection. It's some sort of naked person with some
24 sort of message about being light-skinned underneath it.
25 I think that if there is any probative value to that at

1 all, it is substantially outweighed by the risk of
2 unfair prejudice or confusing the jury.

3 If the witness wants to testify that there is
4 a picture that says "no service" and he pulled it on that
5 date, that's completely different.

6 THE COURT: I will sustain the objection
7 to the last one. I will allow the witness to be able to
8 testify as to what he was able to glean from the device
9 in terms of when service was or was not, but at this
10 point as far as the photo itself, I'll sustain that.

11 I'll overrule the objection to the others for
12 the purposes that the State has given. So, the middle one
13 needs to come off, I'll sustain that, and also the last one
14 dated April 9th needs to be removed.

15 MS. GAIDO: Yes, Your Honor.

16 THE COURT: Just to be clear, make sure
17 that those are marked and I'll put it on before I bring
18 the jury back, just so it's clear what I was talking
19 about.

20 MS. GAIDO: Absolutely, Your Honor.

21 THE COURT: All it's referring to now are
22 boards. You can mark for appellate purposes what the
23 two were that I sustained the objections to so that
24 there's a record of what was removed.

25 MS. GAIDO: Okay, Your Honor.

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1 THE COURT: Just so we're clear, once all
2 the evidence is in, I give the jury the instructions and
3 I send them back to deliberate, before or if they send
4 out any notes, I want both sides to look at the evidence
5 that's been admitted so that there is agreement at least
6 over what has been admitted should the jury ask for
7 everything. So, just in case I forget to remind y'all
8 of that, the second they go back to deliberate, I want
9 y'all to be clear.

10 MS. GAIDO: Your Honor, would it be
11 possible to have a determination or to have that
12 discussion before closing argument so I can know what
13 I'm able to publish from the exhibit?

14 THE COURT: Certainly. My point was just
15 that there may be a bunch of things floating around here
16 that aren't admitted into evidence. When 50 things get
17 piled up there, I just want to make sure that the stuff
18 that's not admitted is just in the right stack. But
19 clearly everybody will have a ruling before the jury
20 ever deliberates in terms of what's admissible and
21 what's not.

22 MS. GAIDO: Your Honor, the only other
23 matter that we have is State's Exhibit No. 11. There
24 was an objection made to it.

25 THE COURT: I'll allow you to be heard.

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1 MS. MEADOR: I don't have anything
2 further.

3 THE COURT: Nothing? Okay. State's 11
4 will be admitted then. So, when the jury is brought
5 back in, I will rule at this point that 7A and 7B are
6 admitted and 11. However, the only thing by agreement
7 that is going to be shown out of 7A and 7B are 12A, 12B
8 and 12C and you've made your objections to those. What
9 I want to be clear about is when we break today, because
10 we're going to break early today, is that I will give
11 y'all a chance to go back through the entirety of 7A and
12 7B to see what other objections there are with regard to
13 it so that I can give rulings on if or what the rest of
14 that, what's admissible or not admissible. All right?
15 And then I will deal with those specifically either
16 later today or tomorrow, but obviously before both sides
17 close and anything gets back to the jury. But just so
18 that we can move through this in a timely manner, the
19 only portions of 7A and 7B that you're going to publish
20 are those items; is that correct?

21 MS. GAIDO: Yes, Your Honor.

22 THE COURT: I assume there's not going to
23 be a discussion of specific contents of anything else in
24 terms of that document that you're going to elicit from
25 him?

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1 MS. GAIDO: In 7A and 7B?

2 THE COURT: Correct.

3 MS. GAIDO: No, sir.

4 THE COURT: I know I've said this 50
5 different ways, but the reality is the only thing you're
6 going to talk about out of 7A or 7B are those three
7 boards, right, in terms of specific items?

8 MS. GAIDO: If you don't mind, I would
9 like to talk about the general contents.

10 THE COURT: I understand.

11 Go ahead.

12 Actually, what I will do in front of the jury
13 at this point is I won't rule on 7A or 7B, but I am going to
14 rule that 12A, 12B and 12C are admissible and 11.

15 (Jury enters courtroom.)

16 THE COURT: For purposes of the record,
17 State's Exhibit 11 is admitted.

18 And, State, you've offered 12A, 12B and 12C?

19 MS. GAIDO: Yes, Your Honor.

20 THE COURT: And those are admitted at
21 this point. You may proceed.

22 MS. GAIDO: Thank you. May I publish
23 State's Exhibit No. 11?

24 THE COURT: Yes.

25 Q. (BY MS. GAIDO) Officer, I'm showing you what

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1 has been marked and admitted as State's Exhibit No. 11.

2 Do you recognize this document?

3 A. Yes, ma'am.

4 Q. Tell the jury what it is.

5 A. This is the forensic analysis report that I
6 write up. The top portion of it, this is filled in
7 automatically when we intake a device, when an officer
8 drops off evidence. The date and whoever takes it is
9 automatically filled in to this report later.

10 The specific findings near the bottom,
11 this is what I manually type in that identifies the type
12 of phone, how I got the data from it and what data I
13 got.

14 Q. I'm flipping to the next page, page two of
15 State's Exhibit No. 11. What do we see here?

16 A. These are photos of the device itself.

17 Q. Why do you take those?

18 A. To clearly show that the serial numbers match
19 up. This is the device that I did, and if there was any
20 damage to it prior to me getting it or how I returned
21 it.

22 MS. GAIDO: Your Honor, may I approach
23 the witness?

24 THE COURT: Yes.

25 Q. (BY MS. GAIDO) I'm showing you State's Exhibit

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1 No. 11. And you already have State's Exhibit No. 8.
2 Are you able to verify that State's Exhibit No. 8 was
3 the cell phone device used to get the report that is
4 State's Exhibit 11?

5 A. Yes, ma'am.

6 Q. And how are you able to do that?

7 A. Simply looking at it, the damage matches up
8 along the face. There is missing glass in the lower
9 left portion and cracks that move up the screen.

10 Q. Were you able to -- we've got State's Exhibit
11 No. 11, which is a two-page report. Was there a larger
12 report that details your findings or the extractions of
13 the phone?

14 A. Yes. Exhibit 7A and 7B.

15 MS. GAIDO: Your Honor, may I approach
16 the witness?

17 THE COURT: Yes.

18 Q. (BY MS. GAIDO) When you are looking through
19 something like State's Exhibit A and B, which has not
20 been admitted, what does that show the person reading
21 the report? And I can bring you -- without testifying
22 to the contents specifically of 7A and 7B, can you tell
23 us about these headings, what information, not
24 specifically, but generally and broadly go into a report
25 like that?

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1 A. The extraction report is going to provide the
2 manufacturer of the phone, the make and the model of the
3 phone, the phone number, other identifying information
4 about the phone links to the carrier and such. Also, it
5 will show what it's able to extract and what I got:
6 Contacts, text messages, calendar and so on and so
7 forth.

8 Q. Are photographs included in that?

9 A. Yes, ma'am.

10 Q. When you are doing your forensic analysis on a
11 cellular device, will you automatically know the,
12 quote-unquote, owner of that device?

13 A. Not necessarily. There's multiple ways to
14 determine the owner. In this case with an iPhone, most
15 iPhone users name the phone, Mark's iPhone or whatever.

16 In this particular case the phone was
17 pass-worded, meaning that whoever was using the phone
18 had to be privy to that information. Most people hold
19 the password pretty close to their chest. Myself and my
20 wife are the only ones that can access my phone.

21 Q. In this instance were you able to determine if
22 this cell phone had a name, as you call it?

23 A. Yes.

24 Q. And what was that name?

25 A. Zeus.

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1 Q. Zeus?

2 A. Yes, ma'am.

3 Q. Were you able to get photographs off the --
4 well, let me rephrase.

5 In your profession, is there a difference
6 between a photograph and a screen shot?

7 A. Yes, ma'am.

8 Q. Can you describe what a screen shot is versus
9 what a photograph is?

10 A. A photograph implies that you are using the
11 phone's camera to take a picture. A screen shot, the
12 phone is taking a picture of the screen. It captures
13 what's currently being displayed and saves that as an
14 image file.

15 Q. Where does the image file go? Is it
16 accessible in the type of analysis that you did on
17 State's Exhibit No. 8?

18 A. Yes, ma'am.

19 Q. I'm showing you what has been marked and
20 admitted as State's Exhibit No. 12A.

21 Are you familiar with these?

22 A. Yes, ma'am.

23 MS. GAIDO: I'm sorry, Your Honor. May I
24 publish?

25 THE COURT: Yes.

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1 Q. (BY MS. GAIDO) Have you and I spoken about
2 these exhibits before?

3 A. Yes, ma'am.

4 Q. I have what we have marked as, within 12A, 1,
5 2, 3 and 4.

6 Would you describe these as screen shots
7 or photographs?

8 A. They are photographs.

9 Q. Where did the photographs come from?

10 A. Where did I find them?

11 Q. Yes.

12 A. They were saved in the device itself in the
13 camera folder. This is typical of where screen shots
14 are saved.

15 Q. Is this the screen shot or is this a
16 photograph?

17 A. This is a photograph.

18 Q. Just so we're clear, you said that a
19 photograph is something that is actually taken by the
20 camera that is in the device?

21 A. Correct.

22 Q. We have some dates above 1, 2, 3 and 4 on
23 State's Exhibit No. 12A.

24 Are you familiar with these dates?

25 A. Yes, ma'am.

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1 Q. Can you tell the jury how you're familiar with
2 these dates?

3 A. When a picture is taken with the camera, the
4 camera automatically logs the date and time that the
5 picture was taken. So, in the extraction report, it
6 will clearly show here's your picture and here's the
7 date and time it was taken.

8 Q. So, February 15th of 2013 is when the
9 extraction shows these photographs were taken by State's
10 Exhibit No. 8?

11 A. Yes, ma'am.

12 Q. We also have No. 5 on State's 12A. Can you
13 describe for the jury -- well, have you seen this
14 before?

15 A. Yes, ma'am.

16 Q. Can you describe what it is?

17 A. This is a screen shot. Very clear. It was
18 displayed on this phone. Someone, whoever, captured
19 that image from the phone and it saved into the phone's
20 camera folder.

21 Q. And State's No. 6 on 12A, can you describe
22 that?

23 A. Same thing. This one -- sorry. I'm just
24 trying to read it.

25 This is also a screen shot and it was

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1 found in the same place.

2 Q. I'm now showing you what's been marked as
3 State's Exhibit No. 12B.

4 Do you recognize this?

5 A. Yes, ma'am.

6 Q. And are all -- there are eight photographs on
7 12B, correct?

8 A. Yes.

9 Q. Where did those photographs come from?

10 A. These were stored on the phone in the camera
11 folder.

12 Q. We have a few dates on 12B. The first one is
13 February 1st, 2013.

14 Where did you come up with this date --
15 or do you know about this date?

16 A. The forensic extraction provided that date
17 linked to those photos.

18 Q. By "those photos," are you referring to the
19 four on the left-hand side of 12B?

20 A. Yes, ma'am.

21 Q. So, February 1st was the date that they were
22 taken by State's Exhibit No. 8?

23 A. Correct.

24 Q. We also have in the middle on the top row
25 labeled as October 3rd, 2012.

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1 Is this photograph also from State's
2 Exhibit No. 8?

3 A. Yes, ma'am.

4 Q. Is that the date that you determined this
5 photograph had been taken by State's Exhibit No. 8?

6 A. Yes.

7 Q. On the right-hand side in the upper corner, we
8 have a date of February 7, 2013.

9 Is it safe to assume that this is the
10 date that you analyzed this photograph was taken by
11 State's Exhibit No. 8?

12 A. Yes.

13 Q. And then the same for the last two remaining
14 photographs in 12B. One on the right-hand side in the
15 middle is labeled February 2nd, 2013. And then the
16 bottom right-hand corner January 28, 2013.

17 Are these photographs that were taken by
18 State's Exhibit No. 8?

19 A. Yes.

20 Q. And do those dates comport with the dates that
21 they were taken?

22 A. Yes.

23 Q. Lastly, on State's Exhibit No. 12C, we have
24 three different photos. Starting with the top two
25 photos, which are labeled February 23rd, 2013, would you

1 describe these as photos or screen shots?

2 A. These are screen shots.

3 Q. Well, how were you able to determine that
4 these screen shots were taken on these dates?

5 A. Once again, when a picture is captured or
6 taken with the camera, it's linked to a particular date
7 and time.

8 Q. Is the information that's on the top two
9 screen shots shown in 12C information that would have
10 been on State's Exhibit No. 8 that day? In other words,
11 is this the way that the screen looked at that time?

12 A. Yes.

13 Q. And what do we see in the top hand, the very
14 top of the top two screen shots in 12C?

15 A. It appears that the phone has service, both
16 cellular and wireless.

17 Q. And I'm going to stop you. How can you tell
18 the jury or tell yourself how a cell phone might have
19 wireless and might have a carrier and how it might be
20 accessing the Internet wirelessly?

21 A. The iPhone is in the top left of the phone.
22 In this particular model of an iPhone, the bars will
23 show your cellular strength. Most of you, I'm pretty
24 sure, are familiar with it. And the second arc icon,
25 that shows your wireless strength. So, whether you have

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1 cell service or not, you might be connected to the
2 Internet.

3 Q. The screen shot under April 9th, 2013, which
4 is written on 12C, is that a screen shot or is that a
5 photograph?

6 A. Also a screen shot.

7 Q. Were you able to determine that the screen
8 shot was taken on April 9th, 2013?

9 A. Yes.

10 Q. What is different, if anything, about the
11 April 9th screen shot and the February 23rd screen
12 shots?

13 A. It clearly says that there is no cellular
14 service; however, it maintains wireless service.

15 Q. Can you describe for any cell phone dummies
16 like me what it means to not have cell phone service but
17 to have wireless service?

18 A. Well, today, smart phones aren't necessarily
19 just phones. They're everything to everybody. Cameras,
20 video, books, cameras, music players, GPS devices. Very
21 few of us actually use a cell phone as a phone now.
22 It's so much more. So, regardless if you have cell
23 phone service or not, your device still works, but you
24 don't have phone accessibility. You can't make a phone
25 call; however, you can continue listening to music,

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1 taking pictures.

2 So, simply because you don't have cell
3 service, you can continue using the Internet in this
4 case.

5 Q. Is it possible to continue to use the phone as
6 a camera?

7 A. Yes.

8 Q. I'm showing you State's Exhibit No. 12A again,
9 specifically what we have labeled as 5. We have --
10 well, let me back up.

11 Is there a way through your analysis to
12 determine if a phone is sharing information with another
13 phone?

14 A. Yes.

15 Q. Whatever that information may be?

16 A. Uh-huh.

17 Q. In your experience, are cell phones able to
18 share photographs with other cell phones?

19 A. Yes.

20 Q. In your forensic analysis, are you able to
21 determine if a particular phone has shared or, for lack
22 of a better word, sent something like a photograph to
23 someone else?

24 A. Yes.

25 Q. Can you tell actually from the report which

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1 photographs are being sent to particular numbers?

2 A. Yes.

3 Q. Were you able to do that in this case?

4 A. Yes.

5 Q. Looking at State's Exhibit No. 5 -- I'm
6 sorry -- 12A labeled 5 on the bottom left-hand corner,
7 we see something that says IMG.4420.JPG.

8 Can you describe what that is, if you
9 know, for the jury?

10 A. It's just an image file. It's a Jpeg file.
11 That's a standard image file. This is how the phone
12 saves pictures. It assigns that number generally in
13 sequential order and it stores it in a camera folder.

14 Q. If there are photographs found on a device
15 like State's Exhibit No. 8, are they given a number in
16 your forensic analysis report?

17 A. Yes.

18 Q. Is it the number of that Jpeg that we see?

19 A. Yes.

20 Q. In 12A what's been labeled No. 5, do we see
21 the device sharing certain Jpegs with another device?

22 A. Yes, ma'am.

23 Q. And what phone number, if you know, does
24 State's Exhibit No. 8 have?

25 A. From my forensic report that I took a look at

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1 earlier, it was the first three digits were 600.

2 832-600-8754.

3 Q. Looking at the same exhibit, do you see that
4 phone number there?

5 A. Yes, ma'am.

6 Q. And is that phone number receiving or sending
7 those particular Jpegs, if either?

8 A. This is sending.

9 Q. So, State's Exhibit No. 8 is sharing these
10 particular Jpegs with another device?

11 A. Correct.

12 Q. Were you able through your analysis of the
13 phone to determine what images these particular Jpegs
14 are in 12A, bottom left-hand corner, No. 5?

15 A. Yes.

16 Q. And do you see those anywhere else on 12A?

17 A. Yes.

18 Q. Where are they?

19 A. These top four.

20 Q. So, these are images that are being shared by
21 this cell phone with another cell phone?

22 A. Yes, ma'am.

23 MS. GAIDO: Pass the witness, Your Honor.

24 THE COURT: Ms. Meador.

25

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1 A. Not necessarily. It could mean that the bill
2 went unpaid or it could mean that they're in the middle
3 of Montana.

4 Q. And, more specifically, when you're looking at
5 a phone, you can tell a lot about a phone, but you can't
6 tell, say, who actually authored a text?

7 A. No. Definitely not, however, the password
8 kind of helps.

9 Q. But you can't tell who the person is who
10 entered the password?

11 A. Yes, ma'am.

12 Q. Or took a photo?

13 A. Right.

14 Q. And we also don't know necessarily if an image
15 or text comes into a phone, you would have no way of
16 telling who authored the text that was sent to the
17 phone?

18 A. Yes. That's reported.

19 Q. The actual phone number that sent it?

20 A. Yes, ma'am.

21 Q. But not the person who typed the text?

22 A. Okay. Yes.

23 Q. And your analysis is purely digital, right?

24 You don't do anything that might actually identify who
25 physically possessed the phone? Fingerprints, DNA,

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1 that's not your purview?

2 A. That's correct.

3 MS. MEADOR: Nothing further, Your Honor.

4 THE COURT: Anything else?

5 MS. GAIDO: No further questions, Your
6 Honor.

7 THE COURT: Let me see the attorneys for
8 one second.

9 (At the Bench, on the record.)

10 THE COURT: If y'all are done with this
11 witness, I'll excuse him for today. At the end of the
12 day, I want y'all to go through 7A or 7B. I just want
13 to make sure this witness is available. I don't know
14 that you would have any further questions, but just in
15 case there are further questions based upon what I rule,
16 I just want to make sure that this witness is available.
17 I want to know if either side -- I mean, if you want him
18 back, then you'll have to get him back. If you want him
19 here, then just let us know with regard it.

20 MS. GAIDO: Okay.

21 THE COURT: What else do you have?

22 MS. GAIDO: Your Honor, I have
23 complainants.

24 THE COURT: I'm going to let the jury go
25 to lunch now. It's just going to be a short one.

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1 Thirty, 40 minutes.

2 (In open court.)

3 THE COURT: Ladies and gentlemen, please
4 step back to the jury room with the bailiff. Your lunch
5 has arrived. So, you will get to eat lunch back there.
6 We'll take a short lunch. Once you're finished with
7 lunch, we'll resume with the trial at that time.

8 Again, same instructions apply. Do not
9 discuss the case amongst yourselves or with anyone else.
10 please step back with the bailiff.

11 (Jury exits courtroom.)

12 THE COURT: Just again for purposes of
13 the record, 11, 12A, 12B and 12C were admitted. I think
14 a 13 and 14 were at least identified, which were the
15 ones that I sustained objections to. Whether or not you
16 want those put with the record for appellate purposes, I
17 will let y'all determine that.

18 With regard to 7A or 7B, they've been
19 offered. I haven't admitted them at this point because I
20 will give you a chance at the end of the day to go through
21 and see what additional objections there are.

22 If nobody is going to need anything further
23 from this witness today, I will excuse the witness for now
24 with the understanding that this witness could be subject to
25 recall depending upon what the Court's ruling on 7A or 7B

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1 would be tomorrow.

2 Everybody in agreement with that?

3 MS. GAIDO: Yes, Your Honor.

4 THE COURT: Just so it's clear,
5 obviously, State, you can get in touch with the witness.

6 Defense, if you are going to want him back,
7 let us know in time for us to get him here tomorrow.

8 All right. Let's take about 30, 40 minutes.

9 (Lunch recess.)

10 (Off-the-record discussion.)

11 THE COURT: When we break for the day,
12 we'll give both sides a chance to sort out 7A and 7B.

13 And as the Court indicated, Officer Wilson
14 just needs to be on call in case he's needed to be called
15 back to deal with any matters that the Court admits and
16 whatever happens with regard to that.

17 State, you were about to say there were some
18 matters that need to be taken up with regard to the
19 witnesses that are going to be called?

20 MS. GAIDO: Several of the witnesses
21 would testify that their income taxes for 2013 were
22 filed by someone that was not themselves. When they
23 went to file their taxes, they were told by the IRS that
24 their taxes had been filed by someone else.

25 There's not going to be any information about

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1 who did that because the IRS would not tell them. But the
2 State believes that that is evidence of intent to defraud or
3 harm. Something was done that was harmful with their
4 information. So, we believe that it is relevant and
5 probative.

6 We're not going to go into victim impact with
7 regard to that. I have admonished them. Hopefully they
8 will heed my admonishments, but that is why we will be
9 offering that testimony when it's relevant.

10 THE COURT: Well, hopefully, you will
11 instruct them in terms of -- first of all, I'll hear
12 what objections or anything there is, but if I do allow
13 that, it will be limited to not any victim impact or any
14 further discussion about how that's made them feel or
15 this, that and the other.

16 MS. GAIDO: Your Honor, I have admonished
17 them and rehearsed with them. I may lead them ever so
18 slightly so as to eliminate that potential.

19 THE COURT: Mr. Pope, did you want to be
20 heard?

21 MR. POPE: No. We'll make the proper
22 objection at the time, Judge.

23 THE COURT: Okay.

24 MS. GAIDO: Also, Judge, some of the
25 witnesses that I'm calling have criminal history. I

1 have shared some of that with Scott Pope and the stuff
2 that I have not shared, I will elicit from the witnesses
3 myself.

4 THE COURT: Let's go ahead and get
5 started and get through as much as we can. And we'll
6 break, then at the appropriate time have a chance to
7 deal with 7A, 7B, and deal with the charge.

8 Are your witnesses out there or --

9 MS. GAIDO: They are all in the rooms,
10 Your Honor.

11 THE COURT: Go ahead and have your first
12 one at least in the courtroom.

13 MS. GAIDO: Yes, Your Honor.

14 (Jury enters courtroom.)

15 THE COURT: Ms. Bell, would you raise
16 your right hand to be sworn.

17 (Witness duly sworn.)

18 THE COURT: State, you may proceed.

19 MS. GAIDO: Thank you, Your Honor.

20 **ELLA BELL,**

21 having been first duly sworn, testified as follows:

22 **DIRECT EXAMINATION**

23 Q. (BY MS. GAIDO) Good afternoon.

24 A. Good afternoon.

25 Q. Would you please state your name for our jury.