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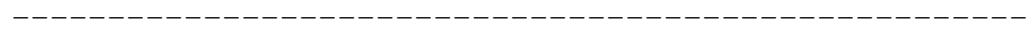
IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT  
OF FLORIDA, IN AND FOR MARION COUNTY

CASE NO. 42-2008-CF-4862-A-Y

STATE OF FLORIDA

vs.

ADRIAN DEON BROWN,  
  
Defendant.



DEPOSITION OF:           JEFFREY BENSON

TAKEN BY:                 Defendant

REPORTED BY:             Kelly Owen McCall, RPR, FPR  
Stenographic Court Reporter  
Notary Public  
State of Florida at Large

DATE AND TIME:           January 26, 2011; 10:00 a.m.

PLACE:                    Marion County Judicial Center  
Courtroom 2C  
Ocala, Florida

APPEARANCES:            ANTHONY M. TATTI, Esquire  
Assistant State Attorney  
State Attorney's Office Building  
19 NW Pine Avenue  
Ocala, Florida 34470

                              NICOLE HARDIN, Esquire  
Assistant Public Defender  
Public Defender's Office Building  
204 NW Third Avenue  
Ocala, Florida 34475  
Attorney for Defendant

ALSO PRESENT:            Thomas Cougill  
Office of the Public Defender

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I N D E X

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- - -

1                                   JEFFREY BENSON,  
2   having been produced and first duly sworn as a witness,  
3   testified as follows:

4                   THE WITNESS:   Yes, I do.

5                                   DIRECT EXAMINATION

6   BY MS. HARDIN:

7           Q     Can you state your name.

8           A     Jeffrey Scott Benson.

9           Q     I forgot to ask you the first time, but where did  
10   you go to school?

11          A     I got my training in the military.  I was in the  
12   Army 1986 through 1989.  I was in communications, in  
13   electronics -- excuse me -- and I've had various training  
14   throughout my career in different technologies.

15          Q     Did you work with frequencies in the Army or --

16          A     Yeah; radio frequency.

17          Q     I wanted to ask you first, I got an e-mail last  
18   night about the text messages, trying figure that out.

19          A     Uh-huh.

20          Q     Okay.  And you had noted that you think that the  
21   phone is saying -- the time zone may be incorrect or the  
22   text message router was on Mountain Standard Time.  Can you  
23   explain what each of those things would mean?

24          A     Well, after thinking about it, the actual -- the  
25   phone must have been on the right time.  The air -- or the

1 discrepancy would have been the text message router. Which,  
2 you know, this is 2008. I'm not sure exactly where it was  
3 routed. But based on the fact that the text messages all  
4 seem to fall into place two hours, two hours ahead, I guess,  
5 on the phone --

6 MR. TATTI: The router is ahead of the phone.

7 THE WITNESS: The phone records are two hours  
8 before. Isn't that correct?

9 MR. TATTI: I think they're after.

10 THE WITNESS: The phone display was 2:50 a.m. The  
11 call record is 12:50 a.m. So the call record is two  
12 hours --

13 BY MS. HARDIN:

14 Q Ahead.

15 A -- prior. Okay.

16 Q And that's what you wrote on the chart, right, I  
17 think?

18 A Oh, yeah.

19 Q So what you're saying is the call record would be  
20 the accurate -- more accurate than the text routing time?

21 A The time on the phone would have been the accurate  
22 time.

23 Q The time on the phone?

24 A This is a billing record here.

25 Q Right. So the billing record on the text

1 messages --

2 A Is -- the way it was processed, is two hours  
3 behind.

4 Q Is that normal?

5 A Yes. After speaking to the -- to our custodian of  
6 record -- they're out in Kansas City -- they said, yes, it  
7 is; at least, it was common to have discrepancies. I don't  
8 think it is now, but --

9 Q Well, what about the phone times? Is it common to  
10 have discrepancies in the phone times, when they're actually  
11 made?

12 A With the phone times, no.

13 Q Or cause it to go to voice mail or anything like  
14 that?

15 A No.

16 Q And why would that be different?

17 A Because the router itself starts the billing  
18 cycle. The phone itself, when it receives that text  
19 message, will record the time that the phone -- the phone is  
20 on a GPS, so the phone knew what time it was.

21 Q Do you have to have the GPS enabled, or no?

22 A Back in 2008, I think they were all enabled. I  
23 think it came standard.

24 Q Go ahead.

25 A Well, after speaking to the custodian, they said,

1 yeah, it was common. First they had mentioned that it could  
2 have been the phone. But after looking at the record and  
3 looking at some of the text messages, it seems -- I'm quite  
4 certain that the phone was showing the correct time. The  
5 billing on the call record is showing two hours behind.

6 Q What makes you sure about that, that the phone is  
7 correct and the billing record is wrong?

8 A Because of the time of the calls and pattern of  
9 the voice calls that I saw around the area, the times.

10 Q So you based thinking it was the router or the  
11 billing rather than the phone because of the voice calls,  
12 you said?

13 A Well, not because of the voice calls. Just I can,  
14 I can make a correlation between the voice call times and  
15 the text message times, the way they're on the billing  
16 record.

17 Q Maybe if we just look at the first one, it will  
18 help me.

19 A Sure.

20 Q Like the first one you have, it has call record,  
21 it says it came in at 12:50.

22 A Correct.

23 Q The phone displays it at 2:50. So what made you  
24 think that the phone was correct rather than the call record  
25 on that?

1           A     Well, we'll go back.  Hopefully, I have some of  
2 those records here.  I hope they're in order.  I might need  
3 a copy of the original.  Hold on, hold on.  We had a voice  
4 call -- oh, that's 3:50.  We had a voice call at  
5 3:50 a.m. -- okay.

6                     The text message we are talking about on the  
7 billing record was at 12:50 a.m.

8           Q     Correct.

9           A     There was a voice call at 12:37 a.m. and two text  
10 messages together, 12:50 and 12:51 a.m., and then three more  
11 voice calls.  So that right there tells me that these text  
12 messages were sent in between those two voice calls.  The  
13 billing record is correct, as far as the order goes.

14                     I know for a fact that the voice record times are  
15 correct because they go through a different billing system.  
16 So just based on the sequence of these calls and text  
17 messages, I would say definitely the phone had the correct  
18 time.

19                     MR. TATTI:  Well --

20                     THE WITNESS:  See what I'm saying?

21                     MR. TATTI:  Maybe I don't understand what you're  
22 saying.

23                     MS. HARDIN:  I don't understand.

24                     THE WITNESS:  All right then.

25                     MR. TATTI:  The phone says, the picture of what's

1 in the phone --

2 THE WITNESS: Says 2:50.

3 MR. TATTI: -- says 2:50.

4 THE WITNESS: Correct.

5 MR. TATTI: The billing record says it should be  
6 12:50 a.m. And it coincides exactly between phone  
7 calls. And you're telling me the phone calls go off a  
8 different router and you know those times are accurate.

9 THE WITNESS: Yes. I'm sorry, I'm sorry. The  
10 voice calls, as soon as you hit "send," the billing  
11 cycle starts. And that's what we see here on the  
12 billing record.

13 BY MS. HARDIN:

14 Q Isn't that true for text messages, too?

15 A No. They go on a whole different system. They go  
16 on overhead. They're packet data first. They have a record  
17 of them, but not where they go.

18 MR. TATTI: So the display on the telephone is  
19 inaccurate?

20 THE WITNESS: The display --

21 MR. TATTI: Because the display says 2:50 a.m. and  
22 the phone record says 12:50 a.m.

23 BY MS. HARDIN:

24 Q Do you know which one for sure is inaccurate?

25 Maybe that's the better question.



1           A     I do once I get my head straight here. Well, the  
2 time on the phone was correct.

3           Q     How do you know that?

4           A     Because of the way these are lined up -- I don't  
5 know if I can talk about it, the one text message that said  
6 it was 9:00 or 8:30.

7           MR. TATTI: Yeah, I'm looking at that one now.  
8 And it may be, Mr. Benson, you're -- we're just  
9 speaking two different languages.

10           Because it sounds like to me the times that you're  
11 saying that --

12           Do you mind if I show him that?

13           MS. HARDIN: No.

14           MR. TATTI: Like, for instance, this text message,  
15 which is the phone. That's a photograph of the phone.

16           THE WITNESS: Right.

17           MR. TATTI: And it says 9:35. And it is a text to  
18 Nikki. It says about 9:30, 'bout 9:30. Presumably  
19 somebody is asking him when is he going to get  
20 somewhere and he's --

21           THE WITNESS: I'm sorry. This -- on the phone is  
22 the correct time.

23           MR. TATTI: Then --

24           THE WITNESS: Then the billing is two hours behind  
25 it.

1 MR. TATTI: But then that would shift all of the  
2 phone calls, and you say all the phone calls are  
3 dead-on accurate.

4 THE WITNESS: Give me a second.

5 MR. TATTI: Here's the -- if you wanted to look  
6 at --

7 THE WITNESS: I have to look at mine. I had it  
8 straight in my head before you guys.

9 Well, based on what I'm seeing and -- yeah, I  
10 think this is -- I think I'm just explaining this  
11 wrong. The billing, the billing record for the text  
12 messages would be two hours behind; just for the text  
13 messages would be two hours behind. So --

14 MR. TATTI: So you're saying they're plugged in  
15 two hours behind on the record?

16 THE WITNESS: Yeah, if you look at the sequence  
17 here. Let's look at this. We have a voice call at  
18 12:27 -- No, let's look at the other one.

19 We have a voice call at 12:37 a.m. I have -- may  
20 I have five minutes to look at this?

21 MR. TATTI: Sure.

22 THE REPORTER: Can we go off the record?

23 MS. HARDIN: Yes.

24 MR. TATTI: Yes.

25 (At 9:17 a.m., a short recess was taken, and the

1 deposition continued at 9:20 a.m. as follows:)

2 THE WITNESS: The fact -- I don't know. The fact  
3 that the phone is showing 9:30, the text message, the  
4 billing record is two hours previous to that, I would  
5 say that the phone is correct. None of these calls  
6 show up as -- with that time on the call record.

7 MR. TATTI: Well, not the time that the phone  
8 records.

9 THE WITNESS: Not the time that the phone  
10 recorded.

11 MR. TATTI: It's visible on the screen on the  
12 phone.

13 THE WITNESS: Correct. We look at this time here.  
14 We see a text message that came in at 9:35 a.m. We  
15 don't see that on a call record. We see that on the  
16 call record at 7:35 a.m.

17 MR. TATTI: Right. But you've told us, and I  
18 think it's clear, the text messages travel through a  
19 completely different router than the voice calls.

20 THE WITNESS: Absolutely.

21 MR. TATTI: Okay. The voice call router -- I  
22 mean, doesn't the billing change, depending on what  
23 time of day it is? I mean, wouldn't the voice call  
24 router and all of the records attendant to that depend  
25 very heavily on having an accurate time?

1 THE WITNESS: Absolutely. Absolutely.

2 MR. TATTI: Okay. Well, if the text messages are  
3 fitted with the voice calls two hours earlier than it  
4 shows on the phone, wouldn't that logically suggest  
5 that the record is correct and the phone is wrong?

6 THE WITNESS: Yes. I'm sorry. I'm sorry. We  
7 were talking about the time zone on the phone possibly  
8 being incorrect. I would need the phone definitely.

9 MR. TATTI: Because if the record is wrong, then  
10 the whole record is wrong and all of the calls would be  
11 two hours before. And you've told us that can't be.

12 THE WITNESS: I was -- yes. I was talking about  
13 the actual time zone on the phone. The billing record  
14 would be correct, the time on the phone would be  
15 incorrect.

16 MR. TATTI: Because it's set to the wrong time  
17 zone or some other quirky issue?

18 THE WITNESS: Likely, yes; likely, yes.

19 BY MS. HARDIN:

20 Q But there's really no way for us to tell for sure  
21 because the phone is not --

22 A Looking at the billing records, it's pretty clear.  
23 And I'm sorry I turned that around a little bit. You guys  
24 confused me.

25 MR. TATTI: Well, they all run together. It

1 causes me to have a headache, so -- which is why mine  
2 is all colored up, so I can tell the difference between  
3 one thing and another.

4 THE WITNESS: The phone display time -- let's  
5 look.

6 MR. TATTI: I mean, your chart is exactly correct,  
7 as far as I can tell.

8 THE WITNESS: Yes, it is.

9 MR. TATTI: And it shows very clearly those text  
10 messages falling in line with voice calls.

11 THE WITNESS: The voice, absolutely.

12 MR. TATTI: And it's just the phone is showing a  
13 time two hours later, for whatever reason.

14 THE WITNESS: The phone is showing the time two  
15 hours later. The call record is correct. It's falling  
16 right in line with the voice calls and it makes  
17 perfect -- it's logical that the call record is  
18 correct, based on the way these text messages fall in  
19 between the sequence.

20 And, originally, that was the -- that was my  
21 initial thought, that the time zone was incorrect in  
22 the phone, possibly -- I did talk, like I said, to the  
23 custodian of record, and they have seen that before.  
24 And that is the only explanation right now.

25

1 BY MS. HARDIN:

2 Q When the custodian of record, you said they had  
3 seen that before, what have they seen before?

4 A They've seen incorrect time zones set on phones so  
5 that they won't match up with the call record.

6 Q Have there been incorrect time zones on the  
7 routers? Because you have put that, as well, on your  
8 report.

9 A On the voice?

10 Q Text; text rather. You wrote here text message  
11 router might have been on Mountain Standard.

12 A This is 2008. And it was just something that they  
13 threw out there, the custodian; actually, the legal group I  
14 spoke with yesterday.

15 Q So it could have been the router, it could have  
16 been the phone. You're leaning toward you think it's the  
17 phone?

18 A I'm quite certain it's the phone.

19 Q Is that pretty accurate, what I just said?

20 A Yeah, I'm quite certain it's the phone, it's set  
21 incorrectly.

22 Q Who would set the time on a phone? The user or --

23 A The user can, yeah. I mean, normally when the  
24 phone is purchased --

25 Q It's set to -- what's the default setting, time

1 zone?

2 A You know, honestly, I don't know what the default  
3 is. This is a Boost mobile phone. It's bought  
4 off-the-shelf, so I'm not sure exactly how that -- I mean,  
5 if you purchased it at a Sprint store, they would ensure  
6 everything was set up correctly. Being that it's a third-  
7 party sale, I can't tell you for sure.

8 MR. COUGILL: Is it your understanding, though,  
9 whenever -- any time a phone gets activated, whenever  
10 it first makes a contact with any of that particular  
11 company's cell, it automatically adjusts the time/date  
12 information for billing records purposes, activation?

13 THE WITNESS: I -- yeah, I would think so.

14 BY MS. HARDIN:

15 Q The other thing is this tower radius of 220. You  
16 had said in the earlier depo a 2.3-mile radius, and I think  
17 T.C. had called and you said a 2.6, and now it says 2.5.  
18 I'm just wondering which it is.

19 A You know, radio frequency is not exact. So I'm  
20 taking an average of what our propagation tools show and  
21 what's in the database. I mean, it's -- we're looking at  
22 220?

23 Q Yes.

24 A Did I send that after?

25 Q Yes. You had added on 220 and 078.

1 A I just saw that thing. Pardon me for a second.

2 MS. HARDIN: It was with the other text message  
3 thing, if that helps.

4 MR. TATTI: You sent two new slides and it's the  
5 blue colored one with the --

6 THE REPORTER: First page.

7 THE WITNESS: Yeah, first page. Thank you.

8 BY MS. HARDIN:

9 Q Do you want to see it?

10 A No, no, I've got it. I'm sorry.

11 Q Yes. So the 220, that was the one you had said  
12 earlier was 2.3 radius.

13 A Yeah. Well, the 2.3 radius was at a tower height  
14 of 150 feet. The five feet additional will give you a  
15 slight increase in your footprint.

16 Q This 2.5 is what you think after looking at it  
17 closer?

18 A Yeah; 2.5-mile radius. But that's not exact.  
19 This is -- you know, again, this is our propagation.

20 Q How exact is it, or isn't it?

21 A How exact is it? We go out and drive test these  
22 after they're put on the air. We design to a certain  
23 footprint. We have a coverage objective and we drive these.  
24 We test these after the cell site goes on the air to ensure  
25 that they meet the coverage objection.



1           So I would say it's very accurate as far as --  
2 you're going to have different signal levels inside, of  
3 course. But for the most part, the outdoor coverage will  
4 fall within that. That phone would be within 2.5 miles.

5           Q     And the other thing is, I know I asked you last  
6 time and I, like, went back and looked at it. There are  
7 these three areas where he's pinging between I think the  
8 hours of 9:00 and 10 -- or 2:54.

9           A     Yes.

10          Q     And he's pinging off these different towers. And  
11 you had said that could be that the phone isn't physically  
12 moving?

13          A     The phone does not have to be physically moving.  
14 It could be, it could be on the fringe of one sector, fringe  
15 of one site, you know, in the overlap, so --

16          Q     Is the crime scene close enough to 219 to be  
17 considered on the fringe?

18          A     Is the crime scene -- no, I would say "no." It's  
19 probably a mile or two too far. Plus, the phone locks in on  
20 the strongest, cleanest signal. And, definitely, the 204  
21 would be the strongest, cleanest signal.

22          Q     So if there's a ping into Tower 219, does that  
23 mean that that phone probably wasn't at the crime scene? Or  
24 can you tell me that?

25          A     That one voice call that was made at -- what time

1 was that?

2 MR. TATTI: 10:58 p.m.

3 A (Continuing.) At 10:58? That voice call was made  
4 in the footprint of 219, so it would have been much closer  
5 to 219.

6 Q So you don't think the phone was at the crime  
7 scene at that point?

8 A Not when it made a call on 219, no.

9 Q All right. What about for 223? Is it close  
10 enough to the fringe of that?

11 A 223, yeah, there was -- I think there was some  
12 pinging between 223. There was one voice call. It's  
13 possible that we had an origination there.

14 MR. TATTI: That one was at 11:06. Or perhaps he  
15 went to the store and went back home.

16 THE WITNESS: Yeah. There was movement. There  
17 was movement. In order to originate a call on 223,  
18 there would have been movement to the north, to the  
19 northeast.

20 MS. HARDIN: Okay. That makes more sense.

21 MR. COUGILL: So that would be -- also be the same  
22 for at 1:30, where he originated on 304 and then he  
23 finished off on 223?

24 THE WITNESS: I'm sorry? Which one are you  
25 referring to?

1 MR. COUGILL: If -- the call record, if you look  
2 at 1:30 in the morning, he made an outgoing phone call.

3 THE WITNESS: On the 25th?

4 MR. COUGILL: Correct.

5 THE WITNESS: On the 25th at 1:30 a.m.?

6 MR. COUGILL: Correct.

7 THE WITNESS: I'm sorry. What time was that?

8 MR. COUGILL: 01:30 is when it originated.

9 THE WITNESS: Are you talking about a text  
10 message?

11 MR. COUGILL: Negative; phone call.

12 THE WITNESS: 11:25 at 12:30 a.m.?

13 MS. HARDIN: 1:30.

14 MR. COUGILL: 01:30.

15 THE WITNESS: 1:30. Yeah, it was originated on  
16 Cell 1304. And the fact that it terminated on 223,  
17 tells me that the phone was moving northeast.

18 MR. COUGILL: Okay.

19 BY MS. HARDIN:

20 Q Would it report any differently if it's in that  
21 overlap area? Or will it still just report to the  
22 strongest, clearest signal?

23 A When you hit "talk" for billing purposes, it locks  
24 in on -- it's a called a primary server, a primary cell  
25 site. So he was in the footprint, likely. He was in the

1 footprint of Cell Site 204 when he pressed "talk" on that  
2 phone. Now, it could have --

3           It's hard to determine exactly how far. I mean,  
4 he could have walked, I guess, northeast possibly and, you  
5 know, terminated that call. He could have driven northeast.  
6 Again, RF is not an exact science. It's -- you know, radio  
7 waves bounce off buildings. They --

8           You know, all I can say, from an RF standpoint, is  
9 that he originated in the footprint of Cell Site 204. He  
10 terminated somewhere in the footprint of 223. Could have  
11 been in the overlap. That I don't know.

12           Q     How much more accurate is GPS versus cell phone  
13 tower pinging?

14           A     GPS is about as accurate as you can get.

15           Q     So it's a lot more accurate?

16           A     Wait. Than phone pinging?

17           Q     Well, than trying to track people from pinging off  
18 cell phone towers?

19           A     Yeah, if I had GPS information from the phone. I  
20 don't know if that's -- I don't think that's available.

21           Q     Really?

22           A     Well, I'm sorry. Yeah, that's what they use for  
23 911. As far as in a billing record, there is -- well,  
24 there's nothing in here that would tell me.

25           Q     It's really just a general question. I'm trying

1 to place it on an accuracy scale. GPS is the most accurate,  
2 you would say, accurate technology?

3 A Oh, yes, absolutely.

4 Q So it's less accurate than that?

5 A The ping, the ping is that phone talking to that  
6 cell site somewhere in that radius, somewhere. It's not  
7 exact.

8 Q But it would have to be in that radius?

9 A Yes.

10 Q Or I guess you had said sometimes it can shrink a  
11 little bit, but it would have to be somewhere in that circle  
12 or a little less?

13 A Correct. Based on the time of day that this was,  
14 I doubt there was traffic on that site, so the footprint  
15 would have been pretty accurate, 2.6 miles.

16 Q Okay. If you have one ping and another ping five  
17 minutes later, do you have the ability, based on that, to  
18 try to figure out how fast someone was traveling? Or is  
19 that --

20 A Let me think about that. Ping. I think you can  
21 make an assumption. It's not, you know, it's not like GPS.  
22 GPS will tell you exactly where you are and exactly how fast  
23 you were going to get to the next point.

24 I think you can, you can make an assumption that  
25 this phone -- I just forgot your question. I'm sorry.

1 Q I'm wondering if you have, you know, a couple of  
2 pings in a row and you know someone is, say, traveling on  
3 the interstate, could you make an assumption on about how  
4 fast they were going?

5 A Yes. Yeah, you can determine, I would say, I  
6 guess a minimum speed. I mean, based on these times here --

7 Let's see. The best representation of that, of  
8 course, is on Slide -- I guess the slide that shows calls  
9 from 11/25, 3:51 a.m. to 11/25 -- I'm not sure what slide  
10 number that is. 11/25/2008, 3:51 a.m., to -- I'm sorry.  
11 It's one of these that shows the actual times.

12 Q I think so. 3:51, right? You wrote "3:51" at the  
13 top?

14 A Yes. So based on these time stamps and the cell  
15 sites that the phone was pinging off of -- or, in this case,  
16 it was actually locking in on. It had to -- if it's on the  
17 billing record, it had -- it's utilizing what we call  
18 traffic channel. Once you grab the traffic channel, the  
19 billing starts.

20 Q What's the traffic channel?

21 A It's an actual -- you're assigned a time slot.  
22 You're assigned a portion of the band width. You have band  
23 width. And you have overhead, where the phone is talking to  
24 the network, always telling the network where it is, that's  
25 above and beyond. That's called overhead traffic.

1           Once you press "send" on your phone, you're  
2 assigned an actual traffic channel so that you can make that  
3 call. That's your direct connection between your phone and  
4 the end party's phone. At that point, you are utilizing a  
5 hard resource and that's why you're billed.

6           MR. TATTI: Are we in the middle of a question?

7 BY MS. HARDIN:

8           Q     I didn't know if you were computing what you  
9 thought the speed was.

10          A     Oh, no. I'm sorry. I was waiting for -- well, if  
11 I look at --

12          Q     Also, I think that the 3:56 one, that says -- are  
13 you -- there's a 3:55 and a 3:56 on the call record. I  
14 didn't know --

15          A     Well, I used the one call to pinpoint that tower  
16 and the time. So you're looking at the call record itself?

17          Q     Yes.

18          A     Which one?

19          Q     It goes 3:50, 3:55, 3:56.

20          A     Okay. The 3:50 call was terminated at 3:51. So  
21 that was on Cell Site 220. And what was the next call?

22          Q     3:55:23?

23          A     3:55:23 was on Cell Site 78, OR03XC078. So  
24 another origination was made following that termination on  
25 220. Another origination was made on that next site to the

1 south.

2 Q So the 3:50 to 3:51:30, that whole thing was made  
3 and hung up while still in that radius?

4 A While still in the footprint of that site.

5 Q And then at 3:55, when it was picked up, the phone  
6 is in the next tower?

7 A Correct; which tells me the phone was traveling  
8 south. In order to get in the footprint of that next site,  
9 the phone would have had to have been moving.

10 Q So are you able to figure out from those three  
11 calls about the speed, or no?

12 A You're still talking about the speed. I'm sorry.

13 Q That's okay. I mean, if you can't, if you're not  
14 sure --

15 A No, I would not -- all I can tell is that that  
16 phone was moving. During that period of time between the  
17 time when the call was terminated on Site 220 till it was  
18 originated on Cell Site 78, that phone was moving south in  
19 order to be in the footprint of the next site down.

20 Q A lot of these calls are like 20 seconds, 30  
21 seconds. Is there a way of telling whether or not they just  
22 called and got voice mail or if they actually talked to  
23 somebody or you can't tell?

24 A The voice mail calls, we can look. Those were the  
25 routed calls.



1 Q Is that if someone calls that phone, it goes  
2 straight to voice mail or -- let me see if I can ask it a  
3 different way.

4 If I place a phone call and it rings and then goes  
5 to voice mail, will it count as a routed call?

6 A It will be a routed call.

7 Q Okay. Does it matter if the phone is off or on  
8 before you call?

9 A No. If it goes to voice mail, whether the calling  
10 party doesn't answer or the phone is off, it's going to be  
11 routed to voice mail.

12 Q Okay. And we can't track routed calls, right,  
13 with accuracy, I think you said?

14 MR. TATTI: The location.

15 A Oh, yeah; not the location.

16 Q The other thing, the very first map slide, what  
17 made you choose 9:07:51 as a starting time for your report?

18 A 9:07:51. Let's see.

19 MR. TATTI: Honestly, he probably started with  
20 that because, during my original conversation with him  
21 about what I wanted to talk about, we started at about  
22 9:00 that night, rather than tracking the phone all day  
23 long on the 24th.

24 A (Continuing.) I was -- yeah, I was asked to  
25 identify calls between a certain period of time.

1           MR. TATTI: Because he was in northeast Ocala  
2           earlier in the day. I didn't think that was relevant  
3           to what we were doing.

4 BY MS. HARDIN:

5           Q     I did notice on page one that there is ingoing and  
6           outcoming from the call records and outgoing calls that  
7           don't list any first or last cell. Do you know why that  
8           would be?

9           A     What are you referring to?

10          Q     On page one of the call records.

11          A     Page one of the call record?

12          Q     Yeah.

13          A     And what are you --

14          Q     In the middle, there's a list of outgoing and  
15          incoming calls.

16          A     Yes.

17          Q     And there is no cell information, tower  
18          information. I was just wondering why that would happen.

19          A     That's a text message.

20          Q     Okay. Did you only get the records from 11/24 and  
21          11/25?

22          A     No. I received -- there were 400-and-something  
23          call records that began, I think, around 3:00 p.m. on the  
24          24th.

25          Q     But you didn't look at anything before the 24th?

1           A     Before the 24th, no. I looked at, only looked at  
2 what was on the call record.

3           Q     On the other chart, you did 36 records between  
4 3:52 p.m. and 10:51 a.m. I think it's the second-to-last  
5 slide. Was that also the area you were just asked to focus  
6 on? Is that why you chose those times?

7           A     The 45 records?

8           Q     I'm sorry. Never mind. That's for Damien Fuller.  
9                 Were you asked to focus on calls between Damien  
10 Fuller and the subject's phone?

11          A     I was asked to identify how many calls were  
12 between numbers -- I don't know who these people are --  
13 which is, I think, on one of these slides here.

14          Q     And that would have been the same for the next  
15 chart. That's why you prepared it, is you were --

16          A     Correct. Let me find these. Hold on a second.  
17 Yes, it was requested. I was given a time period and I was  
18 asked to identify all text messages and voice calls during  
19 that period of time to this certain number -- or I'm  
20 sorry -- between, conversations between the subject's phone  
21 and I guess it's Damien Fuller's phone.

22          Q     And do you -- I know that you had marked the  
23 4:41 a.m. to 5:54 a.m. slides. You had made a slide of the  
24 calls made then. Do you have any idea of the radiuses of  
25 those towers?

1 A Actually, I do.

2 MR. TATTI: I'm sorry. Which one?

3 BY MS. HARDIN:

4 Q It's entitled 4:41 a.m. to 5:41 a.m. It's like  
5 that.

6 A 4:41 a.m. to 5:41 a.m.?

7 MR. TATTI: Yeah. It's around Tampa Bay and --

8 A (Continuing.) Yeah. 59XC001 has a center line of  
9 145 feet. So we roughly have the same radius as the site to  
10 the north, a couple of sites to the north. Cell Site 220,  
11 which is 155 feet. So it would be in the two-and-a-half  
12 mile range radius.

13 Q Okay. I think the next one is labeled by Brandon,  
14 027.

15 A TA73027. The tower is -- the center line, the  
16 antennas are at 140 feet, so, again, 2.2 miles.

17 Q And then the last one is 133.

18 A 133 has a center line of 140 feet, so in the same  
19 -- the coverage area would be the same general two to  
20 two-and-a-half-mile radius.

21 MS. HARDIN: Do you have any questions?

22 MR. TATTI: Yeah.

23 MS. HARDIN: I think I'm finished.

24 CROSS-EXAMINATION

25 BY MR. TATTI:

1 Q Mr. Benson, going back to the slide with the  
2 coverage footprint either the first one you did or the last  
3 one. Yeah, the one on the front.

4 A Whichever one I can find quickly, I'm sure.

5 Q Yeah, that will work. All right. Now, do I  
6 understand correctly that while your estimate of the  
7 footprint you say is accurate based on the height of the  
8 tower, that it can vary depending on the time of day,  
9 atmospheric conditions --

10 A Absolutely.

11 Q -- or the actual location of the phone, what is  
12 interfering with the phone's ability to communicate with the  
13 cell phone tower?

14 A Yes.

15 Q Okay. Can it vary as much as a half-a-mile?

16 A Can it vary as much as a half-a-mile?

17 Q For instance, if, let's say, you're in the  
18 footprint of 204, which is an enormous tower, but you're  
19 where the crime scene location is, which is moving toward  
20 the edges of that footprint. I mean, it's in there, but  
21 it's moving away from it.

22 And the subject were to take the telephone, for  
23 instance, out the front door of the house, and get the house  
24 and structure and all kinds of things between him and the  
25 cell tower that's on the other side of the house, would the

1 phone then start -- and, for whatever reason, he's behind a  
2 beam, behind a tree, whatever he's behind, he loses 204, but  
3 gets a faint signal from 223. Is the phone going to shift  
4 to 223?

5 A The origination, whichever cell site he sees or  
6 cell site sees that phone with the cleanest, strongest  
7 signal. So if he was on the other side of a building, yeah,  
8 it's possible that if Cell Site 223 was coming in cleaner  
9 when he pressed "send," it would have originated on that.

10 Q Okay. All right. And what if the call -- for  
11 instance, he made a call inside the house, okay, on the side  
12 of the house closer to 204 -- see, you don't know how the  
13 house is oriented. I know how the house is oriented.

14 The house sits facing the east on a street that  
15 runs north and south. And the Defendant's location in the  
16 house is on the south side of the house, so it's closer to  
17 204. If he were to go out the front door of the house and  
18 get the house between him and the tower behind him, he would  
19 be looking at 223.

20 And that's what I'm asking. Is it possible --  
21 because if he starts a call on 204, and the signal fades on  
22 him because he's changed location walking in the house,  
23 walking out of the house, and that he now gets a cleaner  
24 signal on 223, will the phone shift to 223?

25 A Yes, absolutely.

## REDIRECT EXAMINATION

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BY MS. HARDIN:

Q Even if it's not in the overlap area?

A In the overlap area?

Q If it's not in the overlap area.

A If it's not or if it is?

Q If it's not.

A If it's not in the overlap area, yes, it can still -- you know, based on the conditions at that time. The phone can always bounce from one cell site to another. But in this case, based on the location of the crime scene, which is 2.6 miles in the large footprint of Cell Site 204, and the amount of calls that originated on Cell Site 204, I would say, yes, most of these --

He was in this footprint, but it is possible that if he -- if there was an obstruction, that the call could have gone to 223, especially if it was terminated. If he was originating a call, if he was originating, that would definitely tell me that 223 was coming in cleaner, because the phone will automatically grab the cleanest signal.

MS. HARDIN: Any more questions?

MR. TATTI: No. That's it.

BY MS. HARDIN:

Q I have one more. What's the radiuses of the tower ending in 218 on this map?

1 A 218?

2 Q It is just north of the crime scene.

3 A Just north of the crime scene? I do not have  
4 that. I can get it, but I don't have it right now.

5 Q Is it strange to you that none of the calls were  
6 grabbed by that tower? Because it just looks close on the  
7 map.

8 A No. I mean, it's -- we call, we call a dominant  
9 signal -- basically, the dominant signal will push out a  
10 weaker signal. So I wouldn't see how calls would be  
11 originated on 218.

12 Q No. I mean, they were never picked up at any  
13 point. No calls, I think, pinged off that tower. I just  
14 thought it was weird because it was close.

15 A It's close, but we don't -- you know, I can look  
16 up the center line on it and, again, the morphology, it's --  
17 the signal wasn't strong enough.

18 Q Just based on what you just said, so you -- the  
19 phone can be completely outside of the cell tower footprint  
20 and still register on that tower?

21 A Well, then it wouldn't be outside the footprint.  
22 It would be --

23 MR. TATTI: The footprint would be bigger.

24 A (Continuing.) Yeah. The footprint, the site  
25 would be radiating further because it's not an exact -- if I



1 say 2.5 miles, it could be 2.8 miles, depending on the  
2 conditions. So if a cell phone registers on the tower, it's  
3 in the footprint of that tower at that time.

4 Q So if he's at the area labeled crime scene and  
5 he's on a tower at 223, that means that tower ending in 223  
6 has expanded its footprint that much to pick that up?

7 A If he was at the crime scene and he originated on  
8 223, that would mean the footprint of that site --

9 Q No; he originates on 204.

10 MR. TATTI: And he ends on 223.

11 A It depends, based on the conditions. If it starts  
12 on 204 -- and you say it terminates on 223?

13 Q Yes.

14 A The phone could have -- it could have been the way  
15 the phone was moved, the movement of the phone. There's a  
16 lot of variables.

17 Q But without leaving that address?

18 A Without leaving the address?

19 Q Yes.

20 A I would say "yes."

21 Q So what you are saying is, yes, 223 tower  
22 footprint can expand that far?

23 A Yes, but it's based on what the phone sees, so --  
24 it could.

25 Q How likely is it?

1           A     It's not very likely, but, theoretically. With  
2 radio frequency, it could, based on the obstruction between  
3 where he was and 204. Certainly, it could have originated  
4 on -- are we back to 223, right?

5                   MR. TATTI: Right.

6 BY MS. HARDIN:

7           Q     I'm just using that as an example. Well, I mean,  
8 in general, just saying, if you're outside of a footprint,  
9 you can still be picked up in that --

10          A     Yes. But, again, like I say, then you're not --  
11 we design to a footprint, but that footprint varies, like I  
12 said, depending on the conditions outside, the loading on  
13 the tower, the --

14                   Yeah, that phone could have originated definitely  
15 on 223. But it's not, it's not an exact science, so -- just  
16 based on these calls and where they originated and where  
17 they terminated, we can definitely make a pretty good  
18 assumption of where that phone was.

19          Q     So if it started calling on 204 and it moved to  
20 223, what would your assumption be?

21          A     If it started there, either the subject was moving  
22 the phone, the phone was moving to the east, or there was an  
23 obstruction and it allowed 223 to come in stronger and  
24 cleaner, and then it would have gone to 223.

25          Q     Like just a regular house would constitute an

1 obstruction?

2 A Yes.

3 MS. HARDIN: Anything else?

4 MR. COUGILL: Yeah. The majority of these that  
5 we're asking the heights and such, they're  
6 approximately 140, 150, 160 feet up in the air. And  
7 you're giving us a radius of like 2.3, 2.2, 2.5, within  
8 two and two-and-a-half miles.

9 THE WITNESS: Yes.

10 MR. COUGILL: Okay. So you say you don't have the  
11 data for 218, but if -- can we -- is it pretty standard  
12 at the 140, 150 feet on -- that it's nothing higher  
13 than that? Is it the standard, normally, approximately  
14 140, 150 feet in the air?

15 THE WITNESS: I can't call that a standard. It's  
16 just -- it's based on designing the network. We ask  
17 for a specific height to meet a specific coverage  
18 objective. I don't know what the coverage objective  
19 was for 218, so I can't tell you, I can't tell you what  
20 the footprint was designed for or what it actually is.

21 Now, if I can look up the tower height, I can make  
22 a pretty good assumption.

23 MR. COUGILL: Okay. If we said that it was at  
24 140 feet, it would give it kind of a clear as a two to  
25 two-and-a-half-mile radius?

1 THE WITNESS: Yes.

2 MR. COUGILL: And if that particular -- if it was  
3 two to two-and-a-half miles, and if we span that out,  
4 if the house actually fell under that coverage,  
5 wouldn't 218 outweigh the options to utilize, rather  
6 than 223 --

7 THE WITNESS: No.

8 MR. COUGILL: -- for a stronger signal?

9 THE WITNESS: No, not necessarily. It has to be a  
10 clean signal, too, you know. There could be  
11 interference. The phone establishes, like I said, a  
12 clear, what we call a quiet connection with no  
13 interference with whichever tower is radiating that it  
14 sees.

15 I mean, you know, as far as I can see, the phone  
16 did not see 218 clear enough to originate a call, or it  
17 would have.

18 MR. COUGILL: Okay.

19 BY MS. HARDIN:

20 Q If a call originated in 204 and stayed in 204,  
21 does that mean that you assume that it didn't leave that  
22 circle?

23 A Yes.

24 MS. HARDIN: Okay. I'm done. I think I'm just  
25 getting more confused so I am going to stop.

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MR. TATTI: I don't have any more questions.

(And the deposition was concluded at 9:59 a.m.)

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C E R T I F I C A T E

STATE OF FLORIDA  
COUNTY OF MARION

I, Kelly Owen McCall, RPR, Stenographic Court Reporter, do hereby certify that I was authorized to and did stenographically report the foregoing deposition of JEFFREY BENSON; that said witness was duly sworn to testify truthfully; that a review of the transcript was not requested; and that the foregoing pages, numbered 1 through 37, inclusive, constitute a true and correct record of the testimony given by said witness to the best of my ability.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties hereto, nor a relative or employee of such attorney or counsel, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 26th day of January 2011 at Ocala, Marion County, Florida.

---

KELLY OWEN McCALL, RPR, FPR  
Stenographic Court Reporter

## CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF MARION

I, the undersigned authority, certify that JEFFREY  
BENSON personally appeared before me and was duly sworn on  
the 26th day of January 2011.

WITNESS my hand and official seal this 26th day  
of January 2011.

---

KELLY OWEN McCALL, RPR, FPR  
Notary Public  
State of Florida at Large  
My Commission No. DD313402  
My Commission Expires 8/26/12