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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,
vs.
CARLA JACKSON and
TELDRIN FOSTER,
Defendants.

DOCKET NO.
1:20-CR-00296-JPB-5-20
VOLUME 5 (AM SESSION)

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE J.P. BOULEE
UNITED STATES DISTRICT COURT JUDGE
FRIDAY, FEBRUARY 9, 2024

Appearances:

For the Government: Tal C. Chaiken, Esq.
Samir Kaushal, Esq.
Babasijibomi Moore, Esq.

For Defendant Jackson: David D. Marshall, Esq.

For Defendant Foster: Leigh Ann Webster, Esq.
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(Court was called to order at 9:00 a.m.)

THE COURT: Thank you, Officer.
Thank you. You all can have your seats.

Hope everyone is well this morning. Good to see
you all.

Are we ready to put the witness on the stand and
bring out the jury?

MS. CHAIKEN: Yes, Your Honor.

THE COURT: And what did we decide, that
Ms. Webster was going to get to a good stopping point and
then shift focus to a myriad of other witnesses we need to
get in today?

MS. WEBSTER: I think that's what we decided, yes.

THE COURT: How far are you from a decent stopping
point?

MS. WEBSTER: I was just going to sort of finish
what we started talking about yesterday, and lay that
foundation. Like, two and a half pages.

THE COURT: Okay. So?

MS. WEBSTER: 10 minutes.

MS. CHAIKEN: Your Honor, I want to be clear
because I think where we left it off yesterday was that
Ms. Webster was saying that lack of effect on the

1 investigation was what she was going to try and lay a
2 foundation for, and in our view that's not an admissible
3 purpose for admitting hearsay.

4 So I wanted to make that clear so we don't have to
5 object in the presence of jury.

6 If he says he didn't do anything in the
7 investigation based on that hearsay report, I don't think it
8 should be admitted or referred to in substance.

9 THE COURT: Ms. Webster?

10 MS. WEBSTER: Your Honor, if --

11 THE COURT: Off the record a moment.

12 (Off-the-record discussion, and proceedings
13 continued:)

14 THE COURT: Back on the record, Ms. Wolff.

15 Ms. Webster, go ahead.

16 MS. WEBSTER: If the agent or when someone is
17 investigating the case and they learn about information that
18 should cause them to maybe like ponder or reconsider their
19 efforts or their investigation, and they don't change tactics
20 or they don't consider potentially exculpatory evidence, then
21 that is absolutely admissible. It goes to the credibility of
22 the investigation.

23 I think it's admissible under Kyle v Whitley. It
24 is permissible evidence.

25 So the government will often get in evidence where

1 the agent interviews someone and they say it's not for the
2 truth of the matter, it's to show the effect on the
3 investigation. While I think showing that they learned
4 information and then didn't act on it, it also goes directly
5 to the effect on the investigation and goes to the
6 credibility of the investigation, which is utterly relevant
7 and is critical to our defense.

8 MS. CHAIKEN: Your Honor, may I be heard on that,
9 please?

10 Two things, Your Honor. First, as I said
11 yesterday, the agent did not learn about that interview until
12 after his investigation was well underway into Amanda
13 Christian, and so it was not part of his investigation that
14 she be interviewed --

15 THE COURT: You mentioned this was a different
16 investigation that someone else was doing?

17 MS. CHAIKEN: Correct. There was a Secret Service
18 investigation that was done completely separately and we
19 learned about it later.

20 THE COURT: Okay. And why was it even, I mean, I
21 guess you, in an abundance of caution, you produced the
22 materials because you found out about this other
23 investigation that was in your files?

24 MS. CHAIKEN: It was produced because Amanda
25 Christian was a codefendant of Mr. Foster's and under Rule 16

1 we have to produce statements that we have in our possession
2 of hers. And so we obtained it because we learned that it
3 existed and we turned it over.

4 Because she was a codefendant, it would not have in
5 any way, I think, have been discoverable as to Mr. Foster if
6 he were the lone defendant.

7 Second, though, Your Honor, the idea that it goes
8 to the credibility of the investigation, that the agent did
9 not follow up on a false statement by Amanda Christian, is
10 completely inconsistent with them saying we're not offering
11 this for the truth of the matter asserted.

12 They're trying to show Amanda Christian is a liar,
13 and then they want to say the investigation was unreliable
14 because our agent knew she was a liar, didn't follow up about
15 whether there is a Foster, first name unknown, at CDC
16 Finance, to figure out what that was.

17 THE COURT: I tend to agree with the government.

18 Ms. Webster, under this logic, couldn't you, with
19 anything said in any document, by anyone, written by anyone,
20 couldn't you just get every single document in, in anybody's
21 case file?

22 I mean, I just ... I don't see how this could come
23 in.

24 MS. WEBSTER: That's -- no, we're not asking for
25 that or anything --

1 THE COURT: Well, I know you are not asking for it.
2 You are asking for this. But under your logic, I would think
3 that anything anybody said to anyone, that was written down
4 anywhere, is going to come in under your logic.

5 I'm sitting here imagining what wouldn't get to
6 come in, and I can't think of anything.

7 MS. WEBSTER: Well, Your Honor, I think that it
8 would have to meet a lot of -- a number of --

9 THE COURT: I mean, assuming you can find a shred
10 of relevance. Let's assume that.

11 MS. WEBSTER: Right.

12 THE COURT: Right.

13 MS. WEBSTER: So I think that most documents, when
14 you are admitting them for records or other things, you are
15 admitting them for the truth of the matter, not to show
16 that -- it's not to show that something could have happened
17 but didn't.

18 And so I think that this is different because it is
19 -- so, for example, if an -- if there was -- this is
20 unrelated to this case, but as an example, if an investigator
21 found a video that was exculpatory but was otherwise
22 investigating like an armed robbery or something but then
23 found a video and the person was not present or not
24 responsible for the robbery on the video, but didn't -- but
25 there was other evidence that supported his involvement, and

1 then the agent just didn't do anything in response to the
2 video, the fact that that video showed the person being not
3 involved is absolutely relevant to show the effect on the
4 investigation or the lack of the effect on the investigation.

5 THE COURT: All right. Thank you.

6 And Ms. Chaiken, did I understand you would be
7 making also a 403-type argument about confusion here if we go
8 down this rabbit hole?

9 MS. CHAIKEN: Yes, Your Honor.

10 THE COURT: I think the -- as we discussed in
11 detail yesterday, I think the hearsay objection is well
12 founded for that particular layer. And even if it weren't, I
13 think 403 would prohibit this.

14 The relevance, I think, is very slight here. I
15 don't see much probative value, and I think that is
16 substantially outweighed by confusion here. I think it also
17 wastes our time.

18 So I'm going to disallow this.

19 Let's bring out the jury, please, Officer.

20 MS. WEBSTER: Can I just put on the record, while
21 they are coming out, that this goes to the heart of our
22 defense.

23 I think that Mr. Foster has a constitutional right
24 to present a defense and it is relevant for that purpose.

25 We have multiple instances where people are falsely

1 identifying him, or implicating him in the investigation, and
2 that is critical to our defense.

3 THE COURT: Thank you, Ms. Webster. You have made
4 your record.

5 MS. WEBSTER: So, just to be clear, Your Honor, I
6 know that the instance with Amanda Christian is not coming
7 in. But yesterday, I was also asking the agent about
8 Charmaine Redding and her statement, and --

9 THE COURT: I'm only ruling on what's before the
10 Court and the questions that are answered and objected to.

11 I'm not going to pre-rule on X, Y or Z until I have
12 the context.

13 MS. WEBSTER: Okay. Thank you.

14 (Jury enters the courtroom at 9:09 a.m.)

15 THE COURT: You all can have your seats.

16 Ladies and gentlemen of the jury, good morning. I
17 hope you are well. Thank you for being here. Happy Friday.

18 We're going to do a little more musical chairs with
19 the witness stand today.

20 Ms. Webster is going to get to a good stopping
21 point in her cross-examination of Special Agent Stites, then
22 we're going to pause and we're going to hear from a myriad of
23 other witnesses, some government, some defense, many of whom
24 are from out of town and have flown in to be here for this
25 trial and we would like to get them back out of town and

1 avoid unnecessary expense of hotels over the course of the
2 weekend, et cetera. And then I think one or two of them also
3 have some scheduling issues we're trying to accommodate.

4 So honestly, not as neat and tidy as I would like
5 it to be, but it just is what it is. And the parties have
6 all consented to doing it this way and I have said it's okay
7 to do this way as well.

8 So thanks for bearing with us as we muddle through
9 the order of witnesses.

10 Ms. Webster, your witness.

11 MS. WEBSTER: Thank you, Your Honor.

12 CONTINUED CROSS-EXAMINATION

13 BY MS. WEBSTER:

14 Q. Agent Stites, yesterday we discussed that you are
15 the case agent in this case; correct?

16 A. Yes.

17 Q. So you are the lead agent and responsible for
18 overseeing the investigation?

19 A. Yes.

20 Q. Okay. And you help the prosecutors as they
21 prosecute this case; is that right?

22 A. Correct.

23 Q. And knowing what happened or being involved in
24 interviews about the targets of that investigation is a
25 critical piece of your job?

1 A. Yes.

2 Q. And you review evidence as it comes in?

3 A. Yes.

4 Q. Okay. And you interview witnesses; right?

5 A. Yes.

6 Q. Okay. And you make decisions about the case and
7 your investigation based on that evidence?

8 A. Yeah. We make decisions based on evidence of
9 interviews, of documents we receive.

10 Q. So for example, if you should interview other
11 witnesses?

12 A. Yes.

13 Q. Or if you should gather other records?

14 A. Yes.

15 Q. Okay. And if the witness is trustworthy or if they
16 seem not credible?

17 A. Yes.

18 Q. And sometimes you can use that information to
19 potentially reevaluate prior decisions that you have made?

20 A. Sometimes.

21 Q. And sometimes it confirms your prior decisions?

22 A. Sometimes.

23 Q. Okay. So in this case -- or yesterday we discussed
24 how you had interviewed Ricky Dixon; correct?

25 A. Correct.

1 Q. That he had lied about communicating with Teldrin
2 Foster; correct?

3 A. Yes.

4 Q. And that interview was on January 29 of 2021?

5 A. That's correct.

6 Q. Okay. And that was before Mr. Foster was sent a
7 target letter?

8 A. Yes. I think Mr. Foster was sent his target letter
9 in February. Is that correct?

10 Q. I think that's about right. Sometime after this.
11 And that was also before Mr. Foster was indicted?

12 A. Yes.

13 Q. Because he was indicted after the target letter;
14 correct?

15 A. Correct.

16 Q. Okay. And you had to confront Mr. Dixon because he
17 lied to you about not working with Darrell Thomas?

18 A. I didn't have to confront him. We chose to
19 confront him in the WebEx proffer interview.

20 Q. Okay. You felt compelled to at that point or --

21 A. Yes.

22 Q. And we talked about Charmaine Redding briefly; is
23 that right?

24 A. Yes.

25 Q. And I think you said that she was recruited by

1 Ricky Dixon to participate in the PPP fraud about All Star
2 Room and Board?

3 A. Yes.

4 Q. And she was interviewed on May 5 of 2021. Does
5 that sound right?

6 A. Sounds about right.

7 Q. Okay. And that was before Teldrin Foster was
8 charged?

9 A. Yes.

10 Q. And it was after Ricky Dixon was interviewed?

11 A. Yes.

12 Q. Okay. I think yesterday you said you weren't sure
13 what she said about Teldrin Foster in the interview and that
14 reviewing the transcript would refresh your recollection; is
15 that right?

16 A. Yes.

17 Q. So I am going to show on my iPad the transcript of
18 the Redding interview, from pages 26 and 27.

19 (Hands document to witness.)

20 A. (Responds to request.)

21 How far did you want me to go?

22 Q. To about the middle of 27 or so, I think, or
23 towards the top.

24 A. Okay.

25 Q. Okay. So just to be clear, she said she had

1 communicated with Darrell Thomas; right?

2 A. Yes.

3 Q. Okay. I wanted to make sure I didn't misstate
4 that.

5 But she said she also had been communicating with
6 Teldrin Foster; is that right?

7 A. Yes.

8 Q. And do you remember that she said that she had
9 communicated with him on Signal?

10 A. Is that in here as well?

11 Q. It's there. It might not be on exactly that page
12 number.

13 A. If it's on here, then that's what she said. This
14 is, I'm assuming, a transcript of the recording. The whole
15 interview was recorded.

16 Q. Yes, it is. Thank you.

17 So she identified Teldrin Foster as being the
18 person that she primarily communicated with about these
19 documents for the All Star Room and Board loan; is that
20 right?

21 A. I believe she said that she had -- was with, you
22 know, she had contact with Darrell, and Darrell connected her
23 with Teldrin. And then she had some communications with
24 Teldrin.

25 Q. And you don't have any evidence that she was

1 actually communicating with Teldrin Foster; right?

2 A. No, I don't.

3 Q. Okay. And do you recall that Ricky Dixon also said
4 that he had been communicating with Teldrin Foster via
5 Signal?

6 A. He did.

7 Q. Okay. And that neither one of them had any had
8 messages to prove that they had actually been communicating
9 with Teldrin Foster; is that right?

10 A. Correct.

11 Q. So at that point, two separate people had
12 implicated Teldrin Foster in this investigation; correct?

13 A. Uh --

14 Q. Let me be clear. Ricky Dixon and Charmaine Redding
15 both had implicated Teldrin Foster in this investigation?

16 A. Yes. They both had talked about Teldrin in their
17 interview.

18 Q. Okay. And in ways that you have no evidence to
19 support?

20 A. Correct.

21 Q. Okay.

22 MS. WEBSTER: Thank you.

23 Your Honor, I think I'm at a stopping point.

24 THE COURT: All right. Very well.

25 Sir, if you could please step down.

1 THE WITNESS: Ms. Webster, would you like this
2 back?

3 MS. WEBSTER: Thank you.

4 THE COURT: Call your next witness.

5 MR. KAUSHAL: Your Honor, the government calls
6 Samantha Beechan.

7 SAMANTHA BEECHAN,

8 Having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. KAUSHAL:

11 Q. Good morning, Ms. Beechan.

12 Can you please state and spell your name for the
13 record.

14 A. Yes. Samantha Beechan. S-A-M-A-N-T-H-A
15 B-E-E-C-H-A-N.

16 Q. Ms. Beechan, where are you employed?

17 A. Cross River Bank.

18 Q. Can you tell me whether Cross River Bank was FDIC
19 insured in 2020?

20 A. Yes. We have been FDIC insured since 2008.

21 Q. What is your role at Cross River Bank?

22 A. My current role is program manager on the PPP.

23 Q. And are you familiar with the PPP program that was
24 administered through the CARES Act?

25 A. Yes.

1 Q. Was Cross River Bank involved in offering PPP loans
2 to the public?

3 A. Yes.

4 Q. Can you briefly walk the jury through how somebody
5 might get a PPP loan from Cross River Bank?

6 A. Yes.

7 So in 2020, CARES Act PPP, Paycheck Protection
8 Program, was enacted. In order to apply, you had to -- seek
9 this loan at a bank that was already in standing with the
10 Small Business Administration prior to the program starting.

11 So you would have to fill out an application form.
12 This form -- well, what I call this form is the 2483. So in
13 order to receive a loan, you would apply. A bank would kind
14 of review, issue their approval or nonapproval. And then
15 from there, ultimately, there is not a loan unless the SBA
16 reviews and approves.

17 Q. All right. And in submitting a loan, you said a
18 2483. Is that the standard PPP loan application?

19 A. Yes. That is the form name/number. Yes.

20 Q. And for Cross River Bank, was that application
21 process done electronically?

22 A. Yes.

23 Q. And were the servers that were used by Cross River
24 Bank for those online electronic applications located in
25 Pennsylvania, in 2020?

1 A. Yes.

2 Q. And in terms of the application process, is it true
3 that Cross River Bank would require supporting documents as
4 part of the application?

5 A. Yes. In kind of coordination with the program
6 administered by the SBA, yes.

7 Q. And the supporting documents, could that include
8 bank statements?

9 A. Yes.

10 Q. And what about various tax forms?

11 A. Depending on entity type, but broadly speaking,
12 yes.

13 Q. So like an IRS Form 941 would be something that
14 might be submitted?

15 A. Yes. 940, 941, the 1040 Schedule C. Yes.

16 Q. All right. So when an application was submitted to
17 Cross River Bank, did the bank rely on the applicant to tell
18 the truth?

19 A. Um, yes. The bank relied on the attestations on
20 the 2483 itself.

21 Q. And the person that's submitting the application
22 had to certify that everything in the application is
23 accurate; correct?

24 A. Yes. There are many questions and they kind of --
25 but yes, the broad answer is yes.

1 Q. Is it important for the applicant to tell the
2 truth?

3 A. Yes. The call from Congress was to lend in good
4 faith, so yes. But I would argue that the entire kind of
5 impetus of the program is relying on those attestations.

6 Q. Does Cross River Bank rely on the applicant to tell
7 the truth?

8 A. Yes.

9 Q. If the application contained false information,
10 would Cross River Bank approve a loan?

11 A. No.

12 Q. Is the number -- in thinking about the application
13 itself, you are familiar with the "number of employees"
14 portion of the application?

15 A. Yes.

16 Q. Is that information -- is the number of employees
17 an important fact to be evaluated when determining whether a
18 PPP loan should be approved?

19 A. Yes. It's called the Paycheck Protection Program,
20 and the ability to be eligible is based off of existing
21 payroll. Yes. So it's based on employee count, plus kind of
22 their pay.

23 Q. And what about those supporting documents that we
24 just talked about, the bank statements and the tax forms, are
25 those documents, likewise, important to determining whether a

1 loan should be approved?

2 A. Yes.

3 Q. If those documents were false or fraudulent, would
4 Cross River Bank approve the loan?

5 A. No.

6 MR. KAUSHAL: Nothing further.

7 Thank you.

8 THE WITNESS: Thank you.

9 MS. DURRETT: Your Honor, we have no questions for
10 this witness.

11 THE COURT: Mr. Marshall.

12 CROSS-EXAMINATION

13 BY MR. MARSHALL:

14 Q. Good morning, Ms. Beechan.

15 A. Good morning.

16 Q. So a couple questions about if your bank would
17 approve, if you -- if the applicant submitted false
18 information; is that correct? In an application?

19 A. Can you -- I'm --

20 Q. You would not approve an application if there was
21 false information included in it; right?

22 A. No.

23 Q. Do you have any kind of steps or anything that your
24 bank would do to try to verify the information that was
25 provided by these applicants?

1 A. Um, we did, during origination. Yes.

2 Q. So for instance, there was a question about bank
3 statements. If someone submitted bank statements -- by the
4 way, how many months of bank statements would be required?
5 Is there a number of months?

6 A. No.

7 Q. Okay. So they can just submit one bank statement
8 if they wanted to?

9 A. Potentially. I mean, it depends on entity type,
10 really, to define what the supporting documents would be
11 required.

12 So if you are a kind of single entity, sole prop,
13 like a bank statement might be in lieu of a payroll statement
14 because you might be paying yourself not via like a full
15 payroll system.

16 But yeah, that's where it -- it depends.

17 Q. Okay. So let's say it's -- it's a hypothetical.
18 Let's say it's a company with 20 employees, small company
19 with 20 employees.

20 They submit some bank statements. Is there any
21 requirement for the number of bank statements they have to
22 supply?

23 A. No. At that point the expectation would be that
24 the payroll is being substantiated by payroll reports. The
25 bank statement would be to -- tied to kind of ACH

1 information. So you ask for verification, so verification of
2 where this kind of loan is going to be disbursed. But then
3 secondarily, it would be used to verify being in good
4 standing.

5 So one of the requirements of the program from the
6 SBA was to be in operation prior to or on February 15 of
7 2020. So a bank statement was largely used to verify that
8 component.

9 Q. Okay. So let's say an applicant submits a bank
10 statement or several bank statements and they have balances
11 in there showing maybe \$600,000 on average, or \$800,000. Do
12 you do anything to follow up with the actual bank?

13 Let's say it's a Chase Bank or a JPMorgan Chase.
14 Do you do anything independently to contact that bank to
15 verify that information?

16 A. No. It's not a requirement of the program.

17 Q. So just what's sent to you by the applicant is
18 enough for Cross River; is that essentially it?

19 A. Well, no. Because I just defined that those are
20 requirements of supporting documentation for the application
21 itself and for origination.

22 Q. Okay?

23 A. So outside of those requirements.

24 Q. Okay. Let's say -- I think there was a reference
25 made to some tax forms. Are you familiar with 941s?

1 A. Yes.

2 Q. What are those?

3 A. So those are going to be forms that you, as a small
4 business that are paying employees with the payroll, it's a
5 tax form off of the wages and any kind of taxes that are
6 being assessed and paid out based off of that payroll itself.

7 Q. Okay. And those are submitted -- those are
8 quarterly tax forms; is that correct? Do you know?

9 A. 941 is quarterly; 940 annually, I believe. Though
10 I might be flipping those in my brain. I apologize.

11 Q. Similarly to the verification of any bank
12 statements, if you get 941s, let's say from this company,
13 this hypothetical company with 20 employees, you receive
14 these, I guess, electronically.

15 Do you do anything to verify the information that's
16 in that 941 with the Internal Revenue Service?

17 A. No. It's not a required piece of the program.
18 We're relying upon the attestations made by the applicant on
19 the 2483.

20 Q. Did you have any guidelines for this program
21 through CARES that you were -- it was going to be -- it's a
22 little bit -- pretty easy for an applicant to kind of provide
23 documents for this program; would you characterize it that
24 way?

25 A. Can you clarify? There was a couple kind of

1 questions in one.

2 Q. Submitting one or two bank statements and a few 941
3 forms.

4 A. Again, can you clarify the question, please?

5 Q. Easy in the sense that none of information has to
6 be verified by your bank through the banks themselves or
7 through the IRS?

8 A. I wouldn't say yes to "none." Again, the program
9 relied upon the attestations made by the applicant on the
10 2483.

11 MR. MARSHALL: Okay. Nothing further. Thank you,
12 ma'am.

13 THE WITNESS: Thank you.

14 MR. KAUSHAL: Your Honor, I have a very brief
15 redirect.

16 THE COURT: Go ahead.

17 REDIRECT EXAMINATION

18 BY MR. KAUSHAL:

19 Q. Ms. Beechan, I asked you a question and defense
20 followed up on it and I think I can ask, hopefully, a little
21 bit better question than I originally asked.

22 If the application contained false -- if the bank
23 knew that the application contained false information, would
24 the bank have approved the loan?

25 A. No. Our -- the -- no. No. No.

1 Q. And you were asked a few times about different
2 steps. The last question was about whether it was easy to
3 get a PPP loan, and you said that wasn't a requirement of the
4 program; that was your response.

5 Can you tell us why these -- why the requirements
6 were what they were in the PPP program?

7 A. Good question. So Congress enacted the CARES Act,
8 and then they set forth the kind of high-level guidelines to
9 the SBA, and then the SBA built the program based off of what
10 Congress wrote.

11 So -- I'm so sorry. Can you restate the question
12 again?

13 Q. The question is: You said it wasn't a requirement
14 of the program. Do you know why it wasn't required that, for
15 example, your bank go and get IRS records for every applicant
16 in the PPP program that applied to Cross River Bank and then
17 cross-check those with the documents that were submitted, for
18 example?

19 A. So SBA and Congress didn't make it a requirement in
20 the program. The ask was to lend in good faith, and so we
21 relied upon the attestations made by the applicant on the
22 2483.

23 Q. Were we in the middle of a global pandemic at that
24 time, ma'am?

25 A. Yes. Thank you for that question. Yes.

1 MR. KAUSHAL: Nothing further. Thank you.

2 MR. MARSHALL: Your Honor, can I have just a couple
3 questions in recross?

4 THE COURT: Of course.

5 RECROSS-EXAMINATION

6 BY MR. MARSHALL:

7 Q. I think the government prosecutor just asked you --
8 let me see if I say this right. But you wouldn't approve of
9 a loan if you knew if the information that was provided was
10 false; is that correct? Would that be a correct statement?

11 A. Yes. I would not approve a loan if I knew there
12 was falsification in any of the supporting documents or 2483.
13 No.

14 Q. But how do you know if information that's submitted
15 in a bank statement is false, or in a 941 tax form, if you
16 don't contact the actual entities that issued those forms and
17 bank statements?

18 A. I'm not a fraud investigator. I can't answer that
19 question. I wouldn't know.

20 Q. So it would be fair to characterize it --
21 essentially what it is, the representation that's made in
22 whatever paperwork you make, you basically accept?

23 A. We are relying upon the attestations on the 2483,
24 and the 2483 does outline in those attestations that there is
25 not falsification in the application itself and/or the

1 supporting documents that are being submitted in lieu of the
2 2483.

3 Q. Would this be kind of part of what you would call a
4 due diligence review of a loan application?

5 A. Potentially. Again, I'm not an originator, an
6 underwriter, or a fraud investigator.

7 Q. Okay. Do you do any other kind of approvals of
8 other types of loans at your bank?

9 A. I do not.

10 Q. Do not. Just PPP loans?

11 A. Yes. I have only been on the Paycheck Protection
12 Program. That is my role at the bank.

13 MR. MARSHALL: Okay. Nothing further.

14 Thank you Judge.

15 Thank you, ma'am.

16 THE COURT: Any redirect?

17 MR. KAUSHAL: No, Your Honor.

18 THE COURT: Ma'am, you can step down.

19 All counsel are reminded of my pretrial conference
20 rulings on some of the motions in limine.

21 Please call your next witness.

22 MR. KAUSHAL: Your Honor, the government calls
23 Shelli Hayman.

24 SHELLI HAYMAN,

25 Having been first duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR. KAUSHAL:

Q. Good morning, Ms. Hayman.

Can you please state and spell your name for the record?

A. Sure. Shelli Hayman, H-A-Y-M-A-N.

Q. Where are you employed, ma'am?

A. CDC Small Business Fiance Corporation.

Q. How long have you been employed there?

A. 23 years.

Q. And what is your present role?

A. My present role is senior vice president of small business lending.

Q. And as part of your role as senior vice president, were you involved in operating the PPP portfolio for CDC?

A. Yes.

Q. And can you tell the jury what CDC is?

A. Sure.

CDC is a nonprofit mission-based lender that's certified and regulated by the U.S. Small Business Administration.

Q. And was CDC involved in participating in the PPP program under the CARES Act?

A. Yes.

Q. Can you walk the jury through the application

1 process for applying for a PPP loan with CDC?

2 A. Yes. We utilized Ventures Plus, which is part of
3 Ventures Lending Technologies. We had an online portal that
4 applicants would apply through and upload appropriate
5 documentation that was required for the application.

6 Q. And that appropriate documentation mirrors what's
7 required in a Form 2483?

8 A. Correct.

9 Q. And the PPP portal you just mentioned, are the
10 servers for that PPP portal in San Diego, California?

11 A. Ventures Lending Technologies's servers, they
12 actually utilize the Microsoft Azure system, and their
13 servers are located throughout the western United States.

14 Documentation would be housed through local
15 San Diego servers and then backed up to a private cloud in
16 Minnesota.

17 Q. And as part of the application process, are
18 applicants required to provide forms of supporting documents?

19 A. Yes.

20 Q. Does that include bank statements and tax forms?

21 A. Yes.

22 Q. And are tax forms things like IRS tax Forms 940s
23 and 941s?

24 A. Correct.

25 Q. And CDC collects that information in the

1 application, sends it to the SBA, gets back a loan number,
2 and then provides funding if appropriate, correct?

3 A. Correct. Yes.

4 Q. In completing the application process, is it
5 important that the applicant certify that everything in the
6 application is true and correct and accurate?

7 A. Yes.

8 Q. Is it important to CDC for the applicant to tell
9 the truth in the application?

10 A. Yes.

11 Q. Does CDC rely on the applicant to tell the truth?

12 A. Yes.

13 Q. And if the application contained false information,
14 would CDC have knowingly approved that loan?

15 A. No.

16 Q. And by that I mean would they have knowingly
17 approved something that had false information in it?

18 A. No. Absolutely not.

19 Q. Among the things on the PPP application is
20 something called a number of employees; right? Is the number
21 of employees an important fact that CDC evaluates when
22 determining whether a loan should be approved?

23 A. Yes.

24 Q. And what about those supporting documents, the bank
25 statements and the Form 941s? Are those important to

1 determining whether a loan should be approved?

2 A. Yes.

3 MR. KAUSHAL: I have got nothing further. Thank
4 you.

5 MS. DURRETT: Your Honor, we have no questions for
6 this witness.

7 MR. MARSHALL: No questions, Your Honor.

8 THE COURT: Ma'am, you can step down. Thank you.
9 Please call your next witness.

10 MR. KAUSHAL: Your Honor, the government calls Marc
11 Rehberger to the stand.

12 MARC REHBERGER,

13 Having been first duly sworn, testified as follows:

14 THE WITNESS: Marc; M-A-R-C.

15 Last name, Rehberger; R-E-H-B-E-R-G-E-R.

16 DIRECT EXAMINATION

17 MR. KAUSHAL: Thank you, Ms. Lee.

18 I hope you haven't been doing that for the other
19 witnesses because I always start that way and I may have been
20 inadvertently been saying that over and over.

21 COURTROOM DEPUTY: No.

22 MR. KAUSHAL: Thank you.

23 BY MR. KAUSHAL:

24 Q. Mr. Rehberger, good morning.

25 A. Good morning.

1 Q. Where are you employed, sir?

2 A. At Customers Bank.

3 Q. What is your position at Customers Bank?

4 A. I am a senior vice president, senior managing
5 director, and head of technology-enabled banking.

6 Q. How long have you been employed there?

7 A. Almost four years.

8 Q. During your time there -- let me withdraw that.

9 Was Customers Bank participating in the PPP loan
10 program under the CARES Act?

11 A. Yes.

12 Q. And during your time at Customers Bank, were you
13 involved in administering the PPP program?

14 A. Yes.

15 Q. And you are familiar with the PPP portfolio at the
16 bank; correct?

17 A. Intimately.

18 Q. Can you tell me -- switching gears -- whether
19 Customers Bank was FDIC insured in 2020?

20 A. Yes.

21 Q. And now can you walk the jury through how someone
22 could apply for a PPP loan with Customers Bank?

23 A. Sure.

24 During the PPP program, the bank partnered with
25 financial technology companies, also known as fintechs, to

1 establish digital applications to increase our reach into the
2 economy to help reach as many small businesses as possible to
3 attempt to save the economy through saving jobs.

4 Q. And when somebody -- just talking more specifically
5 about how Customers Bank received applications, did Customers
6 Bank have a partnership with a company called Ready Capital?

7 A. Yes.

8 Q. Can you explain the application process with Ready
9 Capital to Customers Bank in connection with PPP loans?

10 A. Yes.

11 Q. Can you explain what that process is?

12 A. You would like me to explain the process?

13 Q. The application process, yes.

14 A. Sure.

15 So Ready Capital was a financial technology company
16 or known as a fintech. Their job was to widely -- or create
17 and then widely distribute PPP applications to eligible
18 partners.

19 Ready Cap would process the loan on our behalf as
20 our third-party partner, an extension of the bank. They
21 would gather all the documentation, the application,
22 et cetera.

23 And then they would submit electronically to us a
24 funding file that they attested to that indicated that the
25 applicant had met the conditions for the PPP loan.

1 Once we received the funding file, we would then
2 fund the loan and move the money from the bank to the deposit
3 account of the eligible entity that had applied through Ready
4 Capital.

5 Q. And in connection with this application process,
6 Customers Bank used servers located in Pennsylvania; is that
7 correct?

8 A. Yes.

9 Q. And you mentioned supporting documents here in the
10 application process.

11 Do those supporting documents include things like
12 tax filings like Forms 941s and 940s?

13 A. They can, yes.

14 Q. Do they also include things like bank statements?

15 A. That would be one of the expected documents, yes.

16 Q. And the information that Ready Capital would
17 receive from an applicant, is that the type of information
18 you would see in a Form 2483, the PPP application form?

19 A. Can you repeat that question, please?

20 Q. The information that Ready Capital collects --

21 A. Um-h'm.

22 Q. -- is it the information that is the information
23 for a PPP loan, what's required to be submitted?

24 A. It should match. Yes.

25 Q. And in terms of the applications that are submitted

1 to Ready Cap and then ultimately funded by Customers, is it
2 important that the applicant certify that everything they
3 provided in the application process is accurate?

4 A. I can't stress how important it is. It's
5 paramount. It is paramount to the program that the
6 application be accurate.

7 Q. Does the applicant have to certify that everything
8 is accurate?

9 A. Based on the way the CARES program was built out
10 and the PPP program was built out, the banks relied upon
11 accurate attestations or accurate information, and we relied
12 upon the customer to be honest and direct with us on that
13 application.

14 Q. And was that how the CARES Act was intended to be
15 administered?

16 A. Absolutely.

17 Q. And if an application, a PPP loan application,
18 contained false information and the bank knew that it was
19 false, would the bank have approved the loan?

20 A. No.

21 Q. In the PPP loan application, there is a section
22 about number of employees. Are you familiar with that?

23 A. I am.

24 Q. Is the number of employees an important fact to be
25 evaluated when determining whether a loan should be approved?

1 A. It's important to evaluate the amount of the loan.

2 Q. And the amount of the loan is --

3 A. Is directly.

4 Q. -- is important?

5 A. Yes. It's directly related to the number of
6 employees.

7 Q. And what about those supporting documents? Are
8 those, like the Form 941s and the bank statements and the
9 940s, are those documents important to determining whether a
10 loan should be approved?

11 A. Yes.

12 Q. If those documents are fake, would that be an
13 important fact for the bank to know about?

14 A. Yes.

15 Q. And the expectation is that the applicant will
16 submit true documents, correct?

17 A. True and accurate documents. Correct.

18 MR. KAUSHAL: Your Honor, if I could have one
19 moment.

20 (Pause.)

21 MR. KAUSHAL: I have got nothing further for you,
22 sir.

23 THE WITNESS: Thank you.

24 MS. DURRETT: Your Honor, I have no questions for
25 this witness.

1 MR. MARSHALL: No questions, Your Honor.

2 THE COURT: Sir, you can step down. Thank you.

3 THE WITNESS: Thank you. Enjoy your day.

4 THE COURT: You too.

5 Please call your next witness.

6 MR. KAUSHAL: Your Honor, the government calls
7 Meghan Musil to the stand.

8 MEGHAN MUSIL,

9 Having been first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. KAUSHAL:

12 Q. Good morning, Ms. Musil.

13 Can you please state and spell your name for the
14 record?

15 A. My name is Meghan Musil. M-E-G-H-A-N. Last name,
16 M-U-S-I-L.

17 Q. Where are you employed, ma'am?

18 A. I'm employed by Harvest.

19 Q. And how long have you been employed there?

20 A. Since January 2021.

21 Q. And during your time there, have you worked as a
22 PPP loan processor?

23 A. Yes. The entire time.

24 Q. Based on your work there, do you know that the
25 process for PPP loan processing did not change since 2020?

1 A. That is correct.

2 Q. Now, you said you work at Harvest. What is
3 Harvest?

4 A. Harvest is a small business lender.

5 Q. And you said you work in PPP loans?

6 A. Yes.

7 Q. Is that the PPP loan department that you work in?

8 A. Yes.

9 Q. All right.

10 A. Part of the PPP team.

11 Q. Is your PPP team, is that a remote team?

12 A. Yes. We all worked remote.

13 Q. And when you work on PPP loan applications, is
14 there a VPN that's involved?

15 A. Yes.

16 Q. And that's a virtual private network?

17 A. Yes.

18 Q. Is that located in California?

19 A. In Laguna Hills, California.

20 Q. Is most of your PPP team remote?

21 A. All of them.

22 Q. Can you, very briefly, walk us through the
23 application process for a PPP loan with Harvest?

24 A. Sure.

25 So Harvest used an online platform called Ventures.

1 Borrowers would submit their application through Ventures, we
2 would locate their account along with all their supporting
3 documents, download them to our own database, create a file
4 there, review all the documents, and then we would reach out
5 to the borrower to let them know whatever additional
6 documents we needed or some clarification.

7 Once everything aligned, we would have them certify
8 that everything was true and accurate on their application
9 and submit it to the SBA.

10 Q. And as part of that process, this application --
11 we're using the phrase "application." Is that the Form 2483
12 information?

13 A. Yes.

14 Q. And I think you mentioned documents being needed.
15 Is that right?

16 A. Yes.

17 Q. Are bank statements, tax forms, 941s and 940s, are
18 those the types of documents that would be submitted with an
19 application?

20 A. Yes. Along with an identification.

21 Q. And when somebody submits an application to
22 Harvest, do they have to certify that everything is accurate
23 in that application?

24 A. Yes.

25 Q. And is it important for the applicant to tell the

1 truth?

2 A. Yes.

3 Q. And does Harvest rely on the applicant to tell the
4 truth?

5 A. Yes.

6 Q. If the application contained false information and
7 Harvest knew that it was false, would Harvest approve the
8 loan?

9 A. No.

10 Q. Is the number of employees, which is one of those
11 entries in the Form 2483, is that an important fact for
12 Harvest to evaluate when determining whether a loan should be
13 approved?

14 A. Yes.

15 Q. And are those supporting documents, like the
16 Form 941s, the form 940s and the bank statements, are those
17 documents important in determining whether a loan should be
18 approved?

19 A. Yes.

20 Q. And if Harvest knew that those documents were fake
21 or fraudulent, would Harvest approve the loan?

22 A. No.

23 MR. KAUSHAL: I don't have any further questions.
24 Thank you.

25 MS. DURRETT: Your Honor, I have no questions.

1 MR. MARSHALL: No questions, Your Honor.

2 THE COURT: Ma'am, you can step down.

3 THE WITNESS: Thank you.

4 THE COURT: Please call your next witness.

5 MR. KAUSHAL: Your Honor, government calls Aaron
6 Bloom to the stand.

7 AARON BLOOM,

8 Having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. KAUSHAL:

11 Q. Good morning, Mr. Bloom.

12 Can you please state and spell your name for the
13 record?

14 A. Sure. Yeah, good morning.

15 Aaron Bloom. A-A-R-O-N; B-L-O-O-M.

16 Q. Where are you employed, sir?

17 A. Bluevine Inc.

18 Q. What is Bluevine?

19 A. Bluevine is -- we provide financial services for
20 small businesses.

21 Q. How long have you been employed there?

22 A. Just over four and a half years.

23 Q. Did Bluevine provide services in connection with
24 PPP loan applications under the CARES Act?

25 A. We did.

1 Q. Were you involved in Bluevine's provisioning of
2 those services?

3 A. I was.

4 Q. Can you, very briefly, describe Bluevine's role in
5 administering PPP loans?

6 A. Sure. We were a service provider contracted to
7 banks that were offering PPP loans to small businesses.

8 Q. And so you were like the technological arm of some
9 banks that were offering PPP loans?

10 A. We were the customer-facing application.

11 Q. Okay. And were two of those banks that Bluevine
12 worked with Celtic Bank and Cross River Bank?

13 A. Yeah. Yes.

14 Q. Can you describe the PPP loan application process
15 as administered by Bluevine?

16 A. Yeah.

17 So applicants could come to our website and choose
18 to sign up for a PPP loan. They would complete a brief
19 sign-up form where we would ask for their very basic
20 information, name, email, password.

21 Then we would collect some business information, so
22 business name, business address, EIN. Things like that.

23 We would then collect some financial information,
24 so account number, routing number, bank statement from prior
25 to February, 2020.

1 And from there, they would submit that information.
2 We would collect some personal information, so name, date of
3 birth, SSN or social security number. Things like that.

4 And then at that point we would actually ask some
5 questions that were provided by the SBA from the application.
6 So things like, you know, collecting, like, average monthly
7 payroll, things like that that the SBA required us to
8 collect.

9 And from there, they would actually, we would do a
10 review of the information provided so far. And if they met
11 the basic qualifications of the SBA requirements, then we
12 would allow them through to the next step.

13 Otherwise, we would actually decline them, send
14 them a decision notice and inform them that they were not
15 able to move forward at that time.

16 If we did move them forward, we would actually send
17 them an email to the email address they used to sign up. And
18 the intent of that was to verify that they had access to that
19 email.

20 So we'd send them an email; it had a tokenized link
21 in it. They would click that link. It would take them back
22 to our site, they would log in. And then they would see what
23 we call tasks in our system. And the tasks were mostly to
24 provide tax information, like for example, a Schedule C tax
25 form as an example.

1 Once they provided all of the required tasks that
2 we had, we would do a review of the information provided
3 using the SBA kind of guidelines.

4 And at that point, we would, if -- again, if they
5 did not meet any of the requirements, we would decline them
6 at that point, again, email and notify them.

7 And if they did meet the basic requirements to this
8 point, we would submit them to our -- to the relevant bank
9 partner who we worked with and we would -- who would then do
10 some reviews on their end, submit it on to the SBA. The SBA
11 would do some checks, I believe, and then they would send it
12 back to us.

13 If the checks were successful and they would
14 provide what's called an e-tran identification number, and
15 that e-tran number basically told us that their place in the
16 loan process was reserved.

17 And at that point we would ask the applicant to
18 complete a -- to sign the application form. And basically,
19 we would pull in all the information they provided to us
20 during the application process and we would serve it up to
21 them in the standard format.

22 So they would sign an application form and a loan
23 note or a promissory note. We would then submit that
24 information back to the bank, who would pass it on to the
25 SBA.

1 And at that point, once they were able to actually
2 fund the loan, we would receive back an SBA loan number. And
3 at that point, you know, the bank would effectively start
4 working to fund the loan.

5 We weren't too involved past that.

6 Q. Thank you for that explanation. A couple things to
7 unpack there.

8 A. Sure.

9 Q. This is all done online. Clearly there's a lot of
10 emails and things you described just occurred on the
11 internet?

12 A. Correct. To our application.

13 Q. And your application servers, are those located in
14 West Virginia?

15 A. Yes. AWS servers in West Virginia -- north
16 Virginia, rather. Sorry. North Virginia.

17 Q. North Virginia? Okay.

18 Were there any servers in West Virginia?

19 A. I think it was called AWS West -- East Region. I
20 believe they were in north Virginia. I could be mistaken.

21 Q. Okay. And through this process, you would have to
22 interface with banks like Celtic and Cross River Bank; is
23 that right?

24 A. Correct.

25 Q. And interfacing with them requires sending

1 information electronically to them; correct?

2 A. Correct.

3 Q. So that would cause information to go from
4 Virginia, to their servers, wherever those are; right?

5 A. Correct.

6 Q. Now in terms of -- I think you mentioned supporting
7 documents and you mentioned some examples. Would bank
8 statements be an example a supporting document?

9 A. Yes. We would collect those in the financial step,
10 so they would provide bank statements at that point. So yes.

11 Q. And what about IRS tax Forms 940 and 941?

12 A. Yes. If those were relevant to that applicant,
13 based on their business, we would ask for those.

14 Q. And your software, it sounds like it populates a
15 PPP loan application, at the end of the day it creates that
16 PPP loan application; is that right?

17 A. Based on the information they provided.

18 Q. And the applicant, does the applicant have to
19 certify that everything in that ultimately-created
20 application -- excuse me, PPP loan application, do they have
21 to certify that everything in there is accurate?

22 A. Yes.

23 Q. And is it important for the applicant to tell the
24 truth throughout the application process?

25 A. Yes.

1 Q. Does Bluevine rely on an applicant to tell the
2 truth?

3 A. Yes. Those are the SBA guidelines.

4 Q. And if the application contained false information
5 and Bluevine knew that it was false, would Bluevine have
6 advanced these forms to the next step in the application
7 process to interface with banks?

8 A. No.

9 Q. And what about the tax -- excuse me, the supporting
10 documents that we were just talking about, things like bank
11 statements, Form 941s and Form 940s? If those contained
12 false information and Bluevine knew that they contained false
13 information, would they have advanced the loans through the
14 application process to the banks?

15 A. No.

16 Q. And are -- those supporting documents that I just
17 described, are those important to determining whether a loan
18 should be approved?

19 A. Yes.

20 Q. And the PPP loan application, the Form 2483
21 contains a section about number of employees; isn't that
22 right?

23 A. Yes.

24 Q. And is the number of employees an important fact to
25 be evaluated when determining whether a loan should be

1 approved?

2 A. Yes. It was part of the application.

3 MR. KAUSHAL: I don't have any more questions.

4 Thank you.

5 THE WITNESS: You are welcome.

6 MS. DURRETT: Your Honor, I have no questions for
7 this witness.

8 MR. MARSHALL: Just briefly.

9 CROSS-EXAMINATION

10 BY MR. MARSHALL:

11 Q. Good morning.

12 A. Good morning.

13 Q. Can you tell me, do you know the percentage of
14 applicants's information that you ended up forwarding on to
15 banks? Do you know how many, what the percentage of
16 approvals are?

17 A. No.

18 MR. MARSHALL: Okay. Nothing further. Thank you.

19 MR. KAUSHAL: No redirect, Your Honor.

20 THE COURT: Sir, you can step down.

21 Thank you.

22 THE WITNESS: Thank you.

23 THE COURT: Please call your next witness.

24 MR. MOORE: The United States called James Berni.

25 JAMES BERNI,

1 Having been first duly sworn, testified as follows:

2 MR. MOORE: Your Honor, if there are any witnesses
3 in the courtroom, we would ask that they be excused at this
4 time.

5 THE COURT: Okay.

6 Looks like there are no witnesses in the courtroom.

7 MR. MOORE: Thank you.

8 DIRECT EXAMINATION

9 BY MR. MOORE:

10 Q. Where do you work?

11 A. I work for the Federal Bureau of Investigation.

12 Q. And what is your title?

13 A. I'm a special agent.

14 Q. And for how long?

15 A. I have been with the FBI for a little bit over
16 16 years.

17 Q. All right. Can you tell the jury a little bit
18 about your educational background?

19 A. Yes.

20 I have a bachelor's degree in criminal justice from
21 Auburn University in Auburn, Alabama.

22 Q. And what did you do for employment before you
23 joined the FBI?

24 A. I spent 10 years active duty in the United States
25 Army, the last six years of which I spent in the National

1 Security Agency, or NSA, where my job was to track Department
2 of Defense high-value targets using their communication
3 devices like cellphones and satellite phones in Iraq and
4 Afghanistan.

5 Q. Since you have joined the FBI, what roles have you
6 had?

7 A. As a special agent I have worked numerous types of
8 cases, everything from bank robbery -- I was a bank robbery
9 coordinator in Minneapolis. I worked mortgage fraud. I've
10 worked as part of a gang task force. And now I'm part of the
11 FBI's CAST team.

12 Q. And what is CAST?

13 A. CAST stands for cellular analysis survey team.
14 It's a team stood up by the FBI in 2009, after the FBI
15 noticed increased use of cellphone records in criminal
16 trials.

17 So CAST team members like myself specialize in both
18 active and historical mapping and tracking of cellphones and
19 social media devices.

20 Q. Could you please describe for the jury the training
21 you received to be a CAST agent?

22 A. Yes.

23 So we receive a little bit over 400 hours of
24 specialized training in everything from radio wave theory and
25 propagation, like how do radio waves move through space.

1 We also receive training directly from the
2 cellphone manufacturers. So we get training directly from
3 Apple, LG, Samsung, Google on how their cellphone devices
4 work and operate within a cellphone network.

5 But probably the best training we receive is from
6 the cellular providers themselves. So we bring in
7 representatives from T-Mobile, Verizon, AT&T, and they talk
8 to us about from how their network works.

9 So from the time you hit the green button to place
10 a call and hit the red button to end the call, how is that
11 call routed through their network and then how it is routed
12 shows up in cellphone records, and then how do we use records
13 to get a general location of a device when it had an activity
14 like a call or a text message on the network.

15 Q. Does the training you receive include testing or an
16 exam?

17 A. It does.

18 Q. And do you have any type of certification?

19 A. You do.

20 Q. And are you familiar with the cellular technologies
21 utilized by the major cellphone providers in the United
22 States?

23 A. Yes, I am. It's part of that initial training and
24 also recurring training that we get. They talk about their
25 architecture and their recordkeeping practices.

1 Q. So through all that training, you are familiar with
2 the recordkeeping practices for the various providers?

3 A. I am.

4 Q. And how can data generated through other sources,
5 like transaction data, help you in your investigation?

6 A. Yeah. Obviously any time we get other sources of
7 data, that can help us put the whole picture of an
8 investigation together.

9 So mostly I specialize in the cellular portions of
10 that data, but a lot of times we use that cellular portion
11 and then look at hey, was there LPR, license plate reader
12 transactions, we can look and see where the phone was at. Or
13 financial transactions, we can look and see where was the
14 phone at.

15 So other sources of data can help us corroborate
16 the cellular analysis.

17 Q. What is historical call data analysis or call
18 detail analysis?

19 A. So, by law, all the cellular providers have to keep
20 track of every mobile device on their network, and they do
21 this with what's called CDRs, or call detail records.

22 So think of the CDR as like the old-school phone
23 bill when you would get a paper copy. You have our number,
24 the other number we talked to, the date and time of that
25 conversation, the duration -- whether it's 60 seconds, 30

1 seconds.

2 But then there is some other data that's useful to
3 the providers and to law enforcement, and that is the
4 cellphone tower and sector or side of the tower that's used
5 for each of those calls.

6 In addition to that record, the cellular providers
7 have to keep a list of every tower that's in their network,
8 and they do this in what's called a tower list.

9 And the tower list has the street address or a
10 latitude/longitude spot on the Earth of where every cellphone
11 tower within their network is.

12 And the tower also provides a breakdown of all of
13 its sectors or sides. Meaning it will say Tower 123 is
14 located at this street and this address, and Sector No. 1
15 points at zero degrees; 2 points at 120 degrees; and 3 points
16 at 180 degrees, let's say.

17 So historical call detail analysis is basically
18 taking the call detail records when an activity occurred,
19 like a call, putting it together with the tower list, where
20 an activity occurred because we have the street address of
21 the lat and long.

22 By putting those two things together, we can get a
23 general area of where a device is when it had an interaction
24 like a call or a text message on the network.

25 Q. Approximately how many times have you performed

1 historical call detail analysis, and in what types of cases?

2 A. So this has been my full-time job since January of
3 2019. So every day I'm looking at cellphone records.

4 So I have probably looked at well over 1,000, maybe
5 1,500 to 2,000 records through that time period.

6 Q. And what agencies can request CAST services?

7 A. Yes. So we provide analysis assistance to all
8 kinds of departments, everything from other federal partners
9 to state and local agencies, to overseas agencies.

10 I did some work in Ukraine before the work -- the
11 war started. I have worked in Mexico. I handle the
12 Caribbean, which isn't terrible.

13 So again, we provide services to any department
14 that needs it.

15 Q. Is the CAST team associated with any other unit
16 within the FBI?

17 A. We are. We're part of the FBI's CARD team, which
18 is stands for child abduction rapid deployment team.

19 So any time there is an Amber alert, a missing kid,
20 a runaway, a CAST team member gets involved in the case and
21 assists in tracking.

22 Q. So you are involved in other contexts outside of
23 criminal investigations; is that correct?

24 A. Yes. Absolutely.

25 Q. Have you or CAST ever conducted an analysis where

1 the person accused of a crime has been eliminated or cleared
2 as a result of your CAST findings?

3 A. Yes. As I said, I do a lot of work with other
4 agencies, be it state homicide groups or whoever. And a lot
5 of times they will send me records and say hey, this is our
6 main suspect. The crime is in Atlanta. He says that, let's
7 say, he went to be Florida during this time period.

8 And I will review the records, and it's often -- or
9 it happens that the records shore up a person's alibi. And
10 sure enough, that person and that device were in Florida at
11 the time of the crime therefore eliminating that person as a
12 potential suspect.

13 Q. Based on your training and experience, is cellular
14 telephone record analysis reliable?

15 A. It is. And it is for really for three main
16 reasons. The first is, let's be honest, this is a
17 multibillion-dollar industry. We pay a lot of money for our
18 phones and for our plans on our phones. And if we're not
19 happy as customers, we go to a different provider.

20 So the main reason these records are kept is they
21 are business records kept by the provider, T-Mobile, AT&T,
22 Verizon in order to optimize their network.

23 Meaning they want to know where are people placing
24 calls from; where are there dropped calls; what are our most
25 used towers and sectors; do we need to add towers and sectors

1 in a spot where there is a lot of phone usage.

2 So again, the main reason is because these billion-
3 dollar companies want to optimize and make the network the
4 best they can.

5 The second reason is, think about when the
6 cellphones became popular in the late '80s and early '90s.
7 We paid for our plans in two different ways. One was we'd
8 buy like a package of minutes. We'd buy, like, a 300-minute
9 plan, and the provider had to accurately keep track of the
10 number of minutes that you used on your call detail record.
11 So that way, when you went to 301, they billed you extra, 25
12 cents a minute or whatever that charge was for that.

13 Well, at the time, we also paid for our phone in
14 what's called home network and roaming charges. So again, if
15 you lived in Atlanta and you took your family on a vacation
16 to Orlando, well, you were no longer in your home network and
17 you were now considered "roaming" in Florida.

18 So the providers had to accurately keep track of
19 all the cellphone towers and sectors you used so they could
20 bill you extra for that.

21 Well, we no longer pay for our plans like that, but
22 we all know that information is power to companies so they
23 still track every call you make and every tower and sector
24 that you use.

25 The last reason is the FCC or Federal Communication

1 Commission, basically the government, has mandated that the
2 providers be able to provide an accurate tower and sector for
3 any 911 call. Meaning if you call 911 and your battery dies
4 and your phone gets disconnected, the provider -- AT&T, let's
5 say -- has to be able to provide 911 operators with a tower
6 and sector.

7 Q. Have you testified as an expert in court before?

8 A. I have.

9 Q. Approximately how many times?

10 A. 75 different times in nine different states.

11 Q. Have you testified in federal court before?

12 A. I have.

13 Q. Have you presented the results of your cellular
14 analysis when you testified in court?

15 A. I have.

16 Q. What methodology do you use in forming your
17 opinion?

18 A. So just what we talked about with historical call
19 detail analysis. It's taking the call detail records,
20 basically the kind of phone bill and putting that together
21 with the tower list.

22 And again, that allows us to get a general location
23 of where a device is when it had an interaction, a call or
24 text, on the network.

25 Q. Is the methodology you described generally accepted

1 in your area of expertise?

2 A. It is.

3 Q. Are there any papers or articles to support this?

4 A. There are.

5 Q. And are your results peer reviewed prior to being
6 presented at trial?

7 A. They are.

8 MR. MOORE: Your Honor, at this time I am formally
9 offering Agent Berni as an expert on cell site analysis.

10 MS. DURRETT: No objection, Your Honor.

11 MR. MARSHALL: No objection.

12 THE COURT: So admitted.

13 BY MR. MOORE:

14 Q. Agent Berni, did you prepare a report in this case?

15 A. I did.

16 Q. And would that report be helpful in explaining your
17 findings to the jury?

18 A. Yes, it would.

19 MR. MOORE: Your Honor, I would ask permission to
20 display Agent Berni's report.

21 MS. DURRETT: Your Honor, I object. It hasn't been
22 admitted into evidence.

23 MR. MOORE: We're displaying it as a demonstrative,
24 Your Honor.

25 MR. MARSHALL: Same objection, Judge.

1 THE COURT: Counsel?

2 MR. MOORE: Your Honor, it's pictures of his
3 analysis. It's just going to be a demonstrative for him to
4 be able to explain the location of the phone.

5 We don't want it sent back to the jury afterwards.

6 THE COURT: Let me hear from the defense as to why
7 they take issue with that.

8 MS. DURRETT: Your Honor, I object not only because
9 it has not been admitted into evidence, but there's also
10 information in the report that we can't verify.

11 I have had a chance to talk with Agent Berni, and I
12 know that there are points that are plotted that we don't
13 have access to. So I think that the information that's
14 included in the report is not something that we have had
15 access to.

16 MR. MOORE: Your Honor, they have had -- all of the
17 data has been provided to them in discovery. And if she
18 wanted to inquire about points that she is not able to figure
19 out where they are, that's a proper matter for
20 cross-examination but not to exclude the demonstrative, Your
21 Honor.

22 THE COURT: All right. What parts of it do you
23 want to use?

24 I generally agree with you, but without seeing each
25 page of the report, I'm wondering what they take issue with.

1 What pages of the report are you planning to use,
2 and do you have a copy that I can look at?

3 MR. MOORE: I do have a copy, Your Honor.

4 And the report is pictures of a map in the Atlanta
5 area and pinpoints of where he was able to place a phone on
6 that map.

7 That's the entire report.

8 I'm happy to --

9 THE COURT: Yes. If you can hand me up a copy.

10 MR. MOORE: (Hands document to the Court.)

11 THE COURT: Ms. Durrett, I'm struggling to think of
12 why I wouldn't allow this. Do you want to expand on what the
13 issue is, because I don't understand it so far.

14 This seems pretty routine. Looks like some
15 pictures of cell site locations, which is the whole thing
16 he's testifying about and admitted for.

17 Ms. Lee, I can hand this back.

18 MS. DURRETT: Thank you, Your Honor.

19 When I had a chance to talk with Agent Berni
20 earlier this week, I asked him about some of the -- I think
21 on the report that you have there are green dots, multiple
22 green dots on all the pages. I asked him about those dots.
23 He said they represent other towers in the area that weren't
24 necessarily used by the cellphone at issue.

25 And I said, Where did you get that data?

1 And he said, Oh, typically, the cell service
2 provider gives that data out. And he went and looked in the
3 records as we were on the phone, I think, and he said, "Oh
4 wait. T-Mobile didn't give those records in this case. My
5 software just added it in."

6 So when you are looking at any of their slides,
7 there are multiple green dots, I mean, 20, 30, 40 green dots
8 that he said would typically be provided by the cellphone
9 provider when they certify the records. And he said, Oh,
10 those weren't provided this time by T-Mobile. My software
11 just added that in.

12 So we don't have access to that.

13 The second thing I will say is when I was on the
14 phone with him, he notified me that there were errors in
15 multiple slides, including page 11, page 12, page 21,
16 page 34, page 42, page 46, to name a few. And that they
17 weren't going to be able to use those slides because of those
18 errors.

19 THE COURT: All right. So I guess we're in the
20 realm of 703.

21 MR. MOORE: Yes, Your Honor. Under 703 an expert
22 may base an opinion on facts or data in the case that the
23 expert has been aware of or personally observed.

24 Here, Agent Berni has testified that he relied on
25 data such as his software system and it's the type of data

1 generally relied on people -- experts in this area, and that
2 is what is relied on in the report and it's admissible.

3 This is publicly available data that defense
4 counsel could also access. And the physical locations of
5 cell towers is something he's familiar with. He actually
6 does reports in this area regularly, so he is made aware of
7 when he is doing reports for this case and other cases where
8 all of the towers are.

9 And I will -- I would like to correct the
10 misfactual statement of defense counsel about errors in the
11 report, which we would address through questioning later on.

12 THE COURT: All right. One moment.

13 (Pause.)

14 THE COURT: Ms. Durrett, anything else?

15 MS. DURRETT: Your Honor, just if the government is
16 suggesting that this agent is familiar with each of the green
17 dots on each of these slides, I will say that I asked the
18 agent about --

19 MR. MOORE: Your Honor, if she is going to talk
20 about conversations with the agent, we would ask for a
21 sidebar. I don't think that's appropriate in front of the
22 jury.

23 MS. DURRETT: I don't think there is a foundation
24 for him to say that he is familiar with each of those green
25 dots on each of the slides, Your Honor, as the government is

1 representing.

2 THE COURT: All right.

3 MR. MOORE: I'm happy to lay that foundation, Your
4 Honor.

5 THE COURT: All right. We'll see if you can lay
6 the foundation.

7 And to the extent it comes up, I'm going to
8 overrule the objection without prejudice to renew as to any
9 particular slide that they show him that you think there is
10 not a proper foundation.

11 Go ahead.

12 BY MR. MOORE:

13 Q. Have you done cell site analysis in the Northern
14 District of Georgia before?

15 A. I have.

16 Q. All right. And is that a part of your regular
17 course of business?

18 A. It is.

19 Q. And when you are doing this analysis, is part of
20 that analysis being able to rely on the cell tower locations?

21 A. Yes, absolutely. I mean, obviously, we rely on
22 cell locations as part of our -- a huge part of our analysis.

23 Q. And could you please describe to the jury how you
24 are able to determine the cell tower locations?

25 A. Yes.

1 So the cellphone providers, again, they are
2 required to keep a list called a tower list. And that list
3 has the tower and sector locations. So if, say, hey,
4 T-Mobile Tower 123 located at 123 Main Street or whatever,
5 and the orientation off of all of its sectors.

6 And then if they make any changes to that tower
7 list, they update it typically quarterly or so. And then
8 they send those updates to what's called the National
9 Domestic Communications Assistance Center.

10 And we can go to that. NDCAC is what the
11 abbreviation is. We can go to NDCAC, get a copy of tower
12 list associated with the time period of the analysis.

13 Meaning I'm not going to get a tower list for
14 January 2024 if the crime occurred in July of 2022; I need to
15 get a tower list from July of 2022. Which is what we do in
16 every case that we analyze.

17 Q. And would experts in your field reasonably rely on
18 the tower list in forming an opinion on the subject that you
19 are testifying here to today?

20 A. Yes. Absolutely.

21 MR. MOORE: Your Honor, at this point I would ask
22 to display Agent Berni's report.

23 THE COURT: Any additional objection, Ms. Durrett?

24 MS. DURRETT: No additional objections, Your Honor.

25 THE COURT: All right. Very well.

1 Without objection, go ahead.

2 MR. MOORE: Can you show page 3 of the report.

3 BY MR. MOORE:

4 Q. All right. You had told the jury earlier a little
5 bit about cell towers. Can you explain to them what is being
6 shown on the screen now?

7 A. Yes.

8 So these are all pictures of cellphone towers. The
9 most common are the ones on the left-hand side, the monopole,
10 the latticework tower, the guy wire tower. These are the
11 vast majority of cellphone towers that we see as we drive
12 around, like on the interstates and whatever.

13 And occasionally they can also put antennas, which
14 are the long white -- long white rectangles that we see on
15 the structural tower. So they can put those along the sides
16 of buildings or water towers to make a cellphone tower and a
17 sector.

18 But everything on the right-hand side is also a
19 cellphone tower. So everything from the fake trees that we
20 do see here in Atlanta. We don't see this cactus; this is
21 from Phoenix, Arizona.

22 But again, they can make cellphone towers look
23 about just about everything.

24 So the reason we show this is just because you
25 don't see a tall monopole or a guy wire tower right around

1 your area doesn't mean there is not a cellphone and an
2 antenna providing coverage to your cellphone.

3 MR. MOORE: And can we go to page 4, please.

4 BY MR. MOORE:

5 Q. Can you explain to the jury what the cell tower
6 sectors are?

7 A. Yes.

8 So each cellphone tower is uniquely numbered.
9 Meaning T-Mobile -- let's say T-Mobile, and we look at Tower
10 123. There is only going to be one tower labeled 123 in
11 their entire network in the entire United States. And it
12 becomes like a fingerprint within the network that allows us
13 to know the general area that the device was used.

14 So the vast majority of all those towers are what
15 we call three-sided towers, about 95 percent. So a cellphone
16 tower is put in area to provide capacity to users; right?
17 T-Mobile puts a tower in so they can provide coverage in that
18 area for phones.

19 Well, in order to provide more space for users,
20 they take that one tower and they divide it into three equal
21 parts, or sectors. And that allows, basically, from one
22 entry point, a tower, to three entry points, different
23 sectors.

24 So you take a full 360-degree circle, which a tower
25 covers, and you divide that by 3, you get each sector

1 covering approximately 120 degrees, which is what we start to
2 see here.

3 So on the left, the triangle shape in the middle is
4 the cellphone tower. So this would be us on top of the
5 cellphone tower looking down.

6 And in this example, sector No. 1 or side No. 1,
7 the middle of it points towards zero degrees. And again, we
8 get that from the tower list provided by the provider.

9 And then we know that each sector is approximately
10 120 degrees. So if we know the middle is at zero degrees, we
11 can go to the left 60 degrees and to the right 60 degrees,
12 and that gives us the orientation of that sector or that
13 approximate 120 degrees side of that sector, which we will
14 see how we do that in slides to come.

15 MR. MOORE: And can we go to slide 5, please.

16 BY MR. MOORE:

17 Q. And can you talk about the sector orientation,
18 please?

19 A. Yes.

20 So here what we see on the left-hand side, again we
21 have that same tower in the middle with the degrees on the
22 outside. But now we have drawn the lines for sector No. 1.
23 Again the middle of it points towards zero degrees, we get
24 that from the tower list.

25 And then we know we can go 60 degrees to the left

1 of it, to 300, and 60 degrees to the right, to 60. And that
2 gives us a 120-degree sector or side of the tower.

3 One thing you will notice is it's kind of shaded in
4 the middle, in this case it's shaded red in the middle.
5 Well, that shaded area doesn't depict where the phone is,
6 like that close to the tower, nor does it say that that's the
7 coverage area of that tower. The shaded area just shows the
8 sides of the V that we're looking at in reference to the
9 sector.

10 So on the right-hand side, you see how it will be
11 displayed on the map. The point of the V, where the two arms
12 of the V meet together, that point is the cellphone tower.
13 And you will see -- it might be hard to see, but there's a
14 green dot there. The green dot represents the tower.

15 And then the left and right arms of the red kind of
16 pie wedge represent the left and right limits, approximate
17 limits of that sector used.

18 MR. MOORE: Can we go to Slide 6, please.

19 BY MR. MOORE:

20 Q. Can you explain to the jury what the slide
21 illustrations are?

22 A. Yes.

23 For each tower used, we will see what's called a
24 call-out box, and that's what's represented here. And in the
25 call-out box is some important information about the tower

1 and the calls.

2 So what we see is, at the top, where it says CID,
3 that stands for Cell ID. That's that unique tower number.
4 So in this case, this is a T-Mobile tower and that unique
5 tower is 158418. Again, that number is not replicated
6 anywhere else in their list.

7 And then the -2 shows the sector that's used. And
8 in this case, T-Mobile, we're using the second digit, or the
9 number 2, as the sector.

10 Underneath that, we have the date. So in this
11 example, July 12 of 2020.

12 And then the number right underneath that is the
13 phone number for the records being analyzed. So in this
14 case, we're mapping out the activity for the number
15 678-559-8218.

16 And then we see time in local time. So it's
17 2:47:50 p.m. And again, that will all be in local Eastern
18 time.

19 Next to that is the type of activity. So in this
20 case, this was an incoming call and we can see that it says
21 "incoming."

22 And then the next number is the compass direction
23 of the sector used. Meaning we know based on the CID box
24 that it used sector No. 2. And we know off of this that
25 sector No. 2 points towards the middle of it, towards 160

1 degrees because it will be annotated in the box there.

2 And then on the other side, another phone number.
3 That's the other phone number associated with this call that
4 got mapped.

5 So basically, this was the incoming call to the
6 8218 number from the number on the right, ending in 5358,
7 that occurred at 2:47:50 p.m. And you can see the tower used
8 and the sector used. And then we know the orientation of 160
9 degrees, and that allows us to map out that activity.

10 MR. MOORE: Can we go to page 7, please?

11 MS. DURRETT: Your Honor, I object because there is
12 no foundation for the green dots on this page, which are the
13 other towers that allegedly are in existence at the time of
14 this call.

15 THE COURT: Counsel?

16 MR. MOORE: Your Honor, that's the same objection
17 that she made previously, and he testified that this
18 information is the type of information that is relied upon by
19 experts in his field and that he's familiar with it.

20 THE COURT: Overruled.

21 BY MR. MOORE:

22 Q. This jury has previously heard testimony that a
23 phone number 678-559-8218 is associated with defendant
24 Teldrin Foster.

25 Did you do an analysis of cell site data associated

1 with that phone number?

2 A. I did.

3 Q. And this jury has also heard testimony that rapid!
4 PayCard No. 4112380018535123 is also associated with
5 defendant Teldrin Foster.

6 Did you do an analysis comparing the cell site data
7 to transaction data from that card?

8 A. I did.

9 Q. Can you explain to the jury what is displayed here
10 on this slide?

11 A. Yes.

12 So each of the subsequent slides will be maps of
13 phone activity. And so at the top of each page will be the
14 date of the activity so, in this case, it's July 11 of 2020,
15 and then the time period for the records that I analyzed. So
16 I looked at between 10:00 p.m. and 11:00 p.m. on the 11th.

17 On the left-hand side, again, you will see the
18 phone number that's analyzed, ending in 8218.

19 You can also see the green dots that we have been
20 talking about. Those are other T-Mobile towers that were
21 operated at the time period in July of 2020.

22 On the right-hand side would be any locations of
23 interest associated with this time period based off of the
24 financial transaction.

25 So in this case, we see a red number 1, and then it

1 says it's a PNC Bank and it lists the address for that bank.
2 And then right underneath that will be, again, the financial
3 transaction, the card number, and then the time period that
4 that card was used.

5 So if we actually then start looking at the
6 activity during that time period, we can see the cellphone
7 tower and sector used. It's mapped out there.

8 And then in the call-out box, the kind of green box
9 on the right-hand side, we can see the time period that the
10 phone used those towers and sectors. Again, that's at 10:00.
11 10:05, it used a tower and sector on the west side or
12 left-hand side of that tower.

13 And then there is a call at 11:00, an outgoing call
14 that uses the south side of that tower or sector.

15 Q. Okay. So just to summarize, is it accurate that
16 there was a call made in the vicinity of the PNC Bank at
17 10:00, 10:05 and 11?

18 A. That's correct.

19 Q. And then there was a card transaction on the
20 Teldrin Foster card at 10:32 at the PNC Bank; is that
21 accurate?

22 A. That is also accurate. Yes.

23 MR. MOORE: Can you go to slide 8, please.

24 BY MR. MOORE:

25 Q. Can you tell the jury what this slide displays?

1 A. Here we're looking at July 12, as we see at the
2 top, analyzed between 2:32 and 2:48. We can see right
3 underneath that, in the white box there is a financial
4 transaction at 2:34 p.m.

5 And then, when we start looking at the phone
6 activity, on the right-hand side we can see there was a call
7 and the tower and sector used at 2:32 p.m.

8 And then the next activity is at 2:47 and 2:48, and
9 we see both of those towers on the west side or the left-hand
10 side of the No. 2 mark there.

11 Q. And just to help with the jury, with their
12 understanding, we are only able to plot points on the map
13 when there is activity on the phone; is that accurate?

14 A. Yes.

15 So on the call detail records, all we can see is
16 when there are calls and some text messages is what T-Mobile
17 keeps tower and sector information for. All calls, and then
18 some text messages.

19 Q. So the best we can see on this slide is at 2:34
20 there was a transaction, and at 2:23 the phone was on the
21 east side. And then at 2:48, it was approximately on the
22 west side of the Publix supermarket?

23 A. Yes.

24 MR. MOORE: Could we go to slide 9, please.

25 BY MR. MOORE:

1 Q. Could you please tell the jury what this slide
2 displays?

3 A. So again, this is for July 12 of 2020. We see at
4 the top, I analyzed between 10:28 and 11:30 p.m. Looked at
5 transactions that occurred at the QwikTrip, it's the red
6 No. 3 there. And you can see the transaction at the time
7 listed below that.

8 And then what we see when we look at the call is
9 that at 10:28 and 10:44, there were two calls. And you can
10 see the towers and sectors used for that, again, are in
11 proximity to the QwikTrip.

12 One thing to note is on the bottom right-hand side
13 of the slide I put when the next call was. And there is no
14 activity. Again, 10:44:58 we see that mapped there, but then
15 there is no other activity, mappable activity, until the next
16 morning at 2:48 a.m.

17 MR. MOORE: Can we go to slide 10, please.

18 BY MR. MOORE:

19 Q. And can you tell the jury about this slide?

20 A. This is on July 13 of 2020. You can see the time
21 period 4:03 p.m. to 5:39 p.m. at the top.

22 And then this is associated with three different
23 locations. You can see those labeled there, 4, 5, and 6.

24 And then you see the transaction times, the first
25 one being at 4:44 p.m. and the last one being at 5:25 p.m. in

1 the area.

2 So we can see the phone activity. Again, there is
3 an outgoing call at 4:03. Near the bottom there, we see the
4 tower and sector used for that. And then the next call that
5 we have tower information for is at 5:39 p.m., and again we
6 see the towers and sectors used for that.

7 MR. MOORE: And can we go to slide 11.

8 BY MR. MOORE:

9 Q. Can you please tell me the jury what slide 11
10 shows?

11 A. This is on July 14 of 2020. You see the time
12 period, 11:34 a.m. to 12:59 p.m. Again this is transactions
13 at the QwikTrip. We see the time listed there of the
14 transaction is 12:14.

15 And then we see the time periods of the analysis at
16 11:34, at 12:16, and at 12:59. We can see the towers and
17 sectors used there.

18 Q. And do vendors ever do preauthorizations on cards
19 or run the transactions at a different time than the person
20 actually swipes the card?

21 A. Yes.

22 Q. And so if you were doing that data and they did the
23 transaction at a later time, you would be -- the time that
24 would be shown on the records wouldn't be the time of the
25 actual swiping of the card; is that accurate?

1 A. Yes.

2 For the preauthorization transaction, it could be
3 at a different time period. Correct.

4 Q. And at some point during this process was it
5 identified by financial agents that some of the transactions
6 you mapped were reconciliation transactions?

7 A. That's correct. Yes.

8 So I mapped all of the transactions based on the
9 dates and times of the transactions, and then showed where
10 the phones were in relation to those.

11 And then that analysis got reviewed again by the
12 financial analysts, and they saw that some of the times that
13 I mapped were actually preauthorizations or reconciliations
14 of the reports. So then that information was found.

15 Q. And so for the transactions that you mapped, did
16 you accurately map each transaction on the map for where the
17 cellphone was at that time?

18 A. Yes. Absolutely.

19 All of the mapping is 100 percent correct and has
20 been peer reviewed by another CAST-certified agent. Again,
21 the time period of the reconciliation could have been at a
22 different time period.

23 Q. And your job is limited to the mapping; correct?

24 A. That's correct.

25 Q. You are not involved in the financial data analysis

1 afterwards?

2 A. I'm not a financial expert.

3 MR. MOORE: Can we go to tab 13, please.

4 BY MR. MOORE:

5 Q. Can you explain to the jury what tab 13 shows?

6 A. Yes.

7 This is transactions on July 14 of 2020. We see
8 the time period, 7:09 to 9:34 p.m. And we see the location
9 No. 7 where the transactions occurred. And again the time
10 period of the transactions is listed as 8:37 p.m.

11 So we can see the towers and sectors used. There's
12 an outgoing call at 7:09. And then the phone moved north and
13 used the tower and sector at 7:41 and 8:23. And then it
14 moved south again at 9:34 and used the tower down there.

15 So we see the towers used during this time period.

16 MR. MOORE: Could we go to tab 14, please.

17 BY MR. MOORE:

18 Q. And can you describe to the jury what this shows?

19 A. Yes.

20 So this is phone activity July 15, 4:15 to 5:41
21 p.m. Again, you can see the location, labeled No. 8 there,
22 and then the time period underneath that, listed at 4:30.

23 And again, then we have a call at 4:15 that uses a
24 tower and sector in the middle of my page here. And then
25 there are several calls at 5:38, 5:39, and 5:41 that you can

1 see use a tower and sector in close proximity to the incident
2 location No. 8.

3 MR. MOORE: Page 15, please.

4 BY MR. MOORE:

5 Q. And can you describe what this is for the jury?

6 A. Yes.

7 So this is a continuation that day, also July 15 of
8 2020. Now we're looking at a different incident location.
9 And the analysis was between 8:49 and 10:04 p.m.

10 You can see the incident location marked as the
11 No. 9, and then again the time period, utilized the card at
12 9:25 p.m.

13 So when we start looking at the analysis, we see
14 there was an outgoing call at 8:49, kind of on the left side
15 or west side of the page here. The phone then moved down
16 toward the target location. There was an outgoing call at
17 9:29. And then there was an outgoing call at 10:04.

18 The device has moved back up toward -- closer
19 toward downtown Atlanta.

20 THE COURT: When you get to a good stopping point,
21 I think we're due for a comfort break.

22 MR. MOORE: I think this is an excellent time, Your
23 Honor.

24 THE COURT: Ladies and gentlemen of the jury, we're
25 going to take a short break. Let's all maybe be ready to go

1 in ten minutes. You are reminded of your instructions for
2 the breaks.

3 (Jury withdrew from the courtroom at 10:41 a.m.,
4 and proceedings continued as follows at 11:02 a.m.)

5 THE COURT: Thank you. You all can be seated.
6 Bring the jury in, please.

7 (Jury enters the courtroom at 11:02 a.m.)

8 THE COURT: All right. You all can be seated.
9 Thank you.

10 Mr. Moore, go ahead.

11 MR. MOORE: Could we move to Slide 16, please.

12 BY MR. MOORE:

13 Q. Can you tell us about this slide, the slide at the
14 Kroger Field Center?

15 A. Yes.

16 It is again analysis from July 16 of 2020. We see
17 the time period, 10:46 p.m. to 11:00 p.m., at the top. Again
18 we see an incident number, listed No. 10, and it's shown on
19 the map. And you can see the time period that the card was
20 used, at 10:48 a.m., listed underneath that.

21 When we start looking at the phone and tower usage,
22 we can see, at 10:46 a.m., a tower and sector used that was
23 in close proximity to incident No. 10.

24 And then the device travels north and west and has
25 two phone activities at 11:00, and you can see the towers and

1 sectors used of those.

2 MR. MOORE: Can we go to Slide 17, please.

3 BY MR. MOORE:

4 Q. Can you tell us about this activity at Georgia
5 United?

6 A. This is on July 18 of 2020. Again, I mapped
7 between 1:30 p.m. and 3:00 p.m. You can see the incident
8 location listed, No. 11. And you see the transaction time
9 listed underneath there as 2:05.

10 The call activity, we see two incoming calls, both
11 at 1:52 p.m. And again you can see the tower and the sector
12 side of the tower that was used.

13 One thing to note, if you see on the bottom right,
14 the next call on this device isn't until 5:01 p.m.

15 MR. MOORE: Can we go to page 19, please.

16 BY MR. MOORE:

17 Q. Can you tell us about this activity at Red Lobster?

18 A. Yep.

19 July 19 of 2020. I looked at between 3:15 and
20 4:03 p.m. You see that at the top.

21 Again, you see the incident labeled No. 14, and you
22 can see that on the map. The transaction time, 3:39 p.m.
23 And again we see an outgoing call at 3:47 p.m. You see that
24 the tower and sector listed for that, again, is one that's in
25 close proximity to the incident location.

1 And then we see the device moved shortly
2 thereafter, and you can see the tower and sector used at
3 4:03.

4 Q. Based on your training and experience, do you know,
5 transactions at sit-down restaurants, is that normally done
6 at the beginning of your time there or towards the end when
7 you are leaving?

8 A. Yes.

9 Most of the time at sit-down restaurants you will
10 see, obviously, we pay our bill after we eat, as opposed to
11 buffet-style places like Piccadilly's, I think we have seen
12 on slides, right, you pay when you enter and then you eat
13 your buffet and then you just leave.

14 Q. So seeing the phone move away from the location
15 after the activity, that would be consistent with paying at
16 the end of the meal?

17 A. I think that would be consistent. Yes.

18 MR. MOORE: Can we go to Slide 20, please.

19 BY MR. MOORE:

20 Q. All right. Could you please tell the jury about
21 these transactions at QwikTrip and Publix?

22 A. Yes.

23 So we see July 20 of 2020. Again, we looked at
24 between 12:30 a.m. to 1:35 a.m. There are two incidents.
25 You see both of those locations. One labeled 15 is a Publix,

1 and the other, labeled No. 3, is a QuikTrip.

2 And you can see the transaction times listed,
3 Publix 12:56 and 12:57 a.m., and the QuikTrip has 1:08 and
4 1:12 a.m.

5 And then if we look at the analysis, we see a tower
6 and sector used close to incident 15, or the one labeled 15,
7 at 12:53 a.m.

8 The next activity is at 1:28, and we can see the
9 tower and sector used now is one that's close to the incident
10 labeled No. 3.

11 And then we see the device again moved west at
12 1:35, and you see the tower and sector used there.

13 MR. MOORE: Can we go to slide 21, please.

14 BY MR. MOORE:

15 Q. And can you please tell the jury about this Red
16 Lobster transaction?

17 A. Also on July 20 of 2020, 11:30 a.m., to 12:30 p.m.
18 was the time that I analyzed.

19 You can see the incident location up there. The
20 transaction time is at 11:52 a.m. And we can see the only
21 calls during that time period were at 12:21, and we can see
22 the tower and sector used for that.

23 Q. Okay. So here, there isn't a call made until about
24 29 minutes after the bill is paid?

25 A. That's correct.

1 MR. MOORE: Can we go to slide 22, please.

2 BY MR. MOORE:

3 Q. Can you tell the jury about this transaction at the
4 VIP package store?

5 A. Yes.

6 July 20 of 2020. Analyzed between 8:30 and 9:33.
7 You can see incident labeled No. 16. The transaction time is
8 at 9:10 p.m. And we see phone activity in the call-out
9 boxes. One is at 8:30 p.m. And again you see that that's
10 using a tower and sector that's close to the incident
11 location.

12 And then the device has moved south and west. At
13 9:33, you see the tower and sector used at that time.

14 MR. MOORE: And can we go to slide 23, please.

15 BY MR. MOORE:

16 Q. And can you tell the jury about this transaction at
17 Publix?

18 A. Yep.

19 So this is on July 20 at 11:00 p.m., until July 21
20 at 1:01 a.m. And then you see the incident location is
21 No. 17. The transaction time listed there is 12:48, two
22 transactions, and one at 12:49 a.m.

23 When we start looking at the analysis, we see there
24 is a tower and sector used at 11:01, kind of in the middle of
25 map.

1 And then at 1:01 a.m., we see another tower and
2 sector used that's in close proximity to Publix.

3 One thing you will note there is that that tower
4 and sector is shown as a full circle.

5 So remember when I said that not all cellphone
6 towers look the same. The vast majority are three-sided
7 towers. The ones we see used at 11:01 is a three-sided
8 tower.

9 The one used at 1:01 is a smaller omnidirectional
10 antenna, meaning that it's one antenna and instead of
11 dividing that antenna up, they just have that one antenna
12 cover a full circle, 360 degrees.

13 Those types of antennae are normally used to fill
14 extra capacity or extra spots in places where there is
15 businesses like strip malls, parks, other things like that.

16 So that's what we see in this instance. That cell
17 phone tower, again, is a smaller omnidirectional, covers 360
18 degrees, tower that's used.

19 MR. MOORE: Can we go to slide 25, please.

20 BY MR. MOORE:

21 Q. Can you tell the jury about this transaction at
22 Raceway?

23 A. Yep.

24 July 22 of 2020. Again, I analyzed 5:40 to
25 6:16 p.m. And we see the incident location No. 19 labeled

1 there. Transaction time 6:01 to 6:04. And then we see that
2 there were incoming and outgoing calls, one at 6:08 and one
3 at 6:16, again using a tower and sector that's in close
4 proximity to the incident location.

5 MR. MOORE: And can we go to slide 27, please.

6 BY MR. MOORE:

7 Q. Can you tell the jury about this QuikTrip
8 transaction?

9 A. This is on July 25 of 2020. Again, I looked at
10 between 12:05 and 1:00 a.m. You can see, again, we're
11 looking at incident location No. 3 as marked on the map. The
12 transaction time you see listed there is at 12:34.

13 So again we marked, mapped out the activity, and
14 you can see the device used a tower and sector in close
15 proximity at 12:05, and again at 12:25. And then there is no
16 activity, as you see on the bottom right, until 3:45 a.m., so
17 a couple hours later.

18 MR. MOORE: All right. Slide 28, please.

19 BY MR. MOORE:

20 Q. And then can you tell the jury about this
21 transaction at Georgia United?

22 A. This is on July 25, 2020. Looked at 3:45 p.m., to
23 4:05 p.m. You can see the incident location again marked as
24 No. 11. The transaction time at 3:52 p.m.

25 And then we see the analysis. There is an incoming

1 call at 3:46, and then at 4:05, an outgoing call, 4:05 p.m.
2 And again you see a tower and sector there. It's a tower and
3 a sector that's, you know, again in close proximity to the
4 incident location.

5 MR. MOORE: All right. And slide 29, please.

6 BY MR. MOORE:

7 Q. Can you tell the jury about this Wells Fargo Bank
8 transaction?

9 A. This is on July 30, 2020. We looked between 11:08
10 and 11:41 p.m. You see the incident location marked as
11 No. 20 on there, and then the transaction times 11:17, two
12 transaction times.

13 And then we can see the towers and sectors used.
14 There is incoming calls, one at 11:08 p.m., and then the next
15 one is at 11:41 p.m., both using a tower and a sector and in
16 close proximity to the incident location.

17 MR. MOORE: And can we go to slide 30.

18 BY MR. MOORE:

19 Q. And can you tell the jury about this transaction at
20 Murphy?

21 A. This is on July 31 of 2020, between 11:30 a.m., and
22 12:15 p.m. We see the incident location marked as No. 21 and
23 the incident time period as 11:43 p.m.

24 And then we see kind of another odd shape as
25 opposed to our 120-degree sector. This is a tower that has

1 six sides to it. And again, we can tell this because of the
2 information that comes from the tower list and also in call
3 detail records.

4 And so because it's a six-sided tower, each side of
5 the tower is now only 60 degrees instead of that full 120.
6 That's why it looks a little bit different.

7 But that tower was used at 11:52 a.m.

8 Q. All right. And I noticed that Murphy's is on
9 Highway 41. Would this, where this data is showing, is it
10 consistent with like a call somewhere in the vicinity of
11 Highway 41?

12 A. Yes. Just north of the incident location you can
13 see there. But yes, I would say that that sector covers,
14 would cover Highway 41.

15 MR. MOORE: Can we go to slide 31, please.

16 BY MR. MOORE:

17 Q. And can you please tell the jury about these
18 transaction at Walmart and at Polo?

19 A. Yes.

20 These are on July 31 of 2020. I looked at between
21 5:30 and 6:47 p.m. There were two different incident
22 locations, marked as No. 22 and No. 23. You can see the time
23 periods of those. The earliest is at 5:47, and then the
24 second one is at 6:15 p.m.

25 And then when we start looking at the phone

1 activity, we see the phone used a tower in close proximity to
2 those incident locations. At 6:20 and 6:21 there are two
3 outgoing calls.

4 And then we see the device start to move
5 northbound, and it uses a tower north of the incident
6 location at 6:31, two outgoing calls. And then it continues
7 northbound at 6:47.

8 MR. MOORE: Can we go to slide 33, please.

9 BY MR. MOORE:

10 Q. Can you tell the jury about this transaction at
11 Publix?

12 A. This is on August 1 of 2020. Again, I looked at
13 from 12:00 a.m., until 1:00 a.m. You can see the incident
14 location there marked as 15. And then you can see the
15 transaction times, 12:36 to 12:38.

16 And then you can see the tower -- or the call
17 activity. There is an incoming call at 12:54. And again you
18 can see the tower and sector used for that.

19 MR. MOORE: All right. Could we go to slide 35,
20 please.

21 BY MR. MOORE:

22 Q. Can you please tell the jury about this transaction
23 at the Kroger Field Center?

24 A. So this is also on August 1. Looked at between
25 5:30 and 6:07 p.m. See the incident location marked as

1 No. 10. And then the transaction times of 5:50 and 5:53.

2 And then we see there is a tower and it uses two
3 different sides of that tower or two different sectors. It
4 uses the sector on the right-hand side between 5:50 and 5:58.
5 And then at 5:59, there's an outgoing call, and now the phone
6 is using the west-hand side of that same tower.

7 And we can tell that because, if you look in the
8 call-out box, it says -- you know, if you see the column that
9 says incoming and outgoing, the column right next to that,
10 again, is the azimuth of the sector used. So a lot of them
11 say 40, which says that it used the sector that points
12 towards 40 degrees which would be the one that points to the
13 right-hand side. And then at 5:59, it uses the sector that
14 points towards 280 degrees, which would be the west-hand
15 side.

16 And then after that 5:59 call, we see another call
17 at 6:07 p.m., where the device has now moved west, away from
18 incident location No. 10.

19 Q. All right. And here the card was first utilized at
20 5:50:34, and then there's an incoming at that Kroger Field
21 Center, in that general vicinity, at 5:50:36 seconds; is that
22 accurate?

23 A. That's correct.

24 MR. MOORE: Could we go to slide 36 please.

25 BY MR. MOORE:

1 Q. Could you please tell the jury about this
2 transaction at Dat Fire Jerk Chicken?

3 A. This is on August 1. I looked at between 6:10 and
4 7:32. You see the incident location marked as No. 25. The
5 transaction time is at 7:22 p.m.

6 And then when we look at the analysis, we see at
7 6:10 it used a tower and sector, the one kind of on the
8 right-hand side.

9 And then the next one is at 7:19, and we see that's
10 a tower and sector in close proximity to the incident
11 location.

12 And then, at 7:32 p.m., you can see the phone is
13 now using a different tower and sector annotated there.

14 MR. MOORE: All right. Can we go to slide 37,
15 please.

16 BY MR. MOORE:

17 Q. Could you please tell the jury about this
18 transaction at Publix?

19 A. On August 1 of 2020, between 8:00 and 9:35 p.m.,
20 again the Publix annotated as the number 15 there. You can
21 see the transaction times, 8:37 and 8:38 p.m.

22 And then we have phone activity on the phone at
23 8:16. You can see it's near downtown Atlanta there, on kind
24 of the left-hand side of the slide.

25 And then at 9:34 is the next activity, and you can

1 see it uses a tower in close proximity to the Publix or to
2 the incident No. 15.

3 MR. MOORE: Okay. And slide 38, please.

4 BY MR. MOORE:

5 Q. Can you please tell the jury about these
6 transactions at Chevron and Wells Fargo?

7 A. Yes.

8 These are August 1. I looked at between August 1
9 at 11:22 p.m., and August 2 at 12:47 a.m. There's two
10 different incident locations, No. 26 and No. 27. And you can
11 see the incident times there, 11:50 and 11:59.

12 And then when we look at the call activity, at
13 11:22 we can see the tower and sector used there. And then
14 at 11:53, we can see that the phone used a tower and sector
15 in close proximity to incident location No. 26.

16 And then the next phone activity isn't until
17 12:47 a.m., and we see the tower and sector utilized there.
18 The device has now moved south and west, away from both of
19 those locations.

20 Q. All right. Is it accurate that there was an
21 outgoing call at the Chevron, in the vicinity of the Chevron,
22 approximately three minutes after the transaction?

23 A. Yes. It uses a tower and sector that's very close
24 to the Chevron, and that sector would cover the Chevron.

25 MR. MOORE: Can we go to slide 39, please.

1 BY MR. MOORE:

2 Q. And can you tell the jury about this transaction at
3 QuikTrip?

4 A. Yep.

5 This is on August 2. I analyzed between 2:00 and
6 2:40 a.m. You can see the incident marked as No. 3.
7 Transaction time is at 2:21 a.m.

8 The only activity during that time period was a
9 call at 2:15 a.m., an outgoing call. And again you can see
10 that it utilized a tower and a sector in close proximity to
11 the incident location.

12 MR. MOORE: And can we go to slide 40, please.

13 BY MR. MOORE:

14 Q. And can you tell the jury about these transactions
15 at Target and Chipotle?

16 A. Yes. So this is August 2, again, of 2020. I
17 reviewed between 7:15 and 9:30 p.m. And there is two
18 different incident locations, one marked 28 and one marked
19 29. You can see the incident times, 7:33 and 8:09 p.m.

20 And then the phone activity, you can see there are
21 two outgoing calls, 8:14 and 8:15.

22 MR. MOORE: Can we go to slide 43, please.

23 BY MR. MOORE:

24 Q. And can you tell the jury about these transactions
25 at Target -- yes. These transactions at Target.

1 A. So August 3, reviewed between 2:00 and 2:46 p.m.
2 You can see the incident location, this one is marked as
3 No. 31. And then the transaction times are 2:27 and 2:32.

4 And then when we look at the times, we can see that
5 there was an incoming call at approximately 2:40. You can
6 see the tower and sector used for that.

7 And then the device travels northbound and uses a
8 tower, at 2:46, that's further away from the incident
9 location.

10 MR. MOORE: And can we go to slide 44.

11 BY MR. MOORE:

12 Q. And can you tell the jury about this transaction at
13 Macy's?

14 A. So this is on August 4 of 2020. Again, I reviewed
15 between 2:20 and 3:09 p.m. You can see the incident location
16 marked as No. 32. And the time period of the transaction is
17 at 2:49 p.m.

18 And then you have the respective calls. There is
19 an incoming call at 2:27. You can see the tower and sector
20 used there.

21 And then the next activity is at 3:09. And again,
22 at this point, the device has moved westbound, away from the
23 incident location.

24 MR. MOORE: All right. And finally, can we go to
25 slide 45.

1 BY MR. MOORE:

2 Q. And can you tell the jury about this Wingstop
3 transaction?

4 A. This is on August 6, between 5:14 and 5:39 p.m.
5 Again, you can see the incident labeled No. 24 on the map.
6 The time of the transaction is at 5:21 p.m.

7 And then when we start looking at the calls, we see
8 an incoming call at 5:14, uses a tower and a sector that's in
9 close proximity to the incident location.

10 And then the next activity is at 5:39 p.m. We can
11 see the device has moved away from the incident location at
12 that time.

13 BY MR. MOORE:

14 Q. All right. So would it be accurate --

15 THE COURT: Let me interrupt for one moment.

16 We're off the record for a second.

17 (Off-the-record discussion, and proceedings
18 continued as follows:)

19 BY MR. MOORE:

20 Q. Would it be accurate to say that seven minutes
21 before the check is paid, the phone is in the vicinity of
22 Wingstop and then we see, after the check is paid, the phone
23 has moved away from Wingstop?

24 A. Yes. I would say that the phone is in the general
25 area around the Wingstop based on the tower and sector used

1 at 5:14, which again would have been seven minutes prior to.
2 And then, shortly thereafter, it departs the area.

3 Q. And then just to summarize, have all of the spots,
4 the cell site spots that you have pinpointed on these maps,
5 have they all been accurate?

6 A. They are.

7 Q. Even for the reconciliation ones, the spot that you
8 pointed to on the map is the accurate spot of where the phone
9 was at that time?

10 A. Yes, at the time that I reviewed it. Correct.

11 Q. Is it fair to say that your analysis has determined
12 that this cellphone that's been analyzed was in the vicinity
13 of these transactions on multiple occasions?

14 A. I would say that's correct.

15 MR. MOORE: Nothing else, Your Honor.

16 THE COURT: Any cross?

17 MS. DURRETT: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MS. DURRETT:

20 Q. Good morning, Agent Berni.

21 A. Good morning.

22 Q. I have a few more questions than the government
23 had. I know you went kind of fast through your slides, so I
24 want to talk with you a little bit about that.

25 But I want to start by asking what materials did

1 you use in creating your report?

2 A. Yes. So we use the call detail records and then we
3 also review the tower lists in order to verify the locations
4 of towers listed in the call detail log.

5 Q. So the call detail report is something that comes
6 from the carrier; right? T-Mobile?

7 A. Correct.

8 Q. And so they give you a list. It's basically the
9 bill without the money; right?

10 A. Yes. And in addition, it lists the towers and
11 sectors. So just extra columns.

12 Q. Right. And the tower list that we were talking
13 about earlier, that's typically -- at least my understanding
14 from speaking with you, that's typically something that's
15 also provided by the carriers; correct?

16 A. It is. Yes. They generate the tower list.
17 Correct.

18 MS. DURRETT: Can we -- maybe just to show what I
19 was talking about, could I ask for your assistance in pulling
20 up slide No. 8 from that report?

21 BY MS. DURRETT:

22 Q. So what I was asking you about are these green dots
23 that you can see on the screen. Those represent other cell
24 phone towers; is that correct?

25 A. Yes, ma'am. That's correct.

1 Q. So when we were talking about the tower list,
2 T-Mobile updates and sends out a list of all of its towers in
3 the Atlanta area, for instance?

4 A. Correct.

5 Q. And I think you said they update that every couple
6 of months?

7 A. Correct.

8 Q. Okay. And so in this case, when you started
9 reviewing the documents, you didn't actually get a tower list
10 with the records that came certified from T-Mobile; right?

11 A. That's correct.

12 Q. You -- it's my understanding, then, that your
13 software that you use just populated that?

14 A. The other dots on there, yes, it does. Yes. So
15 it -- the software that we use reaches out to that NDCAC,
16 that National Domestic Communication Center website, which is
17 where the providers take a tower list they create and they
18 send it to this website.

19 So our software reaches out to there and pulls the
20 tower list associated with the time period of our records.

21 Q. Okay. So you got, the actual records that you got
22 to review are the T-Mobile records, the call data report?

23 A. Yes, ma'am.

24 Q. Not the tower list because that was a separate
25 thing, right, with the software?

1 A. That not come from -- that's correct.

2 Q. And then the other component of data that's in this
3 report is this rapid! Pay information. Where did you get
4 that information?

5 A. Yes. That came from the FBI investigators.

6 Q. Okay. Would that be the agents here?

7 A. It is.

8 Q. Okay. And in what format did you get that?

9 A. That's in an Excel spreadsheet.

10 Q. Okay. And we have seen -- I think here in court
11 there is an Excel spreadsheet that has that rapid! Pay data,
12 and then there is what they call a summary chart. Do you
13 know which one you looked at?

14 A. I looked at the Excel spreadsheet.

15 Q. Okay. So that, I think, if I'm correct, that's
16 Exhibit 2954?

17 It's been admitted.

18 MS. DURRETT: Can we pull 2954?

19 BY MS. DURRETT:

20 Q. Does this look familiar?

21 A. It does.

22 Q. Okay. And, I mean, familiar as the rapid! Pay
23 transactions that you would have looked at when you populated
24 your report?

25 A. Yes. This looks vaguely familiar. I think it was

1 titled something different.

2 MS. DURRETT: Can we scroll up to see if there is
3 anything at the top?

4 BY MS. DURRETT:

5 Q. Is that what you looked at?

6 A. Yeah. And then I'm pretty sure that the one that I
7 received was specific to -- or it may have been sorted
8 specifically to the card number.

9 Q. Okay. But it came in a -- it was a spreadsheet, an
10 Excel spreadsheet?

11 A. Yes, ma'am.

12 MS. DURRETT: Could I trouble you to pull up 3015.
13 3015.

14 BY MS. DURRETT:

15 Q. Does this look more like what you saw?

16 A. Um, this looks like a PDF. But, no. I think it
17 was in an Excel -- from what I remember, it was in an Excel
18 form.

19 Q. Okay. And it was provided by the agents and it was
20 a list of rapid! Pay transactions that were tied to the card
21 that has a certain ending number; correct?

22 A. That's correct.

23 Q. And I think you listed that on your report. It
24 ends in 5123?

25 A. Yes, ma'am.

1 Q. Okay. And then we have the mapping software that
2 populated the tower records; correct?

3 A. Correct.

4 Q. Okay. And what is that mapping software called?

5 A. It's called ESPA, and it's made by Gladiator
6 Forensics.

7 Q. And is that publicly available? I could go and buy
8 that?

9 A. Yes, ma'am. I believe so.

10 Q. Is there a law enforcement version?

11 A. I'm not a hundred percent sure if there's different
12 versions, to be honest. I don't believe there is.

13 Q. Okay. Now I want to show the report. Let me ask
14 you, if we look at page 2 of your report --

15 Can we pull up page 2?

16 And this is the conclusions in your report;
17 correct?

18 A. This is basically a summary. No. 1 says how I was
19 involved; No. 2 describes the methodology, taking the call
20 detail records and the tower list;

21 And then No. 3 says you will see subsequent
22 conclusions based on the maps shown.

23 Q. Okay. But there is no written conclusions other
24 than what's here?

25 A. Correct.

1 Q. Okay.

2 Let's talk about the mapping software. So, just
3 like any other software, that's software that has to have
4 fixes or updates; right?

5 A. Yes, ma'am.

6 Q. Okay. And do you update it?

7 A. Do I update it?

8 Q. Yes.

9 A. I do not. Obviously, if we notice a glitch in the
10 software, we will contact the programmers who would update
11 it. But I'm not a programmer, so I don't update it myself.

12 Q. But it gets updated for bugs?

13 A. It is.

14 Q. It can have bugs in it; correct?

15 A. Sure. It's a program. Absolutely.

16 Q. Let me ask you about the times. And I could do
17 this on the ELMO if that's easier.

18 But, for instance, if we pull up one of your slides
19 and there are times listed or -- let me see if I can get this
20 on.

21 Can I use the ELMO?

22 COURTROOM DEPUTY: I think there is just a delay
23 with it coming on.

24 MS. DURRETT: Okay.

25 THE WITNESS: I see it on. I just don't see a

1 slide yet.

2 BY MS. DURRETT:

3 Q. Okay. What I wanted to know about is the rapid!
4 Pay, the times that you listed there. Where did that come
5 from?

6 A. The times were times associated with the
7 transactions for the specific locations off of the
8 spreadsheet with the transactions.

9 Q. And do you know where the rapid! Pay records came
10 from? It's not a trick question. But do you know where they
11 are generated or where they come from?

12 A. I do not.

13 Q. So you didn't get the original, you know,
14 certification or anything with those records?

15 A. I did not.

16 Q. Okay. Do you know what time zone those records are
17 in?

18 A. I assumed that they were in local transaction time.
19 But again, I'm not here as a financial analyst so I can't
20 speak specifically about the, you know, card pay things other
21 than the times provided to look at.

22 Q. And when you say "the times provided," you mean the
23 times provided by the agents in that spreadsheet?

24 A. Correct.

25 Q. Okay. And you assumed that that meant local time?

1 A. Correct.

2 Q. When you say "local time," obviously we're on the
3 East Coast, you mean East Coast time?

4 A. Yes, ma'am.

5 Q. And I know when you are looking at the T-Mobile
6 records, those are listed in what they call UTC time?

7 A. That's correct.

8 Q. So when you placed things into your report, you had
9 to translate the times from UCT time -- sorry if I didn't say
10 that right -- to Eastern time for the cellphone records?

11 A. Correct.

12 Q. But you did not translate any time for the rapid!
13 Pay transactions?

14 A. Yeah. I didn't update the spreadsheet for the
15 transaction times into my software. So I just review those
16 times and then, within the software, review the time periods
17 around those times to see the phone activity.

18 Q. Okay. And you talked a little bit your training.
19 I don't think we need to go that much more into it. But safe
20 to say the beginning of your training came from the FBI;
21 right?

22 A. No. As far as cellular analysis training? Yes,
23 no. I mean, I did that in the military for six years working
24 with the National Security Agency. That's where I first
25 started getting training on cellular devices.

1 Q. Okay. Okay. So it's fair to -- I'm not disputing
2 that you have had a lot of training in using cell site
3 technology and cell site forensics; correct?

4 A. Yes, ma'am.

5 Q. Okay. In this case you were asked to analyze the
6 phone number associated with Teldrin Foster; correct?

7 A. Correct.

8 Q. Were you asked to analyze anyone else's phone
9 number?

10 A. I was not.

11 Q. Were you asked to analyze anyone else's device?

12 A. I was not.

13 Q. Were you asked to analyze any other transactions
14 other than these rapid -- rapid! PayCard transactions?

15 A. No. Those were the only ones I was asked about.

16 Q. Okay. So, just to be clear, you weren't asked to
17 analyze Gena Pyfrom-Foster's phone?

18 A. No, ma'am. I don't even know who that is.

19 Q. Or Darrell Thomas's phone?

20 A. No, ma'am.

21 Q. And I'm going to show you what has been marked as
22 F1000.

23 MR. KAUSHAL: Ms. Durrett, she is going to need a
24 moment to get the ELMO. It's going to take just a moment.

25 I'm sorry.

1 MS. DURRETT: Thank you for helping me.

2 (Pause.)

3 MS. DURRETT: I did not mean to cause a problem.

4 THE COURT: There we go.

5 MS. DURRETT: Thank you.

6 COURTROOM DEPUTY: Thank you, Alisha.

7 BY MS. DURRETT:

8 Q. Okay. I'm going to approach and show you what's
9 been marked Defendant's Exhibit F1000 and ask if you have
10 seen that before?

11 A. I have.

12 Q. Okay. And how -- do you recognize what it is?

13 A. Yes. This is a record from T-Mobile and MetroPCS.
14 And it is a list of different phone numbers and the records
15 provided for those phone numbers.

16 Q. And you received this as part of the request to
17 analyze Mr. Foster's phone number; correct?

18 A. Well, the initial request just listed -- just was
19 the phone records and the financial spreadsheets for that one
20 phone number.

21 I saw these later, after trying to verify whether
22 there was sent a tower list or not. I was asked and sent all
23 of the records that they received from T-Mobile, and that's
24 when I saw this sheet.

25 Q. Okay. But you weren't asked to analyze any of

1 these other phone numbers, were you?

2 A. No, ma'am.

3 Q. Okay.

4 MS. DURRETT: Your Honor, I would move to admit
5 Defendant's Exhibit F1000.

6 MR. MOORE: No objection, Your Honor.

7 MR. MARSHALL: No objection, Judge.

8 THE COURT: Admitted.

9 (Defendant's Exhibit F1000 admitted into evidence.)

10 MS. DURRETT: Here we go. We can kind of see it.

11 BY MS. DURRETT:

12 Q. It lists out records -- it lists out a list of
13 phone numbers that records were provided for; correct? From
14 T-Mobile?

15 A. Yes, ma'am.

16 Q. Okay. I know you can't see it very well.
17 And how many phone numbers are on there?

18 A. Give me a second to count.

19 Q. Okay.

20 A. There appears to be seven different phone numbers.

21 Q. Okay. Thank you.

22 I know you talked about you have worked other cases
23 where you have analyzed cellphone data and you were able to
24 eliminate suspects out of a case entirely; right?

25 A. Yes, ma'am.

1 Q. Did you eliminate any suspects in this case?

2 A. No. I just reviewed one phone number.

3 Q. Okay. Were you asked to analyze any watches,
4 tablets, computers, anything like that?

5 A. No, ma'am. And I guess I should clarify, I don't
6 do, like, extractions of devices, meaning the download of the
7 device itself.

8 I just analyze the records for various cellphones
9 or social media accounts.

10 Q. Okay. And you would agree with me, though, that we
11 now have watches where we can make phone calls; correct?

12 A. Yes, ma'am.

13 Q. And we have tablets where we can make phone calls?

14 A. Yes, ma'am.

15 Q. And computers and things like that?

16 A. Um-h'm.

17 Q. Do you know if your tablet makes a phone call, does
18 that still appear on your cellphone records?

19 A. So it really depends on how that call is made.

20 Obviously, we can make FaceTime calls. FaceTime calls would
21 show up on your Apple account and not on your T-Mobile
22 account because it's actually a data session and not an
23 actual phone call carried by your cellular provider.

24 So it really depends on specifically the type of
25 call that's being made.

1 Q. Okay. Well, is it possible to make a phone call
2 from a tablet and have that phone call appear on your phone
3 bill, on your phone record?

4 A. If the tablet has its own phone number, then the
5 answer is yes, it could. You can see -- you wouldn't see the
6 phone call, but you would see the data, you could get the
7 data records for the tablet and it would show, hey, on this
8 date and time the tablet connected to this cellphone tower
9 and sector for some type of data session. And that could
10 have been your iMessage; it could have been some other type
11 of call like that.

12 Q. But I'm not talking about iMessage.

13 For instance, if I make a call with my watch,
14 that's not a separate phone number from my phone, is it?

15 A. Depends on -- there are two kind of watches.

16 MR. MOORE: Your Honor, she is asking him to
17 speculate about tablets and other things. We have admitted
18 him as an expert in cell site analysis, and in that limited
19 field in which he reviews documents and plots them on the map
20 is what he has been admitted as an expert.

21 She is asking him questions outside that area of
22 expertise, so we object on that.

23 THE COURT: Ms. Durrett?

24 MS. DURRETT: Your Honor, he's an expert in
25 cellphone technology. He's an expert in digital forensic

1 technology. All of this is related to that. We're talking
2 about the phone records.

3 THE COURT: Give me a moment.

4 Anything else, Mr. Moore?

5 MR. MOORE: No, Your Honor.

6 THE COURT: Overruled. Go ahead.

7 MS. DURRETT: Thank you.

8 BY MS. DURRETT:

9 Q. So you would agree with me that it's possible to
10 make a phone call from your watch using the same phone number
11 that you would use from a telephone?

12 A. So there are two different kinds of watches. There
13 is a watch that has its own phone number and it's own IMEI,
14 or equipment identifier. And then there are watches that you
15 connect to Bluetooth, to your cellphone, that would then make
16 the call.

17 So depends on the type of watch that you have as to
18 whether or not that phone call would show up on the record
19 for the cellphone or whether that phone call would show up on
20 the record for the watch, which would be an entirely
21 different record.

22 Q. Okay. Thank you for the clarification.

23 So I want to talk about the second type that you
24 just talked about, the kind that uses your same phone number.

25 A. Okay.

1 Q. Okay. When I look at your slides -- and again, I'm
2 going to try this, but we will see how we go.

3 Is there a way for me to look at the slide and know
4 if the phone call was answered on a watch or on a telephone?

5 A. So the records show the phone which connected the
6 call to the tower. So it's showing the location of the phone
7 at that time.

8 Now, the Bluetooth of the watch has to be within a
9 certain distance. And most of time we know that distance to
10 be, you know, 15 feet, maybe 20 feet at the most, for a
11 Bluetooth connection.

12 Q. And what about a tablet?

13 A. Um, I have not seen a tablet connect to a device
14 that -- Bluetoothed to a device that would use the same phone
15 number to place calls. So I have never seen that.

16 The times I have seen tablets used is, one, either
17 a tablet that has its own phone number and is connected
18 separately to the cellular network; or one that uses Wi-Fi to
19 connect.

20 Q. Okay. And so you just haven't had that experience?

21 A. Yeah. And in all of my training I have never heard
22 of a device -- a tablet that you can make a phone call using
23 your same phone number as your cellphone.

24 Q. Okay. And when you are talking about that IMEI
25 number, that's linked to the cellphone number, correct?

1 A. That's the individual mobile equipment identifier.
2 It's, for lack of a better term, almost like the serial
3 number of the device. So that device is associated with the
4 equipment number, meaning it's an iPhone 13 or it's an LG
5 phone. That's what the IMEI tells us.

6 Q. Okay. Well, how do I know which device my phone
7 bill is associated with?

8 A. Well, your phone bill is associated with a phone
9 number and typically the IMEI, the equipment identifier. And
10 that way they fight, like, cloning devices; someone can't
11 clone your phone number and use your account because they
12 associate your account with the IMEI.

13 Have you ever gone and get a new phone and they are
14 like, hey, we have to switch your phone over? And that's so
15 that two phones can't use the same phone number at the same
16 time. Only one can.

17 Q. But a phone and a watch can use the same phone
18 number?

19 A. Well, the watch is connecting via Bluetooth to that
20 device. So the device is -- the device, meaning the
21 cellphone, is what's communicating with the tower, not the
22 watch.

23 The watch connects to the phone via Bluetooth. The
24 phone is actually what is -- has the phone number and is
25 connecting to the tower.

1 Q. Okay.

2 Let's talk about the tower records. Now you didn't
3 talk about receiving any maintenance logs or anything else
4 about the towers. Do you regularly review the maintenance
5 logs?

6 A. We don't normally get maintenance logs. And the
7 reason is, we know what towers and sectors are used because
8 those were the ones populated in the call detail record.

9 And so, also in our training and meeting with
10 T-Mobile, Verizon, we know that if a tower goes down, that's
11 money to them. So if something goes down, it's emergency, go
12 fix within hours, not go fix when they want to.

13 Q. And I'm going to place slide No. 12 on the screen,
14 just for -- so that we can know what we're talking about.

15 Again, the little green dots or the little dots are
16 the towers; right?

17 A. Yes, ma'am.

18 Q. And the reason there are so many towers is T-Mobile
19 wants to keep coverage for its coverage; correct?

20 A. Yes. There are more towers wherever more people
21 live or more people work.

22 Q. And if a tower itself goes down or has a
23 maintenance issues, calls are switched to another tower,
24 correct?

25 A. They could. Correct. That's the way the network

1 is developed.

2 But again, you don't often see towers go down. I
3 mean, sometimes they may pull them down temporarily for
4 maintenance or, say a tornado comes in and takes towers down.
5 But we didn't notice that in any of these analysis dates and
6 times.

7 Q. Did you analyze for that?

8 A. Did I analyze for -- could you refresh your
9 question?

10 Q. You said you didn't notice any towers going down
11 during this date and time. Did you analyze for that?

12 A. What I'm saying is during these time periods, there
13 were no big tornadoes or things that would have taken towers
14 down.

15 Q. And what about tower overcrowding? For instance,
16 if there are a lot of people trying to make a phone call at
17 once, doesn't that then switch from an overcrowded tower to a
18 less crowded tower?

19 A. It could. Yeah. But the way the calls are handled
20 on a call detail record, so a phone chooses the tower with
21 the strongest clear signal. The phone is in charge of which
22 tower that it uses.

23 And so in an overcrowded time period, the phone
24 would reach and connect to a certain tower. That tower would
25 say, hey, I'm at 90 percent capacity. Do you see any other

1 towers that you can use?

2 And the phone says, yes, I see this other one. So
3 it says, hey, I'll move you to that tower.

4 Well, the call detail records still shows the
5 initial tower that was connected by the phone.

6 So even though that call was routed to a different
7 tower, we know that the tower chose by the phone as the
8 strongest clearest signal was the one that was initially
9 populated in the call detail records.

10 Q. Right. And the report that you provided, it
11 doesn't have -- again, I showed your conclusions there. It
12 doesn't have any information in it about tower overcrowding
13 or tower maintenance, so it's clear that you didn't do any of
14 that as part of your report; correct?

15 A. Well, again, tower overcrowding doesn't really
16 matter because the tower -- the phone picks the tower and the
17 sector with the strongest clearest signal. So that's
18 typically the closest tower, most of time.

19 So again, if I place a call and that -- I'm at a
20 concert and that tower is at 90 percent, it's going to
21 transfer me to another tower. But the call detail records
22 will show that my phone chose the first tower, the one with
23 the strongest clearest signal first.

24 A lot of records don't show the next tower used.
25 T-Mobile, for instance, does not show handover.

1 So all we can see is the tower and sector that
2 initiated the call, which is the closest tower, normally the
3 closest tower to the phone, based on the signal strength and
4 the clarity of the call.

5 Q. And when you are talking about the closest tower to
6 the call, what is the range of those towers?

7 A. So that really depends on where you are at.
8 Obviously, we see downtown Atlanta in this map populated
9 here, there are towers on top of each other -- or so it
10 looks.

11 So the range of those towers is much smaller than
12 if with we look on the map, on the bottom left-hand side, now
13 we're getting to more rural parts where towers are farther
14 part. So the ranges of those towers tend to be more than the
15 range of a tower in downtown Atlanta.

16 MS. DURRETT: Okay. It's sort of hard to see here
17 on the screen, so I'm going to ask again for help from the
18 government to pull up slide number -- page No. 14, if that's
19 possible.

20 Okay. I think we have page 14 there.

21 BY MS. DURRETT:

22 Q. And I wanted to just talk about the slide here.

23 I know you have not been qualified as an expert in
24 Atlanta rush-hour traffic, but this occurred during rush
25 hour, correct? I mean, it's 4:30 in the afternoon; right?

1 A. I would say that's probably a rush-hour time
2 period.

3 Q. So I want to talk through this because I'm not sure
4 we talked through it when you were testifying on direct.

5 So when we look at number 8, the transaction,
6 that's the location where the rapid! Card was swiped; is that
7 correct?

8 A. Yes. That's correct.

9 Q. And then I see an arrow that looks like it's
10 pointing directly to a green dot. That's not a pinpoint
11 location, is it? It's not a GPS location, that green dot?

12 A. No. The green dots are tower locations derived
13 from the towers.

14 Q. Okay. So it's not showing where the phone is; it's
15 just showing the tower that the phone hooked up to?

16 A. The tower and the sector or side that's used.

17 Q. And the sector or side in this case looks like it
18 was on the northeast side; is that correct?

19 A. Are you talking about, like, the calls at 5:38,
20 5:39 -- yes. That's the northeast side. Yes, ma'am.

21 Q. So -- and then the call that happened at 4:15 is
22 down here. It looks like it says by Spivey Splash Water
23 Park. And that call would have been made from the west side
24 of the tower, correct?

25 A. Yes, ma'am.

1 Q. And you can't say where in that sector, those two
2 long lines, you can't say where in that sector the phone was?

3 A. No. Off of the call detail records, you can just
4 see the tower and sector. So you just get a general location
5 of a device.

6 Q. Okay. So it looks like the first call was 4:15.
7 The transaction was 4:30. And then the later calls started
8 at around 5:38. Is that correct?

9 A. Yes, ma'am.

10 Q. Okay. Do you know where Mr. Foster lives? Do you
11 have any idea?

12 A. I do not.

13 Q. Do you know where Darrell Thomas lives?

14 A. I do not.

15 Q. Gena Pyfrom-Foster?

16 A. No, ma'am.

17 Q. So you did not have any of that information?

18 A. I did not.

19 Q. Okay.

20 MS. DURRETT: I would like to pull up slide No. 15.
21 And again I want to kind of talk through what the analysis
22 shows here.

23 BY MS. DURRETT:

24 Q. So down on the bottom right-hand corner, there is a
25 number 9. That was where the rapid! PayCard was used at

1 Target; is that correct?

2 A. Yes, ma'am.

3 Q. Okay. And that happened at 9:25?

4 A. That's correct.

5 Q. Okay. And so there's the No. 9 transaction. There
6 is a call at 9:29 in that area; correct?

7 A. Yes, ma'am.

8 Q. Okay. And then what we see is there are some calls
9 way over here on the other side of the map; correct?

10 A. That's correct.

11 Q. Okay. So it looks like -- and I don't know how to
12 order them but I have been looking at the bottom left-hand
13 corner. There's a call at 9:49 p.m.?

14 A. Correct.

15 Q. Okay. So what it looks like is this person was
16 located out here by Stonecrest, on the left-hand side, at
17 8:49; is that correct?

18 A. Yes, ma'am.

19 Q. And then went all the way down by the Assembly Hall
20 of Jehovah's Witness around 9:30?

21 A. Well, in the coverage area of that tower down
22 there.

23 Q. Okay. And then made it all the way back over to
24 where I-20 is by 10:04?

25 A. That's correct.

1 Q. Okay. I just wanted to make sure that's what it
2 showed.

3 MS. DURRETT: I would like to pull up slide No. 19.

4 BY MS. DURRETT:

5 Q. And again, this is another rush-hour timeframe.
6 It's 3:39 to about 4:00; is that right?

7 A. Yeah. I'm not sure what traffic would be like at
8 that time period.

9 Q. Okay. We can, yes, use our experience on that.
10 And then, so what we have is No. 14 transaction
11 occurring at 3:39?

12 A. Yes, ma'am.

13 Q. A phone call around 3:47?

14 A. Yes, ma'am.

15 Q. And those are kind of both down in the Morrow area;
16 right?

17 A. That's right.

18 Q. Riverdale?

19 A. It uses a tower down there.

20 Q. Okay. And then, by 4:03, someone has made it all
21 the way up to where 285 is?

22 A. Yes, ma'am.

23 Q. Okay. I just wanted to make sure that's what it
24 showed.

25 Then I want to look at page 23.

1 I know you pulled this one out specifically and
2 talked about it this morning already; right?

3 A. Yes, ma'am.

4 Q. It was because you wanted to talk about that circle
5 that's there in the middle of the screen?

6 A. That's correct.

7 Q. And the circle just means the tower is -- radiated
8 a signal to all sides?

9 A. Yes, ma'am.

10 Q. So it doesn't mean that someone is inside that
11 circle?

12 A. It does not.

13 Q. Okay. Okay. And again, I think you talked a
14 little bit about this, but the reason there are so many green
15 dots on this is because there were so many towers in that
16 area; correct?

17 A. That's correct.

18 Q. Because that's a congested area?

19 A. That's correct.

20 Q. As far as phone calls go?

21 A. Correct. Phone usage.

22 Q. Phone usage.

23 And I would like to pull up page 24.

24 On this one it looks like there is a -- our first
25 call is down here in the left-hand corner, at 1:59?

1 A. Yes, ma'am.

2 Q. Is that correct?

3 A. Yes.

4 Q. And the call, if I'm understanding your testimony
5 correctly, is made on the southwest side of that tower in the
6 bottom left-hand corner?

7 A. Yes, ma'am.

8 Q. Okay.

9 A. Correct.

10 Q. Okay. And then -- so that's 1:59. And then we
11 have, at 2:27, another call being made on the west side of a
12 tower?

13 A. Yes, ma'am.

14 Q. Okay. And then by 2:45, that phone is -- or the
15 transaction is occurring down in Conyers; correct?

16 A. That's correct. That's what time the transaction
17 time was at.

18 Q. Okay. So we have over here by Stonecrest, and then
19 way down in Conyers; correct?

20 A. Yes, ma'am.

21 Q. Okay.

22 MS. DURRETT: I want to look at slide No. 41.

23 BY MS. DURRETT:

24 Q. Okay. So it looks like what we have here is a call
25 that is occurring, in the bottom of the screen, at 3:02 on

1 the south side of a tower that looks like it's south of
2 Exchange Park or in that Exchange Park area; is that right?

3 A. Yes, ma'am.

4 Q. Okay. And then, by 3:13 p.m., there is a
5 transaction going on up at Belvedere Park?

6 A. That's correct.

7 Q. Is that what that shows?

8 A. Yes, ma'am.

9 Q. Okay.

10 MS. DURRETT: I would like to look at slide No. 42.

11 BY MS. DURRETT:

12 Q. And in this one it looks like what we have is a
13 transaction that happens at 12:09 p.m.?

14 A. Yes, ma'am.

15 Q. And then a call that happens -- it looks like they
16 are staying kind of in that same area -- at 1:23; is that
17 right?

18 A. Yes, ma'am.

19 Q. And this, I think, is what you were talking about
20 earlier when you were talking about reconciliation; correct?

21 A. I would have to look specifically at this
22 transaction. Again, I would say that the best person to
23 answer that would be the financial analyst on the case as
24 opposed to me.

25 Q. One of these agents, maybe?

1 A. I would assume so. Again, I'm here to testify
2 about cellular analysis. I'm not sure what everyone else is
3 here to testify about.

4 Q. Let me ask you this. Again, we -- well, we
5 received these records, the cellphone records, in April of
6 2021.

7 When were you asked to do your analysis?

8 A. Um, not until, probably, later. Near the end of
9 2023, I would guess.

10 Q. A few months ago?

11 A. That's correct.

12 Q. Okay. And I think we got the report sometime in
13 January. When did you learn that there were these errors in
14 including the reconciliation transactions?

15 A. Yeah. I mean, I -- again, I'm here to testify
16 about the cellular analysis and where a device was at a
17 specific date and time.

18 I'm not a financial analyst. I'm not sure if the
19 term "error" is correct, or just figuring out which of those
20 transactions occurred specifically at the date and time
21 specific of when the transaction occurred as opposed to the
22 reconciliation or the preauthorization.

23 Again, that's a question more for a financial
24 analyst more than a cellphone analyst.

25 Q. But let me ask you this: The report that you have,

1 it purports to say that this transaction happened at this
2 time on this day. And I think you have testified more than
3 once there was a phone in the vicinity of that transaction at
4 that time; right?

5 A. Correct. Yeah. Based on the time, where were the
6 devices at during that -- during a time period around this
7 specific time.

8 Q. So if we can show that the transactions didn't
9 actually happen at that time, this part of the report would
10 not be accurate; is that correct?

11 A. Again, I'm reviewing times off of the financial
12 report, specific dates and times.

13 Again, I'm not a financial analyst. I can't give
14 you the full details on preauthorization versus
15 reconciliation and all of those things. That's not my
16 specialty.

17 My specialty is where was the device at a specific
18 date and time.

19 So that would be a question to, again, either one
20 of the investigators, the case agents, or the financial
21 analyst.

22 Q. Okay. But I want to make sure I understand. You
23 have testified here today that there were transactions that
24 occurred, and a cellphone was in the vicinity of those
25 transactions at certain times; correct?

1 A. Correct.

2 Q. If we show that you put the wrong time here for the
3 transaction, then your report would be inaccurate?

4 A. Well, the time is not wrong. The time could be
5 either the preauthorization, the actual transaction time, or
6 the reconciliation time. All of those times are correct
7 times off of the report. So none of those times are
8 inaccurate.

9 A financial analyst or the case agent would be
10 better to describe specifically was the 12:09:35 a
11 reconciliation time or a preauthorization time?

12 Again, my job is to take the times on those
13 reports, which all of these times come directly from those
14 reports. So again, the times are accurate.

15 Now again, where is the device during a time
16 period? That's what I'm here to testify about.

17 Q. Okay. And you've testified, again -- and I hate to
18 keep asking it, but you said this device was in the vicinity
19 of this transaction when it occurred. You testified to that,
20 sir. So if the report has the wrong time, that testimony
21 would be inaccurate; correct?

22 MR. MOORE: Objection, Your Honor. I think this is
23 the fourth time she has asked the same question. I think
24 it's been asked and answered and it's argumentative at this
25 point.

1 MS. DURRETT: Your Honor, I don't think he has
2 answered the question. He keeps saying someone else can
3 answer it.

4 But if he has a timeframe in his report, and he has
5 said -- was asked more than once on direct, "Does this show
6 that a cellphone was in the vicinity of this transaction at
7 this time?" he said yes. And now, when I'm saying, if that
8 time is wrong, that testimony would be inaccurate. And he
9 has not answered that.

10 MR. MOORE: Your Honor, I believe he has answered
11 multiple times that it is not inaccurate, that it is either
12 the reconciliation time or the transaction time or the
13 preauthorization time.

14 I understand that defense counsel is not happy with
15 the answer, but that is his answer. He said it four times.

16 I don't know how many more times she is going to
17 continue to ask the same question.

18 THE COURT: Ms. Durrett, haven't you asked it
19 several times now? Seems like you have. What are -- what am
20 I and Mr. Moore missing?

21 MS. DURRETT: You are correct that I have asked it
22 several times. I have not yet heard the answer.

23 THE COURT: You haven't heard the answer that
24 satisfies you; right? But you have heard an answer.

25 MS. DURRETT: But he did not directly answer my

1 question, Your Honor.

2 THE COURT: All right. Why don't you try one more
3 time.

4 MS. DURRETT: I will.

5 THE COURT: And then perhaps we can move on.

6 MS. DURRETT: Thank you, Your Honor.

7 BY MS. DURRETT:

8 Q. This morning you testified about your report,
9 correct?

10 A. I did.

11 Q. And you were asked, more than once, does this show
12 that a certain cellphone was in the vicinity of a rapid! Pay
13 transaction at a certain time. And you said "yes." Do you
14 remember that?

15 A. I do.

16 Q. If we show that the times in your report, either of
17 the rapid! Pay transactions or the cellphone calls are
18 incorrect, then your testimony would be inaccurate; is that
19 correct?

20 A. No. Again, you are saying that the times are
21 incorrect. The times come directly from the transaction
22 financial report.

23 So if the times are incorrect, it's because the
24 times listed in the report are incorrect.

25 Again, I'm not a financial analyst, meaning I'm not

1 the one to ask the question about is this time a
2 reconciliation time, a preauthorization time, or, you know,
3 another time.

4 It is I looked at times listed in the financial
5 report, where was the device located at those times? And
6 that's what my testimony was about.

7 MS. DURRETT: Okay. Can I see Government's
8 Exhibit 2954.

9 BY MS. DURRETT:

10 Q. Does this look like the spreadsheet that you looked
11 at when you made your report?

12 A. My recollection is, yes, it does look similar to
13 that. I can't say it's exact.

14 Q. Do you need us to scroll through it so that you can
15 look at it and determine if it is the same report or the same
16 Excel spreadsheet?

17 A. It appears to be the same spreadsheet.

18 Q. Okay. And it's the spreadsheet that has the list
19 of the rapid! Pay transactions; correct?

20 A. Yes, ma'am. That's correct.

21 Q. And that was provided to you by the agents in this
22 case?

23 A. Correct.

24 Q. Okay. And it's an open spreadsheet, right? If you
25 accidentally hit something, you could delete something or add

1 something; right?

2 A. Yes, ma'am.

3 Q. It's an editable spreadsheet?

4 A. As far as I know, yes.

5 Q. I mean, it came from the agents. There was nothing
6 locked about it or sealed about it?

7 A. No.

8 Q. And like I said, I asked you earlier if you had
9 seen the PDF of it, and that was not what you were working
10 from?

11 A. Yeah, I don't recall seeing the PDF.

12 Q. You were working from the open spreadsheet?

13 A. Yes.

14 Q. Okay. Now let's talk about -- we can just pick a
15 transaction, if you would like to do that. I wanted to talk
16 about that timing and how you determined what times to put in
17 your report for the rapid! Pay transactions.

18 I think, at least on the phone call we had the
19 other day, we talked about Eastern time versus UTC time;
20 correct?

21 A. For the call detail records. Yes, ma'am.

22 Q. And the only reason I was trying to give a little
23 basis here -- tell me how that works, and we're talking about
24 summertime, so it's July, and I wanted to know the difference
25 about Eastern time and UTC time.

1 A. Yes. So UTC -- so there are time zones all around
2 the globe, of course, and we're in Eastern time.

3 A lot of businesses that do international business,
4 they tend to keep their records in one time zone. So the
5 time zone that is normally kept for that is UTC time zone.
6 And it's the time zone associated with Greenwich, England.
7 And most people count that as like the first time zone. And
8 then as we go around the globe, the time zones just add on.

9 So UTC time is what T-Mobile records are kept in.
10 And during the summertime, that would be a difference of four
11 hours to Eastern time.

12 Q. Okay. So if it is noon here, then it would be 4:00
13 UTC time; is that right?

14 A. Correct.

15 Q. Okay. And I only ask that because I get confused
16 so I want to make sure I'm correct.

17 A. Yes. It would be 4:00 p.m. --

18 Q. 4:00 p.m.

19 A. -- UTC. And it would be noon here, in the
20 summertime.

21 Q. Okay. So I want to go through some of these
22 transactions and make sure I understand the times that are
23 listed.

24 So for instance -- I don't know if I can do both of
25 these things at once. I probably can't.

1 I'm going to hand you a page of your report. It's
2 going to be page 8, I think. And the transaction, the
3 rapid! Pay transaction occurred at 2:34:57 p.m. And then I'm
4 going to have you take a look at this.

5 (Hands document to witness.)

6 A. Thank you.

7 Q. So we might have to scroll down to -- I don't know
8 if you can see July 12 on here.

9 A. I'm not sure that the spreadsheet is actually
10 sorted for that column.

11 Q. I -- and that's part of the issue. Right. You can
12 change the spreadsheet; correct?

13 A. You can sort and stuff by it, of course. Yes.

14 Q. Okay. Instead, I'm going to show you Government's
15 Exhibit 3015, which is a summary that's made from this chart.
16 Okay?

17 A. Okay.

18 MS. DURRETT: Can you put up 3015.

19 MR. MOORE: Your Honor, I would object to this. I
20 think he has testified that this is not the chart that he
21 relied on, nor is he familiar with it. I think his testimony
22 should be limited to the evidence that he reviewed in
23 preparation for his testimony.

24 MS. DURRETT: Your Honor, the government has
25 represented that Exhibit 3015 is a summary of that document

1 that he reviewed.

2 THE COURT: Anything else, Mr. Moore?

3 MR. MOORE: No, Your Honor.

4 THE COURT: All right. I'll allow you to cross on
5 that.

6 MS. DURRETT: Thank you, Your Honor.

7 And I don't know if we can zoom in a little bit on
8 July 12.

9 BY MS. DURRETT:

10 Q. So I think you are looking at a transaction, a
11 rapid! Pay transaction that happened at, I think you said,
12 2:34?

13 A. Yes. On my slide it says 2:34:57 p.m.

14 Q. Let me ask you the first question. Do you see any
15 seconds listed here?

16 MR. MOORE: Objection, Your Honor. This is not the
17 report that he relied on, and she is now trying to impeach
18 him with a different report, knowing that he did not rely on
19 this report and is not what it is based off of. This is
20 improper, Your Honor.

21 MS. DURRETT: That's fine, Your Honor. I'll go
22 back to the other report, which the government has
23 represented is the Excel spreadsheet this is based on. But,
24 that's fine.

25 THE COURT: Very well. It sounds like that would

1 solve the issue.

2 MS. DURRETT: That's fine, Your Honor.

3 BY MS. DURRETT:

4 Q. Let me ask you one question about the summary while
5 we are here, in case we have some trouble with that Excel
6 spreadsheet.

7 You said this transaction occurred at 2:34 p.m.,
8 correct?

9 A. Yes, ma'am.

10 Q. So what time would that be Eastern Standard Time if
11 you were using military time?

12 A. That would be 14:34.

13 Q. 14:34.

14 Look at the summary chart. Can you tell me where
15 that transaction is that occurred at 14:34?

16 A. Again, I'm not familiar with the summary report,
17 but there is not one listed on this report that would be at
18 14:34.

19 Q. Okay.

20 We're going to try again. I want to just confirm.
21 Hold on one second.

22 (Off-the-record discussion, and proceedings
23 continued:)

24 MS. DURRETT: So can I see Government's
25 Exhibit 2954.

1 And I think you need to go to that first tab. Does
2 it say -- I'm sorry, IT, the transaction tab. Can you search
3 for July 12?

4 Your Honor, I can't control the spreadsheet, but if
5 the Court -- if we could take a break, I can make sure that
6 we're in the right place with the government's spreadsheet.
7 But this is the document that I was informed was the
8 underlying spreadsheet for that report.

9 MR. MOORE: Your Honor, just to clarify. This is
10 the underlying spreadsheet for the summary chart.

11 This is not the spreadsheet that he relied on in
12 creating his report.

13 So there has been no testimony that he has seen
14 this particular spreadsheet.

15 He received the Teldrin Foster transactions sorted
16 from the agents. So she is trying to ask him questions from
17 a spreadsheet that he is not familiar with.

18 THE COURT: Okay. And he may or may not be able to
19 do that.

20 MS. DURRETT: Thank you, Your Honor.

21 THE COURT: We will see.

22 MS. DURRETT: And I -- then I would say that we
23 have not been provided the correct report -- the correct
24 Excel spreadsheet.

25 MR. MOORE: So again, these are all of the

1 transactions, a larger universe than what he looked at. So
2 he is familiar with just the Teldrin Foster transactions that
3 come from this.

4 So if you, if this -- I mean, it's a process, but
5 you can sort the larger spreadsheet, limit it to just Teldrin
6 Foster and just the dates that he looked at. And that is the
7 information he is familiar with.

8 MS. DURRETT: And Your Honor, I'm happy to do that
9 over the break. Or if you want me to keep going, I'm happy
10 to do that, too. I don't want to waste time. But we were
11 informed that this was the spreadsheet.

12 THE COURT: Ms. Durrett, I'm happy for you to cross
13 the witness with whatever you like.

14 MS. DURRETT: Thank you.

15 THE COURT: I have overruled the objection when
16 they didn't want you to use it to cross-examine him.

17 It sounds like the issue is it's because he hasn't
18 used this spreadsheet before, so it may be that he ends up
19 stumbling through this with you. It may be that there is a
20 better document.

21 I'm not going to prohibit you from trying to use
22 this.

23 MS. DURRETT: Thank you.

24 Can you please search for the July 12 transactions.
25 If you could sort it to July 12, that would be the easiest.

1 THE COURT: And we are pretty close to a breaking
2 point anyway for lunch, disconnected from this issue, so if
3 we get to a good stopping point.

4 MS. DURRETT: We could stop now, Your Honor, if you
5 want.

6 THE COURT: If you are at a good stopping point.

7 MS. DURRETT: I am.

8 THE COURT: Ladies and gentlemen of the jury, it's
9 12:25. It's been a long week. So why don't we all just take
10 a full hour for lunch today. I'll stop pressing everyone
11 with these 45 minute lunches.

12 Why don't we all just be back and ready to go at
13 1:30, please. Thank you.

14 You are reminded of your instructions for breaks.

15

16 (There was a lunch recess at 12:26 p.m.)

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2 CERTIFIED STENOGRAPHIC REPORTER'S CERTIFICATE
34 I, Judith M. Wolff, a stenographic reporter,
5 Certified Realtime Reporter and Official Court Reporter for
6 the United States District Court for the Northern District of
7 Georgia, with offices at Atlanta, do hereby certify:
89 That I reported on the Stenograph machine the
10 proceedings held in open court on Friday, February 9, 2024,
11 in the matter of United States of America v. Carla Jackson
12 and Teldrin Foster, Case No. 1:20-cr-00296-JPB-5-20;
1314 That said proceedings in connection with the
15 hearing were reduced to typewritten form by me;
1617 And that the foregoing transcript is a true and
18 accurate record of the proceedings.
1920 This the 10th day of February, 2024.
21
2223 /s/ Judith M. Wolff, RPR, CRR
24 Official Court Reporter
25

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