

G1SSL0P4 Donaldson - Cross

1 (Jury present)

2 THE COURT: Welcome back. I hope you had a pleasant  
3 lunch.

4 Yesterday I indicated that there was a possibility  
5 that we might sit tomorrow between 9:30 and one. By a show of  
6 hands, please raise your hand if you cannot sit tomorrow  
7 between 9:30 and one o'clock.

8 I see one hand.

9 What we will do is let you know by the end of the day  
10 today how we will proceed. Let's continue with the trial.

11 Go ahead, counsel.

12 CROSS-EXAMINATION

13 BY MR. HOROWITZ:

14 Q. Good afternoon, Mr. Donaldson.

15 A. Good afternoon.

16 Q. I want to ask you a few questions about BlackBerry Bold  
17 9650 with the phone number ending 8041 that you testified about  
18 this morning. All right?

19 A. All right.

20 THE COURT: Hold on. Let's just make sure you lean  
21 into the microphone and keep your voice up.

22 Can the jurors hear everything?

23 Let's continue. Go ahead.

24 MR. HOROWITZ: Thank you.

25 BY MR. HOROWITZ:

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

G1SSLOP4 Donaldson - Cross

1 Q. You said that you weren't able to obtain any data from the  
2 phone itself, right?

3 A. Correct.

4 Q. That's because the phone was password protected with a pin,  
5 right?

6 A. Correct.

7 Q. The computer software that you used to access the phone is  
8 called Cellebrite, correct?

9 A. Correct.

10 Q. Using that software, you extracted data the SIM card in the  
11 phone as well as an SD card, right?

12 A. Yes.

13 Q. An SD card is basically another way of saying external  
14 storage, right?

15 A. Yes.

16 Q. In fact, it is very easy to connect an SD card to your  
17 computer for the purpose of copying or deleting or editing  
18 photos or files that are contained on that card, right?

19 A. Correct.

20 Q. I want to ask you specifically some questions about  
21 Government Exhibit 905-C-R, which was already admitted into  
22 evidence.

23 MR. HOROWITZ: Ms. Milione, can I ask you to pull that  
24 up, please.

25 Thank you.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

G1SSLOP4

Donaldson - Cross

1 BY MR. HOROWITZ:

2 Q. Now, this was a report that was generated for you by the  
3 Cellebrite software, right?

4 A. Correct.

5 Q. The report contains detailed information about what was  
6 contained on the SD card or external storage card that was  
7 recovered from the BlackBerry ending with phone number ending  
8 8041, right?

9 A. Correct.

10 Q. You testified on your direct about two images specifically.  
11 Withdrawn.12 MR. HOROWITZ: Ms. Milione, can I ask you to pull up  
13 page seven of this report, please.

14 Thank you. If you could zoom in on the top image.

15 That's fine. Thank you.

16 BY MR. HOROWITZ:

17 Q. You testified this morning that this metadata indicates  
18 that this particular photo was taken by that BlackBerry, right?

19 A. Correct.

20 MR. HOROWITZ: Ms. Milione, is it possible to pull up  
21 page 14 of this same report.22 If you can zoom in on the second from the bottom. Not  
23 that image. Thank you.24 Q. That's the same photo contained on the SD card, but this  
25 particular photo doesn't have any metadata associated with it,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

G1SSLOP4

Donaldson - Cross

- 1 right?
- 2 A. Correct.
- 3 Q. In fact, there are a number of computer programs that make
- 4 it very easy to edit or remove metadata from an image, right?
- 5 A. Correct.
- 6 Q. The lack of metadata associated with --
- 7 MR. HOROWITZ: If we can just zoom in on the image on
- 8 the top, please. I'm sorry.
- 9 Yes, thank you, with all of the information as well.
- 10 Q. It was your testimony this morning that the lack of
- 11 metadata indicates that that forest was perhaps sent to this
- 12 telephone, right?
- 13 A. Yes. Yes.
- 14 Q. Really, there are a number of explanations for why this may
- 15 not be metadata associated with a picture, right?
- 16 A. A JPEG picture will always have metadata. It may not have
- 17 the captions, like we see. It may not have information in
- 18 there, but we always have metadata.
- 19 Q. In this context, the type of metadata that you're talking
- 20 about is called XFI data, right?
- 21 A. Yes.
- 22 Q. That data can be very easily scrubbed and removed from a
- 23 picture, right?
- 24 A. Yes.
- 25 Q. So the lack of metadata doesn't indicate in any way where

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

G1SSLOP4 Donaldson - Cross

1 that photo came from, right?

2 A. Well, there is other ways to tell. Particularly in this  
3 photo that you showed before, the previous photo, that was an  
4 exact copy of the other one, that was a JPEG image, but it was  
5 a thumbnail, which wouldn't have held the metadata. It  
6 wouldn't have the name of the photo because it is just a  
7 picture of a picture.

8 Q. Talking about this photo in particular, say for example if  
9 the SD card that this image was contained on was plugged into a  
10 computer and this image was copied to that SD card, there is no  
11 way to differentiate whether that is what happened with this  
12 photo or whether this photo was sent to the phone, right?

13 A. Well, if you copied this photo, the metadata would change.  
14 This is an image of the photo.

15 Q. But the lack of metadata indicating which camera took this  
16 picture doesn't tell you anything about its origin, right?

17 A. No, it doesn't.

18 MR. HOROWITZ: Thank you. No further questions.

19 THE COURT: Any redirect?

20 MR. HOROWITZ: Your Honor, I apologize. I have one  
21 brief question.

22 THE COURT: Go ahead.

23 BY MR. HOROWITZ:

24 Q. In connection with your investigation, you testified that  
25 there were a total of five cell phones that you examined,

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

G1SSLOP4 Donaldson - Cross

1 right?

2 A. Correct.

3 Q. One of those cell phones was a phone with phone number  
4 ending 6620, right?

5 A. I can't recall off the top of my head.

6 Q. I'll show you what is marked as 3505-6. If you would just  
7 take a look at that and see if that refreshes your  
8 recollection?

9 A. Yes.

10 Q. So you did examine a phone with phone number ending 6620?

11 A. Yes.

12 MR. HENRY: Thank you. Nothing further, your Honor.

13 THE COURT: Any redirect?

14 MR. COHEN: No redirect, your Honor.

15 THE COURT: The witness is excused.

16 (Witness excused)

17 THE COURT: Let's have the government call your next  
18 witness.

19 MR. COHEN: The government calls Johnny Martinez, your  
20 Honor.

21 JOHNNY MARTINEZ,

22 called as a witness by the Government,

23 having been duly sworn, testified as follows:

24 THE COURT: Let the ask the witness to please lean  
25 into the microphone.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

G1SSLOP2 Santos - Cross

1 Q. Mr. Santos, if I can just have you read that for the jury.

2 A. Date is Monday, December 17, 2012, 5:14 p.m. From  
3 El Doctor. Hello. Call me.

4 MR. COHEN: No further questions, your Honor.

5 THE COURT: Any cross-examination?

6 MR. HOROWITZ: Just briefly, your Honor.

7 CROSS-EXAMINATION

8 BY MR. HOROWITZ:

9 Q. Good morning, Mr. Santos.

10 A. Good morning.

11 Q. I want to start by asking you a few questions about sound  
12 forensic practice when you're conducting a cell phone  
13 examination.

14 A. Sure.

15 Q. Now, you testified on your direct that you have had about  
16 60 hours of classroom training in conducting cell phone  
17 forensics, right?

18 A. Yes, sir. That's right.

19 THE COURT: Hold on. Let me check in. can the jurors  
20 hearsay? All right. Go ahead, continue, counsel.

21 BY MR. HOROWITZ:

22 Q. In that training, you're taught that one of the first  
23 things that you do when examining a cell phone is that you  
24 should isolate it from cell tower signals and Wi-Fi signals,  
25 right?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

G1SSLOP2

Santos - Cross

1 A. That's right.

2 Q. One of the most common ways to accomplish that is to put  
3 the phone into what is called airplane mode, right?

4 A. That's right.

5 Q. What that essentially does is it disconnects the phone from  
6 any outside cell towers or Wi-Fi signals, Bluetooth  
7 connections, that kind of thing?

8 A. Right.

9 Q. The reason that you do that is because it ensures that the  
10 phone isn't going to be sending or receiving any data at the  
11 time that you're conducting the examination, right?

12 A. That's correct.

13 Q. And that the information in the phone won't be altered in  
14 any way?

15 A. That's correct.

16 Q. In fact, you have testified in the past about the  
17 importance of this practice, right?

18 A. I specifically haven't testified about that practice, but  
19 other forensic examiners have.

20 Q. When you examined the phone ending in 2656, you didn't do  
21 that, right?

22 A. I don't recall doing that.

23 MR. HOROWITZ: Ms. Milione, can I ask you to pull up  
24 Government Exhibit 901-D13, please. If you can zoom in to the  
25 top left corner of the screen.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

G1SSLOP2

Santos - Cross

1 Thank you.

2 BY MR. HOROWITZ:

3 Q. If you look in the top left corner of the screen, you can  
4 see that the phone has obtained a cell phone signal while you  
5 were conducting the examination, right?

6 A. It appears to have connected to a network.

7 Q. So you didn't follow that practice, right?

8 A. Possibly not for this phone.

9 MR. HOROWITZ: Okay. You can zoom out, please.

10 Thank you.

11 Q. I just want to ask you a few questions about the time  
12 stamps that you testified about on direct. You said that if  
13 you look in the top left-hand corner, that time corresponds to  
14 the time that the message was received by that phone, right?

15 A. I'm sorry, which time are you referring to?

16 Q. Where it says Sunday, December 16, 2012?

17 A. Yes.

18 Q. Those time stamps on the text messages that you testified  
19 about, they are obtained from the phone's internal clock,  
20 right?

21 A. That's correct.

22 Q. The time that the phone is set to can be altered in the  
23 phone's settings, right?

24 A. It depends on the device. Usually the time is retrieved  
25 from whatever network it is connected to.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

G1SSLOP2 Santos - Redirect

1 Q. But for this specific phone, you don't know whether that is  
2 the case, right?

3 A. Not off the top of my memory.

4 Q. It is possible then that the dates and times that are  
5 reflected here do not accurately represent the time that those  
6 messages were sent or received by the phone, right?

7 A. It is possible.

8 MR. HOROWITZ: Thank you. Nothing further, your  
9 Honor.

10 THE COURT: Any redirect?

11 MR. COHEN: Very brief, your Honor.

12 REDIRECT EXAMINATION

13 BY MR. COHEN:

14 Q. Mr. Santos, are all the text messages there in front of you  
15 with the date and time before you analyzed the cell phone?

16 A. Yes, they were.

17 Q. Are they back in 2012, in fact?

18 A. I'm sorry, can you repeat the question?

19 Q. They are from 2012, the year 2012, is that correct?

20 A. Yes.

21 Q. When did you analyze this cell phone?

22 A. In 2015.

23 MR. COHEN: No further questions, your Honor.

24 THE COURT: Thank you. The witness is excused.

25 (Witness excused)

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300