

1 BY MR. DAUGHERTY:

2 Q Are you familiar with the work on this case of Special  
3 Agent Kevin Boles?

4 A Yes, sir.

5 Q Did he prepare a PowerPoint, or presentation in this  
6 matter?

7 A I stand corrected. Mr. Boles, he did assist with the  
8 investigation.

9 Q Additionally, were there --

10 MR. DAUGHERTY: Well, nothing further. Withdraw that  
11 question.

12 THE COURT: Okay. Anything else?

13 MR. TERRELL: Nothing else.

14 THE COURT: Okay, you can resume your seat at counsel  
15 table, yet again.

16 And you can call your next witness.

17 MR. DAUGHERTY: Thank you, your Honor.

18 People call Special Agent Kevin Boles to the stand.

19 THE CLERK: Please raise your right hand.

20 Do you solemnly state the evidence you shall give in this  
21 matter shall be the truth, the whole truth, and nothing but the  
22 truth, so help you God?

23

24 KEVIN\_BOLES,

25 (Called as a witness on behalf of the People, was sworn and  
26 testified as follows:)

27

28 THE WITNESS: I do.

1 THE CLERK: Thank you. Have a seat.

2 THE BAILIFF: Please be seated. Please state and spell  
3 your name for the record.

4 THE WITNESS: It's Kevin Boles, K-e-v-i-n, B-o-l-e-s.

5 THE COURT: Okay, you may proceed.

6 MR. DAUGHERTY: Thank you, your Honor.

7 DIRECT EXAMINATION

8 BY MR. DAUGHERTY:

9 Q Sir, what is your current occupation?

10 A I'm employed as a special agent with the Federal Bureau  
11 of Investigation.

12 Q And how long have you been so employed?

13 A Since 2005.

14 Q Ask you, do you have any particular education, training  
15 and experience in cell phone record analysis and/or cell phone  
16 tracking analysis?

17 A Yes, sir.

18 Q I may be using the words wrong. If I am, don't hesitate  
19 to correct me.

20 Could you please describe that for me?

21 A Yes, sir.

22 Well, part of the basic FBI training does include the  
23 exploitation of phone records and learning how to do that. In  
24 2009 I took a position within the FBI as the coordinator of a  
25 fugitive task force. A large amount of my job every day since  
26 2009 has been the analysis of phone records for the purpose of  
27 locating fugitives, as well as assisting local law enforcement  
28 with homicide cases and other types of cases.

1 Q And so you have, I take it, extensive on-the-job  
2 training.

3 Do you have any formal classroom training or anything  
4 like that?

5 A Yes, sir. I've taken approximately 120 hours of various  
6 types of cell phone exploitation training over the last five or  
7 six years.

8 But the majority of the experience comes from on-the-job  
9 training.

10 Q Okay. Can you tell us, just generally, in layman's  
11 terms, how a cell phone works?

12 A Sure. So, cell phones, when you communicate with them,  
13 they maintain communications with cell towers. Those cell  
14 towers usually are in the vicinity of the, of where the cell  
15 phone is located. The tower that the phone chooses is due to  
16 the signal strength.

17 And by analyzing records that the cell phone companies  
18 give us, it allows us to get a general area of where a cell  
19 phone is located when a call was made or received.

20 Q In this particular case, did you receive records for a  
21 phone number, (909) 374-0102?

22 A I did.

23 Q And were those identified to you as belonging to a  
24 person, or associated with a person by the name of Charles  
25 Merritt?

26 A Yes, sir.

27 Q And were these records from AT&T?

28 A Yes, sir.

1 Q What did you do with those particular records in this  
2 case?

3 A I was given records approximately one year ago, and asked  
4 to analyze, initially it was just a few days, to look at the  
5 geographic location of where the cell towers are for the  
6 individual phone calls for those few days. It was around  
7 February of 2010 was the date and time in question.

8 Eventually, I was asked to expand that and do several  
9 weeks in the month of February.

10 And I geographically plotted those locations on the map  
11 and provided those back to the San Bernardino County Sheriff's  
12 Department.

13 Q I'd like to begin with your analysis of the defendant's  
14 cell phone records from February 4th, 2010. What did you note  
15 on that date with regard to the defendant's cell phone record?

16 A Do you mind if I refer to my report?

17 Q Did you prepare a report in that?

18 A Yes, it's like a PowerPoint-type slide.

19 Q Did you do it at or near the time of your analysis?

20 A I did.

21 Q And would it refresh your recollection to refer to that?

22 A Yes, it would.

23 MR. DAUGHERTY: With the Court's permission?

24 THE COURT: Sure.

25 THE WITNESS: You said February 4th?

26 Q (By Mr. Daugherty) Yes, sir.

27 A My analysis on February 4th starts at 9:51 A.M. And  
28 there are a multitude of calls throughout the day, through 5:48

1 P.M. And during that time the cell phone has contact with two  
2 different cell towers that are adjacent to each other in the  
3 Rancho Cucamonga area.

4 Q Okay. Did the defendant's cell phone contact a number,  
5 (949) 295-7451?

6 A Yes, it did.

7 Q How many times during that day?

8 A By my count, I show 16 calls where the defendant called  
9 that number. And then 11 times that the number you just cited  
10 called the defendant.

11 Q So, a total of 27 times?

12 A Correct.

13 Q Turning your attention, was there a call received from  
14 that phone number? Was that phone number, by the way,  
15 identified to you as Joseph McStay Sr.'s, phone number?

16 A It was, by the San Bernardino County Sheriff's  
17 Department.

18 Q At 5:48 did the defendant receive a call from Joseph,  
19 Sr., Joseph McStay, Sr.?

20 A Yes, that's accurate.

21 Q How long did that call last?

22 A Approximately 2 minutes and 37 seconds.

23 Q After that phone call, when is the next phone activity on  
24 the defendant's cell phone?

25 A The next phone activity is at 9:32 P.M. on February 4th.

26 Q I'm sorry, 9 --

27 A 9:32 P.M. is the next activity that generates a cell  
28 tower.

1 Q Okay. That's -- you used the term the second time, "that  
2 generates a cell tower"?

3 A Correct.

4 Q Was there any activity during that time period, that  
5 almost three and a half hours, a little over three and a half  
6 hours?

7 A There are. If you can bear with me while I count here.

8 Q Sure.

9 (Brief pause.)

10 A I count six incoming phone calls that go -- are routed to  
11 voice mail, according to the description here on the AT&T  
12 record.

13 Q And were those calls -- those are calls coming into the  
14 defendant's cell phone?

15 A Yes.

16 Q Was that from a number identified to you as belonging to  
17 Katherine Jarvis?

18 A This particular number, no. I don't know who it belongs  
19 to.

20 Q So, you didn't receive an identification?

21 A Not for that particular number.

22 Q It's all the same number?

23 A Five of the, five of the six incoming calls are from the  
24 one number. And then there's one phone call from a different  
25 number.

26 Q What happened to those calls? You said they didn't  
27 generate a cell tower. Why not?

28 A If they didn't generate a cell tower, there's a number of

1 reasons for that. The phone could be off, could be in airplane  
2 mode, could be out of range of a cell tower. So, there's  
3 several reasons why that could have taken place.

4 Q So, after that little over three-and-a-half-hour time  
5 period at 9:32, what's the first event that occurs on the  
6 defendant's cell phone?

7 A The defendant originates a phone call to the same phone  
8 number that he had missed five calls from. And that generates a  
9 contact with a cell tower that's located in the Mira Loma area  
10 of California.

11 THE COURT: What area?

12 THE WITNESS: Mira Loma, which is -- it's a Riverside  
13 County area. It's approximately 10 to 12 miles south of the  
14 Rancho Cucamonga area.

15 Q (By Mr. Daugherty) And how far north of the Fallbrook  
16 area?

17 A Without mapping -- I don't have that mapped out. But I  
18 would estimate 45 to 50 miles, something of that nature.

19 Q After that 9:32 P.M. voice mail, is there any activity on  
20 the defendant's cell phone between 9:32 on the night of the 4th  
21 and 7 A.M. on the morning of the 5th?

22 THE COURT: Well, the 9:32 P.M. is not a voice mail, is  
23 it?

24 THE WITNESS: No, it shows an outgoing call from the  
25 defendant's phone to a phone number that he had missed five  
26 phone calls from.

27 THE COURT: Right. And that was a completed phone call?

28 THE WITNESS: It appears to be.

1 Q (By Mr. Daugherty) And, after that phone call, is there  
2 any activity until 7 A.M. the following morning?

3 A No, 7 A.M. the next morning is the next line activity on  
4 the phone records.

5 Q Turning to Friday, February 5th, 2010, what were the  
6 results of your analysis on the defendant's cell phone records  
7 on that day?

8 A Well, at 7 A.M. is when he originates a phone call. It  
9 appears that he's checking his voice mail. His phone was in the  
10 general area of Upland, California, at that time.

11 The next activity is at 10:45 and 10:46, which is in the  
12 general area of Santa Clarita. At 10:59 A.M. he has contact  
13 with a cell tower in the general area of Interstate 210 near the  
14 San Fernando area.

15 And then between 12:49 P.M. and 2:23 P.M., he contacts  
16 two towers that are adjacent to each other in Rancho Cucamonga.  
17 Then, from 2:32 P.M. to 3:54 P.M., he contacts two different  
18 towers. Both are in the Rancho Cucamonga area. And after the  
19 3:54 P.M. call, which was in the Rancho Cucamonga area, there's  
20 no call activity until 9:17 P.M.

21 Q So, over five hours of no activity on the 5th?

22 A Correct.

23 Q Based upon your review of the defendant's cell phone  
24 records for up to a year prior to this date, is that consistent  
25 with his normal cell activities?

26 A I don't know if I can comment on that, 'cause I didn't  
27 review the whole year to see if there were normal five-hour gaps  
28 of time. I'm sorry. I would need to review that further to



1 comment on that.

2 Q That's okay.

3 Turning your attention to February -- well, let me ask  
4 you this.

5 How many times did the defendant dial Joseph McStay  
6 Sr.'s, phone number that day?

7 A I count three.

8 Q Were those all calls from the defendant to the victim,  
9 Joseph McStay, Sr.?

10 A Yes, they were originated from the defendant's phone.

11 Q Backing up to February 4, is there any record on the  
12 defendant's cell phone records of a call received at 8:30 P.M.  
13 from the victim?

14 THE COURT: From who?

15 MR. DAUGHERTY: From the victim, Joseph McStay, Sr.

16 THE WITNESS: At 8:30 P.M.?

17 Q (By Mr. Daugherty) Right.

18 A No, sir.

19 Q Sir, is it your opinion that the phone was either off or  
20 in airplane mode at that time?

21 A That's what it appears, in my experience.

22 Q Turning your attention to February 6th, 2010, Saturday,  
23 what did your analysis reveal on that day?

24 A The first phone activity is at 10:46 A.M. It contacts a  
25 tower in the Victorville area near Interstate 15.

26 The next activity is at 11:30 A.M., and continuing  
27 through 11:52 A.M, contacts the cell tower in the Oro Grande  
28 area just north of Victorville in the High Desert, near

1 Interstate 15.

2 11:53 A.M., contacts a cell tower a little bit to the  
3 south, back up near Victorville.

4 THE COURT: What time was that?

5 THE WITNESS: 11:53.

6 And 12:49 P.M., contacts a cell tower in the Victorville  
7 area.

8 And then at 1:30 P.M., has contact with the cell tower in  
9 the Oro Grande area, again from a direction pointing to the  
10 south in that case.

11 Q (By Mr. Daugherty) Okay. I'm going to show you -- you  
12 said you prepared, like, a PowerPoint presentation in this  
13 matter?

14 A Yes, sir.

15 Q Do you think that would assist you in explaining your  
16 testimony to the Court, your testimony regarding February 6th in  
17 this case?

18 A Yes, I think so.

19 Q I'm going to show you and publish Exhibit No. 1.

20 THE COURT: Has this been marked as an exhibit?

21 MR. DAUGHERTY: It has, your Honor.

22 THE COURT: And the number is?

23 MR. DAUGHERTY: No. 1.

24 THE COURT: All right, Exhibit No. 1 for identification.

25 Thank you.

26 Q (By Mr. Daugherty) Can you tell us what we're looking at  
27 here?

28 (Marked for I.D. = Exhibit 1, Voice calls, 11:30

1 A.M.-11:52 A.M.)

2 A Yes, sir. These, what you see here is a snapshot of the  
3 records regarding just the calls between 11:30 A.M. and 11:52  
4 A.M., which --

5 So, here on the left you can see the connection dates and  
6 time, which tells you the times that the calls were originated  
7 or received, the phone numbers involved in the call. And the  
8 important part for the geographic plotting comes from this, this  
9 section here.

10 There are a lot of numbers, and the way this is read is  
11 this first number here, 5262, indicates what's known in the cell  
12 phone world as a LAC, which is essentially -- it's LAC. It  
13 stands for a, it's a group of cell towers that are kind of  
14 grouped together for the phone companies' identification  
15 purposes.

16 The following number after that is the actual cell tower  
17 identifier that identifies the exact cell tower. Followed by  
18 the longitude of negative 117 here. And then the colon  
19 separates the latitude here. And then the last colon tells you  
20 what's called the azimuth.

21 So, in this case on the top line it's 85 degrees, where  
22 90 degrees is going to be due east. So this, this data here is  
23 what we use to plot where the cell tower is located and the  
24 direction from the cell tower where that particular phone was at  
25 the time.

26 Q (By Mr. Daugherty) Did you say -- when you say you use  
27 that information to plot, did you do that in this case for these  
28 coordinates?

1 A Correct. The GPS coordinates tell you where that cell  
2 tower is physically located. In this case, it's on the top of a  
3 hill. I believe, I'm not real familiar with Oro Grande, but I  
4 believe it's called Quartzite. It's on top of a mountain. And  
5 then azimuth tells you what section you're looking at.

6 Q I'm going to show you, also, Exhibit No. 2, and publish  
7 Exhibit No. 2;

8 Did you prepare this?

9 A Yes, I did.

10 Q Can you tell us what this describes?

11 (Marked for I.D. = Exhibit 2, Geographic locations of  
12 Exhibit No. 1)

13 A Yes, so this is geographically what was just put out in  
14 number form. So, this is the GPS position of where that -- or I  
15 should say the latitude and longitude of where that particular  
16 cell tower exists, which is indicated by the blue dot.

17 The other blue dots on the map indicate other AT&T cell  
18 towers as they existed in February of 2010. The dark-colored  
19 square here is the location of the crime scene that, that --  
20 coordinates of that were provided to me by the San Bernardino  
21 County Sheriff's Department.

22 So, this particular cell tower identifier, which the  
23 calls generated at 11:30, 11:31, 11:33, 11:34, and 11:52 A.M.,  
24 were generated from this cell tower at an azimuth of 85 degrees.

25 So, 85 degrees points nearly due east. And the cell phone  
26 sector for that particular site is 120 degrees. So, as  
27 indicated by the black lines, that cell phone existed somewhere  
28 in this area. The call at 11:32 was generated, this tower

1 connection which has an azimuth of 10 degrees, which is  
2 indicated by the blue sectors. As you can see, there is a  
3 little bit of overlap. That's not uncommon. It does happen in  
4 the way AT&T orients their towers, and various carriers orient  
5 their towers.

6 Q Did you review records back to February of 2009, of the  
7 defendant's cell phone records back to February of 2009 to see  
8 any other times that he may have been in the High Desert area or  
9 the Victorville area?

10 A I did. In particular I did because I was provided  
11 information by the Sheriff's Department that the defendant does  
12 have a relative in the area. So, I went back and looked, and  
13 there was one time, according to my notes here. It was on July  
14 12th, 2009, the defendant did contact this tower one time. At  
15 the time he contacted that tower on that date he had an azimuth  
16 of 325 degrees, which is pointing to the west side of the  
17 hilltop, where the tower is located.

18 Q And when was that occurrence?

19 A July 12th, 2009.

20 Q And when you say it would be to the left, you just  
21 pointed to the direction where it says Oro Grande there on  
22 Exhibit No. 2;

23 Is that correct?

24 A Yes, with 360 degrees being due north and 270 being due  
25 west, 325 would be somewhere in between that, kind of. I guess  
26 that'd be northwest of where the cell tower is located.

27 Q Again, I'm referring to July of 2009.

28 THE COURT: And for the record, when you were indicating

1 to the west, you were indicating in -- from the blue dot of the  
2 cell tower in the general direction of what's designated as Oro  
3 Grande?

4 THE WITNESS: Yes, sir, that's correct.

5 THE COURT: Okay.

6 Q (By Mr. Daugherty) Was there, based on your review of at  
7 least a year prior of the cell phone records, did he ever hit  
8 the site of the towers that he had -- or that he hit on February  
9 6th?

10 A No.

11 Q Did he ever hit on the sites of the towers on the same  
12 side as the gray areas?

13 A Not in the records I have here.

14 Q How many times did he call the victim, Joseph McStay,  
15 Sr., on February 6th?

16 A I'm sorry, say that again.

17 Q How many times did he call Joseph McStay, Sr., on  
18 February 6th?

19 A I don't see any calls to him on February 6th.

20 Q From Saturday, February 6th at 3:14 P.M., until Sunday at  
21 10:35 A.M., February 7th, is there any cell activity on the  
22 defendant's cell phone, any tower activity, any activities?

23 A You said February 6th, from 3:14 P.M.?

24 Q Correct?

25 A That's his last call of the day on February 6th. His  
26 first call of the day on February 7th is at 10:35 A.M.

27 Q So -- and there's no activity between that time period?

28 A No.

1 Q Almost 20 hours?

2 A I haven't done the math, but -- sure.

3 Q Okay. Turning your attention to February 7th, Sunday,  
4 February 7th, 2010, what did your analysis of the cell phone  
5 records show for that day?

6 A Starting at 10:35 A.M. and on through 11:17, he has  
7 contact with one cell tower in the Rancho Cucamonga area, from  
8 11:46 A.M. through 4:06 P.M., he has contact with cell towers in  
9 the Rancho Cucamonga and Ontario area, which are two cities  
10 adjacent to each other.

11 5:17, he has contact with a cell tower in the Rancho  
12 Cucamonga area.

13 And that is his last call of the day on that particular  
14 day.

15 Q So, last call on February 7th was 5:17 P.M.?

16 A Correct.

17 Q When was the first call on February 8th?

18 A 7:26 A.M.

19 Q Is there any activity between 5:17 P.M. and 7:26 A.M.?

20 A No activity.

21 Q Turning your attention to -- well, let me ask you this.

22 How many times was there contact between the victim's cell phone  
23 and the defendant's cell phone on February 7th?

24 A I show two originating calls from the defendant to the  
25 victim's phone, both at approximately 3:47.

26 Q So, two calls right about the same time?

27 A Correct.

28 Q Okay. Now, turning your attention to February 8th, what

1 did your analysis of the defendant's records that day reveal?

2 Well, let me ask you this, 'cause we are, we're drawing  
3 near on lunchtime.

4 Between 7:36 A.M. and 1:31 P.M., is there any activity on  
5 the defendant's --

6 A Between 7:36 and 1:31?

7 Q Correct.

8 A There is one, one incoming call that goes to voice mail,  
9 does not generate a cell tower, though. So, there's no location  
10 information.

11 Q Why would that be?

12 A It could have been off, airplane mode, out of range.

13 Q And the phone came back, was it fair to say on 1:31, what  
14 was the location of the defendant's cell phone?

15 MR. TERRELL: Your Honor, that misstates the evidence. I  
16 believe the agent says there's three types, not just that it was  
17 off.

18 THE COURT: Sustained.

19 MR. TERRELL: Motion to strike. Thank you.

20 Q (By Mr. Daugherty) With the call at 1:31, were you able  
21 to obtain location data from that?

22 A Yes, sir.

23 Q Where was the defendant's cell phone at that time?

24 A It was in the area of Corona in California.

25 Q Anywhere in particular, were you able to devise?

26 A It's a cell tower near Auto Center Drive and the 91  
27 Freeway in Corona.

28 Q And turning your attention to February 9th, 2010 --



1       Actually, I do want to back up.

2       On February 8th, you said the 91 and Auto Center Drive in  
3   Corona?

4       A   Correct.

5       Q   Were you able to opine a direction of travel of the  
6   defendant after that 1:31 call?

7       A   Yes, sir. He hits the tower that I previously mentioned  
8   at 1:31, followed by a tower at 1:41 that's further north up on  
9   the 15 Freeway.

10       And then at 1:42 he hits a cell tower adjacent to the 15  
11   Freeway in Limonite -- near the Limonite exit in Mira Loma,  
12   which would indicate a northbound travel, presumably on the 15.

13       Q   February 9th, 2010, did your review of the records show  
14   that the defendant was in the Fallbrook area?

15       A   Yes.

16       Q   And from 4:49 P.M. until 10:11 P.M., where was the  
17   defendant's cell phone during that time?

18       A   So, from 4:49 to 10:11, he contacted a cell tower  
19   adjacent to the Pechanga Indian Reservation in the Temecula  
20   area.

21       Q   Are you familiar with that area?

22       A   Yes, I am.

23       Q   Is there a casino there?

24       A   Yes, sir.

25       Q   Did you conduct an analysis of calls either between --  
26   well, between the victim, Joseph McStay, Sr., and the defendant  
27   from January 15th, 2010, to February 3rd, 2010? Did you  
28   determine how many calls were made during that time frame?

1 A I did.

2 Q And how many calls were made?

3 A The number of contacts between the two of them from  
4 January 15th to February 3rd, was 123.

5 Q Between February 3rd and February 9th, 2010, how many  
6 attempts to contact were there?

7 A The analysis conducted was from the 4th to the 15th.

8 Q I'm sorry, from the 4th to the 15th?

9 A So, February 4th to February 15 there were 39 contacts.  
10 I believe 27 of those were made on the 4th.

11 Q Was there any attempt to contact the victim, Joseph  
12 McStay, Sr., by the defendant after February 9th, 2010?

13 A Going through February 15th, it doesn't appear there was  
14 any attempt to contact him after the 9th.

15 THE COURT: There was an attempt on the 9th, though?

16 THE WITNESS: After the 9th, there was no attempt to  
17 contact the defendant.

18 MR. DAUGHERTY: The defendant or the victim?

19 THE WITNESS: I'm sorry, the victim.

20 THE COURT: Was there an attempt to contact the victim's  
21 phone number from the defendant's phone number on the 9th?

22 THE WITNESS: I can check that, sir, if you give me a  
23 minute.

24 THE COURT: Actually, I guess what I'm really interested  
25 in, when was the last time there was an attempt to contact the  
26 victim's phone number from the defendant's phone number?

27 THE WITNESS: Okay, I will look that up right now, sir.

28 (Brief pause.)

1 It appears that was on February 9th at 1:07 P.M.

2 THE COURT: Okay. And was that from the Temecula cell  
3 tower?

4 THE WITNESS: That particular cell tower is located kinda  
5 in between Corona and Lake Elsinore, in the south Corona area.  
6 Temescal Valley is what it's often referred to as.

7 THE COURT: Okay.

8 MR. DAUGHERTY: No further questions, your Honor.

9 THE COURT: All right. It's about 12, so we'll go ahead  
10 and take our noon recess at this time 'til 1:30 in the  
11 afternoon.

12 We'll see everyone back at 1:30.

13 I'm afraid we'll need you back at 1:30.

14 (Whereupon the noon recess was had.)

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1 SAN BERNARDINO, CALIFORNIA, MONDAY, JUNE 15, 2015

2 -oOo-

3 DEPARTMENT '21' HONORABLE MICHAEL A. SMITH, JUDGE

4 (Appearances as previously noted.)

5 (Theresa Christine Wolfe, C.S.R., Official Reporter,

6 C-6024.)

7 THE BAILIFF: Please come to order. Court is now in

8 session.

9 THE COURT: All right, the record reflect we are now back

10 in session on the Merritt matter. Counsel and parties are

11 present. And our witness is still on the witness stand.

12 And, Mr. Daugherty, had you finished your direct

13 examination?

14 MR. DAUGHERTY: I did, your Honor.

15 THE COURT: All right. Cross.

16 MR. TERRELL: We have no questions. I apologize for the

17 delay to the agent.

18 THE COURT: Okay. All right, if we had known that we

19 might have saved you a trip.

20 One or two questions.

21 EXAMINATION

22 BY THE COURT:

23 Q Could you put Exhibit 2 back up?

24 So, you have the cell tower and you have what I'm calling

25 the vectors for the directions?

26 A Yes, sir.

27 Q So, what is the range that a call would hit that cell

28 tower, if you know?

1 A There's no way to say, 100 percent. I can say my  
2 experience of locating phones in fugitive cases. We typically  
3 look at the adjacent cell towers where the phone would likely  
4 turn and contact this tower. If you look at the 50-percent  
5 mark, that's where you start to see a shift. We typically go  
6 out to 70 percent, just to be on the safe side. But --

7 So, that's generally --

8 But without sophisticated equipment, we can't tell for  
9 sure.

10 Q And ballpark, what's that distance, if you know? Say the  
11 50-percent mark between --

12 A Using this scale here of 1 to 4 miles, I would say  
13 approximately 2, 2 to 5 miles is the distance between these two.

14 Q Okay, that's good.

15 Technically, if someone has a cell phone, cell phone is  
16 on, not in airplane mode, they're driving up Interstate 15, not  
17 receiving any phone calls, not making any phone calls and not  
18 getting or receiving any texts, is the cell phone going to  
19 bounce off of any cell towers?

20 A It won't reflect in the records until the cell phone is  
21 in communications with the cell towers. The company needs to  
22 know that, but that information is not stored in the course of  
23 business with the phone companies. So, unless there's activity  
24 on the phones, we won't get that.

25 Q So, if someone is out in the area of a cell phone tower,  
26 their phone is on but they're not receiving or making calls,  
27 there's nothing to indicate the phone was there?

28 A Correct.

1 Q It's only if they make or receive a call that it will  
2 generate the information that you put up on Exhibit No. 1?

3 A Yes, sir. The only exception is occasionally you can get  
4 the use of data on the phone. But, again, there's activity in  
5 the phone.

6 THE COURT: Right. I gotcha. Okay. Thank you.  
7 Anything further by either counsel?

8 MR. TERRELL: No, your Honor.

9 MR. DAUGHERTY: No, your Honor.

10 MR. TERRELL: No, sir.

11 THE COURT: Okay. Any objection to Special Agent Boles  
12 being excused?

13 MR. DAUGHERTY: No, your Honor.

14 MR. IMES: No.

15 MR. TERRELL: No, your Honor.

16 THE COURT: Thank you, sir, for your attendance. And you  
17 are excused.

18 THE WITNESS: Thank you, sir.

19 THE COURT: You can call your next witness.

20 MR. DAUGHERTY: Your Honor, People call Detective Daniel  
21 Hanke.

22 THE CLERK: Please raise your right hand.

23 Do you solemnly state the evidence you shall give in this  
24 matter shall be the truth, the whole truth, and nothing but the  
25 truth, so help you God?

26 ///

27 ///

28 ///