

Sprint/Nextel Records

Custodial Jenifer Scheild's Testimony

1 A Yes, sir. He was.

2 MR. GARCIA: Okay. I have no further
3 questions, Judge.

4 MR. YEAZELL: Nothing further, Your Honor.

5 THE COURT: All right. May this witness be
6 released?

7 MR. GARCIA: Yes, Judge.

8 THE COURT: You're free to go. Thank you.

9 THE WITNESS: Thank you.

10 THE COURT: Who's your next witness?

11 MR. YEAZELL: Judge, I'm sorry. Could I ask
12 that she just stay until after Ms. Scheid's
13 testimony and then -- that will just be a few more
14 minutes.

15 THE COURT: Okay. Scheid.

16 MR. YEAZELL: Scheid. Is it Scheid? Yeah.

17 THE BAILIFF: Ma'am, if you'd just put your
18 property down there (indicating).

19 Just step up. Right hand.

20 THEREUPON,

21 JENNIFER SCHEID,

22 the witness, was placed under oath.

23 THE WITNESS: Yes.

24 THE BAILIFF: Just step up there. Be careful.

25 Have a seat. Get comfortable. Speak in the

1 microphone so everyone can hear you.

2 THE COURT: Go ahead, Mr. Yeazell.

3 MR. YEAZELL: Thank you, Judge.

4 DIRECT EXAMINATION

5 BY MR. YEAZELL:

6 Q State your name for the record please.

7 A Jennifer Scheid.

8 Q Ms. Scheid, what company do you currently work
9 for?

10 A Sprint.

11 Q And do you -- have you worked as a custodian
12 of records?

13 A Yes.

14 Q Okay. How long have you worked now for
15 Sprint?

16 A Since August of 2004.

17 Q Okay. Can you tell me what a custodian of
18 record does essentially?

19 A We testify in state and federal courts
20 throughout the country on behalf of phone records that
21 we have produced in response to legal demands that have
22 been served upon the company.

23 Q Okay. And that's the purpose of your
24 testimony is to what?

25 A Authenticate the records.

1 Q Okay. To make sure that those records are
2 trustworthy and so forth?

3 A Yes.

4 Q How many times would you say that you have
5 testified?

6 A Approximately 125.

7 MR. YEAZELL: Okay. May I approach the
8 witness?

9 THE COURT: You may.

10 MR. YEAZELL: Let the record reflect I'm
11 showing what's been marked as Defendant's Exhibit E
12 to State.

13 MR. GARCIA: Judge, may we approach?

14 THE COURT: Yes.

15 (BENCH CONFERENCE.)

16 MR. YEAZELL: Judge, -- why don't you state
17 your concerns.

18 MR. GARCIA: Judge, my concern is I don't know
19 why this is like this here (indicating). It's
20 almost like bringing attention to these numbers. I
21 mean, I don't have a problem with them introducing
22 it, but it's almost like this is, like, being
23 highlighted.

24 MR. YEAZELL: What I can tell the Court is
25 this is the -- this was discussed in the first

1 trial too. This is the actual exhibit out of the
2 trial record. And I think -- I know that Judge
3 Siracusa commented about it. There was like a name
4 up here (indicating), I think, that they erased.
5 But everybody agreed there wasn't much they could
6 do with the thin line.

7 So -- and, frankly, none of this is relevant
8 to anything. The only thing that's relevant is up
9 here (indicating). So I don't even know why it was
10 circled up here. Apparently somebody at some
11 point, the State or the Defense, circled while they
12 were thinking or something about what they were
13 going to do with it while they're trying to figure
14 it out maybe.

15 THE COURT: But are there any clean copies
16 available?

17 MR. YEAZELL: This is the one I got right out
18 of the trial record that was admitted unless the
19 State has one. I believe this is the cleanest copy
20 there is. I mean, I can take a quick look to see.
21 Maybe take a minute to look, but I'm guessing.

22 MR. GARCIA: Judge, I'll check real quick too.

23 THE COURT: Okay. Check.

24 MR. YEAZELL: I'll leave it up here.

25 Judge, I've checked my file. And then

1 Ms. Lavender had a thought on it.

2 MS. LAVENDER: This is the only copy the State
3 Attorney's Office had was this (indicating). And
4 then we had to give it to the Defense. We don't
5 have an original. That's what we were trying to
6 tell you. This is all we have (indicating).

7 MR. YEAZELL: It appears that the detective
8 was probably, while investigating and trying to
9 figure things out --

10 And this is the copy. This copy is the one
11 that's in the court -- it's a Court exhibit in the
12 record. And that's the one that was actually
13 introduced into evidence. They cleaned it up a
14 little bit at the trial. I don't -- my argument
15 would be there's no prejudice to the State.

16 MS. LAVENDER: It's sort of -- it's
17 highlighting the times.

18 MR. YEAZELL: It doesn't -- none of these
19 entries pencil marked presumably by the detective
20 are relevant to anything. The issue is up here,
21 Judge (indicating). It's actually above the box
22 right here (indicating). That the phone was turned
23 off at 3:00. All of this stuff isn't -- doesn't
24 mean anything. That's why I say it's not
25 prejudicial.

1 MS. LAVENDER: That's certainly what you're
2 going to argue. You're going to argue this phone
3 was turned off because the next call wasn't until
4 6:22. So it is.

5 MR. YEAZELL: Right. Right here -- but, I
6 mean --

7 MS. LAVENDER: So you can't say it's not.
8 That's what you're going to argue.

9 MR. YEAZELL: Yeah. It's boxed, the entire
10 thing.

11 THE COURT: I looked at it briefly while you
12 were checking for a clean copy. It didn't -- well,
13 nothing jumped out at me. I don't know what
14 exactly you're trying to show with this other than
15 what I've learned thus far. So I'm not in any
16 better shape than the jurors are. I didn't see
17 anything that jumped out at me as an ah-ha moment.

18 MS. LAVENDER: I think he's going to be
19 questioning her as to that.

20 MR. YEAZELL: I'll ask two questions. The
21 only thing -- what I'm going to do, Judge, is I'll
22 do exactly what I did during the proffer. The only
23 additional question I'll ask is, does this record
24 reflect at what time on July 28th the phone was
25 shut off. She'll say, yes, 3:00.

1 MS. LAVENDER: I don't know how she can
2 testify it was shut off or not.

3 MR. YEAZELL: She'll explain. She'll explain.
4 I can ask her one question. Or maybe --

5 THE COURT: How does she know it was shut off?
6 Or just not --

7 MR. YEAZELL: No incoming, outgoing calls.

8 THE COURT: Three o'clock in the morning.

9 MR. YEAZELL: Between 3:00 and 6:22.

10 THE COURT: I'm pretty sure -- I've got a lot
11 of those gaps myself. I don't know, but I don't
12 turn my phone off.

13 MR. YEAZELL: Yeah. Well, that's what she
14 testified to at the last trial. But all I'm
15 concerned about is that there were no incoming
16 calls between those hours. So whether it's because
17 it's off or --

18 THE COURT: If the record is accurate, then it
19 speaks for itself, unless she has some special
20 knowledge as to --

21 MR. YEAZELL: She does. She knows how these
22 records work.

23 MS. LAVENDER: I understand that. But I don't
24 think you can --

25 MR. YEAZELL: I don't know that I'm the one

1 that should be telling the jury that there are no
2 calls that came --

3 MR. GARCIA: The best evidence is the record.

4 THE COURT: Right.

5 MR. GARCIA: And it speaks for itself.

6 THE COURT: It does. Because I don't know of
7 any one, particularly not a records custodian, who
8 can, you know, decipher this.

9 MS. LAVENDER: Right. They pull the records.

10 THE COURT: Right.

11 MS. LAVENDER: But that would be an engineer.

12 MR. YEAZELL: As long as the State's not going
13 to argue later that I can't argue there was no
14 incoming or outgoing calls between 3:00 and ~~6:00~~
15 ~~because that's what that says.~~

16 THE COURT: That's what that says. But I
17 ~~don't think you have the leeway if the phone was~~
18 ~~shut off.~~

19 MR. YEAZELL: No. No. Actually, Judge, to be
20 honest with you, that's just what they testified to
21 at the first trial. I don't necessarily disagree
22 with you. I don't know. Now, I was going to ask
23 her if that's what it was. I mean, she has been
24 doing this for 100 years (sic).

25 MS. LAVENDER: Yeah. But, to me, she's the

1 records custodian. She's not the computer person.
2 She's not --

3 MR. YEAZELL: Wouldn't she be able to testify
4 to what this record says?

5 MS. LAVENDER: But that's no different than me
6 saying, okay. Well, look at cell site. It says he
7 was in Wesley Chapel, doesn't it. She can't
8 testify to that.

9 MR. YEAZELL: Well, sure. I don't know --

10 THE COURT: No. No.

11 MR. YEAZELL: Well, you know, that's my
12 position. Is the Court saying, you know --

13 THE COURT: I'm going to, ahead of time -- she
14 is not going to be able to explain what anything
15 means on here or -- other than how she knows it's
16 the Sprint's.

17 MR. YEAZELL: So I can't ask the one question,
18 are there any incoming or outgoing calls between
19 3:00 and 6:00. Can I ask that one question?

20 THE COURT: No.

21 MR. YEAZELL: Okay. But I can argue.

22 THE COURT: She doesn't have any independent
23 knowledge and the record speaks for itself.

24 MR. YEAZELL: Okay.

25 THE COURT: That's for the jury to determine.

1 MR. YEAZELL: Okay.

2 THE COURT: Because we don't have anybody
3 that's qualified to say yea or nay other than the
4 records. So ...

5 MR. YEAZELL: Okay.

6 (OPEN COURT.)

7 THE COURT: Go ahead.

8 MR. YEAZELL: Thank you, Judge.

9 May I approach the witness?

10 THE COURT: You may.

11 Q (MR. YEAZELL) Okay. Ms. Scheid, I'm
12 handing you what's been marked as Defendant's
13 Exhibit E for identification. Can you take a look
14 at that for me?

15 A (Perusing document.) Yes.

16 Q Okay. Do you recognize that document?

17 A Yes.

18 Q And can you tell me what that document is?

19 A This is a call detail report for phone number
20 813-377-8042.

21 Q Okay. And where is that document maintained
22 or those -- those databases that maintain those
23 documents?

24 A We have an electronic database that stores
25 this information in Overland Park, Kansas.

1 Q And can you tell me how that works, how those
2 types of documents are generated?

3 A This is a log of any and all outbound and
4 inbound call activity for all of our subscribers.

5 Q Okay. And what other information is contained
6 on that sheet besides inbound and outbound calls?

7 A The originating and terminating cell sites,
8 the date and time, and the call type.

9 Q Okay. So it covers it all: Dates and times,
10 in and out for that particular phone number, correct?

11 A Correct.

12 Q All right. And tell me how the information is
13 generated from a standpoint of not the report but how it
14 ends up there. How does it work?

15 A It's captured electronically at the time that
16 the transactions occur.

17 Q Okay. So in other words, when somebody makes
18 a phone call to that particular number or if that
19 number -- if that particular phone makes a phone call
20 out, it is automatically, by computer, a line is
21 generated on that particular -- in that database?

22 A Yes.

23 Q And then that information can be subsequently
24 removed from the database per a report such as the one
25 that you're holding in your hand?

1 A Yes.

2 Q Okay. And are these things done -- are they
3 generated -- is each line generated contemporaneously
4 with the inbound or outbound call?

5 A Yes.

6 Q Is it common for Sprint to receive these types
7 of requests -- subpoena requests for their records?

8 A Yes.

9 Q When someone subpoenas a record, explain to me
10 how that works exactly.

11 A When we receive a subpoena for call records,
12 we have a database that we will put the phone number in
13 and the specific start date and end date of the
14 requested information and a report like this one is
15 generated.

16 Q Okay. And once that record is generated
17 within the database, can it be changed or altered in any
18 way?

19 A No.

20 Q Okay. How many requests for these types of
21 documents do you get per day?

22 A Approximately 500.

23 Q Okay. And there is security on the system, I
24 assume, that protects these documents?

25 A Yes.

1 Q All right. Is that a record that is kept in
2 the regular course of Sprint's business activities?

3 A Yes.

4 Q And are they kept in the regular practice of
5 Sprint keeping the records?

6 A Yes.

7 Q And, I'm sorry, what was that -- if you could
8 just say again what -- who was that -- what was the
9 number of that particular record?

10 A 813-377-8042.

11 MR. YEAZELL: All right. Judge, at this time
12 I would move the record into evidence as
13 Defendant's Exhibit E, I believe.

14 THE COURT: One.

15 MR. YEAZELL: One. You want to do it that
16 way? Okay. Defendant's Exhibit One.

17 THE COURT: Any objection?

18 MR. GARCIA: We would renew our previous
19 objections, Your Honor.

20 THE COURT: All right. And the same ruling.
21 It will be admitted.

22 MR. YEAZELL: Okay. Thank you, Judge.

23 May we approach just for a moment?

24 (BENCH CONFERENCE.)

25 MR. YEAZELL: Again, Judge, here's the thing:

1 I can publish it to the jury. I'm going to ask
2 that it be published. I don't know if we really
3 need to hand it down the line. They're not going
4 to know what they're looking at until I argue it.

5 THE COURT: I don't think that would help them
6 at this point.

7 MR. YEAZELL: Okay.

8 THE COURT: But, clearly, they'll have the
9 opportunity to examine them at their leisure when
10 it goes back.

11 MR. YEAZELL: Okay. So how would you like me
12 to handle it? It has been admitted into evidence.
13 I can give it back to the clerk and just argue it
14 in closing.

15 Okay. I really don't see any point.

16 MR. GARCIA: No.

17 MR. YEAZELL: Okay. All right. You didn't
18 have any cross?

19 MR. GARCIA: Just one question for her.

20 THE COURT: Okay. Thanks.

21 (OPEN COURT.)

22 THE COURT: Go ahead, Mr. Garcia.

23 MR. GARCIA: May it please the Court.
24
25

1 CROSS-EXAMINATION

2 BY MR. GARCIA:

3 Q Ms. Scheid, that particular number that you
4 just recited to Mr. Yeazell, you can't say that that
5 particular individual would have had the phone on
6 July 27th or July 28th of 2006, correct?

7 MR. YEAZELL: Judge, I object. It's beyond
8 the scope of cross (sic). It's kind of what we
9 talked about that I couldn't get into.

10 THE COURT: Approach.

11 (BENCH CONFERENCE.)

12 THE COURT: She didn't testify as to anyone
13 having the phone.

14 MR. GARCIA: Exactly. She can't testify to
15 anyone having the phone, nor having the phone.

16 THE COURT: But the point is you have to
17 rephrase because you said, you can't tell that
18 individual and that -- she didn't say any
19 individual. So ...

20 MR. YEAZELL: Right. And I wasn't permitted
21 to testify that it was no incoming or outbound
22 calls coming between 3:00 and 6:00 so the jury
23 won't even know what he's talking about. So it's
24 beyond the scope. And, quite frankly, I think he's
25 going into an area that I was not permitted to get

1 into.

2 MR. GARCIA: Judge, I can ask her, based on
3 your own personal knowledge, you can't say whether
4 that person had the phone on July 27th or 28th.

5 THE COURT: Not that person, any person.

6 MR. GARCIA: Any person. Judge, any person.

7 MR. YEAZELL: Does that not open the door for
8 me to redirect on the fact that there was no
9 incoming or outbound calls between 3:00 and 6:00?

10 THE COURT: No. That doesn't have anything to
11 do with his question, obviously.

12 MR. YEAZELL: All right. Well, my objections
13 stand, that it's beyond if the scope of direct.

14 THE COURT: All right. Overruled.

15 MR. YEAZELL: Thanks.

16 (OPEN COURT.)

17 Q (MR. GARCIA) Ms. Scheid, is it fair to say
18 that on July 27th or 28th, you can't say that anyone
19 might have had that phone, correct?

20 A I don't know who was using that phone.

21 MR. GARCIA: Okay. All right. Thank you.

22 THE COURT: May this witness be released?

23 MR. GARCIA: Yes, Judge.

24 MR. YEAZELL: Yes, Judge.

25 THE COURT: Thank you, Ms. Scheid.

Sprint/Nextel Records

Custodial Jenifer Scheild's Testimony
'Proffer'

1 THE COURT: Yes.

2 MR. YEAZELL: All right.

3 THE COURT: Is this witness released?

4 MR. YEAZELL: Well, obviously she would
5 testify at the trial too, in the presence of the
6 jury.

7 THE COURT: Right. All right. For now, just
8 wait outside because we'll probably be getting to
9 you fairly quickly, if that's going to happen.

10 MR. YEAZELL: Your Honor, I would call
11 Jennifer Scheid to the stand.

12 THE BAILIFF: Just step over here one second.
13 Pause. Raise your right hand and receive the oath.

14 THEREUPON,

15 JENNIFER SCHEID,
16 the witness, was placed under oath.

17 THE WITNESS: Yes.

18 THE BAILIFF: Just step this way, ma'am. Be
19 careful there's a little step up here.

20 Have a seat. Get comfortable. Once you're
21 comfortable, you don't have to speak directly on
22 top of that thing because you'll get muffled. But
23 just close enough where it can be heard through the
24 loud speaker.

25 Okay?

1 THE WITNESS: Okay.

2 THE BAILIFF: Thank you, ma'am.

3 THE COURT: Go ahead, Mr. Yeazell.

4 MR. YEAZELL: Thank you, Judge.

5 PROFFER - DIRECT EXAMINATION

6 BY MR. YEAZELL:

7 Q State your name for the record please.

8 A Jennifer Scheid.

9 Q And, Ms. Scheid, were you a custodian of
10 records for Sprint Nextel?

11 A Yes.

12 Q And for how long?

13 A I have been employed with Sprint since August
14 of 2008.

15 Q Okay. And tell me exactly what a custodian of
16 records does.

17 A We testify in state and federal courts
18 throughout the country on behalf of phone records that
19 we produce in response to legal demands that our company
20 receives.

21 Q Okay. And the purpose of that testimony is to
22 what?

23 A Authenticate our business records.

24 Q All right. And how many times have you
25 personally testified in court?

1 A Approximately 125.

2 Q Okay. And do you do that throughout the
3 country?

4 A Yes.

5 Q All right. Let me show you an exhibit that
6 has been marked Defendant's Exhibit E for
7 identification. Do you recognize that?

8 A Yes.

9 Q Okay. Okay. Can you tell me what that is?

10 A This is a call detail report for phone number
11 813-377-8042.

12 Q Okay. And where are records like that
13 maintained?

14 A We have an electronic database that stores
15 call detail records.

16 Q Okay. And tell me -- explain to the Court
17 exactly what a call detail record is.

18 A A call detail record will capture all the
19 inbound and outbound transactions prior to them being
20 generated or appearing on a customer's bill.

21 Q And where are they specifically maintained? I
22 mean, like, what city and state?

23 A Overland Park, Kansas.

24 Q All right. Are you from Overland Park,
25 Kansas.

1 A I work in Overland Park, Kansas.

2 Q Okay. So that's where you actually work at.
3 You still work at that facility now; is that correct?

4 A Yes.

5 Q All right. Can you tell me how these records
6 are generated?

7 A When we receive a legal demand, we put the
8 phone number and the specific date range that records
9 were requested for into our system and a report is
10 generated.

11 Q Okay. And can you describe for me what is on
12 that particular document? What is the data that's
13 reflected on it? Can you tell me about that?

14 A It's inbound and outbound call -- it's an
15 inbound and outbound call report for July 28, --

16 Q Okay. And --

17 A -- 2006.

18 Q -- does it have the specific dates for each
19 one of those incoming and outgoing calls?

20 A Yes.

21 Q All right. And what other information does it
22 have on there?

23 A It just specifically lists the inbound and
24 outbound, the number that was called or the calling
25 party, and cell site information.

1 Q Okay. And is that format indicative of the
2 format that you use at Sprint Nextel?

3 A It's changed slightly today from what it looks
4 like in this report, but, yes.

5 Q Okay. Let me ask you about back in 2006.
6 Were you custodian of records back in 2006 as well?

7 A Yes.

8 Q Okay. Is that format --

9 A Not -- I'm sorry. Not in '06.

10 Q Okay.

11 A In '08.

12 Q I should have asked. Yes, '08. That's when
13 you were subpoenaed to be a custodian of records?

14 A Yes.

15 Q And do the -- does that format that's on that
16 particular sheet reflect the format that you were using
17 at that time?

18 A Yes.

19 Q Okay. Is it common for these types of records
20 to be subpoenaed from Sprint?

21 A Yes.

22 Q All right. Let's talk a minute about the
23 individual incoming, outgoing calls and how they are
24 generated. Is that done automatically or
25 contemporaneously with the phone call or how does that

1 work?

2 A It's done at or near the time the transaction
3 occurs.

4 Q Okay. So right at that very moment. Is it
5 done by computer?

6 A Yes.

7 Q Okay. So in other words, if somebody's
8 calling in, it's automatically going into a database?

9 A Right.

10 Q And then ultimately where do you get this
11 record from?

12 A The database that we use to extract the call
13 report.

14 Q Okay. And are these databases databases that
15 you have personally been using for some time?

16 A Yes.

17 Q Okay. Is there a security set up to protect
18 these databases?

19 A Yes.

20 Q Okay. Once the record is generated
21 automatically, can anyone get into the database later
22 and change anything?

23 A No.

24 Q Are you certain that that document that is
25 sitting in front of you is a record -- and I'm sorry.

1 What did you call them again, data --

2 A Call detail record.

3 Q Call detail record. That that is a call
4 detail record from Sprint?

5 A Yes.

6 Q Okay. And you're 100 percent certain of that?

7 A Yes.

8 Q No question in your mind?

9 A No.

10 Q And how is it that you know that?

11 A We have a tracking system that we use whenever
12 we receive a request --

13 Q Okay.

14 A -- to produce phone records. And although we
15 cannot view this exact report, I can go back into that
16 system and see that this report was generated and
17 produced.

18 Q Okay. And I'm assuming that that report
19 doesn't show all of the detail; is that correct?

20 A Right.

21 Q All right. It just shows that it was
22 produced?

23 A Right.

24 Q All right. And have you had the opportunity
25 to check that?

1 A Yes.

2 Q Okay. And was it produced?

3 A Yes.

4 Q All right. Is this a record that is kept by
5 Sprint in the -- that is kept in the regular course of
6 business?

7 A Yes.

8 Q Okay. And it is the regular practice of
9 Sprint to keep these records, correct?

10 A Yes.

11 Q And I believe you already testified that these
12 records are prepared -- I shouldn't say "prepared"
13 because they're not done by human beings. But they are
14 kept instantaneously or contemporaneously with the
15 incoming and outgoing calls, correct?

16 A Yes.

17 MR. YEAZELL: All right. Judge, as far as the
18 regularly kept business record, that's what I would
19 be proffering to the Court. I have some additional
20 questions, but it would be -- it would not pertain
21 to the proffer.

22 THE COURT: Do you wish for the witness to
23 step out for argument or --

24 MR. GARCIA: Judge, I want to cross-examine
25 her.

1 THE COURT: All right.

2 PROFFER - CROSS-EXAMINATION

3 BY MR. GARCIA:

4 Q Ms. Scheid, did I understand you correctly
5 that you were not employed as a records custodian in
6 2006?

7 A Correct.

8 Q So can you testify to the trustworthiness of
9 the records that were supplied in 2006?

10 A Yes.

11 Q How, if you weren't even employed there?

12 A I was employed there.

13 Q I just asked you that question and you said
14 no.

15 A Oh, I'm sorry. I think there must be a
16 misunderstanding. When I say "custodian of records", I
17 mean my primary job responsibility is just to go from
18 place to place and testify about these records. But
19 I've been pulling these records since I started working
20 with the company in August of 2004.

21 Q Okay. So you were pulling the records, but
22 you were not the actual custodian of the records in
23 2006?

24 A I didn't travel and testify on behalf of the
25 company in 2006, no.

1 Q Do you even know who the records custodian was
2 in 2006?

3 A Yes.

4 Q And who was that?

5 A Eric Tyrel and Crystalee Danko.

6 Q Eric Tyrel?

7 A Yes.

8 Q And Chris --

9 A Crystalee.

10 Q How do you spell that?

11 A C-r-y-s-t-a-l-e-e Danko.

12 Q D-a-n-c-o?

13 A D-a-n-k-o.

14 Q D-a-n-k-o. So at the time that these records
15 were produced, they would have been either Eric Tyrel or
16 Crystalee Danko?

17 A If you subpoenaed a custodian of records to
18 appear, it would have probably been one or the other of
19 them that would have come to testify on behalf of the
20 record.

21 Q Okay.

22 A They probably would not have been the same
23 individual that pulled the record.

24 Q Okay. And that was my next question. It's
25 fair to say that you did not pull these records?

1 A Correct.

2 Q And, in fact, it was another colleague that
3 pulled these records?

4 A Yes.

5 Q And did you ever compare the records that were
6 sent out pursuant to the subpoena to the actual database
7 itself?

8 A No.

9 Q And why not?

10 A Because the record was no longer viewable at
11 the time that I came to testify.

12 Q In 2009?

13 A Right.

14 Q And it's fair to say that the actual database
15 had been destroyed?

16 A Not destroyed. The database is still in
17 existence, but the records are only kept for the most
18 recent 18 months.

19 Q So if it's not destroyed, then what's the
20 status of records from 2006?

21 A Oh, I thought you meant the database was
22 destroyed. No, --

23 Q No. No. No.

24 A -- the database is still intact. But we can
25 actually only view call detail reports for the most

1 recent 18 months.

2 Q Okay. And you would agree with me that just
3 because a person has a phone number, that phone number,
4 for instance, it could have been a Verizon phone number
5 that was transferred to a Sprint Nextel phone, right?
6 That's common among the carriers?

7 A For someone to take their number to a
8 different carrier?

9 Q Yes.

10 A I guess. Yeah.

11 Q Well, what do you mean you guess? How long
12 have you been doing this?

13 A I don't know if it's common, but it happens.
14 Yes.

15 Q It happens all the time, doesn't it?

16 Yes?

17 A Yes.

18 Q Okay. And the records that you looked at now
19 that were shown to you by Defense Counsel, there's
20 nothing on there that says Sprint Nextel, correct?

21 A On this report, no.

22 Q And can you testify if there was any computer
23 problems or database problems back in 2006 with these
24 particular records?

25 A Not that I know of.

1 Q Okay. But you would agree with me that it was
2 not your responsibility to maintain these records,
3 correct?

4 A Right.

5 Q Who checks the computers and stuff to make
6 sure that there's no problems?

7 A The database is maintained by network
8 engineers.

9 Q Okay. And would you agree with me that you
10 are not a network engineer?

11 A Correct.

12 Q Now, could you distinguish this record from
13 any other record, like METRO PCS? Verizon?

14 A I'm not familiar with the format of other
15 carriers' reports. I've only seen our own.

16 Q Okay. But you'd agree with me, would you not,
17 if the other reports were similar -- how does this --
18 let me ask it this way:

19 How does this particular record -- how can you
20 distinguish it from Verizon, from METRO PCS, from AT&T,
21 any other phone companies?

22 MR. YEAZELL: I'm going to object. She's just
23 indicated she hasn't seen the others. So she can't
24 distinguish between, she can only testify as to why
25 she knows it's her report.

1 THE COURT: Fair enough.

2 MR. GARCIA: I'm sorry?

3 THE COURT: Fair enough. She can do that.

4 She can answer.

5 MR. GARCIA: Oh, okay.

6 THE WITNESS: Okay. I know that this report
7 is exactly what we produce. And also I have looked
8 in our database and have confirmed that we did
9 produce this report for this number which was
10 subscribed to by one of our customers on July 28,
11 2006.

12 Q (MR. GARCIA) When did you check that? Do
13 you recall your deposition being taken?

14 A I just checked that today.

15 Q Today? Well, you would agree with me, would
16 you not, that your deposition was taken back on July 8th
17 of 2013, correct?

18 A 2013?

19 Q Yes.

20 A I don't remember that.

21 Q Okay. So you said you checked it today. When
22 did you go back and check it?

23 A Today.

24 Q When today?

25 A This afternoon.

1 Q Okay. Were you told by someone to go and
2 check it or did you do this on your own?

3 A No. I just wanted to confirm when or about
4 the time that we produced the records, which is all I
5 can see.

6 Q Okay. So ...

7 A That we received a request for this -- on this
8 number and we produced a record around July 28, 2006.

9 Q Okay. So what you're looking at it just tells
10 you that you had a request and you complied with that
11 subpoena request?

12 A Correct.

13 Q It doesn't say anything about the actual
14 records themselves or whether or not they're the same
15 records --

16 A Right. I cannot view the record.

17 Q Now, do you recall in your deposition that you
18 were asked and you testified the only record you have
19 was subscriber information?

20 A What do you mean, the only record I have?

21 Q You were asked a question:

22 "You testified previously in Luc

23 Pierre-Charles's case; is that correct?" And you said,

24 "Yes." And then you were asked:

25 "Do you have any records in on front of you?"

1 And you said, the only record you had -- and you gave a
2 phone number of 352-458-2122. Do you remember that?

3 A Not specifically.

4 Q Okay. Do you want to have an opportunity to
5 look at your deposition; would that refresh your memory?

6 A No.

7 Q No, it would not refresh your memory?

8 A It may. But -- I guess --

9 Q Why are you looking at the Defense Attorney?

10 A Can you ask the question again?

11 Q Yeah. Why are you looking at the Defense
12 Attorney? Are you expecting him to give you --

13 MR. YEAZELL: Judge, I'm going to object. Her
14 looking over here -- if he has a question, he
15 should ask the question.

16 MR. GARCIA: I have a question. Why is she
17 looking over at the Defense Attorney; is she
18 expecting an answer? A nod?

19 A I guess I just didn't know if maybe he had a
20 copy of that. I don't because I can't reproduce any of
21 these records due to their age. So if he doesn't have
22 it, --

23 Q (MR. GARCIA) So when you indicated that
24 you looked earlier to confirm this, did you look at
25 his records or did you look in the database then?

1 Because you just said you don't have --

2 A It's just the snapshot is all it is.

3 Q A snapshot? Where did you get this snapshot?

4 MR. YEAZELL: Judge, I'm going to object. At
5 this point it's real clear what she did. She
6 checked back on the database to see if those
7 records were pulled. That's what she's testified
8 to. He's continuing to ask the same question to
9 see if he can get a different answer.

10 She's testifying that she can't get the whole
11 record; she can only look back at the database to
12 see if it was pulled. She's testified to that.
13 She's made it clear. She's made it clear she can't
14 get any more than that. That's what she did today.

15 THE COURT: And what is the question that you
16 just read about the 352 area code number?

17 MR. GARCIA: Judge, when she was deposed in
18 this case, she was -- Ms. Lavender asked specific
19 questions, very specific questions.

20 She asked her, "Do you have any records in
21 front of you?"

22 And she said, "The only record I have is the
23 subscriber information."

24 "And what telephone number is that for?"

25 She gave a number, 352-458-2122.

1 "Who is the subscriber for that?"

2 "Tyree Jenkins."

3 And then, Question:

4 "Tyree Jenkins?"

5 "Would you like me to spell it?"

6 "I know who it is. Okay."

7 That continues on. And then the question is
8 asked, "Do you have any other phone records or
9 requests in front of you?"

10 "No."

11 "You even -- so back from when you had
12 testified at trial, the phone records back from
13 2006 are no longer on the database; is that
14 correct?"

15 "That's correct."

16 "So you have no way of retrieving those
17 records that we requested?"

18 "That is correct."

19 THE COURT: Those are two different questions
20 though, did she have them in front of her or were
21 they still in the database. That doesn't even make
22 sense.

23 Is that what you're asking her now? Because I
24 see she's got one record in front of her and that
25 doesn't tell me whether the database exists or not.

1 So I'm not following where you're going with this
2 question.

3 Are you impeaching her? What?

4 MR. GARCIA: No, Judge. I was -- I'm trying
5 to ask her the question about these other records.

6 THE COURT: Okay.

7 MR. YEAZELL: Judge, I'm going to object to
8 that. Because we're only trying to enter one
9 record into evidence and that's a record of Andre
10 Pierre-Charles's phone number on that night.

11 Q (MR. GARCIA) When you looked up the
12 records for today and compared them, did it have a
13 phone number? What did you look at?

14 A We have a tracking system. I can put in this
15 phone number here, 813-377-8042, and it will pull up any
16 requests that we've had for records on this number.

17 So I can see that around July 28th, we did
18 produce records to the State's Attorney's Office for
19 this number for this date range. That's all I can see.
20 I can't actually look at the report or the records.

21 MR. GARCIA: Judge, I don't have any further
22 questions, Judge.

23 MR. YEAZELL: Just a little bit, Judge.
24
25

1 PROFFER - REDIRECT EXAMINATION

2 BY MR. YEAZELL:

3 Q Okay. So based on even what you were able to
4 do today -- by the way, let me ask you this: What you
5 did today is that also a common thing that you do as a
6 custodian of records, make those kind of checks that you
7 just testified to?

8 A It could be, yes.

9 Q Okay. And based on that information, you can
10 say without any doubt that 813-377-8042 was assigned to
11 Sprint Nextel in July of 2008; isn't that true?

12 A Yes.

13 Q Okay. And Mr. Garcia asked you -- well, let
14 me ask you this: How many requests do you get a day,
15 any idea, for records?

16 A Five hundred.

17 Q Okay. So maybe 500 a day. So, you know,
18 we're talking thousands and thousands over a period of
19 months, correct?

20 A Yes.

21 Q Now, is it fair to say that it's common that
22 you don't have a custodian of records for each one of
23 these individual things? One custodian of records goes
24 around and testifies all over the country or several do?

25 A We have several.

1 Q Okay. And those custodian of records aren't
2 necessarily the ones that pull the information from the
3 database; is that correct?

4 A Yes.

5 Q Okay. He asked you about network engineers
6 and them being the ones that maintain the databases,
7 correct?

8 A Yes.

9 Q But network engineers are not the individuals
10 that go around the country and testify as custodians of
11 records?

12 A No.

13 Q That's solely your responsibility?

14 A Yes.

15 MR. YEAZELL: I have nothing further, Judge.

16 THE COURT: Anything else?

17 MR. GARCIA: No, Judge.

18 THE COURT: I have a question.

19 PROFFER EXAMINATION

20 BY THE COURT:

21 Q That number that we're talking about, that you
22 have the record in front of you, 813, at any given time
23 would that number be assigned to various different
24 providers? Would Sprint have that number and then, say,
25 Verizon have somebody with that number, and METRO PCS

1 have someone with that number?

2 A It's possible. Yeah.

3 Q So three different people in this area could
4 have that number?

5 A Not at the same time.

6 Q Oh, all right.

7 A No.

8 Q How many at the same time?

9 A Just one.

10 THE COURT: All right. Any redirect or cross
11 after --

12 MR. YEAZELL: No, Your Honor.

13 THE COURT: -- that inquiry?

14 All right. Then this witness can be released
15 for the moment?

16 MR. YEAZELL: For the moment, Judge, yes.

17 THE COURT: All right. We've got to redo that
18 in front of jury, so -- if that's going to be
19 happening. Just wait outside.

20 THE WITNESS: Leave this?

21 THE COURT: Yeah.

22 MR. YEAZELL: Yeah. Actually, if you wouldn't
23 mind bringing that here.

24 THE BAILIFF: Just watch your step down.

25 MR. YEAZELL: Thank you.

1 THE COURT: All right. Argument.

2 Any more?

3 MR. YEAZELL: I do have one thing I'd like to
4 put on the record, Judge. I wanted to read -- I
5 realized there was some concern in regard to
6 whether or not she was the one that actually pulled
7 the records. I'm reading from Ehrhardt here under
8 the hearsay exception, 803.6. They address this
9 issue specifically.

10 And Ehrhardt indicates that it is not
11 necessary to call the person who actually made the
12 entry.

13 And I'm kind of, you know, suggesting that
14 it's the same thing about who pulled the entry.

15 Section 90.806 states that a custodian or
16 otherwise qualified witness who has the necessary
17 knowledge to testify as to how a particular record
18 was made can lay the necessary foundation for the
19 introduction of the record. Any witness who has
20 the knowledge to testify to the method by which a
21 particular record was entered is a qualified
22 witness.

23 So Ehrhardt would seem to suggest that we
24 don't even need to have the actual custodian of the
25 record, but only requires a qualified witness that

1 has knowledge as to how these matters work and that
2 can testify to that.

3 And, certainly, I would submit to the Court
4 that Ms. Scheid has been doing this for many, many
5 years and has testified in this matter I think she
6 said 125 times. She has personal knowledge as to
7 how these records are generated. I think it
8 provides a clear sense of their trustworthiness.
9 And we'd move to have them entered into evidence in
10 front of the jury or have the opportunity to
11 examine her, as well as Detective Schoneman.

12 THE COURT: Response?

13 MR. GARCIA: At this point or at the point he
14 recalls these witnesses, Judge, they're not
15 relevant until a certain individual testifies. So
16 I assume that he's going to call Andre
17 Pierre-Charles. But until that's done, the records
18 aren't relevant.

19 MR. YEAZELL: Judge, I can address that. And
20 I'm not sure that that's an issue. So I don't want
21 to make a big issue that's not there. On the other
22 hand, I don't know that the order necessarily
23 matters because I wouldn't ask Detective Schoneman,
24 as I indicated before, whether or not she
25 determined that was Andre's number. I would just

1 ask her if she investigated the number, requested
2 subpoenas. Then I'd put Scheid on to testify that
3 here's the record to that number. And then I think
4 I could put Andre on to testify, yeah, that's my
5 number.

6 I don't know that he would need to come first.
7 I don't see -- the relevance of the issue in the
8 case is that Angel Brooks has alleged that she
9 heard this statement via Andre's phone.

10 So me getting these records in is relevant. I
11 don't know that the order necessarily matters. I
12 think I can do any of the above.

13 MR. GARCIA: Judge, and my argument is those
14 records do not become relevant until Andre
15 testifies, that's my phone number. If he doesn't
16 testify to that, those records are worthless.
17 They're not relevant until he testifies that's his
18 phone number. That's what makes them relevant.

19 MR. YEAZELL: I will say this, I can see the
20 practical value of having him testify first because
21 if he said that wasn't his number, then that's
22 potentially an issue. So I could see that.

23 THE COURT: Yeah.

24 MR. YEAZELL: Okay.

25 THE COURT: Well, exactly. I mean, everything

1 that that witness testified to, Ms. Scheid, would
2 be meaningless to the jury.

3 MR. YEAZELL: It would be a big waste of time,
4 too, I guess.

5 THE COURT: Yeah.

6 MR. YEAZELL: Well, Judge, I can talk to him.
7 To be candid with you, my intent was to call
8 Jessica Rotolo who was a good friend of Andre's.
9 She's the one that identified the number at the
10 first trial. I've called two or three times; she
11 has not responded to my calls. So that's kind of
12 where I'm at with that.

13 But I did call to see if Andre could appear
14 here. But I'm going to have to step outside and
15 see if he's available, once the Court makes a
16 ruling on this one way or another.

17 THE COURT: All right. As far --

18 MR. GARCIA: Judge, and for the record I have
19 a problem with Jessica Rotolo testifying to a phone
20 number because it's based on hearsay. Somebody had
21 to tell her what that number was.

22 MR. YEAZELL: And, again, Judge, she wouldn't
23 be just coming in saying, yeah, Andre told me this
24 was his number. They were close friends. She had
25 been calling his number for a very, very long

1 period of time. She called him on a regular basis.
2 She actually had personal knowledge of it.

3 I mean, if we were going to go to that nth
4 degree of what hearsay is, then everything would be
5 -- we learn everything from somebody else.

6 THE COURT: I agree. The question to her
7 would be, under that scenario, simply, did you ever
8 call Andre.

9 MS. LAVENDER: On that day.

10 THE COURT: Well, --

11 MS. LAVENDER: I mean, it has to be relevant
12 to the day. They want one piece of phone record in
13 for that day; it has to be relevant for that day.

14 MR. YEAZELL: I think a reasonable period of
15 time, whether she had personal knowledge it was his
16 number. If they want to argue that on close,
17 that --

18 THE COURT: Right. That's certainly -- and
19 it's open to cross. Just as, you know, you're
20 obviously insinuating that he used a lot of
21 different phones. But that -- that's a little more
22 difficult.

23 You can't bring someone like Ms. Scheid in
24 here and say, you know, isn't this number also
25 associated with -- you know, that's absurd. No one

1 can actually pin something on someone that's not
2 even registered to their name, unless they've
3 called them on that number regularly or something
4 along those lines. Other than that, no. That's
5 pure hearsay. Oh, you know, it's my
6 understanding -- in Detective Schoneman's
7 deposition, I read that, that she -- it was her
8 understanding that these numbers were tied to these
9 individuals. That's pure hearsay.

10 So when you get -- go through the channels and
11 verify with personal knowledge who's tied to what,
12 how, officially and you have someone who can
13 testify to that, fine. But otherwise, no.

14 As to Detective Schoneman testifying, the
15 testimony that was proffered I find is admissible.

16 And Jennifer Scheid, I overrule State's
17 objection as to authenticity. There's any number
18 of reasons why duplicates are admissible in lieu of
19 lost or destroyed records. And, quite frankly,
20 they were sent through discovery by -- obviously
21 subpoenaed, according to Ms. Scheid, by the State
22 Attorney's Office, provided in discovery. And to
23 come back now and question the authenticity I think
24 is traveling down a dangerous road, since we all
25 know how often, you know, phone records are relied

1 on. And if this is going to set a new standard of
2 what we have to do, that might be pretty
3 problematic to having trust or reliability on phone
4 records. If we have to call in the network
5 engineer to testify, I'm afraid that's going to be
6 a problem for everyone who has to secure witnesses
7 in any type of case.

8 So I don't find any problem with the
9 authenticity and I'm going to overrule that
10 objection and it will be admitted.

11 All right. Can we get the jurors in now?

12 MR. YEAZELL: Yes, Judge.

13 The exhibit that I was using, I don't know how
14 the Court wants to handle this. I used it in part
15 to show that it was the exhibit that had previously
16 been admitted. But now I think it would be more
17 appropriate to put the ID tag over the other tag,
18 which is what I know what the clerk was originally
19 intending to do.

20 THE COURT: Can you put another one on there?
21 You've got a blank one, right?

22 THE CLERK: Yeah.

23 THE COURT: Put another one on it. Just put a
24 blank one over top of it.

25 MR. GARCIA: Judge, just to clarify, did you

1 rule on the relevancy that Luc (sic) Pierre-Charles
2 would have to testify first? I mean, I'm sorry.
3 Andre Pierre-Charles will have to testify?

4 THE COURT: I do. Someone's going to have to
5 for that purpose.

6 MR. YEAZELL: Judge, I'll need a moment then
7 before they bring in the jury to see -- I haven't
8 been out to see if Mr. Pierre-Charles --

9 THE BAILIFF: He's out there.

10 MR. YEAZELL: He's out there? Okay.

11 THE COURT: He's out there? Okay. Good. All
12 right.

13 All right. Then let's --

14 MR. GARCIA: And, Judge, if he's going to ask
15 Andre Pierre-Charles a question, then I would ask
16 that he asks: What was your phone number July 28,
17 2006? Not, was your phone number was 813 -- da,
18 da, da, da, da? Because he's giving him the answer
19 and it's leading.

20 THE COURT: That's correct.

21 MR. YEAZELL: Okay. Yeah.

22 Judge, and I've got to check and make sure
23 Schoneman is still out there too.

24 MS. LAVENDER: She was.

25 THE COURT: All right.

1 Are we ready for the jurors once you return?

2 MR. YEAZELL: I think so.

3 THE BAILIFF: They went over to get them.

4 THE COURT: Oh, okay.

5 THE BAILIFF: Your Honor, are we ready?

6 THE COURT: Yeah.

7 THE BAILIFF: All right. Come on.

8 Jurors entering the courtroom.

9 (Jury present.)

10 THE BAILIFF: Your Honor, the jurors are
11 present and seated in the courtroom.

12 THE COURT: Thank you, Mr. Dome.

13 Ladies and gentlemen, were you all able to
14 abide by my instructions during the recess?

15 THE JURY PANEL: (Responding.)

16 THE COURT: All right. Then we shall begin.

17 Mr. Yeazell, are you ready with your next
18 witness?

19 MR. YEAZELL: I am, Your Honor.

20 Judge, I would call Andre Pierre-Charles to
21 the stand.

22 THE COURT: All right.

23 THE BAILIFF: Are we swearing him again?

24 THE COURT: Yeah. Please.

25 THE BAILIFF: Sir, just pause one second here.