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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,
Plaintiff(s),
vs.
Fort Lauderdale, Florida
January 23, 2014

ROGERIO CHAVES SCOTTON,
Defendant(s).

JURY TRIAL
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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FOR THE DEFENDANT(S): Rogerio Scotton, Pro Se

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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ROBERT MIDYETT

BY MS. MITRANI	11			
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1 Thereupon,
2 the following proceedings began at 9:00 a.m.:

3 THE COURT: This is case No. 12-60049. United States
4 versus Rogerio Chaves Scotton. Would the parties please state
5 their appearances for the record.

6 MS. MITRANI: Good morning, Your Honor. Bertha
7 Mitrani on behalf of the United States. With me at counsel
8 tables is Special Agent Roy Van Brunt and Nathan Frank, who's
9 an analyst with the FBI.

10 THE COURT: Good morning. Thank you.

11 MR. SCOTTON: Good morning, Your Honor. Roggerio
12 Scotton, defendant.

13 THE COURT: Good morning. Thank you. And for
14 purposes of the record, Mr. Kreiss, would you note your
15 presence.

16 MR. KREISS: Good morning, Your Honor. Jason Kreiss
17 standby counsel for Rogerio Scotton.

18 THE COURT: And I see that you are handing Mr. Scotton
19 some supplies. Would you just put on the record what you have
20 given to Mr. Scotton, please.

21 MR. KREISS: Yes, Your Honor. I went shopping last
22 night and purchased for Mr. Scotton a supply of highlighters,
23 pens, and legal pads.

24 THE COURT: Thank you.

25 MR. KREISS: I think the marshals will dole out one

1 pen at a time per protocol. But we have a full supply of pads,
2 pens, and highlighters.

3 THE COURT: Thank you very much. And before we get
4 started, I do want to say that before the -- once we are going
5 to bring in the jury, I am going to ask Mr. Kreiss, if you
6 would, Mr. Kreiss, and I'm sorry to ask you to do this, if you
7 would please take a seat in the back because we cannot have the
8 hybrid representation that we talked about. And I think it
9 will be confusing to the jurors as well when I tell them that
10 Mr. Scotton is representing himself to see Mr. Kreiss sitting
11 there. So, Mr. Kreiss, before we bring in the jury, we will
12 have you sit in the back.

13 MR. KREISS: Will do, Your Honor.

14 THE COURT: All right. And then if need be, of
15 course, during the course of trial, if you need to step in for
16 some reason, then we can address it at that time.

17 MR. KREISS: Sure. And Mr. Scotton will make the
18 request if need be.

19 THE COURT: All right. Very good.

20 MS. MITRANI: Your Honor, I wanted to bring up, I
21 guess, two matters before the Court. One, Your Honor
22 indicated, I believe it was yesterday that you were going to
23 advise the jury that it's a four- to eight-week trial.

24 THE COURT: Six to eight weeks.

25 MS. MITRANI: I'm sorry, six- to eight-week trial. I

1 would request the Court maybe consider saying four to six
2 weeks, and this is my thinking. I think by all rights, the
3 government's case is maybe two weeks, maybe more. So it would
4 be a two- to three-week trial. So given the circumstances,
5 understanding that there's going to be a defense case, I
6 believe doubling that to four to six might be better and
7 eliminate fewer conflicts.

8 The Court could also advise the jury that, you know,
9 maybe it will be less, maybe it will be more. That was just my
10 thought. I think an eight-week trial, the term eight week is
11 going to scare a lot of people away.

12 THE COURT: I think you are right about that, but I
13 also think it's important that the jurors know at the front end
14 what this might entail because I think it will be far worse if
15 we get six weeks into it and then we find out that the jurors
16 have a problem, you know, that a substantial number of jurors
17 have a problem and we have to start all over again.

18 So I appreciate what you are saying, but I would
19 rather know if there he is going to be a conflict on the front
20 end. We can always bring more jurors if we do that. I would
21 rather spend an extra day or two if we have to picking a jury
22 than have to go through the trial more than once.

23 MS. MITRANI: I understand, Your Honor. I understand.
24 Obviously it's everybody's hope that we are able to seat a jury
25 as soon as possible.

1 The other matter is, and I think the Court and I had
2 also forgotten, but last week you asked me about whether the
3 government was going to bring up anything pertaining to the
4 defendant's arrests and I had not looked at that issue for a
5 while. So I can advise the Court that that won't be coming up
6 either in the government's case in chief or in any
7 cross-examination.

8 THE COURT: All right. Thank you.

9 Mr. Scotton, did you hear that?

10 MR. SCOTTON: Ma'am, I'm sorry.

11 THE COURT: Mr. Scotton, you need to pay attention to
12 the proceedings. If you don't pay attention to the
13 proceedings, you aren't going to know what's going on. Last
14 week you had asked about whether the government would be
15 bringing up any prior legal problems that you had. The
16 government just advised that they do not intend to bring it up
17 in their case in chief or in cross-examination.

18 MR. SCOTTON: Okay, Your Honor.

19 THE COURT: All right. There's one other thing I
20 wanted to discuss with you all. It is my practice at the
21 beginning of a trial to give a very brief statement to the jury
22 about what the case is about, the reason being that I have
23 learned that sometimes we will have jurors who find themselves
24 unqualified to sit because of the nature of the case. And if I
25 don't tell them what the nature of the case is before we select

1 the jury, we could wind up impaneling someone who has some kind
2 of a conflict. So it's my practice always to give a very brief
3 description of the case. My usual practice is to have the
4 parties agree on it, but in this case, I think it's appropriate
5 for me just to go ahead and say it.

6 I have put a copy of it on each of your desks, so you
7 can take a look at it and see whether anyone has any
8 objections. Generally what I do is I say a general overview of
9 the allegations that the government has made against the
10 defendant and then I say that the defendant denies that he did
11 these things.

12 So as you can see, in this particular statement, it
13 says, this is a criminal case in which Mr. Scotton is charged
14 with defrauding Federal Express, DHL Express, and UPS by using
15 false information to open shipping accounts with these
16 companies under names and addresses other than his own and then
17 using these accounts to ship packages without paying Federal
18 Express, DHL, and UPS for their shipping services. Mr. Scotton
19 denies that he did any of these things and that he defrauded
20 anyone.

21 In addition, Mr. Scotton is charged with making
22 materially false statements on his I485 application and to an
23 officer of the United States Citizenship and Immigration
24 Services relating to immigration matters. Mr. Scotton denies
25 that he made any false statements on his I485 application and

1 to any officer of the United States Citizenship and Immigration
2 Services.

3 Is that acceptable to everybody if I read that
4 statement, or is there anything you would like me to consider?

5 MS. MITRANI: No objection from the government.

6 THE COURT: Mr. Scotton?

7 MR. SCOTTON: No, Your Honor, no objection.

8 THE COURT: Okay. Very good then. Thank you.

9 MS. MITRANI: Your Honor, I will also put on the
10 record that I have provided Mr. Scotton with a copy of the
11 government's witness list, a copy of the government's exhibit
12 list, and a revised copy of Government's Exhibit 14K.

13 THE COURT: All right. And, Mr. Scotton, I will just
14 remind you that you need to provide the government with any
15 evidence that you intend to use during this trial by tomorrow.
16 If you fail to do that, then you are unlikely to be permitted
17 to use that evidence during trial. So I just want to remind
18 you of that obligation that we have previously discussed.

19 Is there anything else we need to address before we
20 bring back in the jury?

21 MS. MITRANI: Nothing from the government, Your Honor.

22 MR. SCOTTON: Your Honor, I have a CD here that has
23 prepared for the government. It's part of what I am going to
24 bring in. I'm still recovering some stuff. By tomorrow
25 probably be able to have the other part of the evidence.

1 THE COURT: Thank you. Was it one or two CDs that are
2 being given, Mr. Kreiss?

3 MR. KREISS: One single CD.

4 THE COURT: One CD is being provided to the government
5 at this time, and Mr. Scotton reports he will provide the rest
6 of the materials by tomorrow.

7 Is there anything else we need to address before we
8 bring in the jury?

9 MS. MITRANI: Nothing from the government, Your Honor.

10 MR. SCOTTON: No, Your Honor.

11 THE COURT: All right. Then just a reminder about how
12 we will be proceeding. We will fill up the seats in the jury
13 box and then in the gallery. Each person will go through the
14 14 questions on the questionnaire that I think you have all
15 been provided a copy of. Then I will ask the voir dire
16 questions that the parties have asked me to ask.

17 After that -- and there will likely be a break at
18 least during part of this. And after we do all of that, then
19 we will excuse the jury and we will dismiss any jurors that we
20 need to dismiss for cause, and then I will entertain peremptory
21 challenges. And I hope to impanel the jury today and get to
22 opening statements.

23 All righty. It takes a few minutes to bring the
24 jurors up since they are on the second floor and I think there
25 may be only one functioning elevator at the moment. But when

1 they get here, we will need to rise but not yet.

2 Let me ask the marshals, does Mr. Scotton have leg
3 irons on, by chance?

4 THE MARSHALL: No, Your Honor.

5 THE COURT: Thank you.

6 THE MARSHALL: We are working on seating arrangements.
7 The investigator is here. She probably doesn't need to be up
8 here.

9 THE COURT: Right.

10 THE MARSHALL: I asked Jermaine to ask the jurors to
11 slide in when they come up.

12 THE COURT: All right.

13 (Thereupon, a jury was selected.)

14 (Thereupon, opening statements were heard.)

15 All right. We are going to turn to the government to
16 present its first witness.

17 MS. MITRANI: Your Honor, the government calls Larry
18 Midyett.

19 THE COURTROOM DEPUTY: Please raise your right hand.

20 ROBERT MIDYETT

21 Having been first duly sworn on oath, was examined and
22 testified as follows:

23 THE COURTROOM DEPUTY: Please be seated and state and
24 spell your first and last name for the record.

25 THE WITNESS: My name is Robert Midyett, R-O-B-E-R-T

1 M-I-D-Y-E-T-T.

2 DIRECT EXAMINATION

3 BY MS. MITRANI:

4 Q Do you also go by Larry?

5 A I do go by Larry, Robert Larry.

6 Q Is that your middle name?

7 A Yes, Larry is my middle name.

8 Q Good afternoon, Mr. Midyett. And I apologize for not
9 getting your name correct.

10 A That's okay.

11 Q Where do you reside?

12 A In Memphis, Tennessee.

13 Q By whom are you employed?

14 A Federal Express.

15 Q How long have you been with Federal Express?

16 A Over 32 years. It will be 33 years in March.

17 Q That's a long time.

18 A Yes.

19 Q I don't want to know everything you have done for the last
20 32 years, but why don't you tell the members of the jury what
21 your present position is and maybe just go back a little bit
22 temporarily.

23 A Sure. Okay. Currently the manager of customer service
24 quality assurance with Fed-Ex Tech Connect. Fed-Ex Tech
25 Connect is one of the operating companies underneath the Fed-Ex

1 parent company. And the customer service arm of Fed-Ex is in
2 the Tech Connect operating company. I have been in the
3 customer service area for about 14 years.

4 The last 11 years I have been in the quality assurance
5 area, and I manage the customer service engineering department.
6 For the first three years, I was in customer service. Before
7 that I worked in the hub engineering department at several
8 other areas of Fed-Ex.

9 Q Can you briefly then describe for the jury what is
10 customer service as it relates to Fed-Ex?

11 A Well, we have typical call center operations just like any
12 large corporation does to provide customer service. We have
13 call centers in different parts around the United States. The
14 department that I am in supports the U.S. call center
15 operations. So up until recently, we had 16 call center
16 locations around the United States, and then we had a few
17 outsource vendor call center locations as well. So we, my
18 department, specifically does the quality assurance part of the
19 call center operations support.

20 Q What do you mean by quality assurance, sir?

21 A We are responsible for all of the call quality programs
22 that we work with our reps to make sure they are providing
23 good, you know, customer service to the customers. We are a
24 little bit different than typical quality assurance department
25 in a large corporation.

1 In most of those companies, their model is to have a
2 quality assurance service department that actually does the
3 call quality monitoring of the calls. You know how when you
4 call somewhere and they say your calls may be recorded for
5 quality purposes, they have a group that actually monitors
6 those calls randomly and provides feedback to the reps or to
7 the reps' managers or supervisors so they can coach them. And
8 we did that at one time.

9 But in our model, since about 2006 or 20 -- sorry, about
10 2003 or 2004, we actually do all the program management for the
11 quality programs. But our call center managers themselves
12 actually do the monitoring and do their own coaching and
13 feedback so we prescribe, here's how your are going to monitor
14 them, here's how many monitors you are going to do, here are
15 the guidelines you are going to use for how you monitor them,
16 and that type of thing.

17 Q So I take it there's a number. Maybe it's 1-800
18 go-Fed-Ex --

19 A It is 1-800 go Fed-Ex.

20 Q I took a chance. -- that people can call for all sorts of
21 issues, correct?

22 A Yes. Any time you've got a Fed-Ex question with an
23 existing package that's in the system or you want to schedule a
24 pickup or order supplies, anything of that nature, get a rate,
25 quote, you call 1-800 go Fed-Ex, the calls go into the

1 interactive voice recognition system first, the IVR, and there
2 are lots of self-service things customers can do while they are
3 in the IVR. If they decide to opt out of the IVR and speak
4 with a representative, they opt out and talk to a rep. Once
5 they opt out of the IVR, that's where we take over as far as
6 the quality assurance goes.

7 Q Because you are talking to a human being now?

8 A I'm sorry.

9 Q Because you are talking to a human being now?

10 A Exactly.

11 Q Federal Express records these phone calls to Fed-Ex?

12 A Yes, we do. Like I said, starting in about 2004, we began
13 recording all inbound and most outbound call interactions with
14 customers. For all of our call center locations, we were
15 recording those. On the application that we purchased for our
16 outsource vendors, they record on whatever application,
17 recording application, they had. And so we have access to the
18 calls that we recorded. And if we needed to hear a call
19 recording that a vendor rep took, we would retrieve that call
20 from the vendor.

21 Q Let's focus your attention on the calls that are not
22 outsourced to vendors but that Federal Express records. Could
23 you describe a little bit to the jury a little bit of the
24 hardware and software that you have that effectuates the
25 calling, excuse me, the recording of customer service calls?

1 A Sure. In 2004 we purchased the NICE call recording
2 application. Nice is the name of the vendor. It's also how
3 the application is referred to.

4 And we did call recording on NICE from 2004 through 2010
5 for all of our inbound call center operations. 2010 we began
6 switching over to a different application called Calabrio, but
7 we still use the NICE application for our trace organization
8 and our revenue operations organization in Memphis.

9 For the NICE call recording application, you actually have
10 two servers at each call center location. And at that time, we
11 had 16 around the U.S. So you have a logger server and an
12 application server at each location.

13 Q I'm sorry, at that time are you focusing your testimony
14 now to the time period 2008, 2009?

15 A Yes, with the NICE application. So when we -- in that
16 timeframe then in 2008, we had two servers at each location.
17 The logger server, this was for NICE Nine Dado One was the
18 version we had. The logger server is just the server that
19 maintains all the log information at will of the call. So a
20 call came in at this time, a call ended at this time, this is
21 the number that the call came from. It's what's referred to as
22 the CTI data related to the call.

23 Q If I could stop you, for simplicity, you logged in the
24 information about the call in one application. I think it's
25 called metadata?

1 A Yes.

2 Q Everything about the actual call on one application, is
3 that right?

4 A That's correct, on that logger server.

5 Q With the date, the time, and the other information you
6 testified to?

7 A Right.

8 Q And then you had another server?

9 A Yes.

10 Q What does this other server do?

11 A Right on the application server, that's where the actual
12 recording itself resides. And they -- the servers are both in
13 a secure telecommunications room, you know, in the call center
14 location. Those are key coded or locked doors that only the
15 senior administering or the tech support person at that
16 location has access to.

17 The NICE application resides on the rep desktop so the
18 call recordings can begin and end at the appropriate times, but
19 the reps have no control. In fact, it's completely invisible
20 to the rep that this is occurring. And in our application, the
21 rep didn't start or stop a recording at all. It's automatic.

22 Q It's automatic that these calls get --

23 A Yeah. Once a call arrival comes in -- because the reps
24 are actually answering calls from their computer from their
25 desktop. So it's like the phone is on the computer. So as the

1 call comes in, a call comes, in a call recording begins, and
2 when the call is disconnected, the call recording ends. So
3 there is no manipulation by the call rep at all.

4 Q Is it the regular business practice of Fed-Ex to record
5 all these customers service calls, inbound calls? And I know
6 you said also outbound. I'm focusing on inbound.

7 A Yes.

8 Q Is it something you do on a regular and routine basis?

9 A It is. We have about 2,000 call center reps in the U.S.
10 not counting outsource vendors. There's another 2,000, 2,200
11 of those. For all of ours that we are recording, we have about
12 2,000 of them, they are taken anywhere from 100 to 120 calls a
13 day. So we are recording somewhere around 220 calls a day
14 between Fed-Ex and our outsource vendors.

15 Q Are these calls recorded realtime? When the call comes
16 in, does the program automatically click on and then the
17 recording is made?

18 A Yes, the recordings are realtime. And back in 2008 with
19 the NICE application, again, every call center had their own
20 server. They were HP servers. And they had a certain
21 capacity. And we generally had enough capacity depending on
22 the center and how many calls that center actually took to
23 store about 30 to 45 days worth of calls. So it's kind of a
24 first on first off process. So as the server got full, as
25 another call came in, the oldest call rolled off. So we

1 don't -- we do record every call as it comes in, but we don't
2 store them indefinitely.

3 Q You would have trillions of calls, it sounds like, if you
4 did that?

5 A Yes. It would not be manageable.

6 Q All right. And when these -- so then these calls are
7 stored on the servers, correct?

8 A Yes, on the application server.

9 Q And, sir, is there an ability for Fed-Ex, somebody in
10 customer service or somebody in the fraud department to
11 retrieve a phone call?

12 A Yes. Actually, the only people who have access to
13 playback or retrieve a call are the call center managers or
14 someone in the quality assurance department or someone in the
15 fraud and security departments. The managers have access
16 because they -- like I described before, in our model, they are
17 our call quality monitoring resource as well so they have to
18 have access to their reps' recorded calls so they can play them
19 back and review them and score them and provide that coaching
20 and so forth to the rep.

21 We have access more from a program management standpoint
22 so whenever that manager -- we provide the user support, if you
23 will, and the managers are the user in this model. So we have
24 to be able to access whatever they are accessing so we can help
25 them and support them. And then fraud and security have access

1 because they were typically contacting us to ask us, can you
2 tell us have we gotten a call from this account or from this
3 phone number or for a given tracking number. And we gave them
4 access so they could do that research themselves rather than
5 having to get it through us.

6 Q And then they could access that call -- strike that.

7 They could then research that call based on different
8 information, I think you said either the invoice or tracking
9 number or name?

10 A Right.

11 Q I take it there are different ways to search for a call?

12 A Right. Again, back Mr. 2008, we had the different servers
13 on each location and we had call centers in Cincinnati and
14 Houston and Dallas and Memphis and Somerset and all around. So
15 if you knew which rep actually took the call, call center
16 representative, then you could go into the server for that
17 location and then locate the call by the date and time and
18 which rep took the call. If you didn't know all that
19 information to be able to find it in the NICE application, then
20 we could go into our desktop application that the reps use that
21 we call one source, it's a clarify application, Windows
22 application, and we could research to see have we gotten any
23 phone calls about a given tracking number or from a given phone
24 number or from a given customer account number.

25 And if we did, then from that data and one source, we

1 could determine who was the rep that actually took that call
2 and look them up and see what call center they are in. And
3 then sign into that server and locate the call for that rep by
4 the date and time as well.

5 Q Are any changes made to the phone calls? Are these phones
6 call altered or modified in any way, the content of the phone
7 call?

8 A No, they are not. All the NICE application provides is
9 just playback capability. So you locate the call, click on the
10 button to do the playback. We do also for about 25 to
11 30 percent of the calls, in addition to recording the audio
12 portion, we record what we call screen shots. So as you are
13 monitoring or reviewing the call, you can actually see what the
14 rep was doing on their screen as you are listening to the
15 audio. About 25 to 30 percent, we have those. There again,
16 you are pushing the button to play and listening to and
17 monitoring.

18 Q And they don't get changed or altered in any way?

19 A No, they do not. I don't know of any capability to do
20 that. There's no functionality to do that.

21 MS. MITRANI: Your Honor, may I approach the witness?

22 THE COURT: You may.

23 MS. MITRANI: Your Honor, may I approach?

24 THE COURT: You may.

25

1 BY MS. MITRANI:

2 Q I am showing you -- let me get the microphone.

3 I'm showing you what's been marked for identification as
4 Government's Exhibit 14A and 14E. What are they?

5 A These are CDs or diskettes. They indicate they have
6 Fed-Ex call recordings on them, and I have reviewed these call
7 recordings that are on these CDs.

8 Q All right. So there are two discs with recordings which
9 you have listened to in their entirety?

10 A Yes.

11 Q And you have initialed them?

12 A Yes, I did.

13 Q In red?

14 A Actually, I did in black.

15 Q In black, I apologize. These are customer service phone
16 calls?

17 A Yeah. Actually, the nature of these calls are new account
18 setup calls. So, you know, like I said before, you can call
19 Fed-Ex customer service for a number of different reasons, one
20 of which would be to set up an account with Fed-Ex. And you
21 know, we actually encourage customers to do that. And you can
22 get shipping discounts and so forth if you have an account with
23 Fed-Ex. So these calls are all new account setup type calls.

24 Q And these are genuine, authentic recordings of Fed-Ex that
25 have not been changed, modified, or altered in any way?

1 A No, they have not. All these customer service
2 representatives were Fed-Ex employees at the time when they
3 handled these calls. Some still are. And these calls very
4 clearly follow the phraseology and the call flow and so forth
5 for a standard new account setup call.

6 Q So when you were listening to them, it didn't surprise you
7 to hear some of the stuff that the Fed-Ex call rep was saying
8 because it's like their certain standard language they are
9 instructed or encouraged to use?

10 A Yes. When I managed the customer service engineering
11 department, we were responsible for the phraseology that the
12 reps use on the calls. So I'm very familiar with the
13 development of standard phraseology for reps. When I took over
14 the quality assurance department, one of the first projects I
15 had when we resumed new account setup calls within our own call
16 center operations, prior to that new account setup was more of
17 a sales function. So sales had a outsourced vendor that took
18 all the new account setup call. If you came through the IVR
19 and you indicated you wanted to set up an account, the call got
20 routed to an outsourced vendor who was a salesman that did
21 that.

22 So I actually led the project, though, when I was in
23 quality assurance to resume taking the new account setup calls
24 in a Fed-Ex call center, so I actually developed the
25 phraseology and so forth that the reps use. And that was in

1 early 2008 when we -- I think it was in February 2008 when we
2 started taking those calls ourselves again.

3 Q And so we are clear, one of the discs contains two
4 recordings, correct?

5 A That's correct.

6 Q And the other disc contains three recordings.

7 A Yes.

8 Q And the one, the disc that contains three recordings, of
9 these three recordings, was there a malfunction in one in the
10 sense that you only heard one part of the conversation, the
11 caller, but not the Fed-Ex customer service rep?

12 A That's correct. For some reason, the reps' voice was not
13 recorded properly.

14 Q But has that -- was that what was able to be retrieved?
15 That was the way, the form, in which it was retrieved?

16 A That's all that was stored and saved on the NICE
17 application.

18 Q So nobody came and tried to erase that information?

19 A No. And those things happen from time to time even with
20 the Calabrio application that we have now. We have that
21 problem from time to time where we only get half of the
22 recording, if you will, or one voice.

23 Q But the other four recordings, you have the Fed-Ex
24 customer rep and individual on the line?

25 A That's correct.

1 MS. MITRANI: Your Honor, may I have a moment?

2 THE COURT: You may.

3 MS. MITRANI: I am going to get the exhibits, Your
4 Honor.

5 THE COURT: All right.

6 MS. MITRANI: I'm almost done. If I could just have a
7 minute, Your Honor.

8 THE COURT: Of course.

9 MS. MITRANI: Your Honor, the government would offer
10 14A and 14E into evidence.

11 THE COURT: Any objection?

12 MR. SCOTTON: Yes, Your Honor, I am going to object.
13 This call, I have not heard this call, just one person speaking
14 out of the call. It's not a customer service on the back end.

15 THE COURT: Why don't you guys come up sidebar,
16 please.

17 (Thereupon, the following was heard sidebar.)

18 THE COURT: Have the calls previously been provided to
19 Mr. Scotton?

20 MS. MITRANI: Yes, Your Honor.

21 MR. SCOTTON: I saw two the call, and the call has two
22 people talking, not just one people talking.

23 MS. MITRANI: Your Honor, the call that's only half,
24 we are happy not to play it, but it is on the disc and that's
25 how we got it. And since there have been many issues of

1 altering documents, that's how we received it. If it
2 alleviates Mr. Scotton's concerns, the one that is half a call,
3 we won't publish, and the other four calls which have been
4 produced years ago --

5 MR. SCOTTON: Your Honor, the prosecutor has object
6 everything that I say today that I have not bring my evidence
7 to her.

8 THE COURT: Okay.

9 MR. SCOTTON: So it is the same here.

10 THE COURT: Mr. Scotton, let me stop you for just a
11 moment. The government is saying it's only seeking to
12 introduce the four calls which it says that you have already
13 heard. Are you saying that you didn't hear the four calls?

14 MR. SCOTTON: No. The calls I see, I see customer
15 service talk to someone. I never heard any calls that someone
16 talk to a --

17 THE COURT: There are five calls. One of them is one
18 where the customer service rep is missing. Ms. Mitrani has
19 said that she's not going to seek to offer that one. She's
20 only going to seek to offer the four that are both the customer
21 representative and the other voice. I guess the customer is
22 talking. Do you have any objection to those four coming in?

23 MR. SCOTTON: What are those companies? Because I
24 heard two calls, and it was two, two from Fed-Ex and two from
25 DHL.

1 THE COURT: The first question is, are you saying that
2 you did not receive a copy of those calls?

3 MR. SCOTTON: Your Honor, I got calls --

4 THE COURT: Can you answer my question.

5 MR. SCOTTON: No, I don't.

6 THE COURT: You did not receive a copy?

7 MR. SCOTTON: No.

8 THE COURT: Ms. Mitrani?

9 MS. MITRANI: Your Honor, I mean, I have all my
10 discovery letters. This was produced. This was produced early
11 on and often. It was produced to his attorneys. It was
12 brought into the courtroom in August. I don't have the exact
13 date.

14 THE COURT: Objection overruled.

15 (Thereupon, the following was heard in open court.)

16 THE COURT: All right. Government's 14A and 14E are
17 admitted.

18 (Thereupon, Government's 14A and 14E received in
19 evidence.)

20 MS. MITRANI: The government has no further questions
21 Your Honor. Thank you so much.

22 THE COURT: All right. Cross-examination,
23 Mr. Scotton.

24 CROSS EXAMINATION

25

1 BY MR. SCOTTON:

2 Q It is Mr. Larry, right?

3 A Larry, yes.

4 Q Mr. Larry. I understand that you say that you are the one
5 who collect those calls?

6 A I don't collect those calls.

7 Q As, I guess, either the government or the fraud department
8 has requiring you for such a calls?

9 A Right. No, I didn't retrieve the calls myself, no.

10 Q You didn't retrieve because you -- I just got the
11 impression you say you retrieve those calls?

12 A I did not personally retrieve those calls.

13 Q And say you even signed the CDs?

14 A I listened to them.

15 Q You listened to them?

16 A Right.

17 Q Who is the tech who has collected those calls?

18 A They were collected by the fraud department.

19 Q The fraud department?

20 A At Fed-Ex.

21 Q And they give to you?

22 A Sorry?

23 Q And they handed those calls to you to listen to those
24 calls?

25 A No. I reviewed the calls with the U.S. Attorney's Office.

1 Q Okay. Do you guys have the timestamps on those calls? Is
2 any sort of time stamp?

3 A Yes.

4 Q They can say it goes to the service and you receive a time
5 stamp from one call ID connect to the other?

6 A Yes. On the logger server, there is a date and timestamp
7 for every call.

8 Q You are able to provide to the jury today some evidence
9 what time the call came in and what time the call was end and
10 which call ID would show? I mean, the Fed-Ex has the
11 capability to prove from where this call is coming from and who
12 accept and how long the call was?

13 A The only thing we could prove is the phone number that the
14 calls came from which we could retrieve from the server.

15 Q And the government's going to present this to the jury?

16 MS. MITRANI: Your Honor, objection.

17 THE COURT: Sustained. Mr. Scotton, at this time you
18 can ask Mr. Midyett the questions you need to ask him.

19 BY MR. SCOTTON:

20 Q Do you have this information with you today?

21 A No, I do not.

22 Q You don't. Does anybody else in your company have that
23 information at this point?

24 A I don't know if the fraud department would have that
25 information. It's not anything that can still be retrieved

1 from that server.

2 Q No? Okay. You mentioned that the server most of the time
3 has capacity for 30 days, right?

4 A 30 to 45 days.

5 Q And the server get a recycle and everything will get
6 shipped to another different server or get just deleted and
7 recycled?

8 A Yeah, the calls just begin to drop off basically.

9 Q Base on the 30 days a year, do you have a day and time
10 when those calls have been collected by the fraud department
11 out of the database?

12 A I don't know what date and time they collected the calls,
13 no.

14 Q So they collect the calls and Fed-Ex cannot verify exactly
15 when those calls has been collect?

16 A I can't say Fed-Ex can't verify. I'm saying I don't know
17 when the fraud department pulled those calls. They may be able
18 to verify that.

19 Q When the fraud department has been contact by the
20 government or somebody else, anything referring to fraud, it is
21 the fraud department itself that collect those evidence or it
22 is specific tech that goes and retrieve all those phone calls?

23 A I think typically the reason why a company like Fed-Ex has
24 a fraud department is because they are doing their own fraud
25 investigation. So they begin to retrieve calls or pull calls

1 and review recordings for their own investigation.

2 Q So Federal Express has their own fraud department?

3 A Yes.

4 Q It's a worldwide company; they have a huge fraud
5 department?

6 A I'm not sure exactly how big it, but Fed Ex does have
7 their own fraud department.

8 Q Each counter has own fraud department, or they are all
9 linked to each other?

10 A I believe they are linked to each other. I'm not aware of
11 separate fraud departments within the different companies.

12 Q Do we have the rep of the person who has collected
13 evidence out of the database, out of the server?

14 MS. MITRANI: Objection, Your Honor.

15 THE COURT: Just one second.

16 I'm sorry, I didn't understand the question. Can you
17 ask it one more time, please.

18 MR. SCOTTON: Yes, Your Honor. With pleasure.

19 BY MR. SCOTTON:

20 Q Right. To understand who was, you mention the fraud
21 department involved on those phone calls. But who exactly went
22 to server and took those calls out of the server?

23 A A member of the fraud department retrieved those calls.

24 Q So was any kind of technician that operated the system as
25 you mentioned?

1 A No.

2 Q So they have access, they have the training and capability
3 of to collect those calls?

4 A Yes.

5 Q When those calls has been transed to a CD, as you know,
6 when you passing copy or pass and paste something, the quality
7 seems to be changed. How do you guys transfer those calls?

8 A The calls can be downloaded or copied from the recording
9 application as a wav file onto the CD.

10 Q Of course, right there by change to MP3 format, automatic
11 you change a little the quality of the call?

12 A There can sometimes be a degradation of the quality of the
13 call.

14 Q Yes or no, sir, I mean pretty much change the call.
15 That's the law of Microsoft.

16 MS. MITRANI: Objection.

17 BY MR. SCOTTON:

18 Q When you translate a voice from a server and you try to
19 format on a capacity of a CD, you have to format the CD, right?
20 The call automatically is going to stretch is going to squeeze
21 the voice call and the quality is going to be changed?

22 A Again, sometimes there can be a degradation in the sound
23 quality on the call, but it does not necessarily alter the call
24 or the voices on the call themselves.

25 Q When the fraud department has to collect those evidence

1 for whatever might be the reason, what is the time frame for
2 them to do that?

3 A They can do that in any time frame they would want they
4 just have to work within the time frame of when the calls would
5 be available on server.

6 Q Let me rephrase the question. The process for the fraud
7 department, that is just snap fingers and go to the computer,
8 search for the call, and download the call? This can take
9 what, a day, two day to find out of thousand, millions of calls
10 you guys receive? I mean, what is exactly the time frame for
11 them to find such a call on a server?

12 A Actually, it would not take very long to locate a call on
13 the server if you have got enough information to locate the
14 call. Again, all the calls are stored on a server for a
15 particular call center location. At least that's how they were
16 stored in 2008. So if you know which representative actually
17 took the call and the date and time of the call, it would only
18 take a matter of two or three minutes to locate the call on
19 that server.

20 Q Who is the rep that took the call?

21 A The desktop application that the reps use also keeps a log
22 of the activity itself. So if we have any information on a
23 tracking number and account number or telephone number that a
24 call came in from, we can find that interaction in the database
25 for the desktop application, and then we can then go to the

1 logger server and the application server for the call reporting
2 it and locate the call recording.

3 Q Okay. Mr. Jeff -- it is Jeff, Mr. Jeff, right?

4 A No, my name is Larry.

5 Q Larry, I'm sorry. Larry is your first name or last name?

6 A My middle name is Larry.

7 Q Okay. That will be okay to call you Larry?

8 A Sure.

9 Q Sure. Okay. So fraud department claim that it was a
10 fraud in such account, right? And now they are going to go
11 ahead and try to do the investigation?

12 A Right.

13 Q I presume here, let's say thousands and thousands of
14 packages have been shipped out of the account over a period of
15 time. 30, 60 days, 90 days, until they realize someone used
16 this account is not authorized, right?

17 A Uh-huh.

18 Q How can he go to the server and retrieve exact this same
19 call when the server only capacity is to hold for 30 days? I
20 mean, I'm trying to -- and correct me if I'm wrong here -- to
21 calculate here the time frame of someone trying to defraud your
22 company, use an account. If I'm ship packages to Brazil, I
23 know the package is going to take 15 to 20 days, the package
24 goes to delivery, it goes to another, let's say goes to 20
25 packages, by the time fraud department realized someone didn't

1 pay this bill here, already more than 30 days went by?

2 A Could be.

3 Q And you just mentioned that 30 days only for the servers
4 to hold this call. I'm trying to understand here how the
5 software operate now. Because you are just saying for the
6 record that 30 days only for the server and then get a recycle?

7 MS. MITRANI: Your Honor, objection. I don't even --
8 I mean, I don't like interrupting, but there's about 15
9 questions or statements.

10 THE COURT: Mr. Scotton, let's just keep it to one
11 question at a time. You can ask all of those questions, but
12 let's give Mr. Midyett an opportunity to answer each one before
13 you go to the next one. All right?

14 MS. MITRANI: I would object to the beyond the scope.
15 Mr. Midyett is a records custodian for the recordings as well,
16 not as to the fraud investigation.

17 THE COURT: Well, let me hear the individual
18 questions, and if you have objections, you can make them at
19 that time.

20 MS. MITRANI: Thank you, Your Honor.

21 MR. SCOTTON: Let's move on, Your Honor. May I
22 continue, Your Honor?

23 THE COURT: Yes.

24 BY MR. SCOTTON:

25 Q You didn't retrieve those call, fraud department retrieved

1 the call. Is there any reason why they brought those calls
2 back to you?

3 A I'm sorry?

4 Q Is there any reason why they brought those calls for you
5 to listen?

6 A The U.S. Attorney's Office asked me to listen to those
7 calls. The fraud department did not bring them to me to listen
8 to.

9 Q It was the government that wanted you to listen to these
10 calls?

11 A Yes.

12 Q Any recollection why they wanted you to listen to these
13 calls?

14 A I assume because they are related to this case.

15 Q Okay. You mentioned the application started with Fed-Ex
16 in 2004, is that correct?

17 A Yes.

18 Q But you mentioned some kind of changes in 2008?

19 A No. 2010 we began to switch over to a different call
20 recording application for our inbound call center operations.

21 Q All right. You mentioned some change in 2008. That's
22 what I'm trying to understand. What kind of change was 2008?
23 Because you mentioned 2004, but you mentioned 2008?

24 A I didn't mention any change in 2008. If I did, I
25 misspoke. There was no change in 2008.

1 Q So whatever is in the record that shows 2008, it was 2004
2 we are talking about here, not 2008?

3 A We began making call recordings in the NICE application in
4 2004. We continued to do so up through 2010. And in 2010 we
5 began to transition to a different call recording application.
6 There was no change in 2008.

7 Q The service still the same?

8 A Yes.

9 Q How many different service -- is different service in
10 different locations?

11 A Right. We had 16 different call center locations plus our
12 trace and WRO organizations in Memphis. So there were 19 total
13 different locations, each of which had two servers at each of
14 those sites.

15 Q Do you have exact the day of the calls that you hold in
16 your hand right now when they have been collect?

17 A No, I do not.

18 Q You do not have the days?

19 A No, I do not.

20 Q Is the fraud department has the exact days when those
21 calls has been collect?

22 A You would have to ask them. I don't know that.

23 Q When exact listen those calls? Do you know the date you
24 listened to those calls?

25 A Yesterday.

1 Q That's the first time that you have heard those calls?

2 A I had heard them once before, but I did listen to them
3 again yesterday.

4 Q How long ago did you listen to those calls?

5 A I don't know the exact date, but it's probably been about
6 three months.

7 Q Three months ago you listened to those calls?

8 A Yes.

9 Q And those calls the fraud department probably collect in
10 2008?

11 A Yes.

12 MR. SCOTTON: No more questions, Your Honor.

13 THE COURT: All right. Any redirect?

14 MS. MITRANI: No, Your Honor.

15 THE COURT: Thank you. You may step down.

16 THE WITNESS: Thank you.

17 THE COURT: Let me ask how long the next government
18 witness will be.

19 MS. MITRANI: Very long.

20 THE COURT: Thanks. Since we need to end today by
21 4:30 and I want to make sure we get you out on time, we are
22 going to finish for today. Let me just double-check. I told
23 you previously our trial days are Monday through Thursday.
24 This week is the one exception. We will have trial tomorrow.
25 We will start at 9:00. And we will end in time for you to be

1 able to get your kids if you need to do that. Don't worry
2 about it.

3 I do need to ask that everybody please remember my
4 instructions, don't discuss the case with anyone, don't
5 disburse any information about the case, and don't do any
6 independent research into the case. And I just like to let
7 everybody know I do this in every case. In order to keep our
8 record clean and so there's no question at any later point in
9 time, after an extended break such as overnight or over lunch,
10 I do ask the jurors if everybody followed my instructions. I
11 will be doing that every day, so I just want to let you know
12 that I do that.

13 Is there anything else we need to address with the
14 jury before I let them leave for the evening?

15 MS. MITRANI: No, Your Honor.

16 MR. SCOTTON: No, Your Honor.

17 THE COURT: Actually, there is one more thing. Sorry.
18 I do need to ask Ms. La Barbera to stay behind for just a
19 moment, please, and everybody else, I will see you tomorrow at
20 9:00.

21 All rise for the jury.

22 (Thereupon, the jury exited the courtroom at
23 4:24 p.m.)

24 THE COURT: Please be seated. You can sit down
25 wherever you are comfortable there. Ms. LaBarbera. I asked

1 you to say because Mr. Creary advised me that after you heard
2 the opening statements, you indicated to Mr. Creary that your
3 significant other works for Citrix.

4 A JUROR: He does.

5 THE COURT: And I just wanted to take the opportunity
6 to inquire with you. Can we have his name, please.

7 A JUROR: Beau B-E-A-U, Dolinsky, D-O-L-I-N-S-K-Y.

8 THE COURT: Thank you. Is there anything about the
9 fact that he works for Citrix and Citrix is one of the
10 accounts, I guess, or you want to explain it.

11 MS. MITRANI: It's one of the victim accounts in this
12 case.

13 THE COURT: One of the victim accounts in this case.
14 Is there anything about that fact that would affect your
15 ability to be fair to either the government or to Mr. Scotton
16 in this case?

17 MS. MITRANI: I'm sorry, Your Honor. Let me clarify
18 out of an abundance of caution. The victims are actually the
19 shipping companies in terms of the loss, but Citrix was one of
20 the ones that was compromised. There may not be a distinction
21 for this purpose.

22 THE COURT: Thank you.

23 A JUROR: Can you clarify that?

24 THE COURT: Sure.

25 A JUROR: Just as far as I don't know if I'm supposed

1 to address you, not to be disrespectful.

2 THE COURT: That's fine.

3 A JUROR: So basically, Citrix was just the name on
4 the account? There was no -- they did not suffer in any way
5 financially?

6 THE COURT: Did Citrix suffer any financial loss?

7 MS. MITRANI: It's hard to answer the question. But I
8 can say that the losses were sustained by the shipping company.
9 So if Citrix was charged for something, they were credited.

10 A JUROR: Okay.

11 THE COURT: Does that answer your question?

12 A JUROR: That's kind of what I wanted to know.

13 THE COURT: So is there anything about that that would
14 interfere with your ability to be fair either to the government
15 or to Mr. Scotton in this case?

16 A JUROR: If that's all that has happened and there's
17 not going to be anything else presented later, I would say no,
18 there is nothing that would affect it.

19 THE COURT: Does anybody have any questions for
20 Ms. LaBarbera?

21 MR. SCOTTON: No, Your Honor. At this point I want to
22 strike her from the jury.

23 THE COURT: We are not going to talk about that right
24 now, Mr. Scotton. Does anyone have any questions for
25 Ms. LaBarbera?

1 MS. MITRANI: Yes, Your Honor. It's your significant
2 other that works for Citrix?

3 A JUROR: Yes.

4 MS. MITRANI: I'm sorry, I'm sure you said his name.
5 What's his name?

6 A JUROR: Beau.

7 MS. MITRANI: Do you realize that this case has
8 nothing to do with your significant other.

9 A JUROR: I do understand that.

10 MS. MITRANI: When did he start working for Citrix?

11 A JUROR: He has worked for them for about five or six
12 years.

13 MS. MITRANI: What is his job?

14 A JUROR: He's in between principal consultant where
15 he goes -- he's principal consultant slash service delivery
16 manager.

17 MS. MITRANI: He's not with accounts receivable,
18 accounts collectible, anything like that?

19 A JUROR: No, he is not.

20 MS. MITRANI: So you understand this case is
21 completely independent of that?

22 A PROSPECTIVE JUROR: Yes, I do.

23 MS. MITRANI: Thank you, Your Honor.

24 THE COURT: One last time, is there anything about all
25 this that we have just been discussing that would interfere

1 with your ability to be fair either to the government or to
2 Mr. Scotton?

3 A JUROR: No.

4 THE COURT: Thank you. Have a terrific evening. We
5 will see you tomorrow at 9:00.

6 A JUROR: Thank you.

7 (Thereupon, the juror exited the courtroom at
8 4:28 p.m.)

9 THE COURT: All right. Mr. Scotton, I will hear your
10 objection at this time.

11 MR. SCOTTON: Clear she made assumption that if the
12 company suffered loss, that she would change different terms to
13 me. Definitely I can't have her. Now without even know, I
14 tried to strike her --

15 THE COURT: Well, that, you don't get the benefit of
16 your own action that nobody asked you to do.

17 MR. SCOTTON: Your Honor --

18 THE COURT: Just like the other times throughout this
19 trial, you don't get to benefit from when you do something
20 wrong. It doesn't work that way. I'm trying to do everything
21 I can to make sure you get a fair trial, but you need to help
22 me with that. I did not ask you if you had any objections. I
23 asked if you had any questions. All right.

24 So with respect to the first issue that you raised,
25 she said that to the extent that the information is limited to

1 what has come in at this point and the issues that have been
2 raised at this point, she has no problem. There was no
3 indication after questioning that she would have a
4 disability -- or an inability, I should say, to be fair either
5 to you or the government.

6 I am quite certain since she wasn't shy the first time
7 about bringing it up and because we have inquired of her and we
8 have brought this to her attention, that if we get to a point
9 in the trial where there is something more that comes in and
10 she has an issue, she will let us know and we will address it
11 at that time. But right now I don't see any basis for striking
12 her from the jury. I'm going to overrule that objection at
13 this time. Just one moment.

14 Ms. Flores apparently indicated that she goes to class
15 four times a week and this will be difficult for her. But my
16 recollection and my notes are that if she talked about class,
17 she talked about it being after the end of the day. And I was
18 very clear at the beginning. I advised everybody that you
19 needed to let us know before we selected the jury and it was
20 too late after you were selected. But I do want to just let
21 everybody know that that's been brought to my attention.

22 I have instructed Mr. Creary to tell her that although
23 we are sorry about that, that it's too late for us to be able
24 to do anything about it now, and she is on the jury.

25 All right. Anything else that we need to address

1 today?

2 MS. MITRANI: No.

3 THE COURT: If you want me to look at the -- if you
4 want to look at the videos with the government today, perhaps,
5 that you brought in and then if the government has any
6 objections, then I will look at them. But I'm not looking at
7 them unless the government has an objection. I will give you
8 time to do that now so if you want to or need to present them
9 during the trial, you will be able to do that. Would you like
10 to do that, Mr. Scotton?

11 MR. SCOTTON: The government really has all the
12 videos, right, on CD?

13 MS. MITRANI: No, we don't.

14 MR. SCOTTON: We have to give to them.

15 THE COURT: Right, so they don't have it. So once
16 again, if you want me to allow you to play it, you need to show
17 it to them. You have an opportunity at this point. We are all
18 here. If you would like to do it, why don't you go ahead and
19 show the government the video. If the government has any
20 objections, I will hear the objections at this time or after
21 they have reviewed it, and we can address it at that time.

22 MS. MITRANI: I'm not sure. Depending what they show,
23 Your Honor, I may not be able to make all my objections today,
24 but we can see how it goes.

25 THE COURT: Let's at least make sure that the video

1 has been viewed.

2 I don't think you all need me here for this. But I
3 will be in the back so when you all are done, just go ahead, if
4 you wouldn't mind, and -- Officer Hildebrand, will you be here?
5 If you could let Officer Hildebrand or Mr. Creary know and I
6 will come back out.

7 MS. MITRANI: Tomorrow is a normal 9:00 to 5:00 trial
8 day?

9 THE COURT: It will be 9:00 to 4:30 because of the
10 juror who has the child pickup issue.

11 MS. MITRANI: That's fine. 9:00 to 4:30.

12 THE COURT: That's Ms. Flores. I don't know if she
13 has it tomorrow. She said she has it two times a week. It
14 might not be tomorrow.

15 MS. MITRANI: Monday we are off and Tuesday we resume.
16 Am I correct?

17 THE COURT: Let me double-check. No, Monday we are
18 on, Monday through Thursday of next week.

19 MS. MITRANI: Okay. That may be -- Your Honor did say
20 we were off because next week was going to be the transition
21 week.

22 THE COURT: I apologize. I thought -- I may have said
23 that. I thought what I said, but you may be right, is that I
24 had things on Monday and on Friday and I was going to try to
25 move them all to one day. So we moved them all to Friday so we

1 could do Monday through Thursday.

2 MS. MITRANI: Okay.

3 THE COURT: I'm sorry about that if I was confusing.

4 MS. MITRANI: No, it's confusing which is why I asked.

5 But because we are flying in more people from out of town, I
6 thought we were on on Monday. But as we stand today, we are on
7 Monday, is that correct?

8 THE COURT: We are on on Monday. Just double-check.
9 Yes, Monday through Thursday of next week. Friday is the
10 motions day. Okay. Thank you. And I'll be in the back if you
11 need me.

12 Mr. Kreiss?

13 MR. KREISS: May I make one request, Judge?

14 THE COURT: You may.

15 MR. KREISS: I have an arraignment tomorrow before
16 Judge Snow at 11:00. I have already asked that my case be put
17 as number one on the docket. Can I run down, can we call it a
18 bathroom break, or can I be excused for ten minutes just so I
19 can show this particular client some attention.

20 THE COURT: Yes, absolutely, we can do that. Let me
21 just figure out the best way to do that. All right. Would
22 you -- well, let me see if I can -- what is the name of the
23 client so I can email Judge Snow?

24 MR. KREISS: Ferenga, Cody Ferenga, out of custody.

25 THE COURT: So we will take a break. If I forget,

1 please just remind me. But it will be my intention to take a
2 break tomorrow maybe at about five of 11:00.

3 MR. KREISS: Okay.

4 THE COURT: And then we will take 15 minutes and --

5 MR. KREISS: Sure, five to 11:00, ten to 11:00. The
6 arraignment will take two minutes if I can get down there a
7 couple minutes before because we are --

8 THE COURT: Sure. I will be in the back when you have
9 reviewed the videos. Thank you.

10 (Thereupon, a recess was taken at 4:35 p.m.)

11 THE COURT: Thank you. Please be seated. All righty.
12 Has the government had an opportunity to review the video?

13 MS. MITRANI: No, Your Honor. And Mr. Frank can
14 address the Court, but Mr. Frank knows this technical stuff.
15 And what I'm advised, that there's what, 17? What is there?

16 MR. FRANK: Your Honor, I got a USB flash drive from
17 Mr. Scotton and it contained 1.77 gigabytes which is a lot of
18 data. There's multiple videos and there's 390 files. This is
19 just what he just gave me. I copied it onto my computer. And
20 then when you look inside, this is all that was there. If you
21 sort it by file type, all the videos are at the bottom here.
22 So there are seven videos at least and then this is a different
23 video. So there was just a lot more than just we can look at
24 in a little amount of time.

25 THE COURT: All right. Then let's do it this way.

1 Why don't you, if you can, take a look at it tonight. Let me
2 know if you have any objections to it tomorrow, or if there's
3 some reason why you can't do that, you will let me know that.
4 He doesn't really need to put it in anyway until his case if
5 he's going to put it in.

6 MS. MITRANI: So in that vein, I don't want to push my
7 luck, Your Honor, but we thought we weren't going to have court
8 Monday, which is fine. So now we are going to scramble to get
9 more out-of-town witnesses in. Is it possible we can have
10 until Monday?

11 THE COURT: Sure, that's certainly reasonable.

12 Mr. Scotton?

13 MR. SCOTTON: Your Honor, I have some -- I guess I'm
14 going to be meeting later today with the investigator down at
15 the jail. And I have some emails files that I need to present
16 the government. We couldn't do the whole thing last night.
17 She was there until 10:00 almost at the jail with me.

18 THE COURT: Let me make sure I understand. Do you
19 have the email files that you are going to present with you now
20 or are you saying you will have them tomorrow?

21 MR. SCOTTON: As I'm going here, I need to see,
22 because we are talking about here over maybe thousands and
23 thousands of emails. I need to start searching those emails
24 that is related to the case that I can start saving to give to
25 the government. So it's going to process that she can come and

1 I can start looking to see what am I --

2 THE COURT: They need to be turned over by tomorrow.
3 I already explained this you to. Everything has to be turned
4 over by tomorrow. It should have been done well before this
5 point in time, but tomorrow is fine.

6 MR. SCOTTON: All right.

7 THE COURT: Anything else we need to address?

8 MS. MITRANI: No, Your Honor.

9 MR. SCOTTON: No, Your Honor.

10 THE COURT: All right then. We will be in recess.
11 Have a good night.

12 MS. MITRANI: Thank you so much.

13 (Thereupon, the trial adjourned at 4:47 p.m.)

14 - - -

15 C E R T I F I C A T E

16
17 I hereby certify that the foregoing is an
18 accurate transcription of the proceedings in the
19 above-entitled matter.

20
21
22 7/2/14

s/ Tammy Nestor
Tammy Nestor, RPR
Nestor Court Reporting, Inc.
tammynestor@yahoo.com

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,

Fort Lauderdale, Florida

Plaintiff(s),

January 24, 2014

vs.

ROGERIO CHAVES SCOTTON,

Defendant(s).

JURY TRIAL
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): Bertha Mitrani, Esquire
United States Attorney's Office
500 East Broward Boulevard
Seventh Floor
Fort Lauderdale, Florida 33301

FOR THE DEFENDANT(S): Rogerio Scotton, Pro Se

STANDY COUNSEL: Jason Kreiss, Esquire
The Kreiss Law Firm
1824 Southeast Fourth Avenue
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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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1 Thereupon,
2 the following proceedings began at 8:56 a.m.:

3 THE COURT: All right. Is there anything that we need
4 to address before we bring in the jury?

5 MS. MITRANI: Nothing from the government, Your Honor.

6 MR. SCOTTON: Your Honor, yes, I want to address
7 something that happened yesterday. I couldn't do it during the
8 time, I guess, after on the stand. Yesterday the Court has
9 denied me to present some of those newspaper articles as a
10 demonstration to the jury as my character as a race car driver.
11 Meantime, the government has done a presentation here also was
12 in Portuguese. So the Court may put something on the record
13 that I --

14 THE COURT: I asked you whether you objected and you
15 said you didn't. That's as simple as that. Next issue.

16 Anything? If not, then as soon as the jury gets here,
17 we will bring them in.

18 MR. SCOTTON: Your Honor, I have another question for
19 the Court. I understand that Mr. Jason in his capacity as
20 standby lawyer, most of the time he stay across the room here.
21 If I have a question of him, why can he not even stay somewhat
22 close to me that I can be able to ask him question?

23 THE COURT: It's not hybrid representation. You are
24 representing yourself. He's here to take over if you, for
25 whatever reason, decide you want him to take over. But you

1 have to understand, that, you know, obviously he hasn't
2 prepared for this trial, but if you wanted him to take over, he
3 could do that under those circumstances.

4 But he's not representing you. And it's not a hybrid
5 representation. You represent yourself. As I have explained
6 throughout this entire litigation, when we have standby
7 counsel, it's not hybrid representation. You represent
8 yourself.

9 And it's not -- I have allowed Mr. Kreiss to assist
10 you in the logistics of getting your witnesses here and getting
11 your investigator and things of that nature, but at no point
12 have I ever relaxed the rule that precludes hybrid
13 representation. So I'm sorry, but he needs to sit in the back.

14 MR. SCOTTON: My understanding from day one is that if
15 some kind of question I need to ask him in reference to rules
16 and regulations here, I can ask him.

17 THE COURT: No, he doesn't represent you. You
18 represent yourself. I have allowed him to sit with you at
19 proceedings where the jury hasn't been present. You are
20 representing yourself throughout this, but certainly when the
21 jury is here, he needs to sit in the back.

22 MR. SCOTTON: This goes for the investigator? The
23 investigator is not allowed to be close to me and help with
24 paperwork and ask about things I thought I had?

25 I mean, the government has two investigators next to

1 them, so my investigator is not allowed to be next to me?

2 THE COURT: You have never asked me that before.

3 MR. SCOTTON: Okay.

4 THE COURT: This is the first time you are asking me
5 that.

6 MR. SCOTTON: She's allowed to be next to the
7 defendant during the process?

8 THE COURT: If you need her to assist you giving you
9 paperwork or whatever the case may be of things that she has
10 investigated, then yes, she can be near you.

11 MR. SCOTTON: Thank you, Your Honor.

12 THE COURT: We are going to need to bring in
13 Ms. La~Barbera.

14 MR. KREISS: Judge, I wanted to remind you if possible
15 if we could stop a couple minutes before 11:00 so I can run
16 down --

17 THE COURT: Yes, thank you. If I forget, raise your
18 hand or something in the back. Sometimes I just get wrapped up
19 in what's going on and I don't look at the clock.

20 MS. MITRANI: Which juror number is she?

21 THE COURT: She's 6. She was 12, but now she's 6.

22 MS. MITRANI: Is she the same one that came in before?

23 THE COURT: Yes.

24 MS. MITRANI: Thank you, Your Honor.

25 (Thereupon, a juror entered the courtroom at

1 9:01 a.m.)

2 THE COURT: Please be seated. Mr. Creary tells me
3 that there's something that you wanted to bring to our
4 attention? Ms. LaBarbara, what is it you wanted us to be aware
5 of?

6 A JUROR: It's Ms. De~La~Hoz.

7 THE COURT: I'm sorry, Ms. De~La~Hoz. I apologize.

8 A JUROR: I wasn't sure if I should say anything.
9 After the opening statement is when I found out about the
10 second indictment.

11 THE COURT: There's only one indictment. And you may
12 recall that yesterday I mentioned that it would deal with
13 defrauding -- allegedly defrauding Federal Express, DHL
14 Express, and UPS, and allegedly false statements to citizenship
15 and immigration services.

16 A JUROR: Okay. All right. Because I only thought
17 that it was mail fraud. I thought in the opening statements
18 that it was mentioned that there was mail fraud and then in
19 addition it was marriage fraud.

20 THE COURT: Well, it's an allegation. As I read the
21 statement yesterday when everybody was here, I described it as
22 Mr. Scotton having been charged with making materially false
23 statements on his I485 application and to an officer of the
24 United States Citizenship and Immigration Services relating to
25 immigration matters. And then I noted that Mr. Scotton denies

1 that he made any false statements on his I485 application and
2 to any officer of the United States Citizenship and Immigration
3 Services.

4 A JUROR: Okay.

5 THE COURT: Does that clear it up?

6 A JUROR: Yes. Okay. Maybe I didn't hear the second
7 part then.

8 THE COURT: No problem. Thank you.

9 A JUROR: All right. Can I speak to you sidebar or
10 does it need to be on the record?

11 THE COURT: Well, it needs to be on the record if
12 there is an issue. Is there an issue?

13 A JUROR: I didn't realize that it was about
14 immigration issues yesterday so I guess that's my mistake. I
15 thought it was about mail fraud so...

16 THE COURT: All right. I did say it.

17 A JUROR: Okay. All right.

18 THE COURT: Is there some kind of a problem that you
19 have?

20 A JUROR: I would say I have very strong opinions on
21 that, so that would have affected my answer to No. 14. Now I
22 don't want to create a problem. I honestly thought it was just
23 mail fraud.

24 THE COURT: I understand. We all thank you for
25 letting us know. We all come to court and we all have our own

1 opinions. We all have our life experiences, and they inform
2 the way we think about issues. It's okay to have opinions.
3 There's nothing wrong with that even if you were sitting on the
4 jury. The question is whether you can, even having those
5 opinions, when I instruct you on the law, will you be able to
6 set aside your personal opinions and follow the law even if you
7 don't agree with the law? And that's really the question
8 that's important here. And let me ask you what your answer is
9 to that. Again, this is about false statements as opposed to
10 whether or not you agree with immigration law.

11 A JUROR: Right. I feel the way that certain groups
12 are treated, for example, Cubans, and the rights they are
13 extended, it's sort of legal discrimination against other
14 immigrants. I am an American citizen, but I come from a family
15 of immigrants. My mother is Columbian. My father is Cuban.
16 My dad's family can't get visas and there's preferential
17 treatment. I know that has nothing do with marriage fraud, but
18 I have also known a lot of people who have been in that
19 situation and it's not something that I would consider --

20 THE COURT: Let me stop you for a moment. Again, I
21 understand you have personal feelings. Everybody does. Some
22 people have strong personal feelings. Again, that's okay. The
23 question isn't whether you have personal feelings. The
24 question is whether once I instruct you what the law is and I
25 tell you, you know, you have to find these three things or

1 whatever it may be beyond a reasonable doubt in order to return
2 a guilty verdict against Mr. Scotton, can you follow the law.
3 That's the question. Can you do that?

4 A PROSPECTIVE JUROR: In regards to convicting someone
5 for marriage fraud or --

6 THE COURT: In regard to -- okay. In regard to the
7 charges in this case which are both mail fraud and making false
8 statements to immigration regardless of what those false
9 statements may be about, making false statements to
10 immigration. That's the question. It's not whether or not
11 there's something else going on. It's whether or not there
12 were false statements made to immigration. Can you follow the
13 law?

14 A JUROR: In regard to the second one, I don't believe
15 that the law is correct.

16 THE COURT: I understand that, but can you follow it?

17 A JUROR: I wouldn't feel that I can convict someone
18 on that, no.

19 THE COURT: Okay. We are going to release you from
20 the jury, but I'm going to need you to sit through the next two
21 weeks of trial so that you can understand how the law proceeds.
22 All right?

23 A JUROR: Okay.

24 THE COURT: Okay. Thank you.

25 A JUROR: Thank you.

1 THE COURT: Please don't discuss the case with anyone.
2 You can sit in the back and you will see how that works so
3 that, you know, hopefully in the future if you are selected for
4 a jury, you will be able to sit on the jury and understand how
5 the process works. Thank you.

6 A JUROR: Can I make another comment?

7 THE COURT: Sure.

8 A JUROR: Okay. It's not my intent to get released
9 from the jury. I served on a grand jury. I completely
10 understand how the law works. I don't believe that that's the
11 issue at hand here. I just want that on the record.

12 However, I have very strong opinions on this one
13 subject and I just thought that it was fair that I bring that
14 to light and how I feel about that and my opinion about the law
15 because I have actually, you know, participated in immigration
16 reform and things like that, and I don't feel that that is a
17 crime.

18 So yesterday when the indictment was being read,
19 perhaps it was my misunderstanding, but I understood it to be
20 mail fraud and fraudulent statement. But that in no way was
21 understood to me to mean marriage fraud or anything like that
22 or having to do -- and perhaps I missed that. But I remember
23 that the rest of the questions were specifically in regard to
24 DHL, Fed-Ex, mail fraud, et cetera.

25 THE COURT: All right. Well, in light of the fact

1 that you've sat on a grand jury, and I forgot that you had done
2 that, I will not require you to sit through the next two weeks.
3 But it is very important if you are selected for jury service
4 again and you are on a panel -- here's the problem, we spent
5 half of yesterday and actually the whole day on this case. If
6 we go below 12 jurors, we need to start all over again. That's
7 your tax dollars and that's the system. That's another
8 defendant who has to wait another day or however long for his
9 trial. That's Mr. Scotton who has to go through this whole
10 thing more than once, and it really isn't fair to a whole bunch
11 of people. And that's what the issue here is.

12 So we can't have people who are not going to tell us
13 what we need to know in the jury selection process. And that's
14 the issue. I understand you are saying you didn't understand.
15 But I just want to emphasize that when you go through this
16 again, that you -- it's very important to listen because all of
17 these things rest on having a jury that we can count on.

18 We understand sometimes emergencies happen, that's why
19 we pick alternates. But we really count on the jurors that we
20 select not to have problems, being able to follow the law as
21 the law is explained after we select them because we
22 specifically ask the jurors whether they can do that.

23 So you understand why this is a very serious and
24 significant issue and why I'm concerned that you understand the
25 way the process works. But you are right, you did say

1 yesterday that you sat on the grand jury for six months and I
2 recall now that I asked you about that. So I will not require
3 you to sit here for the next two months. I just want to
4 emphasize the importance of making sure that if you have these
5 issues, they come out at the front end.

6 A PROSPECTIVE JUROR: I agree with you completely and
7 I honestly felt conflicted bringing this up because I was very
8 surprised yesterday in the opening statements, and maybe I
9 didn't pick up on it. I feel like it was repeatedly asked
10 about DHL and the mail fraud. And I understood it to just be
11 fraud or false statements in regard to mail. Maybe I didn't
12 pick up on the fact that it was immigration. So I apologize
13 for that. But I didn't -- I don't feel that the questions, you
14 know, in case I didn't pick up on it the first time, that the
15 rest of the questions would have given me the opportunity to
16 voice my concern.

17 THE COURT: All right. Well --

18 A JUROR: I apologize. I apologize.

19 THE COURT: That's okay. I disagree, but I think it's
20 important that these things be brought to our attention. I
21 would rather know if you can't be a fair juror sooner rather
22 than later. But as I said, you know, if you are called for
23 jury service again, please do remember all of the things that
24 count on our seating a jury that can follow the law. And if
25 you tell us after you are on the jury and the jury has been

1 sworn, it causes a lot problems. So I'm just saying --

2 A JUROR: I understand.

3 THE COURT: I'm just saying, the next time, please
4 remember to do it before we get started. All right? Thank
5 you. You are excused.

6 A JUROR: Thank you.

7 (Thereupon, a juror exited the courtroom at 9:14 a.m.)

8 THE COURT: All righty. We are going to bring in the
9 jury. Please rise for the jury.

10 It's a different juror than it was yesterday. It was
11 Ms. De~La~Hoz.

12 (Thereupon, the jury entered the courtroom at
13 9:14 a.m.)

14 MR. SCOTTON: Who is the juror we just excused, Your
15 Honor?

16 THE COURT: Ms. De~La~Hoz. The first alternate -- or
17 second alternate, rather.

18 You can be seated. We have another problem.

19 MS. MITRANI: Your Honor, it's too soon for these
20 problems.

21 MR. SCOTTON: Your Honor --

22 THE COURT: I'm not going to talk about it right now.
23 We are bringing the person out.

24 (Thereupon, a juror entered the courtroom at
25 9:15 a.m.)

1 THE COURT: Ms. LaBarbara, what seems to be the
2 problem?

3 A JUROR: After talking to you yesterday and hearing
4 that Mr. Scotton wanted me to be removed, I don't want to be
5 uncomfortable.

6 THE COURT: I understand. Let me say this -- well,
7 let me ask you. I understand that you heard Mr. Scotton say
8 that he would like to strike you from the jury. But in the
9 end, we have decided that we want to have you on the jury. So
10 there shouldn't be a concern at all with being on the jury. Do
11 you understand? Sometimes people say things out of turn and
12 then later after we have had an opportunity to consider them,
13 it's not an issue anymore. And we have decided that we would
14 like to keep you on the jury. Do you understand?

15 A PROSPECTIVE JUROR: I understand that, but this is
16 not my everyday life. And I know you guys are used to being in
17 this situation, but knowing that somebody is standing trial --
18 and I understand how the jury selection works, but after -- and
19 he may not have wanted me in the beginning or the prosecutor
20 may not, but now hearing that, it's hard. There's a lot of
21 information I gave up yesterday and I am just -- I'm nervous.
22 I'm not comfortable.

23 THE COURT: Are you worried about your safety, is that
24 it?

25 A JUROR: I don't know that -- yeah, I guess I am.

1 I'm just --

2 THE COURT: Okay. And if you are more comfortable
3 sitting down, I want you to sit down. I don't want you to be
4 uncomfortable. I understand because it's a new situation and
5 the case has the name criminal case and sometimes people find
6 something scary about that label. But there's nothing scary
7 about -- there's nothing to be afraid of in this situation. We
8 are in a case that involves economic crime.

9 A JUROR: I understand. It's more, quote/unquote,
10 white color than violent. I get all that. I just --

11 THE COURT: And at this point there certainly hasn't
12 been evidence put on at all at this point that Mr. Scotton did
13 anything. So you can listen to all of it and maybe conclude
14 that the government hasn't met its burden and hasn't proven
15 Mr. Scotton guilty beyond a reasonable doubt and find it
16 perfectly appropriate to return a not guilty verdict. Do you
17 understand what I'm saying?

18 A PROSPECTIVE JUROR: I do. But I'm not sure I can
19 stand here with certainty and tell you that I am comfortable
20 enough to say that I can do this. I don't want to say fairly,
21 but I just I'm very uncomfortable. I'm very uncomfortable.
22 And it kills me to say this because this is not even the person
23 I am. I can put emotions aside. I'm just not comfortable and
24 it's -- I mean, I had a very rough night last night. I
25 obviously can't say anything to anyone. I'm just not

1 comfortable. And I was fully prepared to do this, fully
2 prepared. And I would be happy to sit on another jury or go
3 back to jury selection for another trial.

4 THE COURT: Why don't you have a seat and let me have
5 the parties come up sidebar, please.

6 (Thereupon, the following was heard sidebar.)

7 THE COURT: Comments?

8 MS. MITRANI: Judge, I'm loath to -- I mean, we only
9 have three. This is the second day of trial.

10 THE COURT: I know.

11 MS. MITRANI: I'm trying to think.

12 THE COURT: How do I rehabilitate?

13 MS. MITRANI: I understand. So this is an
14 out-of-the-box situation. I wonder if we maybe don't start
15 right this second, maybe give her 15 minutes to calm down.

16 THE COURT: I don't think that's going to happen. She
17 was here last night and she obviously stewed over it overnight
18 and it's gotten worse. I think the longer she sits there, it's
19 not likely to go the other way unless we can figure out a way
20 to rehabilitate her.

21 MR. SCOTTON: She's the one who husband worked for
22 Citrix, that's what it is?

23 THE COURT: Yes.

24 MS. MITRANI: If I understood her correctly, she was
25 uncomfortable because she thinks Mr. Scotton didn't want her on

1 the jury. Is that --

2 THE COURT: Right. She's basically afraid.

3 MR. SCOTTON: She has to be released from the jury,
4 Your Honor, because I don't think she's going to make it fair
5 for me.

6 THE COURT: I'm going to give the government every
7 chance to rehabilitate her because you created this situation.
8 There was no reason for you to do that. You did it yourself.
9 You are going to have to live with those consequences. If
10 there is a to rehabilitate her, we are doing it.

11 What is the government's position?

12 MS. MITRANI: May I just voir dire her for a few
13 minutes?

14 THE COURT: Yes.

15 MS. MITRANI: Thank you.

16 (Thereupon, the following was heard in open court.)

17 THE COURT: All right. Ms. LaBarbara, the government
18 just has a few questions it would like to ask you.

19 MS. MITRANI: Good morning.

20 A JUROR: Good morning.

21 MS. MITRANI: Is it okay if I stand here, Your Honor?

22 THE COURT: Sure.

23 MS. MITRANI: First of all, we appreciate your candor
24 because this is a very important case. It's a very important
25 case for the government, and it's a very important case for

1 Mr. Scotton. So both sides are taking this very serious. So
2 we do appreciate your -- and I see that you are upset.

3 As Her Honor told you, this is -- you know, you are
4 going to be sitting with jurors. This is going to be a
5 collective decision at the end. Everybody wants you to be
6 here. Do you think maybe if we wait a little while in light of
7 what Her Honor told you, you get your thoughts together, do you
8 think maybe you can maybe clear your mind and see how it goes
9 today and then maybe we can revisit this later? Do you think
10 maybe you could do that?

11 A PROSPECTIVE JUROR: I can definitely try to do that.

12 MS. MITRANI: Because, you know, basically, again, as
13 the Honorable Judge informed you, the government is here to
14 present evidence. And there's -- the government's going to
15 present evidence. And at the end of the trial, it's up to the
16 jury just to decide on that evidence. It has nothing to do
17 with personalities. Do you understand?

18 A JUROR: Yes.

19 MS. MITRANI: Whether you like me or hate me.

20 A JUROR: A hundred percent.

21 MR. MITRANI: Or dislike the defendant. It's almost
22 like a business. It's a business, a profession, you understand
23 that?

24 A JUROR: Yes.

25 MS. MITRANI: Do you think maybe if you compose

1 yourself, because obviously nobody would want you sitting in
2 the jury box upset, maybe take a few minutes, do you think you
3 could sit through today in a normal trial day proceeding? Let
4 me explain, because that implies yesterday wasn't normal. You
5 have to start by picking a jury. That happens in every
6 criminal trial. So that's not not normal, but what I mean by
7 normal day is witnesses are going to come up, questions are
8 going to be asked, evidence may or may not be introduced, and
9 we sort of go through the day. And you did a lot of talking
10 yesterday. You are not going to do any talking today. Do you
11 think maybe you will feel differently in the afternoon?

12 A JUROR: I am willing to try. You know, just -- it
13 was a lot yesterday. You know, honestly, if it was you who
14 said that, I would be like whatever, you know. But being that
15 it was the defendant, it's a little different. And like I
16 said, I gave up information.

17 MS. MITRANI: It was a long day yesterday.

18 A JUROR: And I was -- you know, you said my name to
19 call. Like I said, I'm a third grade teacher. I'm with
20 eight-year-olds all day. I got the kick in the stomach. Okay.
21 This is what we are doing the next six to eight weeks. We went
22 on break. In between opening statements, I spoke to my
23 principal, let her know the situation, came back in, I was
24 totally fine with all of this.

25 MS. MITRANI: You are absolutely doing the right thing

1 because again, I just can't emphasize enough how this is so
2 important both to the United States and to Mr. Scotton. So we
3 want people who are going to listen, pay attention, nothing to
4 do with personalities. Look at the documents, there's nothing
5 here, but there will be, and make a decision. So if it's
6 acceptable to you and, of course, to the Court, let's see maybe
7 how the day goes. And maybe you will feel better, maybe you
8 won't, but can you maybe keep an open mind?

9 A JUROR: Yes. Yes, I will try.

10 THE COURT: Okay. Let's do that then. I very much
11 appreciate it, Ms. La~Barbera, and I do want you to be
12 comfortable. If you want to take a couple of minutes, we can
13 start. Would you like to wait until 9:30 to start?

14 A JUROR: Yeah, just let me go to bathroom.

15 THE COURT: No problem. We will start at 9:30. And
16 if this is still a problem at the end of the day, we will count
17 on you to bring it to our attention. Okay?

18 A JUROR: Okay.

19 THE COURT: Thank you.

20 (Thereupon, a juror exited the courtroom at 9:25 a.m.)

21 THE COURT: We are going to start at 9:30, so if you
22 need a minute to run to the bathroom, now is a good time to do
23 it, but please be back in time to start at 9:30.

24 MS. MITRANI: Thank you, Your Honor.

25 THE COURT: You're welcome.

1 (Thereupon, a recess was taken at 9:25 a.m.)

2 THE COURT: All right. We have another issue.

3 MS. MITRANI: Who is it this time.

4 THE COURT: Mr. Graham.

5 (Thereupon, a juror entered the courtroom at
6 9:30 a.m.)

7 THE COURT: Good morning, Mr. Graham. Please have a
8 seat. Mr. Graham, I understand that there is something that
9 you needed to let me know.

10 A JUROR: Yes. Because of this trial, I'm reading my
11 newspapers a day late. And yesterday, the Sun Sentinel, on the
12 front page there was an article with details about the trial
13 and information about the trial.

14 THE COURT: Did you read the article?

15 A JUROR: I am reading the whole paper, and I'm like,
16 there's another trial going on, and I'm flipping through it and
17 then I saw the name. I'm like, holy bleep, that's the trial
18 I'm in. But by then, I had scanned through most of the
19 article.

20 THE COURT: Okay. First of all, let me thank you for
21 your candor. It's very important for our jurors to let us know
22 these things. You understood yesterday when I explained about
23 why it's important not to get any information about this case
24 from anywhere other than this courtroom?

25 A JUROR: Right.

1 THE COURT: You understood that?

2 A JUROR: That's why I'm reporting it.

3 THE COURT: I know, and I appreciate that. Let me ask
4 you, do you think you can set aside whatever might have been in
5 the newspaper article yesterday and not consider it at all when
6 you are considering the evidence in this case and consider only
7 the evidence that comes in in this courtroom?

8 A JUROR: Yes, I can. The only thing is I know it. I
9 can set it aside, but I still know it. So if you can trust me
10 to be impartial, then yes, I can do it.

11 THE COURT: We trust you to do what you tell us you
12 can do.

13 A JUROR: Okay. I can do it.

14 THE COURT: All right. And you are confident about
15 that?

16 A PROSPECTIVE JUROR: Yes.

17 THE COURT: Okay. Terrific. Thank you so much.

18 A JUROR: We are retired teachers. We have to be
19 impartial.

20 THE COURT: Thank you. And let me just say when I ask
21 the question today since you have already disclosed it, there's
22 no need to raise your hand unless there's something you haven't
23 told us.

24 A JUROR: My concern was who else -- did anyone else
25 read yesterday's newspaper.

1 THE COURT: And that's why I'll ask the question.

2 A JUROR: Okay.

3 THE COURT: Thank you.

4 Let's bring them in.

5 (Thereupon, the jury entered the courtroom at
6 9:33 a.m.)

7 THE COURT: Welcome back. Please be seated. I am so
8 sorry that we are starting late this morning. We had a few
9 unanticipated issues that we needed to resolve, and I thank
10 you. Oh, we need one more person. Okay. We will be all set
11 in just a moment.

12 A JUROR: May I go get my steno pad?

13 THE COURT: Of course. Of course. If anybody else
14 has a notepad and pen that they left in the room that they want
15 to get, you can go ahead and do that now too.

16 Okay. Welcome back. Thank you for being here on
17 time. And let me apologize to all of you once again. I'm
18 sorry we are not able to start on time this morning. As I was
19 explaining, there were a couple of unanticipated issues that we
20 needed to address before we began today.

21 Mr. Tucker, thank you for moving down, and
22 Ms. De La Hoz is not going to be an alternate with us anymore.
23 So it makes your roles even more important because there are
24 now fewer of you. So thank you.

25 All right. I just need to ask, to keep our record

1 clean, is there anybody here who did not follow my instructions
2 last night, that is, is there anybody here who discussed the
3 case with anyone, disbursed any information about the case, or
4 did any research into the case on their own. If so, please go
5 ahead raise your hand for me now. I see no hands. We all
6 thank you for that. It keeps the trial fair so the parties
7 appreciate it and so do I.

8 Without further ado, let me turn back to the
9 government.

10 MS. MITRANI: Good morning, Your Honor. May it please
11 the Court, members of the jury, and Mr. Scotton, the government
12 calls Billy, or William Seligstein.

13 THE COURTROOM DEPUTY: Please raise your right hand.

14 WILLIAM SELIGSTEIN

15 After being duly sworn on oath was examined and testified as
16 follows:

17 THE COURTROOM DEPUTY: Please be seated, and state and
18 spell your first and last name for the record.

19 THE WITNESS: My name is William Seligstein,
20 W-I-L-L-I-A-M S-E-L-I-G-S-T-E-I-N.

21 DIRECT EXAMINATION

22 BY MS. MITRANI:

23 Q Good morning.

24 A Good morning.

25 Q I know you are not from New York with that accent. Where

1 are you from, sir?

2 A Memphis, Tennessee.

3 THE COURT: I'm sorry to interrupt. Can you
4 double-check and make sure that the microphone is on, please.
5 It's on? Okay. Maybe pull it down a little bit. There you
6 go. Thanks.

7 BY MS. MITRANI:

8 Q As someone who has an accent, I get that a lot myself.
9 You are from Tennessee?

10 A Correct.

11 Q Can you tell the members of the jury a little bit about
12 your background? Did you go to college?

13 A Right. I have a BS in education and a JD all from
14 Louisiana State University.

15 Q Okay. And are you presently employed?

16 A I am presently working for Fed-Ex, correct.

17 Q How long have you been working for Fed-Ex?

18 A 17 years.

19 Q You know, why don't we talk about Fed-Ex or a little bit
20 about what is Fed-Ex.

21 A Fed-Ex is a privately held corporation and our goal is to
22 ship packages everywhere. Fed-Ex uses planes, trucks, boats,
23 to ship packages domestically from city to city from state to
24 state from the United States internationally, internationally
25 to the United States and internationally between companies. We

1 want to move packages.

2 Q Okay.

3 A We are in the package moving business.

4 Q And, sir, does Fed-Ex have offices throughout the United
5 States?

6 A Fed-Ex has offices pretty much in every city throughout
7 the United States.

8 Q And does it have offices worldwide?

9 A They have offices in most countries worldwide.

10 Q These packages and matters that you move from state to,
11 city to city, country to country, are there like locations
12 where all these packages are processed?

13 A Right, they are hubs. They are hubs. Memphis is, of
14 course, the major hub. We have a hub in Indianapolis. We have
15 a hub in Oakland, California. We have a hub in Paris, France.
16 We have a hub in England. And we have some -- I'm not familiar
17 with where the other ones are, but those are the major ones.

18 Q How big a company is it?

19 A We have 300,000 employees.

20 Q Worldwide?

21 A Worldwide. I think we have the largest air fleet in the
22 world. I think we have over 800 planes, and we have multiple
23 trucks. We do shipping packages by ground by, LTL which is the
24 same thing as trucks, and we have planes. So we have a large
25 fleet. And then once the packages get there, we have a huge

1 delivery fleet that goes to each city where they -- when the
2 packages reach the station there, they are sorted, they are
3 placed on a truck, and they are delivered.

4 Q And Fed-Ex is a commercial -- is Fed-Ex a commercial
5 enterprise? Do you charge your customers for these shipping
6 services?

7 A I sure hope so, yes, we do.

8 Q Thank you. All right. So now that we know a little bit
9 more than perhaps what we otherwise would know about Fed-Ex,
10 Federal Express, I guess it's Fed-Ex now?

11 A Fed-Ex is like Kleenex and Xerox. When you are going to
12 do something, you are going to Fed-Ex it to somebody. That's
13 the way we sort of treat that.

14 Q That's true. Tell us a little bit about now what you do.
15 So what is your current job title?

16 A I'm a senior performance and planning analyst in the
17 revenue operations of revenue recovery. So I handle -- Fed-Ex
18 has different groups. Of course Fed-Ex has a group that what
19 they do is move packages. The revenue operations handles
20 everything to do with customers, accounts, payments, invoicing.
21 We are the ones who get the money in for the company.

22 Q And how long have you been in that position?

23 A I have been in -- since 1999, I have been in one form or
24 the other working for revenue services in different jobs but in
25 that same group.

1 Q So I think you just described a little bit about what the
2 revenue department does. Can you describe to the members of
3 the jury a little bit about what your personal responsibilities
4 are?

5 A My personal responsibilities is -- at this point I am in
6 the investigation of cases. I do the -- handle the revenue
7 side. I look at account numbers. I look at customers. I look
8 at invoicing. I review shipments. I review air bills. I look
9 at the whole focus to see what's involved to deal with people
10 that are trying to defraud Fed-Ex from their services. That's
11 what my responsibilities are right now.

12 Q And in addition to these records, in addition to or
13 perhaps in tandem with these responsibilities, are you a
14 records custodian for Fed-Ex?

15 A Yes, I am a custodian of the records. I handle all the
16 systems. I'm familiar with all the systems. I know how they
17 all work, dealt with all of them for at least ten years now.

18 Q Can you describe for the jury a little bit about with what
19 types of records Federal Express maintains and how they are
20 maintained?

21 A Well, Federal Express --

22 Q Or Fed-Ex, excuse me.

23 A Fed-Ex, you would imagine we have a mainframe computer.
24 We have a mainframe that's in Colorado Springs. We have a
25 backup in Memphis. And all of our records are maintained --

1 all the -- most of the records are maintained in that mainframe
2 system. That's all the customer information, the billing
3 information, the payment information, all of that information
4 is contained in that particular circumstance.

5 So what my responsibilities are is I have access to all
6 that information so that I can pull it up, look at it, review
7 it, add to it.

8 We have -- as you would imagine, we have a system where we
9 can add comments to accounts. If you were to call in on your
10 Fed-Ex account, I would make a note that you called in today
11 and asked for a copy of the invoice and we sent you a copy of
12 the invoice. So we have systems like that.

13 Basically it's what you would imagine for a large
14 multinational corporation that has a huge system that works for
15 collection -- for payments, collections, everything with regard
16 to customer accounts. We are in the customer friendly
17 business.

18 Q So the -- a lot of different categories of documents that
19 Fed-Ex maintains and I think you just described, there are many
20 documents pertaining to accounts and payments and revenues?

21 A Right.

22 Q Are there also -- and I guess we haven't spoken about it a
23 little bit so maybe now is the time to do it. When somebody
24 ships a package with Fed-Ex, is an air bill attached to the
25 package?

1 A Every package has to have an air bill on it. The reason
2 they have to have --

3 Q Let me stop you for a second. I apologize. Actually, can
4 you tell us all, what is an air bill? What kind of information
5 does it contain and what is its use?

6 A Each air bill is attached to the package. In it, it
7 contains, of course, you would imagine the person who shipped
8 it and where it was going. You would say what kind of service
9 you were doing, whether you were doing it priority overnight,
10 whether you were doing it standard overnight, whether it was
11 dangerous goods, and how it was paid for. So each air bill has
12 that information on it. As well as there is account
13 information on it and, of course, the date it was shipped and
14 who was responsible for payment of it.

15 Each of the air bills has a 12-digit number on it. So
16 everybody -- you know, tracking numbers, that is a tracking
17 number. We call it air bill number. It's a tracking number.
18 And I'm sure a lot of people here have shipped packages before
19 and they have gone online and they have entered their tracking
20 number to see where their package is along the way. So all
21 that information is contained on it.

22 Also contained on it is the number of the package, how
23 much it weighs. There is a default for declared value. If you
24 want to make a higher declared value, you can put that declared
25 value on it as well as other information similar to that. So

1 you have to have an account number.

2 A lot of the air bills -- there are two different kinds,
3 of course. There are kinds that are generated by the computer
4 and there are kinds that are handwritten. I'm sure everybody's
5 done it the old-fashioned way, used to handwrite them, and now
6 most people go and generate them on the computer.

7 There is a bar code on this. And in the bar code, there
8 is information in that bar code such as the tracking number, a
9 lot of other information that is scanned, and that way
10 packages -- so a package can be scanned and followed throughout
11 our systems.

12 Q And these air bills, are they obviously -- are they
13 business records?

14 A Yes, of course.

15 Q And so I think you mentioned that there are two ways to
16 generate it, electronically, online, or handwritten?

17 A Correct.

18 Q Let's talk about the electronic. When an air bill is
19 created electronically, is it created through the Fed-Ex
20 website?

21 A Right. You go to Fed-Ex dot com and you would sign in,
22 log in with your name and password.

23 Q When you say you, to whom are you referring to?

24 A A shipper.

25 Q A person who wants to ship the package?

1 A If I was a person who wanted to ship a package and I had a
2 Fed-Ex account, I would go into the Fed-Ex dot com, I would
3 enter a name and a password, and go in electronically and put
4 all the information in, where I needed the package to go, how
5 it was packaged, what kind of service that I want. And once I
6 completed all the required information, there's a click on that
7 say click on that says ship and it brings you up to let you
8 check it and then you press go and it will print off your air
9 bill for you.

10 Q And then is that then saved into the computer server
11 system at the moment it's created by the shipper?

12 A Oh, yes. What it does is it not only creates the air
13 bill, but it creates all -- it starts the tracking information,
14 it starts the billing information, all within the Fed-Ex
15 computer system. That is how it starts off.

16 Think about it the old way. You used to have to do all of
17 that by hand. Well, now when it's all populated in Fed-Ex dot
18 com, it's all populated within our Fed-Ex system. We can see
19 it. We can look at it. It starts the tracking information so
20 you can start tracking electronically.

21 Q And I think you already mentioned -- said this, testified
22 to this, but to be clear, are all the air bills -- do they get
23 linked up internally to specific accounts?

24 A Yes, they do.

25 Q Are you familiar with the different methods that Fed-Ex

1 offers to open accounts?

2 A Right. Exactly. Fed-Ex opens accounts. There's multiple
3 ways to do it.

4 Q I'm sorry.

5 A There's multiple ways to do it. You can call in to our
6 customer service office and give them information saying I
7 would like to open an account and they will start asking you
8 questions and they will open an account and give you your
9 account number and say, okay, you've got your account number
10 you can ship. You can go on Fed-Ex dot com and open your
11 account that way and of course fill in whatever they need to
12 fill in and do that and go forward.

13 They will give you the information right then. Of course
14 you can go through one of our sales representatives and do it
15 that way. You can call our sales department. We are in the
16 shipping business. We want to open accounts for customers.
17 That's how we get our business, opening accounts. So we want
18 to make that process good and easy for our customers.

19 Q And once an individual or both an individual -- strike
20 that.

21 An individual can open an account, right?

22 A Right, an individual can open an account. Like I have an
23 account with Fed-Ex. Individual accounts are required to have
24 credit cards to back them up and pay for those. If your
25 business entities can open account, and they can be either on a

1 credit card or open line of credit.

2 Q What does an open line of credit mean?

3 A That means that I trust you to pay. I have opened your
4 account. You can ship. You are going to receive an invoice
5 from me and we expect you to pay that invoice within 15 days of
6 receipt of the invoice. So it's open line of credit.

7 It's not like it's going to hit a credit card when it's
8 shipped. I'm going to -- I guess the best term was I am going
9 to bill you for it. And that's what we do. We are going to
10 bill you for it. We expect you to pay for it.

11 Q And this open line of credit, as you say, I'm going to
12 bill you for it, is extended to business entities?

13 A Correct, business entities.

14 Q A few follow-ups on that. You indicated that invoices are
15 sent out approximately every 15 days to business entities. And
16 let's focus our attention on that. Is that correct?

17 A Well, if you ship a package, your accounts are set up to
18 be billed on a weekly basis. So what's going to happen is once
19 a week, whatever you shipped, we are going to use our computer
20 records, we are going to use our computer records to generate
21 you a paper document and send it to you and then you will have
22 it in your hands. And on it it says, please pay within 15 days
23 of this particular circumstance.

24 So then you get -- there's a little, of course -- at the
25 bottom, there's a tear-off with the little bar code so you sent

1 your check in the bar code and you pay your invoice that way.
2 You can call in. You can make a payment by phone on that
3 invoice. You can call in and make a payment on the credit card
4 on that invoice. We will take your money any way we can.

5 Q If a business entity doesn't pay its invoice, what
6 happens?

7 A Well, basically there's a certain time reference that when
8 you open a new account, you have a certain time reference you
9 have to pay on a new account. If you don't pay on that
10 account, we are going to close the credit on that account.
11 What we do is put it on a credit hold until the account is
12 brought current.

13 On other accounts, if it falls behind about 60 days, then
14 we are going to shut it down because we have given you an
15 opportunity, reasonable opportunity, to pay and you have
16 made -- you have proven to us that you are not going to pay so
17 we are not going to reopen the credit on your account until you
18 come and bring that account current and make a commitment to go
19 forward and pay us within our normal credit terms.

20 Q There is, I think you termed it a grace period between the
21 time the invoice is sent out and is due and the time that you,
22 you being Fed-Ex, would close the account, about 30 to 60 days?

23 A 30 to 60 days, yeah. We want to give people, you know,
24 reasonable opportunity to get a copy of the invoice, look at
25 it, see if there are any problems. Sometimes there has to be

1 adjustments made or there's a problem or there's a late
2 shipment to get adjustments. So give them a reasonable
3 opportunity to do that and then send the check in and get
4 posted to their account.

5 You don't want to hold them to five or six days in today's
6 society. You want to give them a reasonable opportunity to
7 pay. And that way, after 60 days, we will call you on the
8 phone. If we can't reach you or you don't pay like we have
9 asked you to, then we are going to make a collection effort on
10 it, and then we are going to shut you down if you don't pay.

11 Q I just want to shift gears for a second. Something else
12 concerning business accounts. So that's the invoice and
13 payment part of it. When a business opens an account, are they
14 able to log in, somebody within the business, with user name
15 and password?

16 A Certainly, yes.

17 Q And is that user name and password automatically links up
18 to the account and the account number?

19 A Right. It's a situation where sort of like when you go
20 into your AOL mail account, you enter AOL dot com and password
21 and it takes you to your mail. What this does, it goes in, you
22 enter your name and password. There are hyperlinks there. You
23 say, I want to ship and it brings up the form to ship and
24 enters your account number there automatically.

25 Q So the account number is automatically populated in the

1 shipping label?

2 A Yes.

3 Q Is the sender information also automatically populated
4 based on the information provided with the account opening?

5 A Well, once you get where you are sending the package and
6 you hit the ship button, it's going to populate that
7 information for your shipping label, you know, for the label.

8 Q For the second sender?

9 A It's going to put the sender information in there. That
10 information that's in our mainframe computer is going to
11 populate automatically on that particular form. Of course,
12 like I said, we want to make it easy for you. We don't want to
13 have you put all that information in. We want it to move
14 quickly so you ship.

15 Q Let's say I wanted to change the shipper's address or I
16 wanted to change the entity, do you manually override that?

17 A There is a manual override situation. It's something
18 that's a little bit difficult to do because it's not what
19 people normally do. They normally just ship. They have -- the
20 information is there. They want to get in, make their label,
21 they want to get going out of it.

22 Q But certainly you can type over the sender's information;
23 you can put anything you want as a sender?

24 A Exactly. There's always an override feature there.

25 Q I apologize. I'm jumping around. I'll try not to do

1 that. Getting back to the invoice, I think you indicated that
2 the invoice will charge for the specific shipments, in other
3 words, what Fed-Ex charges the client to take the package from
4 destination A to destination B, correct?

5 A Right.

6 Q But in addition -- yes, is that --

7 A Yes, that's correct.

8 Q Now, is there any additional documentation if -- excuse
9 me, invoicing or billing when a package goes from the United
10 States to Brazil?

11 A There's always -- when you ship internationally, there's a
12 requirement for customs information to go with the package.
13 There has to be some customs information. There has to be a
14 commercial invoice. That's not a Fed-Ex requirement. That's a
15 requirement of all the countries when you ship internationally,
16 each country, so that way they can assess their duties and
17 taxes when the packages come.

18 So the commercial invoice tells the sender, the recipient,
19 gives detailed information of what's in the packages, and
20 assigns a value to it so that they can assess the customs
21 duties on the packages. So you have multiple --

22 Q Is it the foreign entity, like in this case, let's talk
23 about Brazil. Does Brazil impose duties and customs on inbound
24 packages?

25 A Right. Each country has a different percentage of customs

1 and duties and taxes. So wherever the destination package is,
2 you have to clear customs through them before it's delivered,
3 yes.

4 Q So to make it very simple, Brazil wants a certain amount
5 of money. Every country, but let's focus on Brazil. Every
6 country wants customs and duties, payments before they will
7 release the package to a destination within their country?

8 A Correct.

9 Q So who pays that customs and duties on a Fed-Ex package
10 from United States to Brazil?

11 A Actually Fed-Ex advances those sums.

12 Q Explain that.

13 A What we do is we pay those on the front end. And of
14 course, because you have to remember, if you have to wait for
15 that someone to pay those duties and taxes, it would be held up
16 in customs and it would take a lot longer to deliver. So what
17 we do is we advance those funds to the country. And what
18 happens is when you ship a package internationally, you are
19 going to get two separate invoices from Fed-Ex. You are going
20 to get one invoice for the shipping, okay, because that's the
21 transportation. That's what it costs you to move it from one
22 country to next. And then you are going to get a separate
23 invoice for duties and taxes.

24 Q Fed-Ex pays it up front and bills it back to the client?

25 A That's right. We do that for our customers, yes.

1 MS. MITRANI: I apologize, Your Honor, beg the Court's
2 indulgence. Your Honor, may I approach the witness?

3 THE COURT: You may.

4 BY MS. MITRANI:

5 Q Mr. Seligstein, I'm showing you what's been marked for
6 identification as Government's Exhibit 14K.

7 A Yes.

8 Q Can you describe what 14K is?

9 A This is a spreadsheet. I think it's 20 different accounts
10 of information from our mainframe system. It shows the account
11 number, the name on the account, the street address of the
12 account, the city, state, and zip, the phone number. We always
13 have a contact person on all of our accounts. A lot of times
14 now we are getting email addresses shows the date open. There
15 was a name given to Fed-Ex and how the account was opened, the
16 date it was first shipped, the day it was closed, and the
17 amount of Fed-Ex loss.

18 Q Did you create Exhibit 14K?

19 A Yes, I did.

20 Q And are there also the underlying business records that
21 gave rise to 14K also contained within the exhibit?

22 A That's right. I went in from our -- yes, this is right
23 down here. I pulled this information out of our business
24 records and actually compiled the spreadsheet myself. So this
25 is the spreadsheet and this is the underlying information.

1 Q And this is the business records we talked about generally
2 pertaining to account opening and revenue, correct?

3 A Correct, exactly. So I went in and put all the
4 information on one sheet.

5 MS. MITRANI: Yes, Your Honor, the government would
6 offer 14K into evidence.

7 THE COURT: Any objection?

8 MR. SCOTTON: Your Honor, I'm trying to see here on my
9 files -- I'm not -- I'm looking for this evidence and I'm not
10 seeing here that I have it.

11 MS. MITRANI: Your Honor, I provided everything to
12 Mr. Scotton. What I will do is I will provide him a copy.
13 Mr. Scotton, I gave you, I'll just give it to him again, Your
14 Honor.

15 THE COURT: Okay. Thank you. All right.
16 Mr. Scotton, are there any objections?

17 MS. MITRANI: I'm going to give him the underlying
18 documents too.

19 MR. SCOTTON: No, Your Honor.

20 THE COURT: Well, do you want to give him the
21 underlying documents and we can just be sure?

22 MS. MITRANI: Sure.

23 THE COURT: Thanks. Any objections?

24 MR. SCOTTON: No, Your Honor.

25 THE COURT: All right then, Government's Exhibit 14K

1 is admitted.

2 (Thereupon, Government's 14 received in evidence.)

3 MS. MITRANI: Your Honor, I would like to publish 14K
4 to the jury. It's kind of -- most of our exhibits are going to
5 be electronic, but this is a big spreadsheet. Would it be
6 acceptable to the Court if I pass one out to each juror?

7 THE COURT: Sure, that's fine. Ms. Mitrani, of course
8 it's up to you, but if you want me to be able to follow along,
9 I need a copy.

10 MS. MITRANI: A million apologies, Your Honor.

11 THE COURT: No problem. Thank you.

12 BY MS. MITRANI:

13 Q Okay. Mr. Seligstein, let's identify these accounts. So
14 let's start. Let's actually identify the columns. So on the
15 left most part of the spreadsheet, the column is account
16 number, correct?

17 A That's correct.

18 Q I'm sorry, sir. Go ahead.

19 A Fed-Ex uses nine-digit account numbers. If there's any
20 here, I don't see any. There are eight digits. What that
21 means is there is a zero in the start of it. So we use
22 nine-digit account numbers. Our system is set up that way so
23 we can access using a nine-digit number to access the business
24 records.

25 Q The next column is the name on the account, correct?

1 A That's correct.

2 Q Then the -- the next column is street address, correct?

3 A That's right.

4 Q Is that the street address that was provided to Fed-Ex
5 during the point either when the account was opened or sometime
6 subsequent to that?

7 A That was either the address that was there or changed
8 later on down the route maybe. But this is the address. When
9 the account is open, I pulled --

10 MR. SCOTTON: Objection, Your Honor.

11 THE COURT: I'm sorry?

12 MR. SCOTTON: Object.

13 THE COURT: What's the objection?

14 MR. SCOTTON: He don't know what the answer is, so...

15 THE COURT: All right. Overruled.

16 THE WITNESS: This is the information that's in our
17 mainframe system in the business records. If you go into the
18 system, you access the business records. And this is the
19 information. I just compiled it all into one spreadsheet so it
20 would be easy to see.

21 BY MS. MITRANI:

22 Q All right. And the next column is phone number. That's a
23 phone number that's provided?

24 A Correct, yes.

25 Q Contact person provided is the next column?

1 A Yes.

2 Q Email address, if there was one provided?

3 A Correct.

4 Q So if -- as we review the spreadsheet, if you don't see an
5 email address on there, what does that mean?

6 A That means there wasn't one provided, there's not one in
7 the business records.

8 Q The next column is date opened. Is that the date the
9 account was opened?

10 A Yes.

11 Q The next column is name given to Fed-Ex?

12 A Correct.

13 Q Is that self-explanatory, is that the name --

14 A That's the name that the caller gave to Fed-Ex.

15 Q Or if it was online or through a rep, would that be the
16 number?

17 A Yes.

18 Q Next column is how opened?

19 A Right, correct.

20 Q First shipped, what does that mean, sir?

21 A A lot of people open accounts because they are going to
22 need one in the future. But what these accounts do is they are
23 opened and our system designates -- the business records
24 designate the first day the customer ships. So we know the
25 date the account is open. We are also aware of the date the

1 customer first shipped its first package.

2 Q And then they close an amount of loss, correct?

3 A Yes.

4 Q What does amount of loss represent?

5 A We talked earlier about when the account is unpaid and
6 there's -- and the accounts are closed. This is the amount
7 that was due at the time the accounts at or near the time the
8 accounts were closed.

9 Q So let's go through this. The first one is Brasil Express
10 Online, Inc., is that correct, sir?

11 A Yes.

12 Q And that's Brasil spelled with an S?

13 A Yes.

14 Q And that account was opened on November 22, 2010?

15 A Yes.

16 Q And it was closed December 13, 2010?

17 A That was the first ship date.

18 Q I'm sorry, sir. It was closed January 26, 2011?

19 A Yes, uh-huh.

20 Q And it has approximately \$50,000 loss, the amount on the
21 spreadsheet?

22 A Yes.

23 Q The next three entries are Brazil Express, Inc. with three
24 distinct account numbers, correct?

25 A Yes.

1 Q And the first one is with an S, correct?

2 A Correct.

3 Q And the other two are with a Z?

4 A Right.

5 Q All right. And these accounts, not the first Brazil
6 Express, but the second two, let's go for the third one in the
7 spreadsheet was opened March 2008 and closed March 18, 2008,
8 correct?

9 A Correct.

10 Q And that had an approximate \$9,495.13 loss?

11 A Correct.

12 Q And the next Brazil Express was opened December 1st, 2010
13 and closed January 13, 2011, about six weeks later, is that
14 correct?

15 A Yes.

16 Q And the amount of loss on that one is approximately
17 \$22,937.73?

18 A Correct.

19 Q All right. Then we have Sky Air Express, correct?

20 A Yes.

21 Q And address on Sky Air Express is 398 Southeast Mizner
22 Boulevard?

23 A Right.

24 Q It was opened January 18, 2011, is that correct?

25 A Yes.

1 Q And it was closed January 21, 2011?

2 A Right.

3 Q So that one was closed pretty quickly?

4 A Right, exactly.

5 Q And in that three-day period, it accumulated a \$13,000
6 loss?

7 A If you ship a bunch, you know, you can -- ship a bunch of
8 packages, you can run up a bill pretty quickly.

9 Q How about if you ship internationally to Brazil?

10 A Especially internationally. Especially internationally.

11 Q The next one is Matte Lion USA, Inc., correct?

12 A Yes.

13 Q That also has the 398 Southeast Mizner Boulevard, Boca
14 Raton, Florida address on it?

15 A Right.

16 Q And I'll note, do Sky Air Express and Matte Lion USA, do
17 they both share the same phone number as that provided to
18 Fed-Ex, which is 561 -- I apologize. It's not the same, but
19 it's close. One is 561-361-4348 and one is 561-368-7348,
20 correct?

21 A Correct.

22 Q Likewise, the contact people aren't the same, but they are
23 pretty close, is that correct?

24 A Correct.

25 Q One is Alex Chavez is for Sky Air Express?

1 A Yes, Alex Chavez and Alex Column.

2 Q And Alex Column from Matte Lion, is that correct?

3 A Yes, ma'am.

4 Q That account was opened, the Matte Lion USA account, was
5 opened February 27, 2007, correct?

6 A Yes.

7 Q And it was closed April 20, 2007, correct?

8 A Correct.

9 Q So about two months, a little less, and it racked up
10 \$36,337.48 worth of loss?

11 A Correct.

12 Q Now, the next series one, Rio Motor Sport, Inc., correct?

13 A Correct.

14 Q With an address in Boca Raton and that was opened
15 January 22, 2010 and closed March 8, 2011?

16 A Correct. I think that was November of 2010. I think it
17 was closed March of 2011.

18 Q Right. It was opened November 2010 and was closed
19 March 2011, correct?

20 A Yes, ma'am.

21 Q And that one had losses to Fed-Ex \$224,485.14?

22 A That's correct.

23 Q And there was another Rio Motor Sports account but not
24 with the Inc. So the next one on the spreadsheet is Rio Motor
25 Sports, correct?

1 A Yes.

2 Q It gives you that account was opened using the same
3 address as Rio Motor Sports, Inc., correct?

4 A Yes.

5 Q And the contact for Rio Motor Sports was a Roger Sutton?

6 A Correct.

7 Q And then the next one is Rio Motor, Inc., correct?

8 A Yes.

9 Q That one has 7797 Golf Circle Drive as the address
10 provided, correct?

11 A Yes, ma'am.

12 Q And is that the same address as the first account, Brazil
13 Express Online, Inc.?

14 A Yes.

15 Q In Margate, Florida?

16 A Yes, it is.

17 Q And that one had losses of \$29,325.87, correct?

18 A Correct.

19 Q Now, the next accounts are Citrix Online, correct?

20 A Yes, ma'am.

21 Q And an address in Fort Lauderdale, Florida was given?

22 A Correct.

23 Q And that's a Citrix account with the account number
24 identified on the spreadsheet that was opened August 2008,
25 August 11, 2008, closed September 15, 2008, is that correct?

1 A Yes, ma'am.

2 Q So it lasted about a month approximately?

3 A Right.

4 Q And that month period, there was a \$61,519.47 loss to
5 Fed-Ex?

6 A Correct.

7 Q The next one is Triunfo, T-R-I-U-N-F-O, Specialty Food
8 Corp, is that correct?

9 A Yes.

10 Q That one was opened July 14, 2008 and closed September 5,
11 2008?

12 A Correct.

13 Q With a \$81,432.93 loss to Fed-Ex?

14 A That's correct.

15 Q All right. I'm going to -- I'm just going to skip Copilot
16 Express for now. And the next one after Copilot Express is Sun
17 Moon Online, correct?

18 A Yes, ma'am.

19 Q And that one gives the 7797 Golf Circle Drive address in
20 Margate, Florida, correct?

21 A Correct.

22 Q The same as Rio Motor, Inc. and the same as Brazil Express
23 Online, Inc., correct?

24 A Correct.

25 Q And the Sun Moon Online, that was opened December 4th,

1 2008, closed April 23rd, 2009 with a \$32,445.34 loss to Fed-Ex,
2 correct?

3 A Correct.

4 Q I'm going to skip over BH Photo Video for now. We will
5 come back to that. There is Impulse Energy Drink with a Miami
6 address provided, correct?

7 A Yes, ma'am.

8 Q And a Steve Berian was the person provided as the contact
9 information?

10 A Yes, ma'am.

11 Q And that was opened by telephone, correct?

12 A Yes, ma'am.

13 Q That was opened December 10th, 2008 by phone?

14 A Yes, ma'am.

15 Q It was closed December 29 -- excuse me, it was closed
16 January 15, 2009 with a \$380 loss to Fed-Ex, correct?

17 A Yes, ma'am.

18 Q And was that -- the telephone call that opened the Impulse
19 Energy Drink, that was retrieved by Fed-Ex, correct?

20 A Correct.

21 Q Have you had the opportunity to hear that phone call?

22 A Yes, I did.

23 Q Is that phone call contained on Government's Exhibit 14A?
24 You don't know which one?

25 A I have listened to the phone call. I'm not sure what

1 exhibit it is. But I'm sure there's a copy of it, yes.

2 Q And the phone call matches the account number as well as
3 the contact person, correct?

4 A Yes..

5 Q All right. Now, the next count in this spreadsheet is
6 Amazon dot com LLC.

7 Q Is Amazon a big client of Fed-Ex?

8 A Amazon is a very large client of Fed-Ex.

9 Q Can you tell us a little bit -- does it have one account,
10 does it have many accounts? Give the members of the jury --

11 A I'm going to say we probably have thousands of accounts
12 for Amazon. You know, multiple accounts. I'm not sure I have
13 looked a hundred percent. But Amazon is one of our largest
14 shippers.

15 Q Do they pay their bills?

16 A Of course they pay their bills, yes.

17 Q Okay. But this particular Amazon dot com LLC didn't pay
18 its bills?

19 A That's correct.

20 Q And like the other accounts we have been talking about, it
21 was closed by Fed-Ex for nonpayment and suspect of fraud,
22 correct?

23 A Exactly.

24 Q So similarly I see Wal-Mart is our next entry after Amazon
25 dot com LLC, and that account, that particular account

1 identified by the account number on the spreadsheet was opened
2 by telephone on October 8, 2008?

3 A Yes, ma'am.

4 Q I know the spreadsheet is a little small. It's hurting my
5 eyes too. I apologize.

6 A It's okay.

7 Q And this Wal-Mart account, was it also the recording of
8 the account opening, was it also captured and retrieved by
9 Fed-Ex?

10 A Yes, it was.

11 Q You have had the opportunity to hear it?

12 A Yes, I did.

13 Q And the information on the call recording, for example,
14 the account number that's on the spreadsheet matches what was
15 provided on the reporting?

16 A Exactly.

17 Q So sort of the same as Amazon, is Wal-Mart a big client of
18 Fed-Ex?

19 A Wal-Mart is actually a huge client.

20 Q Mail many packages, does it?

21 A Thousands per day.

22 Q Thousands per day?

23 A Per day.

24 Q Does it have a lot of accounts?

25 A Multiple accounts. Wal-Mart probably has thousands. They

1 probably have -- they are -- each customer is assigned a
2 national account number and I assume their national account
3 number probably has a thousand accounts.

4 Q As the records custodian does Wal-Mart pay its invoices?

5 A Oh, yes.

6 Q On this particular Wal-Mart account that was opened
7 October 8, 2008 and then closed, it doesn't have a date closed?

8 A Right.

9 Q But it has an outstanding balance of not being paid as
10 \$14,499.88?

11 A Correct.

12 Q The next is Sound Stream Technologies. And that was
13 opened November 24, 2008 and closed December 2, 2009?

14 A Correct.

15 Q And that had an approximate \$3,000 loss?

16 A Correct.

17 Q Global Money Remittance with the specific account number
18 given, this particular account was opened October 21, 2008?

19 A Yes.

20 Q And closed December 1st, 2008, correct?

21 A Yes.

22 Q With a \$6,534.30 unpaid balance?

23 A Yes.

24 Q And was the phone call that opened that account retrieved
25 by Fed-Ex?

1 A Yes.

2 Q And have you listened to it?

3 A Yes, I have listened to it as well.

4 Q The information on the spreadsheet, the account number
5 person opening match what was on the phone call?

6 A Yes, it does.

7 Q And last but not least is Target. And is Target another
8 big customer?

9 A We are hitting all the big customers. Yes, they are big
10 customer of ours?

11 Q Do they have multiple accounts?

12 A Yes, multiple accounts. And yes, they are a good payer.
13 We have been doing business with them a long time.

14 Q This particular account that purports to be from Target
15 was opened November 7, 2008?

16 A Correct.

17 Q Closed pretty quickly. Excuse me, no. It was -- the
18 first shipment was pretty quickly, and it was closed
19 September 24, 2009?

20 A Right.

21 Q And this particular Target account has an outstanding
22 balance of \$3,770.10?

23 A Correct.

24 Q I don't know if I asked you, was the phone call for this
25 account opening retrieved by Fed-Ex?

1 A I think this one was retrieved, and yes, I have listened
2 to this one and it matches up the information.

3 Q You have listened to the recording?

4 A I have listened to the recording and the information
5 opening the account matches this information.

6 Q These accounts, the ones that were closed, I think there's
7 only one that wasn't, were all closed by Fed-Ex, these were all
8 closed by Fed-Ex?

9 A That's correct, closed by Fed-Ex collections.

10 MS. MITRANI: May I approach, Your Honor?

11 THE COURT: You may.

12 BY MS. MITRANI:

13 Q Mr. Seligstein, I'm showing you Government's Composite
14 Exhibit 14J. So 14J is broken down from 14J1 to and including
15 14J4. Do you recognize these documents, sir?

16 A Yes, I do.

17 Q What are these documents, what is Government's Exhibit
18 14J?

19 A 14J is our copies of invoices that Fed-Ex uses to bill our
20 customers for our services rendered. It gives the customer's
21 name, tells you where to send a payment to which is the most
22 important part, the invoice number, the date, your account
23 number, the invoice amount, the amounts due, and it provides
24 you with all the tracking information that we have come to
25 expect from Fed-Ex. The sender information, the recipient

1 information, the number of packages, the weight, what kind of
2 service we provided you, and the charges and the amount due.

3 Q So these are invoices and then some of them contain a
4 summary sheet summarizing if there was more than one invoice,
5 correct?

6 A Right. Invoices --

7 Q I'm sorry, sir. Is there a summary sheet in the
8 beginning?

9 A There's a summary sheet in the beginning.

10 Q Not of each of them, but the one that has multiple
11 invoices, correct?

12 A Correct.

13 MS. MITRANI: Your Honor, government would offer 14J
14 into evidence.

15 THE COURT: Any objection?

16 MR. SCOTTON: No, Your Honor.

17 THE COURT: All right 14J is admitted.

18 (Thereupon, Government's 14J received in evidence.)

19 BY MS. MITRANI:

20 Q And actually, there was a 14J5 which I inadvertently left
21 at counsel's table. Is that also Fed-Ex invoices?

22 A This is a Fed-Ex invoice, yes. That is one singular
23 invoice.

24 MS. MITRANI: The government would offer 14J5 as well.

25 THE COURT: Any objection?

1 MR. SCOTTON: No, Your Honor.

2 THE COURT: All right 14J5 is admitted.

3 (Thereupon, Government's 14J5 received in evidence.)

4 MS. MITRANI: Your Honor, I think I need to use the
5 ELMO. Is that --

6 THE COURT: Sure. Go right ahead.

7 MS. MITRANI: Thank you, Your Honor.

8 THE COURT: It sounds like a character from Sesame
9 Street, but it's really our fancy overhead projector.

10 MS. MITRANI: I apologize, Your Honor, it's just
11 taking a minute for it to warm up.

12 THE COURT: That's all right.

13 BY MS. MITRANI:

14 Q So 14J1 summarizes the Target invoices with the specific
15 shipments as reflected on the date of the invoices, correct?

16 A Correct, yes.

17 Q Although, I think -- okay.

18 The first page of 14J2, likewise, are numerous Fed-Ex
19 invoices to the Wal-Mart account that we just discussed and
20 your summary sheet, 14K, with the invoice amounts, correct?

21 A Correct.

22 Q And then so we can actually see an invoice, we see that
23 the sender is supposedly a Steven Duke on Wal-Mart online
24 account, correct?

25 A Yes.

1 Q On the first entry and the second entry --

2 A Yes.

3 Q With packages going to Brazil?

4 A That's correct.

5 Q Likewise, the last two entries on this invoice are
6 packages. Can you see okay?

7 A I've got the monitor, yes, I can see.

8 Q So more packages to Brazil?

9 A Correct.

10 MS. MITRANI: Your Honor, mind if I move that chair?

11 THE COURT: No, that's fine.

12 BY MS. MITRANI:

13 Q So the first three entries on the third page of 14J2 which
14 is -- and for the record, this is Fed-Ex 285. Again, the
15 sender, Steven Duke, with two addresses in Orlando, the first
16 and third, and one address in Atlanta, correct?

17 A Correct.

18 Q And packages were going to Brazil?

19 A Correct.

20 Q The fourth one, though -- make sure I counted correctly.
21 Excuse me, the fifth one on the invoice, and I know it's hard
22 to tell and I can show you the thing if you want to see it, the
23 fifth one is a little different. It is the same Wal-Mart
24 account number, but this one is coming from an Alex Scotton in
25 Brazil, is that correct? Can you see it on your screen?

1 Should I zoom it up for you?

2 A Yes. I'm looking at the last rather than next to last
3 one, yes.

4 Q So this is the same Wal-Mart account that we identified?

5 A Right.

6 Q And this particular shipment was from, according to the
7 documentation, the business records of Fed-Ex, was from Alex
8 Scotton in Brazil, correct?

9 A Yes.

10 Q To Roger Scotton at, looks like 298 Southeast Mizenser but
11 spelled M-I-Z-E-N-S-E-R Boulevard in Boca Raton, Florida,
12 correct?

13 A Yes.

14 Q And the last shipment on this invoice on this particular
15 page of invoice -- excuse me, Fed-Ex 285, likewise, the return
16 address is not Wal-Mart in Arkansas or Orlando, but it purports
17 to be from Wal-Mart in Brazil, correct?

18 A Yes.

19 Q With a shipment to Roger Scotton. This one is 398
20 Southeast Mizer Boulevard, M-I-Z-E-R, in Boca Raton, Florida
21 correct?

22 A Yes.

23 Q I'm showing you again, I'm still on 14J2, this particular
24 page, Fed-Ex 287, and that same Wal-Mart we have been
25 discussing. This one is a package that was -- the return

1 address is FDXPDKA space GRD space OPS with an address in
2 Atlanta, Georgia, correct?

3 A Yes.

4 Q And it's going to returns, Steven Duke, Wal-Mart online at
5 398 Southeast Mizner Boulevard, correct?

6 A Yes.

7 Q And the bottom seems to say R. Paulo?

8 A Right.

9 Q And then the next shipment is Wal-Mart return online, but
10 this one in Bentonville, Arkansas to an address in Austin,
11 Texas?

12 A Right.

13 Q The same Wal-Mart account on this page of the same
14 Exhibit 14J2 is Fed-Ex 290 on the same account. This time the
15 shipper is listed as online R, 2234 North Federal Highway, Boca
16 Raton, Florida to Paulo at 398 Southeast Mizner Boulevard in
17 Boca Raton, Florida, correct?

18 A Correct.

19 Q I am going to go back to 14J1, which is the Target
20 account. And this is the second -- excuse me. This is the
21 second page of Exhibit 14J1. And this is -- is this the same
22 Target account that was identified on the spreadsheet, sir?

23 A Yes.

24 Q All right. And this is Fed-Ex 338, this particular page,
25 for the record, and here Target, the Target account -- strike

1 that.

2 Here the return address is given as Targeting Express
3 Online, 2234 North Federal Highway, Boca Raton is the shipper
4 correct?

5 A Yes.

6 Q To a Cerline Santos at 398 Southeast Mizner Boulevard in
7 Boca Raton, Florida?

8 A Yes.

9 Q And then the next page is Fed-Ex 339. It's given as --
10 the first entry is Douglas at Targeting Express Online in Boca
11 Raton, Florida to a Junio in Everett, Massachusetts, correct?

12 A Yes.

13 Q And then the next entry, the next shipment on the invoice
14 says Paul Online Express at 398 Southeast Mizner Boulevard,
15 also to -- this one is to Junio Silva in Massachusetts?

16 A Correct.

17 Q 14J3, this is the summary for invoices on the Matte Lion
18 account?

19 A Yes.

20 Q On this Matte Lion account at Fed-Ex 174, there's a
21 shipment that shows the sender is Carlos Colon at 398 Southeast
22 Mizner, 1921, in Boca Raton?

23 A Yes.

24 MR. SCOTTON: Object, Your Honor.

25 THE COURT: I'm sorry, what is the objection?

1 MR. SCOTTON: The picture doesn't show 398 Southeast
2 Mizer, Micner Boulevard.

3 THE COURT: All right. Thank you. Sustained.

4 BY MS. MITRANI:

5 Q Does it say 298 Micner Boulevard?

6 A Yes.

7 Q Is it a package to Brazil?

8 A Yes.

9 Q But then does the second entry say Mike Rose at 398
10 Southeast Mirner Boulevard in Boca Raton?

11 A Yes?

12 Q That's also a package to Brazil?

13 A Yes.

14 Q Just one more on this Matte Lion account. This is at
15 Fed-Ex 176 all within Exhibit 14J3 on the same Matte Lion
16 account which I guess we can show everybody. That's been on
17 the corner -- the client or the account number, the entity, the
18 account number is on the upper left-hand corner of these
19 invoices, correct?

20 A Right. You are going to have invoice number and then
21 account number right under it.

22 Q I don't think I have shown this, but they are all going to
23 have -- we have been focusing so far on sender recipient, but
24 actually the first column on all of these invoices that we have
25 been talking about, Target, Wal-Mart, and Matte Lion, have the

1 specific tracking number, reference number, for the shipment?

2 A Every package will have a tracking number, yes.

3 Q And that's contained on the invoice?

4 A Yes, exactly.

5 Q And this particular shipment was from David at Matte Lion
6 USA, Inc. at 398 Southeast Mizner Boulevard, Boca Raton,
7 Florida to Brazil?

8 A Correct.

9 Q This will be my last one on Matte Lion. I guess these
10 middle entries, the first two say Lion, Inc. The first one
11 doesn't give an address. The second one says 398 Mizner
12 Boulevard, right?

13 A Yes.

14 Q In Boca Raton?

15 A Yes.

16 Q They are both from Boca Raton, Florida as the shipper?

17 A Yes.

18 Q And they are both shipments to Brazil, correct?

19 A Yes.

20 Q But then on the same Matte Lion account, it says Alex
21 Colon, Matte Lion USA, Inc. at 7797 Golf Circle Drive, Margate
22 with a package going to Brazil?

23 A Correct.

24 Q 14J4 --

25 MS. MITRANI: Can the Court hear me okay?

1 THE COURT: Yes.

2 MS. MITRANI: Thank you.

3 BY MS. MITRANI:

4 Q 14J4 is a little different than the other three. There's
5 this 14J4 is just one invoice, correct?

6 A That's a nine-page invoice.

7 Q A nine-page -- one invoice nine pages long with lots of
8 shipments?

9 A Yes, I would assume lots of shipments.

10 Q Or at least \$10,000 worth of shipments, how about that?

11 A I would agree the invoice is \$10,181.

12 Q This is the same Citrix that is contained on the
13 spreadsheet 14K, correct?

14 A Yes.

15 Q So as with everything else, there are numerous shipments
16 on this invoice. One of them as identified by the tracking
17 number on the left was supposedly sent by David Friedmain,
18 Citrix Online, 398 Southeast Mizner Boulevard, 1921, Boca
19 Raton, Florida. Can you see that okay, sir?

20 A Yes, it's the one ending 6720. The shipping number ends
21 in 6720.

22 Q Yes, the shipping number ends in 6720. And the sender is
23 how we just identified and that's a package going to Brazil?

24 A Yes.

25 Q And that one was, for the record, Fed-Ex 479. Now I'm

1 turning to Fed-Ex 480, all within 14J4, the same Citrix
2 account. Here we have shipments from Paulo at Express Online,
3 398 Southeast Meziner in Boca Raton, Florida, correct?

4 A Yes.

5 Q Going to Brazil, correct?

6 A Correct.

7 Q And then the next page, which is a Fed-Ex 481 for the
8 record, a shipment from Paulo Express Online, 398 again Meziner
9 to Brazil?

10 A Correct.

11 Q As we have been talking, we have been highlighting some of
12 the shipments, but are there more shipments contained within
13 these invoices?

14 A I'm sure there are, yes. With that much money, there
15 appear to be other shipments on that particular invoice.

16 Q Why don't you just look at it so you can see?

17 A Oh, yeah. There are actually 18 shipments on this
18 particular invoice.

19 Q And last but not least within the 14J series, this is
20 14J5. This is -- I'm sorry. I asked you a question and then
21 moved it. That's not fair.

22 Is this one invoice on that Impulse Energy Drink account?

23 A Yes.

24 Q It's a three-page invoice, correct?

25 A Yes.

1 Q And this particular invoice is showing a shipment from
2 Steven Brian Impulse CO in Boca Raton, Florida to an address in
3 Massachusetts?

4 A Correct, in Clinton, Massachusetts.

5 MS. MITRANI: Your Honor, in light of what we
6 discussed this morning with Mr. Kreiss, would now be a good
7 time to break?

8 THE COURT: Not quite yet. Thank you.

9 MS. MITRANI: May I approach the witness?

10 THE COURT: Yes.

11 BY MS. MITRANI:

12 Q All right. I am showing you -- I don't have them quite
13 memorized yet, but I am showing you Government's Composite
14 Exhibit 14I, so that's 14I1 through and including 14I8. Just
15 take a brief look at the documents or as long as you want and
16 just briefly summarize, are these claims that were made to
17 Fed-Ex regarding -- on several different accounts?

18 A These are claim documents for cargo claims is what we
19 would put them on several different accounts for. I think each
20 of these would be one shipment so that would make them eight
21 different claims from eight different shipments. They are all
22 claim forms and the appropriate documents with them, the
23 accompanying documents with them.

24 MS. MITRANI: Your Honor, the government would offer
25 composite 14I into evidence.

1 THE COURT: Any objection?

2 MR. SCOTTON: Yes, Your Honor, I am going to object
3 there is a lot of paper missing here. First of all --

4 THE COURT: Okay. Come sidebar.

5 (Thereupon, the following was heard sidebar.)

6 THE COURT: What is the objection?

7 MR. SCOTTON: The claim that there is eight different
8 claims here. We got only one check. I don't see any claims
9 form so is a lot of paperwork is missing here, receipts, claim
10 form. All of this evidence is incomplete. I'm going to
11 object.

12 MS. MITRANI: These are documents -- we pulled the
13 most relevant documents.

14 MR. SCOTTON: Your Honor.

15 THE COURT: You've got to let her talk. I will give
16 you a chance in a minute.

17 MS. MITRANI: Certain documents had hearsay in them
18 because they were annotated and some of them -- we pulled the
19 relevant documents, but all of it was produced to Mr. Scotton
20 in discovery.

21 THE COURT: Just one minute. Let me ask you
22 something. I understand it as hearsay. Do you have any
23 objection to putting all of it in?

24 MS. MITRANI: I don't know what Mr. Scotton means by
25 all of this.

1 THE COURT: What is it that you mean?

2 MR. SCOTTON: What I mean, this is a paper that the
3 government present here has eight claims. If the government is
4 going to present evidence, evidence has to be complete. So if
5 someone has made a claim on those accounts, I need to see the
6 claim form, the receipts, the waybills. Everything has to be
7 together here.

8 MS. MITRANI: I don't know that those are eight
9 claims. I have to see that.

10 A JUROR: Just a moment.

11 MR. SCOTTON: We got one check here. We got eight
12 claims here. This say we are going to pay the claim. But
13 where are the claim forms? Where is the receipts from the
14 merchandise? Where is the waybills and the customers in Brazil
15 pay for it? I mean, everything isn't complete.

16 MS. MITRANI: We provided what Fed-Ex gave us. I
17 think Mr. Scotton is suggesting that all claim forms are
18 identical. That's not true. He selected these. If the Court
19 sees, some there are waybills, and some there aren't. It's
20 what is provided to Fed-Ex. The claim gets initiated by the
21 client so it starts with whatever he pulls and what Fed-Ex does
22 to investigate it. Nothing is being hidden. Each folder
23 contains one check. It pertains to one claim.

24 THE COURT: Let's do this. Why don't we go through
25 each one. I know we went through all of them together. Why

1 don't we go through each of them individually and you can lay
2 the foundation for each of them individually then.

3 MR. SCOTTON: Your Honor, let me ask this question.
4 This here come from 14, it's 141, right?

5 THE COURT: I.

6 MS. MITRANI: 1411.

7 MR. SCOTTON: Okay. So what I'm seeing here, Your
8 Honor, this is eight different claims. The prosecutor tried to
9 present eight different claims and put it as evidence. For
10 them to put this in evidence --

11 THE COURT: Why do you keep saying it's eight
12 different claims?

13 MR. SCOTTON: Because that's what he testified just
14 now. Each one here has been made a claim.

15 MS. MITRANI: No.

16 THE COURT: First of all, there are only four things
17 that are here.

18 MS. MITRANI: That pertains to the same claim. I
19 apologize because there are eight folders. It's I1 through I8.
20 He just pulled one folder. There are eight claims. Each
21 folder is one claim.

22 THE COURT: So in I1, this is one claim we are looking
23 at?

24 MS. MITRANI: Yes. And, Your Honor, if I may because
25 I think Mr. Scotton is confusing things, as the Court knows,

1 these are Fed-Ex internal numbers that are provided that the
2 government stamps them with to provide in discovery.

3 THE COURT: Right.

4 MS. MITRANI: So that has nothing to do with the
5 actual Fed-Ex claim.

6 THE COURT: Okay. We are going to do this. We are
7 taking up a lot of time. Let's go through them one by one.

8 MS. MITRANI: I think Mr. Kreiss needs his break now.

9 THE COURT: We are going to take it in a minute.

10 MS. MITRANI: With the witness?

11 THE COURT: Yes, and I'll consider -- do a foundation
12 for each one and if there are objections, we will take them one
13 at a time.

14 (Thereupon, the following was heard in open court.)

15 THE COURT: We are going to take a break now until 10
16 after 11:00. Please remember my instructions. Don't discuss
17 the case with anyone. Don't disburse any information about the
18 case, and don't do any independent investigations about the
19 case. We will see you back here at 10 after 11:00.

20 All rise for the jury.

21 (Thereupon, the jury exited the courtroom at
22 10:55 a.m.)

23 THE COURT: All righty. So we will start up right
24 back at 10 after 11:00. Hopefully Mr. Kreiss will be done by
25 then. And if everybody could be back on time to start at that

1 time, that would be terrific.

2 MS. MITRANI: Are we going to wait for Mr. Kreiss to
3 return before we do anything?

4 THE COURT: I'm thinking we will wait another minute
5 or two and then we will bring the jury in. And by the time
6 they are seated and everything, we should be ready to start.

7 We are going to have to wait five minutes. Mr. Kreiss
8 is apparently just up right at this moment.

9 Let's bring them in. All rise for the jury.

10 MR. KREISS: Thank you, Judge.

11 (Thereupon, the jury entered the courtroom at
12 11:15 a.m.).

13 THE COURT: All righty. Please be seated. Thank you.

14 Mr. Seligstein, I'll just remind you that you are
15 still under oath. Do you understand?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Whenever you are ready, you may resume.

18 MS. MITRANI: Thank you, Your Honor. Your Honor, may
19 I approach the witness?

20 THE COURT: You may.

21 BY MS. MITRANI:

22 Q Mr. Seligstein, we are going to take this a little slower.
23 Let me start maybe by asking you, if a customer has a claim
24 against Fed-Ex -- I'm going to stand here for now because of
25 that light and I'll come back to the documents in a minute.

1 If the customer has a claim --

2 A Correct.

3 Q -- what are the typical types of claims on a package?

4 A Either a lost, damaged, stolen package. Those would be
5 the three main ones.

6 Q And who would initiate the claim?

7 A The customer, the recipient, the party to whom -- either
8 one, the sender or the recipient.

9 Q And is there a claim form, does Fed-Ex have a claim form
10 that it requests its customers to use when submitting claims?

11 A We have a claim form. You can do it one of two ways. You
12 can either do it by claim form or fill out the form online and
13 send it in. But we have a claim form to be completed.

14 Q And is that a business record of Fed-Ex?

15 A That is maintained in the normal business records, yes.

16 Q And then there's a process that is followed to an ultimate
17 resolution of the claim, it's either granted, denied, or
18 granted in part, is that a fair summary?

19 A Yes. There's a cargo claims group that reviews the claims
20 and decides whether to pay them or not pay them.

21 Q When you say cargo claims, what do you mean, sir?

22 A I guess that's just a internal situation.

23 Q You mean an internal phrase?

24 A Internal phrase is what I'm trying to say. It's what we
25 use when we talk about cargo claims because basically in the

1 day, all Fed-Ex traveled by plane, so anything on a plane was
2 cargo. So that's why these were called cargo claims. Now we
3 do ground transportation as well, so we have taken the
4 vernacular and moved it on.

5 Q In other words, you are dating yourself that you have been
6 working at Fed-Ex for a long time?

7 A Yes, I've been around a while.

8 Q I guess each claim, there might be more interactions
9 between the claimant and the customer service and some claims
10 are maybe fewer interactions between the two parties?

11 A Exactly. It depends on the type of the claim, what's
12 involved, how much is involved. Each claim would be handled on
13 an individual basis.

14 Q So would there be identical paperwork for any two or three
15 given claims?

16 A No.

17 Q Does each claim stand on whatever documents is submitted
18 by the client and whatever documents are generated by Fed-Ex?

19 A Right, it would be each claim is an individual development
20 or whatever you want to -- term you want to use. It comes in,
21 it's numbered, it is set up in the system. And they work from
22 a cue. And each one is an individual incident. They are all
23 on the same tracking number, so each one of them is an
24 individual situation.

25 Q Okay. My brain froze for a minute. Each one is an

1 individual situation, so therefore, the paperwork would be
2 whatever the paperwork is for that particular claim, correct?

3 A Correct, uh-huh.

4 Q And if the customer submits something, let's say a
5 receipt, does that then become part of the business records of
6 Fed-Ex?

7 A Right, that is.

8 MR. SCOTTON: Object, Your Honor.

9 THE COURT: What is the objection?

10 MR. SCOTTON: Leading.

11 THE COURT: Sustained.

12 BY MS. MITRANI:

13 Q What does Fed-Ex do with any documents received by a
14 client --

15 A In the.

16 Q -- with respect to a claim?

17 A With regard to a claim, they would be looked at and
18 reviewed, they would be scanned and placed in the system. We
19 keep those records. There is a system that contains those
20 records, the cargo claims, and that that system is maintained.
21 Those records are kept for, I think, at least eight to ten
22 years.

23 So we keep so many records in our normal course of
24 business, so when they come in, there's a procedure that they
25 are scanned in, kept in the normal course of business, and they

1 are done on a daily basis and they are worked as quickly as
2 possible.

3 Q I going to approach. Government's Exhibit 14I1, how many
4 claims are contained within 14I1?

5 A Just one.

6 Q So it's one claim pertaining to how many packages?

7 A One claim pertaining to one shipment.

8 Q One shipment as identified by a waybill number as well as
9 a claim number?

10 A Correct.

11 Q Is the claim number different from the waybill numbers?

12 A It would be, yes.

13 Q All right. And let me just -- all right. So then the
14 first page of the exhibit, is that the claim form that was used
15 to initiate the claim?

16 A That's correct. This is the Fed-Ex claim form that we
17 would send in. It looks like it's for Fed-Ex Express. This is
18 a claim for Fed-Ex Express package.

19 Q Okay. Let me -- we are going to try to summarize now.
20 And then are the following documents contained in the folder
21 the documents that were generated with respect to this one
22 particular claim?

23 A Right, exactly.

24 Q All right. And this one particular claim that's 14I1,
25 what was the name of the corporation that made this claim?

1 A This was a cargo claim of the Pittiman Corporation,
2 P-I-T-T-I-M-I-N, Corporation in Coconut Creek, Florida.

3 MS. MITRANI: Your Honor, the government would offer
4 14I1 into evidence.

5 THE COURT: Any objection?

6 MR. SCOTTON: Yes, Your Honor.

7 THE COURT: What is the objection?

8 MR. SCOTTON: This is not the original claim form.
9 This is a claim form that probably come from Fed-Ex database or
10 office. This is not the claim --

11 THE COURT: The claim is that it's not the original
12 form.

13 MR. SCOTTON: It's not the claim that the clients made
14 to Fed-Ex. It's not the typical claim that Federal Express --

15 THE COURT: Overruled. You can cross-examine on that.

16 MS. MITRANI: Is it admitted, Your Honor?

17 THE COURT: Yes, 14I1 is admitted.

18 (Thereupon, Government's 14I1 received in evidence.)

19 BY MS. MITRANI:

20 Q I'm showing you what's been marked for identification as
21 Government's Exhibit 14I2. Is this one cargo claim submitted
22 to Fed-Ex?

23 A Yes, that's correct.

24 Q What was the entity, the name of the entity or business
25 that submitted the claim?

1 A It was Cargo Air Roger Scott, Cargo Air from Boca Raton,
2 Florida.

3 Q Is the second page of that exhibit the claim form that
4 initiated the claim?

5 A Correct.

6 Q Are the ensuing pages of the -- are the ensuing pages
7 following the claim form the documents that were generated by
8 Fed-Ex or received from the claimant in connection with the
9 processing of this claim?

10 A Yes, this would be the claim file for this case.

11 MS. MITRANI: Your Honor, the government would offer
12 14I2 into evidence.

13 THE COURT: Any objection?

14 MR. SCOTTON: Yes, Your Honor, object that too.

15 THE COURT: The same grounds?

16 MR. SCOTTON: Well, Your Honor, paperwork is missing
17 here, waybills, commercial invoice.

18 THE COURT: All right. Overruled. You can
19 cross-examine about that.

20 BY MS. MITRANI:

21 Q We will talk about it first and then pull up the ones that
22 are admitted.

23 A All right.

24 Q I'm showing you 14I3, paren 3. Is this one claim -- cargo
25 claim, I'm going to get it right, that was submitted to Fed-Ex?

1 A Yes, it was.

2 Q And what was the entity submitting the claim?

3 A It was called David Friedmain Citrix Online in Margate,
4 Florida.

5 Q Is the second page of the exhibit the claim form that
6 initiated the claim?

7 A Yes, it was.

8 Q Are the documents that follow the documents that were
9 generated in connection with the processing of that claim?

10 A Yes.

11 MS. MITRANI: Your Honor, the government would offer
12 14I3.

13 THE COURT: Any objection?

14 MR. SCOTTON: Yes, Your Honor. Can we have a sidebar?

15 THE COURT: All right.

16 (Thereupon, the following was heard sidebar.)

17 MR. SCOTTON: Let me get this straight here on 14I2
18 that objected --

19 MS. MITRANI: Your Honor, I'm going to get it. Okay?

20 THE COURT: Just one minute.

21 MR. SCOTTON: You showed that evidence, so you
22 claiming my name, but this we got Manuel Ramos. So what it is?
23 Which claim it is?

24 THE COURT: Okay. We are not -- just one minute. The
25 question is whether or not this can come into evidence. The

1 only issue is whether these are business records, which he's
2 already testified that they are and that they are maintained in
3 the ordinary course of business, that they are made or created
4 at or near a time when the activity occurred by someone with
5 knowledge.

6 And the other business records requirements, and he's
7 testified that that's what it is. He's also -- I believe he's
8 testified that it's the complete record that they have produced
9 or that they have regarding this particular claim. So what is
10 the evidentiary basis for objecting?

11 MR. SCOTTON: Your Honor, prosecutor has another claim
12 over there. This one claim and this is another claim because
13 this name is Ramos Manuel and over there she stated was my
14 name. So I don't have those papers. That's what I have.

15 THE COURT: Okay. Just to be clear, we are talking
16 about 14I2 right now. Is that right?

17 MS. MITRANI: Right, which has already been admitted.

18 THE COURT: It's already been admitted. You can
19 cross-examine on it.

20 MS. MITRANI: 14I3, Your Honor, was the one he
21 objected to. So this is argument made to 14I2.

22 THE COURT: 14I2 is admitted. 14I3, if you have an
23 objection, she's showed you what's in it. I have admitted it.
24 If you want to cross-examine on the contents of it, you can.

25 MR. SCOTTON: When she claim they have my name here,

1 what they show doesn't even show my name.

2 MS. MITRANI: I see the problem, Your Honor. No good
3 deed.

4 MR. SCOTTON: I have papers here that she have over
5 there in evidence but is not here on exhibits they gave to me.

6 MS. MITRANI: No good deed goes unpunished. What
7 Mr. Scotton has is 14I2. I believe I would have to confirm but
8 I believe this is something that Special Agent Van Brunt gave
9 to Jason Kreiss this morning as a courtesy. Agent Van Brunt
10 said it was from August, so it's not complete. If he's relying
11 on what Mr. Kreiss gave him this morning, it's not complete.
12 However, he was provided the complete -- he was provided with a
13 complete file. That was just a draft exhibit. That's the
14 problem. That's not the exhibit. I have never claimed that
15 that was the exhibit.

16 MR. SCOTTON: I tried to present some stuff yesterday
17 because government never got a chance to see it. The object
18 was --

19 MS. MITRANI: I can get the discovery letter.

20 THE COURT: Go get the discovery letter. Let's put it
21 on the record.

22 MR. SCOTTON: Your Honor, I don't want the Court to
23 lose patience with me. I'm just trying to understand the
24 process.

25 THE COURT: Please wait until the prosecutor is here

1 as well.

2 What I am frustrated about is that you keep objecting
3 that you haven't received things that I know you have received
4 because I have been present when you received them and you have
5 received them on more than one occasion. Various attorneys
6 tell me they have given them you to. I have provided you with
7 time to go over this in the back. I know you have done that.
8 I don't know why you keep saying you haven't received things
9 you have received.

10 MR. SCOTTON: This one in the file, Your Honor.

11 THE COURT: She explained to you this was a courtesy
12 copy provided to you this morning, that it was never intended
13 to be the whole thing, and the whole thing was previously
14 provided to you. I'm not listening to this anymore.

15 MS. MITRANI: We have several Fed-Ex productions. So
16 one Fed-Ex production, which I believe has the documents that
17 were not in that draft, was produced October 28, 2013 via --
18 hand-delivery, Fort Lauderdale federal courthouse. So it must
19 have been in this courthouse. As a matter of fact, we had a
20 hearing that day and we produced Fed-Ex 911 to 945. I'm going
21 to get the delivery records that refer to that.

22 If he's relying on what we gave his counsel this
23 morning --

24 THE COURT: We are not going to do it right now. What
25 we are going to do is we will have -- you can put all the stuff

1 on and I will make factual findings about what was provided
2 previously during a break. I don't want to keep this jury
3 waiting. If your objection is that you didn't get this, I am
4 overruling that objection right now.

5 MR. SCOTTON: I'm not objecting I didn't get it. What
6 I am saying is I have exhibit and the papers is not there.

7 THE COURT: I understand the objection. That's
8 already been explained. This was done as a courtesy. You have
9 the original ones that were provided to you that you chose not
10 to bring. You created that situation. You cannot benefit from
11 problems that you keep creating yourself. I will not allow it.

12 MR. SCOTTON: I didn't create any problem here, Your
13 Honor.

14 (Thereupon, the following was heard in open court.)

15 THE COURT: Exhibit 14I3 is admitted.

16 (Thereupon, Government's 14I3 received in evidence.)

17 BY MS. MITRANI:

18 Q Do you have 14I3 there, sir?

19 A I have 14I1. You have 14I2. I'm trying to keep them in
20 order here.

21 Q You don't have 14I3?

22 A I have 14I3 and 1.

23 Q Okay. Let me see. Okay. Thank you.

24 I'm showing you what's been marked as Government's Exhibit
25 14I4. Is that -- the documents contained within 14I4, does

1 that pertain to one cargo claim that was submitted to Fed-Ex?

2 A Yes.

3 Q Who was the claimant that submitted it according to the
4 document?

5 A The name is R-O-D-G-E, Scoten, S-C-O-T-E-N, on line R.

6 Q And is the second page of that exhibit the claim form that
7 initiated the claim?

8 A Yes.

9 Q Are the ensuing documents the documents that were
10 generated in the processing of the claim generated by Fed-Ex,
11 either generated by Fed-Ex or received from the claimant?

12 A Yes.

13 MS. MITRANI: Your Honor, government would offer 14I4
14 into evidence.

15 THE COURT: Any objection?

16 MR. SCOTTON: Objection, best evidence rule.

17 THE COURT: Overruled.

18 (Thereupon, Government's 14I4 received in evidence.)

19 BY MS. MITRANI:

20 Q I'm showing you what's been marked for identification as
21 14I5. Is this one claim, cargo claim, that was submitted to
22 Fed-Ex?

23 A Yes.

24 Q Is the second page of that exhibit the claim form that
25 initiated this particular claim?

1 A Yes.

2 Q And who was the claimant in that?

3 A This is -- the contact's name was Paul, Global Express
4 Online.

5 Q And the ensuing documents in that exhibit, are they the
6 documents that were created or received and generated in
7 connection with the processing of the claim?

8 A Yes.

9 MS. MITRANI: Your Honor, government would offer 14I5
10 into evidence.

11 THE COURT: Any objection?

12 MR. SCOTTON: Best evidence rule, Your Honor.

13 THE COURT: Overruled. 14I5 is admitted.

14 (Thereupon, Government's 14I5 received in evidence.)

15 BY MS. MITRANI:

16 Q I am showing you 14I6. Is that one cargo claim that was
17 submitted to Fed-Ex on the Targeting Online account?

18 A Yes, it is.

19 Q Is the second page of the document, the exhibit, excuse me
20 sir, the claim form that initiated the claim?

21 A Yes.

22 Q Are all the ensuing documents documents that were
23 generated in the processing of the claim?

24 A Yes.

25 MS. MITRANI: The government would offer 14I6 into

1 evidence.

2 THE COURT: Any objection?

3 MR. SCOTTON: Yes, Your Honor, best evidence rule.

4 THE COURT: All right. Thank you. Overruled.

5 (Thereupon, Government's 14I6 received in evidence.)

6 BY MS. MITRANI:

7 Q The government -- I'm showing you what's been marked for
8 identification as 14I7. Is that one cargo claim that was
9 submitted to Fed-Ex purporting to be from a Paulo?

10 A Yes.

11 Q Are all the ensuing documents in 14I7 the documents
12 generated in connection with the processing of the claim?

13 A Yes.

14 MS. MITRANI: Your Honor, the government would move
15 14I7 into evidence.

16 THE COURT: Any objection?

17 MR. SCOTTON: Your Honor, can the defendant have a
18 minute with standby counsel? I have to ask him a specific rule
19 question.

20 THE COURT: No, sorry.

21 MR. SCOTTON: Then it's going to be --

22 THE COURT: You know what, Mr. Scotton, why don't you
23 come up sidebar for just a moment, please.

24 (Thereupon, the following was heard sidebar.)

25 THE COURT: You are not to refer to standby counsel

1 during these proceedings. You know that. You are not
2 represented. If you want counsel to take over, counsel takes
3 over. I have explained to you how this works. I'm sorry.
4 Please don't refer to him in front of the jury.

5 MR. SCOTTON: I understand, but I need him for some
6 rules of court so --

7 THE COURT: No.

8 MR. SCOTTON: Then what is the standby counsel's
9 purpose here?

10 THE COURT: He can step in if you decide that you
11 don't want to represent yourself.

12 MR. SCOTTON: I don't understand that. I thought he
13 was supposed to help with the rules and regulations.

14 THE COURT: No. I told you this is. Another one that
15 falls into the category of no good deed go unpunished. I
16 explained to you I was allowing him to help you facilitate
17 getting witnesses here and getting things to trial and getting
18 things filed. That's what I did. I also explained that
19 generally that's not permitted, but I was going to allow that
20 for you.

21 You are not going to turn that into some kind of
22 larger grant. There's no hybrid representation in this court.
23 I have explained that previously on numerous occasions. Please
24 do not refer to standby counsel again unless you want standby
25 counsel to take over for you. All right. Let's proceed.

1 (Thereupon, the following was heard in open court.)

2 MS. MITRANI: Your Honor, I think 14I7 has been
3 offered into evidence.

4 THE COURT: Was there any objection?

5 MR. SCOTTON: Yes, Your Honor.

6 THE COURT: What is the objection, please?

7 MR. SCOTTON: The best evidence rules, Your Honor.

8 THE COURT: All right. Thank you. That's overruled.
9 And 14I7 is admitted.

10 (Thereupon, Government's 14I7 received in evidence.)

11 BY MS. MITRANI:

12 Q Last on the 14I serious is this 14I8, paren 8, is this a
13 claim that was submitted to Fed-Ex by Impulse Energy Drink?

14 A Yes.

15 Q Is the second page of the exhibit the claim form that
16 initiated the claim?

17 A Yes.

18 Q Are all the ensuing documents documents that were
19 generated in the processing of the claim?

20 A Yes.

21 MS. MITRANI: Your Honor, the government would move
22 14I8 into evidence.

23 THE COURT: Any objection?

24 MR. SCOTTON: Yes, Your Honor.

25 THE COURT: What is the objection please.

1 MR. SCOTTON: Best evidence rules.

2 THE COURT: All right. Thank you. That's overruled.
3 And 14I8 is admitted.

4 (Thereupon, Government's 14I8 received in evidence.)

5 BY MS. MITRANI:

6 Q Can you see that okay, Mr. Seligstein?

7 A Yes.

8 Q All right. So as the document indicates, this is a Fed-Ex
9 claim form. It's on Federal Express, correct?

10 A It's a Fed-Ex Express claim form, yes.

11 Q And this claim, the first box says sender information,
12 right? Correct?

13 A Yes.

14 Q And the sender here is identified as John Pittiman at
15 Pittiman Corporation in Coconut Creek, Florida?

16 A Yes.

17 Q And then there's a typewritten address of 6870 Northwest
18 43rd Terrace, No. C16, in Coconut Creek, Florida, correct?

19 A Yes.

20 Q Handwritten it says, mail to PO Box 629, Boca Raton,
21 Florida, correct?

22 A Yes.

23 Q And I'm sorry, I think I said this, but just in case I
24 didn't, the company purporting to make this claim is identified
25 as Pittiman Corporation, correct?

1 A Yes.

2 Q Now, on the top, the very top of the document, do you see
3 where it says May 23 and beyond?

4 A Yes.

5 Q Can you explain to the members of the jury what that is?

6 A This is the income fax information.

7 Q Incoming to whom, sir?

8 A Incoming to the Fed-Ex claim department.

9 Q Okay. And so that's the fax information of the sending
10 fax?

11 A The sending, yes.

12 Q So when -- so what does it say. It was sent on what day?

13 A May 23, 2008 at 12:20 p.m. Brazil Express, phone number
14 561-368-7347.

15 Q Now, the recipient of this package was going to be an
16 individual located in Rio de Janeiro, Brazil, correct?

17 A Yes.

18 Q And then the next sort of box or section of the claim form
19 requests a tracking number, and then a specific tracking number
20 was provided for that package?

21 A Yes.

22 Q Mr. Seligstein, this next section, shipment information,
23 can you explain what that is and what that states to the jury?

24 A Well, it shows the ship dates of May 12, 2008, one package
25 weighing almost six pounds. And it says it was -- the box is

1 checked that said it was a loss and says -- the handwritten
2 says was a brick on the box, laptop was stolen. And then it
3 has a declared value, we call it DV, of \$826 even. So that is
4 the shipping information in that particular -- that pretty much
5 makes up the basis of the claim right there.

6 Q So a brick was submitted -- was delivered to Brazil as
7 well as the laptop?

8 A Right, that's what it says.

9 Q Then on the bottom it says, required signature, correct?

10 A Yes.

11 Q And then there's a signature there with a date, is that
12 right?

13 A Right. There's a signature, May 28, '08, the same day it
14 was faxed. And it says PO Box 629, Boca Raton, Florida with a
15 zip code.

16 Q That's the claimant's address?

17 A That's what that says. Claimant's address is filled out
18 there. That's correct.

19 Q And the very bottom of the claim form, it writes mail to
20 PO Box 629, Boca Raton, Florida with a zip code?

21 A Yes.

22 Q And for the record, this is Fed-Ex 915 contained within
23 14I1.

24 Showing you Fed-Ex 917, and that's just a number that's on
25 the bottom right that identifies the document. But is this the

1 third page of the fax that we just saw, the claim form being
2 the first page?

3 A Yes, it says page 3.

4 Q We skipped over page 2. Can you explain what this form
5 is?

6 A This looks like this is -- excuse me, this is from the
7 Fed-Ex ship manager.

8 Q What is Fed-Ex ship manager?

9 A When you go to Fed-Ex dot com and access your account, it
10 does keep records of your shipments, the last shipments or --
11 I'm not sure how far back it goes, but it goes back a ways. So
12 you can go back and check to see where you have shipped
13 packages, and it gives you details of what your shipment was.

14 This one says this is -- you can see the Fed-Ex ship
15 manager. It says your shipment details. And it says John
16 Pittiman Corporation.

17 Q With the address?

18 A The address is Coconut Creek, Florida on 43rd Terrace,
19 16C. It was shipped to Ana Lopes in Rio de Janeiro in Brazil.
20 It was shipped international priority. Remember I talked about
21 the service. International priority is our fastest way to ship
22 this package. Okay. So that would be our priority service.

23 Then it says this package weighs 22 pounds. The DV on it,
24 declared value, was \$826. And it gives the account number, the
25 billing number. And they billed the duty and taxes. Remember

1 I talked to you about we have one bill for the shipping and one
2 for duties and taxes. So it lists all the same account number
3 for all the same billing. Okay?

4 Q I see. In the middle where it says bill duty and taxes
5 to?

6 A Right. This package says it weighed 22 pounds.

7 Q I got it. Okay. And this is the fourth page of the fax
8 from -- that was sent May 23 from Brazil Express.

9 A Right.

10 Q Is this a Circuit City document showing an Acer Aspire,
11 what was purposed was an Acer Aspire with specific identifying
12 letters and numbers and the price of \$825.99?

13 A This is what the document says, yes.

14 Q Okay. And then it says Pittiman Corporation, PO Box 629,
15 Boca Raton, Florida?

16 A Yes.

17 Q Did Fed-Ex pay the claim?

18 A Yes, they did. Excuse me, sorry. Yes.

19 Q I think we will do this in two parts. I'm showing you
20 document Fed-Ex 451 all from composite -- all from 14I,
21 Exhibit 14I. Is this a form template of Fed-Ex that's filled
22 out with specific information pertaining to the claim?

23 A Right. This would have been populated from the claim form
24 when the check is sent out. It's a standard form letter. We
25 have to use standard form letters.

1 Q What part of the letter is the standard form letter?

2 A The whole part with the case number, the tracking number,
3 the shipping number, the check number, the amount of the check,
4 and the claim reference would all have to be populated to send
5 this letter out. And then the person who directed, who worked
6 the claim, their name would be down at the bottom. That's
7 automatically added.

8 This is a business document that's created -- I'm sorry,
9 business document that's created when they decided to pay a
10 claim. And then they say it's -- the copy of the letter is
11 saved as a business record so that we have records that we
12 actually sent that claim and sent the information out.

13 And it will have the date on June 10 up at the top as when
14 it was done.

15 Q What are we seeing that's on the bottom of this letter?
16 What is the jury seeing right now?

17 A Obviously it is a nonnegotiable copy -- check copy of the
18 check that was sent out paying this claim.

19 Q And the next document and last page of this Exhibit 14I
20 which is Fed-Ex 447 --

21 A Right.

22 Q Hold on. Let me move it up a little bit. Sir, what is
23 this document that the jury is viewing right now?

24 A This was the actual check that was sent out to pay this
25 claim. It was signed Bernetta Williams automatically was the

1 corporate treasurer at the time, so it was generated and
2 signed. You can see the 6/10 date matched up with the date of
3 the letter. So this was sent out to pay that particular claim
4 and matched up later when it came back.

5 Q Again, the Pittiman Corporation, attention John Pittiman
6 slash Brazil Express at that PO Box 629 that we have been
7 discussing?

8 A Right. We sent it to the address the claimant requested
9 that we did.

10 Q And the bottom half of the same document is the back of
11 the check?

12 A That's the endorsement, back of the check, yes.

13 Q I am showing you 14I2 now, 14I2. So this is Fed-Ex -- the
14 document is just identified as Fed-Ex 926 which again is within
15 14I2. Is this the claim form that initiated a claim?

16 A Yes, it is.

17 Q And so on the sender's information in this instant, it
18 identifies the sender's name as what, sir?

19 A Roger Scott, Cargo Air slash Brazil.

20 Q The Cargo Air slash Brazil is the company's name?

21 A Right.

22 Q What address is the claimant providing?

23 A 398 South Mizner Boulevard, 1921, Boca Raton, Florida.

24 Q Was the recipient an individual located in Brazil?

25 A Correct.

1 Q I wanted to direct your attention back to the top of the
2 document. Do you see the writing there, sir?

3 A Yes.

4 Q Can you describe to the members of the jury what they are
5 seeing there?

6 A 8/21/08 at 1:55 the call center faxed this document out
7 and then it came back in about an hour and a half, two hours
8 later from Brazil Express USA, the 561-368-7347.

9 Q So the bottom part where it says 821-2008 Fed-Ex call
10 center, is that outbound or inbound?

11 A That would be like if you called in, said I want to make a
12 claim, I said you need to have a form, give me your fax number
13 and I will send it out. And that's what that is reflective of.

14 Q And then on the top which says August 21, Brazil Express
15 USA, that's how Fed-Ex got it back inbound?

16 A Yes.

17 Q So it's being sent from?

18 A Yes.

19 Q And then there's a phone number there. What phone
20 number -- or a fax number.

21 A 561-368-7347.

22 Q I'm going to show you Government's Exhibit 14I1 which we
23 just looked at. Is that I1 or did I give you I2?

24 A I1.

25 Q Is that the same fax number that was on the Pittiman claim

1 form that was submitted?

2 A Right. The same number 5613487347.

3 Q The middle identifies the package by a specific
4 trademarking number. Is that correct, sir?

5 A Yes. The tracking number ends in 8450.

6 Q And there's some handwritten annotations in the same box
7 that says tracking number. It says please send any mail to PO
8 Box 629?

9 A That's correct.

10 Q The next section is the shipment information. And why
11 don't you describe for the members of the jury what the
12 claimant said regarding that.

13 A It looks like 6/21/08, it's one package weighing
14 1360 pounds. The box checked is a loss. There's no box
15 whether it's complete or -- there's no other additional
16 information filled in there. The declared value is shown as
17 \$400.

18 THE COURT: I'm sorry to interrupt. I think the
19 microphone might be rubbing up against you.

20 THE WITNESS: Sorry.

21 THE COURT: That's okay. I just want to make sure the
22 jury can hear you.

23 THE WITNESS: The DV, declared value, is \$400. This
24 shows the freight shipping charges too of 447.46 and it's a
25 Play Station III. The Play Station is what's handwritten

1 there.

2 Q On the bottom, the required signature block, there appears
3 to be a signature with some handwritten, the date, and
4 handwriting of phone numbers.

5 A Correct.

6 Q And then that PO Box 629 address is written once again on
7 the bottom of the claim form?

8 A Right, the Boca address, the PO Box in Boca, yes.

9 Q And just -- there are so many numbers here, I just want to
10 make this perfectly clear. The tracking, what does the
11 tracking number pertain to?

12 A The tracking number, the number that was on the package.
13 Every package has a tracking number to ship.

14 Q Is there also a claim number assigned to claims?

15 A There is, yes.

16 Q And is that independent, a different number from the
17 waybill number?

18 A That's a completely different number?

19 Q Contained within that claim file, there was a submission
20 of a document from Circuit City showing the purchase of a Sony
21 Play Station III console for \$399.99.

22 A Yes.

23 Q And it says Roger Scott, 398 Southeast Mizner Boulevard,
24 1921, Boca Raton, 33432, correct?

25 A Yes, that's correct.

1 Q Was the claim paid?

2 A Pardon?

3 Q Was the claim paid?

4 A Yes, the claim was paid. Yes.

5 Q Okay. Now, I don't expect you to have a photographic
6 memory so let me -- there is a specific tracking number --

7 A The tracking number in this case ended in 8450.

8 Q That's what this letter says?

9 A Yes.

10 Q I guess for the record we are putting on Fed-Ex 457 which
11 is again part of 14I2. And is the same -- is this the form
12 letter that was sent to the customer?

13 A This is the transmittal letter of the check, yes.

14 Q And it has the tracking number on it which is in the
15 middle and says tracking slash bar code label number, right?

16 A Exactly, yes.

17 Q So we are clear on the claim form, it's the same tracking
18 number, correct?

19 A Right. The full tracking number is 7927183588450. Most
20 of the time, I'm just used to doing it with the last four
21 digits.

22 Q I understand. I want to make sure we talk about the
23 same -- what I'm going to ask you here, it says Manuel Ramos,
24 Cargo Air, PO Box 629, Boca Raton, Florida typewritten but the
25 claim form had --

1 A Roger Scott.

2 Q -- had Roger Scott, correct?

3 A Yes.

4 Q I'll put it back on the ELMO.

5 So Roger Scott was written in as the Cargo Air?

6 A Yeah. Is the contact person, yeah.

7 Q And here Manuel Ramos was just typed in?

8 A Right.

9 Q And do you know why that is?

10 A No, it's a business record. The only -- Manuel Ramos
11 maybe the contact on the account in our systems.

12 Q Would that be normal?

13 A That would be normal to look into the system and send it
14 to the contact name on the account is all I can say about that.
15 Yes, that would be normal.

16 Q That would be normal?

17 A Yes.

18 Q And on the bottom is?

19 A It's the same information. It's the top. It would be
20 Cargo Air, attention Manuel Ramos at the PO Box that was
21 requested the check be sent to on the handwritten document.

22 Q And last, Fed-Ex 452, is this a copy of the Fed-Ex check
23 that was cut to Cargo Air, attention Manuel Ramos, and the
24 check was cut on August 27, 2008, correct?

25 A This was the same check number that was on the transmittal

1 letter and this was the actual check that was sent out.

2 Q That's endorsed on the back, correct?

3 A And that's the back of the check with the endorsement on
4 it.

5 Q And it comes back to Fed-Ex --

6 A Right.

7 Q -- through the banking system?

8 A Right, through the bank account.

9 Q We are going to switch gears. We are going to use the
10 ELMO now for 14I3.

11 Okay. I have a little technology now to assist. I'm
12 showing you 14I3, the second page of the exhibit, which is
13 Fed-Ex 920. Is this a claim form that was submitted to Fed-Ex,
14 correct?

15 A Yes.

16 Q And here the sender shipper is David Friedmain, Friedmain,
17 M-A-I-N, as the sender or the shipper, correct?

18 A Right. That's the contact person of the shipper, yes.

19 Q And the company is Citrix Online, is that correct?

20 A Yes.

21 Q And the address, sir, is that 7797 Golf Circle Drive, 204,
22 Margate, Florida?

23 A Yes.

24 Q This form looks a little different than the one we have
25 been seeing -- strike that.

1 Go down to shipment information. Okay. The tracking
2 number is located -- hold on. It's identified by the last four
3 numbers, 9000?

4 A It's easier to keep it straight. That way you don't have
5 to remember all 12. The 9000 is easier.

6 Q And then the shipment information here, there was a claim
7 that a Sony Vaio VGNAR830E was lost?

8 A Yes.

9 Q With a value of \$1,720?

10 A Yes.

11 Q And going down to the bottom, as we have been seeing, the
12 claimants's information is filled out there, correct?

13 A Right, the claimant's information is shown as David
14 Friedmain, online Department, 7797, looks like the rest of that
15 is cut off, Margate, Florida.

16 Q And was this then the next document within this
17 Exhibit 14I3 is Fed-Ex 921 so a Best Buy -- a document from
18 Best Buy was submitted to Federal Express showing the purchase
19 of the Sony computer?

20 A Right, exactly. You can see that the 9000, the tracking
21 number, is written on there. You can see it's on there. Up at
22 the top, the 9000 there, that's the tracking number.

23 Q That's handwritten?

24 A Yes.

25 Q Is this the way that Fed-Ex received it?

1 A Yes.

2 Q Was the claim paid?

3 A Yes, it was.

4 Q And so here's Fed-Ex 590. Is this what we have been -- we
5 saw it two times already. This is the transmittal letter that
6 was sent with the payment of the claim?

7 A Exactly. It's got the -- you can see the case numbers are
8 not the same as the tracking numbers. And the tracking number
9 is 9000. And then the 1720 was paid, the date of the shipment,
10 and the number of the check was on there.

11 Q And the last page is Fed-Ex 581, again all within 14I3.
12 And is this a copy -- is this a copy of the check that was sent
13 to pay the claim to Citrix Online, attention David Friedmain?

14 A Right, that was the check that was sent out and that's the
15 endorsement on the bottom or the backside of the check.

16 Q Going to 14I4, in this instance, sir, this is a claim form
17 that was submitted to Fed-Ex. The sender there is written --
18 there's a -- it's handwritten, correct?

19 A Part of it is handwritten and part of it is typed in.

20 Q Okay. And so as the sender, it is what?

21 A The sender, the shipper is R-O-D-G-E S-C-O-T-E-N.

22 Q Is that what --

23 A That's what it says. And the company's name is Online R.

24 Q So the R-O-D-G is typed in, Rodg?

25 A Uh-huh.

1 Q And S-C-O-T, it appears to be either an E or an I is
2 handwritten in, is that correct, sir?

3 A Yes.

4 Q And the address that is given that the claimant the
5 shipper gives is 2234 North Federal Highway, 327, Boca Raton,
6 Florida, correct?

7 A Yes, uh-huh.

8 Q And the recipient is an individual in Boca Raton?

9 A Yes.

10 Q And this was faxed in?

11 A Right. You can see that the call center faxed the form
12 out and then it came back on November 3, 2008, 1124RRO with the
13 number 561-368-7347.

14 Q Which is the same number that we saw on 14I2 and 14I1,
15 correct?

16 A Yes, exactly.

17 Q All right. Let's go down to the middle where it says
18 shipment information. Thank you so much. And here the claim
19 is of damage that the shipment was damaged.

20 A Can we scroll down a little, make sure we get the tracking
21 number. Scroll up, I'm sorry. 2788. I'm sorry.

22 Q The tracking number ends in 27 --

23 A 88, right.

24 Q And here there is a claim of damage, correct?

25 A Yes.

1 Q Do you see that?

2 A Yes, I do. It says contents Epson --

3 Q It says what it says. It says Epson something or other
4 handwritten?

5 A Photo something, visor, top left side was -- I wish I
6 could read it better, but it is what it is.

7 Q At the bottom there's a signature all the way at the
8 bottom. There's a signature and there's some handwriting
9 including the address 2234 North Federal Highway in Boca Raton?

10 A Yes, November 3, yes, 2008, yes.

11 Q And was this claim paid?

12 A Yes, it was.

13 Q And so let's go to 4/24. All right. It's ground hog day,
14 I know. It's the same form document but a different claim,
15 right? This is the same form document we have been --

16 A Right.

17 Q -- seeing in our other claims?

18 A I think this claim form is different. This transmittal
19 letter is different because this shipment was a domestic
20 shipment. And if you noticed on the other documents, they
21 talked about the Warsaw convention. It was international
22 shipments, where this was domestic to domestic. So that's why
23 the -- it's still a form letter because I can tell you they
24 don't let us send out anything about form letters, as you would
25 imagine. So this is a form letter for a domestic payment.

1 Okay.

2 Q And it's to Rodge, typed in Rodge, Online R at 2234 North
3 Federal Highway, Boca Raton?

4 A Yes. And you can see the last four digits of the tracking
5 number 2788.

6 Q Would this be information in terms of how it's addressed
7 to? Was this the information in the system?

8 A That was the information that was provided on the claim
9 form.

10 Q And last let's go to 418 still within 14I4. This is
11 Fed-Ex document 418. Is this a copy of the check that was paid
12 to Online R, attention Rodge for \$989?

13 A That one paid the claim and the back of the check is where
14 it was endorsed.

15 Q 14I5, can you see that okay, sir?

16 A Yes.

17 Q Okay. In this instant, the sender slash shipper's name
18 slash contact is Paul?

19 A Paul.

20 Q And the company is Global Express Online, is that right,
21 sir?

22 A 398 Southeast Mizner Boulevard, 1921 in Boca Raton.

23 Q And with the phone number of 561-368-7347?

24 A Right.

25 Q And the recipient here, this was another domestic one,

1 correct? The recipient here was --

2 A Right, this is in Everett, Massachusetts.

3 Q There's a specific tracking number ending in 4912.

4 A Right. And this package was not a loss. It was damaged.

5 Q I was just about to ask the question. I know you are
6 anticipating it.

7 A I'm sorry.

8 Q Was this a package the claim was that it was damaged?

9 A Yes.

10 Q And then there's a handwritten description of the item?

11 A It says, screen broke and something, something describe
12 damage. And there's some bubble wrap in there written
13 somewhere at the bottom. It looks like the bubble wrap was
14 damaged too.

15 Q Okay.

16 A You have your declared value, 992.

17 Q And at the bottom, there is a signature and the same name
18 and address typed in that we saw above, correct?

19 A Right.

20 Q Yes?

21 A Yes.

22 Q Documentation was sent to Fed-Ex from Office Depot?

23 A Yes.

24 Q And the documentation indicates that there was some kind
25 of Sharp copy fax for \$992?

1 A Yes.

2 Q And underneath it says Paul S-C-T-T-E-N or S-O-T-T-E-N?

3 A It's one or the other. I can't tell if it's -- T-T-E-N is
4 good and the S is first. It's the second letter that is the
5 question.

6 Q Whatever it says, it says?

7 A Whatever it is, it is.

8 Q But the address, though, is 398 Southeast Mizner
9 Boulevard, 1921 in Boca Raton?

10 A Correct.

11 Q And was the claim, this particular claim that we have been
12 discussing in 14I5, Exhibit 14I5, was it paid out on or about
13 November 20, 2008?

14 A Yes, this was the transmitting letter. You see it's still
15 a domestic transmitting letter. You can see the tracking
16 numbers 4912, the same one we have been using.

17 Q For the record, this is document Fed-Ex 444.

18 And again, the address was to Paul, and this one it looks
19 a little bit easier to read, S-T-E-N-N?

20 A Yes.

21 Q At Global Express Online, the 398 Mizner Boulevard
22 address?

23 A Correct.

24 Q And document Fed-Ex 439, for the record, what's this?

25 A This is the check that paid that \$992 claim. The actual

1 check. And then the endorsement is on the bottom.

2 Q So that same -- we don't have to repeat it again, the same
3 Global Express Online?

4 A Global Express Online.

5 Q And the same address?

6 A Exactly, uh-huh.

7 Q 14I6 I'm putting on, for the record, it's Fed-Ex 923.

8 This particular document is the second page of the exhibit.

9 This is the claim form. Is this the claim form that initiated
10 the claim?

11 A Yes.

12 Q So here in the column where it says sender shipper's name,
13 contact, it is handwritten Douglas Scovanner, is that correct?

14 A Correct.

15 Q And then typed is, company, Targeting Express, 2243 North
16 Federal Highway, 327 Boca Raton, Florida?

17 A Right.

18 Q With a phone number. Let me ask you, you said that claims
19 could be handwritten, you testified to that before, is that
20 correct?

21 A Yes.

22 Q Can they also be generated online?

23 A Yes. You can make claims online, yes.

24 Q Is there a capability to fill out claims online?

25 A Yes.

1 Q And at this time period in 2008?

2 A I believe so, yes.

3 Q And the recipient here is another domestic, right, Junio
4 in Massachusetts?

5 A Right. And you can -- can you read the 5780 is the last
6 four digits, so just trying to keep that consistent.

7 Q Right, the tracking number is 3708.

8 A Uh-huh.

9 Q And here the claim was that it was damaged?

10 A The box was smashed.

11 Q Okay. What does it say?

12 A I'm sorry. On the left side of the page, it says this was
13 damaged. It was a Sharp laser copier, and it says box was
14 smashed to and right of machine, Brooke. It says, was on
15 factory original box with factory protection.

16 Q On the bottom there purports to be a signature again with
17 the same claimant's name Douglas Scovanner with the address we
18 saw above, 2234 North Federal Highway, correct?

19 A Correct.

20 Q And Office Depot receipt was submitted showing the
21 purchase of this Sharp piece of equipment?

22 A Yes.

23 Q And that was Fed-Ex 924. Fed-Ex 408, again, this is all
24 still 14I6 was the transmittal letter?

25 A Yes, you can see the domestic transmitting letter.

1 Q Mr. Douglas Scovanner with the address we have already
2 spoken about?

3 A Yes, again, tracking No. 5780, keeping the theme by making
4 sure the tracking number matches up with the transmittal
5 letter.

6 Q And the final page of this exhibit, which is Fed-Ex 402,
7 is that a copy of the check?

8 A This is a copy of the original check that was sent out.

9 Q To Targeting Express Online, Inc.?

10 A At that address in Boca Raton, Douglas Scovanner.

11 Q The 2234 North Federal Highway address?

12 A Yes. And then that's the signature on the back of the
13 check.

14 Q Moving on to 14I7, the second page. I keep on referring
15 to the second page. Let's just put the first page so everybody
16 knows. This is just a -- what is this?

17 A This is a separation page that was created to show the
18 separate -- the different claims. This is one -- I made that
19 page up.

20 Q You made it up yourself?

21 A I made this page up so when I scan them or fax them to you
22 or someone, they would say, this is one claim here, this is the
23 next claim to make a division between claims. I created that
24 document.

25 Q The first page of all of these exhibits is the name of the

1 entity and the claim number?

2 A Exactly. They are all similar or the same, yeah.

3 Q So everybody knows, I have not been so good. And then the
4 exhibit sticker identifying the exhibit is on the bottom of
5 that first page?

6 A Yes.

7 Q So this is 14I7?

8 A Right, that's 14I7.

9 Q Okay.

10 A For the record.

11 Q To clarify things, I keep saying Fed-Ex and a number.
12 Fed-Ex 929, that's not -- is that a number that you put on this
13 document?

14 A That's not my number, I don't think. No, it's not, I
15 don't think. No, that's not my number.

16 Q So the second page, as with all the exhibits, so the
17 second page is what we identify as Fed-Ex 930, is that right?

18 A Yes.

19 Q Okay. So in this instance, sir, there's a claim form
20 submitted to Fed-Ex. It says contact, Paulo, correct?

21 A Yes.

22 Q And the address is PO Box 6729, Boca Raton, Florida?

23 A 33429.

24 Q And the recipient, was this another domestic package going
25 to Boynton Beach, Florida?

1 A Yes.

2 Q And on the top, you see fax information. Can you explain
3 that?

4 A You know, the Fed-Ex call center has faxed a page out.

5 Q So that's the bottom where it's cut off?

6 A The bottom where it's cut off, January 15, 2009, then
7 January 15, 2009 about three hours later, BE fax from
8 561-368-7347.

9 Q And the tracking number on this claim is 1411?

10 A Uh-huh, yes.

11 Q And in this instance, the box checked over on the left
12 part, is that -- or checked and circled says, damaged, correct?

13 A Yes.

14 Q And what does it say in the middle?

15 A It says, manufacturer laptop box, box was smash and
16 something was damaged. Please something if you have a photo --
17 please let me know if you need photo from box.

18 Q Please let me know if you need photo from box?

19 A I think that's what that says, yes.

20 Q The type of the description of the package is manufacturer
21 laptop box?

22 A Right. That's the outer package. The damage to the outer
23 package was the manufacturer laptop box. This says Toshiba.
24 That was what was in there for \$784.

25 Q Bottom left says, Paulo again with PO Box 629, Boca Raton?

1 A Yes, the Boca Raton PO Box at 33429.

2 Q And this is Fed-Ex document 930?

3 A Yes.

4 Q And Fed-Ex 931, which is on the bottom right, is a
5 document from Best Buy purporting to show the purchase of the
6 Toshiba Satellite for \$784?

7 A Right, that's correct.

8 Q And it has a different name, Paulo Moreira at the same PO
9 Box?

10 A Right, PO Box 629, Boca Raton 33429.

11 Q Fed-Ex document, Fed-Ex 438, still part of 14I7, is this
12 the transmittal letter?

13 A That's the transmittal letter. You can see the tracking
14 number, 1411. And the amount of the check is 784. You see the
15 case number, I have been watching for it but the case number
16 has been changing every time.

17 Q And again, this was the information that was pulled from
18 the computer Steven Brian at Paulo, PO Box 629, Boca Raton,
19 Florida?

20 A Exactly. And the check number is 8172, so that should
21 match up too.

22 Q Fed-Ex document 433?

23 A Made to Paulo Steven Brian, PO Box 629, Boca Raton, 33429
24 for \$784. Then you have the signature along the bottom.

25 Q And last but not least, in the 14I series, is 14I8,

1 correct?

2 A Uh-huh.

3 Q And this was a cargo claim of Impulse Energy Drink with
4 the claim number that was assigned to it?

5 A Correct.

6 Q And here, the top, the sender shipper name contact is
7 Paulo. The company is Paulo. And the address is 2234 North
8 Federal Highway, 327, Boca Raton, Florida?

9 A Correct. Correct.

10 Q And this was another domestic package to Massachusetts?

11 A Medford, Massachusetts.

12 Q And the bottom is the fax information that you have
13 previously discussed with the Fed-Ex call center sending the
14 document out and the receipt of it from Fed-Ex on January 27,
15 2009 at 8:14 p.m.?

16 A Right.

17 Q From BE.

18 A From BE with the incoming fax of 561-368-7347.

19 Q This is another damage to Toshiba Satellite?

20 A Yes.

21 Q And this is the final time we will sent this fax. Next
22 time we go legal in the middle?

23 A Right. That's what it says.

24 Q And then the bottom, it has the claimant's name and
25 address, correct?

1 A Yes, on that, yes, it does.

2 Q I guess this is the final time going into the exhibit,
3 Fed-Ex 940, does it appear that the claim form was submitted on
4 January 15, 2009?

5 A Yes, I think the two dates are different.

6 Q Right.

7 A Yes.

8 Q So it was submitted once?

9 A And then a second time.

10 Q And then something happened and it was submitted again?

11 A Correct.

12 Q Okay. Another document that was sent to Fed-Ex from Best
13 Buy showing the purchase of the Toshiba Satellite computer,
14 correct?

15 A These were receipts sent by the claimant from Best Buy.
16 And it was saying that it was Toshiba Satellite for the \$687.
17 And the purchaser was Paulo Morelra on 2234 North Federal
18 Highway, 327 in Boca Raton, Florida.

19 Q Fed-Ex 430, is this the transmittal letter that was sent
20 in payment of the claim for tracking No. 0256?

21 A Yes, it is.

22 Q And it says Steven Brian, Impulse Energy Drink, 2234 North
23 Federal Highway, 327, Boca Raton, Florida?

24 A Right, correct. It matches up with the same tracking No.
25 0256.

1 Q And Fed-Ex 424 is a copy of the check that Fed-Ex paid out
2 to Impulse Energy Drink?

3 A Right. That is a copy of the original check that was
4 sent.

5 Q To Impulse Energy Drink?

6 A Impulse Energy Drink, Steve Brian, 2234 North Federal
7 Highway, 327, Boca Raton, Florida 33431.

8 MS. MITRANI: Your Honor, would this be a good time to
9 break?

10 No? Okay.

11 BY MS. MITRANI:

12 Q I am showing you what's been marked for identification as
13 Government's Exhibit 14IL. Do you recognize this document?

14 A I recognize the first page of the document. The first
15 page of the document is a shipping label. This would have been
16 what was created by the computer so that the package could
17 ship. The second and third pages of this would be the
18 accompanying paperwork.

19 When you ship international, there is a duties and taxes
20 paperwork and commercial invoice that have to be attached so it
21 will clear customs. I don't know if you have ever shipped
22 internationally. You have to have additional paperwork, not
23 just an air bill. This would be a single shipment from David
24 Friedmain.

25 Q Let me get it. Is this a business record of Fed-Ex?

1 A Yes, this is a business record kept in the normal course.

2 Q In the ordinary course of business?

3 A Yes.

4 MS. MITRANI: Your Honor, the government would offer
5 14L into evidence.

6 THE COURT: Any objections?

7 MR. SCOTTON: No, Your Honor.

8 THE COURT: All right. 4L is admitted.

9 (Thereupon, Government's 4L received in evidence.)

10 BY MS. MITRANI:

11 Q Okay, so this is -- this might be the first time we have
12 actually seen a waybill so far. So what is this?

13 A This is a shipping document. This is an airway bill.

14 Q Was it manually created or was it created electronically?

15 A This was created electronically.

16 Q And it's showing this particular package was from David
17 Friedmain, Citrix Online, in Fort Lauderdale, Florida on a
18 shipment to Brazil?

19 A Right, correct.

20 Q And that shipment was tendered to Fed-Ex for delivery?

21 A Yes, the ship date is shown, September 8, 2008.

22 Q And it was shipped -- did Fed-Ex ship this to Brazil?

23 A Yes.

24 Q Okay. Where is the tracking number on this package? Is
25 it on the right where it says TRK number ending in 9000?

1 A Right, ending in 9000 there, correct.

2 Q This is the shipping label that goes to the claim that we
3 saw at 14I3, correct, do you remember that?

4 A I remember the 9000 ending. I can't remember all 12, but
5 I remember it ending in 9000.

6 Q Does this refresh --

7 A Yes, this is a copy of the transmittal letter that paid
8 that claim. This was -- the document shows that it was a Sony
9 Vaio shipped, and it was 1720. And I remember talking about
10 that particular claim.

11 Q So this -- we are talking about the claim on tracking No.
12 9000. And this is the waybill --

13 A Correct, uh-huh.

14 Q -- that goes with it?

15 A Correct.

16 Q This is the claim form of that 9000 that we have
17 previously discussed, and this is the waybill that goes with
18 that?

19 A Yes, and the numbers match up.

20 Q Let's go to the next page of 14L. Going to the second
21 page of 14L.

22 A Right.

23 Q And it says commercial invoice. I think you have talked
24 about what a commercial invoice is. Is this the document that
25 you have previously talked about?

1 A Yes, correct.

2 Q So in this instance, this is the commercial invoice that
3 accompanied the shipment to Brazil?

4 A Exactly.

5 MS. MITRANI: May I approach, Your Honor?

6 THE COURT: Yes.

7 BY MS. MITRANI:

8 Q I am showing you what's been marked for identification as
9 Government's Exhibit 130. Do you see that, sir?

10 A Yes, I do.

11 Q It's a compact disc, correct?

12 A Yes, it's a CD.

13 Q And what is contained within that CD?

14 A It says Excel spreadsheets.

15 Q Have you reviewed Government's Exhibit 130?

16 A Yes, I have reviewed the spreadsheets, yes, exactly.

17 Q So it says it, and how many spreadsheets are contained
18 within Government's Exhibit 130?

19 A There's two.

20 Q Can you generally describe what each one is?

21 A One of them looks like dated May 17, '11. It says Brazil
22 shipments to Sam. And the second one says 5/19/11, Rio Motor
23 Sports.

24 Q So one of these spreadsheets -- now, you have reviewed
25 them both?

1 A I have looked at these spreadsheets personally, yes.

2 Q So one, is one titled Rio Motor Sports?

3 A Yes.

4 Q And the one Rio Motor Sports, how many accounts does it
5 pertain to?

6 A That spreadsheet dealt with a singular account, all the
7 shipments on one account.

8 Q As identified by what?

9 A As identified by its account number.

10 Q And what information does that spreadsheet contain with
11 regard to that specific Rio Motor Sports account number?

12 A That particular spreadsheet gives specific details as to
13 each and every shipment on that particular count. That would
14 be the account number, the invoice number, the airway bill
15 number, the person to whom it was supposed to be billed to, the
16 billing address, both street, state, and zip, and then it would
17 be the shipper's address which would be street, state --
18 shipper's name, address, state, and zip. Then it would be the
19 recipient's similar information for the recipient.

20 It would contain what sort of service, whether it was
21 international, standard international, priority, or it doesn't
22 have to be international, any shipment, priority, overnight,
23 standard delivery, three days, then it would have the charges
24 for that, the amount of charges for that shipment, what we
25 charge for that shipment, and who signed for it. Basically all

1 the information that would be available to Fed-Ex, it's pulled
2 out and put on that spreadsheet.

3 Q For each particular shipment on that account?

4 A For each individual shipment, it contains -- there
5 might -- for each air bill, it will contain all of that
6 information.

7 Q And so one of the -- so you said one of them which is
8 titled Rio Motor Sports is one account?

9 A That's correct.

10 Q And I think, does one of the columns on the spreadsheet
11 say net charge?

12 A Charge, yes, net charge.

13 Q What is net charge?

14 A Net charge is what we are charging you for doing that.
15 There may be discounts. There may be things along the way.
16 That's where we are looking for you to pay in this particular
17 circumstance, the charges.

18 Q Okay. And tell us about the second spreadsheet. What's
19 the second spreadsheet.

20 A The second spreadsheet has multiple accounts with similar
21 information. Multiple accounts with multiple names, multiple
22 account numbers.

23 Q Well --

24 A Similar information.

25 Q How many accounts are set forth approximately in the

1 second --

2 A Over a hundred.

3 Q And does it -- you just testified extensively that it's
4 very detailed information on each shipment. I'm not going to
5 repeat it.

6 A Right.

7 Q Does the second spreadsheet --

8 A Yes.

9 Q The same detailed information for each shipment on each of
10 the accounts identified?

11 A It contains the same detailed information on each of the
12 shipments, yes. One, I think, had several thousand shipments
13 on it.

14 Q And how is that spreadsheet generated?

15 A Well, you can imagine that several thousand sheets, we are
16 not going to do that one line at a time. So there are programs
17 that we run off of our business records, sequel programs that
18 pull all that information out and specifically put it under
19 those individual columns. So you can run one account, pull the
20 information, put it in a spreadsheet. You could put another
21 account, pull the information, copy it, put it in the
22 spreadsheet. So you could have the same spreadsheet have many,
23 many accounts on it. Okay.

24 Q When you say pull, who's doing the pulling?

25 A The person that's doing this would pull -- the person who

1 had the account numbers would pull the information from it out
2 of the data warehouse.

3 Q So the program -- does the computer -- what does the
4 computer program do?

5 A The computer program goes into our bank of knowledge on
6 each shipment and pulls out every detail that we have and puts
7 it in the spreadsheet automatically. You couldn't do this --
8 you couldn't do this by hand.

9 Q Even if you wanted to?

10 A Even if you wanted to. It would take you weeks; whereas,
11 this takes minutes.

12 Q Is this the type of document that is routinely generated
13 by Fed-Ex?

14 A Oh, we all in our area routinely generate these and keep
15 copies of these in our business records for reference purposes
16 all the time. I do this every other day, a substantial number
17 of times myself.

18 Q As part of any investigations that you are doing into
19 revenue collections?

20 A That's correct. This would be a normal -- something that
21 we would normally do. You can look at the shipping -- when you
22 try to look at them in an invoice form, it's difficult, but you
23 can look. When you can put them in a spreadsheet like this, it
24 allows you to manipulate the data and you can see trends and
25 things a whole lot faster than trying to look at individual

1 documents. It's a good tool that we use for investigation as
2 part of our day-to-day jobs.

3 MS. MITRANI: Your Honor, government would offer 130
4 into evidence.

5 THE COURT: Any objection?

6 MR. SCOTTON: Your Honor, CD the government has
7 provided me here with those information is blank, so I just put
8 in my computer here.

9 MS. MITRANI: Can we go sidebar?

10 THE COURT: Yes, let's come sidebar.

11 (Thereupon, the following was heard sidebar.)

12 MR. SCOTTON: This is the CD. There is nothing on the
13 CD.

14 THE COURT: Do you want to put it in your computer and
15 check it?

16 MR. SCOTTON: Because it is -- because my computer
17 doesn't read because it's empty.

18 MS. MITRANI: Okay. I mean, sure. I'll --

19 THE COURT: Why don't you check it on your computer.
20 Maybe there's something wrong with his.

21 (Thereupon, the following was heard in open court.)

22 MS. MITRANI: Your Honor, may we approach sidebar
23 again?

24 THE COURT: Yes. Mr. Scotton, if you would please
25 come up you.

1 (Thereupon, the following was heard sidebar.)

2 MS. MITRANI: So I quickly looked at the CD. It
3 doesn't appear to even have -- when we produce documents, we
4 usually have our handwriting on it. So I don't see that. I'm
5 not sure that's what we produced to him. We are going upstairs
6 to look at the production that may be a copy someone made for
7 him. The spreadsheets were produced in discovery and they were
8 brought to the Court in August when the Court ordered us to
9 bring our discovery. We can check to see. We keep a copy of
10 what we produced and that's what the agent is doing now.

11 THE COURT: We can take a lunch break and deal with
12 this when we get back.

13 MS. MITRANI: Thank you, Your Honor.

14 (Thereupon, the following was heard in open court.)

15 THE COURT: Thank you all for your patience. I think
16 we are going to take our lunch break now. And hopefully so we
17 can start on time when I expect to be starting, we are going to
18 take an hour and ten minutes. So we will come back at 2:00.
19 Please remember my instructions. Don't you discuss the case
20 with anyone. Don't disburse in information about it, and don't
21 do your own independent research into it. Have a good lunch.
22 We will see you at 2:00. Thank you. All rise for the jury.

23 (Thereupon, the jury exited the courtroom at
24 12:50 p.m.)

25 THE COURT: All right. Why don't you all come back at

1 1:45 and we will address this at that time. We will be in
2 recess until then.

3 MS. MITRANI: Your Honor, I hate to disturb the Court.
4 I have a lot of witnesses I'm going to try to juggle for this
5 afternoon. Is this going to be 2:00 to 5:00 or 2:00 to 4:30.

6 THE COURT: I'm sorry, I did not inquire of the juror
7 so I don't know. It will either been 2 to 4:30 or 2:00 to
8 5:00.

9 MS. MITRANI: And I assume there will be an afternoon
10 break?

11 THE COURT: Yes, probably 15 minutes.

12 MS. MITRANI: We don't want to keep too many people
13 waiting.

14 THE COURT: I understand.

15 MS. MITRANI: Thank you. I appreciate it.

16 THE COURT: We will be in recess then until 1:45.
17 Thank you.

18 (Thereupon, a recess was taken at 12:51 p.m.)

19 THE COURT: All righty. What is the current situation
20 with the CD?

21 That's okay. Take your time.

22 MS. MITRANI: We have it resolved, Your Honor. I'm
23 just waiting for Special Agent Van Brunt who's coming from
24 downstairs. The CD that Mr. Scotton provided to the Court and
25 to the government saying there was nothing on it, in fact,

1 doesn't have anything on it. However, that was not the CD that
2 was produced in discovery, and Mr. Van Brunt is making copies.
3 We have copies of the CD that we produced in discovery. We
4 have actually copied the CD with Special Agent Van Brunt's
5 handwriting and the Bates label. So the CD that we provided in
6 discovery, and I think we have all the dates because I think we
7 are going to have to take up all the Fed-Ex dates before the
8 jury, had the spreadsheets on it.

9 I don't know what happened. I can surmise that
10 there's handwriting on the CD that Mr. Scotton provided so
11 perhaps one of his lawyers or investigators made a copy for him
12 and didn't quality control it. But I can tell the Court -- and
13 there's Special Agent Van Brunt and I might actually have him
14 address the Court.

15 THE COURT: Why don't I hear from Special Agent
16 Van Brunt.

17 MS. MITRANI: Let me hand this up. So let me hand
18 this up and I will just mark it for identification Government's
19 Exhibit 500.

20 THE COURT: Okay.

21 MS. MITRANI: Mr. Scotton is talking to someone, but
22 I'm putting it on his desk and I pass 500 to the Court.

23 THE COURT: Thank you.

24 MS. MITRANI: Let's address the disc first and then we
25 will address the other things. Government's 500 is a two-page

1 document. The first page Your Honor sees, it says Fed-Ex 349,
2 that is --

3 THE COURT: Let me stop you for a second. I have two
4 that say Fed-Ex 349.

5 MS. MITRANI: Do they both say typed?

6 THE COURT: They both have the Bates number.

7 MS. MITRANI: Then I'm sorry.

8 THE COURT: That's okay. You may have given both 350s
9 to somebody and give me --

10 MS. MITRANI: It's a little confusing.

11 MR. SCOTTON: I got the same also, 349.

12 MS. MITRANI: Sorry, Your Honor. What I handed out.
13 It doesn't matter. Here's 500.

14 THE COURT: Thank you.

15 MS. MITRANI: So let me clarify the record. So
16 Government's Exhibit 500 is a one-page document. It says
17 Fed-Ex 349. This is an actual copy of the CD that was provided
18 to the defense and as you can see, it says defense copy and
19 it's marked with Fed-Ex 349. It says Excel spreadsheet
20 provided to FBI by Fed-Ex. That's Special Agent Van Brunt's
21 handwriting.

22 So nobody is confused what I was showing you before
23 which is no longer an exhibit, we kept the DOJ copy of the same
24 defense copy. But this is the copy that was actually provided
25 to him. And this is what Mr. Scotton gave us. I'm going to

1 return it to him.

2 THE COURT: I'm going to need a photocopy of that as
3 well so it's in the record. Can you give that to Mr. Creary,
4 please.

5 MS. MITRANI: Thank you, Your Honor. In the meantime,
6 let me ask, have you had an opportunity to provide
7 Mr. Scotton -- I know you have already provided him with the
8 one that you have just described in Government's Exhibit 500,
9 but have you provided him with yet another one today?

10 You copied it on to the one that was blank before?

11 AGENT VAN BRUNT: No, Your Honor,

12 THE COURT: Let me hear from Mr. Van Brunt.

13 MS. MITRANI: Thank you.

14 AGENT VAN BRUNT: Good afternoon, Your Honor. Roy
15 Van Brunt, V-A-N-B-R-U-N-T. In the white CD sleeve that the
16 clerk went to chambers with, there is a disc behind it. I
17 believe it's noted spreadsheet 130. That's a working copy that
18 we have used. It's behind the disc that Mr. Scotton had
19 provided to us.

20 THE COURT: Okay.

21 MS. MITRANI: Mr. Scotton gave us one disc, and
22 unbeknownst to me, they put in the good 130 behind the one
23 Mr. Scotton provided.

24 THE COURT: I understand. There are now two discs in
25 there. One is the one that Mr. Scotton got from someone other

1 than you that has nothing on it, and the other one is one that
2 you provided a duplicate of what you previously provided that
3 has on it what was on 349, Fed-Ex 349, is that right?

4 MS. MITRANI: Yes, Your Honor.

5 THE COURT: Okay. Mr. Scotton, did you wish to be
6 heard at all on this?

7 MR. SCOTTON: Yes. As Court mentioned, the CD has
8 been provided to the -- not to the defendant direct. It has
9 been provided to the lawyers previous in the case. So now
10 after the lawyers, the last one I'm assume has turned down all
11 the paperwork and all the material, that's what I have. I
12 really receive an empty disc. So I understand the government
13 is saying that they have provided it to the lawyers. This CD
14 in particular never came to my hands. If it has been handed to
15 someone, it has been handed to the lawyers, not to me.

16 THE COURT: Okay. I find that it's been provided to
17 the defense. Looking at a comparison of -- and let's call this
18 Court Exhibit 2. And for the record, Court Exhibit 2 is a
19 photocopy of the CD that Mr. Scotton claimed that the
20 government had provided to him that was blank. And
21 Government's Exhibit 500 is a photocopy of the CD that the
22 government provided in discovery to Mr. Scotton. And it's
23 Bates No, as I said, Fed-Ex 349. And the Court finds that this
24 was, in fact, provided to the defense team. I don't know why
25 and I'm not going to make factual findings regarding why

1 Mr. Scotton had another which is visibly and clearly different
2 from the CD that the government provided to him for this. I
3 don't know why that is. It could be that his investigator made
4 a copy. It could be that his counsel made a copy. It could be
5 any number of reasons. It's really not for the Court to
6 speculate on that. The issue and the question is whether it
7 was turned over to the defense previously. The government has
8 indicated that it was.

9 Did you say it was in October, Ms. Mitrani?

10 MS. MITRANI: Well, Your Honor, while we are at it,
11 if -- before when we were at sidebar with the claims, we said
12 we were going to address all the production. So I can tell you
13 when 349 was produced right now.

14 THE COURT: Let's just take care of 349 right now.

15 MS. MITRANI: Got it. It was reproduced.

16 THE COURT: Meaning the second time?

17 MS. MITRANI: Meaning the second time. Let me start
18 over. We had initial discovery production in May or June of
19 2012. Then -- so that was the first time it was produced to
20 either Mr. Friedmain or Mr. Abreu or whoever. I don't know who
21 was his lawyer at the time.

22 When Mr. Adelstein was Mr. Scotton's counsel, he
23 inquired about discovery. And as a courtesy to him, we
24 reproduced it to him on June 14th, 2013. So the first time it
25 was produced was May or June of 2012. Let me just --

1 So it was given to counsel the first time around 2012
2 and then it was given to Mr. Adelstein June 14, 2013. And as
3 the Court already knows, it was brought into this courtroom
4 August of 2013 as well.

5 THE COURT: All right. So I find that the CD was
6 given in plenty of time for Mr. Scotton to have reviewed it,
7 and if it had been blank, for him to have discovered it before
8 two days into trial. And so I'm not going to exclude it on the
9 basis that Mr. Scotton did not previously have access to it
10 because I find that, in fact, he did.

11 All right. Did you need to address the other issues
12 of discovery?

13 MS. MITRANI: Yes, Your Honor. And if the Court
14 doesn't mind, Special Agent Van Brunt is going to outline every
15 single Fed-Ex production that was given over several times if
16 that's okay with the Court.

17 THE COURT: That's fine. Let's try to get to it
18 because the jury will be back in five minutes.

19 AGENT VAN BRUNT: Regarding the Fed-Ex documents that
20 were produced as part of discovery, in the initial production
21 that was produced via the company Expedia, the Fed-Ex Bates
22 numbers range from Fed-Ex 1 through Fed-Ex 368.

23 In June 14, 2013, a second production was produced.
24 And included in that production was a disc and the disc
25 contained Fed-Ex records with the beginning Bates range of 350

1 specifically noting that it was partially duplicative of a
2 previous production and continuing on through Fed-Ex No. 740.

3 On August 16, 2013, in court, the government produced
4 several different records. Included in them was Fed-Ex
5 documents identified by Bates No. 741 through Fed-Ex No. 786.

6 On October 23, 2013, via hand delivery at the West
7 Palm Beach courthouse, Mr. Scotton was delivered additional
8 documents including Fed-Ex documents identified as Bates No.
9 787 to Fed-Ex No. 910.

10 And on October 28, 2013, via hand delivery in this
11 courtroom, Mr. Scotton was handed Fed-Ex documents identified
12 as No. 911 to Fed-Ex No. 945.

13 THE COURT: All right. Thank you. And then were
14 there other productions besides the Fed-Ex documents? I think
15 you were just referring to the Fed-Ex ones because that's what
16 came up today. Is that correct?

17 MS. MITRANI: Yes, Your Honor. At sidebar when there
18 was an issue about the claims forms and Government's Exhibit
19 14I, I think we started taking it up at sidebar, so...

20 THE COURT: Right. I just wanted to make sure that I
21 was understanding what you were presenting right now.

22 MS. MITRANI: I want to correct something I said at
23 sidebar. I thought that we did give Mr. Kreiss an incomplete
24 copy of 14I as a courtesy. Mr. Scotton may have had his own
25 incomplete copy because we gave him exhibits in August and then

1 we gave him a revised exhibit list. We told him it wasn't the
2 same.

3 THE COURT: When did you provide the revised exhibits?

4 MS. MITRANI: I provided the documents as stated. I
5 didn't give him an actual new copy of 14I. So that may have
6 been the confusion.

7 THE COURT: Okay. But you had previously produced the
8 exhibits?

9 MS. MITRANI: Yes, yes.

10 THE COURT: And so the new exhibit list identified
11 them by Bates number?

12 MS. MITRANI: Exactly.

13 THE COURT: Okay. But it would have been up to him to
14 put them together?

15 MS. MITRANI: Correct.

16 THE COURT: All right. And just to be clear, the
17 reason you gave him the exhibits in August was at one point we
18 were set for trial in August?

19 MS. MITRANI: Yes, Your Honor.

20 THE COURT: Okay. All right. Anything further on
21 this issue?

22 MS. MITRANI: No, Your Honor.

23 THE COURT: Mr. Scotton?

24 All right. Since Mr. Scotton doesn't wish to be
25 heard, what we are going to do is we are going to check on the

1 jury and we will bring them in as soon as they are ready.

2 MR. SCOTTON: Judge --

3 MR. KREISS: Judge, I'm trying to facilitate producing
4 Mr. Scotton's videos and pictures to the government. I have a
5 gentleman coming from my office Donald Perrin. With the
6 Court's permission, he can burn the CD. You had signed an
7 order allowing me to bring a computer to the courthouse.

8 THE COURT: That's fine.

9 MR. KREISS: He will do it right in the back of the
10 courtroom.

11 THE COURT: Thank you very much. I appreciate that.

12 I will be right back.

13 Thank you. Please be seated at least until the jury
14 comes out.

15 THE COURTROOM DEPUTY: All rise for the jury.

16 (Thereupon, the jury entered the courtroom at
17 2:01 p.m.)

18 THE COURT: All righty. Please be seated. I hope
19 everybody had a good lunch. Just for purposes of our record, I
20 know you will be able to probably say this in your sleep by the
21 end of this, but is there anybody here who discussed the case
22 with anybody, disbursed any information about the case, or did
23 any independent research in the case, please raise your hand
24 for me now. I see no hands. Thank you for that.

25 Ms. Flores, I wanted to check with you, is today one

1 of the days that you needed to leave at 4:30?

2 A JUROR: (Shaking head.)

3 MS. MITRANI: Was that a yes, Your Honor?

4 THE COURT: No, she said she does not.

5 MS. MITRANI: All right.

6 THE COURT: All right then. And Mr. Seligstein, of
7 course, you are still under oath.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Whenever you are ready, you may resume,
10 Ms. Mitrani.

11 MS. MITRANI: Thank you, Your Honor.

12 So the government offers 130 into evidence.

13 THE COURT: All right. Is there any objection?

14 MR. SCOTTON: Yes, Your Honor, best evidence rule.

15 THE COURT: All right. Overruled. And 130 is
16 admitted.

17 (Thereupon, Government's 130 received in evidence.)

18 BY MS. MITRANI:

19 Q Mr. Seligstein, we talked about net charge that's on the
20 spreadsheet which was -- remind us what that was again.

21 A The net charge would be the cost of shipping after any
22 discounts or bonus discounts or up charges or down charges.

23 Q And the net charges on the spreadsheets, have those
24 amounts been paid to Fed-Ex?

25 A No, they haven't.

1 Q They haven't?

2 A No, they have not been paid.

3 MS. MITRANI: No further questions, Your Honor

4 THE COURT: Cross-examination.

5 CROSS EXAMINATION

6 BY MR. SCOTTON:

7 Q Mr. William, do you mind if I call you Mr. William?

8 A Please. That's no problem at all.

9 Q Let me try to go back here from the beginning. I want to
10 help refresh the mind the jury here. You mentioned that you
11 started working Fed-Ex 1999, right? That's correct?

12 A I actually started Fed-Ex in 1996. I moved over to the
13 revenue recovery department in 1999.

14 Q 1999, okay. And so you are the senior supervise of the --

15 A I'm a senior performance -- I'm a senior analyst.

16 Q This has any work under the umbrella of the fraud
17 department?

18 A Pardon me?

19 Q Do you guys work under the umbrella of the fraud
20 department?

21 A I work right now in the fraud department, yes.

22 Q So you don't work in revenue department?

23 A Well, the fraud department is part of the revenue recovery
24 department, revenue operations.

25 Q Okay. Revenue operation. Because earlier you mentioned

1 that, you know, your department, you guys just collect money,
2 get money?

3 A Well, that's a generalized statement. We do, that's part
4 of our, that's part of what we do. Of course, every group has
5 to have -- I explained that we have somebody -- people that
6 move packages and some people that deal with the accounts and
7 collecting money, and that's what revenue operations. But when
8 I say revenue operations, it's not a limited field. It has a
9 lot of different functions.

10 Q When you have be appointed to investigate this case?

11 A Excuse me?

12 Q When they appoint you to investigate this case?

13 A Appointed me to investigate this case?

14 Q Yes.

15 A I have been working on this case since I came into the
16 department back in June of 2012.

17 Q 2012?

18 A Right.

19 Q You came to the fraud department?

20 A Correct. I was in the revenue recovery department before
21 that.

22 Q You transferred from there to the fraud department?

23 A Correct.

24 Q In 2012?

25 A Correct.

1 Q So do you have any knowledge of when exact this
2 investigation start?

3 A I did not do any research into it. This was -- I'm here
4 testifying as to records and not what they did -- started their
5 investigation.

6 Q Okay. Does any official, what can I say, complain from
7 Fed-Ex to the FBI about this investigation, this fraud?

8 A I don't know anything about that. Sorry.

9 Q Okay. And is any official complaint from Fed-Ex saying
10 that Mr. Scotton is defrauding our company to the FBI
11 department?

12 A I don't know exactly what you are asking, but I don't know
13 how that came about, no.

14 Q All right. Well, the question is pretty much, you know,
15 simple. Federal Express made a complaint against the defendant
16 Rogerio Scotton?

17 A Okay.

18 Q Have Federal Express made a complaint against the
19 defendant Scotton?

20 A I'm sure they brought certain facts to the attention, but
21 that was before.

22 Q Mr. William, either yes or no, please.

23 MS. MITRANI: Your Honor, objection.

24 THE COURT: What is the objection?

25 MS. MITRANI: Well, one, beyond -- well, the witness

1 answered that it was outside his function here.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q So you work for the fraud department, but you have no
5 recollection when this investigation had start, who has point
6 fingers to Mr. Scotton whatsoever?

7 A No.

8 Q So you testified earlier today about customer sales call,
9 the requirement to open an account to Federal Express, that is
10 correct?

11 A I testified that there are requirements to open accounts,
12 yes, sir.

13 Q As far as I understand from your testimony, you say that
14 individuals call Federal Express, and I want to open account
15 and give whatever information they might provide over the phone
16 and Federal Express just withdraws to you, says, here, this is
17 the account.

18 A They will do a little bit of research into it to see --
19 make sure -- you know, to check into it a little bit. If you
20 called in and wanted to open an account and they couldn't find
21 any information, they would make you put it on a credit card.

22 Q Right.

23 A Otherwise, they do do a little bit of investigation. And
24 basically, it is a situation where the credit -- they look at
25 credit very quickly and make a quick determination on it.

1 Q When you say they look at the credit, they run a credit on
2 the company or the individual?

3 A They will just look at the account. Basically a business
4 is different than an individual. And so they will check a
5 phone number. And if the phone number works, then they will
6 open it up. That's their determination, not mine.

7 Q What was their determination?

8 A It's the customer service department who opens the
9 account. They have their guidelines. I'm sure when they open
10 them up, they look at the guidelines whether or not the account
11 should be on open credit or credit card, and they make that
12 determination, not me.

13 Q Someone calls Federal Express in those days with credit
14 card information. If the credit is stolen, Federal Express
15 take the stolen credit card?

16 A You are making the assumption we knew it was stolen. If
17 someone called in with a credit card, they would put it on the
18 account. That's correct.

19 Q So basically they open the account, they provide the
20 individual with the account number. Any other information they
21 provide the individual over the phone?

22 A They will give the customer the account number over the
23 phone, yes.

24 Q As you have been appointed 2012 to this investigation. As
25 today, they present several different accounts, have different

1 claims. Any of those accounts one has been filed a claim that
2 Federal Express also has the information on the claim as the
3 client called to make the claim?

4 A I'm sorry, I'm trying to understand.

5 Q Government claimed that they have some CDs with phone
6 calls of individuals opening account.

7 A Right.

8 Q Okay. When individual make the first attempts to make a
9 claim to Federal Express, I'm assuming the individual called by
10 the phone as well, right?

11 A Apparently, yes.

12 Q Is any other way for him to make the first initiation for
13 this claim?

14 A Well, they could do it online.

15 Q They can just go online and, I lost my package?

16 A And fill out some information and put it online. A lot of
17 people do it by claim form. And that way, obviously the
18 situation here is they were faxing out the claim forms at the
19 time.

20 Q And as someone followed this claim form, what is the next
21 proceed from Federal Express in reference to this claim?

22 A You mean after it's received?

23 Q Yes, sir.

24 A Okay. What they would do is it's gone into a queue and
25 people would look into the situation, investigate it, and make

1 a determination whether or not to pay it. I don't know what
2 their guidelines are, but they would look at it and decide to
3 pay it or not to pay it.

4 Q Okay. The claim department has nothing to do with the
5 fraud department. They make decisions on their own, right?

6 A They make their decision on their own.

7 Q Individual ships a package to Brazil. The package get to
8 Brazil. It is damaged package. So who has to make the first
9 attempt to complain the package to the Federal Express, the
10 shipper or the receiver?

11 A Whoever wants to.

12 Q Okay. So if the shipper make that complaint to Federal
13 Express, he makes Federal Express in the United States or in
14 Brazil?

15 A The cargo claims department is in the United States, so it
16 would be in the United States.

17 Q So the shipper made the complaint here in United States.
18 The United States contact Federal Express in Brazil over this
19 claim?

20 A I'm not familiar with the procedures of the claims
21 department. That's -- you know, I'm not --

22 Q Seems to be pretty knowledge when you --

23 A I'm just testifying from the records of the claims
24 department.

25 Q The records there the prosecutor has provided to you?

1 A Pardon me?

2 Q From the records the prosecutor has provided today?

3 A From the records that we have testified from. Those are
4 the business records that were done at the time.

5 Q Right. And did you provide those records to the
6 government?

7 A Yes.

8 Q So came straight from you?

9 A Right, I provided the records. I'm the custodian of the
10 records. So I did pull out the records to give to the
11 government, yes.

12 Q Give to the government. When did you give those documents
13 to the government, Mr. William?

14 A You know, honestly I don't know when I did that
15 investigation. It was after I went to the -- I was preparing
16 to testify and made sure all the records were accurate and
17 looked at the records and had them all, made sure they were all
18 pulled.

19 Q So no recollection when you have given those documents,
20 but you started investigation in 2012?

21 A I wish -- if I remembered the date, I could tell you. I
22 would be happy to. I'm just not that familiar with -- you
23 know, I wish I could remember more dates than I do already.

24 Q The government claimed this investigation started back in
25 2008. So they appoint you in 2012 and those paperwork has been

1 handed to the government in 2012 when they started
2 investigation in 2008. So I'm trying to understand this time
3 frame here. 2008 investigation start and now you say you
4 started investigating in 2012. There's a huge difference in
5 time frame.

6 A Is there a question?

7 Q I'm trying to understand here because you say you started
8 the investigation of this case in 2012. That's correct, right?

9 A I said I came into the department in 2012 is when I left,
10 when I came into the fraud department.

11 Q Right. And all this material you have handed the
12 prosecutor in 2012 as well?

13 A They had -- they had some and I made sure they had it all.
14 I was looking at -- I was preparing as a witness for the case
15 so I was looking at that information.

16 Q Mr. William, what is the time frame here, by the time a
17 person call Federal Express and somebody make a claim form,
18 what is the time frame for Federal Express pay this claim?

19 A I'm not familiar with their particular procedures. Of
20 course, you would think that we would try to pay it as quickly
21 as possible because all the claim forms come into a queue and
22 there are different people who work them as they come up. You
23 would work the oldest claim -- I'm sorry, the oldest claim gets
24 worked first and they work it as quickly as possible. I can't
25 tell you if there's a preferred -- I just don't know. They

1 work -- we try to service our customers as quickly as possible.

2 Q Does as quick as possible take days, months?

3 A I can't answer that question. I'm trying to give you a
4 straight answer saying as quickly as we can.

5 Q I understand. But you used to work for the revenue
6 department, but you don't know anything about the claim and how
7 they pay?

8 A Claims is a different --

9 Q I understand that. When the claim has been opened in
10 Federal Express, Federal Express provide user name and password
11 to that account holder?

12 A No, we don't provide that information. You have to go in
13 and set that up yourself. That's not our -- that's not what we
14 do, no.

15 Q And one specific account, how many user and different
16 passwords the account can have?

17 A I know they can have more than one. I just don't know the
18 maximum. I know on my personal account, I have just one. But
19 I believe you can have more than one.

20 Q So if individual call Federal Express right now and open
21 account and user name and password has been provided to him --

22 A No, you would set your own up.

23 Q I understand that, sir. If I passed the account
24 information to somebody else, can somebody else log in and
25 create a new user name and new password?

1 A If you allowed your account to be compromised by giving
2 the information to someone else, they could do anything they
3 want to.

4 Q And they could go online and produce waybills and
5 shipments?

6 A Whatever you have given them permission to do, they can
7 do.

8 Q When somebody submit a claim, Mr. William, do you have to
9 submit a claim together with proof of shipment?

10 A The claim forms which they have, certainly you would have
11 to show some shipment in order to prepare some sort of claim
12 because, you know, nobody would pay a claim unless we proved
13 some way that you shipped something with us.

14 Q I have this claim form here the government has present to
15 the evidence and has a track number here of 792718358450, Cargo
16 Air slash Brazil.

17 A I don't know what exhibit that is.

18 MR. SCOTTON: Your Honor, can I approach the witness?

19 THE COURT: Yes.

20 MS. MITRANI: Your Honor, can I see which document?

21 THE COURT: Yes.

22 MS. MITRANI: Your Honor, I object to him showing that
23 particular one. There appears to be his handwriting on it.

24 THE COURT: All right. Use the one that's already put
25 into evidence, please. All right?

1 MR. SCOTTON: Okay.

2 MS. MITRANI: We will have to find it.

3 Do you want the witness to have it?

4 MR. SCOTTON: Yes, please.

5 THE WITNESS: Okay. Could you repeat the tracking
6 number so I can make sure I have got the right one? Does it
7 end in 8450? We have been dealing with the last four digits,
8 so is it okay if you and I deal with the last four digits?

9 BY mr. scoo:

10 Q That's fine.

11 A Fine. This says 8450.

12 Q This claim form here previous has been, I'm assuming here,
13 Fed-Ex call center has faxed this to Brazil Express?

14 A Fed-Ex call center has faxed it out to someone. There's
15 no specific information. So the only thing I can tell you is
16 the document reflects that someone from Brazil Express USA
17 faxed it back to Fed-Ex.

18 Q So then this particular claim form here might be shipping
19 from somebody else then, so it doesn't have to be a specific --
20 the defendant received this from Federal Express?

21 A I can't tell you who was on the other end of the fax. I
22 can just tell you what the document says.

23 Q Okay.

24 A So --

25 Q And it has been when Fed-Ex send this claim form, this

1 claim form already has information on it?

2 A I don't know that. I can't answer that. I'm just saying
3 what the document is today.

4 Q So Federal Express sent a claim form blank to the
5 customers?

6 A I wasn't present, so I don't know what they sent out.

7 Q If you work for Fed-Ex in 1999 and I have been asking
8 questions, you know --

9 A This is a claim issue.

10 Q Exactly. And you haven't provided the government here
11 today with a lot of questions here, and it seems to be during
12 the cross-examination you have enough knowledge in the claims?

13 THE COURT: Mr. Scotton, if you could, please stick to
14 asking questions. Thank you.

15 BY MR. SCOTTON:

16 Q And you claimed this claim has been paid to the client?

17 A That's -- Fed-Ex sent out a check that has been negotiated
18 for this claim.

19 Q Do you have any knowledge that Federal Express has offered
20 me a store a couple years ago?

21 A I'm only testifying as to business records here. I have
22 no knowledge of any -- of what they have offered you or what
23 they haven't offered you.

24 Q Just for the record --

25 MS. MITRANI: Objection.

1 THE COURT: Mr. Scotton.

2 MR. SCOTTON: Yes, Your Honor.

3 THE COURT: We have previously discussed this.

4 MR. SCOTTON: About?

5 THE COURT: If you wish to testify, you have to do it
6 from the stand. Please ask questions when you are
7 cross-examining.

8 BY MR. SCOTTON:

9 Q So this particular claim has been paid, right? They sent
10 the check?

11 A There was a check sent out and negotiated on this
12 particular claim, yes, sir.

13 Q Right. When this account has been flagged as a fraudulent
14 account, Mr. William?

15 A Uh-huh.

16 Q Do you have any recollection when this?

17 A I don't have that kind of information in front of me, no.

18 Q So the claim has been faxed back to Federal Express on
19 August 21 of 2008?

20 A Correct.

21 Q But the claim doesn't say when the shipment has been sent
22 to Brazil, correct?

23 A The shipment information says June 21st, 2008.

24 Q June 21st, oh, you're right. June 21st, 2008, this
25 package has been shipped to Brazil?

1 A That's what the form says.

2 Q Okay.

3 A I'm going to have to go by what the form says. That's
4 what I'm trying to do.

5 Q Okay. So the package get to Brazil and it was damaged.
6 And the client has called back Federal Express and complained
7 that the box has been damaged. So the claim department from at
8 this point has initiated some kind of investigation of that
9 claim?

10 A The claims department would have, upon receipt of a claim,
11 investigated the claim, yes.

12 Q Did Federal Express send someone to Mrs. Welda Foria's
13 house to check the package?

14 A No.

15 Q No?

16 A No.

17 Q So they believe everybody else who call and say my package
18 is damaged?

19 A I cannot tell you how they reached their conclusions. I
20 can tell you that they did reach a conclusion to pay the claim
21 and that's what they did.

22 Q Right.

23 A Is it okay if I give this claim form back?

24 MS. MITRANI: Your Honor, may I put it on counsel
25 table?

1 THE COURT: Yes.

2 THE WITNESS: Thank you.

3 BY MR. SCOTTON:

4 Q This particular claim here the check was issued on
5 August 27, 2008?

6 A I don't have the check right in front of me. We could get
7 that information.

8 MR. SCOTTON: Your Honor, may I provide him the check?
9 There's no writing.

10 THE COURT: Yes. And just for purposes of the record,
11 so the record is clear, it states it right under -- can you say
12 what exhibit number that is, please?

13 MR. SCOTTON: It's Exhibit 452.

14 THE COURT: Government's Exhibit 452?

15 MS. MITRANI: No, that's Bates label. I'm going to
16 find out.

17 14I2.

18 THE COURT: 14I2. Thank you.

19 BY MR. SCOTTON:

20 Q So the check has the date of August 27 of 2008?

21 A Yes, sir, that's what the check says.

22 THE COURT: Mr. Scotton, if you could, use the
23 microphone, please.

24 MR. SCOTTON: Yes.

25 THE COURT: Thank you.

1 BY MR. SCOTTON:

2 Q Seven days later, Federal Express cargo department has
3 paid this claim?

4 A I can't answer -- I don't -- I don't remember the date of
5 the claim versus the -- I think it was -- it was a short period
6 of time. If I remember, it was the 21st versus the 28th. I
7 gave the piece of paper back. I guess I should have kept it.
8 Sorry.

9 Q So several days later, they paid the claim?

10 A Yes.

11 Q But there's no investigation on this?

12 A I can't tell you. They must have -- there must have been.
13 Only thing I can tell you is the documents reflect that the
14 claims was paid.

15 Q So this particular claim here, Federal Express claims that
16 this account has been used fraudulently and they still paid the
17 claim on a fraudulent account?

18 A The claim was paid. I don't know whether the account was
19 open or closed at the time and what the circumstances was
20 behind that.

21 Q When the claim has paid to the client, Federal Express
22 sent a check for 399 and this is exact -- the client has
23 claimed Federal Express that he lost 399 and the check was for
24 399. The Fed-Ex didn't pay the shipping cost back to the
25 client?

1 A I can only say what the records are. And the record -- I
2 don't think there's a spot on that claim form for request for
3 shipping charges. And I don't remember, is there a spot filled
4 in for the amount of --

5 Q Shipping charge for \$447.46?

6 A I can't tell you whether that was done, whether that was
7 credited or not?

8 Q But then the check shows 399 only?

9 A Right.

10 Q So the claim form say 400, the check is for 399, and so
11 there is no other checks here being sent to this claim?

12 A Not that, not that was in the business records.

13 Q Okay. So if the shipping cost has not been paid back to
14 the client, how can Federal Express now claim that he has a
15 lost?

16 A I don't know -- Fed-Ex is claiming what on this?

17 Q Government say that Federal Express has been defraud and a
18 lot of shipment that went to Brazil, thousands and thousands of
19 packages. So this one in particular was a claim. Federal
20 Express paid the client for his merchandise that was broken or
21 stolen but Federal Express didn't pay him for his shipping
22 cost. Presume the client paid the shipping cost. Federal
23 Express didn't pay the shipping cost here, have they?

24 MS. MITRANI: Object to the form of the question.

25 THE COURT: Sustained. You need to ask questions.

1 You need to ask questions, Mr. Scotton. All right?

2 MR. SCOTTON: This is a question, Your Honor.

3 BY MR. SCOTTON:

4 Q Have Federal Express pay for the shipping cost?

5 A There was no receipt, no proof of payment of any shipping
6 costs as part of the claim made. So it's hard for Fed-Ex to
7 reimburse it when there's no proof of payment for -- like on
8 these claims, there was proof that you -- that there was a
9 purchase made. And there was a corresponding receipt. There's
10 no receipt in part of the claim form that that was ever paid.

11 Q And then what happened to the shipping cost of this
12 particular package?

13 A I don't know.

14 Q You don't know?

15 A Not today, no.

16 Q So the client lost or the account lost or they credit the
17 account?

18 A I can't -- I don't know. I'm sorry, I just don't know. I
19 can't tell you.

20 Q You don't know?

21 A Right.

22 Q If anybody here from the jurors today call Federal Express
23 and say I want to open an account, is there any information,
24 ID, credentials, that the client has to provide Federal
25 Express?

1 A Well, if they wanted to call and open an account, they
2 would have to, of course, give a name and an address and a
3 phone number and a credit card because they are all
4 individuals, so that would be required to give a credit card.

5 Q And the company has to provide with what kind of
6 information if it was a company?

7 A Company would provide similar information. I don't know
8 how they make that determination whether or not to open an
9 account on open credit or to make them open it on a credit
10 card. We have a customer service department. If you call the
11 1-800 Go Fed-Ex number and you open an account, they can make a
12 determination right there for you.

13 Q Previously in your testimony here, Mr. William, a couple
14 of companies that you put in the record that is a major clients
15 of Fed-Ex, Wal-Mart, Amazon dot com, Target, can you explain to
16 the Court the Target has thousands and thousands of accounts,
17 as you mentioned earlier today?

18 A Uh-huh.

19 Q That Federal Express has a specific sales rep to handle
20 Target accounts?

21 A I would assume so, yes.

22 Q And so any individual can call Federal Express and say, I
23 work for Target, give me an account?

24 A Regretfully that happens. We would prefer they go through
25 the sales rep, but it does happen.

1 Q Because Federal Express trusts people?

2 A Federal Express -- target comes in and wants to open an
3 account, they are a big customer, we want to open a Target
4 account, we want to open a Wal-Mart account. We would proffer
5 they go through their sales rep and do it that, but it does
6 happen on occasion.

7 Q When those account has been flagged as a fraud accounts,
8 have anybody communicated with Target in reference those
9 accounts?

10 A I don't know whether someone contacts target. We do try
11 to reach out to our bigger customers to tell them. So we tell
12 them that we have seen some accounts and we have closed them
13 for their protection. So we do try to reach out that way, yes,
14 if we see them that way.

15 Q When you have a new account open, does anybody else from
16 your company or from your department follow up with calls to
17 the client to confirm the phone number is correct, the account
18 is legitimate?

19 A Not at that time, no. There is now. There is a process
20 now, but not back then. The process is relatively new.

21 Q And we are talking about back then, how long ago?

22 A This started in 2011, 2012.

23 Q So 2011, now Federal Express has some kind of follow-up
24 call to --

25 A We would check to see the phone number, right.

1 Q Right. Because some of those accounts here on this
2 spreadsheet here has been opened in 2011. Do you recall that?

3 A No, I don't recall the spreadsheet, but, you know, I don't
4 know if they called and verified the information. I don't have
5 that information in front of me.

6 Q Sky Express address location, 399 Southeast Mizner
7 Boulevard has opened account on January 18 of 2011?

8 A Right.

9 MS. MITRANI: Your Honor, may I provide the witness a
10 copy of the spreadsheet? I notice the jurors still have it and
11 Mr. Scotton is reading from it.

12 THE COURT: All right. Do you have any objection,
13 Mr. Scotton?

14 MR. SCOTTON: No, your Honor.

15 THE WITNESS: I'm not a hundred percent certain when
16 they started the account verification process. We have learned
17 that as time goes on in the fraud department, that there are
18 ways that we can verify accounts by calling on credit cards,
19 calling on phone numbers. I'm just not sure when that started.

20 BY MR. SCOTTON:

21 Q Okay. But you just say a minute ago that they start this
22 in 2011?

23 A I'm not sure when they started. I said it was possible.
24 Excuse me. I said it was possible it was 2011, but I wasn't
25 certain.

1 Q But then 2011, when they start this process, they didn't
2 call Sky Air Express to verify if Sky Air has opened an
3 account?

4 MS. MITRANI: Objection, mischaracterizes what the
5 witness said.

6 THE COURT: Sustained.

7 BY MR. SCOTTON:

8 Q So now this account was opened, package has been shipped
9 under those accounts, an account has been put to a fraud, some
10 kind of red flag fraud from your department, your department
11 has not received any payment. I imagine you guys would assume
12 it was a fraud account?

13 A Some of the accounts, quite frankly, start as a collection
14 matter first. And if the accounts are open and not paid, then
15 they are closed for nonpayment. And it may be at a later date
16 that we put together the pieces of the puzzle that there are
17 more than one accounts at that -- or certain addresses to tie
18 them all together. So it may have been closed for nonpayment
19 and then identified later on.

20 Q When they put it into collection, is anybody from the
21 collection office try to reach those companies?

22 A Collections would make a collection effort on it. They
23 would try to reach them by phone. And if they did not have a
24 good phone number, they would close the account down for
25 collection reasons.

1 Q Okay. Let's go back a little bit here to the claim here
2 that I have been talked to you a couple minutes ago. Has
3 Federal Express provided the government here any phone records
4 from individual calling Federal Express to file this claim?

5 A No, not that I'm aware of.

6 Q So it's not any individual call, not any voice
7 conversation of anybody playing --

8 A Are you talking about people calling in asking about
9 claims?

10 Q No, I'm talking about the specific claim here on
11 Mr. William.

12 MS. MITRANI: I'm sorry, Your Honor. Can he identify
13 which claim you are talking about, Mr. Scotton?

14 MR. SCOTTON: 926.

15 BY MR. SCOTTON:

16 Q Have Federal Express provide the government, they provide
17 the government the claim form, the check, the letter, some
18 information here from the database from Federal Express about
19 this claim, then we have the track system of the package that
20 was lost?

21 A Okay.

22 Q We have the receipt here?

23 A Okay.

24 Q But no information from the individual that placed this
25 claim has been provided to the government?

1 A You have a claim form that that's what -- we are talking
2 from a business -- I'm trying to understand your question. We
3 filled out --

4 Q If my package got lost, I'm going to call Federal Express,
5 correct?

6 A I assume so, yes.

7 Q And I'm going to tell Federal Express my package is lost
8 or broke?

9 A Uh-huh.

10 Q And they are going to initiate some kind of investigation,
11 as you just mentioned?

12 A No, they are going to ask you to send in a claim form.

13 Q Out of the blue, no investigation, just send in a claim
14 form?

15 A I don't know what you mean by out of the blue. They have
16 to have some documentation They need some information in
17 order to process the claim. I'm not sure what they do, but
18 looking at what they did, it appears they fax out a form, the
19 claim participant fills out the form and sends back the claim
20 form with the accompanying documents. And then Fed-Ex would
21 initiate the investigation to determine whether or not the
22 claim paid or not. We need something in our hands to look at
23 the situation and see. You know, you wouldn't call, if
24 somebody says I lost an \$800 computer, pay me, on the phone, a
25 business person would say, I need a form, I need records, I

1 need something to document your loss so that I can properly
2 look at it. And that's what they are -- that's what these
3 forms do.

4 Q But this conversation between the client and Federal
5 Express, the phone call has not been provided to the
6 prosecutor?

7 A No, I haven't provided any calls to anybody, no. None of
8 those calls with regard to the claims, no.

9 Q During this claim, have anybody from the claim department
10 tried to reach the shipper or the receiver on this claim?

11 A I did not see any notification of that. I would have to
12 look at the forms. I don't know.

13 Q No communication whatsoever?

14 A The information is in the file. I can't answer that. I
15 don't know the specifics on each and every claim without
16 looking at the documentation.

17 Q Mr. William, any recollection here on those fraudulent
18 accounts the government claim the defendant shipped those
19 packages so Federal lost this money. They --

20 A It was uncollected is what your question --

21 Q It was uncollected, right.

22 A Yes

23 Q They never made any money on those shipments, so basically
24 it was a loss for Federal Express?

25 A Correct.

1 Q Does Federal Express claim this to any insurance company?

2 A I have no idea how they do the accounting portion of that.

3 Q They don't claim this at the end of the year on income
4 tax?

5 A That's an accounting question. That's not business
6 records. I don't know how they do that accounting part.

7 Q So you are saying Amazon has their own rep that handles
8 all Amazon's accounts?

9 A I'm thinking that Amazon may have more than one sale rep.

10 Q And all the thousands and thousands of accounts that
11 Amazon has, this particular one here has not been opened by
12 Amazon --

13 (Thereupon, there was an interruption by the court
14 reporter.)

15 BY MR. SCOTTON:

16 Q Is there any record to show that this account from Amazon
17 has not been opened by Amazon account?

18 A I can only state from the records that the account was
19 called in and they opened it under the name of Amazon. The
20 name was given. The information was given with regard to the
21 Amazon account and it was opened by Fed-Ex. That's what the
22 records reflect.

23 Q It doesn't say anything if employee from Amazon has
24 required to open this particular one?

25 A I haven't spoken to any employees from Amazon. I can't

1 speak for what Amazon employees have to say.

2 Q And the Amazon sales rep has not also communicated
3 anything to the fraud department or have not communicated
4 information to say that didn't come from Amazon?

5 A No. This was not part of the national account, so he may
6 not have even known about this account.

7 Q And the same goes for Wal-Mart, individual call, Federal
8 Express pretend to be Wal-Mart. Federal Express gave him an
9 account and say I work for Wal-Mart.

10 A Hopefully they don't all call in and pretend they are
11 doing that, but regretfully, we do have some times some of our
12 national customers do call in and open accounts on their own
13 and not go through their sales rep like we prefer they do so we
14 could verify that information, yeah.

15 Q Those particular accounts has been closed by the
16 collection department or by the fraud department?

17 A I'm not sure. They were closed. I'm not sure who closed
18 them. They were probably closed by collections first and then
19 the fraud. I know the date they were closed. I just don't
20 have that information in front of me right today.

21 Q There's one account here, Mr. William, from a company
22 called BH Photo Video in Brooklyn. The account was opened in
23 July 12 of 2001.

24 A Uh-huh.

25 Q This is ten years account. This is an old account?

1 A Yeah, yes, sir.

2 Q So this account seems to be belongs to BH Photo Video,
3 don't you think?

4 A Pardon?

5 Q This particular account here belongs to that company,
6 don't you think?

7 A I would think so.

8 Q It's pretty much old client?

9 A Old customer, yes.

10 Q And eventually the account was closed on August 4 of 2011?

11 A Correct, that's what the documents say, yes.

12 Q So then goes back to any accounts from Federal Express,
13 they can be assigned to different individuals?

14 A I don't understand what you mean by that.

15 Q If you have account, you can pass information to somebody
16 else to use your account if you like to?

17 A If you are willing to pay for it.

18 Q And then they can go register it online?

19 A The service guide provides you to marshal and take care of
20 your account. If you give that information out to someone,
21 then you are going to be responsible for that, whatever they
22 do.

23 Q Out of all those accounts here, Federal Express has
24 provide the total amount of lost of a claim from this those
25 accounts?

1 A I don't understand your question. I'm sorry.

2 Q Is any information has been provided to the government in
3 all those accounts here?

4 A Yes.

5 Q About the claims?

6 A What do you mean by claims? You mean --

7 Q We have here amount of lost in the corner here for account
8 of \$50,000.

9 A Yes, sir.

10 Q Out of this \$50,000, how much claim has been paid out of
11 those accounts?

12 A What do you mean by claims?

13 Q How many lost -- how many claims has been filed through
14 those accounts?

15 A I don't have that information in front of me. There would
16 not be any claims made because that's things that have not been
17 paid.

18 Q So the shipping has not been paid?

19 A Right, exactly, uh-huh.

20 Q If the shipping --

21 A I can't tell you if there were claims made on those, on
22 all of those accounts.

23 Q If the shipment has not been paid back to the client, the
24 shipment has to be credited back to the account?

25 A I'm sorry, I don't understand the question.

1 Q Federal Express has not paid the shipping back to the
2 client, so automatic the shipper was credited back to the
3 account.

4 A On all those claims that I saw, I only saw one shipping
5 charges. And I said earlier I wasn't exactly sure what
6 happened to that particular -- it's a \$400 charge, \$447 and
7 something. That's the only shipping charges that I saw on
8 that. So I don't know. There were -- none of the other claims
9 were made for any of the shipping charges for any of the
10 packages that were lost or damaged.

11 Q It's clear to see on the other claims that the check the
12 Federal Express sent to the client is only for his merchandise,
13 not for the shipping lost, just for the merchandise?

14 A I'm sorry, that was -- I need a question. That was not a
15 question.

16 Q In the other claims --

17 A Right.

18 Q -- Federal Express check shows there has been paid for the
19 merchandise lost or damaged, correct?

20 A All of the claims paid for the merchandise lost.

21 Q They don't pay? There's not check here that shows that
22 they paid back to the client for the shipping?

23 A There's no check there for the shipping, nor was there a
24 claim made, nor proof of payment of the shipping.

25 Q Right, so in this case, how can Federal Express claim a

1 lost of shipping when they have not paid the client for his
2 lost?

3 A Well, that's one package of \$400. That one account is 50
4 grand. So I'm assuming that 50 grand, I can't tell you that
5 may have been credited before the 50 grand total got there.

6 Q I asked you before, then how many claims it was out of the
7 \$50,000 account?

8 A You have seen all the claims that I am aware of.

9 Q So basically here there is a lot of holes in this
10 investigation here?

11 MS. MITRANI: Objection, Your Honor.

12 THE COURT: Sustained. Mr. Scotton, once again,
13 please, if you could confine yourself to asking questions on
14 cross-examination.

15 BY MR. SCOTTON:

16 Q If the billing department insure billing to the complaint,
17 they mailed the billing out, if the address is not correct,
18 most of the time the post office is going to bounce the bill
19 back to Federal Express?

20 A Yes. It's up to the post office what the post office does
21 with it. We send it out to the address that we were provided.
22 If it comes back, we will note that it came back. But what the
23 post office does, I'm not sure what they do with it.

24 Q But you have any recollection of those accounts that every
25 single bill that was sent out has been delivered to the client?

1 A I just couldn't -- there's no way possible I could tell
2 you if everything that was mailed out, the post office
3 delivered. That's beyond my knowledge.

4 Q In this one particular account here that was opened 2007,
5 a company called Matte Lion USA, Inc., do you recall that?

6 A I recall there was an account named Matte Lion. Is it
7 Matte Lion or Matte Lion?

8 Q Matte Lion?

9 A I just wasn't sure how that was pronounced.

10 Q Federal Express has knowledge that a company belongs to
11 the defendant years ago?

12 A I don't know. I have what information is before me that I
13 pulled out of our records. That's what I have before me.

14 Q Right.

15 MR. SCOTTON: Your Honor, I have a paper here was
16 printed out by the FBI. It has number of 458. I would like to
17 introduce this to the Court.

18 THE COURT: Show it to the government first, please.

19 THE WITNESS: Okay. Yes, sir. What -- so you are
20 saying that you own this company?

21 BY MR. SCOTTON:

22 Q Yes, sir.

23 A Okay.

24 Q Let me go back to the microphone.

25 MR. SCOTTON: Your Honor, for me to do this into

1 evidence as evidence, I have to put it in, right?

2 THE COURT: If you want it to be evidence, you need to
3 ask the Court to admit it as evidence, and then I'll ask if
4 there is an objection.

5 MR. SCOTTON: I would like to submit this as evidence
6 right now, Your Honor.

7 THE COURT: Let's mark it as Defendant's Exhibit 1.
8 And does the government have any objection?

9 MS. MITRANI: Probably not. But can I see it again?
10 No objection.

11 THE COURT: All right. Defendant's Exhibit 1 is
12 admitted.

13 (Thereupon, Defendant's 1 received in evidence.)

14 BY MR. SCOTTON:

15 Q Let me leave this with you for a minute.

16 A Okay. Thank you.

17 Q Right at the bottom in the corner they have a date of
18 2006, right on the bottom of the corner of the first page. It
19 is a date that ends with a 2006. That's the year of 2006 that
20 was print out, that particular paper?

21 A Yes.

22 Q Can you give us the full date, please?

23 A The date on this document that I was provided says
24 March 2nd, 2006.

25 Q 2006?

1 A Uh-huh.

2 Q This particular paper has been print out of the website of
3 the company. You can verify that, right?

4 A I have no idea where this was printed out from. You just
5 handed me a document.

6 Q If you look at the bottom of the cross of the paper next
7 to the date, you can see the codes of the internet.

8 A Right.

9 Q Www Matte Lion, whatever the website, there is a code at
10 the bottom you can pretty much see it is from the internet?

11 A Yes.

12 Q Right. So as far as I understand here, the investigation
13 has been started 2008. But this particular paper was print out
14 on 2006. This particular account here has been opened on 2007
15 when the company has not been in business. So for someone to
16 call Federal Express and open a particular account, what kind
17 of information they have to request to be -- to verify the
18 company that it's still own business?

19 A You saw the information that was there. The company
20 was -- that was the information that was provided.

21 Q 2007, but Federal Express didn't check if this is real
22 information.

23 A Like I said, I'm not sure what they checked back when the
24 account was opened.

25 Q On the claims that have been provided to you, Mr. William,

1 you made a statement that on the claim, the client has put that
2 inside a box was a brick. Is that correct?

3 A I read what was on the form, but I don't characterize what
4 was there. I read what was placed on that form.

5 Q And Federal Express has no investigation on a particular
6 claim?

7 A I'm sorry?

8 Q Has Federal Express run investigation of that claim?

9 A I believe they paid that claim.

10 Q They paid that claim?

11 A Yes.

12 Q They verified there was a brick in the box?

13 A I don't know what they verified. They paid the claim.
14 That's all I can tell you.

15 Q They didn't pay for shipping, just for the brick?

16 A There was no claim made for the shipping on the form if I
17 remember correctly. I can't tell you. I couldn't tell you
18 there was no amount placed. I don't know what the amount was
19 on the shipping part.

20 Q Mr. William, if a client ship a package, he pay for the
21 shipping, now it is lost. So presume now the client has a lost
22 of the merchandise and the shipping and he's to be made a claim
23 form to Federal Express. Federal Express send to the client a
24 check but the check only pay for his merchandise.

25 A Uh-huh.

1 Q Don't you think the client is going to make a complaint
2 about the shipping cost that he made?

3 A What the client does is up to them. I can't answer what
4 another person is going to do.

5 Q So the Federal Express has no recollection what happened,
6 not value of this claim on the shipping of this particular
7 claim?

8 A We never paid the claim. There's no request for payment
9 of shipment on that claim form.

10 Q What does that mean, Fed-Ex has scammed the client for the
11 shipping costs?

12 A No.

13 MS. MITRANI: Objection.

14 THE COURT: Sustained.

15 BY MR. SCOTTON:

16 Q The waybill when it has been created has the information
17 of the company, correct?

18 A Excuse me?

19 Q The waybill once created has the name of the company in
20 it, right?

21 A Yes.

22 Q When you send a claim form to the -- or you request a
23 claim from Federal Express, the form has to be matched what the
24 waybill is, correct?

25 A The information has got -- there is a waybill and they do

1 check the sender and recipient and they do try to see if it
2 matches up. Like in that particular one that I testified from,
3 one of the air bill showed a Sony Vaio computer and that's what
4 the claim was made for. And it was made from the person who
5 shipped it to the person who received it. So, you know --

6 Q But the claim form has been changed that information.
7 They have been provided on a claim form different information?

8 A We look at the information that was provided to us. You
9 know, Fed-Ex, we try to make our customers happy.

10 Q Happy?

11 A We try to. You know, we want to deliver the purple
12 promise to our customers every day.

13 Q So the waybill shows as a name of a company Cargo Air, but
14 then the client can go ahead and claim under Roger Scotton,
15 different names?

16 A I can only show what the claim form made if someone
17 scratched through it, then that's what -- I can only testify as
18 to the records.

19 Q The previous information on this claim form here,
20 Mr. William, has been provided by Federal Express?

21 A I don't know who provided -- I don't know who typed in any
22 of those boxes. All I know is the completed claim form is
23 retained in our records.

24 Q Is any way the client can go online and type menu?

25 A Not that I'm aware of, no.

1 Q The spreadsheet the government has present to the court
2 today has been provided by you to the government or the
3 government provided to you?

4 A Which one?

5 Q The spreadsheet CD?

6 A The spreadsheet CD was provided by the fraud department,
7 yes.

8 Q The fraud department has given that to you or to the
9 prosecutor?

10 A We gave it to me who gave it to them. It was provided to
11 the government by the fraud department.

12 Q Right. And it was provided by Excel?

13 A Excel.

14 Q Excel format?

15 A Excel spreadsheet, yes, that's how it pulls it. Because
16 it's easier -- the reason it comes to an Excel spreadsheet is
17 you can manipulate it. You know what I'm talking about? You
18 can sort by numbers, sort by address, and that's why the
19 programs are designed to go to Excel spreadsheet.

20 Q So it goes to Excel spreadsheet so anybody can manipulate
21 it?

22 A They can move the data to make it sort.

23 Q But they can manipulate numbers, change information, so it
24 is open to do any kind of falsification as they please?

25 A I'm not going to say that somebody's going to go in and

1 falsify a document. What that does is it pulls up information
2 that allows you to sort and manipulate it to look at it so you
3 can look at it the way you need to look at it.

4 Q But the question is that can that particular document be
5 manipulated?

6 A I don't think. I don't think that's a controlled document
7 that could not be manipulated.

8 Q So it can be manipulated?

9 A You could make changes in it, yes.

10 Q Is anybody else work with you during this investigation?

11 A There were a lot of people that worked on this
12 investigation.

13 Q In your department?

14 A In my department, yes.

15 Q Yes. And anyone who has any kind of confirmation that
16 Federal Express has filed a complaint against the defendant,
17 Rogerio Scotton, of shipping packages through fraudulent
18 accounts?

19 A I don't know who would have that particularized knowledge
20 of how that came about, no, I don't know who that would be.

21 Q Have Federal Express make unofficial complaint and say Mr.
22 Scotton has defrauded a company?

23 A I'm certain that somebody has brought that to the
24 attention of the authorities. You just asked me if I knew who
25 it was and I said I wasn't certain.

1 Q Right. So someone from Federal Express brought it to back
2 in the days in 2008 to the government that Mr. Scotton and his
3 fraudulent company shipping packages for four years?

4 A I don't know when it was done. I can't answer that.

5 Q Right. But then in the meantime, for several years this
6 fraud continued, and Federal Express fraud department or your
7 department has not done anything to stop the fraud?

8 A Oh, trust me, if we could do something to stop a lot of
9 this, we would.

10 Q Really?

11 A Yeah. But the idea behind it is sometimes it's difficult
12 to -- it's not always easy to find.

13 Q Mr. William, those accounts have address?

14 A Uh-huh.

15 Q And a lot of those address here, in particular here,
16 someone online, 77 Golf Circle Drive in Margate, it is my
17 mother's address. 398 Southeast Mizner Boulevard used to be my
18 home in Boca Raton. So if thousands and thousands of packages
19 has been picking up by your drivers in my location, they are
20 the only guys figure out it is a fraudulent account, nobody
21 going to come to my door or send me a bill and investigate me,
22 they are right away going to call FBI?

23 A If you can see some of these accounts, when it was
24 identified that the addresses were matched up, they were closed
25 down pretty quickly.

1 Q Right.

2 A So once you in your investigation find some addresses that
3 are suspect and they are shipping there that is unpaid, you
4 start closing them down. And I believe that's what was done in
5 this particular case. And that's why they were -- that's why
6 you can see that there was an account opened in October, then
7 middle of October, the end of October, because they were shut
8 down from all the addresses, so --

9 Q I understand that, Mr. William, but I got accounts here
10 like Sky Air Express opened January 18, 2011, and it was closed
11 January 21 of 2011. So this only three days.

12 A Uh-huh.

13 Q And three days here and had a total of \$15,000 in lost?

14 A Yes, that happens all the time.

15 Q Right. But they don't specify here how many packages
16 would be shipping?

17 A That's \$15,000 worth of lost.

18 Q Right, so three days this account has been closed?

19 A After three days, the account was closed, yes.

20 Q And the address 398 Southeast Mizner Boulevard, Boca
21 Raton, no mail has been sent to that location or no
22 investigation has been made by your fraud department to that
23 location?

24 A I don't know what they did with regard to that. I know
25 that the accounts were closed. You know --

1 Q I understand, Mr. William, but don't you think --

2 A We are not law enforcement so we don't go out and knock on
3 people's doors and make -- you know, that's what law
4 enforcement does.

5 Q You say that Federal Express never knock on anybody's
6 doors?

7 A I'm not -- I'm saying we make collection efforts, but they
8 are not knocking on people's doors is what I am trying to tell
9 you.

10 Q So if your fraud department has to do investigation, they
11 don't go and do investigation, they call the FBI?

12 A We call the appropriate authorities. I'm not saying the
13 FBI. Call the appropriate authorities. I'm assuming in this
14 case it was the FBI. We do make collection efforts, and then
15 when we determine that there is fraud involved, then we turn it
16 over to the proper authorities. I'm not certain a hundred
17 percent how it got to the FBI.

18 Q \$15,000 in this account has been sent, Mr. William, with
19 the address that is the defendant address, but no one come to
20 that location to investigate anything.

21 A Well, what would you have us investigate at that address,
22 Mr. Scotton? Would you want us to come knock on the door and
23 say you are shipping fraudulent packages?

24 Q Why not? If someone defraud my company, I'm going to go
25 for. Don't you think so?

1 A We are just not in the collection business to do that.

2 Q I thought you said Fed-Ex is about collecting money.

3 A We collect money by --

4 Q When you lose \$15,000, let's call the FBI, they can handle
5 it?

6 A Well, this is more than just \$15,000. This is
7 substantially more.

8 Q So four years investigation, the defendant has the address
9 on those accounts, but nobody else come to the defendant's
10 house from Fed-Ex to say we need to talk to you about this or
11 maybe police department?

12 A You are assuming that we turned it over to the police
13 department. Fed-Ex is not going to come knocking on your door.

14 Q Right. And then --

15 A We are not. That's not what we do.

16 Q And four years later, Federal Express engaged in agreement
17 with the defendant to open a store?

18 MS. MITRANI: Objection, Your Honor.

19 THE COURT: Sustained.

20 BY MR. SCOTTON:

21 Q Have anybody from the claim department make any complaint
22 that claim checks has been deposited to the defendant's
23 account?

24 A I'm sorry, I didn't understand.

25 Q Any check that was deposited to the defendant's account

1 from those claims, any complaint from Fed-Ex?

2 A I don't understand what you mean by complaint. It looks
3 like most of the checks were just signed in cash. There didn't
4 appear to be any deposit on any of the checks. We sent the
5 checks out to pay the claim and we expect them to clear the
6 bank. There was one check that had some deposit information on
7 it, but the other ones were just signed pretty much.

8 Q When you say they have been cashed, the person went to the
9 bank and cashed the check?

10 A I'm just saying they have been negotiated. Let me
11 rephrase that. The checks have been negotiated. I will say
12 that.

13 Q Okay. Because --

14 A I wasn't there when they were negotiated.

15 Q Right, sir. This particular check here has been deposited
16 to the defendant's CitiBank account so it was not cashed?

17 A So are you saying that check was deposited to your
18 account?

19 Q Yes. It was.

20 A Okay.

21 Q But then nobody from Federal Express --

22 A Can you tell me which one we are talking about here?

23 Q It is the Cargo Air, Manuel Ramos, 452. It is 14I2.

24 A Okay. So you are saying that was deposited to your
25 account?

1 Q According to the FBI investigation, it was deposited to
2 the defendant account.

3 A You just said to me that -- you asked me did I know it was
4 deposited in your account.

5 Q Yes. Do you have any recollection --

6 A No, I have no idea --

7 (Thereupon, there was an interruption by the court
8 reporter.)

9 THE WITNESS: That's why I asked you is that your
10 account that you deposited to and you said yes.

11 BY MR. SCOTTON:

12 Q No, sir, I did not say that.

13 A That's not? Okay.

14 Q Those checks have been deposited to bank accounts.

15 A They have been negotiated.

16 Q Right. And the accounts that have been deposited is not
17 from Mr. Manuel Ramos.

18 A I'm saying the checks speak for themselves.

19 Q We got a lot of fraudulent account here, Mr. William, a
20 lot of claims deposited, a lot of checks going out, a lot of
21 address here, and Federal Express worldwide company has a huge
22 fraud department. They don't do anything. They just freak out
23 and call the FBI.

24 A I didn't get a question there. Is there a question there?

25 Q You want to tell me here that no investigation has been

1 run during all this time, no finger has been point at
2 Mr. Scotton, the defendant, has been done any fraud against
3 Federal Express?

4 A I would tell you that what we do is pull the information
5 and we let the government provide the government authorities to
6 do their job with regard to these cases. That's how we handle
7 them.

8 Q You have no recollection when this investigation start?

9 A No, sir, I don't.

10 Q You just been appointed to the case in 2012?

11 A That's correct.

12 Q And every single documentation provide to the government
13 was not provided by you?

14 A Well, I did that form.

15 Q You did spreadsheet form?

16 A I did the spreadsheet form.

17 Q Right. That can be manipulated?

18 A And I did the claim forms, provided the full claim forms.
19 Remember, that's my cover sheet on there saying that was my --
20 saying that I pulled that information and sent that information
21 to the government. Yes, sir, I did that.

22 Q You pulled the information from --

23 A From our archives. We have so many pieces of paper, we
24 cannot keep pieces of paper. We cannot keep them in boxes
25 because you would never find them. So they are archived by

1 account number, by claim number, by air bill number so that we
2 can pull that information up and see it on a computer. You
3 know, that's how these are done. We can't keep boxes and boxes
4 of information.

5 Q And how long those information storage on your database?

6 A Most of our stuff to the best of my knowledge is at least
7 seven years if not longer.

8 Q Seven years?

9 A Because we get -- we need that information. We need to
10 have access to that information.

11 Q But yet Mr. Larry has provided information that phone
12 calls only get storage 30 days?

13 A That Mr. Midyett's department. That's phone calls.
14 That's not business records.

15 Q So if you have this information for seven years and we
16 need to verify who made any calls to those accounts or who
17 opened those accounts, Federal Express will not have any
18 recollection because it's only 30 days?

19 A To this day, yes, that information would no longer be
20 available.

21 Q Any specific recollection between claims international or
22 claims that was not international?

23 A I showed you when I was talking about the different
24 letters and showed you we could look and see the shipments
25 would be international versus the shipment that were domestic.

1 Q Does it require for international that it is the same
2 requirement?

3 A What do you mean claim requirements? The claim forms were
4 sent out and filled out and sent back for both types of
5 packages. The documentation was required there too.

6 Q It is also during those claims here because we assuming
7 here was international claims went through customs and is a lot
8 of tax and duties charges on those claims to have those charges
9 been reversed have been paid?

10 A They were -- I cannot tell you that there were any claims
11 made or any payments made on the duties and taxes for the
12 shipping because that wasn't part of the claim forms. I can
13 only tell you -- I'm testifying as the custodian of the records
14 and I can only tell you what the records said there is what I'm
15 trying to --

16 Q Mr. William, on the document here 927, it is the tracking
17 system of Federal Express this particular claim, package has
18 left Fort Lauderdale 5:53 p.m. Well, the paperwork has been
19 submitted 5:53 p.m. on June 20 of 2008. Package was picked up
20 1:32 at Fort Lauderdale June 21st 6:48, arrive in Pompano
21 Beach, and the last scan shows June 22 of 2008, 3:15 arrive in
22 the main hub of Federal Express, correct?

23 A You have the document. I don't have it in front of me, so
24 I can't tell you whether or not it's correct.

25 MS. MITRANI: Do you want to put it on the ELMO so

1 everybody can see it?

2 MR. SCOTTON: Yes.

3 MS. MITRANI: Your Honor, may I?

4 THE COURT: Yes.

5 THE WITNESS: Okay. Got to make it bigger for an old
6 man.

7 MS. MITRANI: That's what I'm trying to do.

8 THE WITNESS: I appreciate that. I can see it better.

9 MR. SCOTTON: All right. Well, thank the prosecutor.
10 She did it.

11 THE WITNESS: Thank you.

12 MS. MITRANI: It's my pleasure. Any time you need
13 anything on the ELMO, you can use it yourself, Mr. Scotton, or
14 we are happy to help you.

15 MR. SCOTTON: Thank you.

16 BY MR. SCOTTON:

17 Q June 21, 6:48 p.m., you see the package left the facility
18 of Pompano Beach?

19 A Okay.

20 Q But then we don't have any scanner here when the package
21 has left, mean the package has arrived in Manfield 3:15 p.m.
22 and that's the last scan of this package?

23 A It appears that way. Excuse me. It appears that that is
24 the last scan on this package from this form. I don't know
25 when this form was printed. There may be other scans that may

1 show up after this form was printed. I can only tell you what
2 this document says. So as it appears on this document, the
3 document says the last scan was arriving at the hub in Memphis.
4 That's what the document says. There may be other scans. I
5 don't know when this was printed so I can't answer your
6 question.

7 Q Well, Mr. William, on the top of the document over there,
8 I guess we are going to have to move that for you to see it,
9 August 21st of 2008, this document has been submitted to the
10 claim department?

11 A Uh-huh.

12 Q So it seems to be this particular package here has been
13 claimed from the client to say the package was lost because the
14 last scan here it is arrive at Federal Express location Memphis
15 and that's it, right?

16 A Okay.

17 Q So is there any particular reason why packages are getting
18 lost inside your main hub?

19 A Trust me, if I could find the answer to that question, I
20 wouldn't be here testifying today because I wouldn't have to
21 work anymore. If you've ever worked in the hub, you could
22 understand why sometimes packages get lost. We have three
23 million packages a night going through the hub, and
24 occasionally some of them get lost. They get their labels torn
25 off. There's other things that happen to them so that they are

1 unable to be delivered to the customer. If we could figure
2 some way that that would never happen, then we could deliver
3 much better customer service.

4 Q Mr. William, what do know about the Federal Express
5 illegal drug scam?

6 A The what?

7 Q Federal Express illegal drug scam?

8 A Legal drug scam?

9 Q Federal Express is under investigation right now. Do you
10 agree with me?

11 A I have no information about that whatsoever.

12 Q You have no information? I can recollect you with some
13 material here that would show --

14 MS. MITRANI: Whoa, whoa, whoa. Objection, Your
15 Honor. May we approach sidebar?

16 THE COURT: Yes.

17 (Thereupon, the following was heard sidebar.)

18 MS. MITRANI: I don't know what's on there, but I can
19 tell you that it hasn't been produced to us. They gave us a
20 flash drive today. I think they gave us something last night.

21 MR. SCOTTON: This has been produced.

22 MS. MITRANI: Whoa, whoa, whoa. One minute,
23 Mr. Scotton. I already see hearsay like investigation boards
24 and incident reports. I see internet articles.

25 THE COURT: Let me say this. Let me say this. You

1 can't introduce it on her case anyway. You have to wait until
2 your case to introduce it into evidence. You can ask him
3 questions that you learned from there, I suppose, if they are
4 relevant and otherwise proper questions, but it can't be
5 admitted in her case unless you can --

6 MR. SCOTTON: This particular document here is one of
7 the things that is related to this.

8 THE COURT: Well, tell me what you want to do so I
9 know.

10 MR. SCOTTON: The question I'm asking is --

11 THE COURT: Let me just say this. I can't see what
12 you are pointing to. I have never seen this before.

13 MS. MITRANI: Neither have I.

14 MR. SCOTTON: Your Honor, this is several police
15 reports here that I went to the police department of Boca
16 Raton.

17 THE COURT: Okay.

18 MR. SCOTTON: And I'm doing reporting fraud here,
19 2007, 2008, 2009. I'm calling companies to say the package has
20 been shipped to accounts and I'm doing reporting.

21 THE COURT: Okay. And you may recall that we
22 discussed the other day that as a general rule, investigative
23 reports of law enforcement are not admissible at trial. I
24 vaguely recall having said this. Let's see. Okay. A record
25 or statement of public office, this is the public records

1 exception we discussed the other day is admissible and is not
2 hearsay if it otherwise meets these requirements. But --

3 MR. SCOTTON: Your Honor, can I have just one second
4 because I just remembered something the marshal told me. I
5 have a pen in my hand. I'm not supposed to have a pen. Sorry
6 for that.

7 THE COURT: All right. It is not admissible. Let's
8 see, the record or statement of public office is admissible if
9 it sets out the office's activities, a matter observed while
10 under a legal duty to report but not including in a criminal
11 case a matter observed by law enforcement personnel.

12 So as a general rule, these types of things of are not
13 admissible. You can ask him if he's aware that you made
14 complaints to the -- you know, about fraud, I don't even know
15 what this is so you are going to have to tell me. I am just
16 guessing.

17 MR. SCOTTON: Which one, Your Honor?

18 THE COURT: What is it you want to ask him about?

19 MR. SCOTTON: As far as I understand by investigation
20 we have done, packages get into the main hub. When they get to
21 the main hub, they claim that a package is lost. The package
22 not lost, has been directed to another waybill shipping, and
23 that's when they stop. They put opium in the box. So I'm
24 trying on my best knowledge as a pro se try to make the Court
25 understand and I've been holding back information that I have

1 because I don't know if I'm going to violate any rules of the
2 court.

3 THE COURT: Here's the problem. This looks like these
4 are -- it looks like the things -- the two up top are -- one
5 says -- looks like it's an article from News Day or it purports
6 to be an article from News Day. And if that's the case, it's
7 hearsay. It's not admissible to prove the truth of the matter
8 and that's exactly what it seems.

9 MR. SCOTTON: Mr. Patrick make a statement, Mr.
10 Patrick make a statement about Federal Express, Your Honor.

11 THE COURT: It's not admissible. The reason it's not
12 admissible, Mr. Patrick Fitzgerald, or whoever it is who is
13 quoted in there, may have been quoted inaccurately and must
14 have been misunderstood. There is a rule about hearsay for
15 that reason. You cannot bring in hearsay evidence. It's not
16 my rule. It's the federal rules of evidence.

17 Hearsay evidence is evidence of things or statements
18 that are said outside of court that are sought to be admitted
19 for the truth of the matter. That is that you are trying to
20 bring them in to prove what it says happened. Do you
21 understand what I'm saying?

22 MR. SCOTTON: Yes, Your Honor.

23 THE COURT: Newspaper articles are sort of the
24 quintessential type of hearsay. That's not generally permitted
25 to be introduced. It's certainly not permitted if it's being

1 introduced for the purpose of proving the truth of the matter
2 contained in it. So I can't allow you to bring that in as
3 evidence at this time.

4 MR. SCOTTON: And those police reports, I can go ahead
5 and have the police officers come here to testify.

6 THE COURT: Okay. Well, get the police officers and
7 they will testify. Get the police officers. They will
8 testify. You still can't generally get the reports in --

9 MR. SCOTTON: On this particular bench --

10 THE COURT: Do you want to hear why or not?

11 MR. SCOTTON: Yes, Your Honor.

12 THE COURT: You probably still can't get the reports
13 in because for the reason that I previously read which is they
14 are also hearsay and they are not considered to be exceptions
15 to the hearsay rule under the public records exception, as I
16 just read to you.

17 But you can certainly ask the officers about whether
18 you made any complaints or anything of that nature because they
19 can be cross-examined about that. That's fine. We have
20 previously discussed this and I told you that you could do
21 that. But this witness is a records custodian. There's no
22 indication that he has -- well, in any case, you can't ask him
23 questions about hearsay articles and we need to get back to the
24 trial, so that's not going to be admissible.

25 MS. MITRANI: I was also going to bring up the records

1 custodian. It's inappropriate, but Your Honor has brought it
2 up.

3 Your Honor, one quick thing I don't want to interfere
4 with the Court's schedule in any way, but before I do redirect,
5 I need to know if the Court can --

6 THE COURT: A bathroom break?

7 MS. MITRANI: Yes, Your Honor. It doesn't need to be
8 now, but before I redirect. Thank you, Your Honor.

9 MR. SCOTTON: Are we going to take a break now?

10 THE COURT: No, but you cannot introduce -- I'm sorry,
11 but that's just not admissible.

12 MR. SCOTTON: But I'm still allowed to ask him about
13 the drug scam or not?

14 THE COURT: You can ask him about if he knows about
15 the drug scam. That's your defense. That's fine with me.

16 MR. SCOTTON: I'm trying to bring evidence, Your
17 Honor.

18 THE COURT: It has to be admissible evidence. That is
19 not admissible evidence.

20 MR. SCOTTON: It is.

21 THE COURT: You cannot talk about there was a
22 newspaper article or a magazine article that suggested that
23 there was a drug scam or anything like that. That's not
24 admissible.

25 MR. SCOTTON: It's not even suggest -- when the

1 officer act on this, it's not suggesting from this day. It's a
2 fact. It's a report.

3 THE COURT: I'm not going to argue with you about it.
4 You cannot prove something substantive by bringing in a
5 newspaper article that reports it. You can't cross-examine a
6 newspaper article. There's no way for the government to be
7 able to test whether the newspaper article is accurate, whether
8 the people quoted in it were quoted accurately, whether what
9 they said was truthful or not. It's not allowed under the
10 rules of evidence. And really, we have taken enough time. You
11 can continue your questioning, but you may not ask --

12 MR. SCOTTON: Boca Raton Police Department is
13 considered Department of Justice.

14 THE COURT: I'm not arguing with you about it any
15 more. We are done.

16 (Thereupon, the following was heard in open court.)

17 BY MR. SCOTTON:

18 Q Mr. William, as I ask, you have no recollection about any
19 involvement with the Federal Express and any kind of illegal
20 drug scam?

21 A No, none.

22 Q You have no recollection that California United States
23 attorney's office is investigating them right now?

24 A Absolutely none.

25 Q Right.

1 MR. SCOTTON: No more questions, Your Honor.

2 THE COURT: All right. Thank you. We are going to
3 take our afternoon break now. And we will return at 3:40. All
4 rise for the jury. Please remember my instructions. We will
5 see you back here at 3:40.

6 And we will see you back here at 3:40. You are not
7 released yet. We are going to do redirect when we return.

8 THE WITNESS: Okay.

9 (Thereupon, the jury exited the courtroom at
10 3:25 p.m.)

11 THE COURT: All right. We will be in recess until
12 3:40. Please be back in time so we can start promptly with the
13 jury. See you then.

14 MS. MITRANI: Thank you, Your Honor.

15 THE COURT: All right.

16 (Thereupon, a recess was taken at 3:26 p.m.)

17 THE COURT: Thank you. Please be seated. You all can
18 be seated if you are more comfortable. We are going to see if
19 the jury is ready, and we will bring them in if they are.

20 (Thereupon, the jury entered the courtroom at
21 3:41 p.m.)

22 THE COURT: All righty. Please be seated. Thank you.

23 And I am sure you know this since we have said it
24 several times, but you are still under oath. Do you
25 understand?

1 THE WITNESS: Yes, ma'am.

2 THE COURT: Thank you very much. You may conduct your
3 redirect when you are ready, Ms. Mitrani.

4 MS. MITRANI: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. MITRANI:

7 Q Mr. Seligstein, were you the only employees of Fed-Ex
8 involved in the investigation which brings us here today?

9 A No.

10 Q Do you know everybody who worked on it?

11 A I don't know everybody who worked on it, no.

12 Q Do you know whether there were local Fed-Ex personnel
13 involved in the investigation?

14 A There were.

15 Q Did you work --

16 A You mean -- when you say local, I'm thinking Memphis
17 versus Fort Lauderdale.

18 Q Let's clarify that. You live in Memphis?

19 A Right.

20 Q And work out the Memphis --

21 A I work out of Memphis.

22 Q Do you know if there were people in south Florida who were
23 involved in the investigation?

24 A I think so, yes.

25 Q So you were -- is it fair to say you were one of many who

1 were working on behalf of Fed-Ex with the authorities?

2 A Correct.

3 Q Now, I think during cross-examination, Mr. Scotton was
4 talking about claims and payment of shipments. Do you remember
5 questions about that --

6 A Uh-huh.

7 Q -- along those lines? Okay. Is Government's Exhibit
8 Composite 14I6 or 7 discrete claims that were made to Fed-Ex?

9 A Yes.

10 Q Does the claim department -- is that -- what is its
11 relationship, if any, to billing and invoice and revenue?

12 A Well, they do look at the shipping on it. They do pay the
13 claims. I'm not sure whether they contact the billing
14 department to have credit done. I'm not sure exactly what
15 their authority is or what their procedures are for dealing
16 with the shipping charges.

17 Q But are there two different departments?

18 A They would have to -- they cannot give credits. They
19 would have to pass that on.

20 Q I haven't asked you anything about credits yet, sir.

21 A There are two departments, yes.

22 Q There are two departments. So the claims handle claims on
23 shipments that have been tendered to Fed-Ex for delivery, and
24 as we saw with claim forms, they are claims of loss or damaged
25 items, right?

1 A Right.

2 Q Do -- let me ask it -- when is an invoice for payment of
3 an account sent out in relation to the shipment?

4 A The accounts, when the accounts are set up, most of them
5 are billed weekly. Okay? So what happens is we take all the
6 shipments from that week and put it in an invoice and send it
7 out to the customer.

8 Q Does the customer pay for the shipment before he or she
9 sends it out or after it has been sent out?

10 A The invoice is paid after it was -- we send the invoice
11 out and expect payment back within 15 days.

12 Q So at the time the claims are made, does that have any
13 relation to whether or not the payment for the shipment has
14 been made?

15 A No, uh-uh.

16 Q So when Mr. Scotton was asking you about crediting the
17 payment for shipment back, would that presume that the shipment
18 was paid for?

19 A Well, I would hope we would not be credited unless
20 somebody paid it first. So to answer your question, yes.

21 Q So to sum it up, claims are one department and that's for
22 discrete packages that have been shipped. Invoicing gets the
23 invoice after the package has been shipped and you said either
24 on a weekly or biweekly basis?

25 A Right. Basically it would be a weekly basis. Sometimes

1 it's biweekly. Most accounts are weekly basis.

2 Q If a customer wanted credit for a shipment that he or she
3 has paid for, would that go to the claims department or would
4 that go to another department?

5 A That would go to the revenue department. Revenue services
6 is where you would call -- we have customer service when you
7 open account deal with that. We have revenue services that you
8 would call and deal with requests for credits.

9 Q Is that revenue service where you request credits for
10 payments made for shipping, is that independent and separate
11 from the claims department?

12 A Yes, different department, uh-huh, yes.

13 Q On cross-examination the defendant was also trying to talk
14 about claim forms as it relates to phone calls. And my
15 question to you is, does there need to be a claim form in order
16 for a claim to be initiated?

17 A Well, you either have to have a claim form or do something
18 online to initiate a claim. The fact that you call in on the
19 phone is not going to -- they are not going to create a control
20 or not going to create anything just for your telephone call.
21 You have to do something in addition to just a phone call.

22 Q Is a phone call a requirement in order to initiate a
23 claim?

24 A I would think if you were able to locate a claim form,
25 whether one of our business service centers or something, and

1 ask for a claim form, there would be a place to send it in. I
2 don't think you actually have to have a phone call to obtain a
3 copy of the claim form.

4 Q Mr. Scotton also asked you about something to the effect,
5 and I don't have the exact words, but to the effect of that
6 claims were paid on fraudulent accounts. And my question to
7 you is, do you know whether the accounts that are identified in
8 Government's Exhibit Composite 14I were flagged as fraud at the
9 time the claims were paid?

10 A No. It's like I said, it's possible that it could have
11 been flagged just for collection purposes. So it wasn't
12 identified until later on. So at the time the logic tells me
13 that, no, if it was flagged for fraud, they would not have
14 refunded the money so it was some other reason.

15 Q I believe the majority of the claims that we went through
16 were in 2008, correct?

17 A I think so, yes.

18 Q Do you have a copy of 14K with you?

19 A No, I do not.

20 Q Now, first 14K, this is the spreadsheet that you made with
21 certain discrete accounts, correct?

22 A Yes.

23 Q And then Government's Exhibit 130 had two other
24 spreadsheets, correct?

25 A Correct.

1 Q With, I think you testified to, how many accounts were
2 there, 130?

3 A One of them was a single account and the other one was
4 multiple accounts, large number.

5 Q And the Government's Exhibit 130 has its own loss amount,
6 correct?

7 A Yes.

8 Q That is not -- so this 14K has the loss amount just for
9 these, however many accounts there are, and Government's
10 Exhibit 30 has the loss amount for all the accounts listed on
11 130, correct?

12 MR. SCOTTON: Object, Your Honor.

13 THE COURT: What is the objection?

14 MR. SCOTTON: Speculation.

15 THE COURT: Okay. Just one second. Overruled.

16 THE WITNESS: There may be some overlap.

17 BY MS. MITRANI:

18 Q Okay.

19 A But, you know, it's like the Rio Motor Sports is on here
20 and that's one of those spreadsheets.

21 Q The Rio Motor Sports is on 14K and it's also on
22 Exhibit 130?

23 A Right. And there are some other accounts that are on 130
24 on the spreadsheet that are on here that there may be other
25 accounts involved but they are not on this spreadsheet.

1 Q Now, during cross-examination, the defendant brought your
2 attention to BH Photo Video. Do you see that, sir, on the
3 spreadsheet?

4 A Yes, I do.

5 Q And this is 14K?

6 A Uh-huh.

7 Q Not Exhibit 130. And, in fact, he asked you about the
8 fact that it was opened in July 12, 2001, correct?

9 A Yes, ma'am.

10 Q Did you do some research as to the circumstances
11 surrounding the loss amounts that are delineated in this
12 spreadsheet?

13 A These were shipments that were made fraudulently on this
14 particular account. The account was an active account and
15 there were fraudulent shipments made. There were actual
16 shipments made by B and H Photo and fraudulent shipments being
17 made on that account, for lack of a better term, the account
18 was being misused and abused. It was an abused account.

19 Q So was it was an existing valid account?

20 A It was an existing valid account where there was abuse on
21 existing valid account.

22 Q And that abuse, as the charge is identified, the 55,000
23 worth of charges that BH Photo, that's not us, that's somebody
24 else?

25 A That is correct.

1 Q And then ultimately it was closed, that existing BH Photo
2 was ultimately closed August 4, 2011?

3 A It's hard to close abused accounts because the customer
4 still wants to keep them open. You have to convince them to
5 close it to stop the abuse.

6 Q Why is that?

7 A Because they have shippers. They have people that
8 regularly ship to them and use their account number. So when
9 we close the account and give them a new account number, it's a
10 pain for them to have to redo a lot of other things. So we try
11 to convince them to stop the abuse by closing the account which
12 it would, but it causes, like I said, pain for them so it's
13 difficult to do that. But we have insisted on it.

14 Q I'm showing you Government's Exhibit 14I1, the document
15 that's identified as Fed-Ex 447. It will come up on the screen
16 in just a moment. I'm actually not showing it to you. I'm
17 about to show you it.

18 Now, Mr. Scotton, the defendant, was asking you questions
19 about checks and you testified that the checks were negotiated,
20 correct?

21 A Correct.

22 Q And so on this particular check which was to Pittiman
23 Corporation, on the back, if you could zoom in on the -- on the
24 back of that Pittiman Corporation check, does it say that it
25 was paid to the order of CitiBank National Association, Boca

1 Raton, Florida with the zip code underneath, there's an account
2 number, and then it says for deposits only, Brazil Express USA,
3 Inc.?

4 A That's what that says, yes, correct.

5 Q Now, in terms of the bank records and the specific
6 accounts that this check and the other check, other checks,
7 excuse me, for deposit, is that something you investigated?

8 A I did pull the copy of the checks.

9 Q Right, but beyond that, you didn't go into what ask Bank
10 of America for its documents or ask CitiBank for its?

11 A No, I pulled the business records from the claims
12 department and got copies of the checks.

13 MS. MITRANI: May I have a moment, Your Honor?

14 THE COURT: You may.

15 MS. MITRANI: No further questions, Your Honor.

16 THE COURT: You may step down. Thank you. The
17 government may call its next witness.

18 MS. MITRANI: The government calls Samuel Cory.

19 THE COURT: Good afternoon.

20 THE WITNESS: Good afternoon, Your Honor.

21 MS. MITRANI: Special Agent Van Brunt is going to
22 clear the exhibits.

23 THE COURTROOM DEPUTY: Please raise your right hand.

24 SAM CORY

25 Having been first duly sworn on oath, was examined and

1 testified as follows:

2 THE COURTROOM DEPUTY: Please be seated. State and
3 spell your first and last name for the record.

4 THE WITNESS: Sam Cory. S-A-M C-O-R-Y.

5 DIRECT EXAMINATION

6 BY MS. MITRANI:

7 Q Good afternoon, Mr. Cory. How are you?

8 A Very well. Thank you.

9 Q Are you presently employed?

10 A Yes, I am.

11 Q By whom?

12 A Fed-Ex Corporate Security.

13 Q How long have you so long been employed with Fed-Ex
14 Corporate Security?

15 A A little over seven years.

16 Q And where? Fed-Ex Corporate Security where, in what
17 location?

18 A Here in Fort Lauderdale. I work out of the Pompano Beach
19 office and cover Fed-Ex ground, home delivery, and some express
20 stations.

21 Q Prior to -- and we will talk more about your
22 responsibilities in a minute. Prior to working for Fed-Ex, how
23 were you employed?

24 A I was a law enforcement officer for the Florida Fish and
25 Wildlife Commission and the Florida Marine Patrol here in

1 Broward County. I was the district commander for 15 years of
2 my 30-year career.

3 Q Okay. So let's turn our attention to Federal Express.
4 What is the -- what department or what branch to you work with
5 within Fed-Ex?

6 A I actually work for the legal division in Fed-Ex and I do
7 investigations, in-house investigation, fraud investigations,
8 everything from setting up building security cameras, dignitary
9 protection, response to emergencies that affect Fed-Ex, and
10 things like that.

11 Q And tell us a little bit about your responsibilities with
12 respect to your fraud investigations.

13 A I also look at different packages and different shipping
14 methods and different shippers, companies and try to detect
15 fraud whenever I can. If we have an account that's being
16 abused, I will get a notification and I'm asked to check out
17 and see the particulars of that company and just determine if
18 it's a legitimate company or not. And in some cases, I'm asked
19 to verify the company owners and locations and things like
20 that.

21 Q Were you involved in an investigation that Fed-Ex named
22 Brazil Express internally?

23 A Yes.

24 Q And approximately when did you become involved in that
25 investigation?

1 A It was back in September of 2008.

2 Q And as best as you can recall, realizing it's several
3 years ago, what triggered that investigation?

4 A I received a correspondence that a company by the name of
5 Triunfo Specialty Foods had an account that was over \$87,000 in
6 arrears. Sales department had indicated that they had gone to
7 the location and said that they did not set up the account.

8 Q All right. Well, you don't have to tell us what Triunfo
9 said, but it started with account abuse on Triunfo, on the
10 Triunfo account?

11 A Yes.

12 Q And that -- and basically did it grow? Did the
13 investigation grow to other accounts?

14 A Yes. The next one that came to my attention was Citrix
15 Online.

16 Q And tell us what came to your attention with respect to
17 that?

18 A Also account abuse. And that was September 11 when I was
19 notified of that.

20 Q Of account abuse at Citrix?

21 A Yes.

22 Q And what do you mean by account abuse?

23 A Again, the account was being used without the knowledge of
24 the company and they were receiving invoices for shipments that
25 they say that they did not make or authorize.

1 Q Did your investigations stop with these two accounts?

2 A No, ma'am.

3 Q Did it grow to include -- how many accounts did it grow to
4 include?

5 A Literally hundreds. It was just amazing. Once the
6 process started and we started tying names and addresses
7 together, it just grew and grew and grew.

8 Q Did an account opened Impulse Energy Drink become part of
9 your Brazil Express fraud investigation?

10 A Yes, it did.

11 Q Does it stand out in your mind?

12 A Yes, it does.

13 Q Tell the members of the jury how that came to your
14 attention and what you did in terms of investigating the
15 Impulse Energy Drink account?

16 A Again, we were sending invoices to the location listed for
17 Impulse Energy Drink and the invoices we were getting calls and
18 saying this is not our accounts, and I subsequently went there.

19 Q When you say there, where?

20 A I went to the Impulse Energy Drink location as listed on
21 our records, and went there, and there was no such business by
22 the name of Impulse Energy Drink. It was KISS Country FM radio
23 station.

24 Q And as part of investigating the Impulse Energy Drink,
25 were you able to actually obtain the recording that opened the

1 Impulse Energy Drink account?

2 A Yes, I did. I requested the online voice recording of
3 that account and subsequently received it via email. And of
4 course I listened to it and verified that all the information
5 that was given by the person applying for the account was
6 accurate as far as the street address where I went to and the
7 account name that was given to us over the phone, verified
8 that, and it was just all fictitious.

9 Q So when you -- how did you link all of these accounts that
10 you just testified that it grew and grew, how did you link all
11 the accounts that you came to believe were part of this Brazil
12 Express investigation?

13 A There were two addresses that consistently popped up, 398
14 Mizner Boulevard and also 7797 Golf Circle in Margate. And
15 also the passwords that were used online when some of the
16 accounts were opened up right directly online, they had the
17 same password. There were different log-on names on an
18 account, but all of the passwords were the same.

19 Q By the way, why did Fed-Ex call this Brazil Express?

20 A It was just one of the company names that we noticed was
21 part of this hundreds of accounts, and because most of the
22 packages were going to and from Brazil, that's just what we
23 dubbed it, Brazil Express. And most of the packages were
24 shipped via express as opposed to ground or home delivery.

25 Q Via express to where?

1 A Brazil.

2 Q What's the difference between being shipped via express as
3 opposed to ground?

4 A The method is faster through express. Typically unless
5 you ask for slower service on express, you are going to get
6 overnight delivery. Ground is going to be two or three days or
7 possibly four days if you live in California and ship from
8 Florida. It's a little bit longer. It's less costly to ship
9 ground or home delivery than it is express.

10 Q Is express the most expensive way to ship?

11 A It sure is.

12 Q With Fed-Ex?

13 A With Fed-Ex, yes.

14 Q Now, when you said that this 398 Mizner address kept
15 popping up and the 7797 Golf Circle address kept popping up, my
16 question is popping up where?

17 A On our delivery records and shipping records as where the
18 packages were going to or in some cases originating from.

19 Q And how did you determine that the accounts that you
20 grouped under to Brazil Express umbrella were fraudulent?

21 A Again, like I said, I went to several other locations.
22 They were fictitious. They did not exist. Other companies had
23 told us that they were getting invoiced for packages that they
24 did not ship to mostly Brazil and things like that.

25 And again, all of the accounts that were opened up online

1 had the same password, although they may have been different
2 sign-on names in general. But just like when you open up your
3 own individual mail, you have a, you know, maybe
4 Sam.Cory@Fed-Ex, but when you go in, you have to use your
5 password to open it up. All of the passwords were identical
6 and we tied all of those together with the street names, the
7 name of either Roger Scotton, or Rogerio Scotton popped up time
8 and time again. And there were some other names that also
9 popped up as well.

10 Q So were you able to stop any of the packages that were
11 being tendered for delivery?

12 A Yes, we did. We stopped maybe a dozen or so.

13 Q And about how many packages, you know, not in exact
14 number, but how many packages were being delivered through
15 these fraudulent accounts?

16 A Literally thousands. I don't even -- I don't know that I
17 have an exact count for you, but there were thousands of
18 packages that were delivered.

19 Q So is it fair to say a very, very small percentage were
20 stopped as compared to what was shipped?

21 A Very small.

22 Q My question is why, why were you only able to stop a very,
23 very small percentage?

24 A Just like in the Impulse Energy Drink case, when I went
25 there and I realized it was all fictitious, the first thing I

1 did was called our account section. And I told them, you got
2 to stop this account, and anything that's in the system now,
3 let me know what it is and have it stopped and sent to me or
4 I'll go pick it up. And it was kind of like a cat and a mouse,
5 you know, you chase an account.

6 Most of these accounts were established with a 30-day pay
7 which means we are not even going to bill you until 30 days.
8 And then before the account would go into collections, it's
9 going to be 45 days or 60 days. So we would have really no way
10 of knowing until the account got in jeopardy, not being paid.

11 Once that happened, the girls that work in the accounting
12 section compiled it and saw the similarities with all the
13 addresses and names and they compiled it. Then we would start
14 trying to stop packages. Every time I would seize a package,
15 shipping would stop and a new account would open up someplace
16 or with a different name and usually a pretext address that
17 again was not valid.

18 Q Did you work with another FBI -- excuse me, with another
19 Fed-Ex investigator in this case?

20 A Yes, I did.

21 Q And what's his name?

22 A Christian Driskill.

23 Q Did you and Mr. Driskill seize packages together?

24 A Yes, we did.

25 Q Did you work with the FBI in this investigation?

1 A Yes, we did.

2 Q Who did you work with at the FBI?

3 A Agent Roy Van Brunt.

4 Q And did you and Mr. Driskill both turn over packages to
5 the FBI?

6 A Yes.

7 Q Packages that Fed-Ex seized.

8 A Yes.

9 MS. MITRANI: May I approach?

10 THE COURT: You may.

11 BY MS. MITRANI:

12 Q Mr. Cory, I'm showing you what's been marked for
13 identification as Government's Exhibit 101A and 101B. Do you
14 recognize these two packages?

15 A Yes, ma'am.

16 Q What are they?

17 A They are envelopes that I seized that were shipped under
18 the Impulse Energy Drink account.

19 Q And -- okay. Both these were shipped under Impulse Energy
20 Drink account and you seized them both?

21 A Yes, ma'am.

22 MS. MITRANI: Your Honor, I would offer 101A and B
23 into evidence.

24 THE COURT: Any objection?

25 MR. SCOTTON: No, Your Honor.

1 THE COURT: 101A and 101B are admitted.

2 (Thereupon, Government's 101A and 101B received in
3 evidence.)

4 MS. MITRANI: Sorry, Your Honor. I was seeing what we
5 have electronically and what we don't.

6 THE COURT: All right.

7 MS. MITRANI: All right. So, Your Honor, do you mind
8 if the witness -- I don't have this scanned in. Do you mind if
9 the witness stands in front of the jury box so we can publish
10 these to the jury?

11 THE COURT: That's fine.

12 BY MS. MITRANI:

13 Q Mr. Cory, do you mind standing up? I'll let you hold the
14 microphone and we will sort of share. Starting with 101A, who
15 is the shipper on this package?

16 A That's Impulse Energy Drink, and you can see the address
17 and the name in the upper left.

18 Q And is it an address of 2234 North Federal Highway, Boca
19 Raton?

20 A Yes.

21 Q And is this package going to a Maria Machado in Margate,
22 Florida?

23 A Yes.

24 Q And the tracking number is 797249705639, correct?

25 A Yes.

1 Q Does Federal Express when it seizes packages, does Federal
2 Express have a right to inspect these packages?

3 A Yes, ma'am.

4 Q Can you exercise this right to inspect?

5 A I did.

6 Q And what I'm pulling out of it, was this all -- these
7 items I have just pulled out of 101A, were they in 101A when
8 you seized it and opened it?

9 A Yes, that's the DHL shipping label and the other contents.

10 Q So inside was a DHL shipping label from -- filled out as
11 Maria Machado the recipient was now going to send a package via
12 DHL to Brazil, correct?

13 A Yes.

14 Q And according to the label, it's a Christmas gift that is
15 indicated as the contents of what was going to be in this DHL
16 package?

17 A That's correct. And it would also be on the commercial
18 invoice.

19 Q So the commercial invoice also indicates it was going to
20 Brazil and it's Christmas tree kit?

21 A Right.

22 Q And inside is a brochure of Brazil Express?

23 A Yes.

24 Q On the front of this document, at the bottom of this
25 document, does it have a phone number of 561-368-7348?

1 A Yes, it does.

2 Q And at the top it says Brazil Express import and export.

3 You know what I think I will do, Mr. Cory, I will ask you
4 to go back to your seat. We will pass them around to the
5 jurors and make it easier.

6 MS. MITRANI: Your Honor, may I pass 101A around?

7 THE COURT: Yes.

8 BY MS. MITRANI:

9 Q Meantime, let's talk about 101B. This package was being
10 sent also from Impulse Energy Drink, but it said Paulo, not
11 Steve Brian, correct?

12 A That's correct.

13 Q And it had an address of PO Box 629 in Boca Raton,
14 Florida?

15 A Yes.

16 Q And this one was to a Muriel Martins in Houston, Texas, is
17 that correct?

18 A That's correct.

19 Q With an express number of 79724972 and 0640, correct?

20 A Yes.

21 Q And inside Government's Exhibit 101B, as in 101A, was
22 there also a DHL label?

23 A Yes.

24 Q And this DHL label here Muriel Martins was going to be the
25 purported sender and was going to be sending a baby stroller to

1 Brazil, correct?

2 A Yes.

3 Q And like 101A, it also had a commercial invoice?

4 A That's correct.

5 Q To accommodate the shipment of the baby stroller?

6 A That's correct.

7 Q And it also had a Brazil Express brochure?

8 A Yes.

9 MS. MITRANI: Your Honor, may I publish 101B?

10 THE COURT: Yes.

11 MR. SCOTTON: Your Honor, before the prosecutor pass
12 the envelope to the jury, I need to object and I need to have a
13 sidebar.

14 THE COURT: All right. It's already in evidence
15 though.

16 MR. SCOTTON: Yeah.

17 (Thereupon, the following was heard sidebar.)

18 MR. SCOTTON: The prosecutor, the government, any time
19 they are going to introduce something, she went to the table,
20 showed me the envelope. She never told me that she was going
21 to go inside. So once again, I don't want the government start
22 taking advantage that I'm not a lawyer and go, I'm going to
23 introduce this inside. I didn't know she was going to present
24 this as evidence here. So make sure next time present the
25 whole thing to me, not just part of it.

1 THE COURT: She handed it to you and gave it to you to
2 look at.

3 MR. SCOTTON: She went like this and told me. I said
4 I saw the label and have no object. Now she's like a magician.

5 MS. MITRANI: I would like for the record to reflect
6 that at no point in time is the government trying to be
7 deceptive to the defendant. We are trying to be courteous and
8 show him everything. To the extent Mr. Scotton feels
9 differently, there's been no attempt. If Mr. Scotton wants
10 more time, he should ask me and I will let him have as much
11 time as he wants.

12 THE COURT: Mr. Scotton, she's going to give you the
13 exhibits before she seeks to admit them and you take the time
14 you need to look at them, examine them. That's your right.
15 That's why she shows them to you.

16 MR. SCOTTON: I understand, Your Honor. But I want to
17 make sure we have it on the record that when she showed this,
18 the envelope with the bill, I don't see any problem objecting,
19 I'm not going to object. But then now she start opening things
20 and start --

21 THE COURT: Well, it says right there physical
22 evidence. And she showed it to you. It was your right to look
23 at it. For whatever reason you may have chosen not to, I don't
24 know. I don't remember specifically what you did. But I do
25 remember that she went over and showed it to you. It's your

1 responsibility to look at these things. If you have an
2 objection, that's why I ask you. All right?

3 MR. SCOTTON: I didn't have objection to what she
4 showed me, Your Honor.

5 MS. MITRANI: So we don't have to come up here again,
6 we have other physical packages. All of them have contents
7 inside.

8 THE COURT: You are aware of that. Take the time you
9 want to take to look through them. That's fine. If you are
10 not going to object and I admit it, it's in. All right?

11 MR. SCOTTON: Okay.

12 THE COURT: All right.

13 (Thereupon, the following was heard in open court.)

14 MS. MITRANI: Your Honor, may I approach?

15 THE COURT: Yes.

16 BY MS. MITRANI:

17 Q I am showing you what's been marked for identification as
18 Government's Composite Exhibit 102 which is 102A, 102B, and
19 102C. Do you recognize these items?

20 A Yes.

21 Q And what are they?

22 A Again, they are shipments that were intercepted. Again, I
23 recognize account BHPV as one of the accounts that was being
24 abused.

25 Q And these three packages were seized by Fed-Ex?

1 A Yes, ma'am.

2 Q And this they are open. Did Fed-Ex exercise their right
3 to inspect them?

4 A Yes.

5 Q And were they ultimately turned over to the FBI?

6 A Yes, they were.

7 MS. MITRANI: Your Honor, the government would offer
8 102AB and C.

9 THE COURT: Any objections?

10 MR. SCOTTON: No, Your Honor.

11 THE COURT: All right. 102A, B and C are admitted.

12 (Thereupon, Government's 102A, 102B, and 102C received
13 in evidence.)

14 BY MS. MITRANI:

15 Q The first one, 102A, and we will pass it around, but this
16 one, the shipping label says Sky BHPV, as you stated, sir, at
17 934 North University Drive, 329, in Coral Springs, Florida,
18 correct?

19 A Yes.

20 Q And it was tendered for delivery to Fed-Ex to be delivered
21 to Rosanna Duarte in Brazil, correct?

22 A Yes.

23 Q And the tracking number on 102A is 798547311212, correct?

24 A Yes.

25 Q And I just pulled out two videos. Are these two videos

1 contained inside 102A?

2 A Yes.

3 MS. MITRANI: Your Honor, may I publish 102A to the
4 jury?

5 THE COURT: Yes.

6 BY MS. MITRANI:

7 Q 102B also has a return address of BHPV at 943 North
8 University Drive, No. 29?

9 A 329.

10 Q Excuse me, 329. Thank you, sir. And this one is supposed
11 to be going to Duarte in Atlanta, Georgia, correct?

12 A Yes.

13 Q And it was tendered for delivery by Fed-Ex?

14 A To Fed-Ex.

15 Q To Fed-Ex. So Fed-Ex could deliver it?

16 A Yes.

17 Q The tracking number on this one is 793425890090, correct?

18 A Yes.

19 Q Some packaging, some newspaper or brown paper, and is
20 there one video inside it?

21 A Yes.

22 Q And does it appear to be, at least the cover, the same
23 cover as was contained in 102A?

24 A One of them, yes.

25 Q One of them, because 102A had two, and this one only had

1 one?

2 A Yes.

3 Q There's a man and a woman depicted on it?

4 A Yes.

5 Q And last but not least in this 102 series, there is a
6 purple label that's covering part of the express label, is that
7 correct?

8 A Yes.

9 Q So you have to kind of look it up, you have to pull it up
10 a little bit, and 102C is also from -- purports to be from Sky
11 BHPV at 934 North University Drive in Coral Springs, Florida
12 being tendered for delivery to Georgia, correct?

13 A Yes.

14 Q With a tracking number that ends in 7014?

15 A Correct.

16 Q And like the other to packages, was this tendered to
17 Fed-Ex for Fed-Ex to deliver?

18 A Yes, ma'am.

19 Q Does this also have a videotape inside of it?

20 A Probably a CD.

21 Q Or a CD. It has round objects, could be CDs or DVDs
22 inside?

23 A Right.

24 Q On the cover, does it look like the same cover as what was
25 the 102A and 102B?

1 A Yes, ma'am.

2 Q And actually on the box, on the back does it say produced
3 by Roger Scotton?

4 A Yes, ma'am.

5 Q And on the inside does one of the videos say Scotton
6 Production?

7 A Yes.

8 MS. MITRANI: The jurors have a lot of packages. I
9 didn't want things to get mixed up, Your Honor, so I was going
10 to wait to get one or two back.

11 THE COURT: Okay. It looks like Mr. Diaz may have the
12 first one back for you.

13 MS. MITRANI: Thank you, Your Honor.

14 Your Honor, the defendant is reviewing the next set of
15 exhibits.

16 THE COURT: All righty. You are getting your workout
17 in today, I see.

18 BY MS. MITRANI:

19 Q Okay. Mr. Cory, I am showing you this -- well, I am
20 giving you one package, 102D. Another one is 102E. Have you
21 seen these packages before?

22 A Yes.

23 Q Were these two packages tendered for delivery to Fed-Ex?

24 A Yes.

25 Q And did you cause them to be seized and turned over to

1 you?

2 A Yes, I did.

3 Q All right.

4 MS. MITRANI: Your Honor, the government would offer
5 102D and E into evidence.

6 THE COURT: Any objection?

7 MR. SCOTTON: No, Your Honor.

8 THE COURT: 102D and E are admitted.

9 (Thereupon, Government's 102D and 102E received in
10 evidence.)

11 MS. MITRANI: We are not going to pass these around
12 because they are heavy. With the Court's indulgence, they
13 can't be passed around, can I have Mr. Cory stand in front of
14 the jury again?

15 THE COURT: Sure.

16 MS. MITRANI: Thank you.

17 BY MS. MITRANI:

18 Q Okay. We will start with the lighter one first since you
19 are carrying it. 102D was a package with the return address.
20 Before we open it, let's look at the label. And I think
21 Special Agent Van Brunt is going to put it on the ELMO for
22 anybody who can't see it.

23 This one is a handwritten label, correct.

24 A Yes.

25 Q It's an international airway bill and it's from -- the

1 sender is listed as BHPV with an address in New York, correct?

2 A Yes.

3 Q But it's being shipped to Brazil?

4 A Correct.

5 Q Where did you intercept this? In what city or state was
6 this intercepted?

7 A Florida.

8 Q And I know there is a tracking number. The tracking
9 number is up here?

10 THE COURT: We need to have Mr. Cory use a microphone,
11 please. Thank you.

12 BY MS. MITRANI:

13 Q This is a tracking number that ends in 1078, correct?

14 A Yes.

15 Q And inside, it's identified as T-shirts, hats, and shoes?

16 A Correct.

17 Q And that's, in fact, what's inside?

18 A Yes.

19 Q Let's close it up. Thank you. You can put it on the
20 floor there. Why don't you speak into the microphone. 102E is
21 also has a return address of BHPV in Airmont, New York,
22 correct?

23 A Yes.

24 Q And this one is being tendered for shipment to Brazil?

25 A That's correct.

1 Q And the tracking number ends in 1067?

2 A Yes.

3 Q Likewise, do you know what city and state this was Fed-Ex
4 seized in?

5 A In Florida, in Pompano Beach.

6 Q Is that your jurisdiction?

7 A That's where my office is that I work out of.

8 Q And what's being shipped to Brazil here is an electric or
9 what it says is electric hydraulic pump, correct?

10 A Yes.

11 Q And inside there is a blue box?

12 A A big heavy blue box.

13 Q You don't have to lift it. It's okay. That's what was
14 inside?

15 A Yes.

16 Q Is it heavy?

17 A Very heavy.

18 MS. MITRANI: Thank you to these gentlemen for
19 assisting me.

20 BY MS. MITRANI:

21 Q Thank you. You can take your seat.

22 A Okay.

23 MS. MITRANI: Your Honor, no further questions.

24 THE COURT: All right. Cross-examination.

25 MS. MITRANI: Let me get my stuff.

1 CROSS EXAMINATION

2 BY MR. SCOTTON:

3 Q Good afternoon, Mr. Cory.

4 A Good afternoon.

5 Q Samuel Cory?

6 A Yes.

7 Q Samuel Cory, how long have we known each other?

8 A I have never met you.

9 Q You have never met me?

10 A No, but I believe I have spoken to you on the phone.

11 Q How many times you have spoken to me on the phone?

12 A I think at least twice.

13 Q Do you have a date when we spoke over the phone?

14 A No, I don't recall the exact date. It was, I believe, in
15 maybe 2011.

16 Q And what was the call about, Mr. Samuel?

17 A You were describing how it was -- rawbox dot com would
18 send you envelopes and they would contain a shipping label.
19 And most all of the information that you were describing to me,
20 I already had known from the interception of the two envelopes
21 which contained DHL labels. And I thought it very suspicious
22 that you could describe the exact techniques of what I had
23 intercepted already.24 Q You say it was two calls. This is the first one. What is
25 the other second calls about?

1 A I didn't say seven.

2 Q You say two calls?

3 A Two.

4 Q Right. So what is the second call about?

5 A When I called and left a message on a phone number, it was
6 in regard to a package that you had received under the name of
7 Roger Scotton. And when you called me back, it was not on the
8 phone number that I had called. You called on a different
9 phone number. That phone number that I called was associated
10 with the shipment and the shipper. But the return call from
11 you was on a different phone number. And I asked how it was
12 that the shipper number was called by me. And you returned my
13 call on a different phone number and you professed that you
14 didn't know, there must have been a mixup on Fed-Ex records or
15 something like that.

16 Q I can call you from the office perhaps, from the cell
17 phone?

18 A I don't know where the phone number was that you called me
19 on. All I know is the number I called was not the number that
20 you returned my call on.

21 Q You called and left a message and I returned your call?

22 A Yes.

23 Q So if I called to a pay phone, returned a call at a pay
24 phone, it is a crime?

25 A No.

1 Q If I called from different number from my mother's house,
2 that is a crime?

3 A No.

4 Q So why are you making some comments that I call you from
5 one number and I return the call from the other?

6 A Again, I'll state the number that I called was associated
7 with the shipment and/or the shipper on it and the account that
8 was set up with. So the shipper was who I was calling and you
9 returned my call on a different number. So it wasn't just a
10 number that I pulled out of the sky. It was a number that was
11 directly related with the shipment.

12 Q Right, it is a phone number that was related to it on the
13 account that was open?

14 A That's correct.

15 Q And which account are we talking about here, the BHPV
16 account?

17 A You know, I'm not sure that I recall. I don't know if
18 I -- I'm certain in my case file I have it logged, but I just
19 don't recall it now. It was quite a while ago.

20 Q Right. So out of the account, the number you called, you
21 left a message. Do you recall any voice message or the phone
22 number you call?

23 A You have to repeat the question.

24 Q All right. You say that you made a phone call and you
25 left a message?

1 A I left a message asking that I have a return phone call
2 regarding the package.

3 Q Did you recall when you left this message what did the
4 recording say?

5 A The recording?

6 Q Yeah. You left a message, so it should be a recording
7 saying thanks for calling?

8 A I don't remember having -- well, I don't remember if there
9 was a prerecorded statement on there prior.

10 Q Right. Do you have the phone number?

11 A I do in my case file.

12 Q Your case file you don't have with you right now?

13 A No.

14 Q You came prepared for this hearing today, Mr. Samuel?

15 A You know, Agent Van Brunt might have copy of my notes.

16 Q I'm not ask Mr. Van Brunt. I'm asking you.

17 A I'm just saying if you want it from my notes, I'm almost
18 certain that I gave a copy of the notes to Agent Van Brunt.

19 Q I'm not going to waste the time of the jury here trying
20 to -- you come to a hearing here. You should be prepared,
21 don't you think so?

22 MS. MITRANI: Objection, Your Honor.

23 THE COURT: Sustained. Mr. Scotton, please stick to
24 asking questions.

25

1 BY MR. SCOTTON:

2 Q Mr. Samuel, you call the number and you left a message and
3 I call you from different number. Perhaps I check my message
4 and I saw you left a call and I called to verify what is your
5 call all about?

6 A I'm not sure I understand the question.

7 Q You left a message on my number. You called my number,
8 right?

9 A Okay.

10 Q And you left a message so now I'm returning call you from
11 different number?

12 A Right.

13 Q And you say that automatically that link to a crime, is
14 that correct?

15 A No, I didn't say it was a crime to call on a different
16 number. I already answered that one once.

17 Q Right. How long have you been involved in this case?

18 A Since 2008.

19 Q 2008. It is 2008 the federal made a official complaint to
20 the FBI?

21 A Did who?

22 Q Did Federal Express makes official complaint to the FBI?

23 A Not in 2008.

24 Q When did you make the official complaint to the FBI?

25 A It was -- I take that back. We first had a meeting

1 December of 2008 and it was just to compile information from
2 Fed-Ex, UPS and DHL. Agent Van Brunt was there. Another agent
3 from the secret service was also at that meeting.

4 Q When the official complaint from Federal Express came to
5 the FBI's office?

6 A I'm not certain what you are referring to as an official
7 complaint.

8 Q All right. We got indictment here that I have been
9 charged with mail fraud?

10 A You are talking about the indictment, when did that come
11 out?

12 Q No, I'm trying to ask when did Federal Express say FBI,
13 Mr. Roger stealing money from us. When did the official
14 complaint come up?

15 A That was in December of '08.

16 Q December '08?

17 A Yes.

18 Q So the Fed-Ex call, FBI say that it is Mr. Scotton doing
19 this fraud against us?

20 A We didn't call them. We had a meeting. Federal Express
21 UPS, and DHL, secret service, and Agent Van Brunt all attended
22 that meeting. There were actually a couple of investigators
23 from all three of the shippers that were there.

24 Q And who called the meeting?

25 A It was called by DHL and DHL had talked with Christian

1 Driskill. And Christian and I said, yes, we should go down and
2 meet and we set a date and time convenient for everybody's
3 schedule. And we went down to the FBI headquarters in North
4 Miami and we met down there.

5 Q DHL then is the one then who made the official call to FBI
6 to accuse the defendant?

7 A They are one of the companies that started it.

8 Q DHL is the first one who called and said defendant is
9 stealing money from us?

10 A I'm not certain who made the first call.

11 Q Right. Have you seen those packages the government has
12 present, has some DVDs inside?

13 A Yes.

14 Q Is any crime in sending DVDs to someone?

15 A No, not unless it's pornographic.

16 Q Right. Even if it's pornographic, is it a crime to send a
17 DVD?

18 A It can be.

19 MS. MITRANI: Objection, Your Honor.

20 THE COURT: It's already answered at this point.

21 BY MR. SCOTTON:

22 Q What is the policy for Federal Express on a third shipping
23 party?

24 A Do you have --

25 Q A third shipping party person?

1 A A third party shipper?

2 Q A third party shipping person, what is the policy Fed-Ex
3 on that?

4 A Which policy?

5 Q It is authorized third party person to ship to --

6 A A third party shipper can send another package, yes.

7 Q Right. So that package that has the DVDs over there, that
8 has been shipped from accounts that belong to company BHPV and
9 was sent to a person in Georgia, Shabolt, I see the name on the
10 label. So if individual call a third party shipping company
11 and say I need to ship this package here, is any crime use
12 third party shipping company?

13 A If you have permission, no.

14 Q So how can a person that use a third party shipping
15 company has acknowledge that that person accounts being used in
16 Fed-Ex is a fraudulent account?

17 A I am really not sure which question -- could you either
18 repeat it or -- if you are asking how are you to know if you
19 are the third party or if you are shipping through a third
20 party, if the account number is valid, is that what you are
21 asking?

22 Q No, Mr. Samuel. Let me get to that point that you
23 understand better. During your investigation, do you get
24 familiar with Brazilian community, it is several different
25 third party shipping companies that ship things to Brazil?

1 A I'm not sure if you are asking me if I know the Brazilian
2 community. I never investigated the Brazilian community. That
3 wasn't part of the investigation scope. It was directly linked
4 to investigating fraudulently established and abused accounts.

5 Q But you agree with me that there's a lot of third party
6 shipping companies that has authorization to resell Federal
7 Express service?

8 A There may be. I'm not familiar with every one.

9 Q Merry Mailman, do you have any recollection of the company
10 called merry Mailman?

11 A Merry Mailman?

12 Q Right.

13 A I have never dealt with them.

14 Q That's the company that Federal Express authorized me to
15 open in February 2011.

16 MS. MITRANI: Objection, Your Honor.

17 THE COURT: Sustained. Please stick to questions.

18 BY MR. SCOTTON:

19 Q So a third party shipping company has shipped this package
20 for the defendant. That make the defendant guilty of shipping
21 that package?

22 MS. MITRANI: Whoa. Objection, Your Honor, to the
23 form of the question.

24 THE COURT: Sustained.

25

1 BY MR. SCOTTON:

2 Q You made early a statement that you never met me before,
3 Mr. Samuel?

4 A Never have.

5 Q On 2008, it is a couple of photo lineups that you say
6 that, I know him. So can you kind of try to explain to me that
7 you say you never met me, but you point fingers on a photo
8 lineup and, oh, I know him?

9 A Your Honor, I have never seen a photo lineup. I have
10 never been presented with a photo lineup from the FBI or
11 anybody else. I don't know what you are talking about.

12 Q Right, then, we don't know what I'm talking about when I
13 made a call to you to complain about fraudulent shipping
14 packages being shipped and I lost the merchandise. So let me
15 ask a question.

16 Do you recall a meeting on July 1st of -- July 26 of 2010?

17 A July 26, 2010?

18 Q Yes.

19 A A meeting?

20 Q Yes.

21 A With whom?

22 Q With me.

23 A With you?

24 Q Yes.

25 A I have never had a meeting with you.

1 Q You never had a meeting with me?

2 A No.

3 Q Cheese Cake Factory, Sawgrass, sit down and talk about the
4 drug scam of Fed-Ex shipping?

5 A Sir, you are sadly mistaken. I have never met with you
6 before and certainly never met with you about drugs.

7 Q I have a statement here from my bank that I paid the bill.

8 MS. MITRANI: Objection.

9 THE COURT: Mr. Scotton, this is your time to ask
10 questions. Do you understand?

11 MR. SCOTTON: This is a question.

12 THE COURT: Please stick to asking questions. We have
13 already talked about evidence. You will have an opportunity to
14 put evidence on in your case if it's admissible.

15 MR. SCOTTON: Okay, Your Honor.

16 BY MR. SCOTTON:

17 Q That particular account from BHPV was a fraudulent
18 account?

19 A It was being abused meaning that there was unauthorized
20 shipping on it and the account was not being paid.

21 Q Well, I just want to know if it is a fraudulent account or
22 not, Mr. Samuel.

23 A It was fraudulent to the regard that charges were not
24 being paid, and I can't recall who opened that account or what
25 name was used to open that account. There was just hundreds of

1 them.

2 Q Only Mr. William confirmed the account belongs to BH Photo
3 Video company?

4 A BHPV?

5 MS. MITRANI: Objection to the form of the question.

6 THE COURT: Sustained.

7 BY MR. SCOTTON:

8 Q The account is not a fraudulent account, do you agree with
9 me?

10 MS. MITRANI: Objection to the form of the question.

11 THE COURT: Sustained. Please be more specific.

12 MR. SCOTTON: Okay. I'm trying to do my best here,
13 Your Honor.

14 THE COURT: There's not a need to comment. Just
15 please be more specific. Thank you.

16 BY MR. SCOTTON:

17 Q Those packages were shipped through a company called BHPV
18 located in New York City, that is correct?

19 A Yes.

20 Q Is BHPV call Federal Express to make a complaint about the
21 account being used fraudulently?

22 A I didn't receive the calls if they did.

23 Q Let me ask the question, Mr. Samuel. Can how can someone
24 get information from account that belong to BHPV?

25 A It could be done in a number of different ways.

1 Q Perhaps like some employees from Fed-Ex selling
2 information to others?

3 A Possible.

4 Q Have you guys got any complaints about employees getting
5 involvement with selling information from your database?

6 A I have never investigated anybody doing that.

7 Q Do you have investigator -- do you recall a name Osvaldo
8 Duarte?

9 A Duarte is familiar from some of these packages, but I'm
10 not sure who you are referring to.

11 Q Did you try to investigate Mr. Duarte also related to any
12 package?

13 A Not specifically him as an individual, just packages, and
14 I remember the name from some of the accounts.

15 Q Right. Now, you made a comment you couldn't flag those
16 accounts before because they accounts most of the time they
17 charge as 30 days accounts, that is correct?

18 A They were specifically asked, and at least the two
19 recordings that I was able to obtain, they specifically asked
20 that they be set on 30-day payment and no credit card to be
21 attached because that, quote, might be a problem. And that was
22 on the recording. So it was specifically asked that they be
23 30-day payable.

24 Q So then we can say the statement from Mr. William during
25 his cross-examination is not accurate when he say every single

1 account is billed weekly?

2 MS. MITRANI: Objection to the form.

3 THE COURT: Sustained.

4 BY MR. SCOTTON:

5 Q Have any account been billing to Federal Express weekly
6 accounts?

7 A There may be.

8 Q May be?

9 A I certainly don't know every account that Fed-Ex has.

10 Q Fed-Ex has a policy of shipping -- billing people every 30
11 days or every 15 days?

12 A Again, I don't know every account. I know the two
13 specific accounts that are pertinent to this investigation were
14 specifically asked that they be 30-day billing.

15 Q And how someone can log into this account if they know the
16 account holder?

17 A On to the account itself?

18 Q Yes.

19 A If you have the account number, that's all it takes. You
20 can fill out an airway bill and use that account number and you
21 can ship.

22 Q Right, as a third party shipper?

23 A Yes, but it doesn't make it right.

24 Q Most of the billing of Federal Express shows who's going
25 to pay for the bill, shipper, receiver, or third party?

1 A Yes.

2 Q Correct?

3 A Yes.

4 Q So in this case, if the account is there, later on the
5 client is going to get a bill out of his account, if the client
6 call Federal Express say I didn't authorize this billing, what
7 happen next?

8 A Then we investigate it.

9 Q And when you investigate it, did you guys try to contact
10 the shipper or the receiver?

11 A Yes, I think I made that clear when I called you about a
12 specific package on one phone number and you return on another.
13 And again, if we have different accounts, let's say it's not
14 associated with you, if a shipper calls us and says these are
15 not packages that I shipped, we investigate it. We try to see
16 where they came from, where they were first put into the system
17 at, and we go based on that.

18 If we can show and establish that these were not shipped
19 under the authorization of the account holder, then Fed-Ex
20 removes the charges from their bill and adjusts it accordingly.

21 Q And then you try to billing either the shipper or the
22 receiver?

23 A No. If we can, we stop the shipments first and we will
24 hold them. And then if we can contact either the recipient --
25 if there is a phone number, a legitimate phone number, we will

1 try to contact the recipient and say we have a shipment that's
2 intended for you, but the billing on it was fraudulently used.
3 Do you want to pay us X amount of dollars and get your package
4 or how do you want us to handle it.

5 Q And most of the time, the client, they can call the
6 station and pay to retrieve the package?

7 A They can.

8 Q Do you recall a time that I got -- the defendant have a
9 notice in his door there was a package on the station and I
10 went to the station? I'm assuming it's the same one you claim
11 to work for in Pompano Beach.

12 A (Shaking head.)

13 Q No recollection of that?

14 A You didn't come to my station.

15 Q I never come to your station to pick up any package?

16 A No.

17 Q Is a video that government claim that I went to -- well,
18 actually, it was email sent by Chris from fraud department
19 saying that I came to the Pompano Beach station tried to
20 retrieve a package?

21 A That would be Christian Driskill?

22 Q Yes, sir.

23 A Okay.

24 Q He never shared that information with you either.

25 A Okay. What's the question?

1 Q The question, have you any recollection that I went to the
2 Federal Express station?

3 A I was not there if you did.

4 Q Right. But then Chris work out of the fraud department as
5 well?

6 A Christian Driskill worked as a security specialist as
7 well, yes.

8 Q Right. So at this point you investigating Brazil Express
9 as Rogerio Scotton and all those packages I go to the station,
10 Chris doesn't share the information with you; that's what you
11 say?

12 A I think we talked about that early on. And I think if
13 it's the case or the instance that I think you are referring
14 to, it was not my station. You went to the Boca Raton station
15 and the counter girl or the customer service agent asked for
16 ID. And without proper ID, matching the name of the package,
17 we wouldn't release the package.

18 THE COURT: I'm sorry. I need to stop for today.

19 MS. MITRANI: Actually, Your Honor, may we have a
20 sidebar real quick?

21 THE COURT: All right.

22 (Thereupon, the following was heard sidebar.)

23 MS. MITRANI: Over lunch this witness notified me that
24 surgery he has scheduled for week after next has been
25 rescheduled to Monday. I don't know how much longer he has

1 on --

2 THE COURT: I can't go past 5:00 today. I'm sorry.

3 MS. MITRANI: Can we start with another witness and we
4 will recall Mr. Cory after his surgery?

5 THE COURT: Yes. I will let them know. You will be
6 able to cross-examine him. We will just have a different
7 witness in between.

8 MR. SCOTTON: I won't be able to cross him any more
9 today?

10 THE COURT: Right. It's 5:00. I told the jury we
11 would be leaving. They probably made plans.

12 MR. SCOTTON: Monday he's not going to come to court.

13 THE COURT: Right, but he will come back another day
14 and you will have the opportunity to cross-examine him.

15 MR. SCOTTON: Okay.

16 MS. MITRANI: Thank you, Your Honor.

17 (Thereupon, the following was heard in open court.)

18 THE COURT: All right. What we are going to do is in
19 just a moment, we are going to end for the day and end for the
20 week. But I do need to let you know Mr. Scotton is not quite
21 done with his cross-examination of Mr. Cory. So there will be
22 further cross-examination of Mr. Cory if Mr. Scotton desires to
23 do so, but it will not be on Monday because Mr. Cory had some
24 other plans that he has to keep, a commitment that he has to
25 keep. We are going to interrupt his testimony with another

1 witness, and Mr. Cory will return at a later point in time so
2 that Mr. Scotton can continue to conduct his cross-examination.
3 Does everybody understand? Is there anybody who has any
4 questions about that procedure? I see no hands. Thank you
5 all.

6 Was there anything else we needed to address?

7 MS. MITRANI: No, Your Honor.

8 THE COURT: Let me just remind everybody once more,
9 please don't discuss the case with anyone, please don't
10 disburse anything about the case, and don't do any independent
11 investigations into the case. Have a terrific weekend. We
12 will start up at 9:00 on Monday. All rise for the jury.

13 (Thereupon, the jury exited the courtroom at
14 5:01 p.m.)

15 THE COURT: All righty. I think we should perhaps get
16 here at 8:30 on Monday in case there are any issues regarding
17 the documents that were produced that the government is going
18 through over the weekend. What I would like to try to avoid is
19 being late again. I think it's not fair to the jury if I tell
20 them to be here at 9:00 and they all, you know, make every
21 effort to be here and then we don't start until late.
22 Obviously it wasn't anybody's fault here today, but I don't
23 want to make that a habit.

24 Let's come back at 8:30 on Monday in case any issues
25 arise after review of the documents that have been provided by

1 Mr. Scotton.

2 MR. SCOTTON: Your Honor, I just want to put on the
3 record that I hand a CD to the government with some --

4 THE COURT: A second CD?

5 MR. SCOTTON: It is the second, right?

6 MS. MITRANI: We received one yesterday and we
7 received one today.

8 THE COURT: All right.

9 MR. SCOTTON: And we can talk about the situation with
10 the video and the video that I say that I would like to
11 introduce about my wife to the Court.

12 THE COURT: And I asked you to please make sure you
13 give a copy to the government. Maybe you and the government
14 can agree to something and we can discuss it at that time.
15 Since the government hasn't seen it yet, I'm not in a position
16 to be able to discuss it.

17 MR. SCOTTON: I'm more concerned right now, as a
18 matter of fact, there was one of the jury here today that saw
19 something was in the news.

20 THE COURT: Well, we already addressed that.

21 MR. SCOTTON: Your Honor, it's about the video. It's
22 about that now.

23 THE COURT: Mr. Scotton, I'm sorry, we don't have any
24 further time today, but you can bring it up on Monday at 8:30.
25 We already addressed the issue of the juror who read the

1 article and we are passed that at this point.

2 We will be in recess. Have a nice weekend.

3 (Thereupon, the trial adjourned at 5:04 p.m.)

4 - - -

5 C E R T I F I C A T E

6
7 I hereby certify that the foregoing is an
8 accurate transcription of the proceedings in the
9 above-entitled matter.

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7/2/14

s/ Tammy Nestor
Tammy Nestor, RPR
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,
Plaintiff(s),
vs.
ROGERIO CHAVES SCOTTON,
Defendant(s).

Fort Lauderdale, Florida
January 27, 2014

JURY TRIAL
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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	I-N-D-E-X				
	WITNESS	DIRECT	CROSS	REDIRECT	RE-CROSS
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2					
3					
4	SCOTT BAKER				
5	BY MS. MITRANI	19		74	
6	BY MR. SCOTTON		51		
7	JUAN TEZAK				
8	BY MS. MITRANI	77		101	
9	BY MR. SCOTTON		94		
10	OTTO FERNANDEZ				
11	BY MS. MITRANI	103			
12	BY MR. SCOTTON		108		
13	JOHN LAWRENCE				
14	BY MS. MITRANI	111			
15	BY MR. SCOTTON		129		
16	FRED KENNICUTT				
17	BY MS. MITRANI	142		192	
18	BY MR. SCOTTON		171		
19	DAVID BONILLA				
20	BY MS. MITRANI	194			
21	BY MR. SCOTTON		212		
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1 Thereupon,
2 the following proceedings began at 8:38 a.m.:

3 THE COURT: Would everybody mind stepping out of the
4 courtroom for a minute?

5 (Thereupon, Ms. LaBarbera entered the courtroom at
6 8:38 a.m.)

7 THE COURT: Good morning. Sorry I wasn't able to
8 speak with you on Friday. I had an appointment and then I came
9 back afterwards.

10 A JUROR: Where do you want me?

11 THE COURT: Wherever you are comfortable.

12 A JUROR: So I'm still in the same place I was. My
13 biggest concerns are that obviously that he displayed -- that
14 the defendant displayed he didn't want me here. I gave up
15 like -- he knows -- I gave up the information where I live. He
16 knows I have a daughter. He knows I'm separated. He knows
17 where my significant other works. And I'm just like really
18 uncomfortable. I just -- I have tried all weekend to let it go
19 and I am just -- it's such an awkward position to be in.

20 I listened to him tell me he's going to fight for his
21 life. I know what the counts are and I get that he is fighting
22 for his life. I just don't feel comfortable being part of that
23 decision. It's been totally -- this whole -- and I -- like, I
24 am honored to be here. I was one of the ones who didn't tell
25 you that I'm scared for the 32 third graders that I have, where

1 they are going to be in six to eight weeks. I left that alone
2 because I know this is my responsibility. I didn't mention the
3 logistics of being a single mom. I knew I had to be here. I
4 gave no excuse. And I wanted to do this if I was chosen. And
5 now I've just -- I'm totally uncomfortable.

6 THE COURT: Okay. I hear what you are saying. And I
7 can appreciate it. And I don't want you to feel that way.
8 This is kind of a lengthy trial, so here's what I'm thinking.
9 I am thinking that -- let me say that I saw that you put in
10 what I would say appeared to be, you know, a real effort on
11 Friday. I watched you during the trial and you were taking
12 notes and paying close attention. And I very much appreciate
13 that. I'm going to tell you honestly what the problem is.

14 A JUROR: Please.

15 THE COURT: The problem is that if we drop you from
16 the jury, we are going to have one alternate left. And if we
17 get below 12, we have to start the whole thing over again which
18 means that, you know, of course, it costs tax dollars to do
19 that. The government has already prepared --

20 A JUROR: The time.

21 THE COURT: -- flown in witnesses. The defendant has
22 been through this once already and obviously we would prefer
23 for him not to have to go through it a second time. The Court
24 has other trials that are waiting until this is done, other
25 defendants waiting to have a trial. And as you can see, it

1 sort of snowballs.

2 What I would really like to ask you to do, and I will
3 hear what your thoughts are on this, is obviously there won't
4 be any voting or anything for some time. And you may find that
5 after you sit on the jury for longer, your feelings change.
6 The voting won't come until the point in time when the
7 government has finished its case and if the defendant wishes to
8 put on a case, the defendant finishes his case, and then I'll
9 read you instructions. And so there will be another
10 opportunity to come off the jury if there's really -- you know,
11 if there continues to be a problem.

12 You know, I understand what you are saying, but the
13 fact of the matter is everybody else on the jury also gave up
14 information. This is a white collar -- and I realize, you
15 know, this is something new for you, as you explained. And I
16 am not in any way trying to delegitimize your concern or
17 anything like that. I want to inject some realism as well.

18 The thing about it is that this is a white color type
19 of case. And you may decide after you hear the evidence that
20 he didn't even do it. And if you, whether you decide that the
21 government has proven it beyond a reasonable doubt or that he
22 didn't do it, this isn't a violent crime type of issue. And
23 you know, obviously you will see throughout the trial if I'm
24 wrong, but I don't anticipate that you will hear any evidence
25 of any kind of violent tendencies.

1 And the other thing is whatever decision the jury
2 makes, it has to be unanimous. Everybody has to agree to it.

3 A JUROR: Right.

4 THE COURT: And after hearing this, you may decide
5 either that you think he's guilty or that he's not guilty, I
6 don't know. Only if everybody agrees with you will we have a
7 verdict one way or the other. So you will be one voice of
8 twelve as opposed to just Ms. LaBarbera.

9 A JUROR: Right.

10 THE COURT: And everybody else, as I said also, has
11 given up information.

12 The information that is given up, yes, it's in the
13 record. I could seal that record. I did not see him taking
14 down any information. I don't know how he would follow up on
15 it even if it were a case that involves some kind of violence.
16 But I have no reason to believe that Mr. Scotton, you know,
17 would come after anyone. There's no reason to believe that.

18 A JUROR: Right. There's two things, if I may.

19 THE COURT: Of course.

20 A JUROR: This is with all due respect. One of them
21 is that I understand it's a white color crime, but for example,
22 the laws work for me. I don't want to be in trouble. So I
23 follow the laws, you know.

24 THE COURT: Of course.

25 A JUROR: So whether it -- if he was willing to commit

1 a white -- allegedly commit this white collar crime, I don't
2 know his limits. That's my fear. The second thing is Citrix
3 is the only local company that was named in that spreadsheet.
4 When I got the spreadsheet and saw David Friedmain, I don't
5 know him personally, I know David Friedmain is a big wig at
6 Citrix. Then I start, obviously because my brain is going, you
7 know, like is he in on this, is he going to retaliate. It just
8 makes me nerves us. I just want you to understand this isn't
9 something I've conjured.

10 THE COURT: I don't in any way think that you are
11 malingering or trying to get out of it.

12 A JUROR: Right, because I would have done that prior.

13 THE COURT: I understand that. But because there are
14 big stakes as far as we have to start over again if we lose the
15 jury, I need to make sure that there is really a reason to
16 release you. And that's why I'm saying, we are not going to
17 come to the point where there's even a vote for some time.

18 A JUROR: Right.

19 THE COURT: And I wonder whether you could sit with us
20 and see if your feelings change during that time.

21 A JUROR: Okay. Is it possible to be changed to the
22 alternate?

23 THE COURT: No, I can't do that. Sorry about that.

24 A JUROR: I was thinking maybe that could be some sort
25 of, I don't know --

1 THE COURT: I understand. And I appreciate your
2 willingness to try to come up with plans and work with us. I'm
3 not trying to put you in a tough spot or be difficult, but we
4 have two days of trial in already at this point. And we would
5 lose today. Well, we won't lose today because we still have,
6 at least as far as I know, 12 jurors and an alternate.

7 But considering this might be a six- to eight-week
8 trial, looking at it from the front end and knowing that we
9 have maybe one alternate left causes me some concern which is
10 why I'm suggesting -- and I understand any time there's
11 something new, you might experience different feelings that you
12 haven't felt before. But in this kind of a trial which will go
13 on for some time, you may realize that you -- it may not be
14 your first choice, but you may have enough of a comfort level
15 that you can decide the case, that you are not going to hold it
16 against the government or Mr. Scotton and you are going to
17 decide the case based on the evidence.

18 And at this point, I don't think you are saying that
19 you are not going to be able to do that. I think you are just
20 saying you are uncomfortable, which I understand. And what I'm
21 saying is that as you sit here, you might become more
22 comfortable and it might give us the opportunity to go through
23 the rest of the trial. Do you understand what I'm saying?

24 A JUROR: Yes.

25 THE COURT: Will that work for you?

1 A JUROR: It's like, yeah, I mean, I don't --

2 THE COURT: All right. So here's what I would say
3 then. Obviously, as we get closer to the end, if it's still an
4 issue for you, just let me know and we will address it at that
5 time. All right?

6 A JUROR: Okay.

7 THE COURT: Thank you very much.

8 A JUROR: Thank you. Can I just ask one more thing.
9 In the end, if the alternate is still here --

10 THE COURT: We will address it at that time because
11 you might feel differently at that time. I will tell you my
12 experience has been lots of times, jurors are not happy to be
13 here in the beginning for different reasons. It might be
14 because of the reasons you are suggesting, they feel a little
15 discomfort sitting on a jury, sometimes because they are busy,
16 sometimes because they think they have an idea of what jury
17 service is, and after they sit through the process, they have a
18 different feeling about it.

19 A JUROR: I'm already there. I've already --
20 obviously my significant other knows I'm serving jury duty and
21 I have already said to him, you know, you hear so much on the
22 news after a trial and that justice hasn't been served, and my
23 thought is, unless you were sitting in that room the entire
24 time, you should have no opinion on it because you have no idea
25 what the jurors saw or didn't see or what they heard. Like I

1 totally get it. That's already happening for me. I totally --
2 yes, I teach this, but until you are sitting in this seat, you
3 just don't have any idea how this all works, you know.

4 THE COURT: Right.

5 A JUROR: So I know what you are getting at. And as
6 far as -- and I'm enjoying myself. It's not that. I'm
7 enjoying the case and I'm fully involved in here.

8 THE COURT: I understand, and I have seen you and I
9 agree you have been completely engaged. I will tell you that
10 by the end of a lengthier jury service, it has been my
11 experience that most, if not all, of the jurors wind up with a
12 bond with each other and also with a different view of the
13 justice system than they had when they came in. Actually, you
14 won't believe it, but I often get people who ask me, you know,
15 can I do it again.

16 A JUROR: Sorry.

17 THE COURT: I know. I'm telling you. But that
18 happens. And so the reason I am saying this is because as you
19 go through the process, you may come to feel -- maybe you will
20 never feel a hundred percent comfortable, but you may come to
21 the point where you say, you know, I can set this aside, I can
22 set aside my discomfort and I can move forward, I can make a
23 decision one way or the other. So I want to give you the
24 chance to do that.

25 A JUROR: Okay.

1 THE COURT: All right.

2 A JUROR: Thank you very much for taking the time to
3 talk to me. I appreciate it.

4 THE COURT: No problem.

5 (Thereupon, a juror exited the courtroom at 8:50 a.m.)

6 THE COURT: Good morning. Welcome back. We have
7 Ms. Mitrani and Mr. Scotton and Mr. Kreiss all present. And
8 let me just say I just spoke with Ms. LaBarbera who was
9 expressing the same feelings she was expressing last week and
10 what I told her was, listen, I want you to sit on the jury and
11 go through the trial and if you are still feeling this way at
12 the end, we will revisit the issue. But merely feeling
13 uncomfortable, at this point, while we understand that serving
14 on a jury is a new thing and perhaps conjures up new feelings
15 in you that you might not have had before, that let's wait
16 until the end because this is expected to be a lengthy trial
17 and you may feel differently at that time. But please let us
18 know if she still has these issues at the end.

19 That's what I told her. We will address it at that
20 time. She knows not to share these feelings with anyone.
21 That's where we are. I wanted to let the parties know.

22 MS. MITRANI: Thank you, Your Honor.

23 MR. SCOTTON: Well, Your Honor, I don't know if it is
24 something I am going to have to put in writing, but I am going
25 to go ahead and file a motion to mistry at this point because

1 this is going to violate my due process. There's another juror
2 over there saying she's afraid. There's one saying she saw
3 some things on the news about sex videos. And one is being
4 excused --

5 THE COURT: Wait. Let me stop you for a second. Only
6 one said he read the newspaper. If there is someone else you
7 are aware of, I wonder how it is you know that?

8 MR. SCOTTON: I just say one.

9 THE COURT: You said she. And the one who said it was
10 a he.

11 MR. SCOTTON: The man say that she saw something in
12 the newspaper. The other lady asking to be excused because she
13 doesn't believe in immigration.

14 THE COURT: She's gone. We are not talking about her.

15 MR. SCOTTON: I understand, but I'm going to put a
16 motion for mistrial, Your Honor.

17 THE COURT: Okay. I'm denying the motion for
18 mistrial. The motion is denied for the following reasons: The
19 individual who had the problem about sham marriages has been
20 excused from the jury because she said that under no
21 circumstances could she be fair and follow the law. That is in
22 accordance with the law on this.

23 The individual who reviewed the newspaper article
24 advised us what he saw and I asked him whether he could set it
25 aside.

1 He said he could. And then he said, if that's good
2 enough for you.

3 And I said, well, we need to know the true -- you need
4 to let us know.

5 And he said, I am letting you know I can set it aside.

6 He has been a teacher for many years and obviously
7 understands the difference between reading it and letting it
8 affect his judgment and setting it aside. So there's no basis
9 for excusing him.

10 And the third one, Ms. La~Barbera, there may be a
11 basis for excusing her, but at this point I don't think that
12 there is. She's expressed discomfort. You did that. It would
13 have been different if she came to it on her own. But you did
14 that yourself. And you don't get to benefit from that.

15 I will let her go if at the end of this she still has
16 discomfort and if she says that she can't be fair to one or the
17 other of you. But at this point she hasn't said she can't be
18 fair to one or the other of you. She just said that she had
19 discomfort. So there's no basis for letting her go.

20 It would have been a different story, perhaps, maybe
21 not, maybe, I don't know, but I'm not at that point, if she had
22 come to this on her own without anything that you had done.
23 But it is solely because of your actions that you did in
24 violation of the process that I set up and that you knew you
25 were not allowed to do that have caused her this discomfort.

1 You will not benefit from that.

2 Anything further that we need to address before we
3 bring in the jury?

4 MS. MITRANI: Yes, Your Honor, actually, several
5 matters. First, I just want to put on the record, so one of
6 our witnesses, Nicole Nelson I'm going to hand Mr. Scotton some
7 documents, the vast majority have already been produced, but as
8 we were looking through this file, we saw some marginal
9 handwritten notes. In an abundance of caution, we are going to
10 give that to Mr. Scotton.

11 I also want to attempt to avoid the problems we had
12 last week. Government's Composite Exhibit 12 are DHL claims,
13 and last week Mr. Scotton said that his Fed-Ex claim file was
14 incomplete. I don't know what changes were made between August
15 and now to the DHL claims, so out of an abundance of caution,
16 I'm going to hand him a copy of what we intend to introduce.

17 I would also like to hand up to the Court, and I will
18 give it to Mr. Scotton, 12A. As we were fine-tuning it, we saw
19 some documents we took out. So I want to hand it up to the
20 Court so the Court's exhibit list can be modified
21 appropriately. And I will hand Mr. Scotton a copy.

22 THE COURT: Thank you.

23 MS. MITRANI: The only other matter, Your Honor, the
24 government reasonably expects to always have witnesses here, as
25 it has, more than the trial date. We do have a lot of

1 out-of-town witnesses. We have three witnesses who require
2 interpreters. I have lined up interpreters for tomorrow and
3 Wednesday. If something goes really fluky, I will advise the
4 Court. We have a whole slew of witnesses set for today and
5 after today if something happens.

6 THE COURT: You will keep me posted?

7 MS. MITRANI: I'm not anticipating it. I want to let
8 the Court know why, because of the interpreters and because of
9 the travel.

10 THE COURT: Okay. Thank you.

11 The videos, did the government have an opportunity to
12 review them?

13 MS. MITRANI: Well, Your Honor, the government has
14 reviewed the discs or the two discs that were given. So I'm
15 clear with the Court, what we received from the defendant, I
16 guess, could be divvied up into like three categories, one of
17 videos which the government would object to, the second are
18 pictures of documents. So there were jpeg files. We printed
19 them out. We would object to those documents.

20 And maybe the third category of pictures, I don't know
21 the exact number, they are voluminous, I'm going to try to
22 address that with Mr. Scotton outside of the Court's presence
23 and see if we can see which of those --

24 THE COURT: Basically what is it about the videos -- I
25 don't know what's in the videos. Why don't you give me a brief

1 description of the videos.

2 MS. MITRANI: Okay.

3 THE COURT: We have about three minutes before we need
4 to bring the jury in.

5 MS. MITRANI: I have a spreadsheet that I can hand up
6 to the Court. I don't know if I have enough copies for the
7 defendant as well. But basically there are a whole bunch of
8 them. There's video of defendant scuba diving. There's a
9 video of the defendant on a boat with topless girls nearby.
10 There's a video of the defendant inside a Formula 3 racing car.
11 There's a video of --

12 THE COURT: Are they relevancy issues?

13 MS. MITRANI: Yes, Your Honor.

14 THE COURT: Okay. So I'm not going to ask you right
15 now, Mr. Scotton, and I'm not going to decide right now, but I
16 am going to need you to explain why the video of you scuba
17 diving, was it on a boat with the topless girls and the third
18 one with a race car?

19 MS. MITRANI: There are more. I will make a copy of
20 this index, pass it up to the Court, give it to Mr. Scotton so
21 he knows what he gave us, and the Court can address it one by
22 one. It's more than three.

23 THE COURT: What I will need you to do is be ready to
24 explain to me why these are relevant to the issues. We are not
25 going to do it now because I want to bring the jury in and I

1 want to give you time to think about it. Ms. Mitrani is going
2 to give you a list of videos to which she objects. And to be
3 clear, my question to you is going to be why is it relevant.
4 Do you understand?

5 MR. SCOTTON: Your Honor, I also have a couple
6 documents that need to be copied and turned over to the
7 prosecutor. I don't know how I'm going to manage to do that.
8 I need a way to copy these documents.

9 THE COURT: How many are there?

10 MR. SCOTTON: Got to be somewhere around a hundred and
11 change.

12 THE COURT: Well, can your investigator do that?

13 THE INVESTIGATOR: Yes, Your Honor.

14 THE COURT: Great. Thank you very much. Anything
15 else we need to address?

16 MS. MITRANI: No, Your Honor.

17 THE COURT: All right then. Let's go ahead and bring
18 in the jury. Please rise for the jury.

19 (Thereupon, the jury entered the courtroom at
20 9:00 a.m.)

21 THE COURT: Good morning, everybody. Welcome back. I
22 hope you all had a terrific weekend. I need to start today
23 like we start every day. Is there anybody here who did not
24 follow my instructions? Is there anybody here who discussed
25 the case with anybody, disbursed anything about the case, or

1 did any research into the case? If so, please raise your hand
2 for me now.

3 I see no hands. We all thank you very much for that.
4 And please be seated. At this point you may recall that we had
5 to interrupt the last witness's testimony, Mr. Cory, because he
6 had a commitment that he couldn't get out of for today. He
7 will be back, and Mr. Scotton will continue his
8 cross-examination at another point. But we are going to have a
9 different witness from the government at this time.

10 So let me call on the government and the government
11 can call its next witness.

12 MS. MITRANI: Thank you, Your Honor. The government
13 would call Scott Baker.

14 SCOTT BAKER
15 Having been first duly sworn on oath, was examined and
16 testified as follows:

17 THE COURTROOM DEPUTY: Please be seated and state and
18 spell your first and last name for the record.

19 THE WITNESS: Scott Baker, S-C-O-T-T B-A-K-E-R.

20 DIRECT EXAMINATION

21 BY MS. MITRANI:

22 Q Good morning, Mr. Baker.

23 A Good morning.

24 Q Let's get a little bit of background from you, sir. Where
25 do you live?

1 A I live in Boca Raton.

2 Q And tell us a little bit about your educational
3 background.

4 A I have a degree from Florida Atlantic University,
5 graduated in 1999.

6 Q What was your degree in?

7 A Geography, geology.

8 Q Are you involved in geology?

9 A No.

10 Q No?

11 A No.

12 Q Okay. Are you a small business owner now?

13 A Correct, yes.

14 Q Can you -- what business do you own?

15 A I own a Pak Mail franchise in Coral Springs.

16 Q What is address of that Pak Mail?

17 A 934 North University Drive, Coral Springs, Florida 33071.

18 Q And how long have you owned that business?

19 A Since May of 2005.

20 Q And was it a new franchise or --

21 A No. We purchased it from a previous owner.

22 Q When you say we, do you have a partner in your business?

23 A Yes.

24 Q What is your partner's name?

25 A Scott Everett.

1 Q Together and you and Mr. Everett run this Pak Mail store?

2 A Yes.

3 Q Let's assume nobody's ever set a foot in a Pak Mail which
4 would not be good for you. Can you tell the ladies and
5 gentlemen of the jury what services a Pak Mail offers.

6 A We offer shipping and packaging services, mailbox rentals.
7 We do faxing. We do receiving. We do large freight services,
8 small estate moves, incoming freight deliveries for people. We
9 receive packages for people who have mailboxes. We receive the
10 mail. We forward mail. We become like a business hub for a
11 lot of our customers.

12 Q Okay. So let's talk about the shipping services or the
13 freight services, however you want to refer to it, or if there
14 is a difference, let us know, that Pak Mail offers. Can you
15 describe that in a little more detail?

16 A For the most part, a customer walks in either with
17 packaged or unpackaged items. We process it through either
18 Fed-Ex, UPS, or DHL, and we box everything up and ship it out.

19 Q You ship it out for the customer?

20 A Ship it out for the customer, yeah.

21 Q When you ship it out, do you ship it out on a Pak Mail
22 account or on the customer's account?

23 A Well, it depends. Sometimes customer will walk in with
24 their own accounts. They will either come in with their own
25 accounts with their labels completely filled out or preprinted

1 and that's the account that they pay for, and we drop it off as
2 a convenience for them.

3 Q Let me to stop you there. One aspect of your shipping was
4 is a customer will walk in with a box that's already packed up,
5 a shipping label for either Fed-Ex --

6 A UPS.

7 Q -- or DHL, and you are just sort of like a dropoff center?

8 A We are a big man drop box at that point, right.

9 Q And you have no further involvement in that?

10 A No.

11 Q Do you receive any --

12 A We receive like an average of a dollar apiece for a
13 dropoff.

14 Q Who?

15 A Fed-Ex, the carrier, pays it. It's a quarterly payment.

16 Q So for the courtesy of letting the customers drop off,
17 Fed-Ex, UPS, DHL will pay you a dollar a box?

18 A Right.

19 Q How about in other instances, are there other instances
20 where customers come and they don't have their own account or
21 they request that Pak Mail mail it out for them?

22 A Yes.

23 Q Let's go slowly. Let me do my question and you answer.

24 A Sure.

25 Q So tell us a little bit about that. Let me start with

1 this. Does Pak Mail have an account with Fed-Ex?

2 A Yes.

3 Q Does Pak Mail, your Pak Mail, have an account with DHL?

4 A Yes.

5 Q Does your Pak Mail have an account with UPS?

6 A Yes.

7 Q So what does that mean, that you, Pak Mail, have these
8 accounts with the shippers?

9 A In that case, the customer walks in, we would charge our
10 retail rate which is a percentage above the rate that we are
11 given by Fed-Ex, UPS, or DHL, and that's how we make our --
12 that's how we make our money. So the customer walks in, they
13 have a toy they want to ship to their nephew or niece. They
14 come up, we type all the information in, send it to Fed-Ex.
15 They give us a price, and that's what we charge our customer.

16 Q Okay. And then the box gets ship on Pak Mail's DHL or UPS
17 or Fed-Ex account?

18 A Yes.

19 Q And Pak Mail then gets billed by the shippers for that
20 particular package?

21 A Yes.

22 Q And then you, in turn, get the money up front from the
23 customer, whatever you are, whatever Pak Mail is going to
24 charge the custody to ship the package?

25 A Yes.

1 MR. SCOTTON: Object, Your Honor.

2 THE COURT: What is the objection?

3 MR. SCOTTON: Leading.

4 THE COURT: Sustained.

5 BY MS. MITRANI:

6 Q All right. In the course of owning a Pak Mail store, did
7 you become familiar with the cost of shipping packages to
8 Brazil?

9 A Oh, yes.

10 Q How would you describe those costs to the jury?

11 A They are high.

12 Q And do you know why they are high?

13 A Well, most international shipping is. And nowadays with
14 international shipping, everything goes through express service
15 so it's all air transported. So packages are priced based on
16 the size more so than the weight most times. So there's a
17 dimensional aspect to them. So yes, most of them are pretty
18 expensive to ship.

19 Q And is there a difference between the shippers as to how
20 much it would cost to ship a package to Brazil?

21 A As far as, yes, carrier prices vary. UPS for the South
22 American region is the cheapest. And then Fed-Ex and DHL are
23 fairly comparable.

24 Q To each other?

25 A Yes, for what we do.

1 Q Right.

2 A Everybody's account is different. Everybody has different
3 rates. A lot of it is based on volume. But for us, for South
4 and Central America, UPS would be our cheapest, for instance.

5 Q And for you, for your Pak Mail, how does Fed-Ex and DHL
6 compare to UPS?

7 MR. SCOTTON: Object, Your Honor.

8 THE COURT: What is the objection?

9 MR. SCOTTON: Speculation.

10 THE COURT: Did you say stipulation?

11 MS. MITRANI: He said speculation.

12 MR. SCOTTON: Speculation.

13 THE COURT: Overruled.

14 THE WITNESS: Can you ask the question again, I'm
15 sorry.

16 BY MS. MITRANI:

17 Q Sure. I think you said that DHL and Fed-Ex's rates to
18 South America and to Brazil are comparable to each other?

19 A Yes.

20 Q How do they compare to UPS?

21 A They are higher. UPS has a Broward County and Miami-Dade
22 County rate for Central and South America.

23 Q Let's talk a little about mailbox or private box rental at
24 your store. Did your Pak Mail have personal mailboxes for
25 rental?

1 A We do.

2 Q Can you describe to the members of the jury the procedures
3 for renting a private mailbox from your Pak Mail?

4 A Sure. A customer will come in and provide us two forms of
5 ID, one being a government photo issued ID, the other being an
6 ID such as a voter's registration, vehicle registration, auto
7 insurance, health insurance. We don't accept credit cards or
8 Social Security numbers for ID. They present those. We fill
9 out a 1583 form provided to us by the post office which allows
10 us to be the receiving agent for that customer to receive their
11 mail and sign for their mail. They pay us the -- we have three
12 separate terms we offer. They choose a term. They pay for
13 everything up front and they have a key to the front door.
14 They have 24 hour access to their mailbox. They can receive
15 letters, packages. We receive, you know, plenty of packages
16 for people. When it comes in, we make a phone call and let
17 them know that they have stuff that's there waiting for them.

18 Q If the customers wishes to rent the private mailbox, when
19 do they fill out the documents?

20 A Immediately.

21 Q At the time they wish to do it?

22 A At the time that it's rented. All the documents are
23 completed until the mailbox is active.

24 Q And what would you do with these documents after they are
25 completed?

1 A We create a file for that customer and it stays in our
2 store. The 1583s are generally filed with the post office.
3 More so in the last few years, they just request quarterly
4 reports from us showing the number of mailbox holders we have
5 on hand as well as the number of people that we serve.

6 Q And was it your regular practice, that is of Pak Mail, to
7 maintain these 1583s and accompanying documents in the ordinary
8 course of business?

9 A Yes, ma'am.

10 MS. MITRANI: Your Honor, may I approach?

11 THE COURT: Yes.

12 BY MS. MITRANI:

13 Q Excuse me, sir. I'm showing you what's been marked for
14 identification as Government's Composite Exhibit 302. Do you
15 recognize these two photographs?

16 A Yes, those are both my store.

17 Q And is this a fair and accurate depiction of what your
18 store looked like at 2008, 2009?

19 A Yes.

20 MS. MITRANI: Your Honor, the government would offer
21 302.

22 THE COURT: Any objections?

23 MR. SCOTTON: Yes, it's irrelevant to the case.

24 THE COURT: Overruled. 302 is admitted.

25 (Thereupon, Government's 302 received in evidence.)

1 BY MS. MITRANI:

2 Q I'm also going to show you what's been marked for
3 identification as Government's Composite exhibit 2. That is 2A
4 and 2B. Do you recognize these, this composite exhibit?

5 A Yes. This is a 1583 form from the post office that allows
6 mail to be received along with our form that shows that we keep
7 track of dates and times that the mailbox has been rented and
8 would be up for renewal as well as copies of a mailbox holder's
9 identification.

10 Q And this is for a -- was this for a private mailbox that
11 was opened at your store?

12 A Yes, ma'am.

13 Q And that's 2A. And what's 2B?

14 A I'm sorry?

15 Q That's okay. Are those -- let me ask you this, sir: Are
16 these more of the accompanying documents, the records
17 pertaining to the particular box that was opened as specified
18 in Government's Exhibit 2A?

19 A Yes.

20 Q Are these business records of Pak Mail?

21 A These are more records. This shows the date that we
22 closed the box on, the IDs that were used as well as a contract
23 that we have. That's our contract with our store.

24 MS. MITRANI: Your Honor, the government would offer
25 Composite 2 into evidence.

1 THE COURT: Any objection?

2 MR. SCOTTON: No, Your Honor.

3 THE COURT: All right. Government Composite 2 is
4 admitted.

5 (Thereupon, Government's 2 received in evidence.).

6 BY MS. MITRANI:

7 Q Let's start with Exhibit 302, Government's Exhibit 302.

8 MS. MITRANI: Your Honor, may I move that cart?

9 THE COURT: Yes.

10 BY MS. MITRANI:

11 Q Just warming up. I guess it hasn't had enough coffee this
12 morning. All right. So I'm showing you what's been marked as
13 Government's Exhibit 302. What is that, sir?

14 A It's the front entrance to our store on 934 North
15 University.

16 Q Okay. And turning to the next picture of 302, what are we
17 looking at, what view do we have here, Mr. Baker?

18 A That's our front counter looking -- the front door would
19 be over here. This is back where we work, where we fill out
20 applications for mailboxes. That's where we -- you know, our
21 POS system where we process our packages that we are shipping
22 out for customers.

23 Q So I guess the counter -- it's like a counter area?

24 A Yeah, it's an all counter. If we get ten people at a
25 time, we can put things around or we have a lot of paperwork

1 that we do. The file cabinets are off to the side.

2 Q I guess at the far end of the picture, is that where the
3 private mailboxes are for the customers?

4 A The door going into the back, there is the back way into
5 the mailboxes. You can see the mailboxes up front. We take
6 the mail back and put it in the mailboxes for the customers
7 when it comes in in the morning.

8 Q Okay. Let's go to 2A.

9 Okay, sir. So is this the form that you described earlier
10 that customers have to complete in order to rent a mailbox from
11 your facility?

12 A Yes, ma'am.

13 Q And it's called a United States postal service application
14 for delivery of mail through agent, correct?

15 A Correct.

16 Q And I think you referred to it on the bottom it has a form
17 number. We will highlight that in a bit. So the date of this
18 particular application was when, Mrs. Baker?

19 A December 29, 2009.

20 Q And can you see okay on your screen, sir?

21 A Yes.

22 Q And then there are various boxes that have to be
23 completed?

24 A Yes.

25 Q All right, sir. No. 2, go to box 2, did an individual

1 named Roger Scotton apply and receive this mailbox?

2 A Yes, ma'am.

3 Q All right. And what's box 3, 3A and 3B?

4 A 3A, 3B would be the address at the store along with the
5 customer's new mailbox number. The PMB stands for private
6 mailbox. It would be Private Mailbox 329, 9334 North
7 University in Coral Springs, 33071. That would be the physical
8 address of the store along with the person's box number that
9 they've rented.

10 Q Would that be the address then that the mail would be
11 addressed to to get to your facility?

12 A Yes.

13 Q All right. And 329 is a specific mailbox assigned to
14 Roger Scotton?

15 A Yes.

16 Q All right. Then, I guess, Box 4 identified what?

17 A Box 4 would be -- it also shows -- it just shows our Pak
18 Mail name along with our address. We are a physical -- one
19 physical address with around 300 different box numbers, so that
20 shows the physical address where mail would be delivered to.

21 Q Okay. And then Box 5 purports to be the signature of
22 Box 6 of Mr. Scotton, correct?

23 A Yes, box 5, the signature, is allowing for delivery of
24 certified or any sort of restricted mail through the USPS.

25 Q Okay. And Box, as I said before, Box 6 is the name of

1 applicant Roger Scotton, correct?

2 A Correct.

3 Q And then 7, that says -- 7A says applicant's home address,
4 home address, paren, number, street number, et cetera, and here
5 the applicant's, Mr. Scotton's, home address is listed as 2234
6 North Federal Highway, No. 327, Boca Raton, Florida 33431?

7 A Correct. That's the address we were given.

8 Q You were given it by whom?

9 A By Roger Scotton.

10 Q And I guess Box 8 indicates the two types of
11 identification that was presented in connection with this
12 application?

13 A Correct.

14 Q And in this instance, it's a Brazilian passport and a
15 Florida driver's number?

16 A Correct.

17 Q And then at the bottom, it says, on Box No. 13, if a
18 corporation, give name, again Mr. Scotton's name appears. Then
19 on the bottom there's a signature. Do you recognize that
20 signature all the way on the bottom?

21 A That particular, there is not a signature. It's
22 actually -- that's written in. The lines that you see slashed
23 through are when people sign up for a business on their
24 mailbox. In this case, we were told it was just going to be
25 for personal use.

1 Q I see. Okay.

2 A So his name was written in but crossed out. It was
3 written in by us. That's our handwriting.

4 Q It's signed below by your partner, R. Scott Everett?

5 A B. Scott Everett.

6 Q B. Scott Everett. Underneath it it identifies this
7 particular form as form 1583, correct?

8 A Yes.

9 Q Let's go to the next page. What are we looking at here,
10 Mr. Baker?

11 A This is our spreadsheet for the records we just keep track
12 of when the mailbox is opened and it goes through the term that
13 that's paid for. So every time the mailbox is renewed, we keep
14 adding to the list. That way we keep track of who is due when.
15 It's in -- we have a computer system that tracks it, but we
16 also track it manually in a file.

17 Q So in that sense, the mailbox from 12/29/09 it started
18 through 6/29/11?

19 A Correct.

20 Q And again, on top it has Mr. Scotton with the -- on the
21 top with Mr. Scotton's name with the address he listed as his
22 home address, correct?

23 A Yes, correct.

24 Q I know this is hard to see. What is this?

25 A A Florida driver's license.

1 Q It's a copy that you made at the time?

2 A It looks -- yes.

3 Q And then the next page, the next page would --

4 A Would be a copy of a passport that we made.

5 Q And then that's 2A. Let's go turn to Exhibit 2B. I think

6 you testified earlier that 2B contains like a mail services --

7 I'm holding it up. It's not on there -- mail services

8 agreement? There we go.

9 A Right.

10 Q Is this a standard agreement that -- what is this? You
11 tell us.

12 A It is -- it is a standard agreement. It shows when the
13 due dates are due on the mailbox. Also, box holder agrees to
14 use the service in accord with regulations set by the United
15 States Postal Service.

16 We also state if there is any illegal activities on the
17 box, we reserve the right to close the box if we are made aware
18 of it. It states when the box is due, what the terms are, when
19 late fees are assessed.

20 Q Okay. So did you come to know Mr. Scotton?

21 A Yes, ma'am.

22 Q So how did you come to know Mr. Scotton?

23 A Well, he was a mailbox holder at our store and received
24 packages. So they were being picked up pretty much on a daily
25 basis. So, you know, when people are in our store every day,

1 we get to know them.

2 Q And what -- do you see Mr. Scotton in the courtroom today?

3 A Yes, ma'am.

4 Q Can you identify him by what he is wearing?

5 A In the suit.

6 Q In the blue suit?

7 A Yes, ma'am.

8 MS. MITRANI: Your Honor, let the record reflect that
9 Mr. Baker has identified the defendant.

10 THE COURT: The record will so reflect.

11 MS. MITRANI: Thank you, Your Honor.

12 BY MS. MITRANI:

13 Q All right. So what kind of business was Mr. Scotton
14 transacting at your store?

15 A There would be packages dropped off for DHL to pick up that
16 were being shipped to. On occasion he would bring packages in
17 that would need additional packaging that he would purchase
18 from us that we would box up, and then we would affix labels
19 that were provided by him in order for DHL to pick them up and
20 take them down to their hub.

21 Q Was he a regular customer in your store?

22 A Yes, ma'am.

23 Q And how often would he come in?

24 A It was a very much daily basis, if not, you know, three to
25 five times a week. Almost, you know, almost every day.

1 Q And on this frequent contact, was Mr. Scotton always
2 bringing in boxes for delivery or packages?

3 A Either picking up packages to go out or bringing in labels
4 for the packages that UPS had delivered to us to then go back
5 out or bringing packages in to be shipped by DHL.

6 Q And do you know, for the most part, where were these boxes
7 and packages going?

8 A Brazil.

9 Q Did you talk to the defendant?

10 A Yes.

11 Q And just how would you describe him?

12 A He was always very friendly to us. You know, he liked to
13 take over the room. He was, you know, very, you know, good
14 talker. We talked about racing. You know, we had good
15 conversations. You know, that's about it.

16 Q Okay. Now, when -- I think you may have already
17 testified, but I'm not sure. When the defendant would drop off
18 the packages, did he have a shipping label or did he get --
19 solicit the services of Pak Mail?

20 A No, ma'am. The labels were already printed out and
21 provided by him. Our Pak Mail store didn't have anything to do
22 with the actual shipping of those packages.

23 Q So he wasn't shipping on the Pak Mail account?

24 A No, ma'am.

25 Q How big were the packages that the defendant was shipping

1 from your store, receiving and shipping?

2 A They were on the larger size, anywhere from, you know, say
3 like a 24 by 16 by 12 size box up to a maybe a 30 by 20 by 18
4 inch box, to give an average. I would guess they were larger
5 sized boxes.

6 Q And when the defendant received packages at your store,
7 what would he do with the packages and boxes that he received
8 at your store?

9 A Generally when he would come in, he would clear any labels
10 that were on the boxes off. You know, most everybody does that
11 to prevent packages being misrouted somewhere else. And then
12 he would affix the DHL labels that he would bring in for DHL to
13 pick them up.

14 Q So did you ever try to solicit the defendant's business to
15 see if he was interested in shipping on DHL's account?

16 A On our account, yes.

17 Q Did you try --

18 A Yes, we approached him about bringing in an invoice or
19 bringing in some quotes that he would get from DHL to see if we
20 could, you know, beat the price or match it and maybe get his
21 business to have him pay for the services in our store versus
22 having it invoiced directly by DHL. So what we asked was when
23 you bring it in, we can process everything, you pay us to ship
24 it, and then we ship it out under our account. We did approach
25 him about that.

1 Q Is that something that you approach with all of you
2 customers?

3 A Yes, ma'am. Yeah, anytime somebody's bringing in a large
4 volume of stuff that's already on an account, we do try to gain
5 that business.

6 Q And did the defendant engage in a dialogue with you about,
7 you know, shipping rates and what you could do?

8 A It was brief. It was -- the response we got was, yes, you
9 know, he would come in and we would check it out, but it never
10 went any further than that.

11 Q So was there any real -- was there ever any discussion of
12 prices and numbers, any details like that?

13 MR. SCOTTON: Object, Your Honor.

14 THE COURT: What is the objection?

15 MR. SCOTTON: Leading.

16 THE COURT: Overruled.

17 THE WITNESS: No. We never got in into discussion
18 about pricing. I know we worked up probably some quotes, but I
19 don't believe we ever actually gave them to him because we were
20 never presented with any shipping prices that he was receiving
21 on his account.

22 BY MS. MITRANI:

23 Q Did there come a time when you were approached by the FBI?

24 A Yes.

25 Q And who within the FBI approached you?

1 A Agent Roy.

2 Q The person sitting right here?

3 A Yes.

4 Q And what did -- in general terms, you don't have to give
5 us what the special agent may have told you, but in general
6 terms, did the special agent discuss the defendant with you?

7 A Discussed briefly, yes. We were asked about the packages
8 that were incoming. We were asked about the labels that were
9 on them, about where they were coming from, where they were
10 going to. Yes.

11 Q And did the Special Agent Van Brunt ask for your
12 assistance --

13 A Yes.

14 Q -- in his investigation?

15 A Yes.

16 Q And what did Special Agent Van Brunt ask you to do?

17 A The labels -- he asked us to make copies of any labels
18 that remain on the boxes that were not torn off prior to
19 shipping.

20 Q Just so it's not confusing, any labels on incoming boxes
21 to the defendant?

22 A Incoming or outgoing both. If labels remained on the
23 boxes, to make copies of those labels as well as the labels
24 that were brought in to go on those boxes to be shipped out to
25 Brazil, so any labels that we could to make copies of.

1 Q And did you make copies of labels for Special Agent
2 Van Brunt?

3 A Yes.

4 Q Did you make copies of any labels that remained on
5 incoming packages?

6 A Yes.

7 Q Did you make copies of labels for the outgoing packages
8 that the defendant shipped out?

9 A Yes.

10 Q After you copied the label, so on an outgoing shipment,
11 after the defendant puts on the label, after you make the copy
12 of the label, what did you do with the shipment?

13 A The shipment acted as normal. I mean, we put the -- the
14 labels were on the box. Our DHL carrier would come in at 5:30,
15 6:00 in the evening, pick them up, and take them down to the
16 airport.

17 Q And did you provide the shipping labels that you made
18 copies of to Special Agent Van Brunt?

19 A Yes.

20 MS. MITRANI: May I approach, Your Honor?

21 THE COURT: Yes.

22 BY MS. MITRANI:

23 Q Okay. Mr. Baker, I am showing you Government's Composite
24 Exhibit 3, that is 3A through and including 3GG. Do you
25 recognize these documents?

1 A Yes. They are DHL waybills along with the commercial
2 invoice or customs form for packages along with the incoming
3 UPS label for packages that Mr. Scotton shipped.

4 Q Okay. That's specifically 3A. And generally speaking, is
5 it fair to say that Composite Exhibit 3 are the labels that you
6 copied for Special Agent Van Brunt?

7 A Yes, these would be them.

8 Q Have you changed or altered them in any way?

9 A No, ma'am.

10 MS. MITRANI: Your Honor, the government would offer
11 Composite 3 into evidence.

12 THE COURT: Any objection?

13 MR. SCOTTON: No, Your Honor.

14 THE COURT: Government's Composite 3 is admitted.

15 (Thereupon, Government's 3 received in evidence.)

16 BY MS. MITRANI:

17 Q Can you see that okay, Mr. Baker?

18 A Yes, ma'am.

19 MS. MITRANI: Your Honor, may I use the microphone?

20 THE COURT: Yes.

21 BY MS. MITRANI:

22 Q Okay. So, Mr. Baker, I'm showing you 3A which is a copy
23 of a label that you copied. So is this a package that the
24 defendant tendered to your Pak Mail for delivery to DHL?

25 A Yes, ma'am.

1 Q And so the return address there says a computer, Fernando,
2 with a phone number at 934 North University Drive, 329, in
3 Coral Springs, Florida, correct?

4 A Correct.

5 Q And the box is being delivered, the package is being
6 tendered for delivery to Brazil, correct?

7 A Correct.

8 Q What's being shipped, the reference code states it's Xbox
9 Elite Splinter Cell, correct?

10 A Correct.

11 Q And the date of that shipment was April 29, 2010?

12 A Yes, ma'am.

13 Q All right. And it was an 11-pound package, correct?

14 A That's what it says on the label.

15 Q Okay. Do you independently verify that or are you just --

16 A No, ma'am. The carriers do for the most part. You can
17 put whatever weight you want on a package. The carrier adjusts
18 it when it goes through their system.

19 Q The waybill number is on the bottom, 7402582095, correct?

20 A Correct.

21 Q All right. And the next page, what is this document,
22 Mr. Baker?

23 A The commercial invoice, we just call it the customs form.
24 Every package that goes internationally needs four copies of
25 this to go with it so each copy gets distributed along the way.

1 It basically states who it's from, who it's to, what the
2 package is, the value for customs, and in cases of packages
3 with extreme high value, there's other forms that need to be
4 filled out. But in this case, there's not. So it's just --
5 this is a customs form.

6 Q Okay. And the shipper information on the invoice matches
7 that of the waybill, correct?

8 A Correct.

9 Q Now, going to the third page of Exhibit 3A and, actually
10 for the record, that would be PAKCS-9. Let's show the -- get
11 the whole document up, please..

12 Okay. So this is identified, as I have identified it
13 before, CS-9. Mr. Baker, what are the members of the jury
14 looking at now?

15 A That's an incoming label through UPS ground from a company
16 in California to Mr. Scotton at our score. So that's a package
17 that UPS would deliver.

18 Q And this particular instance, what's the relationship
19 between this UPS label and the DHL label that we just saw?

20 A This should be the -- well, this is a case where this
21 label was removed from the package prior to that DHL being
22 affixed to it.

23 Q But you were able to copy the -- this is the incoming
24 label on the box which you were able to copy?

25 A This was the incoming label from -- this is an incoming

1 UPS label, yes.

2 Q To Mr. Scotton?

3 A Yes, ma'am.

4 Q And then Mr. Scotton turned around and put the DHL label
5 on it and tendered it for delivery, correct?

6 A Correct.

7 Q Let's go to 3B. And the first page of 3B is a PAKCS,
8 that's 40. And this is another waybill with the same return
9 address, a computer, Fernando at 934 North University Drive,
10 329, Coral Springs, Florida?

11 A Correct.

12 Q And this package was tendered for delivery to Brazil?

13 A Correct.

14 Q The reference code is a guitar hero, is that correct?

15 A Yes.

16 Q And the waybill number is at the bottom ending in 4911,
17 correct?

18 A Correct.

19 Q All right. And the second page of Exhibit 3B, is this the
20 accompanying commercial invoice?

21 A Yes, customs form commercial invoice.

22 Q Let's go to 3C, okay, Exhibit 3C, the first page. This is
23 the first page of 3C. Now, this particular address -- excuse
24 me, this particular waybill has a return address or a from. It
25 says Air Express M. Cancado with a phone number at the address

1 of your UPS store and Mr. Scotton's mailbox number, correct?

2 A Correct.

3 Q And this going to Brazil, correct?

4 A Correct.

5 Q And it's another Xbox Elite game, and the date of this is
6 4/29/2010?

7 A Correct.

8 Q Waybill ending in 4721?

9 A (Nodding head.)

10 Q Let's go to 3D, the first page of 3D. So is this another
11 waybill that you copied from Mr. Scotton?

12 A Yes, ma'am.

13 Q So on this one, it says Apple Computer as the from, Scott
14 phone with a phone number, but the address here is 7797 Golf
15 Circle Drive, No. 204, Margate, Florida, correct, with the zip
16 code?

17 A Correct.

18 Q And it's a package for delivery to Brazil?

19 A Yes, ma'am.

20 Q And it was tendered for delivery April 30, 2010. It
21 states it's 59 pounds?

22 A Correct.

23 Q How would you characterize a 59-pound box?

24 A Expensive to ship to Brazil, to ship anywhere
25 internationally.

1 Q And with the waybill No. 0304, is that correct?

2 A That's correct.

3 Q Do you have a sense of just how expensive a 59-pound box
4 would be to Brazil?

5 A I would -- \$300 plus.

6 Q The next page of 3D, is this the accompanying invoice to
7 that shipment?

8 A Yes, customs form.

9 Q With the shipper listed on the invoice the same as the
10 shipper listed on the waybill, correct?

11 A Correct.

12 Q And if we go to the third page of Government's Exhibit 3D
13 which is PAKCS-22 on the bottom, can you tell the members of
14 the jury what they are looking at now, sir?

15 A It's an incoming waybill from UPS for a package that was
16 delivered to my store for Mr. Scotton.

17 Q And Mr. Scotton's name is listed right there in the middle
18 with your store address and his box number, correct?

19 A Correct.

20 Q All right. And then what's this document that we are
21 looking at here?

22 A That's an internal UPS. When they scan a box, they print
23 out a sticker that goes on the box. I think it helps them keep
24 track. If one label were to go missing, that's an additional
25 label that's on there that UPS can use to regenerate the label

1 in the case of something going missing.

2 Q So both these items were on the incoming box to
3 Mr. Scotton?

4 A Yes.

5 Q And this was the box that he turned around and put that
6 DHL label from Apple Computer for shipment to Brazil?

7 A Correct.

8 Q Let's go to 3E. And this is the first page of 3E. We are
9 back to the shipper address here as a computer, Fernando, at
10 your store's address, correct?

11 A Correct.

12 Q It's for a shipment to Brazil, correct, on April 30, 2010,
13 a 28-pound package with a waybill number ending in 9756,
14 correct?

15 A Correct.

16 Q The second page, is that the accompanying customs form?

17 A Yes, ma'am.

18 Q And then the third page of Exhibit 3E which is PAKCS-30,
19 what is that, Mr. Baker?

20 A That's a Fed-Ex ground waybill. It looks like the address
21 that's delivered to is not our -- wouldn't be our address. The
22 zip code and the box number don't match. But it's a package
23 that was dropped off at our store.

24 Q By Mr. Scotton?

25 A By Mr. Scotton.

1 Q Did you open this from the package that the defendant
2 dropped off at your store?

3 A Yes, ma'am.

4 Q All right. And I guess in the middle, you can see the
5 letters O-T-T-O-N, correct?

6 A Correct.

7 Q All right. 3F, and this package had the return address of
8 Applecomputer with your store's address, correct?

9 A Correct.

10 Q For a package that defendant was shipping out to Brazil,
11 correct?

12 A Correct.

13 Q Waybill ending 4764 delivery April 30, 2010, a 14-pound
14 package?

15 A Correct.

16 Q Skip to Exhibit 3K. 3K, in this instance the return
17 address is listed as Apple Computer, Scott phone with the
18 address 7797 Golf Circle Drive, No. 204, Margate, Florida,
19 correct?

20 A Correct.

21 Q For a package to Brazil. The shipment date here is May 3,
22 2010, a 56-pound package is what the waybill indicates with a
23 waybill number ending in 7520, correct?

24 A Correct.

25 Q The second page of Exhibit 3K, is that the accompanying

1 customs invoice?

2 A Yes, ma'am.

3 Q And the third page of 3K, can you tell the members of the
4 jury what they are looking at here?

5 A Again, it's a UPS incoming waybill that was removed from a
6 package that was being shipped to Brazil.

7 Q And so the incoming UPS was to the defendant at your
8 store's address, correct?

9 A Yes, directed to Mr. Scotton.

10 Q And then the waybill that we just looked at purported to
11 be from Apple Computer was affixed on the same package?

12 A Yes.

13 Q Maybe we will do one more, then we will summarize. Let's
14 go to 3M as in Mary. And this is another DHL waybill with the
15 shipper as a computer, Fernando, at your store's address with
16 the defendant's box No. 329 on the from?

17 A Correct, yes.

18 Q For a package shipped to Brazil?

19 A Yes, ma'am.

20 Q And this one is April 29, 2010. It's a two-pound package
21 with a waybill ending in 6914, correct?

22 A Correct.

23 Q Let's go to the last one -- not the last one. Let's go to
24 3FF. And 3FF, again, this is another package that the
25 defendant tendered to your Pak Mail for delivery for DHL?

1 A Yes.

2 Q And in this instance, the return address is,
3 Colominterna, C-O-L-O-M-I-N-T-E-R-N-A?

4 A Correct.

5 Q And it says L Silva with a phone number and address of
6 7797 Golf Circle Drive in Margate?

7 A Correct.

8 Q This is for a package going to Brazil on May 7th, 2010,
9 waybill purporting to weigh 23 pounds with a waybill ending in
10 3850, correct?

11 A Correct.

12 Q And the second page of 3FF is the accompanying commercial
13 invoice or customs form, as you call it?

14 A Correct.

15 Q Now, I don't know how many we have looked through, but we
16 haven't looked through the whole thing. Have you had the
17 opportunity to look through all the separate labels that you
18 have provided to Special Agent Van Brunt?

19 A Yes.

20 Q And with the exception of Exhibit 3P as in Peter, with the
21 exception of 3P, do all the labels have the return address of
22 either 934 North University Drive, No. 29, Coral Springs,
23 Florida, 33071 or the return address of 7797 Golf Circle Drive
24 in Margate, Florida?

25 A Yes, they do.

1 MS. MITRANI: No further questions, Your Honor.

2 THE COURT: Cross-examination.

3 MR. SCOTTON: Good morning, everyone.

4 CROSS EXAMINATION

5 BY MR. SCOTTON:

6 Q Good morning, Scott. How are you doing?

7 A Good.

8 Q How fishing those days?

9 A It's not enough.

10 Q Scott, let me ask you a question. Has the defendant done
11 anything wrong in opening PO box in your store?

12 A No.

13 Q Have the defendant fulfilled the requirements to open a
14 PO box in your store?

15 A Yes.

16 Q Have I paid all the fees required?

17 A Yes.

18 Q Have the defendant presented all his IDs, credentials as
19 required?

20 A Yes.

21 Q Nothing wrong in open a PO box there, is?

22 A No.

23 Q How long the defendant was your client?

24 A Without looking, a matter of a year, year and a half. I
25 believe the box was signed up for for a year which we gave six

1 months free on, so the term was for a year and a half. I don't
2 recall how long the box was used for.

3 Q Let's, Scott, just try to keep to the questions, please.

4 Has the defendant been a good client to you?

5 A Yes.

6 Q Do you deny the defendant has opened PO box on your
7 location for reason the defendant needs receive these
8 merchandise?

9 A I don't understand the question.

10 Q Do you deny that the reason I opened the PO box with you
11 is I can be able to receive all the merchandise from the
12 companies that I am buying from?

13 A The reason you opened the box was to receive packages at
14 our store, yes.

15 Q Is it not the reason I opened a PO box with you?

16 A That's the reason why, yes.

17 Q Ever receive a big auto parts in your store from the
18 defendant?

19 A Do I receive?

20 Q Yes.

21 A Yes.

22 Q Auto parts come from companies that the defendant bought
23 online?

24 A I don't know where the parts came from. DHL or UPS
25 delivers them. I don't know where they come from.

1 Q Right, but these labels that government has described to
2 you, the UPS labels, that incoming labels, is anything illegal
3 on those labels?

4 A Not that I'm aware of.

5 Q So those labels has the companies that the merchandise
6 coming from?

7 A As far as I know, yes.

8 Q Have you shopped on line before?

9 A Yes.

10 Q When you shop online, do the packages get delivered to
11 your store?

12 A Yes.

13 Q When you shop online, those companies also in charge of
14 the shipping?

15 A Yes.

16 Q Ever receive tires in your store on behalf of the
17 defendant?

18 A I don't recall.

19 Q You don't recall?

20 A Have I received tires in my store for you? I do not
21 recall.

22 Q You don't recall? You don't recall either you or your
23 partner packing some tires for me?

24 A It's probable that we did. It's been a long time.

25 Q Anything from Tire Kingdom, Tire -- I forget the name of

1 the company, Tire Rack?

2 A We received packages from Tire Rack.

3 Q Ever receive any other merchandise from the defendant in
4 your store?

5 A We received packages for you in our store, yes.

6 Q Is any crime receiving merchandise?

7 A No.

8 Q When those merchandise arrive at your store, either you
9 and -- is it your brother?

10 A No.

11 Q Well, I used to call him your brother, Scott, right?

12 A Right. We are not brothers.

13 Q When you receive merchandise in your store, what do you
14 guys do with that merchandise?

15 A We call you, let you know that you have packages.

16 Q And what I used to tell you guys to do?

17 A We would hold them until you would bring us a label. We
18 would put the labels on and DHL would pick them up.

19 Q Besides the labels, you guys used to do with those
20 packages for me?

21 A Occasionally we would tear the labels off to remove the
22 labels so nothing got mixed up between the bar code scans.

23 Q Have you guys prepared those packages for me?

24 A We have prepared packages for you, yes.

25 Q How many packages do you think you guys have prepared for

1 me?

2 A I wouldn't know the number to speculate.

3 Q Have you paid for those packets?

4 A The packages that we -- you paid us to pack the packages,
5 not to ship the packages.

6 Q Prepare the packages?

7 A To prepare them to package them.

8 Q How did I used to pay for that?

9 A Cash or credit.

10 Q Have you had any problem collecting money from the
11 defendant?

12 A No, sir.

13 Q Have defendant given any hard time about say that it's too
14 expense or complain about it?

15 A No.

16 Q Did the defendant say you rip him off on the boxes?

17 A No.

18 Q So I guess I'm a good client?

19 A You were a good client.

20 Q The government has exhibit here 7A. It is a form from the
21 post office. That particular space there should be the drive
22 license address over there?

23 A I would have to see the form.

24 MR. SCOTTON: Your Honor, may I?

25 THE COURT: Yes.

1 BY MR. SCOTTON:

2 Q Right here, Scott, 7A.

3 A Either 7A would be the address of the license or the
4 address that we were given verbally.

5 MR. SCOTTON: Can I show this to the jury also, Your
6 Honor?

7 THE COURT: Yes.

8 MR. SCOTTON: Can I have some assistance with this,
9 please?

10 THE COURT: It's in evidence, right?

11 MS. MITRANI: It's 2A. Do you want us to put it on
12 the computer?

13 MR. SCOTTON: It's 2A, Your Honor.

14 MS. MITRANI: We can put it on the computer. Do you
15 want us to put it up?

16 THE COURT: Sure.

17 BY MR. SCOTTON:

18 Q Scott, is not there a requirement for the post office that
19 the address be there in 7A is the address shows as on ID of the
20 client, the ID that the client present?

21 A 7A states applicant home address. Either that's the
22 address given on a driver's license or it's the address
23 verbally given to us.

24 Q Have you seen this address on the defendant's driver's
25 license?

1 A I don't remember. I would have to see the license.

2 Q The require from the post office two type of IDs have to
3 be present to be able to open a PO box?

4 A Two IDs.

5 Q Right, and one have to be American ID, correct?

6 A Correct.

7 Q And requirements on such ID has to have some address?

8 A Yes.

9 Q And the address has to be on the form?

10 A The ID is to prove you are who you say you are via
11 government photo idea.

12 Q And the ID have the address and the address have to be on
13 7A?

14 A Whether they have to match, I don't know.

15 Q You don't know. How long have you been working as pack
16 shipping store?

17 A Nine years.

18 Q The post office never informed you that it has mandatory
19 that the ID need to be over there?

20 A The post office inspects all of our forms all the time.
21 They have never said anything to us.

22 Q Did you recall surveilliance, surveilliance by the FBI at
23 one point at your store?

24 A Yes.

25 Q Do you recall that day?

1 A The date, no.

2 Q If I show you, perhaps like show a paper, that my
3 recollect you of the date?

4 A Maybe. It's been --

5 MR. SCOTTON: Your Honor, I have, I guess they call
6 RVC00028.

7 THE COURT: Show it to the government, please.

8 MS. MITRANI: Your Honor, if the Court wants to know
9 what's going on, he has a document that is written up. We are
10 trying to find a clean copy for him to be able to show.

11 THE COURT: Thank you.

12 MR. SCOTTON: Your Honor, may I approach?

13 THE COURT: Yes.

14 MR. SCOTTON: I need that back on, please.

15 BY MR. SCOTTON:

16 Q Scott, can you explain the jury what you are looking right
17 now?

18 MS. MITRANI: Objection, Your Honor. I think he's
19 looking --

20 THE COURT: Sustained.

21 BY MR. SCOTTON:

22 Q Does the defendant drive a black Lexus?

23 A I don't remember what kind of car you drove, Roger.

24 Q You don't remember what kind of car it was? You don't
25 remember the defendant drove a black Infiniti?

1 A I remember a black luxury SUV style.

2 Q Go back to that form over there from the post office. I
3 opened the PO box with you on December 29 of 2009, right?

4 A Correct.

5 Q Seems to be here that the FBI say that he's done this
6 5/17/2009, way before I open a PO box with you, that is
7 correct?

8 A On this sheet in front of me it says 5/17 through 2010.

9 Q If you look at the bottom of the investigation form,
10 5/17/2009?

11 THE COURT: Sustained. Come sidebar, please.

12 (Thereupon, the following was heard sidebar.)

13 THE COURT: Number one, that's not in evidence so you
14 can't read from it. Okay. Number two, as we have explained as
15 I have explained now several times, the reports, the
16 investigative reports, cannot come into evidence, so...

17 MR. SCOTTON: They can come in cross-examination,
18 right?

19 THE COURT: They can't come in. The reports cannot
20 come into evidence in any way. You can ask him questions such
21 as --

22 MR. SCOTTON: I asking him a question about the date.

23 THE COURT: Let me explain the kinds of questions you
24 can ask. You can ask him questions such as, are you aware of
25 whether I drove a black Lexus, which is what you asked. That's

1 fine. The question you just asked, which is look at the date
2 and tell me what the date is on there you can't ask because
3 that's like putting the whole record into evidence.

4 MR. SCOTTON: So I can tell him the day then?

5 THE COURT: No, you cannot do that. You can ask him.
6 I can't educate you --

7 MR. SCOTTON: It's not educating.

8 THE COURT: Excuse me. I can't educate you on the
9 entirety of how to serve as a lawyer. I can't do that. I am
10 doing my best. You have to work with me.

11 You can ask him questions about the things reported in
12 there if he -- you can ask him -- you can't ask him things like
13 did so-and-so, did agent so-and-so report X, Y, Z. Did agent
14 so and so say X, Y, Z. You can't do that. But you can ask him
15 things that relate subsequently to in there such as do I drive
16 a black Lexus. That's okay, although the government may never
17 intend to put on a witness who would be able to testify that he
18 saw you driving a black Lexus. They may and they may not.
19 That's up to them. But you can ask those kinds of questions
20 about whether he's seen you drive a black Lexus. You just
21 can't ask the questions about what's reported.

22 MR. SCOTTON: The date over there is December of 2009
23 when the FBI claim --

24 THE COURT: I understand.

25 MR. SCOTTON: -- months before.

1 THE COURT: Excuse me. I understand what you are
2 saying. This is not the right witness for that. You can't --
3 you can ask him questions like when did I open the box and was
4 I ever there before that. You can do that. But you either are
5 going to have to call the witness who wrote the report and ask
6 when surveillance began or some other witness who would be in a
7 position to testify to it or wait for cross-examination of a
8 witness who could testify to it. He can't testify as to when
9 the surveillance began. He can testify as to when the account
10 was opened. You understand what I'm saying?

11 MR. SCOTTON: Yes, Your Honor.

12 THE COURT: Okay.

13 MS. MITRANI: Your Honor, since we are here, on an
14 unrelated matter, I don't think Your Honor gave the jury an
15 instruction that you may see lawyers or parties and they can't
16 talk to you.

17 THE COURT: I'll tell them on the next break.

18 MS. MITRANI: Thank you, Your Honor.

19 (Thereupon, the following was heard in open court.)

20 THE COURT: We are going to be take a little break.
21 Before we do that, let me just tell you, I neglected to tell
22 all of you the other day, you may have noticed you may see some
23 of the parties or people working with them around the
24 courthouse. If you do and they don't say hello to you, they
25 are not being rude. I have instructed them not to say hello.

1 The reason is because if other people see you talking to them
2 and don't hear what you are talking about, they might get the
3 wrong idea and think maybe you are talking about the case. And
4 to avoid that problem altogether, I instruct them to please not
5 have any interactions with the jurors. So please don't think
6 they are rude if they don't say hello. But if I see you, I
7 will say hello.

8 We will see you back here at 10:25. All rise for the
9 jury.

10 (Thereupon, the jury exited the courtroom at
11 10:11 a.m.)

12 THE COURT: All righty. We will be ready to begin
13 again at 10:25.

14 MS. MITRANI: Thank you, Your Honor.

15 MR. SCOTTON: Your Honor, can I make like a quick
16 request? I don't know if everybody feel the same thing. I'm
17 shaking in here. I'm so cold in here. I don't know if we can
18 adjust the AC.

19 THE COURT: We have a problem with the air
20 conditioning. I think I may have explained this to you before
21 since it may seem unusual since last week it was like a sauna
22 in here. I don't control the thermostat. No one in here
23 controls the thermostat. There is a central control somewhere
24 in a hidden room downstairs that is controlled by someone from
25 the general services administration. When I call them and ask

1 them to change it, what we have discovered is we basically have
2 very cold or very hot. We've never been able to get something
3 in between. And so I'm sorry. I recognize it can be cold, but
4 I think we have concluded that colder is better than sauna and
5 sweating. So I will try, but I have to apologize up front, I
6 just don't think that we are going to be able to do anything
7 about that. All right. See you at 10:25.

8 (Thereupon, a recess was taken at 10:13 a.m.)

9 (Thereupon, the jury entered the courtroom at
10 10:25 a.m.)

11 THE COURT: All right. Welcome back. Please be
12 seated. And, Mr. Baker, I just need to remind you that you are
13 still under oath. Do you understand?

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Thank you very much. Whenever you are
16 ready, Mr. Scotton, you may continue.

17 BY MR. SCOTTON:

18 Q We are just going to finish up with this. So I open the
19 account with you somewhere around December 2009?

20 A Right.

21 Q I didn't open before that?

22 A No, December 29, 2009.

23 Q Do you recall that I have a family members that live next
24 by the store?

25 A Say that question again.

1 Q Do you remember I have family members that live by the
2 store?

3 A I don't remember.

4 Q That my mother lived by?

5 A I recall you saying your mother lived nearby. I don't
6 recall --

7 Q Have Renata, an employee of mine, went to your store
8 before?

9 A I remember Renata, yeah.

10 Q She used to do your store, pick up, drop off packets?

11 A She used to bring packages by, drop them off.

12 Q Have I came to the store with my wife before? Do you
13 recall that?

14 A I don't know that we were ever formally introduced to your
15 wife. I believe she stayed in the car.

16 Q If I showed you a picture, would I refresh your mind?

17 A Maybe.

18 MR. SCOTTON: Your Honor, may I?

19 THE COURT: Yes.

20 MS. MITRANI: Mr. Scotton.

21 THE WITNESS: I don't recall.

22 BY MR. SCOTTON:

23 Q You don't recall?

24 A No.

25 Q During the cross-examination from the government,

1 government claims that most the box that I shipped through you
2 guys, I mean through your store, was a big box, but ever see
3 small boxes also?

4 A Yes.

5 Q You can say a couple small box?

6 A A couple small boxes.

7 Q You deny the defendant used to use a third party company
8 to ship his box?

9 A I don't know who provided those shipping labels.

10 Q Have you told the defendant anything about fraud?

11 A Have I told the defendant anything about fraud? No.

12 Q Have the defendant call you several times when he's out of
13 town?

14 A Yes.

15 Q And also have you called the defendant sometimes, the
16 defendant advise you that he's out of town?

17 A I would call to let you know you had packages that we
18 received, yes.

19 Q And what kind of arrangement did we make?

20 A Either we would hold them until you got back or if you
21 would fax us the label, Renata would drop the labels off or
22 they would be emailed.

23 Q During the process, you never have problem with the
24 defendant having so many packages to come to your store, have
25 you?

1 A I don't ever have problems with anybody's packages coming
2 to my store, no.

3 Q Have the defendant asked to pack the merchandise when he's
4 out of town?

5 A Yes.

6 Q Did the defendant pay over the phone with the credit card?

7 A Always paid.

8 Q Any credit card payments by the defendant get reject by
9 the bank?

10 A Not that I'm aware of.

11 Q Do you recall one time when I was out of town preparing
12 for a race during taxes, you called the defendant and defendant
13 told you to go ahead prepare the packets to be shipping and the
14 defendant require the email address? Do you recall that?

15 A I don't recall that specific conversation.

16 Q Do you recall the defendant advise you that when the
17 defendant receive the labels, the defendant would email the
18 labels to you?

19 A We have done that before, yes.

20 Q Have the defendant email his labels before?

21 A Yes.

22 Q Is anything wrong with emailing the labels to you?

23 A No.

24 Q Is there anything wrong over there with emailing the
25 labels to anybody?

1 A (Shaking head.)

2 Q Government has showed you a document that shows with the
3 PAKC, I'm assuming it's CS9 was UPS label. It came from
4 merchandise that can was from Sharp Company. Do you recall
5 that label?

6 A There are so many labels, that particular one offhand, no.

7 Q The labels that come from the companies that deliver the
8 merchandise to me.

9 A The boxes that come into my store have labels on it coming
10 from a company, yes.

11 Q And is auto parts, electronics, tires?

12 A Everything under the sun.

13 Q Is anything wrong with those labels?

14 A Not that I'm aware of.

15 Q No crime in the labels?

16 A Again, not that I'm aware of.

17 Q Scott, is there any crime buying merchandise online?

18 A No.

19 Q Next to your store, you have got several different major
20 stores. Can you describe to the jury a couple of those stores?

21 A Sam's Club, Lens Crafters, Whole Foods, Home Depot.

22 Across the street we have the mall. Next to that we have Best
23 Buy.

24 Q I got Office Depot across the street also?

25 A Yes.

1 Q That's the type store that most of the time the defendant
2 buy the merchandise from?

3 A I recall Best Buy being the place.

4 Q Nothing wrong with buying merchandise from them either,
5 right?

6 A No.

7 Q So the defendant used to buy the merchandise, bring it to
8 your store, and you guys used to pack those merchandise to the
9 defendant, right?

10 A We will package it for you, correct.

11 Q Later on, the company Fed-Ex or UPS or DHL used to pick up
12 those packages and take it off to final destination?

13 A Primarily DHL.

14 Q Have anybody, any of those drivers from Federal Express or
15 UPS or DHL say anything to you that the defendant's packages
16 have been fraudulently shipped?

17 MS. MITRANI: Objection.

18 THE COURT: Sustained.

19 BY MR. SCOTTON:

20 Q Have anybody has making a comment to you from the
21 companies Fed-Ex or UPS?

22 MS. MITRANI: Objection.

23 THE COURT: Sustained.

24 MR. SCOTTON: What do you mean, Your Honor?

25 THE COURT: I mean sustained. That means you ask

1 another question.

2 BY MR. SCOTTON:

3 Q In the packages that come to your store, is there anything
4 illegal in those packages?

5 A Not that I am aware of.

6 Q Have anybody else come to your store to drop off those
7 packages for the defendant besides Renata?

8 A That I can recall, no.

9 Q Have any other person drop any other package to your store
10 to ship to Brazil?

11 A Anybody that's not associated with you?

12 Q Yes.

13 A Yes.

14 Q So defendant is not the only one that is shipping packages
15 to Brazil, correct?

16 A Lots of people ship packages to Brazil.

17 Q Is anybody else, any store besides the defendant, shipping
18 international?

19 A Lots of my customers are international.

20 Q Besides the defendant's shipment, have you seen any other
21 shipment from your store that went to Brazil?

22 A I have shipments that go to Brazil on a regular basis.

23 Q Do you recall the defendant once in the store with a
24 gentleman named Osvaine Duarte?

25 A I recall you coming into the store with a friend or

1 colleague, but I don't recall his name offhand.

2 Q If I show his picture, might refresh your mind?

3 A It might.

4 MR. SCOTTON: Your Honor, do you mind?

5 THE COURT: That's fine.

6 THE WITNESS: He looks familiar. Again, with a
7 hundred percent certainty, I don't.

8 BY MR. SCOTTON:

9 Q Have Mr. Osvaine Duarte also dropped packages to the store
10 on my behalf?

11 A Not that I recall.

12 Q Most of the time you and your partner used to be together
13 in the store, correct?

14 A Most of the time.

15 Q But you are there by yourself or he be there by himself as
16 well?

17 A Yes.

18 Q So after one year that I have done business with your
19 company, the contract expire, have you guys called back the
20 defendant to ask the defendant if you want to continue
21 business?

22 A The contract was for 18 months, so at the end of that 18
23 months, I don't think we were able to reach you.

24 Q Did you try even to renew the contract with me?

25 A I believe so.

1 Q What the defendant answer was?

2 A I don't think I got an answer.

3 Q Have the defendant advised the defendant no longer wish to
4 renew the contract because the defendant open a store of his
5 own?

6 A I don't recall how it ended. I just know that we closed
7 the box out after a period of time of either not seeing you or
8 not hearing from you.

9 Q So your partner never have advised the defendant also
10 opened a pack ship store in Boca Raton?

11 A We were aware that there was a -- that you were doing some
12 business with somebody on the east side of town on Federal
13 Highway, I believe, that it was a closer or more convenient
14 place for you.

15 Q During the time the defendant has done business with your
16 company, did you thought the defendant was doing something
17 wrong?

18 A Not at the beginning, but with packages of that volume and
19 that size going out, it's -- we always question on how the
20 merchandise was being paid for on the other end. It's
21 expensive boxes and why people would spend that kind of money
22 to receive those packages, it was always a question. But
23 again, it's on your account.

24 Q By looking at labels, can you tell how much it was costing
25 to ship those packages?

1 A No.

2 Q You couldn't tell how much it is?

3 A No, I couldn't tell by looking at the labels.

4 Q So you don't understand the perspective of shipping those
5 packages from Brazil, why someone would buy four tires from
6 Brazil?

7 A I can understand why they would want to the buy four
8 tires.

9 Q Why do you think they might want to buy four tires to ship
10 to Brazil?

11 A They need four tires on their car.

12 Q Why do you think they need to buy tires from United States
13 to go to Brazil?

14 A I can only speculate that it's more expensive to buy in
15 Brazil.

16 Q Have your partner complained to you about the defendant?

17 A No.

18 Q Have your partner complained to you any illegal activity
19 doing about the defendant?

20 A Any illegal --

21 Q Illegal activity.

22 A No.

23 Q The defendant has always been a good client. Defendant
24 has always pay his bills. The defendant always show
25 credentials, never hide his identity or address or anything

1 related to him. So the defendant is who he is, correct?

2 MS. MITRANI: Objection to the form of the question.

3 THE COURT: Sustained. You can ask it, but you have
4 to ask one at a time.

5 BY MR. SCOTTON:

6 Q Have the defendant hide himself, the reality of who he is?

7 A Not that I'm aware of, no.

8 Q Do you have a knowledge the defendant was a professional
9 race car driver?

10 A Yes.

11 Q Have you searched the defendant's website?

12 A I have seen it, yes.

13 Q Have you seen the videos on You Tube from defendant
14 racing?

15 A Yes.

16 Q Did you think the defendant is a criminal?

17 A No.

18 Q Did you think the defendant is a fugitive from the
19 justice?

20 MS. MITRANI: Objection, Your Honor.

21 THE COURT: What's the objection?

22 MS. MITRANI: To the form and beyond the scope of
23 this.

24 THE COURT: Overruled.

25 THE WITNESS: Ask the question again.

1 BY MR. SCOTTON:

2 Q Do you think the defendant is a fugitive from justice?

3 A Did I or do I?

4 Q Do you think?

5 A Do I? I don't know.

6 Q So basic, during one year, you didn't see anything wrong
7 with what the defendant was doing, right? The defendant
8 present you credentials, you have the defendant numbers,
9 correct?

10 A Right.

11 Q You always manage to contact the defendant?

12 A Correct.

13 Q The defendant has provided you with email address?

14 A Correct.

15 Q So you know who the defendant is?

16 A I do, yes.

17 MR. SCOTTON: No more questions, Your Honor.

18 THE COURT: Any redirect?

19 MS. MITRANI: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. MITRANI:

22 Q Mr. Baker, of all the packages that the defendant brought
23 to your store, what percentage could you put on the ones that
24 you packed for him?

25 A Small percentage, maybe ten percent.

1 Q And how about the remaining 90 percent or so of packages,
2 what about them?

3 A They would stay in the boxes that they were received in
4 from UPS or Fed-Ex.

5 Q And in addition to sending -- resending the packages you
6 received, sending them out through Pak Mail, did the defendant
7 ever bring new packages into the store?

8 A Bring -- I'm sorry?

9 Q Bring packages to the store that had not been received by
10 your store.

11 A Yes.

12 Q And of those, what percentage were you asked to pack up
13 and what percentage were already packed up?

14 A Again, maybe 20 percent of the ones that were brought from
15 outside, if it was something that was purchased at a retailer,
16 we would pack it. In the case of somebody dropping it off from
17 a place that was received somewhere else, it was already boxed
18 and we would just relabel it.

19 Q The defendant asked you whether other defendants shipped
20 to Brazil and you answered yes. Do you recall that?

21 A Yes.

22 Q How would you characterize the volume of the defendant's
23 shipments to Brazil as compared to your other clients?

24 A Very heavy, a large volume.

25 Q The defendant spoke to you about that he paid you for --

1 do you remember the line of questions that he paid you for the
2 mailbox and other items? Do you recall that?

3 A Yes.

4 Q So did the defendant pay you for the use of the mailbox?

5 A Yes.

6 Q Did the defendant pay you for the instances where you
7 would pack items up for him?

8 A Yes.

9 Q Did the defendant ever pay Pak Mail to ship for him?

10 A No.

11 Q Did the defendant ever request that Pak Mail ship any of
12 his shipments for him?

13 A No.

14 Q Were all the packages that the defendant brought to Pak
15 Mail, received by Pak Mail for shipping, did they all go out
16 under labels that the defendant provided for those packages?

17 A Yes.

18 MS. MITRANI: No further questions, Your Honor.

19 THE COURT: Thank you. You may step down.

20 The government may call its next witness.

21 MS. MITRANI: The government calls Juan Tezak.

22 THE COURT: Good morning, please raise your right hand
23 for me.

24 JUAN TEZAK

25 Having been first duly sworn on oath, was examined and

1 testified as follows:

2 THE COURT: Thank you. Please be seated. And make
3 yourself comfortable. Pull the microphone up and state your
4 full name spelling it for the record. Thank you.

5 THE WITNESS: Good morning. It Juan Tezak, J-U-A-N,
6 last name Tezak, T-E-Z-A-K.

7 DIRECT EXAMINATION

8 BY MS. MITRANI:

9 Q Good morning, Mr. Tezak. How are you today?

10 A Fine, thanks.

11 Q Can you tell the members of the jury a little bit about
12 your background, briefly where were you born and a little bit
13 about your educational experience.

14 A I was born and raised in Venezuela. I have college degree
15 in animal science in 1978. But since 1980, I was working in
16 micromechanics, precision machining. That's what I am still
17 doing more or less. Some changes that you do during your life,
18 but that's what I still do. I immigrate to the US in 2001.
19 And I am happy grandfather of four young childs. And that's it
20 more or less, not a big story.

21 Q It's a pretty good story. Sir, did you come to purchase
22 and own a Pak Mail store here in Florida?

23 A Yes.

24 Q And as best as you can remember, Mr. Tezak, when did you
25 purchase this Pak Mail store?

1 A October 2004.

2 Q Can you tell the members of the jury a little bit about
3 the circumstances under which you purchased the store. In
4 other words, was it an existing business? Did you build it
5 from scratch? Just give us a little detail.

6 A It wasn't an existing business. I was looking for
7 something that would provide me with an office to my business
8 that I keep on doing with Venezuela, my machining business and
9 have like a back office and a front store and I could make some
10 extra money doing some packaging and shipping. And that was
11 the main reason.

12 It worked for me for about five years, four years and a
13 half. We were doing mostly regular packing and shipping and
14 also some complicated packaging for artwork and small moves.
15 And that's what we were doing there.

16 Q Okay. And can you tell us just a little bit about your
17 Pak Mail store in terms of what services, the main services
18 that you offered to the clients of your Pak Mail store?

19 A It was mainly two type of services. Regular shipping, the
20 person come with a package and just need to ship it to whatever
21 place in the U.S. or overseas. We have accounts with UPS or
22 FedEx or DHL. We check out the prices. We gave the price to
23 the customer, and we do the shipping on their behalf.

24 And the other part of the business was mostly packaging,
25 as I told you, complicated packaging for expensive artwork and

1 sculptures. And we also, the Pak Mail stores and all of this
2 packing and shipping has a third activity that was like a drop
3 box -- sorry, we have also mailboxes, private mailboxes that
4 was part of the services. And we also receive drop packages
5 from customers that had they own account with UPS, Fed-Ex, or
6 DHL. And we receive it there and give it to the drivers when
7 they come to pick up the other boxes or packages.

8 Q And in terms of your experience shipping, shipping items,
9 did you become familiar with shipping items to Brazil?

10 A Yes.

11 Q And how would you characterize the costs of shipping items
12 to Brazil?

13 A Most of the countries in Latin America and some other
14 countries in the world has a very high rate on shipping. It's
15 cheaper if you want to send a box from here to Japan. If you
16 want to send it to South America or Brazil or Venezuela or
17 other countries, we have high rates, almost double.

18 Q Why is it cheaper to send --

19 A I don't know. That's the way they categorize us. DHL is
20 almost double for Venezuela. It's three hours flight from
21 here. Brazil is six hours or five hours flight from here.
22 It's almost double if you want to ship to China.

23 Q That's just based on your understanding of what DHL would
24 charge?

25 A I know that, yes. And also duties, particular in Brazil,

1 are very high for everything you ship there.

2 Q Now, can you explain what duties are?

3 A Import duties. They have a regular import duties that
4 other countries have, but they have a special duties for things
5 that come from couriers. And in my times, it was more than
6 60 percent, I think it was 90 if I don't mistake it, a flat
7 rate for everything that you import to Brazil via courier.

8 Q Wait. I'm sorry. I want to make sure I understood. You
9 are saying the country of Brazil would charge something 60 to
10 90 percent?

11 A Import duties.

12 Q 60 to 90 percent of what?

13 A Of the value you declare on the shipping.

14 Q Of the value you declare on the --?

15 A Exactly. If you ship something that cost \$100, you will
16 pay \$70 or whatever is the rate, I think was 90, but I am not a
17 hundred percent sure, but I know it was very high. For
18 example, Columbia is 5 percent, everything you send there. You
19 send a laptop to Columbia, you will pay 5 percent. If you send
20 it to Brazil, it's going to be more than 60.

21 Q These are moneys that are paid over to the country?

22 A The customer has to pay to customs in order to retrieve
23 the item and take it home. So it was very complicated.

24 Q So did your Pak Mail store -- by the way, where was
25 your -- I don't think I asked you, where was your Pak Mail

1 store located?

2 A Boca Raton, Federal Highway.

3 Q Did it rent out mailboxes or private boxes for delivery of
4 mail?

5 A Yes.

6 Q What was your procedure to do that, sir?

7 A The customer showed up. We have a couple of forms. One
8 is a Pak Mail form. The other is mandatory form from the U.S.
9 Postal Services. And they have to fill it up with all the
10 addresses and contacts. And also they have to provide two
11 pictures IDs for the file. So then you keep it on the file.

12 They pay you for one -- you have three options, three
13 months, six months, or one year, depend how long do you need
14 it. And we give you the key, and that's it. You receive your
15 mail. The postman come to our front desk, deliver the mail,
16 and we sort it on the boxes.

17 MS. MITRANI: Your Honor, may I approach?

18 THE COURT: Yes.

19 BY MS. MITRANI:

20 Q Mr. Tezak, I'm showing you what's been marked for
21 identification as Government's Exhibit 300. There are two
22 pictures. Do you see that?

23 A Yes.

24 Q Do you recognize that?

25 A Yes.

1 Q What is it?

2 A This is the Pak Mail store I own in Boca Raton. This is
3 the front of the store and this is the inside of the store.

4 Q And is that a fair and accurate depiction of how the store
5 looked on the outside and on the inside?

6 A Yes.

7 MS. MITRANI: Your Honor, the government would offer
8 300.

9 THE COURT: Any objection?

10 MR. SCOTTON: No, Your Honor.

11 THE COURT: Government's 300 is can admitted.

12 (Thereupon, Government's 300 received in evidence.)

13 BY MS. MITRANI:

14 Q Okay. I'm showing you what's been marked as Government's
15 Composite Exhibit 1. That's Exhibit 1A, B, and C. Do you
16 recognize this?

17 A Yes, I do. This is the mandatory form for postal
18 services.

19 Q To open a mailbox?

20 A To open a mailbox.

21 Q And are all the documents --

22 A And all the documents, exactly, that come with that, the
23 rental agreement, the privacy act statement, and a copy of the
24 driver license.

25 Q And 1B and 1C also contain documents associated with the

1 opening of that mailbox at your store?

2 A Yes. Can I see this one also?

3 Q Of course.

4 And, sir, these are -- you already saw that one.

5 Exhibit 1, are those business records of Pak Mail?

6 A Yes.

7 Q Kept in the ordinary course of business?

8 A Yes.

9 Q And it was your regular practice to keep these forms, get
10 these forms, and maintain these forms?

11 A Yes.

12 MS. MITRANI: Your Honor, the government would offer
13 Composite 1, that is 1A through and including 1C into evidence.

14 THE COURT: Any objection?

15 MR. SCOTTON: No, Your Honor.

16 THE COURT: Government's Composite 1 is admitted.

17 (Thereupon, Government's 1 received in evidence.)

18 BY MS. MITRANI:

19 Q Let's start with Exhibit 300. All right. Mr. Tezak, can
20 you tell us what we are looking at here at February 300, the
21 first page?

22 A The front of the store, the entrance.

23 Q Of your Pak Mail store?

24 A Yes.

25 Q The address I sigh a number. It's 2234?

1 A North Federal Highway, yes, Boca Raton.

2 Q And see the next picture? Can you tell the members of the
3 jury what they are looking at here, the second page of
4 Government's Exhibit 300?

5 A Yes. That's the main place of the store. There are the
6 working desks. There's the computer. This is small door in
7 the back which is the back office. And these are -- the right
8 side are the mailboxes.

9 Q So now we are going to turn to the first page of
10 Government's Exhibit 1A. We are going to zoom in on the first
11 part first and then we will zoom in on the second part second.
12 So this document we are looking at is a PS form 1583
13 application for delivery of mail through the agent, correct?

14 A That's correct.

15 Q And this particular mailbox was applied for on
16 October 30th, 2008, is that correct, sir?

17 A That's correct.

18 Q All right. And in box 2, can you tell us the name of the
19 applicant for a mailbox at your facility?

20 A Rogerio Scotton.

21 Q And underneath that it says in box 4, applicant authorizes
22 delivery to and in care of, and he fills in what?

23 A Roger Racing and Brazil Express.

24 Q If we go to box 3, it says, address to be used for
25 delivery including zip. And what it is that address, sir?

1 A This is the address of our Pak Mail store. This is where
2 the mail of Roggerio or whatever the two companies will be
3 addressed to.

4 Q And where it says PMB327, Mr. Tezak, what is that?

5 A That's private mailbox. We don't rent PO boxes because it
6 belongs to the post office. We rent private mailboxes. We
7 have to put that because the people have to know it's a private
8 mailbox and not a PO box.

9 Q Was this the number assigned to Mr. Rogerio Scotton?

10 A As far as I remember, yes. What it says there, that's the
11 number.

12 Q Okay. Then I guess we go down to box 6. It says, name of
13 applicant, Rogerio Scotton. And then we go to box 7 and it
14 says, the applicant's home address. And what is listed as the
15 applicant's home address?

16 A Yes.

17 Q Is that 4 --

18 A Sorry?

19 Q I'm sorry. Is the applicant, Mr. Scotton, does he list
20 his home address as 463 Boca Raton Road, Boca Raton, Florida
21 33431?

22 A That's correct. That's what he says.

23 Q And then the telephone number that Mr. Rogerio Scotton
24 gives is 516 -- is that 368?

25 A Yes, 7347.

1 Q The telephone number is listed at two places, right, on
2 box 7 and on box 10?

3 A That's correct.

4 Q All right. And here the indication is that the home
5 address is the same as the business address?

6 A As the business address, that's correct.

7 Q All right. Then in box 9 as the name of his firm or
8 corporation, Mr. Scotton indicates that it's Roger Racing slash
9 Brazil Express, correct?

10 A Exactly. The same as the box No. 3 over there.

11 Q Right, that we saw earlier that's no longer on the screen.

12 A Right.

13 Q Mr. Scotton gave you a driver's license, correct?

14 A That's correct.

15 Q And then what is box 16 all the way on the bottom right?

16 A Yes.

17 Q What is that, Mr. Tezak?

18 A That is his signature.

19 Q And did you rent this box to the defendant?

20 A Yes.

21 Q So I am going to the third page of 1A which is PAKBR-11.

22 And what is that, Mr. Tezak?

23 A That means that the mailbox holder agrees that we can
24 receive on his behalf the mail and we can sign for special
25 receipts of mail, certified mail.

1 Q And then if we go to the next one, it might be a little
2 hard to read so I'm going to actually give you the document.
3 What is that?

4 A This is a driver license from the -- from the mailbox
5 holder, from Roggerio.

6 Q Is this the driver's license that Mr. Scotton provided to
7 you in connection with the opening of the box?

8 A Yes, as far as I remember.

9 Q And it's a dark copy, but does that list his address as PO
10 Box 629, Boca Raton, Florida?

11 A That's what it says here, yes.

12 Q And this is part of 1A, just for the record.

13 I am going to go to Exhibit 1B, which is PAKBR-6. And,
14 Mr. Tezak, can you tell the members of the jury what they are
15 looking at here, sir?

16 A This is our regular application for a mailbox. This is
17 the one that we use for -- this is not the one from the post
18 office. This is the one that we use --

19 Q Internally?

20 A Internally, yes.

21 Q At the top it says it's PMB327 and personal, correct?

22 A That's correct.

23 Q And it lists the defendant's name in the body of the
24 application, Roggerio Chavez Scotton, correct?

25 A That's correct.

1 Q With that same 463 Boca Raton Road address, correct?

2 A That's correct.

3 Q And it says person -- name of persons entitled to receive
4 mail. It lists Roger Scotton and underneath it lists Cirlene
5 Scotton, correct?

6 A Correct.

7 Q Underneath business or commercial use, again it indicates
8 Roger Racing slash Brazil Express, correct?

9 A Correct.

10 Q And underneath, it says, type of business conducted,
11 shopping slash online, correct?

12 A Correct.

13 Q Business address the same. And the name and title the
14 chief executive is listed as Roger Scotton, correct?

15 A Correct.

16 Q And then at the bottom is Pak Mail centers, on the left
17 side it has Roger Scotton's name, a signature, and the date of
18 October 30, 2008, correct?

19 A Correct.

20 Q And on the right-hand, is that from you or an employee
21 from your store?

22 A Yes.

23 Q Finally, look at 1C. And can you tell the members of the
24 jury what they are seeing here at Exhibit 1C?

25 A This is the mail service agreement with our

1 responsibilities and the responsibilities of them. It's a
2 standard form for a business.

3 Q Mr. Tezak, did you come to know the individual who rented
4 that mailbox, Rogerio Scotton?

5 A Yes.

6 Q Tell us a little bit about how you got to know him.

7 A He used to come at least, I guess, three times a week to
8 drop packages in order to be picked up, mostly for DHL. And he
9 came, as I told you, three times, three times a week, mostly in
10 the afternoons dropping off packages. It was a small store.
11 Whenever somebody come three times a week for two months, you
12 can usually start to know him a little bit, chat. We used to
13 have a Brazilian employee which is his same nationality and
14 that always bring you to a chat. And we get to know him, not
15 personally, but we spoke.

16 Q Well, do you see him in the courtroom today?

17 A Yes.

18 Q Can you identify him by what he's wearing?

19 A A suit and a tie, navy suit.

20 MS. MITRANI: Your Honor, let the record reflect that
21 Mr. Tezak has identified the defendant.

22 THE COURT: The record will so reflect.

23 MS. MITRANI: Thank you.

24 BY MS. MITRANI:

25 Q And so what kind of packages was the defendant dropping

1 off at your store?

2 A Usually pretty large packages, address it to somebody in
3 Brazil, to particular people in Brazil, private people.

4 Q And did he also drop off smaller packages?

5 A I remember the larger one because it's always -- you know,
6 we in the business, we know that large packages are more
7 expensive and they will get more, I guess, small packages also.
8 I cannot swear to that.

9 Q Did you know what he was shipping to Brazil?

10 A I think mostly was electronics. I saw him shipping tires
11 also to Brazil, full set of four tires.

12 Q Does that tire package stand out in your mind?

13 A Yes.

14 Q Why is that?

15 A Are big, heavy and very expensive to ship via courier.

16 Q By courier, you mean by DHL, Fed-Ex, or UPS?

17 A Exactly.

18 Q How much would DHL or Fed-Ex charge to ship four tires to
19 Brazil?

20 A Around \$1,000, more or less, between 800 and 1200 easy.

21 Q And would that include the duties?

22 A No, the duties is different. The duties is once it gets
23 there. Once it gets there comes the duties in Brazil which is
24 different. But you have to pay in Brazil. Here you pay to the
25 carrier, you pay the fee of the shipping here in the U.S.

1 Q When the defendant brought his packages to your store,
2 were the labels already on or not on or what do you recall
3 about that?

4 A The labels were on all the time because you -- in order to
5 do a dropoff, you just bring your box closed, ready to go with
6 your form, tape it on the box, and you have to put also some
7 documents inside which are the invoices for customs when it
8 gets to destination. And that's more or less what it is. You
9 just put it there and we give it to the carrier when they come.

10 Q Did the defendant ever come to you and request that you
11 ship the package for him?

12 A No.

13 Q Did the defendant ever purchase shipping services from Pak
14 Mail?

15 A As far as I remember, no.

16 Q Did you try to solicit the defendant's business to ship
17 packages?

18 A Yes.

19 Q So can you tell members of the jury a little bit about how
20 that went?

21 A We were attracted because they were large packages. Large
22 packages are big -- usually big fees, and big fees are usually
23 the money extra.

24 When somebody comes with a dropoff, the couriers, DHL or
25 UPS or Fed-Ex, they pay you one dollar for the dropoff, don't

1 matter the size of the box. So in our case, we had very good
2 rates with the DHL. We had one of the first ones to have
3 international account on the Pak Mail system. So we were
4 working a lot with DHL. I knew that he had very good rates so
5 I would try to get part of the business to try to, you know, to
6 ship his items through our account and make some extra money,
7 not just one dollar. If they giving us a discount or
8 something, I would be happy to give him something else. So
9 yes, I was trying to get the business for our store.

10 Q Did you engage in any discussions with the defendant?

11 A Discussions? Normally, no. Just on the last day maybe
12 when he was in the store, but during the relation -- during the
13 normal time, no.

14 Q Let me rephrase that question. Did you negotiate anything
15 with the defendant in terms of trying to get his business
16 with --

17 A No. I asked him --

18 MR. SCOTTON: Object, Your Honor.

19 THE COURT: What is the objection, please?

20 MR. SCOTTON: Leading.

21 THE COURT: Sustained.

22 BY MS. MITRANI:

23 Q Did you have any negotiations with the defendant?

24 MR. SCOTTON: Object, Your Honor.

25 THE COURT: What is the --

1 MR. SCOTTON: Leading.

2 THE COURT: Overruled.

3 THE WITNESS: I was trying several times to get the
4 account so I asked him to give me the prices or let me give you
5 a quote, let me see if I can do it through threw my account.
6 That was very unsuccessful. He was very evasive and no way to
7 get the account.

8 BY MS. MITRANI:

9 Q So did anything ever come of those negotiations?

10 A No.

11 Q Did there come a time when the relationship between Pak
12 Mail and the defendant ended?

13 A Sorry. Again?

14 Q Did there come a time when the relationship between Pak
15 Mail and the defendant ended?

16 A Yes.

17 Q Who terminated that account?

18 A Myself.

19 Q Why did you do that?

20 A Because was suspicious for me, the whole activity.

21 Q Did it have anything to do with boxes being in your store?

22 A Yes. I was checking the boxes to see -- to try to get a
23 quote for myself.

24 Q Let me stop you. When did you terminate the account, do
25 you remember?

1 A It has to be the first couple -- the first three months of
2 2009 because I sold the store in April. So it has to be before
3 I sold the store. It was around maybe February, March.

4 MS. MITRANI: No further questions, Your Honor.

5 THE COURT: All right. Thank you.

6 Cross-examination.

7 CROSS EXAMINATION

8 BY MR. SCOTTON:

9 Q Good morning, Mr. Juan.

10 A Good morning.

11 Q For the first question, in reference to termination of the
12 business between the defendant and you, was not the true that
13 you cannot hold so much big boxes inside your place? You
14 advised you can't hold big boxes inside the place, do you
15 recall that?

16 A Maybe was one. We have two main reasons. Maybe that was
17 one and the other one was that you never showed me the second
18 ID that we asked you to submit. And we didn't -- I didn't
19 want -- I didn't want more your business.

20 Q Do you recall a problem also that some of my clients used
21 to ship packages directly to your store? Do you recall that?

22 A Maybe, maybe some.

23 Q The problem you told me that because they names is not on
24 post office agreement, I couldn't receive the packages over
25 there out of your store?

1 A Maybe, yes.

2 Q That they end up get upset with you, and I told you to go
3 ahead and close my PO box. Do you recall that?

4 A No, I don't recall that.

5 Q You don't recall that?

6 A No.

7 Q That I told you, if you can't handle my business, I will
8 take someplace else?

9 A I was very happy, but the discussion that day I don't
10 recall exactly what it was. But I was encouraging you to end
11 the -- to terminate the relationship.

12 Q When I opened the PO box with you, did I comply with all
13 the requirements?

14 A Well, it was a few of the requirements on there. You
15 complied with one ID and that's it.

16 Q What do you mean I complied with one ID?

17 A With the driver license only.

18 Q Exactly. Did you ask for another ID?

19 A We always ask for two, and you know that.

20 Q Did you ask me for another ID?

21 A We asked you for other ID.

22 Q Then why did you still open the box?

23 A That's why I closed it three months after.

24 THE COURT: Excuse me. Only one at a time can speak
25 or else the court reporter can't take it down. All right. So

1 please, let's each wait for the other to finish.

2 BY MR. SCOTTON:

3 Q You just say to the government the reason that you close
4 it is because you could not handle the box inside the store,
5 but now you say you close it because I just provide one ID?

6 A I told you from the beginning when you asked me you didn't
7 provide two IDs.

8 Q Just say yes or no to the question.

9 A What is the question again?

10 Q The question is how many IDs did I provide you? One,
11 right?

12 A One, right.

13 Q When did I open the store with you?

14 A What it says there, October 2008.

15 Q And when the PO box was closed?

16 A I'm not sure. I think it has to be the first three or
17 four months of 2009.

18 Q So you say that the reason that we closed the relationship
19 is because you only have one ID on file?

20 A One of the reasons. The other one was the boxes.

21 Q Took you three months to go ahead and come up with that
22 idea and let's decide to close the store?

23 A Yes, but all your activity was very suspicious.

24 Q Just answer the question, please.

25 MS. MITRANI: Your Honor, he shouldn't interrupt the

1 witness. The witness should be able to answer completely.

2 THE COURT: Mr. Scotton, you need to wait for the
3 witness to answer the question.

4 Mr. Tezak, you can answer the question that's asked,
5 but please limit yourself to answering only the question that
6 is asked. All right?

7 THE WITNESS: Thank you.

8 THE COURT: Thank you.

9 THE WITNESS: Can I answer now what was the other
10 reason or no?

11 THE COURT: Yes, that's the question that was asked.

12 THE WITNESS: Okay. The other reason was I was very
13 suspicious for all the activities. He was dropping boxes and
14 on the labels says that was box 6 by 6 by 6, and I knew that
15 were boxes 30 by 30 by 30. So I was trying to get a quote on
16 the boxes. And I get to know that he was simply lying in all
17 of his measure and weights. So I didn't like it and I decided
18 it was better you to go.

19 BY MR. SCOTTON:

20 Q So it is a crime right now if someone put --

21 A No, I don't like it.

22 Q Mr. Juan, let me ask you a question.

23 A Okay.

24 Q So the defendant present a label over there on the box.

25 The box say that the dimension or the weight it is off what the

1 box shows?

2 A Uh-huh.

3 Q That made a crime with that?

4 A I didn't like it.

5 Q You don't like it. You are the one who has implant the
6 laws and regulations for DHL and Fed-Ex?

7 A No, but in my store, yes.

8 Q Are you some kind of expert on Brazilian government duties
9 law?

10 A No, but I am an importer exporter for many years.

11 Q The question is, you are an expert on Brazilian government
12 laws?

13 A No.

14 Q You no longer own this store, do you?

15 A Sorry?

16 Q You no longer own the store, do you?

17 A No.

18 Q When on the application the government has showed you
19 state that I put the names on the application, but the writing,
20 the handwriting on that paper, is not the defendant, it is?

21 A No. That writing on the official form is usually from our
22 employees because the people don't like to -- it's confusing
23 for them, so we usually write it for.

24 Q Have the defendant rent a truck from you before? Do you
25 recall that?

1 A I don't recall.

2 Q You don't recall did I rent --

3 A That you rented a truck? No, I don't recall.

4 Q You rent -- you used to rent U-Haul trucks over there?

5 A Yes.

6 Q You don't recall the defendant has rent one from you?

7 A No, I don't recall.

8 Q Have the defendant provided with the corporation IDs?

9 A I don't recall.

10 Q But it is still open, the PO box?

11 A Your PO box?

12 Q Yes.

13 A I don't know. We close it in --

14 Q I'm asking, do you still open the PO box?

15 A No.

16 Q You didn't open the PO box for the defendant?

17 A We opened PO box, yes.

18 Q Exactly. I asked you if you received the corporation's

19 IDs?

20 A No. We don't ask for corporation IDs.

21 Q So anybody can come over there, put the name of the

22 company, and open PO box?

23 A Usually they do that, yes. We don't ask for the company

24 records.

25 Q For the defendant, have the defendant pay all the fees

1 required?

2 A Yes.

3 Q It is true that every single person, every store has
4 different rates for their accounts?

5 A I don't understand the question.

6 Q You mentioned to the government that DHL has high rates to
7 ship to Brazil?

8 A Yes.

9 Q But it's not the truth that every single person or every
10 store has different rates?

11 A Mostly, yes, depends on the tier, depends how many you
12 ship.

13 Q How can you say that every single box of tire that goes to
14 Brazil is over a thousand dollars?

15 A We had a very strong account. We were one of the number
16 one, so I knew it was very expensive.

17 Q Mr. Juan, how can you tell it's a thousand dollars for
18 every single person has different weights?

19 A Because you have something called dimensional weight.
20 Tires are at least 30 by 30 by 60. And that brings you to
21 150 pounds minimal shipment. If you put one pound in a box
22 that is one but is 30 by 30 by 60, is more or less the size of
23 the tires on a box, you will pay for 150, no matter what.

24 Q No matter what. So if the third party shipping company
25 that I use has different rates for DHL means what?

1 A Rates are different and tiers. Tiers is whatever you got
2 and depending how is your discount and how much do you ship.

3 And dimensional weight is always the same for everybody

4 Q So it is not right to say that every single different
5 person that shipping packets might have different rates?

6 A May have different rates maybe a little more or a little
7 less.

8 Q Just answer the question, yes or no?

9 A Yes.

10 Q Do you have any way to show and prove to the jury that you
11 haven't offered me some kind of different business?

12 A No.

13 Q Have you given me any kind of presentation of some kind of
14 business proposal?

15 A No.

16 Q Do you have any video recording from your store that shows
17 that we have engaged in some kind of conversation that you
18 tried to propose me some kind of business?

19 A No.

20 Q You don't?

21 MR. SCOTTON: No more questions, Your Honor.

22 THE COURT: Any redirect?

23 REDIRECT EXAMINATION

24 BY MS. MITRANI:

25 Q Did you engage in a conversation with the defendant about

1 shipping rates?

2 A Yes.

3 Q Is it the conversation that you talked about during your
4 direct examination?

5 A Yes.

6 MS. MITRANI: No further questions.

7 THE COURT: All right. You may step down. Thank you,
8 Mr. Tezak.

9 And the government may call it's next witness.

10 MS. MITRANI: Thank you, Your Honor. In the meantime,
11 we will get the next witness, Your Honor, the government would
12 offer composite 6 and composite 28 into evidence as official
13 certified records.

14 THE COURT: Is there any objection?

15 MR. SCOTTON: I didn't see that, Your Honor.

16 THE COURT: Do you want to show Mr. Scotton another
17 copy of it, please.

18 MS. MITRANI: I will. Why don't we address that after
19 this witness. I will withdraw that offer now.

20 THE COURT: All right. Thank you.

21 OTTO FERNANDEZ

22 Having been first duly sworn on oath, was examined and
23 testified as follows:

24 THE COURTROOM DEPUTY: Please be seated state and
25 spell your first and last name for the record.

1 THE WITNESS: First name is Otto, O-T-T-O, Fernandez,
2 F-E-R-N-A-N-D-E-Z.

3 DIRECT EXAMINATION

4 BY MS. MITRANI:

5 Q Good morning.

6 A Good morning.

7 Q Inspector Fernandez, can you tell the members of the jury
8 a little bit by whom you are employed and what your capacity
9 and your responsibilities are?

10 A I am a U.S. postal inspector for the U.S. postal
11 inspection service. I am a member of our violent crimes team.
12 We investigate cases involving -- that have a nexus to the
13 mail, identity theft, credit card fraud, check fraud, things of
14 that nature, as well as assaults on postal employees or
15 robberies of postal employees and burglaries, robberies of post
16 offices.

17 Q How long have you been a postal inspector?

18 A 15 years now.

19 Q And in your capacity as a postal inspector doing
20 investigations, have you become familiar with the process and
21 forms associated with opening a PO box?

22 A Yes.

23 Q Describe to the members of the jury what is the procedure
24 in order to open a PO box?

25 A Well, also before becoming a posting inspector, I was a

1 window clerk for the post office for about a year and a half.

2 Q As a window clerk, did you have direct experience in post
3 office boxes?

4 A Yes.

5 Q Based on all your experience, can you tell them --

6 A You would ask for two forms of identification, one being a
7 photo identification as well as some type of utility bill to
8 show a physical address, either a light bill from --

9 Q And then is there a specific form that gets filled out?

10 A Yes.

11 Q What is that form called?

12 A PO box application. The form number, I don't know it from
13 memory right now.

14 Q Is it a standard business record of the U.S. Postal
15 Service?

16 A Yes.

17 Q Is it a standard business form of the postal service?

18 A Yes.

19 Q Is it kept in the ordinary course of business?

20 A Yes, at the stations.

21 Q At the stations where they are filed?

22 A Yes.

23 Q All right.

24 MS. MITRANI: May I approach, Your Honor?

25 THE COURT: You may.

1 BY MS. MITRANI:

2 Q I'm showing you Government's Exhibit No. 11 which is a
3 two-page document. Do you recognize this item ?

4 A Yes.

5 Q What is it?

6 A Application for a post office box.

7 Q It was an application for a post office box in what
8 jurisdiction?

9 A Here in -- it's Florida, south Florida.

10 MS. MITRANI: Your Honor, the government would offer
11 11 into evidence.

12 THE COURT: Any objection?

13 MR. SCOTTON: No, Your Honor.

14 THE COURT: All right. Government's 11 is admitted.

15 (Thereupon, Government's 11 received in evidence.)

16 BY MS. MITRANI:

17 Q I am going to the second page of composite 11, and on the
18 top it says, application for post office or caller service part
19 one. And there's a box one that says, name to which box number
20 or numbers is or are assigned. Do you see that, Mr. Fernandez?

21 A Yes.

22 Q To whom was the box, this particular box assigned to?

23 A Roger Scotton, Brazil Express.

24 Q And the box number that we are talking about, is it the
25 629 that's on the upper right-hand corner?

1 A Yes.

2 Q All right. So if you get a signed a box number, how would
3 your address -- how would mail be addressed to you if it was
4 delivered to your post office box?

5 A The name and then the PO box number and then the city,
6 state, zip code of where that PO box is located.

7 Q That's all you need is the PO box, the city, state, and
8 zip code?

9 A Yes.

10 Q No further information is required?

11 A No.

12 Q So in this instance, it would be Roger Scotton, PO Box
13 629?

14 A Correct.

15 Q And here in the second box it says, name of person
16 applying, and it says Roger Scotton, president, correct?

17 A Yes.

18 Q And the next box it says address, which address -- excuse
19 me. It says address and then some other words and then does it
20 list the address of 398 Southeast Mizner Boulevard, No. 1921,
21 Boca Raton 33432?

22 A Yes.

23 Q And is the date of the application February 2nd, 2007?

24 A 27.

25 Q 27, sorry.

1 A Yes.

2 Q Okay. And going back up to Box 4A, Mr. Scotton checks off
3 what?

4 A Personal use.

5 Q The box would be for personal use. And in Box 11, what's
6 the information there?

7 A The type of identification that was used to open the box
8 which in this case was a passport and the passport number was
9 written.

10 Q And then on the bottom there's a signature that purports
11 to be of Rogerio Scotton, correct?

12 A Yes.

13 Q Or Roger Scotton, excuse me, Roger Scotton.

14 A Yes.

15 Q And this form is called a PS form 1093?

16 A Yes.

17 Q That's the standard form to open mailboxes?

18 A Yes.

19 Q And let's scroll down. And is this the second page of the
20 application?

21 A Yes, it is.

22 Q So Box 17 says, name of box, Brazil Express, correct?

23 A Yes.

24 Q Name of applicants, Roger Scotton?

25 A Yes.

1 Q And other authorized representative, Samara Scotton?

2 A Yes.

3 Q And it's stamped. It's from the Boca Raton station on
4 February 27, 2007?

5 A Correct.

6 Q That Boca Raton, Florida 33432, would that be what would
7 be on the address to address it to PO Box 629?

8 A Yes.

9 Q And then it has the signature on the bottom, correct?

10 A Yes, it does.

11 Q And then I guess the other page of this exhibit is just a
12 copy of the second page, correct?

13 A Yes.

14 MS. MITRANI: No further questions, Your Honor.

15 THE COURT: Cross.

16 CROSS EXAMINATION

17 BY MR. SCOTTON:

18 Q How are you doing, Mr. Fernandez?

19 A Good morning.

20 Q Good morning. Do you have any idea how long I have the PO
21 Box open over there with the post office?

22 A No.

23 Q Do you have any idea if I present all my credentials and
24 all my IDs to open the PO Box?

25 A Only a passport.

1 Q Is there any other IDs present?

2 A Not that I'm aware of, no.

3 Q What about my ex-wife's Samara Scotton, any IDs presented
4 by her?

5 A I don't know, don't know.

6 Q You don't know?

7 A No.

8 Q Because it's not you that opened that PO box for me,
9 right?

10 A Correct.

11 Q Have we seen each other before?

12 A Never.

13 Q Have you deal with me over there before?

14 A No.

15 Q Is there anything illegal opening a PO box?

16 A Illegal?

17 Q Yes.

18 A No.

19 Q Do you recall also, as you mentioned the requirements, did
20 you recall also if has been given to the post office some kind
21 of a bill, some kind of FPL or something to verify that I live
22 398 South Mizner Boulevard?

23 A Correct.

24 Q Are you familiar with the area?

25 A No.

1 Q Do you know how far really the PO box from the address is?

2 A No.

3 Q You don't? So do you agree with me that if the wife's ID
4 has not been presented to the post Office, they would not
5 receive mail for her?

6 A The procedure is the person that owns the box would come
7 and tell the clerk, I would like to add this person to receive
8 mail in the box.

9 Q But to be able to add somebody else, somebody else has to
10 present IDs as well?

11 A They don't have to present ID, no.

12 Q So I can put --

13 A Up to three individuals are allowed to.

14 Q Mickey Mouse, Sponge Bob?

15 A Any names. Because you are the only owner of the box, you
16 can put other names that are authorized to receive mail.

17 Q Mr. Fernandez, is the post Office allowed to receive
18 Fed-Ex, UPS, DHL to receive packages for client that rent the
19 PO box?

20 A As of right now, I believe they can.

21 Q Right, but back then?

22 A I don't know back then.

23 Q Post office now has a deal with Fed-Ex, correct?

24 A Yes.

25 Q So every single post office has a mailbox outside from

1 Federal Express?

2 A I don't know if every one does, but --

3 Q But that's what the agreement is, right?

4 A Yes.

5 Q But you are not sure if DHL and UPS and Federal Express
6 dropping packets into a clients to hold the PO box on a post
7 Office, do you?

8 A Back then, I'm not sure.

9 MR. SCOTTON: No more questions.

10 THE COURT: Any redirect?

11 MS. MITRANI: No, Your Honor.

12 THE COURT: Thank you. You may step down, Inspector.
13 And the government may call its next witness.

14 MS. MITRANI: The government calls John Lawrence.

15 JOHN LAWRENCE

16 Having been first duly sworn on oath, was examined and
17 testified as follows:

18 THE COURT: Please be seated. State and spell your
19 first and last name for the record.

20 THE WITNESS: John Lawrence, J-O-H-N, last name
21 L-A-W-R-E-N-C-E.

22 DIRECT EXAMINATION

23 BY MS. MITRANI:

24 Q Good morning, Mr. Lawrence.

25 A Hello.

1 Q Where are you from, Mr. Lawrence?

2 A Boca Raton. I have lived there since I was about 14, save
3 for the last six months, then I came back.

4 Q And did you attend college?

5 A Yes, I did.

6 Q Where did you go to school?

7 A FAU.

8 Q Did you obtain a degree?

9 A Yes, BA in communications.

10 Q In what year?

11 A 2001.

12 Q Did you come to work for a Super Postal Center?

13 A I did.

14 Q Can you tell the members of the jury from when to when you
15 worked there?

16 A Well, I was there three times, different times. The first
17 time was from '99 to 2001. Then the second time I believe it
18 was -- I'm trying to remember. It's been so long. About 2003
19 until about 2007 or so. And then again 2009 until about six
20 months ago, something like that more or less.

21 Q And what services or what was the business of Super Postal
22 Center?

23 A Packing and shipping. We used post Office, Fed-Ex, UPS,
24 DHL for a while while we were still using them, faxes, copies.
25 We would rent private mailboxes sort of like PO boxes, but you

1 can get Fed-Ex and UPS where you cannot at a post office box,
2 that kind of thing. If you picture a -- the UPS store, there
3 you go, that's essentially it.

4 Q And what were your responsibilities within the store?

5 A Same as everybody else's. I knew I handled the stuff with
6 the customers, pack things up for them, collect their money, do
7 notary services, copy things for them, fax things, rent boxes.
8 It's pretty straightforward. Everyone pretty much did the same
9 stuff. There was only three or four people that ever worked in
10 the store, like, at all times, so...

11 Q Did you have a standard procedure to open a private
12 mailbox for your customers?

13 A Yeah. They needed two forms of ID, one at least with a
14 picture. There was a list of things that we could accept as
15 far as the IDs, but we couldn't take a birth certificate,
16 Social Security card or -- was it a credit card? Yeah, or
17 credit card. Those three we couldn't take. But it was a long
18 list of other things we could take most people have on them
19 anyway. Once we had those, we would go into our computer and
20 we enter their information, put the ID numbers in there and
21 print out a form that they would sign. We would also grab a
22 small packet that had like the rules and regulations for the
23 mailboxes and a couple other little things for information for
24 our records and things like that, make a copy of everything
25 that we needed, keep one for ourselves, and send the other off

1 to the post office so they would have it in their records that
2 they would be receiving mail at that time.

3 Q Then would you file away the documents received from the
4 customer?

5 A Yes.

6 Q And that was the ordinary practice of the Super Postal
7 Center?

8 A Yes, it was.

9 Q I am showing you what's been marked for identification as
10 Government's Exhibit 301 which are three photographs. Do you
11 recognize these?

12 A I do.

13 Q What are they?

14 A This first one here, do you need me to show it or
15 anything?

16 Q Just do it general first, and we will go from there.

17 A This first one here is a picture of the front of the
18 store, a sign in the window with our advertisements in it.

19 The middle one here is our front counter, copy machine,
20 our little tchotchke things for sale, some ads, things like
21 that.

22 Third one here is a shot of our private mailboxes up in
23 the front by the window.

24 Q Is this a fair and accurate depiction of what the store
25 looked like both on the outside and the inside?

1 A Yes.

2 MS. MITRANI: Your Honor, the government would offer
3 301 into evidence.

4 THE COURT: Any objection?

5 MR. SCOTTON: No, Your Honor.

6 THE COURT: Government's 301 is admitted.

7 (Thereupon, Government's 301 received in evidence.)

8 BY MS. MITRANI:

9 Q I'm showing you Government's Exhibit No. 4. Is that an
10 application for delivery of mail for a --

11 MR. SCOTTON: Your Honor --

12 THE COURT: Yes.

13 MR. SCOTTON: Sidebar, please.

14 (Thereupon, the following was heard sidebar.)

15 MR. SCOTTON: I'm going to have to object to this
16 statement here. I don't see the receipt, because I opened the
17 account to them 2009 and I have a receipt here 2011, 2010. So
18 I'll need to see the whole complete application with the
19 receipts. I always paid them with a credit card so I should
20 have all the receipts here.

21 THE COURT: I'll tell you what we are going to do.

22 Ms. Mitrani will do what she needs to do to establish a
23 foundation. I will give you the opportunity to do voir dire
24 where you can question the authenticity of the exhibit, and
25 then I will decide. But it hasn't been offered for admission

1 yet.

2 (Thereupon, the following was heard in open court.)

3 BY MS. MITRANI:

4 Q Is the first page of the exhibit the application for
5 delivery through the mail?

6 A Yes, 1583, the form number.

7 Q And that is the -- is that the standard application that
8 Super Postal Center and everybody else uses for private
9 mailboxes?

10 A Yes, unless they changed the things in the last six
11 months, which is highly doubtful. That's what it was for many,
12 many years.

13 Q So that's sort of one -- that's its own document, correct?

14 A Right.

15 Q All right. The next two pages, is that an application for
16 mailbox rental?

17 A Yeah. A lot of it is just the rules and relations as far
18 as what you can do with the mailbox, how it's designated, who
19 can receive mail, store rules. A lot of them, I'm sure, are
20 similar to what other stores would say, but these are just
21 ours. They are pretty general.

22 Q Is this application -- is this a standard form that Super
23 Postal Center gave to its customers who are opening private
24 mailboxes?

25 A Yes.

1 Q Was it a regular business record of Super Postal Center?

2 A Yes, we kept a copy of that ourselves too.

3 Q It was kept in the ordinary course of business?

4 A Right.

5 Q Another page in this exhibit, are those copies of the
6 identification provided?

7 A Yes.

8 Q By the individual opening the box?

9 A Yes, driver's license here and automobile competition
10 committee for the U.S., I'm not familiar with what they are
11 myself, but it looks like it's an ID that we will be able to
12 use.

13 Q Are these documents collectively used to open the mailbox?

14 A Yeah, the only other thing that we added kind of recently
15 was just something where we would write down their email
16 address because when they would receive a package, we could
17 email them, hey, you have something here, come get it.

18 Q But that's recent. But back in 2009 when this has done,
19 was this the standard package opening?

20 A Yes, that was it.

21 Q And then there's a receipt in there?

22 A Yeah, this looks like a credit card receipt and a
23 transaction receipt, a POS sale. Looks like he renewed the box
24 for a year according to the POS sale.

25 Q Okay.

1 MS. MITRANI: Your Honor, the government would offer
2 Exhibit 4 into evidence.

3 THE COURT: All right. Mr. Scotton, did you wish to
4 voir dire the witness on the exhibits?

5 MR. SCOTTON: I'm going to object, Your Honor. I need
6 to see some authentication of that.

7 THE COURT: Did you wish to voir dire the witness on
8 the exhibit, that is, did you wish to ask him questions about
9 the authenticity?

10 MR. SCOTTON: Yes, Your Honor.

11 THE COURT: All right. You may do so.

12 VOIR DIRE EXAMINATION

13 BY MR. SCOTTON:

14 Q Hello, Mr. John.

15 A Hey.

16 Q I want to bring your attention here on the form, the
17 application form No. 9. See name of form of corporation?

18 A Yeah, Sky Air Express.

19 Q Right. This is not the defendant's writing, is it?

20 A I'm sorry?

21 Q This is not the defendant's writing on this application,
22 it is?

23 A I would assume it is. If there was a business name that
24 was going to be added into there, we had to hand-write it
25 because for whatever reason the computer program never seemed

1 to get it straight.

2 Q I know, but this is not from the defendant, right, it is
3 not the defendant handwriting?

4 A Well, it was done back in 2009 and I can't honestly say I
5 remember. I don't know what the defendant's handwriting looks
6 like. I'm assuming that everything was okay though since it
7 was signed.

8 Q You have provided the government here with two receipts
9 for renew. How come you have not provided the government
10 without the receipts from the date it was opened?

11 A It just never came up. But if it was in the computer, I
12 mean, we would have to go back to the store and pull up the
13 records, I'm sure it could easily be done.

14 Q When did you give this application, this information, to
15 the government?

16 A Let's see, when I was living in Tennessee last six months,
17 they wanted me to come down back in August or September, so
18 when I saw them the first time, they showed me this stuff.

19 Q What year?

20 A 2013.

21 Q August of 2013, they went to the store?

22 A Uh-huh.

23 Q You handed this application but you did -- any particular
24 reason the other receipts has not been attached to this
25 application?

1 A Well, considering that the receipt here that was done in
2 2010, the renewal one, does say renew mailbox 152, it would be
3 safe to assume that everything was opened properly; otherwise,
4 we wouldn't have been able to renew a box that wasn't opened in
5 the first place.

6 Q Why the other receipt is missing?

7 A I don't know. You would have to ask somebody else. I
8 don't really know.

9 MR. SCOTTON: I'm going to object to this form. It is
10 incomplete.

11 THE COURT: All right. And the objection is
12 overruled. Government's 4 can be admitted.

13 (Thereupon, Government's 4 received in evidence.)

14 MS. MITRANI: Thank you, Your Honor.

15 DIRECT EXAMINATION (resumed)

16 BY MS. MITRANI:

17 Q Okay. So let's start, Mr. Lawrence, with Exhibit 301.

18 A Okay.

19 Q And what is the -- what are the members of the jury seeing
20 here?

21 A The first one there on the scene is the front of our
22 store. Up at the top, you see our name, Super Postal. It's
23 got the door in and the window, front door.

24 Q What's the address?

25 A 160 West Camino Real, Boca Raton 33432.

1 Q You know it pretty well?

2 A Oh, yeah, considering the number of years I worked there,
3 I know it by now. I practically live there.

4 Q And the next page, what's this, sir?

5 A This is up by the front window. These are our private
6 mailboxes. It's just about all of them in the shop. There's a
7 few below, but it's pretty much all of them. There weren't
8 like any in a different corner or anything. That's it. About
9 200 of them.

10 Q 200?

11 A About that, something like that, if I remember right,
12 yeah.

13 Q And what is this?

14 A Okay. This is the front counter. You see the copy
15 machine? We have a television up at the top with -- it would
16 circulate some little ads for what we do there. Some tchotchke
17 things for sale. It's pretty standard.

18 Q Okay.

19 A Front computer.

20 Q So there's the store. Let's go to the Exhibit 4. So this
21 is the PS form 1583, the application for delivery of mail
22 through agent, correct?

23 A Yes.

24 Q And this particular application was submitted to your
25 store on April 27, 2009, correct?

1 A Yes.

2 Q I see an image of a key on there. What's that?

3 A Well, when we would open up the mailboxes, we would take a
4 photocopy with the key taped on top of it in case, like, the
5 key came loose or whatever and we happen to find a spare one.
6 And we were familiar with our mailbox keys, the shape, the
7 general shape. And if we were missing one on an application,
8 we would be able to put them together and say, oh, okay, it's
9 for this one, so...

10 Q All right. And box No. 2, the name of the applicant was
11 Rogerio Scotton, correct?

12 A Yes.

13 Q And the address to be used for delivery box 3A was the
14 address of your store, 160 West Camino Real, Boca Raton,
15 Florida 33432?

16 A Uh-huh.

17 Q I see No. 1552. What is No. 1582?

18 A That's the private mailbox number he was assigned.

19 Q That Mr. Scotton was assigned?

20 A Uh-huh.

21 Q Okay. Box 6, the name of the applicant is Rogerio Scotton
22 again, correct?

23 A Uh-huh, it repeats. It's just the way it comes out.

24 Q So the form's fault, not yours, right?

25 A Yeah.

1 Q Okay. And then as the Box 7 -- Box 7 is the applicant's
2 home address, and here Mr. Scotton provided the address of 1300
3 Southwest 13th Drive, Boca Raton, Florida?

4 A Yeah, we would put what on their driver's license, so...

5 Q So let me ask you, the information here is typewritten.

6 So how is the mechanics? How does that -- how did that work?

7 A Well, it's on the computer. We would open up the mailbox
8 program and find an open mailbox, select it, and just enter the
9 information and it would put the stuff where it was supposed to
10 go.

11 Q Where did you get the information from?

12 A Well, when we would ask for the two IDs, we would need to
13 see one that did have an address on it just for the program's
14 sake.

15 Q And would it be the applicant that provided you the IDs
16 and the information on the form?

17 A Yes, uh-huh.

18 Q So box 7E, there is a phone number, 561-361-4343?

19 A Uh-huh.

20 Q And then on Box 9 it says name of firm or corporation,
21 written in is Sky Air Express, Inc.?

22 A Uh-huh. Yeah, we generally -- for some reason, the
23 program, even if you were to tell the system that you want to
24 add a company name, you enter all the information, it would for
25 whatever reason put the person's name. We would have to

1 hand-write it for some reason. I think it was just a bug that
2 everybody had. The owner would actually ask other people on
3 his -- on a mailing thread that he was on that had other people
4 with the same kind of businesses there and ask does anybody
5 else have this problem, and everybody had the problem. They
6 could never seem to fix it, the people who did the programming,
7 so we just hand-wrote it.

8 Q Was that your standard then because of the bug to write it
9 in for, not only for Mr. Scotton, but everybody?

10 A Pretty much for everybody. Even when we enter something
11 into the computer, it would put the correct business address
12 but the name would be Rogerio Scotton. So we would have to
13 cross it out and initial and hand-write whatever the company
14 name was. It was an annoying glitch. I wish I knew why it was
15 like that, but you do what you can.

16 Q Okay. All right. So then also next to the Sky Air
17 Express, there's some more writing. It looks like something
18 says Scotton Motor, is that right?

19 A That's what it looks like, yes.

20 Q And then on Box 9, ID that was provided was a driver's
21 license?

22 A Uh-huh.

23 Q And then what's Box B say?

24 A Other. Let me take a look at the picture here that you
25 presented me. Oh, you must have it. The other there was other

1 identification that was in the copy. Here's the other.

2 Q That's okay. We will get to it.

3 A Okay.

4 Q Does that simply mean the driver's license and something
5 else were provided?

6 A Correct. Below that is a list of things that were
7 acceptable identifications just like it says acceptable
8 identifications include blah, blah, blah, blah, blah, so...

9 Q And then on the bottom right, it says signature of the
10 applicant and there's a signature there?

11 A Yes.

12 Q Let's go to the second page of Government's Exhibit No. 4.

13 A Okay.

14 Q And what are the members of the jury looking at there?

15 A Well, like it says at the top, application for mailbox
16 rental. A lot of this is rules and relations that came with
17 the business and came with renting a private mailbox. A lot of
18 red tape stuff essentially, what you can do with it, and what
19 kind of things we can accept, how it has to be written out for
20 incoming mail, the address itself, just rules and regulations,
21 pretty standard stuff. Most of them I could probably easily
22 follow without even realizing it.

23 Q Okay. And is this a Super Postal Center form?

24 A This is a Super Postal Center form, but I had worked on a
25 couple other packing stores, I worked in one in Orlando about a

1 year and a half. I worked in a Pak Mail a couple years. And
2 every single one of them had a similar thing.

3 Q Okay. Let's go to the last page of that Government's
4 Exhibit 4.

5 A Some more rules, yeah.

6 Q All right. And --

7 A Those are the IDs, yeah.

8 Q Are those copies of the identifications?

9 A Yes.

10 Q That Mr. Scotton provided?

11 A Uh-huh.

12 Q So at the top it says Automotive Competition Committee for
13 the United States?

14 A Yes.

15 Q And it has the defendant's name, Rogerio Chaves Scotton
16 with an address of 1300 Southwest 13th Drive in Boca Raton,
17 Florida, right?

18 A Correct.

19 Q And underneath is a copy of the driver's license showing
20 Mr. Scotton's address as PO Box 629, Boca Raton, Florida?

21 A Yeah, looks like it. Since one of the addresses has his
22 home address, we could accept the driver's license with the PO
23 Box number. But one did require to have a street address.

24 Q After the private mailbox was opened inside, Mr. Scotton
25 started coming into your store?

1 A Here and there to pick up his stuff, his letters and any
2 packages he might have had.

3 Q Did Mr. Scotton, the defendant, receive packages at your
4 store?

5 A Uh-huh.

6 Q Yes.

7 A Yes.

8 Q Give us a sense of the volume. A lot, a little?

9 A Some, kind of in the middle, various sizes. Some things
10 were letters we could put in a little bucket to the side.
11 Other things we would have to store above the mailboxes in
12 their little closet. Some of the things we had to store out in
13 our storage room.

14 Q Did that become an issue with the receipt of packages at
15 your store?

16 A After a while, yeah. There was one particular time when
17 we received a pair of tires, and then a few days later, we
18 received a second pair of tires. And they sat in our storage
19 room, which is maybe about five or six feet wide, and that's
20 not including the walls. That's from storing stuff to storing
21 stuff, we barely had any room to get in there. We had to
22 constantly drag it out to get packing material or something for
23 somebody else. And we did leave notices in his mailbox, hey,
24 you have things, please come get them, it's taking up a ton of
25 room. And they sat there for a while, so...

1 Q Did the defendant ever utilize Super Postal Service's
2 shipping services?

3 A Our own, no. He would come in here and there with prepaid
4 dropoff stuff, labels already filled out ready to go. We would
5 just take them and put them in the back with the other things.
6 But I don't recall him ever actually paying us for the other
7 services.

8 Q Shipping services?

9 A Right.

10 Q He did pay you for the mailbox?

11 A Yes, of course.

12 Q Okay. Let me have a minute.

13 A Okay.

14 Q When the defendant was asking you some questions about the
15 Super Postal Center, you said -- you mentioned August of this
16 year. Do you recall when those documents were given to the
17 government?

18 A You mean like when somebody first stopped into the store
19 while I was working there? Jeez, it was at least a couple
20 years ago. It's been so long, it's kind of hard for me to
21 recall exactly. But I know it's been a couple years ago we had
22 a federal agent come in, explain the situation, explain that I
23 might have to go to court, do you have any things that we might
24 be able to use, and we provided them. But exactly when --

25 Q No, but point being is that your memory -- is it your

1 testimony that those documents were turned over to a federal
2 agent several years ago?

3 A Yes.

4 MR. SCOTTON: Object, Your Honor.

5 THE COURT: What is the objection?

6 MR. SCOTTON: Leading.

7 THE COURT: Sustained.

8 BY MS. MITRANI:

9 Q You don't remember the exact date, but do you remember the
10 year?

11 MR. SCOTTON: Object, Your Honor.

12 THE COURT: What's the objection?

13 MR. SCOTTON: Speculation.

14 THE COURT: Overruled.

15 THE WITNESS: Let's see. Probably say about 2011 or
16 so.

17 MS. MITRANI: No further questions.

18 THE COURT: Cross-examination.

19 CROSS EXAMINATION

20 BY MR. SCOTTON:

21 Q How are you doing today, Mr. John?

22 A Hello.

23 Q Good to see you.

24 A How are you doing?

25 Q Let me get this. Previous when you were asked questions,

1 you mentioned this document has been handed to the government
2 on August of 2013?

3 A Well, I sat down with the prosecutors, and you know, we
4 went over things.

5 Q The question is, did you hand this document to them in
6 August of 2013?

7 A No, I didn't directly hand it to them, no.

8 Q Who handed it to them?

9 A I would imagine that when the federal agent picked it up
10 when he stopped by the store a couple years ago is when they
11 received it. We handed it to him, and I would assume they
12 would hand it to them.

13 Q A while ago you mentioned you say you handed to them in
14 August 2013. That's what you just say?

15 A No, I don't recall that. I said I went over the stuff
16 with them.

17 MR. SCOTTON: Maybe the Court can go ahead and show
18 the record.

19 THE COURT: No, sorry. It's not available. It's not
20 in a form that we can use it.

21 BY MR. SCOTTON:

22 Q I open the package ship store in April of 2007, April 27,
23 2009, correct?

24 A Uh-huh, yes.

25 Q Was not in October 30 of 2008, right?

1 A What was the question?

2 Q It was not October 30 of 2008, right?

3 A No, it was April 27, 2009. That's what it says.

4 Q How many people work down in your store?

5 A Well, let's see. At the time it was myself, the boss, and
6 another guy who is not there anymore, so three people.

7 Q Was Aaron his name?

8 A Evan. He's the owner, Evan Keller.

9 Q And do you remember the name of the other one who used to
10 work there?

11 A Jonathan Lund.

12 Q Jonathan Lund, the younger one?

13 A Yeah.

14 Q Do you recall who opened the PO box for me?

15 A Well, according to the application, Jonathan Lund was
16 helping you out.

17 Q He's no longer there?

18 A No.

19 Q The date that I opened, do you remember I was in the
20 store?

21 A I assume you were. We wouldn't have been able to open it
22 otherwise.

23 Q Do you remember did the defendant make a comment that he's
24 just close a PO box with a pack ship store down Federal
25 Highway, that's why he's opening one with you?

1 A I'm sorry?

2 Q Did you recall, did I explain to you guys that I just
3 terminated by business with pack ship store down in Federal,
4 that's why I'm opening one with you? Do you recall that?

5 A No.

6 Q You don't recall that?

7 A No.

8 Q Have the defendant present all his two IDs to you?

9 A Yeah, I mean that's what we have copied down, so...

10 Q Have the defendant pay all the fees to you?

11 A Yes; otherwise, we wouldn't have opened it.

12 Q Do you remember the wife of the defendant coming to the
13 store to pick up mail?

14 A Actually, yeah, a couple times.

15 Q Do you remember how she looked like?

16 You can say, you guys used to check her out. She's good
17 looking.

18 A It looks like that might be her, but I don't recall
19 honestly.

20 Q If I show you a picture, it might refresh your mind?

21 A It could. I don't know. It's going back like five years.
22 I don't know. I mean, we saw hundreds of people coming in
23 every day.

24 Q You can't remember her?

25 MS. MITRANI: Objection.

1 MR. SCOTTON: It's a picture of the wife, Your Honor.

2 THE COURT: What is the objection?

3 MS. MITRANI: He's already shown -- the witness has
4 already answered that question. Now he's just showing him more
5 pictures of --

6 MR. SCOTTON: It's just.

7 THE COURT: Excuse me, Mr. Scotton. I can only hear
8 one person at a time and the court reporter can only take one
9 person. I will give you an opportunity to respond. Let me
10 hear from the government first, please.

11 MS. MITRANI: He's already shown her a picture of the
12 same picture. Now he's going to try to show other pictures.

13 THE COURT: You can show this one.

14 MR. SCOTTON: Your Honor, that one is a face picture.
15 It has a big head on it so maybe that's why. Now I'm going to
16 show him a normal picture of the wife.

17 THE COURT: You can show him those. You have shown
18 him two. You are showing him two more. That's fine. I think
19 at some point, you will need to move on.

20 THE WITNESS: Like I said, I don't recall a hundred
21 percent.

22 BY MR. SCOTTON:

23 Q You can't recall my wife? Great legs, you can't recall?

24 A Nope.

25 Q You remember the wife coming to the store to pick up mail,

1 right?

2 A I know somebody did. I assume they were your wife but I
3 could have been wrong.

4 Q Is anything illegal opening PO box?

5 A Is there anything legal?

6 Q Illegal.

7 A Illegal?

8 Q Yes.

9 A You mean things that we can't receive or --

10 Q Is anything illegal in opening a PO box?

11 A Well, it's a not a PO box. It as a private mailbox, but
12 no there's not.

13 Q Have the defendant done anything illegal to open the
14 private mailbox with your company?

15 A No. You presented the correct IDs, filled out the form,
16 signed it.

17 Q Mr. John, do you guys assume that I live at 1300 Southwest
18 13th Drive because the license has that address?

19 A Well, the license has a PO box address, but what we
20 normally would have done when the driver's license didn't have
21 the correct address, because it did happen before with other
22 people like they might have been moving, we asked that when
23 they did get the correct address, they either present a new
24 photo ID, the driver's license, or if they were to present a
25 utility bill with the current address, as long as everything

1 matched up, then everything was okay.

2 Q At the time I opened the PO box, I present two IDs. The
3 one on the top has 1300 Southwest 13 Drive?

4 A Uh-huh.

5 Q So basically you guys assumed I lived there?

6 A Assuming that is a government ID, that can be an
7 acceptable one as primary ID because it had your photo, then we
8 can go with that and have the state ID or the driver's license
9 be the secondary as long as the primary ID had the correct
10 address, that was fine.

11 Q Are you still asking for any kind of proof of that
12 location, any phone bill or any license that you guys asked me
13 for, anything like that?

14 A I don't recall. It was five years ago.

15 Q Do you recall at one point that the reason why we put Sky
16 Air and Scotton Motor Sports in the application was mail was
17 coming and you advised me that in order for me to receive those
18 mails, I need to have the name of the companies on the form?

19 A Correct.

20 Q And that's why this has been done after I opened the PO
21 box, correct?

22 A We probably did it on the same day.

23 Q Have anyone from your store request any corporation paper
24 from the companies?

25 A No, we don't have to do that. As long as we can go to

1 SunBiz dot org and find it on their line, that's enough. If it
2 was from out of state, then we would need to see something like
3 company letterhead with tax ID information to prove it's a
4 legitimate business.

5 Q Have you and any other person who start delivering any
6 other kind of mail to any individual on my behalf?

7 A I'm sorry?

8 Q Have anyone in the store deliver any of my mails to any
9 other person besides my wife?

10 A I would assume not. If they have their key, they can pick
11 it up. But we don't hand it out to people we don't know.

12 Q Do you recall a dispute I have with the owner of the store
13 when I came back in town and he tried to charge me a fee of
14 storage?

15 A Ah, yes. Before any of this stuff happened, it was
16 already implemented. We had started basically a system
17 where --

18 Q Just say yes. Still the question, please.

19 MS. MITRANI: Your Honor, objection.

20 THE COURT: Overruled. It was a yes or no.

21 THE WITNESS: Yes.

22 BY MR. SCOTTON:

23 Q And do you recall that I even told the owner that I am not
24 going to pay any fee because my contract with you guys doesn't
25 say anything about storage fees?

1 A I don't recall that, but we did put in forms in
2 everybody's mailbox.

3 Q Because I was out of town, I come later, too much packs
4 over there. You guys have no space. So because I terminated
5 the business with you guys, correct?

6 A Well, the last thing that I remember that we saw was you
7 came to pick up some tires, and that was it. The tires I
8 mentioned during her testimony.

9 Q Based on that dispute that I have with the owner of the
10 store, I decide to close the PO box, correct?

11 A Actually, he closed it for you.

12 Q Yeah, but I close because I don't want to do business with
13 you guys no more, correct?

14 A I would assume so.

15 MR. SCOTTON: More questions, Your Honor.

16 THE COURT: Redirect.

17 MS. MITRANI: No, Your Honor.

18 THE COURT: Thank you. You may step down.

19 THE WITNESS: Thank you.

20 MS. MITRANI: Your Honor, I want to offer 6 and 28
21 again, so I will give the defendant an opportunity to look at
22 them.

23 THE COURT: Any objection to 6 and what was the other,
24 28?

25 MR. SCOTTON: Hold on a second, Your Honor.

1 MS. MITRANI: No objection to 6 or 28?

2 MR. SCOTTON: No objection, Your Honor.

3 THE COURT: No objection, Government's Exhibits 6 and
4 28 are admitted.

5 (Thereupon, Government's 6 and 28 received in
6 evidence.)

7 THE COURT: Although usually we would go until 12:30,
8 since we did take a break almost two hours ago, I think what we
9 will do is take an early lunch today and we will take two
10 shorter breaks this afternoon.

11 So we are going to recess for lunch until 1:15. Let
12 me remind everybody, please remember my instructions, don't
13 discuss the case with anyone, don't disburse any information
14 about the case, and don't do any investigation into the case.
15 Have a great lunch. We will see you at 1:15. All rise for the
16 jury.

17 (Thereupon, the jury exited the courtroom at
18 12:15 p.m.)

19 THE COURT: All right. With regard to the videos, I
20 think I probably should set aside some time for that so that
21 the jury doesn't have to leave for us to do that. Mr. Scotton,
22 will it be enough time for you to be ready to argue your
23 position if we do it tomorrow morning at 9:00 on the videos?

24 MR. SCOTTON: Yes, Your Honor.

25 THE COURT: And the photographs?

1 MR. SCOTTON: Yes. Those that I presented to the
2 government, right?

3 THE COURT: Right. Anything that you wish to put on
4 that should have already been provided to the government,
5 right.

6 MR. SCOTTON: Yes. Well, Your Honor, like I mentioned
7 this morning, just got some documents, paper that need to be
8 copied.

9 THE COURT: When are those going to be copied, today,
10 and provided today?

11 THE INVESTIGATOR: Yes.

12 THE COURT: Terrific. Why don't we do this then. Why
13 don't we do it 9:00 to 9:30 tomorrow. I will bring the jury in
14 at 9:30. If we can't finish, is that all right with the
15 government or is that going to interfere with people's flights?

16 MS. MITRANI: No, that's fine. I know the jury
17 doesn't -- the Court doesn't like to keep the jury waiting. I
18 don't know if Your Honor wants to see them or not.

19 THE COURT: I hope not to see them.

20 MS. MITRANI: It's not a problem with us. We are
21 ready.

22 THE COURT: If we need more time, I will set aside
23 some more time to continue the hearing. But what I want to try
24 to avoid is having the jury waiting while we are trying to
25 decide what to do. And since I understand that the marshals

1 may not consistently be able to get Mr. Scotton here before
2 9:00, it seems like the only time we could really do this would
3 be while we otherwise have jury time.

4 MS. MITRANI: I think we should be able to knock it
5 out in a half hour.

6 THE COURT: If not, we will just continue it and we
7 will -- if we need to bring them in at 9:30 on another day,
8 that will be an option.

9 MR. SCOTTON: Your Honor, can we have a sidebar for a
10 minute?

11 THE COURT: The jury isn't here.

12 MR. SCOTTON: It's something about the video I want to
13 discuss with the prosecutor in front of the judge so it's
14 private.

15 MS. MITRANI: Can we take this up tomorrow? It's
16 lunch time.

17 THE COURT: Right. So both of the parties have an
18 opportunity to have lunch and do what they need to do over the
19 lunch break, I have set aside time for this. We will do it at
20 9:00 tomorrow morning. And is there anything else we need to
21 address before we break for lunch?

22 MS. MITRANI: No, Your Honor.

23 THE COURT: Mr. Scotton?

24 MR. SCOTTON: No, Your Honor.

25 THE COURT: We will see you at 1:15. Thank you.

1 (Thereupon, a recess was taken at 12:18 p.m.)

2 THE COURT: We have Mr. Scotton? There he is. Thank
3 you. All righty. Let's all rise and we will bring in the
4 jury.

5 (Thereupon, the jury entered the courtroom at
6 1:16 a.m.)

7 A JUROR: My apologies.

8 THE COURT: That's all right.

9 All righty. Welcome back, everybody. Hope you all
10 had a good lunch. Just a reminder we can't start until
11 everybody is here. If I'm not giving you enough time for
12 lunch, let Mr. Creary know and I will try to adjust it so you
13 will all have enough time to do what you need to do.

14 Let me ask, is there anybody here who did not follow
15 my instructions, that is, is there anyone who discussed the
16 case with anyone, disbursed any information about the case, or
17 did any research into the case? If so, please raise your hand
18 for me now. I see no hands. Thank you all for that.

19 Let me turn to the government and we will continue
20 with the case.

21 MS. MITRANI: Thank you, Your Honor. The government
22 would call Fred Kennicutt.

23 THE COURTROOM DEPUTY: Please raise your right hand.

24 FRED KENNICUTT

25 Having been first duly sworn on oath, was examined and

1 testified as follows:

2 THE COURTROOM DEPUTY: Please be seated and state and
3 spell your first and last name for the record.

4 THE WITNESS: My name is Fred Kennicutt, F-R-E-D
5 K-E-N-N-I-C-U-T-T.

6 DIRECT EXAMINATION

7 BY MS. MITRANI:

8 Q Good afternoon, Mr. Kennicutt. How are you doing?

9 A Good. Good how are you?

10 Q Good. Thank you. Sir, by whom are you employed?

11 A DHL Express.

12 Q And how long have you been employed by DHL Express?

13 A 26 years.

14 Q Are you a native of Florida?

15 A No, I'm not. I'm from Minnesota. I have been down here
16 about six years.

17 Q Okay. So your last six years with DHL have been in south
18 Florida?

19 A Yes.

20 Q And where were you working prior to that?

21 A Minneapolis.

22 Q So the other 20 years were in Minneapolis?

23 A Yes.

24 Q All right. Where do you work specifically within DHL?

25 A Oh, within DHL? I'm at our Delray office. It's our Boca

1 Raton facility, but it's located in Delray Beach.

2 Q Okay. It's the Boca Raton facility. And can you -- what
3 is it? What's the Boca Raton facility? What's done there?

4 A Basically, I have probably on any given day around 22
5 route drivers that go out and deliver and pick up packages. We
6 run a morning sort for delivery and an evening sort of packages
7 at night where we process international outbound packages that
8 will be going to various countries throughout the world. We
9 process them for whatever paperwork is necessary and move them
10 to the next step.

11 And I also run the administration of the facility so I am
12 front hand and back hand. I am in the operation and I also do
13 all of the office admin and management of the office. We have
14 independent contractors that run our routes. So we only have a
15 handful of DHL employees, so we are kind of all, you know, jack
16 of all trades of that facility.

17 Q I don't think I asked you, I neglected, what is your
18 title, what is your role?

19 A I'm the service center manager.

20 Q So you run the operation there in Delray Beach?

21 A Right. I'm responsible for everything that happens in
22 that facility.

23 Q When you said sort of back office and front office, what
24 did you mean by that?

25 A In the warehouse operation, it's an inbound sort, you

1 know, where we sort packages and take them out for delivery.
2 In the evening it's an outbound operation. After the drivers
3 have picked up all the packages and cycle them back to the
4 building, we process them. And basically what I meant by on
5 the front end is, you know, I'm everything else in the
6 building. I'm the supply clerk, I hire and fire the janitors,,
7 you know, anything you would expect an office admin manager to
8 do.

9 Q How big is this facility?

10 A It's rather big. In it's heyday when we did domestic, I
11 had about 90 routes. We are down to 22 now because all we do
12 is international shipments for the most part. It's a rather
13 large facility.

14 Q How many packages go through your facility?

15 A Inbound in the morning for delivery, there's anywhere
16 between 700 and a thousand. And in the evening, we push about
17 another three to four hundred outbound all over the world.

18 Q And so, now, you said that you are the -- it's a service
19 station, it's the BCT service station?

20 A Yeah, service center.

21 Q Service center. So are there service centers located
22 throughout the United States?

23 A Yes, yes.

24 Q And are there -- are all the service centers the same?

25 A Pretty much. Our service centers that have routes that

1 run out of them, whereas the courier that you all see every day
2 that comes to your door, those centers are run very much the
3 same. We also have hubs. We have gateways. We have gigantic
4 sort centers that don't do any pickup or delivery. They simply
5 sort packages, screen packages, do everything in the back end
6 that needs to be done before that package can move on to its
7 destination.

8 Q You used the term gateway. What is a gateway?

9 A A gateway or a hub, we actually call them all hubs now,
10 are areas throughout the United States where packages will
11 stop. It's usually about the last stop they will make, but not
12 always, before they leave the country. And they will clear
13 through U.S. customs and then they will move on to either their
14 next destination or to their ultimate destination.

15 We have a gigantic source facility. It's called a super
16 hub. We have eight of them throughout the world. One of them
17 is in Cincinnati, Ohio and the other little hubs, they are
18 gateways that allow us to get packages to specific
19 destinations.

20 So, for example, in Miami, when they sort, they sort out
21 South Central American and the islands, their focus is really
22 on that material, getting it clear, getting it through customs,
23 getting it to its next flight. Everything else for every other
24 continent in the world will go up to Cincinnati.

25 Q Let me give you an example. Let's say a package was

1 dropped off in Iowa, for example, for delivery to Brazil, would
2 it go from Iowa to Brazil?

3 A No, it would not.

4 Q What route would it take?

5 A It would most likely go to the Cincinnati hub. They would
6 do the first sort on it. The following morning it would go to
7 Miami. Miami would finish off the clearance work on it and
8 then Miami would use their resources to move it to its final
9 destination or another destination.

10 We have another big sort facility in Panama, Panama City.
11 A lot of freight will go there. But we do have some commercial
12 uplift where we will co-load onto a commercial airline and they
13 will go more directly to the final destination or to a gateway
14 like say in Brazil or Columbia or Argentina where the package
15 will then be cleared through international customs and then
16 moved on for delivery.

17 Q So is it common for DHL packages to travel through several
18 states before reaching their final destination?

19 A Yes, it's very common.

20 Q Before 2009, did DHL deliver domestically?

21 A Yes, we did.

22 Q How about before 2009, did DHL deliver packages
23 internationally?

24 A Yes.

25 Q Does it still deliver packages internationally?

1 A Yes, we do.

2 Q How about domestically?

3 A On a very limited basis. It's usually driven by a higher
4 end customer. So, for example, if you got your Microsoft or
5 Honeywell or somebody like that who wants us to co-load
6 domestic and still deliver it for them, we work out rates to do
7 that. However, we are not expressly in that business.

8 In other words, if you walked in to our front counter and
9 you wanted to ship to Iowa, we would say no. If you are IBM
10 and you want to ship to Iowa, we are probably going to say yes.
11 So they have to be doing several million dollars usually in
12 international business and then we will also do their domestic.

13 Q And in your experience at the Delray facility, is there a
14 domestic company, a lens company that ships within the states
15 with DHL?

16 A I want to say it's Lance Lens, but I don't know
17 specifically their name. But they ship a lot of lenses for
18 like your Oakleys or your Ray Bans or, you know, your higher
19 end lens companies. And most of those deliveries are to malls
20 and major markets.

21 So it's still what we do and it's still within our
22 delivery footprint. So we take that because they give us all
23 of their international. So we do that to maintain that
24 international relationship. We do it, I think, for Microsoft.
25 We have done it for Target company.

1 Q When you say done it, you are saying still deliver
2 domestically?

3 A Still deliver domestically for these accounts, yes.

4 Q And from state to state?

5 A Right. The lens company I brought up because they are
6 like an everyday domestic shipper. I see them on my shipping
7 list every day.

8 Q Going state to state?

9 A Actually, it's inbound traffic. They ship centrally out
10 of a different location and we deliver it to malls all over our
11 delivery footprint in Boca Raton, West Palm Beach, Palm Beach.

12 Q Are there cameras in your facility?

13 A Yes, there are.

14 Q Can you tell the members of the jury about those cameras?

15 A These are assigned to three different DVRs. There's
16 roughly in the ball park of about 48 cameras. There are 15 or
17 16 cameras per DVR that record the information that's been
18 transmitted on them.

19 They are motion-activated so the camera could conceivably
20 be off until someone starts moving. They store up to 475 days
21 of information on the low end. However, if it's a camera that
22 doesn't see a lot of activity, it can store several months
23 worth of information.

24 They are located throughout my warehouse, in our office
25 area, in our front counter where people bring packages and,

1 there's a few external outside the building.

2 Q And do those cameras -- what do they record on to, what
3 kind of device?

4 A They record directly on to a DVR type player. You can
5 actually go to the DVR. You can pull up specific days,
6 specific times, and you can watch what occurred at that time or
7 you can watch them live.

8 Q Okay. Did there come a time when you were involved with
9 an investigation involving packages being sent to Brazil?

10 A Yes.

11 Q And maybe specifically what you said were the exact words,
12 first of all, is how you were alerted.

13 A How I was alerted to it?

14 Q Yes.

15 A In its infancy I just saw it in an email and I think it
16 had a heading on it from a lady named Nicole who was one of our
17 security people who said somebody please stop these guys and it
18 says Brazilian fraud. And I opened it and I looked at it and
19 some of the airway bills that were copied into the email
20 originated in my facility.

21 And I was fairly new to the process so I really didn't
22 understand what she was talking about. So there came a time
23 where I reached out and she told me -- because I couldn't find
24 anything wrong with the shipments, and she told me that the
25 account numbers --

1 Q Don't tell us what she said. But she gave you some kind
2 of alert?

3 A Yeah, she gave me an alert. She told me that -- well, I
4 became aware of the fact that the account numbers were no good.
5 They were legitimate account numbers, belonged to my customers,
6 but my customers weren't shipping the packages.

7 Q Did you take any actions as a result of this alert and
8 this information?

9 A Yes. Initially I started watching those account numbers
10 and I started tracking them. So I would physically hold the
11 shipment in my facility. The next day I would contact our
12 fraud department if it was a shipment that was highly irregular
13 coming through my building, like for example, like say Targets
14 being built, we don't do a lot of outbound freight for Target
15 company in south Florida. Their corporate offices are in
16 Minneapolis. So I was really in tune with that in my mind.
17 And so that would raise a red flag, why is this coming through
18 my billing. I would hold it, contact fraud, and they would let
19 me know whether the shipment was okay whether I needed to hold
20 it or whether I needed to send it to them.

21 Q Did your actions sort of grow from that initial contact
22 with Ms. Nelson?

23 A Yes.

24 Q How so?

25 A Initially, you know, we got real good at trapping those

1 accounts that were being used fraudulently, but whoever was
2 doing it got better and obtained more accounts and it was
3 getting harder and harder.

4 And then I noticed a common denominator on every one of
5 the shipments. They were being shipped out with a duty being
6 charged to the shipper. That's highly irregular. We have
7 customers that do it, but the standard process really for
8 shipping outbound is the person receiving the package pays the
9 duty when it clears through customs.

10 So there's a very specific trigger in our system that lets
11 us know if we are having one where the duty will be paid by the
12 shipper because that is an extra service we provide that we
13 charge a nominal fee for. We arrange to get that duty
14 information and bill it to the shipper's account.

15 And the common denominator with these fraudulent shipments
16 is they were all being billed duty and taxes paid which means
17 the shipper is going to pay for the duty. The vast majority of
18 shipments that go through our network are called DTU, delivered
19 taxed unpaid. By being aware of that, it became easier and
20 easier for shipments going to Brazil, to stop those shipments,
21 hold them, validate they were legitimate before moving them to
22 the final destination.

23 During that time, we even had to apologize to some of the
24 legitimate shippers that wanted to do it that way because we
25 had to look at all of them.

1 Q Was there a specific code on the waybill that alerted you
2 to this manner of the shipper paying the duties?

3 A Yes, every shipper we go through whether the airway bill
4 is created manually, which means you walk in our office and you
5 fill out an air bill, or it's created electronically, which
6 means you go onto the internet, you created your own air bill,
7 and you are dropping it at our facility, when we scan that
8 shipment in our sort, a label will come out and in big bold
9 black letters it will say DTP. That means delivered taxes
10 paid. And that's a special handle procedure.

11 So it became very easy as far as the shipments going to
12 Brazil to track those shipments because that red flag would
13 print right off the label and all of my sort people were
14 instructed if the shipment is going to Brazil and you see that,
15 hold it. They literally, if I wasn't there at night, they
16 literally had to call me at home to get my permission to move
17 those packages.

18 Q And when you say this duty paid by shipper, who is paying
19 the duty under this DP code?

20 A It would be the account holder, so the shipment -- the
21 account that the shipment is being shipped on, the duties will
22 be charged to that account as well as the shipping costs.

23 Q Okay. So the shipment costs and the duties would be
24 billed to the account holder?

25 A To the account on the airway bill.

1 Q And would that -- would DHL then cause that shipment
2 though -- if you didn't hold it when it's DTP, it would go
3 through to Brazil, and would DHL front the duties and then
4 charge it back to the client?

5 A Yes. While the shipment is in transit, the shipment will
6 continue in transit. DHL will obtain those costs and charge
7 them to the shipper. Customers that do that, generally it's
8 kind of an expedited process because the duties are being paid
9 so the shipment in theory will move a little more quickly.

10 Q Why will it move quicker?

11 A Because we know that the shipper is going to pay the duty.
12 It's not in dispute. The amount is not in dispute. There
13 won't be any interaction between the receiver and a broker at
14 the other end to get that shipment through customs. It will be
15 there's the duty, shipper is paying it, clear it, and it
16 deliver it.

17 Q Now, in terms of you identifying and stopping packages,
18 how long did that go on approximately?

19 A Approximately it had to be more than a year and a half,
20 maybe two years, maybe longer.

21 Q As best as you can remember. We are not talking weeks?

22 A No, no, no. This was an ongoing process.

23 MS. MITRANI: Your Honor, may I approach?

24 THE COURT: You may.

25

1 BY MS. MITRANI:

2 Q First I'm going to show you what's been marked for
3 identification as Government's Exhibit 29C, 29C as in Charlie.
4 I don't know why I said that. But anyway, do you recognize
5 these items, sir?

6 A Yes, I do.

7 Q What are they?

8 A This is a shipment that was shipped to Brazil under Target
9 Minneapolis's account number, and though it's a manual air
10 bill, if you look right at it --

11 Q First -- actually I'm sorry. I cut you off. I want you
12 to identify it and then we will introduce it. Is this a DHL
13 waybill?

14 A Yes, it's a DHL airway bill for a shipment that was
15 intended to be shipped to Brazil.

16 Q And did you do -- do you remember any specifics about this
17 package?

18 A Yes, I held it.

19 Q You held it. Okay. And you know what, I'll come back.

20 You held it. Was DHL contacted about that specific
21 package that's identified in Government's Exhibit 29C?

22 A Yes, I contacted fraud first and they instructed me to
23 continue holding. Then whomever shipped the package was also
24 contacting DHL at the same time trying to get it back. And I
25 believe at that time -- I believe at that time fraud put me in

1 contact with Agent Van Brunt.

2 Q Okay. Is there a phone number on that waybill?

3 A Yes, there is.

4 Q Did you call the phone number that's own that waybill?

5 A Yes, I did.

6 Q Who was with you when you made that phone call?

7 A Agent Van Brunt was with me. He was recording the call.

8 Q My next question. I'm showing you Government's

9 Exhibit 29A. Are you familiar with this cassette?

10 A Yeah, that's the cassette case.

11 Q Inside is there a cassette?

12 A Yes.

13 Q Is this the recording of the call you made to that phone
14 number?

15 A Yes. After we were done, I initialed it.

16 Q And I'm showing you Government's Exhibit 29B. Do you
17 recognize this?

18 A Yes, this is the transcript that you showed me of the
19 recording.

20 Q And did you review -- have you heard this recording in its
21 entirety?

22 A Yes, I have.

23 Q And have you reviewed that transcript in its entirety?

24 A Yes, I did.

25 Q Is that a fair transcript of this recording, 29A?

1 A Yes, it is.

2 MS. MITRANI: Your Honor, the government would move
3 composite 29 into evidence.

4 THE COURT: Any objection?

5 MR. SCOTTON: No, Your Honor.

6 THE COURT: Government's Exhibit 29 is admitted.

7 (Thereupon, Government's 29 received in evidence.)

8 BY MS. MITRANI:

9 Q Let's start with 29C. Can you see okay, Mr. Kennicutt?

10 A Yes.

11 Q Can you hear me okay?

12 A Yes.

13 Q All right. So this airway bill is obviously handwritten,
14 correct?

15 A Yes.

16 Q All right. And the shipper's -- the front, the shipper's
17 information shows that it's coming from TOIN with a letter
18 there at 160 West Camino Real, 1552, 33432, correct?

19 A Yes.

20 Q And the contact person is Paulo or Pablo?

21 A Yes.

22 Q Is that right?

23 A Yes.

24 Q And the phone number is 561-361-4343, correct?

25 A Yes.

1 Q And as you testified, this was -- well, let me ask you,
2 was this tendered to DHL for delivery to Brazil?

3 A Yes, it was.

4 Q And according to the waybill, box 5, does that give a
5 description of the contents?

6 A Yes.

7 Q What was supposedly in that --

8 A It says Sharp AL240. I believe, in fact, I'm sure it was
9 a printer.

10 Q I think you testified, but did you do some research as to
11 what account this waybill was being charged to?

12 A Yes. When you pull up the account, it's being billed to
13 Target stores in Minneapolis.

14 Q Target in --

15 A It was one of their corporate accounts, one of their
16 headquartered accounts in Minneapolis.

17 Q This is the second page of Government's Exhibit 29C,
18 DHL 23. Do you see that, sir?

19 A Yes.

20 Q Okay. And then what -- I don't think you have testified,
21 maybe you have, but what's a commercial invoice?

22 A Commercial invoice is -- it's just a document that is
23 very, very general in international shipping. It's required by
24 virtually every country in the world when you are shipping a
25 dutiable item. It's entry level document where you are

1 declaring the value of the document so duties may be assessed
2 and the shipment may be cleared.

3 Q And this commercial invoice, it has a waybill number which
4 matches the waybill of the actual waybill, correct?

5 A Yes.

6 Q All right. And here it's showing the shipper slash
7 exporter as Sky Cirlene, 160 West Camino Real, 152, Boca Raton,
8 Florida, correct?

9 A Yes.

10 Q I'm just going back to the waybill for a minute where it
11 says origin, BCT. What is that?

12 A BCT is the three-letter designation of the facility that I
13 work in. Every facility in DHL's arsenal is given a
14 three-letter code. It usually corresponds to the nearest
15 airport so it's an airport code, in this case the airport code
16 for Boca Raton, Florida.

17 Q Okay. So when you placed the phone call to the number
18 listed on the waybill, where did this phone call take place?

19 A It took place in my office.

20 Q At the BCT facility?

21 A At the BCT facility, yes.

22 Q And I guess that's it.

23 MS. MITRANI: Your Honor, I have transcripts. May I
24 pass out the transcripts of the call to the jurors?

25 THE COURT: Sure. I'm just going to read an

1 instruction about the transcripts.

2 MS. MITRANI: Can I pass one up to the Court?

3 THE COURT: Yes. Thank you.

4 All right. Members of the jury, Exhibit 29B has been
5 identified as a typewritten transcript of oral conversation
6 that is heard on the tape recording received into evidence as
7 Government's 29A. I have admitted the transcript for the
8 limited and secondary purpose of helping you to follow the
9 content of the conversation as you listen to the tape recording
10 and to help you identify who's speaking when. But you are
11 specifically instructed that whether the transcript correctly
12 reflects the contents of the conversation or the identity of
13 the speakers is entirely for you to decide based on your own
14 evaluation of the testimony you have heard about the
15 preparation of the transcript and from your own examination of
16 the transcript in relation to hearing the tape recording itself
17 as the primary evidence of its own contents. If you determine
18 the transcript is in any respect incorrect or unreliable, you
19 should disregard it to that extent.

20 Is there anybody who does not understand that
21 instruction?

22 I see no hands. Thank you.

23 MS. MITRANI: So the government is going to publish
24 the phone call now, Your Honor.

25 THE COURT: All righty.

1 (Thereupon, the audiotape was played.)

2 BY MS. MITRANI:

3 Q When we heard that very unpleasant noise, do you remember
4 why we heard that?

5 A My phone will do that. It's digital voice, so it will do
6 that. If you don't dial within a certain number of seconds,
7 the phone will just start doing that.

8 Q So did you then redial the number that was on the air
9 bill?

10 A Yes, we did.

11 (Thereupon, the audiotape was played.)

12 BY MS. MITRANI:

13 Q I'll stop it for a minute. So in this recording, you
14 said, this message is for Josh. Where did you get that Josh
15 name from? Why did you say that?

16 A When the messages started coming in requesting return, our
17 customer service in, I believe, Arizona communicated that name
18 to me in the emails saying that the person's name was Josh
19 Pablo and wanted the package returned.

20 Q So that was your understanding at that moment?

21 A That was my understanding at that moment, so I said, okay,
22 I'm looking at a last name here, not a first name. So that's
23 the message I left.

24 Q Did you then redial the number in the waybill
25 561-361-43 -- I can't see from here -- 4343?

1 A Yes, we did.

2 (Thereupon, the audiotape was played.)

3 BY MS. MITRANI:

4 Q A couple of things, Mr. Kennicutt. First, Agent Van Brunt
5 says a number at the end saying that it was misstated in the
6 beginning. Just you tell us, what number was called?

7 A My recollection is it was 4343 at the end. So it was
8 561-361-4343, but I know we kept butchering it because we
9 thought the 4 was a 9.

10 Q You thought 4343, you thought that first 4 was a 9?

11 A Yes. I remember like when you hear it on the tape, you
12 hear the number is not in service. We were vacillating back
13 and forth with what those last four numbers were.

14 Q So then you got it right with the 561-361-4343?

15 A Yes, my recollection is yes, that's what it ended up
16 being.

17 Q Now, in your -- in the recording, are you told this Pablo
18 Servente they could come pick it up Monday morning if they
19 showed proper ID, right?

20 A Yes.

21 Q Did Mr. Servente show up Monday morning at your facility?

22 A No, he did not.

23 Q Did Mr. Servente show up to pick up this package at all?

24 A I believe so. I believe there was one time I was either
25 in or out of the office when whoever it was came to pick it up.

1 And I had alerted the front office staff to contact me if
2 someone came to pick up that package. And I instructed the
3 front office staff at that time to just tell them, no, we had
4 released it back to Cincinnati whether that was true or not
5 because I didn't want to release the package when the FBI
6 wasn't there.

7 Q Okay. And did you have further contact with the FBI
8 regarding this investigation at a later date?

9 A At a later date, yes.

10 Q And tell us what that was all about.

11 Let me help you. Did the FBI contact you --

12 A We have had a lot of contact --

13 MR. SCOTTON: Objection, Your Honor.

14 THE COURT: I didn't hear the objection.

15 MR. SCOTTON: Leading.

16 THE COURT: I have to hear the question first. She
17 just said, let me help you and didn't say what the question
18 was.

19 BY MS. MITRANI:

20 Q Did you have some contact with Special Agent Van Brunt
21 regarding a package that was going to be shipped to Brazil?

22 A Yes. He had given me an airway bill number of a package
23 that was going to Brazil and asked me to stop it before final
24 delivery. So I sent alerts out to some of my counterparts in
25 Brazil, but the package had transferred too quickly. We are

1 that good. So it got delivered before they got the message.
2 So we had to have the package returned and I gave it back to
3 Agent Van Brunt.

4 Q So the package returned from where?

5 A From it's destination in Brazil. So basically he wanted
6 it stopped in Brazil. And I sent messages out the night prior,
7 but this particular package sorted through our Miami gateway
8 very quickly. And it cleared customs very quickly in Brazil
9 and it got cleared before they actually saw the emails
10 requesting they hold it.

11 Q Mr. Kennicutt, I'm showing you what's been marked for
12 identification as Government's Composite Exhibit 31A and B.
13 Can you, generally speaking, recognize what these are?

14 A Yes.

15 Q A little more specific. Is it something you had direct --
16 is it a waybill from DHL?

17 A Yeah. I had direct interaction with this. This was
18 shipped in from Brazil being delivered to the same address of
19 160 West Camino Real.

20 Q Okay. Let me get it in first. Okay. And then 31B, is it
21 the contents of the package of 31A?

22 A Yes, it was. There were several of these in the box.

23 MS. MITRANI: And, Your Honor, the government would
24 offer 31, composite 31.

25 THE COURT: Any objections?

1 MR. SCOTTON: No, Your Honor.

2 THE COURT: Government 31 is admitted.

3 (Thereupon, Government's 31 received in evidence.)

4 BY MS. MITRANI:

5 Q We will talk more about it in a minute. Let me just get
6 this one. We will go back to it. Let me do this one. I am
7 showing you composite 34. Is this another package that you
8 seized?

9 A Yes.

10 Q You can take it out if it helps.

11 A Yes, I remember this one as well.

12 Q Okay.

13 MS. MITRANI: Your Honor, government would offer
14 composite 34?

15 THE COURT: Any objection?

16 MR. SCOTTON: No, Your Honor.

17 THE COURT: Government's composite 34 is admitted.

18 (Thereupon, Government's 34 received in evidence.)

19 BY MS. MITRANI:

20 Q I'm just going to get this little machine here warmed up,
21 Mr. Kennicutt.

22 So tell us about this waybill. What is this?

23 A That was the shipment that came in from Brazil. If you --
24 from Rio de Janeiro. If you look in the upper right-hand
25 corner, it was actually miscoded to our Miami office. But the

1 delivery address would be in Boca Raton, so they routed it up
2 to us for delivery. It was a box of fliers. If you look in
3 the top left corner, you will see an account number there
4 beginning with a 96.

5 Q Let me see if I can see it. Is it this right here, sir?

6 A Yes. That's significant because accounts that begin with
7 96 or 97 are typically paid to the importer. It's how
8 companies in the United States have material moved from foreign
9 countries to them and they pay the bill.

10 So again, on this case, the receiver would be paying for
11 the shipment and paying any duties and taxes on the shipment
12 and that that account -- boy, top of my head I want to say it
13 was Honeywell but I'm not sure. That account didn't match up.
14 It was a red flag for this type of shipment because it was a
15 customer's account that generally wouldn't come into my
16 building. And it didn't match the customer that it was going
17 to.

18 Q It didn't match the customer it was going to, and in this
19 instance, it was going to a Cirlene Santos at 160 West Camino
20 Real, Suite 162, Boca Raton?

21 A Yes. And that address is a pack and mail type super
22 center. When you go to the UPS store, Mailboxes Etc. or
23 whatnot and people have mailboxes there, they hold these for
24 them and they receive packages for those customers.

25 This particular shipment, I believe, was the one that made

1 me aware of the issue because the driver called in and said
2 that the package was being refused by the receiver and the
3 excuse that -- the reason that he gave us was his customer for
4 that account owed him money. So that's when the driver called
5 in to report that he couldn't deliver it.

6 That triggered the research and then we became aware of
7 the fact that we weren't just dealing with fraudulent shipments
8 going outbound. We were starting to see them inbound for
9 delivery.

10 Q I can't get the whole thing on, but this is Exhibit 31B.
11 Was this what was contained in that shipment, that inbound
12 shipment that you seized?

13 A Yes, yes. There were several of those. It was a
14 12-pound, I believe, shipment so it had quite a few of those in
15 there -- or 12 kilos, I'm sorry. It was a sizeable shipment,
16 around 25, 26 pounds, and it was full of those brochures.

17 Q For Sky Air?

18 A Yes.

19 Q With the phone number 561-361-4343?

20 A Correct.

21 THE COURT: I'm sorry, I need to have counsel up here
22 for just a moment sidebar.

23 (Thereupon, the following was heard sidebar.)

24 THE COURT: Somebody by the name of Ryan Sandal is
25 downstairs at security with a computer. Let me see, with a

1 computer and a phone. He does not have a subpoena, but he says
2 that he's a witness in this case.

3 MS. MITRANI: He's not a government witness.

4 THE COURT: Ryan Sandal.

5 MR. SCOTTON: Your Honor, I don't have my list, but
6 that name doesn't -- I can't recall the name.

7 THE COURT: Okay. I'm going to release him then if
8 neither party knows who he is.

9 MS. MITRANI: Ryan Sandal?

10 THE COURT: Ryan Sandal.

11 MR. SCOTTON: I'm asked by counsel what is the list of
12 subpoena. They haven't given me my list of subpoena.

13 THE COURT: Mr. Scotton, you should know who your
14 witnesses are. He's either your witness or he's not. Is he
15 your witness?

16 MR. SCOTTON: Your Honor, I can't say if he is. I
17 cannot recall the name if I can't see my list.

18 THE COURT: Look at your list.

19 MR. SCOTTON: I don't have it.

20 THE COURT: Mr. Scotton, you know who you asked to
21 have subpoenaed. He's either on your list or he's not on your
22 list.

23 MR. SCOTTON: Your Honor --

24 THE COURT: Excuse me. It's your responsibility to
25 know who your witnesses are. Now, I have a man downstairs with

1 a phone and a computer who says he's here for the Scotton
2 trial. And I have not allowed -- I have not issued an order
3 authorizing him to bring in a phone or a computer and I'm not
4 going to do that if neither of you know who he is.

5 MR. SCOTTON: Can I send my investigator down to see
6 who it is?

7 MS. MITRANI: I know he's not a witness for the
8 government, but I can ask my agent who he is.

9 THE COURT: If you want to send your investigator
10 down, that's fine, but I'm not letting the person in with a
11 computer and cell phone if there's not a good reason for it at
12 this point.

13 MS. MITRANI: Should we go check and come back
14 sidebar?

15 THE COURT: Yes, go check and come back, please.

16 (Thereupon, the following was heard in open court.)

17 THE COURT: Thank you for your patience. This will
18 just take a moment. Once in a while we have a mystery that
19 arises and we need to make sure that everything is going along
20 smoothly.

21 Is it any different than you told me sidebar?

22 MS. MITRANI: No.

23 THE COURT: Let's go ahead then and we will proceed.
24 Sorry for the interruption.

25 MS. MITRANI: Not at all, Your Honor.

1 BY MS. MITRANI:

2 Q So you were saying there were a whole bunch of these Sky
3 Air fliers in that package that you seized?

4 A Yes.

5 Q And this is the same entity that you called regarding that
6 TIO international package, correct?

7 A Yes, it was the same number I called, same entity.

8 Q Now I'm going to show you 34, 34A and B. First let me ask
9 you, Mr. Kennicutt, I have a waybill and a piece of paper.
10 What's the relationship between these two documents?

11 A This would have ridden on the shipment itself. So this is
12 a carbon copy of the, you know, original document. It was a
13 few layers down where you hear that press hard as that rides on
14 the package. This appears to be a photocopy of the same air
15 bill.

16 Q So it's a photocopy of the same air bill?

17 A Yes.

18 Q You can tell by the way number, correct?

19 A Yes, they are the same. It's -- this is a photocopy of
20 this.

21 Q Now, this is another -- is this another DHL inbound label
22 from Brazil to the United States?

23 A Yes, it is.

24 Q And in this instance, this package was destined for Sky
25 Air?

1 A Yes, it was.

2 Q At that same 160 Camino Real Boulevard address?

3 A Yes.

4 Q And why did you seize this one?

5 A By the time we started realizing that we were going to
6 have this problem inbound, I instructed the courier for that
7 area to not deliver to that address without my approval. So we
8 would hold the shipment. I would briefly check the account
9 number. I would validate, try to make sure that it was
10 legitimate.

11 By that time, too, we had also told the courier nothing
12 for Sky Air. That was becoming a real common denominator in
13 these shipments in and out. So it had a bunch of red flags.
14 And the courier pulled it off the belt and came to me with it.
15 And I said I'll take it from here.

16 Q What is Government's Exhibit 34B?

17 A That would be the invoice that accompanied the air bill
18 you just showed me.

19 Q With a date of 7/28/09, correct?

20 A Correct.

21 MS. MITRANI: Your Honor if I can have a moment.

22 THE COURT: Sure.

23 MS. MITRANI: No further questions, Your Honor.

24 THE COURT: Cross-examination.

25 CROSS EXAMINATION

1 BY MR. SCOTTON:

2 Q Mr. Fred?

3 A Hi.

4 Q Good afternoon. Should I call you Fred? Can I call you
5 Fred. Will be okay?

6 A Fred's fine, yeah.

7 Q Do you have the timestamps authentication from this phone
8 record?

9 A I'm sorry?

10 Q Do you have the time stamps from this phone record?

11 A Of the phone number that we called?

12 Q Yes.

13 A No, I do not.

14 Q You don't. So you cannot provide this court of the
15 timestamps that synchronize when the call was dispatched and
16 when the call was received?

17 A No, I do not.

18 Q They have -- the FBI has put a device in your cell phone?

19 A No, it was actually the landline in my office.

20 Q When exact did you make the second call?

21 A When did I make the second call?

22 Q Yeah.

23 A I believe it was either later that afternoon or the next
24 day.

25 Q Do you know the day, exact day?

1 A No, I don't.

2 Q Do you know who is Pablo Servente?

3 A Do I know?

4 Q Who Pablo Servente is?

5 A No, just from hearing him say his name on the phone.

6 Q Does anybody in DHL know who is Pablo Servente?

7 A I couldn't answer that.

8 Q Have you tried to call Pablo Servente again after this?

9 A After I left the message that the package could be picked
10 up?

11 Q Yes, sir.

12 A Not that I recall.

13 Q You mention that cameras on DHL storage 45 days, correct?

14 A That's at a minimum. They will continue to record for
15 several weeks. If they are constantly used --

16 Q Fred, just answer yes or no. I appreciate it. Thank you.

17 During the cross-examination with the government, you say
18 that you didn't see anything wrong with those packages, that's
19 correct?

20 A I didn't see anything wrong with what?

21 Q Anything wrong with the packets?

22 A With the --

23 Q You mentioned during the cross-examination, you say on
24 beginning --

25 A Which package?

1 Q The package that was being dropped off to go to Brazil,
2 you don't see anything wrong with the packages, do you?

3 A I don't see anything wrong with it?

4 Q Yeah.

5 A Other than it was being billed to an account that the
6 person didn't own, no.

7 Q You mentioned to the prosecutor there was nothing wrong
8 with the packets until you receive some email from Nicole,
9 correct?

10 A That there was nothing wrong with the package? I'm not
11 understanding the question.

12 Q At the beginning of your cross-examine you mentioned that
13 you don't see anything wrong with the package until you receive
14 emails from Nicole from the fraud department.

15 A Not that package, no. These were several other air bills
16 that department was providing me with. That package was a
17 separate issue. The fraud department never alerted me to that
18 package. I alerted them.

19 Q Did you recall a type of device that was connected to your
20 phone?

21 A One more time, please.

22 Q Did you remember what type of device was connected to your
23 phone?

24 A It was a tape recorder.

25 Q Can you describe this tape recorder?

1 A It was a device that had phone lines in and out of it and
2 it recorded the conversation. That would be about the limit of
3 my technical knowledge of it. It attached to my phone and it
4 looked like a little tape recorder.

5 Q Did you remember whose the detect that has collect the
6 phone call out of the device?

7 A Who collected it?

8 Q Yes, sir?

9 A Agent Van Brunt.

10 Q Fred, if someone sending me a package, that's make me
11 response for the bill?

12 A If someone sends you a package?

13 Q Yes or no?

14 A Could you repeat the question.

15 Q If someone ship a packet to me, does it make me
16 responsible for the bill?

17 A Make you responsible for the bill?

18 Q Yes.

19 A It would depend on --

20 Q It's a simple question. It's a yes or no, Mr. Fred. If
21 someone send me a package and I receive it at home, do I be
22 responsible to the bill, yes or no?

23 A If it's being shipped to you on your account number, then
24 yes, you are. If it's not your account number, then no, you
25 are not.

1 Q This waybill end in 3913 come from Brazil?

2 A I'm sorry?

3 Q The waybill that ends with 3913, have the waybill come
4 from Brazil?

5 A Can you show it to me?

6 Yes. That's one of them that came in from Brazil.

7 Q Do you recall which account number was used in this
8 shipment?

9 A Could I see the better copy of the air bill? You showed
10 me one that's illegible.

11 This particular one, I am not sure what it was. I don't
12 believe I could validate this account number as a valid account
13 number of any kind really. That's my recollection of this one.
14 The other one with the brochures in it, that one was one I
15 could verify.

16 Q So a package has been shipped from Brazil to United
17 States, and that account is not valid account, right?

18 A And what?

19 Q The account was not valid account?

20 A That one, I don't believe I could validate that account
21 number. I think there was -- it didn't come up. It didn't
22 come up in the computer.

23 Q Right. But the package got delivery?

24 A Not that I know of. I think that was one that was held as
25 well.

1 Q So is any reason why this account was not validated
2 account?

3 A The numbers didn't come up in our system when I tried to
4 pull it up. It could have been miswritten or it could have
5 been -- it could have just been invalid.

6 Q So it's not that it is a fraudulent account. It does not
7 come up in your system?

8 A On that particular airway bill, right, I couldn't validate
9 that one.

10 Q Did you try to contact Sky Air in reference to the
11 package?

12 A No, not that I know of.

13 Q So you receive package that came from Brazil to Sky Air
14 and you guys never contact Sky Air to deliver the package just
15 because the package has no accounts?

16 A We generally don't. If we are going to deliver it, we
17 deliver it. If we are going to hold it, we hold it.

18 Q Did you guys return the package back to sender?

19 A Did we return it to sender? I'm not sure.

20 Q Do you have any knowledge who filled out the waybill?

21 A Any knowledge of --

22 Q Who filled out the waybill.

23 A No, I do not.

24 Q Is anyone from your company or you, Mr. Fred, has
25 contacted the company in Brazil, R. Bracatas?

1 A R -- could you repeat that? You asked me if they
2 contacted a company, but I didn't get the name.

3 Q You or anyone from the company contact the company back in
4 Brazil?

5 A I did not. Once I give it to our fraud department, it's
6 up to them whether they are going to contact. We don't talk
7 about it.

8 Q Have the fraud department contact the company in Brazil?

9 A I would not know, sir. I'm sorry. That's their function.

10 Q Have anybody in your company tried to bill R Bracatas in
11 Brazil for that particular shipment?

12 A Not locally, no.

13 Q Have anyone from your company contact Mr. Milton Silva?

14 A Who.

15 Q Milton Silva.

16 A Again, again, once I give it to fraud, I don't know
17 anything more. I can tell you I did not. I would not.

18 Q It is allowed third party shipping with DHL?

19 A I'm sorry?

20 Q It is allowed to be someone to ship as a third party
21 shipping through DHL?

22 A It can be done, yes.

23 Q Have anyone from DHL went to the location 444 Boca Raton
24 Road?

25 A Not that I know of.

1 Q Is anything illegal of using a third party shipping
2 company?

3 A One more time.

4 Q Is anything illegal in use third party shipping account?

5 A Is there anything illegal to use a third party shipping
6 account?

7 Q A third party shipping company.

8 A A third party company?

9 Q Yes.

10 A Yes.

11 Q Why is it illegal?

12 A Most third party companies like you are referencing would
13 have to be recognized by DHL as a shipping company. If they
14 are not, they are not allowed to ship with us. Doesn't mean
15 they don't try.

16 Q Do you understand there is a lot of third party shipping
17 companies that resale those kind of service to clients?

18 A Yes, there's a lot of them. DHL recognizes them, yes.

19 Q Just because DHL didn't recognize, third party shipping
20 company cannot ship a package to anybody else?

21 A They cannot represent themselves as somebody who can ship
22 with DHL. They must have permission to do so. A reseller,
23 that's what you are referring to, would have to be recognized
24 by DHL, have rates with DHL. The sign out in their building
25 would be a DHL sign given by DHL. And then, yes, they would be

1 recognized. But no, they cannot ship with us if they are not
2 recognized.

3 Q I'm not talking about reseller, Mr. Fred. I'm talking
4 about any company that is involved in shipments.

5 A Any company involved in shipping?

6 Q Is any company in shipping, a company like Lider Mundanca,
7 they do freight, ocean freight, air freight?

8 A If you listen to that tape, the person on the other end
9 told me a DHL sign was in their window. That would be
10 extremely illegal unless you are a DHL recognized partner with
11 a DHL account number licensed to handle shipments for DHL as a
12 reseller. Just having our logo in your window would be
13 something that if validated, I would call the authorities on.

14 Q Right. And how the clients of that company be able to
15 know if he has authorization or not when he have a sign in his
16 door?

17 A If he's trying to perpetrate a fraud, they wouldn't know.

18 Q If anybody tried contact Mr. Ruebens Amaral from Lider
19 Mundanca?

20 A I wouldn't know. Again, this was referred to our fraud
21 department. We don't have communication.

22 Q Bob Robison has advised that he has a sign in his window.
23 Did you dispatch anybody to check his signs?

24 MS. MITRANI: Objection, Your Honor.

25 THE COURT: Sustained.

1 BY MR. SCOTTON:

2 Q Have anybody from DHL or your location or anyone else from
3 the corporate offices try communicate with Mr. Robison and see
4 if he is authorized shipping center?

5 A Everything I do is operational. If I see something like
6 that, I refer it to our fraud department. I don't have further
7 contact with them. They would work directly with the
8 authorities and handle the problem. I ship packages.

9 Q One the accounts that was using major account belongs to
10 Target, that's correct?

11 A Yes.

12 Q Have Target denied the knowledge the account was be opened
13 by them?

14 A In this case, they didn't have to. We intercepted it.

15 Q But the account is originated by Target?

16 A Yes.

17 Q So was not fraudulent account, was used authorized
18 account?

19 A It was a used authorized account.

20 Q It was not authorized to be used?

21 A It was not authorized to be used by whoever was using it.

22 Q Do anybody from DHL went to 106 West Camino Real
23 Boulevard?

24 A That is a regular customer of ours, at the time was a pack
25 and mail super center. Yes, we pick up and deliver from them

1 all the time.

2 Q Does anybody from your company ask anything about Sky Air
3 at that location?

4 A I have had a conversation with a courier about what they
5 told him.

6 Q And what the courier say about, sir?

7 A It's --

8 THE WITNESS: Your Honor, can I answer that? It's the
9 courier telling me something.

10 THE COURT: Well, it's hearsay, but there's no
11 objection, so I suppose if there's no objection.

12 BY MR. SCOTTON:

13 Q I'll rephrase the question then.

14 A Okay.

15 Q Have anybody from your company tried to contact Sky Air?

16 A I made the one phone call that you heard, the two phone
17 calls that you heard on the tape.

18 Q Have anybody tried to contact Sky Air to talk about this
19 matter of shipping fraudulent accounts?

20 A I don't know. Again, that would be referred to our fraud
21 department.

22 Q Have anybody from your company tried to bill Sky Air from
23 any of those accounts?

24 A Again, I would not know.

25 Q Mr. Fred, have you met me before?

1 A No.

2 Q Have anyone in your office met me before?

3 A I suppose it's possible.

4 Q Yes or no, Mr. Fred, please.

5 A I don't know how to answer that. I haven't seen you
6 before. I haven't met you before.

7 Q Have anybody called the number on the recorder looking for
8 Mr. Rogerio Scotton?

9 A Has anyone called what number?

10 Q The 4343.

11 A I called it the time that you heard in the courtroom.

12 Q Have anybody called looking for Rogerio Scotton on that
13 location?

14 A I don't know.

15 Q Have a Ms. Nicole from the fraud department send you the
16 police reports in reference to Lider Mundanca?

17 A No.

18 Q Have she advised that Sky Air has reported Lider Mundanca
19 to police department?

20 A No, I wouldn't be involved in any of that, sir.

21 Q Let me get this straight, Mr. Fred. You left a message
22 for Mr. Pablo to go back on Monday to retrieve that package,
23 that's correct?

24 A Yes.

25 Q Monday being which day?

1 A I'm not sure without looking.

2 Q You made a call, you don't know when you made the call?

3 A No, I called him on a Friday and told him he could have it
4 back by Monday.

5 Q Friday what?

6 A I don't know.

7 Q You don't know?

8 A Off the top of my head, I don't recall.

9 Q What year, what month?

10 A It was in 2009, July of 2009, I believe. I'm not sure. I
11 mean, again, I would have to look at the air bill.

12 Q The FBI mentioned they spoke to you on 05/22/2009, that's
13 correct?

14 A On?

15 Q On May.

16 A May of 2009?

17 Q May 22, 2009.

18 A I'm not sure of the exact date.

19 Q So you don't know if the phone call was made on May 29?

20 A I believe it was. Again, I would have to look at the
21 transcript. That's me talking on it. It's Agent Van Brunt
22 talking on it.

23 Q Right. Did I understand by the FBI that you guys tried
24 to -- you guys admitted to two phone calls? The first phone
25 call, as Mr. Van Brunt say, around 11:00 in the morning, 11:50

1 perhaps, and then you guys made the second phone call?

2 A Yes.

3 Q Is the second phone call in the same day?

4 A I believe it was. Again, I'm not sure.

5 Q Then you guys have the nice conversation Mr. Pablo. You
6 don't know who is Pablo Servente is?

7 A No.

8 Q Then you advice Mr. Pablo Servente to come back to your
9 station to retrieve the package on Monday?

10 A Yes.

11 Q But you don't know what Monday day would be?

12 A I'm sorry?

13 Q You don't know what the day of the month or the year?

14 A No, not without looking again, no.

15 Q Or FBI has told you that the conversation -- you guys left
16 a message and the conversation was that Pablo supposed to go
17 back to your lotion on Monday, May 18, 2009 at 10:00 a.m., is
18 this correct?

19 A I remember saying to come back on Monday at 10:00 a.m.

20 Q Right. So then explain to me, how can Pablo Servente go
21 to your location on May 18 of 2009 when you guys made the call
22 on May 22 of 2009?

23 A How can he what?

24 Q How can he go back over there on your lotion on 18 when
25 you guys made the call on the 22nd?

1 A I don't follow you.

2 Q You don't follow me?

3 A No.

4 Q You made a phone call on the 22nd.

5 MS. MITRANI: Objection.

6 THE COURT: What is the objection?

7 MS. MITRANI: He's misstating the evidence.

8 THE COURT: All right. Well, the witness can correct
9 him if the witness thinks there is --

10 MR. SCOTTON: Let me rephrase the question, Your
11 Honor.

12 BY MR. SCOTTON:

13 Q FBI in the phone call saying that the phone call was made
14 May 22, 2009 --

15 MS. MITRANI: Okay. Objection.

16 MR. SCOTTON: -- correct?

17 MS. MITRANI: Objection to the characterization of
18 Exhibit 29.

19 THE COURT: All right. I don't have a copy -- well,
20 all right. Sustained.

21 BY MR. SCOTTON:

22 Q The conversation on the phone say that Pablo Servente has
23 come to the location to pick up, to retrieve the package on
24 May 18, 2009?

25 A Again, I'm not sure.

1 Q You are not sure?

2 A I'm not sure of the dates. I would need to see the
3 transcript again or the air bill.

4 Q I'm going to confuse myself, Mr. Fred.

5 MS. MITRANI: Your Honor, may I pass up a copy of the
6 transcript to the witness?

7 THE COURT: Mr. Scotton, do you have any objection to
8 the witness having a copy of the transcript?

9 MR. SCOTTON: Your Honor, I'm trying to go --

10 THE COURT: Can you answer yes or no, please.

11 MR. SCOTTON: No, Your Honor. I'm trying to go by
12 what the information the FBI was in reference to the phone
13 call.

14 THE COURT: Excuse me. No need for discussion. Let's
15 have the transcript bought up to Mr. Kennicutt, please. Thank
16 you.

17 I tell you what. Why don't we take a break and we
18 will come back at 3:00. Let's all rise for the jury. We will
19 see you back here at 3:00.

20 (Thereupon, the jury exited the courtroom at
21 2:48 p.m.)

22 THE COURT: All right. We will return at 3:00.
23 Mr. Scotton, if I ask you a question, I would appreciate it you
24 just answer it instead of launching into a discussion of
25 something that's unrelated. Thank you. We will see you back

1 here at 3:00.

2 (Thereupon, a recess was taken at 2:49 p.m.)

3 THE COURT: All right. Let me just advise everybody
4 that I was just informed that Ms. Flores needs to leave at
5 4:00 on Mondays and Wednesdays and 4:30 on Tuesdays and
6 Thursdays. Therefore, we will end today at 4:00. They moved
7 her class apparently.

8 MS. MITRANI: Yeah, I thought it was -- okay, Your
9 Honor. Thank you.

10 MR. KREISS: Thursday, Your Honor, we will work until
11 4:30?

12 THE COURT: Correct.

13 MS. MITRANI: Let me write this down. Monday and
14 Wednesday until 4:00, Tuesday, Thursday until 4:30.

15 MR. KREISS: I have a personal issue Thursday with one
16 of my children. At 4:30 I can run out the door.

17 THE COURT: If there's going to be an issue, let me
18 know. If we need to end a little earlier on Thursday, we will
19 address that. All rise for the jury, please.

20 (Thereupon, the jury entered the courtroom at
21 3:01 p.m.)

22 THE COURT: All right. Thank you. Please be seated.
23 And I don't want you to be concerned, Ms. Flores. We are going
24 to end Mondays and Wednesdays at 4:00 and Tuesdays and
25 Thursdays at 4:30 so you won't be late for you class.

1 Mr. Kennicutt, I need to remind you you are still
2 under oath. Do you understand?

3 THE WITNESS: Yes, Your Honor. Thank you.

4 THE COURT: I think we were in the middle of
5 cross-examination with Mr. Scotton. You may proceed with your
6 cross.

7 BY MR. SCOTTON:

8 Q Mr. Fred, you meant someone from your office has a device
9 that Pablo Servente has walk to the location to retrieve the
10 package, that's correct?

11 A That I was advised, that a person came to recover the
12 package, yes.

13 Q Has anybody tried to collect any kind of information from
14 this person?

15 A No.

16 Q Has anybody get a copy of his driver license?

17 A I believe the agent at the counter asked for it.

18 Q Do you have a copy of Pablo Servente's license?

19 A No, I do not.

20 Q Has the package been released to him?

21 A Was the package released?

22 Q Yes.

23 A No, it was not.

24 Q Out of 40-some cameras on your location, did you guys get
25 a video from Pablo Servente walking in?

1 A I believe there's one at the front counter.

2 Q For Pablo Servente?

3 A For whoever came to our front counter to pick up or drop
4 off packages, but I wasn't present.

5 Q I'm asking this particular package that you advise Pablo
6 Servente to come pick it up?

7 A On this particular package, sir, there would have been a
8 camera operating, but that's all I would know.

9 Q So nobody has Pablo Servente surveillance and nobody get
10 his ID or even get a video from him?

11 A Not that I know of, no.

12 Q Did anybody from DHL went to the location of Ruebens
13 Amaral?

14 A Again, I wouldn't know that. These would be questions
15 better suited for fraud or security.

16 Q So has the fraud department sent emails information about
17 fraud, right, that's correct?

18 A I'm sorry?

19 Q Fraud department has keeping sending information about the
20 fraud, right?

21 A Do they give me information about it?

22 Q Yes.

23 A No, not once I release things to them.

24 Q You mentioned that they sent emails to --

25 A They sent emails to us to stop these packages from going

1 out. That was the extent of the email.

2 Q So you don't get involved in anything related to fraud
3 department?

4 A Not to anything criminal, no. That wouldn't be my
5 function nor would I want it to be.

6 Q Have you met Mr. Ruebens Amaral before, Mr. Fred?

7 A No, I have not.

8 Q Have you seen this individual before?

9 A Have I what?

10 Q Have you seen this individual before?

11 A Have I seen who, I'm sorry, sir?

12 Q Have you seen him before at your location?

13 A Have I personally seen him? No, I have not.

14 Q Have you heard about this third party shipping companies
15 that advertise for the Brazilian community?

16 A That advertise for them?

17 Q Yes.

18 A I have heard of a couple that were not legitimate, yes.

19 Q And they have a shipping package through DHL too?

20 A They attempt to.

21 Q And all the package also was confiscated?

22 A That, I can't speak to. I don't know what gets through
23 and what gets confiscated, you know, what was successful or
24 what wasn't.

25 Q When was the last time you guys confiscate any packages

1 going to Brazil, Mr. Fred?

2 A It's been a while. I would say it's probably been --
3 again, I'm just guesstimating off the top of my head, but it's
4 been a year or two since we have seen anything that we would
5 have pulled.

6 Q Do you attempt to call me before, Mr. Fred, to talk to me
7 related to any fraud accounts or physical packages being
8 shipped fraudulently?

9 A No.

10 Q Anybody from your office attempt to call me direct to let
11 me know anything about fraud?

12 A Not that I know of.

13 Q The waybill shows the name of my company, Mr. Fred. Don't
14 you think it's kind of bizarre that nobody call me to let me
15 know what's going on?

16 MS. MITRANI: Objection.

17 THE COURT: Can I see the air bill?

18 Sustained.

19 BY MR. SCOTTON:

20 Q A package got shipped through unauthorized account,
21 Mr. Fred, and has information a waybill. Does anybody on your
22 company attempt to contact those companies that is on the
23 waybill?

24 A It would depend on the circumstances.

25 Q If it rightly saying that it is a fraudulent account,

1 don't you think someone should have contact names and phone
2 numbers on the waybill to verify them?

3 MS. MITRANI: Object. It's beyond the scope, beyond
4 the competency of the witness.

5 THE COURT: Sustained.

6 MR. SCOTTON: No more questions, Your Honor.

7 THE COURT: Any redirect?

8 MS. MITRANI: Yes, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. MITRANI:

11 Q Mr. Kennicutt, the defendant asked you about a company
12 Lider Mundanca. Do you recall those questions?

13 A Yes.

14 Q Other than hearing that name on the recording with the
15 individual who identified himself as Pablo Servente, have you
16 ever heard of that company in any other context?

17 A No, that was the only time.

18 Q I think you testified that -- strike that.

19 Were you there when the individual came purporting to pick
20 up that TO international package that served as the basis of
21 your phone call?

22 A No, I wasn't.

23 Q So do you know who the person was?

24 A No, I do not.

25 Q Do you know whether it was a Pablo Servente or somebody

1 else?

2 A No, I do not.

3 Q Okay. So you have no idea who that individual may have
4 been?

5 A No, I don't.

6 Q The defendant referred to a Ruebens Amaral. Do you recall
7 him asking you some questions with that name?

8 A Yes.

9 Q Do you know a Ruebens Amaral?

10 A No, I do not.

11 Q Do you even know if a Ruebens Amaral even exists?

12 A No, I do not.

13 Q The phone call that we heard, Government's Exhibit 29A,
14 which is the transcript of 29B, if you review the first -- if
15 you review the transcript, does that help to refresh your
16 recollection as to the date of the phone call?

17 A Yes, it does.

18 Q And when was the date that you made these phone calls in
19 Special Agent Van Brunt's presence?

20 A On May 15th.

21 Q What day of the week was May 15th?

22 A Again, I wouldn't know. It was 2009. You know, I would
23 assume if I told him the package could be picked up on a
24 Monday, that it was a Friday.

25 Q And does the transcript, in fact, reflect that Special

1 Agent Van Brunt identified the day as Friday, May 15th?

2 A Yes.

3 MS. MITRANI: No further questions.

4 THE COURT: All right. Thank you. The government may
5 call its next witness.

6 MS. MITRANI: The government calls David Bonilla.

7 THE WITNESS: Excuse me. Would someone like this
8 back?

9 MS. MITRANI: Thank you.

10 THE COURTROOM DEPUTY: Please raise your right hand.

11 DAVID BONILLA

12 After being duly sworn on oath was examined and testified as
13 follows:

14 THE COURTROOM DEPUTY: Please be seated and state and
15 spell your first and last name for the record.

16 THE WITNESS: My name is David Robert Bonilla, David
17 Robert Bonilla, B-O-N-I-L-L-A.

18 DIRECT EXAMINATION

19 BY MS. MITRANI:

20 Q Good afternoon, Mr. Bonilla. How are you doing?

21 A Doing well. Thank you.

22 Q Where do you live?

23 A I live in Louisville, Kentucky.

24 Q And how long have you been in Louisville, Kentucky?

25 A I have been in Louisville, Kentucky since March of -- two

1 years ago.

2 Q Are you presently employed?

3 A Yes, I am.

4 Q By whom?

5 A Right now I'm working for the Home Depot.

6 Q Okay. And, sir, did there come a time when you were
7 employed by DHL?

8 A Yes, there was.

9 Q When were you employed by DHL?

10 A I was employed by DHL from, I think it's 2008 to mid-2009.

11 Q And before being employed with DHL, how were you employed?

12 A I was employed by a company called Alliance Entertainment
13 which is a national music distribution as a security director.

14 Q Okay. Let's turn to your employment with DHL from 2008 to
15 2009. What was your title?

16 A My title was regional investigator.

17 Q What department did you work for or with?

18 A I worked with the security and fraud department.

19 Q With the security and fraud. Okay. Where were you
20 stationed?

21 A I was stationed originally from Fort Lauderdale, and then
22 I was transferred to the Miami hub.

23 Q And so what territory did you cover?

24 A My territory covered several stations from Boca Raton,
25 south Florida, Puerto Rico, west southern Florida, Fort Myers,

1 Naples.

2 Q Can you tell the members of the jury a little bit about
3 what your responsibilities were. What did you do as a regional
4 investigator?

5 A As a regional investigator, basically you are doing both
6 internal, external, loss prevention responsibilities. You are
7 managing the contractual security at every facility. You are
8 meeting with the contractor management to ensure both
9 facilities are staffed, Miami and Fort Lauderdale, making sure
10 everybody had their proper airport identifications and
11 requirements.

12 I did internal security monitoring our systems which
13 included camera systems, any losses, any claims that were being
14 questioned as far as loss or stolen. I had to go in and
15 research those both via available documentation and available
16 video per facility.

17 Q Okay. In conducting your fraud investigations, did you
18 rely and use a lot of video systems, the surveillance systems
19 at the DHL facilities?

20 A Oh, yeah, that was one of the main systems that we used.
21 If there was a claim at any facility, we had to make sure, for
22 example, Miami hub was a big international and local public hub
23 where a lot of product went through. So we actually had a
24 review video confirming our receipts, our airway bills, et
25 cetera, to make sure that the product was received and where

1 between there and delivery to the docks for the vans to take
2 them out where we can pinpoint any losses.

3 Q So if I understood you correctly, did you say that part of
4 your video you can use that to pinpoint specific shipments that
5 were tendered to DHL?

6 A Correct.

7 Q All right. Well, Mr. Bonilla, did there come a time where
8 you were involved in an investigation involving shipments to
9 Brazil?

10 A Yes, I was.

11 Q So tell us how your involvement started.

12 A One of my responsibilities was a weekly, biweekly security
13 audit of all of our facilities.

14 Q What is a security audit?

15 A Security audit, basically you go through the location,
16 there was I -- believe it was like 30- or 40-point checklist on
17 facility security, camera systems, shipments that were not at
18 their -- you know, shipments had to come in, go out. They used
19 to have an area, I remember too, where they held shipments that
20 were either mislabeled or they had no delivery.

21 And on one particular day, I remember the day, I don't
22 remember what date it was, I remember seeing some packages that
23 were left at one location. I remember it being a large box,
24 one or two boxes, and actually some tires.

25 Q Which location were you at?

1 A That was at Boca Raton.

2 Q At the BCT station?

3 A BCT, yes.

4 Q And you noticed a couple packages set to the side?

5 A Yes, ma'am.

6 Q And why did that -- what did you do when you saw these
7 packages set to the side?

8 A I asked the station manager why these packages were left
9 on the side. At that time he informed me that these packages
10 were being -- he was instructed to hold them for DHL fraud
11 department.

12 Q So did you then make contact with the fraud department?

13 A Yes. What I did, I asked them to -- because there was
14 actually airway bill attached to that shipment, I asked them to
15 provide me copies of those shipments. And, yes, I did make
16 contact with the fraud department at this time to find out, you
17 know, what was going on with this product.

18 Q And as a result of your conversation -- strike that.

19 Do you remember who you spoke with at the fraud
20 department?

21 A Yes, station manager at that time was Fred, Fred
22 Kennicutt.

23 Q And do you remember who within the fraud department you
24 spoke to?

25 A I don't remember her last name, but it was Nicole first

1 name.

2 Q You spoke to a Nicole with the fraud --

3 A Yes.

4 Q Okay. And as a result of your conversation with Nicole,
5 what actions did you take?

6 A Basically I was instructed that these shipments --

7 Q Why don't you just tell me what you did as opposed to what
8 somebody may have told you because that's hearsay. Why don't
9 you tell me what you did as a result of the phone call.

10 A I requested copies of the airway bill. I informed the
11 station manager to let me -- call me whenever additional
12 shipments to Brazil came in as I was instructed by fraud
13 department to document any receipt of the shipments and to
14 document any individuals delivering the shipments.

15 Q Did you take steps to identify the person who was making
16 these shipments?

17 A Yes, I did. With the help of the station manager, I went
18 and reviewed our camera systems which were held in a room in a
19 computer type hub and we went ahead and reviewed there at the
20 DVR station which is locked up in a key room.

21 And he pointed out an individual, and I was able to
22 observe on previous days prior to my arriving at that location
23 a subject, a gentleman, delivering this shipment that I found
24 on that day.

25 Q That triggered the phone call to the --

1 A Yes.

2 Q -- to Nicole?

3 A Yes, ma'am.

4 Q All right. So on November 28, 2008, were you at the Boca
5 Raton station?

6 A Yes, I was.

7 Q And what happened on that date with respect to your
8 investigation?

9 A Yeah, on that date actually I was -- I had arrived. I was
10 in the parking lot at the time and I observed same individual I
11 had seen on my video that I had pulled arrived. He backed into
12 right to the front of the station. He was accompanied by a
13 young female. I remember her black hair, kind of flowery
14 summer-type dress. She remained outside. I saw him go in and
15 make those deliveries into the facility.

16 After the -- I remain outside just so I could obtain
17 documentation on that vehicle. As it left, I went ahead and
18 got the tag, got the vehicle information, went back inside. I
19 confirmed with the counter person and also Fred Kennicutt that
20 that was the same individual as we had reviewed on the video
21 prior.

22 Q And did you review the video of what had happened on
23 November 28th?

24 A Yes, I did.

25 Q And you reviewed it on that same day?

1 A On that same day, yes, I did. That's how I make my notes
2 and times, et cetera.

3 Q Did you take any actions with respect to the packages that
4 the individual brought into the station on that day?

5 A We were already instructed to keep those aside. I asked
6 the station manager, Fred Kennicutt, to go ahead and provide me
7 a copy of that airway bill.

8 Q Had you done that for the video that you had pulled prior,
9 did you ask for way bills to be pulled as well?

10 A Yes, I did.

11 Q Do you recall your next involvement in this case?

12 A After that day, I told the station manager and the front
13 counter person to advise me, call me, since I was back and
14 forth between Miami, Fort Lauderdale, call me any time any of
15 the shipments come in so I can go ahead and document those.
16 The next call that I received from the station manager was a --
17 I don't know if it was the next day or a couple days later, I
18 was informed that the gentleman who was making the shipments
19 was calling constantly because he was complaining about there
20 being a delay on receipt of these shipments to Brazil.

21 Q And did you go to the station at a time when this
22 individual who is complaining about his shipments went to the
23 BCT station?

24 A Yes. I went ahead and they informed me that he had told
25 them that he was going to be coming back on a certain date. I

1 don't recall the date right now. So I went ahead and went to
2 the station on that morning. And I also informed at that
3 time -- when I arrived to the station, I called the fraud
4 department, Ms. Nicole. I advised her that this gentleman was
5 calling, that both the station manager and the front counter
6 person were concerned because the individual calling was
7 very -- you know, they said they were scared. They were
8 concerned because he was saying I better get my stuff back, you
9 know, I'm going to go in there.

10 So they called me and they said, you know, we need some
11 backup, I guess some support here. So I called fraud. Fraud
12 basically Ms. Nicole told me, just go ahead and provide him our
13 phone number. I went ahead and wrote her information. I not
14 sure if I wrote her name, but I remember writing fraud
15 department. I remember adding the number.

16 And I met with the station manager and assistant manager
17 and I told them, when the gentlemen comes in, I will be here,
18 go ahead and provide him this document and let him know that he
19 needs to call the fraud department.

20 Q Okay. And so you gave that document -- you wrote fraud
21 department and the number, gave it to them to give to this
22 individual?

23 A Correct.

24 Q So did there come a time when you were at the station and
25 you saw the individual come in to discuss these packages?

1 A Correct. Actually on that date, I was at the station. At
2 the instructions of the fraud department, I remained right
3 outside the front counter. There's a vestibule you walk into
4 the station. And I remain right there where I can visibly see.
5 I couldn't see the individual, but I can see my station manager
6 at the front counter. I can hear anything being exchanged
7 between anybody at the front counter and the manager and I told
8 him that if anything happens, just to go back up because we had
9 an extra security door there where I could notify the
10 authorities if it was necessary.

11 Q In addition to the station manager, were there any other
12 personnel at the BCT working the front counter?

13 A I remember a -- I don't know her name. There was a female
14 counter person. I don't know her name.

15 Q All right. Did you pull the video for that date when this
16 individual came in?

17 A Yes, I did.

18 Q Okay. And you know what, let's do it this way.

19 MS. MITRANI: Your Honor, may I approach?

20 THE COURT: You may.

21 BY MS. MITRANI:

22 Q I'm showing you what's been marked for identification as
23 Government's Exhibit 13A. It's a compact disc. Do you
24 recognize that disc?

25 A Yes, I do. This is the video where I pulled both three

1 days that I documented. I went ahead and that's my print on
2 the front of the CD. This is the video that I went ahead and
3 shipped to the fraud department.

4 Q And does this contain three videos, surveillance video
5 from three separate dates?

6 A Yes.

7 Q Is there any audio?

8 A No audio on this, no.

9 Q And has this been changed or altered in any form?

10 A No.

11 MS. MITRANI: Your Honor, the government would offer
12 13A into evidence.

13 THE COURT: Any objection?

14 MR. SCOTTON: No, Your Honor.

15 THE COURT: 13A is admitted.

16 (Thereupon, Government's 13A received in evidence.)

17 BY MS. MITRANI:

18 Q Now, I'm showing you 13B, 13C, 13E, and 13F. Do you
19 recognize these documents?

20 A Yes, these are copies of the airway bills for those
21 shipments that I document on these three dates. And actually I
22 remember this one, the first one.

23 Q We will talk about it in a second. Nobody knows what you
24 are talking about. But these are the -- we will talk about
25 these -- are the airway bills that were connected to the

1 packages that you saw being brought to the office through the
2 video?

3 A Correct.

4 MS. MITRANI: Your Honor, the government would offer
5 the remaining portions of 13, I guess 13B, C, E, and F into
6 evidence.

7 THE COURT: Any objection?

8 MR. SCOTTON: No, Your Honor.

9 THE COURT: All right. Government's 13B, 13C, 13E,
10 and 13F are admitted.

11 (Thereupon, Government's 13A, B, C, E and F received
12 in evidence.)

13 BY MS. MITRANI:

14 Q All right. We are going to start with 13A and we will
15 start with the first clip or the first recording that you got
16 from 13A.

17 MS. MITRANI: Your Honor, do you mind if maybe we can
18 dim the lights a little bit? I think the quality --

19 THE COURT: Sure.

20 MS. MITRANI: Thank you, Your Honor. Thank you so
21 much, Your Honor. Thank you, Officer.

22 BY MS. MITRANI:

23 Q Okay. So before we hit play, what are we looking at,
24 Mr. Bonilla?

25 A That's the front counter at the BCT station, DHL.

1 Q Okay.

2 (Thereupon, the videotape was played.)

3 BY MS. MITRANI:

4 Q Okay. And, Mr. Bonilla, directing your attention to the
5 upper left part of the screen -- I'm sorry. I thought it was
6 over. I apologize. While we are watching, is the date of this
7 November 17, 2008?

8 A Correct.

9 Q Now, I think you started saying that you -- let me put up
10 13B. Showing you 13B. So this is a DHL label dated
11 November 17, 2008, correct?

12 A Correct.

13 Q So is this the label that goes to the big box that was
14 brought in on that video?

15 A Yes. As I mentioned, when I observed that, that label was
16 both on the package. And then when I request copies, that's
17 what matched to that delivery.

18 Q And I think you indicated, you started telling me when you
19 started to identify this label, it stands out in your mind?

20 A Yes, because one my last name is Vargas and I remember
21 joking about it. I told one of my fellow workers, God, I hope
22 I'm not family related. That's why I remember it.

23 Q So on this label, that was taken to the BCT station
24 November 17 by the individual depicted in the video, it says
25 it's from Wal space Mart, is that correct?

1 A Correct.

2 Q J. Lend, returns, 1110 Southeast 10th Street, Bentonville,
3 AR, which is Arkansas, and a zip code, correct?

4 A Correct.

5 Q And it's a package being sent to Brazil with a waybill
6 number ending in 4600, is that correct, sir?

7 A That's correct.

8 Q This is a copy of the waybill. What did you actually do
9 with the big package to which it was affixed?

10 A That remain at the station as we were instructed.

11 Q Okay. Showing you Government's Exhibit 13C, is this the
12 commercial invoice that accompanied that package that we have
13 been talking about, the Wal-Mart package?

14 A Yes, it is.

15 Q So as with the package, this commercial invoice shows the
16 sender as Wal-Mart, returns, at 110 -- excuse me 1110 Southeast
17 10th Street, returns, Bentonville, Arkansas, with the zip code,
18 correct?

19 A That's correct.

20 Q And it indicates that an Eagle 255 was being shipped out,
21 correct?

22 A Correct.

23 Q The same waybill number ending in 4600, correct?

24 A Correct.

25 Q Okay. Let's go to the next clip. So is this a clip

1 surveillance from November 28, 2008, sir?

2 A Yes, it is.

3 MS. MITRANI: Please play -- thanks.

4 (Thereupon, the videotape was played.)

5 BY MS. MITRANI:

6 Q Is this still a BCT station?

7 A Yes, this is the BC station.

8 (Thereupon, the videotape was played.)

9 BY MS. MITRANI:

10 Q Was this the day that you stood outside in your car,
11 Mr. Bonilla?

12 A Yes, ma'am.

13 (Thereupon, the videotape was played.)

14 BY MS. MITRANI:

15 Q Was there a girl there at the front counter?

16 A I'm sorry?

17 Q Was there a girl there at the front counter?

18 A Yes, yes.

19 MS. MITRANI:

20 (Thereupon, the videotape was played.)

21 BY MS. MITRANI:

22 Q And Government's Exhibit 13E, is this a DHL waybill from
23 November 28, 2008?.

24 A That's correct.

25 Q And was this affixed to one of the packages that the

1 individual in the video brought into the BCT station?

2 A Yes, right.

3 Q All right. So this package had the return address of
4 Targeting J. Ernesto, 2234 North Federal Highway, 327, Boca
5 Raton, Florida, correct?

6 A Correct.

7 Q And it was a package to be delivered to Brazil, correct?

8 A Correct.

9 Q With a waybill number ending in 0885, correct?

10 A Correct.

11 Q And in the middle where it says service, was the
12 annotation DDP right next to service. Do you see that? Did I
13 read that correctly, DDP?

14 A Yes.

15 Q Then going to F as in Frank.

16 THE COURT: Can we go ahead and turn the lights back
17 on?

18 MS. MITRANI: We have one more video, Your Honor.

19 THE COURT: All right.

20 MS. MITRANI: Thank you.

21 BY MS. MITRANI:

22 Q Is this another waybill that was affixed to one of the
23 packages that was brought into the BCT station on November 28,
24 2008?

25 A Yes, it is.

1 Q And this one also says that it's from Targeting J.
2 Ernesto, again at 2234 North Federal Highway, 327, Boca Raton,
3 Florida 33431, correct?

4 A Correct.

5 Q And another package going to Brazil, correct?

6 A Yes, ma'am.

7 Q And also the service there says DDP, correct?

8 A Correct.

9 MS. MITRANI: All right. Let's, if we can, go to the
10 last video, please.

11 (Thereupon, the videotape was played.)

12 BY MS. MITRANI:

13 Q Was this video clip from December 2, 2008?

14 A Yes. Yes, ma'am.

15 (Thereupon, the videotape was played.)

16 BY MS. MITRANI:

17 Q Was this the day that you were standing behind the door of
18 that facility when this event occurred?

19 A Yes, ma'am.

20 Q Were you able to hear the -- well, we will wait a minute.

21 (Thereupon, the videotape was played.)

22 BY MS. MITRANI:

23 Q Were you behind -- you can see an open door on that. Were
24 you behind there?

25 A Yeah, I was to the right of that open door.

1 Q An individual just came out?

2 A It's one of the station managers. His name is Chris
3 Turner.

4 Q That's Chris Turner?

5 A Yes.

6 Q Were you able to hear what was going on between Mr. Turner
7 and this individual?

8 A Yes. Chris Turner took the note that I provided him with,
9 the name and number for the DHL fraud department, handed it
10 over to the gentleman. I instructed him he can call them
11 direct and they will tell him, you know, what's going on with
12 those packages. I overheard the individual tell him that, you
13 know, you can't haul my packages. You know, I need to get my
14 packages. Turner told him no, I can't do that, sir, you are
15 going to have to call them.

16 Q Call them, call fraud?

17 A Yes, the fraud department with DHL on the number I
18 provided you on that paper. I noticed that the individual
19 voice was much louder. He said, you don't know who you are
20 messing with. You know, I can't say verbatim, but I remember
21 he was loud.

22 Q The individual at the counter?

23 A Yes, the individual at the counter, he was pretty loud.
24 He said, you don't know who you are messing with, I'm going to
25 sue you, I'm going to sue this company. And I do believe he

1 did use some profanity.

2 You know, Turner basically kept telling him, sir, you need
3 to call fraud department, you need to call them, they will deal
4 with you direct.

5 Q And did he identify himself at all?

6 A Actually, yes, during that exchange, he said, well, you
7 can't hold my packages. He went ahead and -- I didn't see it,
8 but I overheard him say something about a Brazilian police
9 officer.

10 Q Okay.

11 MS. MITRANI: Your Honor, I think you can, if you
12 wanted, put the lights on. I think we are done with the video.

13 THE COURT: All right. Thank you.

14 MS. MITRANI: No further questions, Your Honor.

15 THE COURT: Cross-examination.

16 The lights will be back on soon. They take a little
17 while to warm up.

18 CROSS EXAMINATION

19 BY MR. SCOTTON:

20 Q Say your name is David, right?

21 A Correct.

22 Q You no longer work for DHL, correct?

23 A No, sir.

24 Q Do you know Mrs. Rosa Galdamez that work out of Miami
25 station?

1 A No, sir.

2 Q Do you know Jennifer Campbell, supervisor at the Miami
3 station?

4 A No, sir.

5 Q Do you know Robert George, senior operations supervisor at
6 the Miami station?

7 A No, sir.

8 Q Do you know Antonio Moura and Justin Lobbs from the Miami
9 station?

10 A No, sir.

11 Q Do you know Giraldo Walker at the Miami station?

12 A No, sir.

13 Q Do you know Diana Diaz Costello that work together with
14 Yvette Ternors at Miami station?

15 A No, sir.

16 Q How long have you been working there, sir?

17 A About a year, sir.

18 Q You work out Miami station or Delray station?

19 A I worked at all those locations. I worked at the Miami
20 hub, Florida International Airport, Miami International
21 Airport, Fort Lauderdale airport, Boca Raton, BCT.

22 Q And you did not know any of those employees that work out
23 of the airport at Miami station?

24 A No, sir.

25 Q Was the video collected by you, sir?

1 A Yes, sir.

2 Q You mentioned that you wrote the tag number of the car
3 that I was driving?

4 A Yes, sir.

5 Q Did you run the tag?

6 A Yes, sir, I did.

7 Q Did you get the location for that tag?

8 A Yes, sir.

9 Q Did you remember the address for the location?

10 A I remember 7797 something Margate. I'm not sure of --

11 Q Did you remember the car that I was drive, sir?

12 A I believe it was like a black Infiniti SUV.

13 Q And when you wrote the tag number, which name come up out
14 of the tag?

15 A Last name of Colon. I don't remember the first name.

16 Q Is anything in dropping off package to a location?

17 A I'm sorry.

18 Q Is anything wrong with dropping off package to your
19 location?

20 A Is anything wrong?

21 Q Of dropping packages.

22 A Of dropping packages?

23 Q Yes, sir.

24 A Is that a general question to all customers?

25 Q Yes or no, if you go to your store and drop of packages,

1 is there anything wrong with that?

2 A No.

3 Q You mentioned that the government or there was a person
4 calling in reference to those packages very upset over the
5 phone?

6 A Correct.

7 Q Did you guys got the phone record?

8 A Not that I'm aware of.

9 Q Did you guys got the phone number from this person?

10 A Correct. That's what I understood from the station
11 manager and the front counter person.

12 Q But it don't have the record phone?

13 A Not that I'm aware of.

14 Q Is any particular reason why it is not audio on the video?

15 A None of our facilities had audio.

16 Q Is there any reason why?

17 A If I'm correct, and I have worked in cameras for many
18 years, I know there is some federal statute to obtaining, you
19 know, that's what my understanding was.

20 Q What kind of camera system do you guys use in DHL
21 locations, sir?

22 A There was various different systems. Most Miami and other
23 locations had what are called Pelco digital video recording
24 system which is your oldest system. BCT was basically a new
25 system. I would say at least six months to a year from the

1 time that I was there.

2 Q What is the space on a hard drive of the system you guys
3 have to restore videos?

4 A That various. I'm not aware of the exact recording time,
5 sir.

6 Q Did you collect those videos in the same day?

7 A No. I collected those videos after the third day that I
8 was there.

9 Q Did you have some kind of system to collect those videos?

10 A I'm sorry?

11 Q Did you use some other system to collect the video?

12 A No, you have to do it actually there at that particular
13 DVR.

14 Q So you connect a DVR to a laptop or computer and download
15 it?

16 A Correct.

17 Q Do you need special software for that?

18 A The software is already -- what it does when you go and
19 you try to record it, it will load to your laptop for that
20 system, yes.

21 Q On the first video, two person went inside the place and
22 drop of packets. One was me?

23 A Yes, sir.

24 Q Did you recognize the other gentleman?

25 A No, sir.

1 Q The other gentleman has any related to me?

2 A I'm not aware of that.

3 Q That he has commit anything illegal by dropping off his
4 own packets?

5 A Not that I'm aware of, sir.

6 Q Is his packets shipping under fraudulent accounts?

7 A Not that I'm aware of.

8 Q But my packages was shipping under fraudulent accounts,
9 correct?

10 A That was my understanding at that time, yes, sir.

11 Q Nothing wrong with dropping packets, right?

12 A Not to my understanding, sir.

13 Q The waybill the government has show here, and you
14 mentioned the gentleman from Brazil has the same last name as
15 yours, Vargas, have anybody from DHL contacted Rogerio Vargas
16 in Brazil to tell him those packages been shipped from
17 fraudulent accounts?

18 A Not that I'm aware of, sir.

19 Q Out of three visitations, did I admitted to the location,
20 have I provided with any IDs, any credentials to the manager?

21 A I don't understand the question, sir.

22 Q When I went to the station, did I identify myself as
23 Rogerio Scotton?

24 A Not that I'm aware, sir.

25 Q But you just mentioned here to the government that I

1 present myself as a police officer from Brazil?

2 A I said the individual in the video, sir. I didn't not
3 mention any names.

4 Q I understand. So the individual in the video is clearly
5 that's me. I mean, I shave my head of off, but clear it's me,
6 right?

7 A Now that I see it, yes.

8 Q I look more bigger over there, right?

9 A Yes, sir.

10 Q Those first two times that I drop off packages over there,
11 has anyone else in your station approach me to let me know,
12 Mr. Scotton, those packages have been dropping off here,
13 unfortunately those labels have been compromised as being
14 shipped through fraudulent accounts?

15 A I don't know.

16 Q In the first time that I drop off those packages, was
17 fraudulent accounts being used, right?

18 A That's what I was instructed. That's what I was informed
19 by the station manager and fraud department, yes, sir.

20 Q And I come back, and the second time, days later, with
21 another package, but no approach me to let me know, you got
22 some problem here those packages you have been dropping off,
23 nobody has approached me with that, right?

24 A Not that I'm aware of, sir.

25 Q The video doesn't seem to show that any management or any

1 security person approached me saying we need to talk to you,
2 Mr. Scotton, this packages have been shipping on unauthorized
3 accounts from Wal-Mart to Target. Has anybody told me anything
4 about that?

5 A Not that I'm aware of, sir.

6 THE COURT: Let me stop you now. I'm sorry, but it's
7 4:00 so we have to end for the day. We will start up again
8 tomorrow. We are going to start a little bit later tomorrow.
9 We are going to start at 9:30 tomorrow morning. So I hope you
10 all enjoy the extra half hour of sleep.

11 Remember my instructions. Please don't discuss the
12 case with anyone, don't disburse any information about the
13 case, and don't do any research into the case. And we will see
14 you at 9:30 tomorrow morning. All rise for the jury.

15 (Thereupon, the jury exited the courtroom at
16 4:01 p.m.)

17 THE COURT: Mr. Bonilla, you are excused until
18 tomorrow morning. We can't start without you. So if you could
19 please make sure that you are here in time for us to start at
20 9:30, we would all greatly appreciate it.

21 THE WITNESS: Okay. Thank you.

22 THE COURT: Thank you. Have a great night.

23 Please be seated. Since we find ourselves with this
24 unexpected extra time, I don't know if there's any of the
25 matters that we were going to address tomorrow that Mr. Scotton

1 is ready to address tonight. If so, we may be able to take
2 care of that tonight.

3 MS. MITRANI: Your Honor, can I just step out and
4 excuse a witness that's waiting?

5 THE COURT: Yes, of course.

6 MS. MITRANI: Thank you.

7 Thank you, Your Honor.

8 THE COURT: All right. There were some videos and
9 some photographs perhaps if we could work our way through those
10 materials and that way if there is anything in the other
11 materials provided today, the photocopies, we can address those
12 in the morning. Are you ready to do that, Mr. Scotton?

13 MR. SCOTTON: Let me have a minute with Ms. Mitrani.

14 THE COURT: Sure.

15 MS. MITRANI: So, Your Honor, as I indicated to you
16 this morning, there was different categories of items that the
17 defendant provided to the government. I am objecting to all of
18 the videos, but what Mr. Scotton was referring to is he gave us
19 probably 150 photos or something. I told Mr. Scotton if he
20 wants to pick 20 or so, I wouldn't object. And then in
21 exchange, Mr. Scotton said that we have Bank of America
22 records. We were unable to get a 902.11 stipulation, so he's
23 going to stipulate to our Bank of America documents.

24 So maybe the photographs we can take up tomorrow in
25 case the deal falls through, but maybe -- but the videos, the

1 government does object to on relevance grounds, so maybe that's
2 the way to start.

3 THE COURT: All right. Why don't we go through, you
4 can give me a description of each one and then if I -- if it's
5 not immediately obvious to me why it could be relevant, then I
6 will ask Mr. Scotton for a basis for why it would be relevant.
7 And if it is relevant, then we may need to address further
8 issues, I suppose.

9 MS. MITRANI: And just so -- I'm sure the Court is
10 clear, but in addition to pictures and videos, there's other
11 items that I guess we could address at another time. So it's
12 not just pictures and videos.

13 THE COURT: Let's see how far we can get. Why don't
14 we start with the videos. What is the first one?

15 MS. MITRANI: The first one we have is, the file name
16 is called iceman. The video type is WMV. The date last
17 modified was 6/24/2011. And it's eight minutes long. And the
18 contact is Scotton Production. It's scuba diving in Boca
19 Raton, June 24, 2011. We would object to that on relevancy
20 grounds.

21 THE COURT: Mr. Scotton, what is -- I'm sorry, can you
22 just explain why this is relevant?

23 MR. SCOTTON: It's relevant, some the reports on the
24 FBI and several people in the video that will come to testify
25 is going to contradict of the statements of the FBI.

1 THE COURT: I'm sorry. Maybe what I need to do is
2 hear from Mr. Scotton by himself. It's not immediately obvious
3 to me what Mr. Scotton means, and I don't want to force him to
4 give up his defense.

5 MS. MITRANI: Okay. We are happy to step out. But
6 it's a scuba diving video. Should we step out now? Do you
7 want to do one at a time or do you want to do them en masse.

8 THE COURT: I'll do them all at once.

9 MS. MITRANI: Okay.

10 THE COURT: What is the next one?

11 MS. MITRANI: The next one, the file name is
12 Formula 3. And it's -- the last date modified was June 1,
13 2011. It's 12 minutes and 36 seconds. Everything I'm telling
14 you is approximate, Your Honor, of course, but it's inside a
15 Formula 3 racing car.

16 THE COURT: Okay.

17 MS. MITRANI: We don't even know who is inside the
18 Formula 3 racing car.

19 THE COURT: Okay. Why is this relevant?

20 MR. SCOTTON: Some companies involved on this whole
21 process of shipping packages, they claim the fraudulent
22 accounts, companies that are related to me, they are in the
23 car -- they are in the video.

24 MS. MITRANI: From what I understand, Your Honor, it's
25 just a car. You don't see anybody's face in it.

1 THE COURT: All right. Mr. Scotton, is that not a
2 correct or accurate description of the video?

3 MR. SCOTTON: Your Honor, I, you know, I can't give
4 information here and start giving up my defense.

5 THE COURT: Well, Mr. Scotton, they have seen the
6 video, so I don't think it's asking you to give up any
7 information about your defense. What I need you to tell me is
8 whether that's an accurate characterization of the video.

9 MR. SCOTTON: Your Honor, I can't remember. I have so
10 much race videos, most of my videos are related to those
11 companies. So the video is going to show faces in those
12 videos. Some have their names on my cars and my helmet. It's
13 everything related to my case, my relationship with these
14 people.

15 THE COURT: Are they videos of DHL or Fed-Ex.

16 MR. SCOTTON: There will be some videos, yes, there
17 will be some names that show the names on there.

18 THE COURT: I guess I'm going to have to watch the
19 videos. What's the next one?

20 MS. MITRANI: One called MERGULHO2011, that's the file
21 name. It was modified 3/21/2011. It's Roger Scotton diving at
22 172 feet in Boca Raton, Florida. Is it in the water. It's
23 underwater video.

24 THE COURT: Why is that relevant, please Mr. Scotton?

25 MR. SCOTTON: Before everybody jump in the water, Your

1 Honor, there are some employees from UPS in the boat with us
2 and those employees going to come to testify.

3 THE COURT: What is the relevance of it?

4 MR. SCOTTON: It shows my relationship with those
5 people, Your Honor.

6 THE COURT: All right. What else?

7 MS. MITRANI: What other videos?

8 THE COURT: I'm not ruling right now.

9 MS. MITRANI: So if you want a response, we will wait
10 for the Court to request it, but we have a response.

11 Anyway, the next one is called M-E-R-R space M-A-I-L
12 space M-A-N. The only reason I say that is some of the letters
13 are capped, some aren't. The last modified was May 24, 2011.
14 It's 2 minutes and 50 seconds in length. It's a Merry Mailman
15 advertisement video, features Boca Raton and Pompano Beach
16 addresses, clips of packing and shipping packages with USPS,
17 Fed-Ex, UPS, and DHL. I think -- are these pictures of a store
18 front?

19 It's more like a commercial for his business, the
20 Merry Mailman?

21 THE COURT: All right. I will discuss that with
22 Mr. Scotton in a moment after I excuse you all.

23 All right. What else?

24 MS. MITRANI: Produce underscore zero, it was last
25 modified on September 13, 2010. It's a minute and 17 seconds.

1 It's a video of topless girls on a nearby boat and features
2 practically naked women on a boat. It appears that one boat is
3 filming the other boat.

4 THE COURT: I'm so sorry, Mr. Scotton, it's just not
5 immediate obvious to me why this would be relevant. Perhaps
6 you can enlighten me.

7 MR. SCOTTON: The video that has half naked woman over
8 there is not to do with me, Your Honor. What has to do with me
9 is the people in my boat. The wife is in the boat. They can
10 hear. That's the reason I throw that in.

11 MS. MITRANI: Do you want the government's response to
12 that?

13 THE COURT: Yes.

14 MS. MITRANI: You don't see anybody in his boat. You
15 really see the people in the other boat and you hear muffled
16 voices.

17 THE COURT: Is that correct, Mr. --

18 MS. MITRANI: You don't see the defendant or anybody.

19 THE COURT: Is that correct, Mr. Scotton? Is it
20 accurate that you cannot see anybody from the boat that you are
21 on?

22 MR. SCOTTON: You can hear the names on it, Your
23 Honor.

24 THE COURT: Well, can you see anybody in it?

25 MR. SCOTTON: I can't recall right now, but as I

1 understand it, yes, you can see. If the video has been cut, I
2 don't know.

3 THE COURT: Fine. Let's go on to the next one.

4 MS. MITRANI: All right.

5 MR. SCOTTON: Your Honor, if the Court is concerned
6 with the half naked woman over there, the defendant willing to
7 spend some time about that.

8 MS. MITRANI: It's the whole video. There's nudity in
9 the whole video.

10 THE COURT: If you can't see anybody, there's no
11 reason to show a video. If you think there's some relevance to
12 the audio, we can examine that separately. That doesn't
13 explain why you need to show a video. I mean if it's not
14 relevant, it's not relevant. And I'm not going to show a video
15 just for the purpose of embarrassing people who aren't even
16 here to defend themselves. I'm not going to do that.

17 If you can't explain to me why that's relevant, I'm
18 sorry, but I just cannot allow it. If you are telling me that
19 there is relevant audio, then I will be happy to hear that
20 argument. But I don't understand why you need to show the
21 video if all you are saying is relevant is the audio.

22 MR. SCOTTON: Well, the audio is important on the
23 video.

24 THE COURT: So are you conceding then that you don't
25 need to show the video?

1 MR. SCOTTON: I concede that I need to show it because
2 the audio.

3 THE COURT: I'm not sure I'm understanding. Are you
4 arguing that you still want to put in the audio, but you don't
5 care whether the video comes in?

6 MR. SCOTTON: No.

7 THE COURT: No, you are not arguing that? What are
8 you arguing?

9 MR. SCOTTON: Your Honor, I want to go ahead and run
10 the video because the video shows that my wife is with me on
11 the boat.

12 THE COURT: I'm not going to argue with you about it.
13 Unless the government has inaccurately characterized it, there
14 is no video of anyone from your boat. I mean, I will watch it
15 if I have to to satisfy myself that there's no video of anybody
16 from your boat. But I'm not going to be that happy if I watch
17 it and I find out that there's no video from anyone from your
18 boat when you could just tell me honestly whether there is.

19 MR. SCOTTON: I have to see. As far as I have seen,
20 if it is the video, there are two type of videos that show
21 those girls, Your Honor. One the video show plainly my wife
22 sitting there drinking bottle of water. There is another one
23 showing the girls passing by on the other boat and my wife is
24 just talking. And I told her to get out of the way. I said,
25 Aylin, get out of the way because I was videotaping the other

1 boat because people doing crazy stuff. There's twos different
2 videos, one she's sitting over there drinking water and the
3 other one. I don't know which one they are talking about.

4 THE COURT: While you are with your wife, you are
5 videotaping these naked women on the other boat and telling
6 your wife to get out of the way?

7 MR. SCOTTON: Yes.

8 THE COURT: Why is that relevant to showing that your
9 marriage is not a sham?

10 MR. SCOTTON: Because I am charged with that, right.

11 THE COURT: How does that make it any less likely that
12 your marriage is a sham?

13 MR. SCOTTON: Your Honor, if someone engaged to get
14 married to someone for purpose of get some type of green card,
15 let's put it that way, am I going to go ahead and associate
16 myself with her most of the time, go to restaurant, go to boat?
17 No, we are not going to associate ourselves. I pay her, right,
18 and she go her way. Intimacy -- we together we doing things
19 together as a couple do normal. We have a fight, yeah, we have
20 a fight like a couple, yeah, people do.

21 THE COURT: All right. I'll tell you what. Let's go
22 on and discuss what the rest of the videos are.

23 MS. MITRANI: I'll go -- does Your Honor have an index
24 of it?

25 THE COURT: I don't.

1 MS. MITRANI: What I will do is I will provide the
2 defendant and the Court with what our index.

3 THE COURT: Thank you.

4 MS. MITRANI: I don't know if the Court wants to mark
5 it. Maybe we can make it --

6 THE COURT: We can make it Court Exhibit 3 for
7 purposes of discussing this. And Mr. Scotton has a copy of it,
8 is that correct?

9 MS. MITRANI: I did. I just gave him one.

10 THE COURT: All right. Thank you.

11 What is the next one, please?

12 MS. MITRANI: I'm going to go back. I skipped one.
13 Linda, L-I-N-D-A, Mulher, M-U-L-H-E-R, paren 2. It was taken
14 on October 5th, 2010. It's a love video featuring intimate
15 moments with a lady whose initials are CF and that would be an
16 invasion of her privacy.

17 THE COURT: All right. Mr. Scotton, what is the
18 relevancy of a video with someone other than your wife?

19 MR. SCOTTON: Is anything wrong, Your Honor, to have
20 another woman on the side?

21 THE COURT: But how does -- I'm not opining on any
22 kind of moral issues here. I'm just trying to figure out why
23 these videos are relevant and admissible in this case.

24 MR. SCOTTON: Because --

25 THE COURT: Let me just explain to you one more time,

1 evidence is relevant if it makes it more or less likely that
2 the issues that are in controversy occurred or did not occur.
3 Do you understand what I'm saying?

4 MR. SCOTTON: Yes, Your Honor.

5 THE COURT: So if it makes it more or less likely that
6 the crimes you are charged with happened or did not happen,
7 then the evidence is relevant. And what I don't understand is
8 how a video of somebody else involved in intimate acts makes it
9 more or less likely that you engaged in acts of fraud with DHL,
10 UPS, or Fed-Ex or that you had some kind of a sham marriage.
11 So you are going to have to explain that to me because it's
12 just not obvious.

13 MR. SCOTTON: Your Honor, that particular female, she
14 was a partner with me on the Merry Mailman store. It is two
15 statements from the FBI and seems to be also has been presented
16 to me not long ago some kind of police department report that I
17 stole her identity. In fact, this individual is going to have
18 to come and testify. And that video show we have intimacy
19 relationship, and not only intimacy relationship, she has
20 knowledge of the defendant business, she has done business with
21 the defendant, she's all over involved in this business with
22 the defendant.

23 THE COURT: I'm sorry, are you saying the government
24 has her as a witness?

25 MR. SCOTTON: I haven't subpoenaed her, Your Honor.

1 MS. MITRANI: In candor to the Court, things can
2 change, but the government has every intention of calling her.

3 MR. SCOTTON: And it is too --

4 THE COURT: Why is this -- all right. I need to
5 understand what issue this goes to. Why does this make it more
6 or less likely? I'm not going to just allow you to show a
7 videotape of her intimately involved if there's no purpose to
8 it.

9 MS. MITRANI: I just want to be clear in case I -- you
10 know, it's not explicit. It's just -- it's intimate in a
11 nonsexual manner.

12 MR. SCOTTON: We are in the boat. That's it. We are
13 in the boat and I am on the water talk to her. And as far as
14 things go, I kiss her on the leg as I sit in the water. That's
15 the video. It show her face. It show my face. It's two
16 different reports from the FBI.

17 She's saying she's not involved in this business. She
18 has already make false statements that she has not authorized
19 the second store to be open. It's a bunch of false statements
20 that she avoid having any kind of relationship with me.

21 THE COURT: Okay. I understand. Is there anything in
22 the video that, is there any nudity or anything of that nature
23 in the video?

24 MR. SCOTTON: No, Your Honor.

25 MS. MITRANI: I mean, scantily clad, but not any

1 explicit nudity.

2 MR. SCOTTON: Your Honor, she's in a bikini and --

3 THE COURT: All right. I think -- is there a way --
4 well, maybe --

5 MS. MITRANI: Just so the Court knows, there are other
6 ones. I don't want to break the Court's flow, but this is not
7 the only one with this individual. There are others on this
8 list.

9 THE COURT: Let's go through all of them and we can
10 group them and decide how to handle it. What is the next one?

11 MS. MITRANI: I think the next one is another one with
12 this woman. It's labeled produce 77. It's last modified
13 8/31/2010. You know what? The government would -- it's
14 another one of this woman. You know what? I may reserve. I
15 may allow that one in or at least not object to it. Obviously
16 the Court allows it or not. Can we come back to produce 77,
17 Your Honor?

18 THE COURT: Yes.

19 MS. MITRANI: Okay. The next one is Roger Miami 2,
20 March 10, 2011. It features the defendant racing in Miami
21 somewhere.

22 THE COURT: What is the relevance of this one, please?

23 MR. SCOTTON: I'm try to remember if the interview,
24 Your Honor. And if it is interview that I record here, one of
25 the companies mentioned on the indictment here is involved on

1 that video. The image was involved. You can see clear that
2 that company involved on this indictment here has sponsor me
3 during that race.

4 THE COURT: All right. We will talk about that one
5 later. All right.

6 Let me just -- what is the next one?

7 MS. MITRANI: Does the Court mind if I stay seated?

8 THE COURT: Not at all.

9 MS. MITRANI: The in next one is grand and zero 7
10 Watkins Gellen race, 5/25/2011, another racing view from inside
11 a car.

12 THE COURT: Could this may be Watkins Glen race?

13 MR. SCOTTON: Yes, Your Honor.

14 MS. MITRANI: Sorry, Your Honor. It's another racing
15 view from inside the car. You don't see people.

16 THE COURT: What is the relevance of this one, please?

17 MR. SCOTTON: If it is the video that I have seen with
18 the investigator, Your Honor, on the dash aboard of the video,
19 I got a Federal Express logo in it so it shows once again the
20 relationship with Federal Express on the sponsorship.

21 THE COURT: Okay. Next one?

22 MS. MITRANI: Scotton Daytona test and practice,
23 1/20/2012. It's 23 minutes. It a view of a practice run at
24 the Daytona Speedway from inside the car.

25 THE COURT: And why is this one relevant?

1 MR. SCOTTON: Your Honor, we can take that off because
2 that one -- no? Yeah, we can take that one off, Your Honor.

3 THE COURT: All right. What is the next one?

4 MS. MITRANI: 00007.MTS, 9/15/2011. It's an intimate
5 video with CF in a hotel room with Rosa, as described in the
6 spreadsheet.

7 THE COURT: Is there anyone else in the video besides
8 CF?

9 MR. SCOTTON: No, Your Honor. I was holding a camera.
10 She's in the video.

11 THE COURT: All right.

12 MR. SCOTTON: Nothing wrong, Your Honor. Nobody is
13 butt naked or anything like that.

14 THE COURT: Well, we are going to discuss all of those
15 CF videos together in a moment, but let's just figure out what
16 we have first.

17 All right. What is the next one?

18 MS. MITRANI: 00028.MTS Scotton playing with a baby in
19 Portuguese.

20 THE COURT: Relevance?

21 MR. SCOTTON: If Your Honor recall, CF is also in that
22 video.

23 MS. MITRANI: Then it further violates CF because that
24 is then a relative of CF's, the baby.

25 MR. SCOTTON: The baby is her nephew.

1 THE COURT: Okay.

2 MS. MITRANI: DC -- excuse me DSCN0196, 5/16/2010,
3 Scotton talking in Portuguese.

4 THE COURT: Relevance?

5 MR. SCOTTON: Your Honor, I'm assume here this is the
6 one with my interview and I have a race and logos all over from
7 the sponsors. Also is part of the indictment.

8 THE COURT: Are there pictures of logos in this?

9 MS. MITRANI: I don't think so. I'm not sure. I
10 don't think so.

11 THE COURT: We will have to take a look at it.

12 Next one?

13 MS. MITRANI: DSCN0215, 5/16/2010, Scotton scuba
14 diving and waving at the camera.

15 THE COURT: Again, what would the relevance of this
16 one be, Mr. Scotton?

17 MR. SCOTTON: If it is the video that I record, Your
18 Honor, that has to do with the Count 29 that the government say
19 that I entered this country illegal.

20 THE COURT: How does it have to do -- they didn't say
21 you. They said you lied to the -- that you lied on your
22 immigration form and that you lied to customs and immigration
23 service.

24 MR. SCOTTON: Well, if it is the video that I give to
25 my investigator, Your Honor, after the diving, my boat has been

1 intercepted as we enter into United States by U.S. Coast Guard
2 and they clear me in. So I have pretty much the camera rolling
3 when they ask for IDs. I present them my ID. I present them a
4 letter from immigration on my '01 video approved and they --

5 THE COURT: All that is on the video?

6 MR. SCOTTON: If that's the one I think it is, that's
7 what it is.

8 THE COURT: Is that correct?

9 MS. MITRANI: No, that's not the video I was looking
10 at.

11 THE COURT: All right. I can see I am going to
12 actually have to watch these videos. All right. I tell you
13 what. Let's go through the rest of them quickly and I can
14 group them and that way we can watch them all. All right. The
15 next one is what?

16 MS. MITRANI: Roger Scotton, Coney challenge,
17 STBMW333 -- 330I, Lime Park, Lime Rock Park, 2007, 12/23/2010
18 racing view from inside the car. Should I just rifle through
19 them?

20 THE COURT: Yeah, unless -- Mr. Scotton, if there are
21 any that we go through here --

22 MR. SCOTTON: No, Your Honor, let's get that off.

23 THE COURT: Okay. We don't need that one, right?

24 MR. SCOTTON: No, Your Honor.

25 MS. MITRANI: The next one is one paren 5.MTS, unknown

1 man driving a boat.

2 THE COURT: Mr. Scotton, relevance?

3 MR. SCOTTON: Yes, Your Honor. That man is linked to
4 the case.

5 THE COURT: All right. I will watch it.

6 MR. SCOTTON: He's from one of the companies, Your
7 Honor.

8 THE COURT: I'll watch it outside of the presence.
9 Well, I will figure out what to do with it.

10 Okay. What else?

11 MS. MITRANI: 00049.MTS, Scotton sitting with CF in
12 his arms and kissing her. And the next one is another CF
13 video. The next one is Roger 00026.MTSCF and another girl
14 watching a race that possibly the defendant is participating
15 in, but we don't know because we don't see him.

16 THE COURT: All right. It occurs to me as we are
17 sitting here talking about this I am going to have to watch --
18 I guess I'm going to have to watch all of them. So instead of
19 wasting everybody's time, maybe what I should do is there's
20 only one copy, right? Is that right?

21 MS. MITRANI: We can get you a copy. We can get you
22 one, Your Honor. I'm trying to figure out from my team -- if
23 the Court has about an hour, I think, if the Court has a disc,
24 we can do it pretty quickly here. If the Court doesn't have a
25 disc, we can go to my office.

1 THE COURT: Do we have a disc?

2 THE COURTROOM DEPUTY: I can get one.

3 THE COURT: Otherwise, I can get one from my office.

4 Do you have one? I will be right back. I think I have one.

5 All right. Please be seated. We are working on
6 getting one. We should have one shortly. So I don't think
7 there's anything further that we can really do today unless --
8 Mr. Scotton, are there any other ones, other than the two
9 you've already said, that you are withdrawing consideration of?

10 MR. SCOTTON: Your Honor, the other one is -- I don't
11 know. I don't see the government make the comment about it.
12 It is a two surveillance video from my store. And then one is
13 the one that was my wife and me engaged in, you know --

14 MS. MITRANI: I don't know what he's talking about.

15 MR. SCOTTON: -- having sex in the store.

16 THE COURT: That doesn't appear to be on this list.
17 Was there one to that effect?

18 MS. MITRANI: No.

19 THE COURT: Mr. Scotton, apparently that one is
20 missing. I don't know whether you had a different copy, but
21 apparently that one was not provided to the government.

22 MR. SCOTTON: My investigator can -- I mean, as far as
23 she told me, she has provided everything, but she is going to
24 come back to the jail and show me again because I provide both
25 files that has -- one has two people in the store, as a matter

1 of fact, the father of CF, and the other one is the one that,
2 you know, is, you know --

3 THE COURT: All right. Well, I can watch the ones
4 that the government -- that you have given to the government
5 and then we can discuss them. And the ones that you haven't
6 given to the government, I think I had already told you that
7 you needed to provide them to the government and you haven't
8 done so. Unless there's a very good excuse for why not, it
9 could well be too late at this point.

10 All right. I don't think there's anything further we
11 can do today unless there's something I'm missing.

12 MS. MITRANI: Quite frankly, Your Honor, I don't think
13 there's anything further we can do.

14 MR. SCOTTON: Your Honor, I don't know if it's
15 something that standby lawyer can do for me or I need to get
16 some request from the Court. The people in the jail say I have
17 to get it straight from the judge as I'm representing myself.
18 I'm trying to get the full records from the phone jail and also
19 is another record from the jail that I need to get it from
20 visitations and other records that prove people that has come
21 to see me over there and --

22 THE COURT: You need to issue a subpoena. And if you
23 issue the subpoena, then, you know, we can see if we can take
24 care of them.

25 MR. SCOTTON: I don't know how that works.

1 THE COURT: Let me explain something to you, and I'm
2 sorry, Mr. Scotton, but I can't, as I have explained to you
3 previously, I cannot act as your lawyer. It is your job to
4 figure out what it is that you need and to apply the rules and
5 do it. Now, I will give you any orders that you need in order
6 to be able to do that. But you have to do the initial
7 subpoena. I can't draft your subpoena for you. That's
8 something that's up to you. So if you do that and you want me
9 to see if we can go ahead and serve them and you want to bring
10 that to my attention, I will be glad to take a look at it. But
11 until you do, there's nothing I can do at this point.

12 MR. SCOTTON: The sergeant that explained it me, and I
13 explained to him about subpoena, do I have subpoena your
14 department here. He said, no, you need to get authorization
15 from your judge for us to release this to you. That's what
16 they told me. I go by what they told me. I don't mind to go
17 ahead and put a subpoena in.

18 THE COURT: I don't know what you need and what you
19 don't need. Generally the way we obtain evidence is through a
20 subpoena. And, you know, if you prepare a subpoena and you
21 file a motion for me to see if it can be served, I will be
22 happy to have an ex parte hearing on that or whatever it is I
23 need to do as I have in the past. And, you know, if it is a
24 request for evidence that appears that it could be relevant,
25 then I will be happy to issue it. All right?

1 MR. SCOTTON: All right, Your Honor.

2 THE COURT: Anything else that we need to address?

3 MS. MITRANI: Your Honor, I think he had a box full of
4 documents. I was supposed to get a copy of. I don't know what
5 the status of that is. If they are going to give it to us
6 tomorrow, I'm assume being as long as they don't use anything
7 to try to cross-examine any witness, I'm okay if we get it
8 tomorrow. We keep being told we are getting stuff and we
9 don't. We get it at the last minute.

10 MR. SCOTTON: I will make sure they get it and I won't
11 use any evidence without first letting them know.

12 THE COURT: They have to have an opportunity to review
13 it. In other words, you can't just take it out for the first
14 time before you've ever shown anyone and without producing it
15 to the government and try to use it just because you have shown
16 it to them as they are sitting there. That's not sufficient.
17 I mean, there's been a request for reciprocal discovery. You
18 were directed to produce reciprocal discovery a long time ago.
19 I think that we have all been very patient with your producing
20 it. And you need to do that. So --

21 MR. SCOTTON: Your Honor, let me go ahead and state
22 something for the record. I do understand that has been the
23 order for me to go ahead and give the discovery to the
24 government, Your Honor. As I even mentioned before, some the
25 evidence has disappeared and my investigator is working to

1 recover. She just recovered it recent. So she's got all the
2 paper. So now what they need to do is copy the papers and hand
3 it to the prosecutors. It's not that I hold to the last
4 minute. I don't have it. I told the investigator that was
5 appointed to me almost around Christmas to go ahead and
6 retrieve all the paperwork. And the paperwork has been
7 retrieved, so we are going to provide that.

8 THE COURT: Part of the reason of the timing of when
9 she was appointed has to do with when you asked for an
10 investigator.

11 MR. SCOTTON: September.

12 THE COURT: We are not going to go through that whole
13 thing again. If there's nothing further to do this evening, we
14 will be in recess. The defense will provide the documents that
15 have been requested to the government and we have a CD for the
16 government to -- we have a DVD, a blank DVD and a blank CD,
17 because I understand from my law clerk who knows these things
18 better than I do, apparently video can go only on a DVD and not
19 on a CD. I don't know if that's accurate, but I have both. So
20 we will provide that to the government to provide a copy and
21 I'll wait for the copy. Hopefully I will be able to review it
22 tonight. If there's nothing further, we will be in recess.

23 MR. KREISS: May I bring one issue to the Court's
24 attention? I think in order to expedite getting these
25 documents to the government, Ms. Martinez has volunteered to

1 take care of this issue, but it's not a matter of sticking
2 these documents into -- feeding them into a copy machine. Some
3 of them are of five by seven, some are eight by ten, some are
4 stapled. It's going to take her some time and she's going to
5 have to do it. I don't want her to get stuck with a bill from
6 a copy center. Would the Court authorize whatever the funds
7 necessary to make those copies?

8 THE COURT: Let me ask you this: Is it possible, and
9 I understand why Mr. -- I understand that Mr. Scotton doesn't
10 want to allow materials out of the possession of the defense
11 team. But would the government be willing to allow
12 Ms. Martinez to make copies on its copy machine and that way we
13 can get it more quickly and we also don't have to have more
14 payments authorized? Would that work?

15 MS. MITRANI: I don't think I'm authorized to let a
16 defense investigator in the U.S. attorney's office to do that.

17 THE COURT: Obviously accompanied.

18 MS. MITRANI: Sorry.

19 THE COURT: I figured I would try. All right then.
20 Yeah, I don't know what the cost is obviously. We wouldn't be
21 able to authorize a ridiculous cost, but, you know, standard
22 cost. You should maybe perhaps try Staples, I don't know if
23 staples is around anymore, Office Depot, or one of those kinds
24 of places or Fed-Ex office or whatever. All right.

25 THE INVESTIGATOR: I can bring the invoice and

1 whatever the amount is that is the amount you could authorize
2 for the copy.

3 THE COURT: All right. And you would you will be
4 doing the copies yourself. Thank you very much and I will
5 authorize that. Anything further.

6 MS. MITRANI: No, Your Honor.

7 THE COURT: Thank you. We will be in recess.

8 MS. MITRANI: Thank you, Your Honor.

9 (Thereupon, the trial adjourned at 4:40 p.m.)

10 - - -

11 C E R T I F I C A T E

12
13 I hereby certify that the foregoing is an
14 accurate transcription of the proceedings in the
15 above-entitled matter.

16
17
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,
Plaintiff(s),
vs.
ROGERIO CHAVES SCOTTON,
Defendant(s).

Fort Lauderdale, Florida
January 28, 2014

JURY TRIAL
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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I-N-D-E-X					
	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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2					
3					
4	DAVID BONILLA				
5	BY MS. MITRANI	17		38	
6	BY MR. SCOTTON		17		
7	NICOLE NELSON				
8	BY MS. MITRANI	50		133	
9	BY MR. SCOTTON		104		
10	RENATA MEZENTSEF				
11	BY MS. MITRANI	139			
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1 Thereupon,
2 the following proceedings began at 8:59 a.m.:

3 THE COURT: All righty. This is case No. 12-60049,
4 United States versus Rogerio Scotton. Would the parties please
5 state your appearances.

6 MS. MITRANI: Good morning, Your Honor. Bertha
7 Mitrani on behalf of the United States.

8 THE COURT: Good morning.

9 MR. SCOTTON: Good morning, Your Honor.
10 Rogerio Scotton.

11 THE COURT: Good morning. All righty. I reviewed
12 everything that was on the government's computer and there are
13 several categories of videos. There is -- let's start with the
14 easy one, the driving videos. There are a number of videos
15 where somebody is driving. Some of them we can tell it's
16 Mr. Scotton, other ones we can't tell, but I'm presuming that
17 it's Mr. Scotton driving. Most of these are from inside the
18 car, and you can see hands on the wheel and the side of or the
19 tip, front tip of the helmet. Sometimes you can see
20 sponsorship logos, but none of those sponsorship logos appear
21 to me to be any of the companies involved in this case.

22 For example, the ones that I was able to see as I was
23 going through appear to me to be IMS something dog. I couldn't
24 get the whole thing, dark something, e-port something, and SFL
25 something. But no DHL, no UPS, and no FedEx. On another

1 video, the sponsor was quite clearly Playboy. Also,
2 Alara Racing, RPM Motors, RaceTech. I was actually
3 specifically looking for the sponsors to be any of the three
4 companies or any of the other companies that are allegedly
5 involved in this case and I did not see a single one.

6 So if you think I missed something, Mr. Scotton, you
7 need to let me know, because I really was looking very
8 carefully for those companies and I did not see them at all.
9 Mr. Scotton?

10 MR. SCOTTON: Your Honor, she's going to put the
11 computer on right now. As far as I understand, she put all the
12 video, you know, on one pen drive. So we sit in jail. I went
13 over everything that I select, I put on a pen drive. So now --

14 THE COURT: Mr. Scotton, can you answer my question.
15 You indicated yesterday when we were here that you wanted to
16 put these videos in because they showed that you were sponsored
17 by DHL, FedEx, or UPS, and I did not see that. So if you could
18 direct me to where that would be, then I could double-check and
19 make sure I didn't miss anything.

20 MR. SCOTTON: Your Honor, how can I tell something if
21 I'm not seeing? That's the thing, there's so much video. So
22 maybe it is not the video, there was, you know, so much stuff
23 that went to the pen drive. I don't know. I need to see
24 because --

25 THE COURT: Well, let me ask it to you this way: It

1 seemed to me that that was the whole reason that you seemed to
2 think these are relevant. If they are not on there, would you
3 agree with me that it's not relevant?

4 MR. SCOTTON: Well, some of the videos, I want to put
5 it in is also for the jury to see, you know, the kind of person
6 that I am. I mean, I'm going to move some of the videos or so,
7 some of the photos, some of the evidence that I'm going to put
8 in, you know, turning to my character.

9 THE COURT: All right. I don't see how the videos of
10 you driving a race car show anything about your character.
11 Sorry, but I don't. And they are lengthy. I mean, one of them
12 was 24 minutes, another one was over 12 minutes, 8 minutes.
13 And I'm not going to watch -- I'm not going to make the jury
14 sit here and watch hours of you driving a car from the inside
15 of the vehicle unless there is some relevance to it.

16 You can testify that you are a race car driver.
17 There's nothing wrong with that. If that's what you wish to
18 do, feel free to do so. You can put in photographs. But it's
19 just a waste of the jury's time and, I'm sorry, but there's no
20 relevancy to watching you drive race courses as far as I can
21 tell.

22 I was willing to consider it when I thought that as
23 you represented to me apparently falsely yesterday, the
24 sponsors were DHL, FedEx, and/or UPS, but they appear not to
25 be. And so in the absence of that, I'm sorry, but I just don't

1 see the relevance of that. I'm not going to subject the jury
2 to sitting through, you know, hours of your racing.

3 MR. SCOTTON: Your Honor, you conceded to let me sit
4 down with my private investigator back in the jail and kind
5 of -- because I have those videos. I pull it for her. I don't
6 want the jury sitting here watching race. This case is not
7 about, you know, jury watching race. I understand this. But I
8 want the jurors to see that I have a relationship with those
9 companies, that I have been dealing with the, you know,
10 corporate office, vice president of those companies. So but --

11 THE COURT: What difference does it make if you are
12 dealing with the vice president of Playboy or of Alara Racing.
13 Why is that relevant to --

14 MR. SCOTTON: I'm not talking about Playboy,
15 Your Honor. I'm talking about Federal Express, UPS, and DHL.
16 I'm not saying Playboy.

17 THE COURT: Okay. Well, where is the evidence from
18 those videos that you are dealing with the corporate offices of
19 DHL, FedEx, or UPS, because they were not visible to me
20 anywhere on those videos.

21 MR. SCOTTON: That's why I ask the Court to reconsider
22 that I can later on today or maybe tomorrow, whatever it is she
23 have the time to come back to the jail that I can review it,
24 because I'm pretty much sure that I put those videos in.

25 THE COURT: Well, here's what I'll say about it. If

1 you -- if I have missed something by all means feel free to let
2 me know that and you can show it to me at some later point in
3 time. But unless and until I see some evidence that there is
4 relevancy here, I'm sorry, but you are not going to be allowed
5 to admit those.

6 There is one, one of the racing videos where at the
7 end, which racing video was that -- Roger Miami 2. At the end
8 a woman, I guess, leans over and kisses you afterwards. That
9 one, the -- again, the sponsors are SFL something or other and
10 RaceTech, RPM Motors, Alara Racing, and Playboy. I don't
11 think -- I could be wrong, but the woman who is kissing you
12 does not appear to me to look like your wife. Am I mistaken,
13 is that your wife and I'm mistaken there?

14 MR. SCOTTON: Your Honor, I don't even remember a
15 woman kissing me after the race. So that's not a thing that
16 I -- you know, like I say --

17 THE COURT: Well, then if you can't even remember it,
18 then I just don't see how it's relevant.

19 All right. So let's see, along the same lines there's
20 a video of two women watching a race, and that one is called
21 Roger 00026. And they are just watching the race. They are
22 wearing hats that say Scotton Racing and RPM Motors. So,
23 again, they don't refer to any of the companies allegedly
24 involved in this case. And I know that the two women's names
25 or at least they appear to be Krista and Carla because someone

1 is talking to them. So, again, it does not appear to me to be
2 your wife. So I'm not sure how this is relevant, but perhaps
3 you can enlighten me.

4 MR. SCOTTON: It's going to be one of the witnesses
5 that come in here and testify, some false reports has been
6 made. She has been --

7 THE COURT: All right. I tell you what, with respect
8 to the witness who is going to come in and testify, I will do
9 that with you separately in case it's some kind of impeachment
10 so that you don't have to reveal your strategy right now. But
11 barring that, it's not going to be relevant.

12 All right. Those were the racing videos. The next
13 group of videos I would say would be the scuba diving videos.
14 And let's see, in the scuba diving videos as opposed to the
15 boat videos, okay. The boat videos are different. The scuba
16 diving videos are the ones where you are in the water or
17 somebody is in the water. And those include SCN0215.ABI.
18 That's you by yourself waving under water while scuba diving.
19 I'm sorry, but I don't --

20 MR. SCOTTON: Well, I understand that, Your Honor.
21 Now, if it is not the video that shows the Coast Guard accept
22 the boat, then we don't need to use that.

23 THE COURT: There's not a single video that shows the
24 Coast Guard accepting the boat.

25 MR. SCOTTON: Then I guess the prosecutor has not

1 given everything to the Judge because I put everything on a pen
2 drive. So I'm going to go ahead and do this again, but those
3 videos should be on a pen drive with the pictures.

4 THE COURT: All right. Fine. If you elect to provide
5 them to me yourself, then I will be happy to take them from
6 you.

7 MR. SCOTTON: Yes, Your Honor.

8 THE COURT: But I don't want you saying that I somehow
9 destroyed your evidence. So that's why I got them from the
10 government.

11 MS. MITRANI: Your Honor, I guess just for the record,
12 I don't want Mr. Scotton suggesting that the government has
13 hidden anything from the Court. The government gave the Court
14 everything that it received from Mr. Scotton. So, therefore,
15 if Mr. Scotton provides the Court with any additional videos,
16 the government requests that it be allowed to see them as well.

17 THE COURT: Of course the government will be allowed
18 to see them as well. And I will note that the Court's
19 equipment did not work and was not able to play any of the
20 videos so I had to actually use the government's computer to
21 watch the videos and all of the videos were on the computer.
22 It wasn't like they were on some kind of a disc. So those are
23 the ones that were there. There's no evidence that would
24 suggest in any way that the government has somehow withheld
25 videos from the Court.

1 All right. So that one is also not admissible.
2 Similarly, there are ones -- there's one called Iceman WMV, and
3 let me just say that one starts out with the MGM intro and then
4 a new line Cinemas Production and then a Scotton Production. I
5 don't even know -- I don't know whether you have permission to
6 do that, I'm not going to ask you because I don't want you to
7 incriminate yourself, but you might want to consider that.
8 That might be evidence of some other crime. I really don't
9 know. Perhaps you have permission and authority to put that on
10 your own videos. And in that case, I'm sure it's fine. But I
11 just -- it concerns me and I don't want you to wind up
12 accidentally implicating yourself in some other crime here.

13 In any case, on that video, it is a single man scuba
14 diving. It is not Mr. Scotton. It is somebody apparently by
15 the name of Wilson. It is 8 minutes long and he is simply
16 scuba diving. Once again, the relevance is not really obvious
17 to me. So perhaps you could enlighten me.

18 MR. SCOTTON: Your Honor, you can go ahead and
19 disregard that one.

20 THE COURT: All right. Then there's one called
21 Mergul, M-E-R-G-U-L, 02011 dot WMV. It's another
22 Scotton Production with a U2 song playing in the background.
23 And once again there are -- this time there are people scuba
24 diving, but you can't really tell for the most part who they
25 are because it's mostly from a distance and their faces are

1 obscured by masks except for at one point where it focuses on
2 somebody named Wilson, who I assume is the same Wilson from the
3 iceman video. Again, I'm sorry, but I don't know what the
4 relevancy of that is.

5 MR. SCOTTON: You can take that off too, Your Honor.

6 THE COURT: All right. Now let's go to the other boat
7 videos. One parentheses 5 dot MTS is somebody driving the
8 boat, some unknown person, to me anyway, yourself and one
9 woman. But in the video it focuses principally on the person
10 driving the boat, although Mr. Scotton is visible in it as
11 well. And sort of incidentally to it, this woman is visible.
12 But, largely, it appears that the men are ignoring the woman on
13 the boat and she's only partially in it. I don't know who the
14 woman is. I can't tell because she's not in it for very long.
15 But perhaps you could explain to me what the relevance of this
16 one is.

17 MR. SCOTTON: Something that we are going to have to
18 talk on the side, Your Honor.

19 THE COURT: All right. There is one of you on a boat
20 in a wetsuit with scuba gear on, and you can briefly see about
21 three other men. I don't know what the relevancy of that one
22 is either.

23 MR. SCOTTON: It's some witnesses, Your Honor.

24 THE COURT: I'm sorry?

25 MR. SCOTTON: This is some people related to those

1 companies with me.

2 THE COURT: Which companies?

3 MR. SCOTTON: Federal Express.

4 THE COURT: All right. We will talk about that later.

5 The one called Linda Mulher 2 dot WMV is also a
6 Scotton Production, one with what seems to be the Titanic music
7 on the intro. And then it says Sky Air Online Pictures, and
8 there are five Disney princesses whose photographs are shown
9 one by one. And then there's a video of a woman with you, who
10 appears not to be your wife, with hearts graphics all around it
11 and you kissing the woman's leg and then it says
12 Linda Cinderella, and then it says a name on it, another
13 woman's name. There's another woman on the boat besides that
14 woman and the music is something like, I'm So In Love With You,
15 and it says, I'm more, Linda.

16 Again, I'm very sorry, but I don't understand how this
17 is going to tend to show the jury --

18 MR. SCOTTON: You can take that off, Your Honor.

19 THE COURT: Take it off?

20 MR. SCOTTON: Yes.

21 THE COURT: All right. Now, there is one called
22 produce underscore 0 dot WMV. This is the video -- it's not a
23 video of anyone on the boat that you are on. There's
24 apparently no footage of anyone -- I'm guessing of anyone that
25 you know. This is a video of another boat where there are two

1 topless women on the other boat and one of the women then moons
2 the boat you are on, and that's it. I mean, I don't -- I'm not
3 sure why this would be relevant for any reason. Perhaps you
4 could enlighten me.

5 MR. SCOTTON: This might be something that we are
6 going to have to exchange because there are two videos. So
7 that one -- I mean, if my wife is not in that video, then you
8 got the wrong video because my wife should have been in that
9 video.

10 THE COURT: Well, there's no one -- as far as I could
11 tell, the only people who are pictured in the video are the
12 people, the women on the other boat.

13 MR. SCOTTON: Then we need to take that off,
14 Your Honor. I will provide the other one.

15 THE COURT: All right. Then we have one called
16 produce 77 dot WMV, and that one appears to be yourself and
17 another woman in the pool. I don't know who the other woman
18 is. You are kissing the other woman, and then all of a sudden
19 you are both on a boat and you are getting ready to go scuba
20 diving and the woman helps you with the camera.

21 Again, I don't think the woman is your wife, but maybe
22 I am mistaken.

23 MR. SCOTTON: No, she's not. She's not my wife. But
24 she's the witness.

25 THE COURT: Okay. Well, I guess we will have to talk

1 about her later then.

2 All right. And perhaps this one falls into that same
3 category, I don't know. 0007 dot MTS, this one is the one with
4 rose petals on the bed and chocolates and a woman.

5 MR. SCOTTON: The same witness, Your Honor.

6 THE COURT: All right. We will have to address that
7 one later then.

8 Then there's a picture, it's mostly focusing on a baby
9 who is being played with by Mr. Scotton who's sort of got the
10 baby in his lap and wrapped up, and there's a woman's voice in
11 the background, but the video -- all the video is of the baby
12 and Mr. Scotton.

13 MR. SCOTTON: We need to take that off, Your Honor.

14 THE COURT: Okay. There is a video of Mr. Scotton at
15 what appears to be the entrance to Epcot with a woman kissing
16 her on the face and there is some man talking in the
17 background. I don't know, but it doesn't seem like the woman
18 is your wife, but perhaps I am mistaken. Do you know what I'm
19 talking about, Mr. Scotton?

20 MR. SCOTTON: No, Your Honor. I am trying to locate
21 the paper. You can strike that too.

22 THE COURT: This one is 00049 dot MTS. All right.

23 MR. SCOTTON: That's the witness as well, Your Honor.

24 THE COURT: All right. So you'll tell me why we need
25 this later then.

1 MR. SCOTTON: Okay.

2 THE COURT: And then, finally, there's one I couldn't
3 get to play, but what I saw -- it's 22 dot EXE. It's a still
4 photo of a place without people. And I imagine it's a video,
5 but I couldn't get it to -- I'm sorry, there's another one
6 besides that. I couldn't get it to play so I don't know what
7 that video is of.

8 MR. SCOTTON: Which one are you talking about?

9 THE COURT: 22 dot EXE. Oh, the government says it is
10 a surveillance video from the Merry Mailman and that you are in
11 the video, and one male is behind the counter with you and
12 another with a hat walks into the location.

13 MR. SCOTTON: Another witness, Your Honor.

14 THE COURT: All right. We will talk about that one
15 later then. And I'm going to have to actually see if I can get
16 that to work.

17 And then the last one is the Merry Mailman commercial,
18 and that one does appear to be a commercial for the
19 Merry Mailman. There is a woman in it, but you can only see
20 the back of her head and she is packing things. And then the
21 logos for DHL, FedEx, and UPS appear in the video. I don't
22 know if that's relevant or not.

23 MR. SCOTTON: That's something we have to talk on the
24 side, Your Honor, some strategy for my defense.

25 THE COURT: All right. So just to be clear, then, all

1 of the racing ones are coming out unless you come up with some
2 reason why they are relevant and I agree with you. And the
3 baby one is coming out, the scuba diving ones are coming out.
4 And that leaves us with the ones of this one witness, I guess
5 one witness, right, or two witnesses?

6 MR. SCOTTON: Yes, Your Honor.

7 THE COURT: All right. Okay. Let me ask -- let me
8 see if I can speak with Mr. Scotton for a few minutes and get
9 this resolved and ask everybody to please step out.

10 (Thereupon, the government exited the courtroom.)

11 (Thereupon, a sealed hearing was held.)

12 All righty. We are going to all rise and as soon as
13 the whole jury is here, we will bring them in.

14 (Thereupon, the jury entered the courtroom at
15 9:32 a.m.)

16 A JUROR: Good morning.

17 THE COURT: Good morning.

18 Good morning, everybody, welcome back. I hope you all
19 had a terrific evening last night. Let me just start by asking
20 my favorite question. Is there anybody here who discussed the
21 case with anyone, disbursed any information about the case, or
22 did any research into the case, if so please raise your hand
23 for me now. I see no hands. Thank you all once again for
24 that, and please be seated.

25 We will pick up where we left off and the government

1 may call back its witness.

2 Good morning, Mr. Bonilla. How are you today?

3 THE WITNESS: Good. How are you?

4 THE COURT: Mr. Bonilla, I'm just going to remind you
5 that you are still under oath. Do you understand?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: All right. Thank you very much.

8 You may proceed.

9 MS. MITRANI: We were on cross-examination, Judge.

10 THE COURT: Yes. Mr. Scotton, whenever you are ready,
11 you may proceed.

12 MR. SCOTTON: Yes, Your Honor. Just a moment, please.

13 THE COURT: All right.

14 DAVID BONILLA

15 Having been previously duly sworn on oath was further examined
16 and testified as follows:

17 CROSS EXAMINATION (resumed)

18 BY MR. SCOTTON:

19 Q Mr. David, right?

20 A Yes, sir.

21 Q How are you doing this morning, Mr. David?

22 A Doing good, thank you.

23 Q I wish I was doing good, but I can't say much. My mother
24 sent me the wrong tire so I'm not very happy with that. But I
25 guess you know better, right?

1 All right. We left it here yesterday and I was asking
2 question about things like the nature why DHL has never tried
3 to contact me.

4 In a minute here, I'm going to ask permission to call,
5 Your Honor, I got some documents that I got over there on the
6 pen drive that I want to put on the screen. And I went through
7 those documents, so I have already given the documents to the
8 prosecutor.

9 THE COURT: You will have to identify which ones they
10 are, Mr. Scotton.

11 MR. SCOTTON: The documents --

12 THE COURT: Excuse me, to the prosecutor.

13 MR. SCOTTON: Okay.

14 MS. MITRANI: Your Honor, can we approach at sidebar?

15 THE COURT: Sure.

16 (Thereupon, the following was heard sidebar.)

17 MS. MITRANI: So Mr. Scotton says he has some invoices
18 that he wants to show. These are not documents that I have
19 ever seen because I have asked Mr. Scotton are these part of
20 our production to him, he said no. I don't know what he's
21 going to show. And there's -- I can't verify, and even if he
22 were to flash them to me now, there's no way I can verify their
23 authenticity.

24 THE COURT: Mr. Scotton, I warned you about that this.
25 I told you if you didn't produce the documents, you wouldn't be

1 able to use them.

2 Come on up.

3 MR. SCOTTON: Those PDFs, when did you guys put on the
4 CD or pen drive, when did you give those to the government?

5 THE INVESTIGATOR: Everything that was provided is on
6 the flash drive, but I don't know if the PDF is on the flash
7 drive at the time she turned on the computer because I don't
8 know when you put it on.

9 MR. SCOTTON: It's still on the pen drive, everything
10 that I saw right now is on the pen drive.

11 THE INVESTIGATOR: If it's on the pen drive, then --

12 MS. MITRANI: I don't know what documents they are
13 talking about, Your Honor, and there were some documents that
14 we saw JPEG files of documents. I have every reason to believe
15 that many documents that have been provided throughout the
16 course of this case have been altered. There is no way -- the
17 United States objects to showing this witness any document.
18 And because of the confusion, remember yesterday, Your Honor,
19 they had like a boxful of documents. I don't know if he's
20 talking about those documents or talking about JPEGs.

21 Let me finish.

22 As the Court knows, there's been discussion about the
23 video on the pen drive. We never got it. I'm not completely
24 confident based on what's happening here that they have given
25 it to me. Unless he has a piece of paper that he's going to

1 show me -- I just object, you can't show him anything on the
2 screen.

3 THE COURT: All right. I'm not going to allow you to
4 show things up on the screen. First of all, I have no idea
5 what you are showing. You haven't shown it to me before. It
6 doesn't sound like you have shown it to the government before.
7 It doesn't sound like --

8 MR. SCOTTON: Your Honor, you have the pen drive right
9 there on the computer. If you like to see it, it's invoices
10 provided from the employees, invoices, and he's going to be
11 able to verify those invoices come from the corporate office.
12 I am trying to put on my defense here.

13 THE COURT: But you have to follow the rules like
14 everybody else does. Just because you are pro se doesn't mean
15 you get to skip following the rules. You can't just put in
16 anything and everything that you want to put in without
17 complying with the rules, without turning it over when there
18 was a specific request from the government for you to turn this
19 stuff over. You cannot do that.

20 MR. SCOTTON: Mr. Jason has handed a CD to the
21 government here. I think it was Monday night. So everything
22 is on the CD, yes. Everything is right here on the pen drive.
23 It has not --

24 THE COURT: Well, she just indicated that she didn't
25 know if it was on the pen drive.

1 THE INVESTIGATOR: I'm sorry to interrupt, Your Honor.
2 The flash drive is on the computer, so probably he's been
3 transferring documents yesterday. Probably she doesn't have it
4 because they didn't transfer it on the day that she have the
5 flash drive.

6 THE COURT: So you don't think that she has it?

7 THE INVESTIGATOR: I don't think she has it because
8 probably those documents were transferred after yesterday.

9 MR. SCOTTON: No, from the jail. I transferred over
10 there.

11 THE COURT: Okay. We are not going to argue about it.
12 I'm sorry, it's too late now.

13 MR. SCOTTON: I want to be able to present my
14 evidence, Your Honor.

15 THE COURT: It's something that I have been telling
16 you about for weeks now and you were supposed to have turned it
17 over. I have given you plenty of opportunities. By right, it
18 should have been turned over before the trial began. I have
19 allowed you to sort of dribble this stuff in. I'm sorry,
20 but you didn't --

21 MR. SCOTTON: When did you come the first time to jail
22 to see me?

23 THE COURT: Okay. We are not going to have an
24 argument about this. Conduct your cross-examination.

25 (Thereupon, the following was heard in open court.)

1 BY MR. SCOTTON:

2 Q Mr. David, during this case here, how many times did you
3 get together with the prosecutor?

4 A During this case, how many times have I gotten together
5 with the prosecutor?

6 Q Yes.

7 A Twice.

8 Q Twice. How many hours did you spend here going over this
9 case with the prosecutor?

10 A I couldn't tell you hours. Minutes.

11 Q Did she prepare you for this trial here? Did she give you
12 some advice what to say during the trial?

13 A Basically, we reviewed one of my reports --

14 Q Just yes or no, Mr. David.

15 A -- and my video. Yes.

16 Q Just answer the question, have she have advise you what to
17 say in trial?

18 A You're saying prepared, I was --

19 Q Yes.

20 A That's what you just said.

21 Q Coach you?

22 A It's just reviewing my reports and my video.

23 Q All right. Do you know Mr. Jennifer Campbell, supervisor
24 of the Miami location?

25 A No, sir, I don't.

1 Q Do you know how long you work over there?

2 A A little under a year.

3 Q And she's been working there for six years and you never
4 know her?

5 A No, sir.

6 Q Do you know Mr. Javier Garcia, one of the managers over
7 there in the station in Miami?

8 A No, sir.

9 Q Do you really work over there at DHL Miami's place?

10 A Yes, sir. My access at the hub was mainly in the main
11 receiving and loading area, which was our -- or our security
12 offices were located downstairs.

13 Q So if I ask also if you know Joe Sidus from Miami office,
14 do you have any recollection of the name?

15 A No, sir.

16 Q Do you know that he has to -- dealing with the RX pharmacy
17 at Deerfield Beach?

18 A No, sir.

19 Q And selling open pills, provide accounts to Mr. Roberto --
20 Paulo Roberto Moreira accounts?

21 A No, sir.

22 MS. MITRANI: Objection to relevancy, scope, and
23 competency.

24 THE COURT: Sustained.

25

1 BY MR. SCOTTON:

2 Q Do you know that I have a report to DHL to the Department
3 of Justice before?

4 MS. MITRANI: Objection, Your Honor.

5 THE COURT: Sustained.

6 BY MR. SCOTTON:

7 Q Mr. David, do you know the DHL has engaged in sponsorship
8 with me before?

9 A No, sir.

10 Q Have you seen kind of type of DHL invoice before?

11 A Can you repeat the question, sir?

12 Q Have you seen any invoices from DHL? When DHL be your
13 client, have you seen those invoices?

14 A If I have seen an invoice for a client?

15 Q Yes.

16 A Yes, I have. Yes, sir.

17 Q Those major companies that you have, some of them has
18 thousands and thousands of accounts, have you seen those
19 invoices before?

20 A Not thousands. But, yes, whenever I did an investigation
21 I had to, yes, sir.

22 Q Right. It is possible like someone from your company
23 being selling these invoices to others outside?

24 MS. MITRANI: Objection, Your Honor.

25 THE COURT: Overruled.

1 THE WITNESS: What was the question, sir?

2 BY MR. SCOTTON:

3 Q It is possible that others from your company be reselling
4 those invoices to others outside to use them?

5 A I'm not aware, sir.

6 Q You're not aware. But the question is it is possible,
7 Mr. David?

8 A I don't know.

9 Q Any recollection as you work at DHL of any management
10 selling accounts to individuals?

11 A No, sir.

12 Q Do you deny that DHL has bad employees?

13 A I don't understand the question, sir.

14 Q Do you deny that DHL has bad employees? Employees, they
15 stealing?

16 A I don't know, sir.

17 Q Doing things wrong, you don't know?

18 A No, sir.

19 Q So you don't know. So you work at DHL as a security,
20 people didn't get fired over there for negligence, for
21 stealing?

22 A That was mainly an HR responsibility, sir.

23 Q Mr. David, do you know that I have a DHL resell account?

24 MS. MITRANI: Objection, Your Honor.

25 THE COURT: Overruled.

1 THE WITNESS: No, sir.

2 BY MR. SCOTTON:

3 Q Do you know what a resell account is?

4 A No, sir.

5 Q So work as a security, I mean, what kind of training do
6 you guys have?

7 A What kind of training? Basically, we are managing,
8 overseeing the distribution, the security processes, the access
9 control, the camera systems, reviewing any kind of documents
10 and video for any missing product, for claims.

11 Q Right. Basically by being a security person from DHL, you
12 should have a little more knowledge about the company corporate
13 office and proceeds and everything else, right?

14 A I was there a year. I'm sure they do.

15 Q Do you know the person that hold accounts from a resell is
16 a person that is an individual that owns the stores and they
17 resell the service for DHL?

18 A I didn't know that.

19 Q Do you know that 2011, I become DHL authorized shipping
20 center?

21 MS. MITRANI: Objection to the form of the question.

22 THE COURT: Sustained.

23 BY MR. SCOTTON:

24 Q It is illegal for people to come into my store and drop of
25 packages from DHL?

1 A I don't understand the question, sir.

2 Q Is it illegal for anybody to come to my store and dropping
3 off packets from DHL?

4 A Your store?

5 Q Yes, sir. I'm a DHL authorized shipping center.

6 A I'm not aware of that.

7 Q Do you know what is the policy for someone to become
8 authorized to shipping packages from DHL?

9 A No, sir.

10 Q Do you think that DHL would approve someone to become a
11 resell by defraud them?

12 MS. MITRANI: Your Honor --

13 THE COURT: Sustained.

14 BY MR. SCOTTON:

15 Q Has anyone offered you any kind of deal to come here and
16 try to incriminate me, Mr. David?

17 A No, sir.

18 MR. SCOTTON: Your Honor, I need to put this here for
19 the jury. It was been shown yesterday, the prosecutor already
20 know.

21 THE COURT: Is it in evidence?

22 MR. SCOTTON: Yes, it is.

23 THE COURT: All right. You may want to turn it.

24 MR. SCOTTON: It's not going to fit, Your Honor, the
25 paper is kind of big.

1 Well, all right, yeah, I just want the jury to take a
2 look at this waybill. This waybill has been offered yesterday
3 by the prosecutor.

4 BY MR. SCOTTON:

5 Q Mr. David, if this bill has been provided to someone to
6 shipping a package, by just looking at the waybill, how can a
7 client be -- you know, be able to know that this is a
8 fraudulent bill, waybill?

9 A Can you repeat the question?

10 Q If someone hands this waybill to you, here, go ship your
11 package, by just looking at the waybill, how can you tell the
12 shipping account that is unauthorized account?

13 MS. MITRANI: Objection to form of the question and
14 facts not in evidence.

15 THE COURT: Overruled.

16 THE WITNESS: I couldn't tell unless I went to the
17 manager of the facility and asked him to research it.

18 BY MR. SCOTTON:

19 Q Right. So in this case, you walk inside the DHL, be able
20 to verify it. But someone from the street, a normal person
21 like me, a company come and I pay them to ship a package, they
22 hand me a bill, by looking at code bars here, I could not tell
23 this thing is fraudulent, can I?

24 A I don't know.

25 Q You don't know or can I just by looking at this waybill

1 say this is a fraudulent waybill?

2 A I couldn't tell. I mean, I would have to look at it real
3 close.

4 Q Mr. David, this is an easy question here, but I'm going to
5 try to pretend like we are all five-year-old kids here.

6 MS. MITRANI: Your Honor, I object.

7 THE COURT: Mr. Scotton, that is just not appropriate.
8 Please treat the witness with respect.

9 BY MR. SCOTTON:

10 Q This is a waybill.

11 A Yes, sir.

12 Q I go to the store and I pay the store to ship a package.
13 The store hand me this waybill. I'm just a regular person,
14 right? I got the bill, I put on the packet. How can -- there
15 is no account number on this waybill. It is no information can
16 tell me what account it is, right?

17 A Correct.

18 Q How can I -- then how can I go ahead and know that this
19 company is shipping through fraudulent accounts?

20 A What I learned working there, sir, was to look for any
21 irregularities such as, for example, something that would flag
22 me on that, I don't know if that's that particular one.
23 Targeting, it's not a common -- it's something that doesn't
24 look right. We had shipments shipped under George Bush. We
25 had shipments under Michael Jackson. So a lot of times, we

1 were instructed, we were taught to look for these
2 irregularities. So in that case, yes, I would research it.

3 Q In this case, you. But it's someone here from the jury,
4 they are outside, they walk to someone, I want to ship this
5 package and this thing has been handed to them, can they say
6 that by looking at it, oh, you give me a fraudulent shipping
7 label, can they say that just by looking at this label?

8 A Probably not.

9 Q Thank you. If a client come to my authorized shipping
10 store and they are going to ship a package, that he's allowed
11 to change information on the label?

12 A I don't know because you are addressing it as your store.
13 Are you questioning me as to coming to DHL?

14 Q Yes, any store. Can your client say, I want to change the
15 information out of the label?

16 A They may be able to.

17 Q On this case, this label here, it is not my label, it is
18 not my account. I couldn't change the information, can I?

19 MS. MITRANI: Objection, Your Honor.

20 THE COURT: Sustained.

21 BY MR. SCOTTON:

22 Q When you are not the account holder, can you change the
23 information out of the account?

24 A From my understanding in my own experience, if I've
25 prepared a label, let's say I'm shipping something FedEx and I

1 get to my location and I double-check and I see something is
2 wrong, yeah, I may be able to change it.

3 Q Have anybody from DHL try to send any communication to
4 this address on the label?

5 A Not that I'm aware of.

6 Q A gentleman named Paulo Roberto Moreira has sent emails to
7 Nicole, any recollection of him?

8 A No.

9 Q Have anybody from DHL contacted Mr. Paulo Roberto to your
10 knowledge?

11 A No.

12 Q Have anybody contact me about this emails?

13 A No.

14 Q On the email, my website has mentioned, my race website
15 has mentioned. Anybody has contact, you know, me through the
16 website?

17 A I don't know, sir.

18 Q Do you have any knowledge if I have talked to Nicole?

19 A Can you repeat, sir?

20 Q Do you know if I have talked to Nicole before?

21 A I'm not aware, sir.

22 Q Have Miss Nicole mentioned to you that I ever contact her
23 before reference some fraudulent activity?

24 MS. MITRANI: Objection, Your Honor.

25 THE COURT: Sustained.

1 BY MR. SCOTTON:

2 Q Do you know that I ever sent information to Nicole
3 throughout the emails?

4 MS. MITRANI: Objection, Your Honor.

5 THE COURT: Sustained.

6 BY MR. SCOTTON:

7 Q Do you believe that someone is doing fraud against your
8 company who send their own IDs to the company?

9 MS. MITRANI: Objection, Your Honor.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q Have anybody from fraud department of DHL come straight to
13 me to talk about anything?

14 A I'm not aware, sir.

15 Q Any recollection of anybody from your fraud department or
16 any other fraud departments tried to come to me in any
17 different way, my house, through letters, emails, phones?

18 A Well, I do recall on the date that I was instructed by
19 Nicole of fraud department to provide BCT manager their phone
20 number and their name, which was handed over to you on the -- I
21 don't recall the date, but I just -- I remember that.

22 Q You handed to who?

23 A To the facility manager. That was Chris Taylor.

24 Q But nobody from your company has contacted me direct to
25 say anything about fraud, have they?

1 MS. MITRANI: Objection, Your Honor.

2 THE COURT: Sustained.

3 Let's ask some different questions, all right,
4 Mr. Scotton.

5 MR. SCOTTON: Yes, Your Honor.

6 BY MR. SCOTTON:

7 Q Any recollection from phone call that I placed to
8 Mrs. Nicole?

9 MS. MITRANI: Objection, Your Honor.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q During your investigation, Mr. David, did you try to get
13 any kind of calls out of the phone system of DHL?

14 A No, sir.

15 Q Does anybody have done any research on the call center to
16 see if defendant has placed any calls?

17 A No, sir, not that I'm aware.

18 Q Some of those accounts that you are using on this case,
19 Mr. David, the government claim it was fraudulently created.
20 But that's not true, right?

21 A I don't know, sir.

22 Q We start here with the Target, the account belongs to
23 Target. It is account that belongs to Target, correct?

24 A I'm not aware, sir.

25 Q Yesterday looking at the screen, you confirmed to the

1 prosecutor that it was a Target account.

2 A Well, from what I was reviewing, I confirmed that that was
3 the airway bill that I pulled from that shipment, yes, sir.

4 Q Have DHL ever come to the defendant to ask for money for
5 any kind of billing?

6 MS. MITRANI: Objection, Your Honor, beyond the scope.

7 THE COURT: Overruled.

8 THE WITNESS: Can you repeat the question?

9 BY MR. SCOTTON:

10 Q Have DHL tried to charge the defendant for any shipping,
11 collect money from me for any kind of shipment?

12 A I don't know, sir.

13 Q As a security person, Mr. David, during the time you work
14 in DHL, during this procedure, during this fraudulent activity
15 on your company, the fraud, the other department, they don't
16 share with you information?

17 A I only contacted the fraud department on that first date
18 that I located the items to confirm what they wanted done with
19 it. I only had three days' interaction in that case until I
20 was notified to provide the facility manager to let you know
21 that you needed to contact them direct.

22 Q Have you seen any kind of police reports before,
23 Mr. David, about this case?

24 A No, sir.

25 Q Anybody from your fraud department has provided with any

1 kind of police reports the defendant has sent to them?

2 A No, sir.

3 Q Do you know that on October 22nd of 2007, the defendant
4 has communication with detectives from Boca police department
5 in reference to this case?

6 MS. MITRANI: Objection, Your Honor.

7 THE COURT: Sustained.

8 BY MR. SCOTTON:

9 Q Do you have any knowledge that I have report this matter
10 to the police -- Raton police department?

11 MS. MITRANI: Objection, Your Honor.

12 THE COURT: Sustained. Mr. Scotton, let's stick to
13 things that this witness might know.

14 MR. SCOTTON: That's what I'm trying to kind of figure
15 out here, Your Honor.

16 BY MR. SCOTTON:

17 Q During the course of this investigation, Mr. David, did
18 you investigation anything about me?

19 A No, sir, I did not know who you were until I received my
20 trial subpoena, sir.

21 Q Right. You never -- so then we can say then, I was not a
22 suspect on the investigation?

23 A I didn't know who you were, sir.

24 Q The video pretty much is clear, shows who I am.

25 A Prior to my receiving the subpoena, I didn't know who you

1 were. I assume it was somebody named Colon, sir.

2 Q On the video?

3 A Correct.

4 Q Because you run the tag?

5 A Correct.

6 Q Because the car is in the name of my stepfather?

7 A Yes, sir.

8 Q Do you have any kind of idea how many box and days,
9 drivers pick it up from drop-off locations?

10 A Can you repeat, sir?

11 Q How many box you might think the drivers on a daily basis
12 pick it up from drop-off locations?

13 A The drivers?

14 Q Yes.

15 A I don't have exact numbers, sir.

16 Q If the driver pick up any box going to Brazil, this is
17 automatically linked to the defendant?

18 A No, sir.

19 Q There is another waybill that has been shown to you
20 yesterday from the prosecutor of a package that came from
21 Brazil to me. Do you recall that waybill?

22 MS. MITRANI: Your Honor, I think defendant is
23 confusing this witness with Mr. Kennicutt. That was
24 Mr. Kennicutt.

25 MR. SCOTTON: You showed this to him yesterday.

1 MS. MITRANI: He can do what he wants, but the
2 government showed --

3 THE COURT: All right. Thank you.

4 Mr. Scotton, if you want to show it to him so he knows
5 what you are talking about, why don't you do that so there's no
6 confusion, all right?

7 MR. SCOTTON: Better off to put it on the screen so
8 the jury can see it.

9 THE COURT: Is it in evidence?

10 MR. SCOTTON: Yeah, it is.

11 THE COURT: Okay.

12 BY MR. SCOTTON:

13 Q Have you see that waybill before, Mr. David?

14 A I can't really read that, no, sir.

15 Q This is a waybill package that left Brazil to the location
16 that I used to have on 106 Camino Real Boulevard. And you know
17 that 160 Real Camino Boulevard is my address, correct?

18 A I don't know, sir.

19 Q Is it any crime to receive a box?

20 A I'm not aware, sir.

21 Q This particular box I sent to defendant, Mr. David, is
22 defendant responsible to pay for this invoice because he
23 received this box from someone in Brazil?

24 A I don't know.

25 Q Any knowledge if DHL has called any of those companies in

1 Brazil --

2 A I don't know.

3 Q -- to verify accounts with them?

4 A Not aware, sir.

5 Q So, basically, the only thing you know is about the videos
6 that you collect out of the surveillance from the location?

7 A Yes, sir. All my information pertains to those three days
8 and that's the recollection that I have.

9 Q And out of those three years working, one year you say
10 working through DHL location, you don't have any recollection
11 of those individuals that work for DHL that I mentioned to you,
12 right?

13 A Correct.

14 MR. SCOTTON: No more questions, Your Honor.

15 THE COURT: Any redirect?

16 MS. MITRANI: Yes, Your Honor. Your Honor, I'm going
17 to stand here if it's okay with the Court because we are
18 working with exhibits.

19 THE COURT: All right. But can you speak with the
20 microphone there, please.

21 MS. MITRANI: Yes. Thank you, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. MITRANI:

24 Q First, forget about what's on the screen for a minute.

25 Let me ask a question. The defendant on cross-examination was

1 asking you questions about the waybills, do you recollect that?

2 A Yes.

3 Q Do you have any idea where the defendant got these
4 waybills?

5 A No, ma'am.

6 Q Are you -- do you know whether defendant created it
7 himself?

8 A I have no idea.

9 MR. SCOTTON: Object, Your Honor.

10 THE COURT: Overruled.

11 BY MS. MITRANI:

12 Q Do you know whether the defendant created it himself?

13 A No.

14 Q Do you know whether he got it from somebody else?

15 A No, ma'am.

16 Q You have no knowledge one way or the other, correct?

17 A Correct.

18 Q Okay. Now, I'm going to show you the video clip, maybe
19 not the whole of it, from Government's Exhibit 13A from
20 11/28/2008. We won't see the whole thing, we will just see a
21 little bit of it.

22 (Thereupon, the videotape was played.)

23 BY MS. MITRANI:

24 Q So in this, what the members of the jury and the Court is
25 seeing right now is the defendant bringing in a big box,

1 correct? Well, an individual bringing in a big box, correct?

2 A Yes. I remember that was an air-conditioning portable
3 unit.

4 Q Okay. At the time that you saw this individual going in,
5 did you know it was the defendant?

6 A I did after having reviewed, yes, ma'am.

7 Q You knew -- you identified the person, but did you know
8 that person's name?

9 A No, ma'am.

10 Q Okay. Now, government's exhibit, I believe, on -- and
11 then let's see a little bit more.

12 (Thereupon, the videotape was played.)

13 BY MS. MITRANI:

14 Q And in this portion of the video from Government's
15 Exhibit 13A is the individual defendant bringing in a second, a
16 second package?

17 A Yes, ma'am.

18 Q All right. And did you have copies -- Exhibits 13F and
19 13G, are they copies of the waybills from these packages?

20 A Yes. Immediately after he brought them in, I went back
21 and met with the facility manager. I requested copies of those
22 shipments.

23 Q Okay. I think I misspoke 13E and 13F. So let's put on
24 Government's Exhibit 13F. Anywhere on this air bill, do you
25 see the name Roger Scotton?

1 A No, ma'am.

2 Q Anywhere on this air bill, do you see the name Sky Air
3 Express?

4 A No, ma'am.

5 Q Anywhere on this air bill, do you see any variation of Sky
6 or Sky Air?

7 A No, ma'am.

8 Q So the from is identified as a targeting at J. Ernesto,
9 correct?

10 A Correct.

11 Q And the address is 2234 North Federal Highway, 327, in
12 Boca Raton, Florida, correct?

13 A Correct.

14 Q Do you know what's at that location?

15 A Actually, I did verify that it was a Target store.

16 Q Well, are you sure that it was a Target store or are you
17 sure that you --

18 MR. SCOTTON: Object, Your Honor.

19 THE COURT: What is the objection?

20 MR. SCOTTON: She's leading him.

21 THE COURT: Sustained.

22 BY MS. MITRANI:

23 Q Did you ever go to that address, sir?

24 A I confirmed it via Google.

25 Q Okay. Let's go to the next exhibit. I want to show you

1 Exhibit 1A, which is in evidence. This is an application for
2 delivery of mail through an agent for a Pak Mail store. Have
3 you ever seen this before?

4 A I have never seen this.

5 Q So as part of your investigation, you didn't retrieve this
6 document, correct?

7 A Correct. No, ma'am, I've never seen this.

8 Q Okay. Do you see that the address here for this mailbox
9 application is 2234 North Federal Highway, PMB327, Boca Raton,
10 Florida?

11 A I see it here, yes, ma'am.

12 Q Okay. By the way, do you know how many people were
13 working on this investigation on behalf of DHL?

14 A I was only aware of Nicole when I called the fraud
15 department.

16 Q And were you aware of anybody else?

17 A I wasn't made aware of that at the time, no.

18 Q And after the December 2nd video which was the one -- the
19 next one, were you, did you continue to work on this case?

20 A Yes, ma'am.

21 Q And when did you stop working on this case? Were you
22 reassigned to another unit?

23 A Yeah, I was reassigned back to Miami. After the date
24 where he was notified to contact fraud department, I was done
25 with it.

1 Q Okay. After that date?

2 A Correct.

3 Q Is that date the date of -- okay. That's fine.

4 All right. And now let's go to Exhibit 13E. 13E, this is
5 the second package. You see it's dated 11/28/2008, correct?

6 A Yes, ma'am.

7 Q And does anywhere on this waybill, does it say
8 Roger Scotton?

9 A No, ma'am.

10 Q Does it say Sky Air or any variation, Sky Air Global?

11 A No, ma'am.

12 Q Does it also say it's from targeting at the 2234 North
13 Federal Highway address?

14 A Yes, it does.

15 Q And then going to Exhibit 13A, November 17, 2008.

16 (Thereupon, the videotape was played.)

17 BY MS. MITRANI:

18 Q Here we have one individual walking in and dropping in a
19 package, correct?

20 A Yes, ma'am.

21 Q And then here is the second individual dropping off the --
22 a big box?

23 A Yes, ma'am.

24 (Thereupon, the videotape was played.)

25

1 BY MS. MITRANI:

2 Q Then the first individual -- the second individual left
3 first, the first individual left, correct?

4 A Correct.

5 (Thereupon, the videotape was played.)

6 BY MS. MITRANI:

7 Q Now the first individual comes back in, correct?

8 A Yes, ma'am.

9 (Thereupon, the videotape was played.)

10 BY MR. SCOTTON:

11 Q Now, did you obtain the waybill for the -- excuse me.

12 Yesterday you testified that you obtained the waybill for
13 the first big box that the second individual had brought in?

14 A Correct, yes.

15 Q All right. And that is Government's Exhibit 13B?

16 A Yes, ma'am.

17 Q I think you testified that you thought -- I'm sorry, who
18 did you think that individual that had the big -- at the time
19 who brought it in, what did you think his name was?

20 A Based on my running the tag for the vehicle, somebody
21 named Colon.

22 Q Okay. And in this -- so Government's Exhibit 13B, the DHL
23 waybill that goes to the big box, do you see it on your screen,
24 waybill ending in 4600?

25 A Yes, ma'am.

1 Q Anywhere on this waybill is the name Roger Scotton there?

2 A No, ma'am.

3 Q Is the name Colon there?

4 A No, ma'am.

5 Q Is the name Sky Air or Sky Air Global or any variations
6 thereof there?

7 A No.

8 Q Instead, it says Walmart? Is that correct as the from
9 Walmart?

10 A Yes, ma'am.

11 Q With an address of J. Lend Returns in Bentonville,
12 Arkansas?

13 A Correct.

14 Q And, I'm sorry, where was the facility? In what city and
15 state was the facility that this Walmart package was being
16 dropped off this?

17 A You mean the shipping address?

18 Q No. The shipping address says Arkansas.

19 A Oh, BCT in --

20 Q Dropped off in Arkansas?

21 A Yeah. Boca Raton.

22 Q In Boca Raton, Florida?

23 A Florida, yes.

24 Q And then you got the accompanying commercial invoice, 13B,
25 13C. Again, it has -- anywhere on this commercial invoice does

1 it say Roger Scotton, Colon, Sky Air?

2 A No.

3 Q It continues to purport to be from Walmart in Bentonville,
4 Arkansas, correct?

5 A Correct. Yeah, and I matched it to the box that was in
6 the warehouse because the Eagle 255 reflects those tires that I
7 located.

8 Q So when it says in the middle, description of merchandise,
9 Eagle 255, you remember that being the tires --

10 A Yes.

11 Q -- in those boxes?

12 A Yes.

13 Q The defendant on cross asked you about an individual named
14 Pablo Roberto. Have you ever spoken to anybody by that name?

15 A No, ma'am.

16 Q Do you even know if somebody by that name exists?

17 A I'm not aware, ma'am.

18 Q Let's turn to the last clip from December 2nd, 2008. And
19 let's -- this is again from Exhibit 13A. This is the third
20 surveillance clip from December 2nd, 2008, correct?

21 A Correct.

22 Q And that clip, did the service manager hand that
23 individual depicted in this clip a piece of paper?

24 A Yes, ma'am. It was a note that I provided the fraud
25 department's information and phone number to be given to the

1 person that came to the counter.

2 Q And what was written on that note that you gave to
3 Mr. Turner?

4 A The note was the name Nicole, fraud department, and the
5 phone number.

6 Q And after that note that you had given to Mr. Turner, who
7 gave it to the defendant here, there was continued discussions,
8 correct?

9 A Yes.

10 Q And it lasted for some time until --

11 A A few seconds, yes.

12 Q And, I'm sorry, can you remind me, what was the
13 individual's tone in addressing Mr. Turner?

14 A Yeah, he was loud, appeared threatening. He stated, you
15 know, I don't know what you guys are trying to pull, you don't
16 mess with me, you don't F with me. He said, you don't know who
17 you are messing with. I'm going to sue you. I'm going to sue
18 you personally.

19 MR. SCOTTON: I object to that, Your Honor, it's
20 speculation. There's no audio on the video.

21 THE COURT: Overruled.

22 BY MS. MITRANI:

23 Q You may continue. Anything else?

24 A Actually, I didn't see it until I was confirmed by the
25 manager after I reviewed the video with him that he lifted up

1 his wallet, which he had placed on the counter, and he flashed
2 a -- what appeared to be a badge. And he said, police officer,
3 you can't hold my merchandise, and I'm a police officer from
4 Brazil.

5 Q Was there any tone of surprise when he was handed the note
6 saying to contact the fraud department with the number given?

7 A Not that I'm aware of.

8 Q Well, you -- were you there?

9 A Yes.

10 Q And did you hear the conversation?

11 A Yeah. It was just a conversation of the manager telling
12 him and persisting, you know, well, you call them, you know, I
13 can't do anything further, that's what I was instructed. And
14 he, you know, told him again a couple of times, call them, call
15 Nicole, the fraud department, there's a number.

16 Q Okay.

17 MS. MITRANI: No further questions, Your Honor.

18 THE COURT: All right. Thank you.

19 Mr. Bonilla, you may step down.

20 The government may call your next witness.

21 We are going to take ten minutes so we will back at
22 10:35. All rise for the jury.

23 (Thereupon, the jury exited the courtroom at 10:26
24 a.m.)

25 (Thereupon, a recess was taken at 10:27 a.m.)

1 MS. MITRANI: Your Honor, I need to address something
2 with the defendant and then I may need to address it with the
3 Court.

4 THE COURT: All right. If you could, maybe try to do
5 it quickly because we have a jury waiting.

6 MS. MITRANI: Okay. Thanks.

7 Your Honor, I would like the Court to know what
8 Mr. Scotton and I discussed. Exhibit 12 which the government
9 is going to offer with the next witness, Nicole Nelson is the
10 next witness. These are documents that she pulled and we
11 reasonably anticipate getting. And some of them have like very
12 innocuous notes, like she will write claim number on it. I
13 mean, there's no narrative that might be -- she might write
14 down a claim number. I have a redacted version and nonredacted
15 version. Mr. Scotton does not object to me showing the
16 nonredacted version. I told him it was her handwriting, he
17 would have the opportunity to cross-examine. So that's where
18 we're at with that.

19 THE COURT: All right. Let's bring in the jury.
20 Thanks.

21 (Thereupon, the jury entered the courtroom at
22 10:37 a.m.)

23 THE COURT: Welcome back. And I think we are ready
24 for the government to call the next witness, right?

25 MS. MITRANI: Yes, Your Honor, thank you so much. The

1 government calls Nicole Nelson.

2 THE COURTROOM DEPUTY: Please raise your right hand.

3 NICOLE NELSON

4 After being duly sworn on oath was examined and testified as
5 follows:

6 THE COURTROOM DEPUTY: Please be seated, state and
7 spell your first and last name for the record.

8 THE WITNESS: Nicole Nelson, N-I-C-O-L-E, N-E-L-S-O-N.

9 DIRECT EXAMINATION

10 BY MS. MITRANI:

11 Q Good morning, Ms. Nelson, how are you?

12 A I'm good. Thank you.

13 Q Can you hear me okay?

14 A I can.

15 Q If there comes a point in time where you can't hear me
16 okay, will you let me know?

17 A I will. Thank you.

18 Q Where do you live?

19 A I live in Chicago.

20 Q And how long have you been in Chicago?

21 A I have been there nearly 25 years.

22 Q And how happy are you to be in South Florida today?

23 A Very happy.

24 Q All right. Did you go to college?

25 A I did go to college. I went to the University of

1 Wisconsin, and I also went to Loyola University where I got my
2 graduate degree in criminal justice.

3 Q And what degree did you get at the University of
4 Wisconsin?

5 A It was in art and education.

6 Q And was it a -- what kind of degree was it?

7 A I'm sorry?

8 Q See, there's an example. What kind of degree was it, a
9 bachelor's?

10 A It was a bachelor's degree at the University of Wisconsin
11 and master's degree at Loyola.

12 Q What year did you get your master's?

13 A 1999.

14 Q Thank you. Do you have any other degrees or
15 certifications?

16 A I do. I have two certifications. The first is as a
17 certified fraud examiner. I got that certification in 2003.
18 I'm also a certified forensic interviewer, a certification I
19 got in 2010.

20 Q And are those certifications current?

21 A Yes, they are.

22 Q Did there come a time when you were working for DHL?

23 A Yes.

24 Q And let's take it slowly. From when to when were you
25 working with DHL?

1 A Sure. I was there from June of 2006 until February of
2 2009.

3 Q And, physically, where were you located?

4 A I was based in the Chicago land area.

5 Q Okay. And in what department did you work?

6 A I worked in the fraud department.

7 Q Throughout the time that you were with DHL?

8 A Yes.

9 Q Throughout the entire time?

10 A Yes.

11 Q And what was your title?

12 A I held two titles. One was as the fraud manager and the
13 other was as a fraud investigator.

14 Q And can you tell the members of the jury a little bit
15 about what -- actually, two questions, what your department did
16 and what your responsibilities were within the department?

17 A Yeah. The fraud department investigated external fraud.
18 So that was all the fraud that was committed against DHL from
19 people outside of the company. And so some of the things that
20 we would do within our department would be to investigate
21 people who were obviously defrauding the company in various
22 ways. Some of those ways could be people who would set up
23 accounts knowing full well in advance that they weren't going
24 to pay their bills, but they would ship on the accounts anyhow.
25 We would investigate people who stole our customers'

1 accounts, the customer account numbers, and then would use that
2 number to ship their own personal shipments. And we would
3 investigate fraudulent claims from the claims department.

4 Q So it sounds like a wide swath of territory that you
5 covered?

6 A Yes.

7 Q All right. And actually speaking of territories, were
8 you -- what geographic area would you be responsible for
9 investigating?

10 A I was primarily overseeing all the fraud in the
11 United States. Occasionally, there would be some overseas
12 fraud that would involve some -- something with United States
13 as well, too, but the focus was everywhere in the U.S.

14 Q And during the course -- in the course of investigating
15 these cases that you were investigating, did you become
16 familiar with the business records of DHL?

17 A Yes, I did.

18 Q And how did you interact with the business records of DHL?

19 A How did I what?

20 Q Interact with it. In other words, would you pull
21 documents yourself?

22 A I would either have the ability to look up information and
23 generate reports or documents myself or I would work with other
24 departments like billing and credit and ask them to provide me
25 with some records that they had access to.

1 Q And how does DHL maintain its records?

2 A They maintain the records electronically. There might be
3 occasion when people are keeping records in hard copy form as
4 well.

5 Q But for the most part, they are maintained electronically?

6 A Yes.

7 Q And -- okay. Now, were you involved in a case regarding
8 packages that were being shipped to Brazil?

9 A Yes.

10 Q Yes?

11 A Yes.

12 Q Okay. So -- and did you have an internal name for that
13 investigation?

14 A I did. I referred to it as the Scotton case.

15 Q And as best as -- and do you remember when your
16 investigation began into these, we will call them the Brazilian
17 shipments?

18 A It first came to my attention in early 2007.

19 Q And for how long did you work on that investigation?

20 A I worked on it through 2009.

21 Q So is that from early 2007 through early 2009?

22 A Yeah. I left DHL in February 2009 and it was an active
23 case at that time.

24 Q Do you know whether the case was then transferred or
25 handed to somebody else within DHL?

1 A Yes. When I left, it was handed over to the U.S. fraud
2 manager Scott Kamlet.

3 Q And where is he located?

4 A He's based out of Houston.

5 Q Now, when you were working on the case from June '07
6 approximately to February '09 approximately, were you the only
7 one working on this case from the DHL perspective?

8 A From the fraud perspective, yes, I was the only one
9 managing the case.

10 Q Okay. And as the manager of the case, did you work with
11 other DHL personnel?

12 A Yes, I did. I worked with people in other departments and
13 some of the station managers in the South Florida area.

14 Q And did you have contact and communications with people in
15 the South Florida area?

16 A I'm sorry. Say that again?

17 Q How did you contact the people in the South Florida area?

18 A By phone, email.

19 Q All right. So how did this case -- how did this
20 investigation first begin?

21 A Well, it first came out of a list of accounts that I was
22 reviewing.

23 Q Where did you get -- I'm sorry, where did you get those
24 accounts?

25 A Yeah, I had contacted the billing department at DHL and I

1 asked them if they could generate a list of customer accounts
2 with the highest balances that had no history of payment on
3 them. So they sent me this list, and some of Mr. Scotton's
4 accounts were on that list.

5 Q Well, how do you know they were Mr. Scotton's accounts?

6 A As I started to look more closely at the information and
7 the details connected to each of the accounts, his name was on
8 the account, email addresses that had his name in them, phone
9 numbers, credit cards. There's a field for bill to, where the
10 invoices should be sent to that belonged to Mr. Scotton. His
11 company name was part of the account name.

12 Q And what company name -- excuse me. Are you still
13 referring to this sort of initial, how it all got started back
14 in early 2007?

15 A Yes.

16 Q And what company -- when you say his company's name, to
17 what company are you referring?

18 A He had a company called Brazil Express. There was another
19 company called Matte Lion, Scotton Racing. There were several
20 others that were like that. I don't remember off the top of my
21 head.

22 Q But those were the -- were these the initial ones that you
23 are talking about that started your investigation?

24 A Yes, they are.

25 Q And do you recall approximately how many accounts you

1 obtained from billing sort of at the beginning of the
2 investigation, approximately?

3 A Yeah, I would say at the beginning, there were probably
4 close to five or six accounts.

5 Q Did your investigation grow from these initial five or six
6 accounts?

7 A Yes, it did. Because this initial list just had the
8 highest unpaid balances, it didn't include obviously all the
9 accounts that were in existence. So what I did is I took some
10 of the -- what I considered unique identifiers from the
11 accounts that I was aware of, like the name, phone number,
12 credit card information, stuff like that, and I gave that list
13 back to the billing department and I asked them if they could
14 do a search for additional accounts that might be out there
15 that I wasn't aware of. And then they gave me a second list
16 that had probably close to another five or ten accounts.

17 Q And did your investigation grow beyond that second list?

18 A It did. When I became aware of these accounts, especially
19 the ones with the high balances, I immediately closed them so
20 that the shipping would stop and DHL wouldn't incur any more
21 losses. So with this new, bigger list, I closed down all of
22 the accounts. However, after that, brand new accounts would
23 show up and were being used for shipping. As soon as those
24 came to my attention, I would close them down. But every time
25 I closed one down, two or three more would be generated.

1 So it was sort of like this snowball reaction to what I
2 was doing. Every time I would become aware of something, one
3 of these accounts, I would close it. But it almost didn't
4 matter because new accounts kept opening up.

5 Q And did this pattern persist throughout the course of your
6 investigation of old accounts or existing accounts being closed
7 down?

8 A Yes, that happened throughout the entire case.

9 Q And new ones being opened?

10 A Yeah.

11 Q Okay. Once you were able to -- well, strike that.

12 These later accounts, how were you able to link them to
13 these earlier accounts that you identified were under the name
14 Scotton or Brazil Express?

15 A Yeah, there are fields that you have to enter when you
16 sign up for an account and -- or information you have to
17 provide. Again, some of this information would include your
18 name, your phone number, your address, an email address, a user
19 name that you used to set up an account. And these were sort
20 of repeating identifiers so that I could look at a new account
21 and see an email address that had been already used on an
22 account that I had identified as being fraudulent.

23 Q Did claims and claims file factoring into your
24 investigations?

25 A Yes, it definitely did.

1 Q All right. And we will talk more about that in a bit.

2 Once you identified accounts as having balances not being
3 paid and closing them down for fraud, what actions did you take
4 with those specific accounts other than closing -- in addition
5 to closing them?

6 A Well, I started tracking them. I wanted to make sure that
7 people at the -- the managers at the stations were -- you know,
8 the packages were being shipped from were aware that these were
9 fraudulent accounts. So I was just in contact with other
10 people who needed to know about these accounts so that they
11 could bring them to my attention.

12 Q Okay. So you disseminated that information to other
13 individuals?

14 A Yes.

15 Q And I think you said -- and what were your instructions to
16 them?

17 A Well, to the managers at the South Florida stations, I
18 told them they either -- that the accounts were closed, for
19 one. And if anybody wanted to ship something, that they had to
20 pay cash, we weren't going to put anything on an account
21 anymore.

22 Q With those -- with respect to those specific accounts?
23 With respect to the specific accounts that you identified?

24 A Yes.

25 Q So do you recall any other -- in addition to the email

1 links that you talked about or account opening links, are there
2 any other links that come up to your mind right now that linked
3 all the accounts that you had identified as fraud pertaining to
4 the Brazilian shipment case?

5 A There were claims -- I'm not sure if you want to get into
6 the claim information. You said you were going to --

7 Q Yeah, we will get into claims in a minute. Did address,
8 did you see recurring addresses?

9 A I saw recurring addresses that when I did searches were
10 connected to Mr. Scotton. I saw email addresses that showed up
11 repetitively. Billing information was identical among the
12 different accounts; not all of them, but some of them. And
13 again, you know, there were two or three addresses that were
14 used throughout all of these different accounts.

15 Q And I realize your investigation was some years ago, but
16 do any of these addresses pop up to your mind right now?

17 A Yes.

18 Q What address do you -- addresses do you recall?

19 A There was an address on Mizner, I believe it may have been
20 398. There was one -- I don't remember it exactly, 3777
21 something.

22 Q How about -- no, strike that.

23 So during the course of your investigation, ultimately or
24 approximately how many packages, how many shipments were
25 involved?

1 A I don't know an exact number, but I would say well over a
2 couple thousand.

3 Q Okay. And how many accounts?

4 A I believe there were close to --

5 Q If you remember --

6 A If I had to guess, 30 to --

7 Q Don't guess.

8 A Okay. Sorry.

9 Q Let me ask you this, we'll talk about it later.

10 A Okay.

11 Q Did you prepare a spreadsheet of accounts?

12 A I did.

13 Q Okay. And that spreadsheet that you prepared, on what
14 documents were they based?

15 A They were based on billing information, and they listed
16 out the shipments and the charges that were incurred along with
17 those shipments.

18 Q All right.

19 MS. MITRANI: Your Honor, may I approach the witness?

20 THE COURT: Yes.

21 BY MS. MITRANI:

22 Q Ms. Nelson, I'm showing you what's been marked as -- I'm
23 not screaming at you, I'm just talking loud, although it
24 appears that I'm screaming at you. I'm just talking loud so
25 they can take it down.

1 Anyway, I'm showing you what's been marked as composite
2 Exhibit 12, which is 12A through and including 12G.

3 Okay. Take a quick look at those files. Are these claim
4 files that you pulled during the course of your investigation?

5 A Yes, they are.

6 Q And does each of the folders, 12A, 12B, 12C, et cetera,
7 pertain to a different company -- or, excuse me, a different
8 account?

9 A Yes.

10 Q And are these claims the business records of DHL?

11 A Yes, they are.

12 Q Are they kept in the ordinary course of business?

13 A Yes, they are.

14 Q Was it the routine practice of DHL to maintain claim files
15 on claims that were submitted?

16 A Yes, it was.

17 MS. MITRANI: Your Honor, the government would offer
18 composite 12.

19 THE COURT: Any objection?

20 MR. SCOTTON: No, Your Honor.

21 THE COURT: All right. Government's 12 is admitted.

22 (Thereupon, Government's 12 received in evidence.)

23 BY MS. MITRANI:

24 Q Well, we will get to the documents in just a second,
25 Ms. Nelson, but can you describe to the members of the jury

1 what is a claim?

2 A A claim is -- it's basically like an insurance claim. It
3 is what's submitted by a customer if their shipment has been
4 lost or damaged.

5 Q So let's start. I'm showing you the first page of 12A,
6 which is Bates labels on the bottom as DHL 3.

7 A Does this work?

8 Q It certainly is working. Can you tell the members of the
9 jury what they are seeing here, Ms. Nelson?

10 A We are seeing a profile of a customer account.

11 Q And what is a profile?

12 A A profile is what's set up when somebody opens up an
13 account. It includes their shipping information, it includes
14 their contact information, billing preferences.

15 Q Things of that nature?

16 A It's account setup profile.

17 Q Okay. So Government's Exhibit 12A pertains to a company
18 called U.S. Trade International, correct?

19 A Correct.

20 Q And it was never -- it's an account number ending in 2538?

21 A Yes.

22 Q And it has an enrollment date of 1/7/2008, correct?

23 A Correct.

24 Q You know what? I'm actually going to come back to 12A.

25 Let's go to 12B. Is this another profile sheet from DHL from a

1 company that opened an account with DHL and identified itself
2 as Sun and Moon Corp.?

3 A Yes.

4 Q And it has an account number ending in 2374?

5 A Yes.

6 Q And it says last log-in date, 11/19/2007?

7 A Yes.

8 Q What does that mean, last log-in date?

9 A When people set up a profile, the system tracks when they
10 log into their account, and that just means the last time this
11 account was logged into as of the date that this was printed
12 was November 19th, 2007.

13 Q Okay. And the Sun and Moon Corporation identified
14 itself -- identified its address as one in Jamaica, New York,
15 correct?

16 A Correct.

17 Q Now I'm showing you the second page of Exhibit 12B, which
18 is DHL 65. Can you see that okay, Ms. Nelson?

19 A I'm sorry?

20 Q Can you see that okay on your screen?

21 A Yes.

22 Q Okay. What are the members of the jury looking at in this
23 particular page, what are they looking at? Is this the billing
24 options --

25 A Yes.

1 Q -- for the same Sun and Moon account?

2 A Yes. They are looking at billing preferences and billing
3 options.

4 Q And if you look at the document, is the billing option
5 sort of highlighted?

6 A Yes, it is.

7 Q All right. Because it looks a lot like the profile?

8 A It does. It's one tab over where they fill in additional
9 information.

10 Q And in this instance, the billing options for Sun and Moon
11 were an address, 1801 Harbor Point Parkway in Atlanta, Georgia,
12 correct?

13 A Yes.

14 Q All right. I'm still on Government's Exhibit 12B, and
15 this is DHL 69 within 12B. Can you tell the members of the
16 jury, explain to the members of the jury what they are looking
17 at with this document?

18 A Yeah, this is a document that's generated by the claims
19 department. After a claim is submit, it's assigned a number
20 and it gives the status of the claim. If there is a check
21 that's going to be cut and sent back to the customer as
22 reimbursement for lost or damaged shipment, that is the address
23 that shows up next to address. It gives information about the
24 payment. The requested amount in this instance was \$805. DHL
25 was liable for \$805. The check number, it's pretty

1 self-explanatory.

2 Q Okay. Okay.

3 A Yes.

4 Q I guess I just wanted, generally, is it fair to
5 characterize this as a summary --

6 A Yes.

7 Q -- of the claim?

8 A Yes.

9 Q And then behind the summary are the -- are there the
10 actual claim forms and what have you?

11 A Yes.

12 Q Okay. So in this particular instance, the claimant's
13 name, the corporation was Sun and Moon Corporation, correct?

14 A Correct.

15 Q And there was a claim for a shipment loss or damage,
16 correct?

17 A Yes.

18 Q The address, though, and person for the Sun and Moon Corp.
19 for this claim was a D. Matthews at P.O. Box 629, Boca Raton,
20 Florida, correct?

21 A Correct.

22 Q With a phone number of 561-368-7345, correct?

23 A Correct, yes.

24 Q All right. Can you see that okay?

25 A Uh-huh.

1 Q So I'm not going to keep on asking you. If you can never
2 not see anything okay, will you let me know?

3 A I will let you know, yes.

4 Q So what are the members of the jury looking at now? Is
5 this a DHL loss/damage claim form?

6 A Yes, it is.

7 Q All right. And in this instance, was a claim being made
8 on a waybill number ending in 0105?

9 A Yes.

10 Q And the claimant's name was listed as the -- the
11 claimant's company name was listed as what?

12 A I'm sorry?

13 Q What was the claimant's company name listed as?

14 A Sun Moon.

15 Q Okay. With a --

16 A But it's connected to Sun and Moon.

17 Q Okay. And what's the address?

18 A The claimant's address is P.O. Box 629, Boca Raton,
19 Florida 74563.

20 Q Now, on the top, you see my finger -- just very high-tech
21 technology.

22 A Yes.

23 Q Where I was pointing to?

24 A Yes.

25 Q December 11th, can you tell the members of the jury what

1 that is?

2 A Yeah, that's the heading that's imprinted by the sender's
3 fax.

4 Q Okay. So in this instance, this claim form came in by
5 fax?

6 A Yes.

7 Q On December 11th, 2007?

8 A Yes, it did.

9 Q And it says a time and then it says express?

10 A Correct.

11 Q With a fax number of 561-368-7347, correct?

12 A Correct.

13 Q And this was a claim for a shipment being shipped to
14 where, what country?

15 A Brazil.

16 Q And then there's this box here in the middle. What is
17 that box, Ms. Nelson?

18 A That's used to identify the items that were either lost or
19 damaged and their value.

20 Q Okay.

21 A Or the amount claimed.

22 Q The amount claimed. All right. And in this instant, it
23 is a Yamaha product that is being claimed, correct?

24 A Yes.

25 Q And then there is a signature on the bottom, correct?

1 A Correct.

2 Q With a phone number of 561-368-734 -- it's hard to make
3 out the last digit.

4 A It would --

5 Q Go ahead. What would it appear to you?

6 A It would appear to be a 5 or 8.

7 Q Okay. And what -- this is page DHL 73 within Exhibit 12B.
8 What is this here?

9 A This is an invoice that was submitted as proof of
10 purchase, an ownership of the item shipped.

11 Q Coming from that same fax number ending in 7347?

12 A Correct.

13 Q This is DHL 74. Is this the waybill that belonged to the
14 claim?

15 A Yes, it is.

16 Q And the waybill that belonged to the Yamaha claim ends in
17 0105, correct?

18 A Yes.

19 Q The shipper or the from on the waybill is identified as
20 Sun and Moon Corp., R. Matthew, with an address in Jamaica,
21 New York, correct?

22 A Correct.

23 Q With a package going to Brazil?

24 A Yes.

25 Q Putting the claim form back on, the claimant Sun and Moon

1 though, claimed its address on the claim form as P.O. Box 629
2 in Boca Raton, Florida, correct?

3 A Yes.

4 Q So this is still within 12B, it's DHL 79. Can you tell
5 the members of the jury what they are looking at here?

6 A Yeah. This is a form letter that is sent to the customer
7 that gives them details of whether or not their claim is going
8 to be settled and it gives details on the amount that's going
9 to be sent to them in check form.

10 Q And in this instance, this letter was for the same waybill
11 number ending in 0105 as identified where it says claim
12 reference, correct?

13 A Yes.

14 Q And it was sent to Sun and Moon Corp., attention
15 D. Matthews, P.O. Box 629, Boca Raton, Florida?

16 A Yes.

17 Q And we are not going to read the whole letter, but the
18 first sentence of the second paragraph states, enclosed is our
19 check representing the full settlement of your claim with
20 DHL Express, is that right?

21 A Yes.

22 Q And just as you testified earlier, the check amount that
23 was sent to that name and address was \$798.70?

24 A Yes.

25 Q Okay. Government's Exhibit 12C at DHL 89, which you can

1 see on the lower right-hand corner, what are we looking at
2 here, Ms. Nelson?

3 A We are looking at another account in the name of
4 Sunshine Express and this is their profile information.

5 Q And DHL opened an account for Sunshine Express ending in
6 2570?

7 A Yes.

8 Q And what's the last log-in date on this account?

9 A I'm sorry, say that again?

10 Q What's the last log-in date on this account?

11 A January 18, 2008.

12 Q The address that Sunshine Express, LLC, provided to DHL
13 was in Somerville, Massachusetts, is that correct?

14 A Yes.

15 Q And was this account ultimately closed?

16 A Yes, it was.

17 Q We'll talk more about that later. Why was it closed?

18 A I'm sorry?

19 Q Why was it closed.

20 A It was identified as being a fraudulent account.

21 Q And, specifically, was the -- was there invoices paid?

22 A No. It was accruing, yes, an unpaid balance.

23 Q Okay. And here's the billing options with the billing
24 address in Lowell, Massachusetts, correct?

25 A Yes.

1 Q Now, did Sunshine Express submit several claims to DHL?

2 A Yes.

3 Q So now we are looking at DHL 99 within Exhibit 12C. Is
4 this loss or damage claim form from one of the lost/damage
5 claim forms submitted by the Sunshine Express account?

6 A Yes.

7 Q And we see this is for waybill 98 -- ending in 9881,
8 correct?

9 A Correct.

10 Q The date of the shipment was 1/14/08?

11 A Yes.

12 Q And the claimant's company name on the claim form says
13 what?

14 A It says Solange.

15 Q That's the shipper's name. Up here, does --

16 A In the shipper's name under the claim company, I can't
17 read that first box exactly.

18 Q All right. Let me zoom it up for you.

19 A Oh, Sunshine, Sunshine Express.

20 Q Right. So the claimant's company name is
21 Sunshine Express, correct?

22 A Yes.

23 Q With the claimant's address at P.O. Box 629 in Boca Raton,
24 Florida?

25 A Yes.

1 Q I guess that's not on the screen. So Boca Raton, Florida,
2 correct? Boca Raton, Florida, correct?

3 A I'm sorry?

4 Q Boca Raton, Florida, correct?

5 A Yes.

6 Q And this claim on waybill 9881 was for a shipment to
7 Brazil, correct?

8 A Yes.

9 Q Is there a fax information incoming -- the incoming fax
10 information as the document came to DHL, is it on the top of
11 this document?

12 A Yes, it is.

13 Q And what does it state?

14 A It states January 21st, '08, at 1:14 p.m., or P, from
15 number 561-368-7347.

16 Q Was this the same fax number as the Sun and Moon Express
17 claim that we saw a few minutes ago?

18 A Yes, it is.

19 Q And what is the claimant claiming happened to the package?

20 A That it was stolen from DHL.

21 Q And that's the handwriting here, stolen from DHL?

22 A Yeah, that was on the fax.

23 Q Okay. That's how it came to DHL?

24 A Yes.

25 Q All right. And in this instance, the claim is that an

1 Xbox was stolen from a DHL?

2 A Correct.

3 Q And I think afterwards, it says D-R-I-V?

4 A I'm sorry?

5 Q After DHL, it says stolen from DHL, then it says D-R-I-V,
6 correct?

7 A Yes.

8 Q With the claimant's signature on the bottom, correct?

9 A Yes.

10 Q Okay. Still from Exhibit 21C on that same -- and this is
11 document DHL 105, that same waybill we have been talking about
12 ending in 881, correct?

13 A Yes.

14 Q And this is a form -- the form letter that DHL sent out on
15 May 1st, 2008, to Roger Express, attention Samuel, P.O. Box
16 629, Boca Raton, Florida?

17 A Correct.

18 Q And then this letter in the middle, it's saying, enclosed
19 is a copy of the check, with a check number, issued on
20 2/18/2008 in the amount of \$349.99. The check has been
21 negotiated/cashed and we are, therefore, unable to stop payment
22 to reissue, correct?

23 A Correct.

24 Q And is this a copy of the check that was sent to
25 Sunshine Express at P.O. Box 629, Boca Raton, Florida?

1 A Yes, it is.

2 Q And on the lower half of the same page, and this is
3 DHL 102, is the back of the check after having been negotiated,
4 correct?

5 A Yes.

6 Q Is this another -- is this a summary sheet for a claim
7 made by Sunshine Express on a waybill ending in 3611?

8 A Yes, it is.

9 Q And in this instance, was the claim paid?

10 A There was no claim paid on this one.

11 Q But the address on the address field, does it say P.O.
12 Box 629, Boca Raton, Florida?

13 A Yes, it does.

14 Q So it's waybill 3611. And is this the loss -- is this the
15 claim form, we will just call it the claim form. Is this the
16 claim form that came in to DHL for waybill 3611?

17 A Yes, it is.

18 Q And it's identifying the claimant's company name as
19 Sunshine Express with P.O. Box 629 in Boca Raton, Florida --

20 A Yes, it is.

21 Q -- for a shipment?

22 And on the top is there incoming fax information?

23 A Yes, there is.

24 Q And what does it say?

25 A It says February 6, '08, 2:23P, Amazon, and from phone

1 number -- or from fax number 561-368-7347.

2 Q Is that the same fax number that we saw in the
3 Sunshine Express claim and on the Sun and Moon claim?

4 A Yes, it is.

5 Q And in this instant was a -- the claim stated that the
6 item was lost and identifies the item as an Acer laptop
7 claiming \$850?

8 A Yes.

9 Q And still referencing the waybill No. 3611, correct?

10 A Yes.

11 Q And on the top, it says Sunshine Express, P.O. Box -- it
12 says Sunshine Express, P.O. Box 629, Boca Raton, Florida?

13 A Yes.

14 Q And is it requesting additional information in order to
15 process the claim?

16 A Yes, it is.

17 Q And still from Government's Exhibit 12C, Bates labeled
18 DHL 126, is this a claim that came in on waybill No. 8935?

19 A Yes.

20 Q On the -- is it on the Sunshine Express account still?

21 A Yes.

22 Q And is the fax number on the top, 561-368-7347, the same
23 fax number we've been seeing?

24 A Yes, it is.

25 Q And with respect to this claim, this is a copy of the

1 waybill ending in 08 -- excuse me, 8935?

2 A Yes, it is.

3 Q Same as the claim form, correct?

4 A Yes.

5 Q And this is for a package that was sent to Brazil?

6 A Yes, it is.

7 Q And where it says service in the middle, does that say DDP
8 there? Do you see that?

9 A Yes, it does.

10 Q Okay. And is this a letter dated February 9, 2008, that
11 was sent to Sunshine Express --

12 A Yes.

13 Q -- regarding --

14 A I'm sorry.

15 Q That's okay. Regarding that same waybill No. 8935?

16 A Yes.

17 Q All right. And was the claim paid?

18 A It was not paid.

19 Q And in the second paragraph, does it give the reason why
20 it was not paid? It says, our system will normally indicate an
21 origin pick-up scan, hub transfer scan, and delivery station
22 scans. In this instance, there is no scanning record for this
23 shipment at any of our normal routing locations. Therefore, I
24 must respectfully deny your claim.

25 A Yes.

1 Q Going to 12D, as in David, is this the account profile for
2 Rio Motorsports, LLC?

3 A Yes, it is.

4 Q And Rio Motorsports provides an email address of
5 RRS76@hotmail.com, correct?

6 A Correct.

7 Q With an address in Boca Raton, Florida?

8 A I'm sorry?

9 Q With an address in Boca Raton, Florida.

10 A Correct.

11 Q And I don't know if I said it, but that profile is DHL 364
12 within Exhibit 12D.

13 Is this the summary information for a claim that was made
14 on Rio Motorsport account for a shipment tracking number ending
15 in 3423?

16 A Yes, it is.

17 Q And in this instant, was it paid out?

18 A Yes, it was.

19 Q How much was paid out?

20 A It was paid in the amount of \$599.98.

21 Q And to whom was this Rio Motorsport check addressed to?

22 A Daniel Valente.

23 Q At where?

24 A At P.O. Box 629, Boca Raton, Florida 33429.

25 Q And is this the claim form for that same waybill 3423?

1 A Yes.

2 Q And on the top, the incoming fax is dated November 14,
3 '07, with a time and it says, Roger. And then it has a
4 different fax number of 954-301-1834, correct?

5 A Yes.

6 Q And is this a copy of the waybill 3423?

7 A Yes.

8 Q At DHL 245. And is this for a package that according to
9 the shipping label originates in Boca Raton, Florida, as being
10 sent to Brazil?

11 A Yes.

12 Q And still within Exhibit 12D, is this a copy of the
13 DHL Express check that was cut to Rio Motorsports at P.O.
14 Box 629?

15 A Yes, it was.

16 MS. MITRANI: Your Honor, can I have just one moment.

17 THE COURT: Yes.

18 MS. MITRANI: Thanks.

19 BY MS. MITRANI:

20 Q I will show you another claim from Rio Motorsports, and
21 this is still 12D, it's DHL document DHL 274. Is this a claim
22 on a tracking number ending 2953?

23 A Yes.

24 Q DHL 264, is this a letter that was sent in to DHL on that
25 same waybill No. 2953?

1 A Yes, it is.

2 Q And it purports to be from Rio Motorsports, that's what it
3 says on top, correct?

4 A Correct.

5 Q The name on the fax header says Roger, correct?

6 A Yes.

7 Q And can you read this letter to the jury. Can you see it
8 okay?

9 A Yes. It's dated November 16, 2007. It references claim
10 No. 8819492953. And it says, this box was sent to Brazil and
11 with no explanation was returning back to me but the box was
12 empty. I have opened couple with your driver for him to see.
13 Please be advise that if the situation no gets resolve, I will
14 take a claim on the courthouse by next week. This box original
15 was shipper to Brazil and retuning with zero explanation. If
16 this is a new way for Brazil to still from was I will fight
17 this time. We have call customer services and they know and
18 told me that was lost. Also be advise that the claim check
19 need to be with the name O Express as the original waybill
20 8819492953 retuning on empty waybill 8626753111. What is this,
21 new way to still? Send to Brazil and returning with empty box?
22 And there's a signature above the name, Daniel Valente.

23 Q And is this the claim form that goes with that same claim
24 for waybill number ending in 2953?

25 A Yes.

1 Q And that's DHL 260, part of Exhibit 12D. And is this a
2 copy of the check that was -- a DHL Express check that was cut
3 to Rio Motor, attention D. Valente, in the amount of 399.98?

4 A Yes.

5 Q Ms. Nelson, we have spoken about a few claims on this
6 Rio Motor which we have been publishing. Are there additional
7 claims on the Rio Motor account?

8 A Yes, there are.

9 Q Turning your attention to Government's Exhibit 12E, which
10 is the first page of 12E which is Bates labeled DHL 412, is
11 this the profile information from a company called Matte Lion,
12 LLC?

13 A Yes, it is.

14 Q And the last log-in date for that Matte Lion account was
15 9/9/2006 -- 2006?

16 A I'm sorry?

17 Q Was the last log-in date for this Matte Lion account in
18 December of 2006?

19 A Yes, it was.

20 Q And the Matte Lion account was -- gives an address in
21 Boca Raton, Florida, correct?

22 A Yes.

23 Q Within Government's Exhibit 12E, this is Bates labeled
24 DHL 407, is this a summary of a claim made by Matte Lion on a
25 waybill ending in 1945?

1 A Yes, it was.

2 Q And was this claim paid out?

3 A There was a payment made on this, yes.

4 Q In what amount?

5 A A hundred dollars.

6 Q And to whom was the payment made?

7 A It was made to Roger Scotton.

8 Q With an -- at what address?

9 A At Suite 406, 6045 Old Court Road, Boca Raton, Florida
10 33433.

11 Q Still within 12E, and this is a DHL 393, what is this form
12 that we are looking at?

13 A This is a loss or damage claim form.

14 Q It's a little bit different format than the other loss and
15 damage claim forms we have been seeing?

16 A Yeah, it might be different, but it contains the same
17 information.

18 Q Okay. And in this instant, it's for the way number 1945?

19 A Correct.

20 Q Up on the top?

21 A Yes.

22 Q And it lists the shipper's name as Roger Scotton in
23 Boca Raton, Florida?

24 A Correct.

25 Q The receiver is Roger in Marietta, Georgia?

1 A Correct.

2 Q And towards the end of this particular claim, at DHL 335,
3 there's a letter sent to Matte Lion, LLC, attention
4 Roger Scotton, correct?

5 A Yes.

6 Q And, basically, the letter is advising that the limits of
7 liability of \$100 are going to be paid out on this particular
8 claim, is that right?

9 A Yes, that's correct.

10 Q And, Ms. Nelson, is this a summary of a claim, another
11 claim by Matte Lion, this one for the waybill ending in 1643?

12 A Yes, it is.

13 Q And this one, was this one paid out, an amount paid to?

14 A Yes. A hundred dollars was paid out and sent to
15 Roger Scotton at Suite 406, 6045 Old Court Road,
16 Boca Raton, Florida 33433.

17 Q That's very similar in amounts and look to the one we just
18 saw, but which is a different waybill No. 1945, correct?

19 A Correct.

20 Q Moving on to Government's Exhibit 12F, and this is DHL 519
21 within Government's Exhibit 12F. What company is profiled in
22 Government's Exhibit 12F?

23 A I'm sorry?

24 Q What company is profiled in Government's Exhibit 12F, as
25 in Frank?

1 A It says Scottom Racing, LLC.

2 Q And that's Scottom with an M?

3 A Correct.

4 Q And did Scottom Racing have an account with DHL that ended
5 in 6688?

6 A Yes.

7 Q And does the Scottom Racing folder contain a few different
8 claims? Do you want to see it?

9 A Yes, there are several claims in here.

10 Q Last but not least on our claims is Government's
11 Exhibit 12G, as in Gary. And this is a document DHL 539 as
12 part of Government's Exhibit 12G. What company, Ms. Nelson, is
13 profiled in this document?

14 A It's for Electronika.

15 Q With an account number ending in 7470?

16 A Correct.

17 Q And what's the email provided, address provided?

18 A It's RRSS76@hotmail.com.

19 Q Had you seen this email address in other accounts?

20 A Yes.

21 Q On the profile information, it gives an address of Miami,
22 Florida, is that right?

23 A Yes.

24 Q And it gives -- Electronika gives as its number,
25 561-398-7347, correct?

1 A Yes.

2 Q And turning to the billing information, which is at
3 DHL 541, what's the billing information for Electronika?

4 A It's P.O. Box 629, Boca Raton, Florida 33429-0629.

5 Q Do you remember the Electronika account?

6 A I'm sorry?

7 Q Do you have an independent recollection of this
8 Electronika account?

9 A Yes, I do.

10 Q Why is that?

11 A There was a lot of activity on that account in terms of
12 shipments and claims.

13 Q Is this a summary sheet -- summary for the claim made on
14 the Electronika account?

15 A Yes, it is.

16 Q For the particular waybill ending in 1372, is that right?

17 A Yes.

18 Q And I guess we have been talking about waybill numbers.
19 It doesn't say waybill numbers on the first column, it actually
20 says customer reference number, correct?

21 A Yes.

22 Q But is that the way -- is the waybill -- is the waybill
23 the customer reference number?

24 A Yes.

25 Q All right. So tell us, was this claim paid out? If so,

1 how much and to whom?

2 A Yes, it was paid out in the amount of \$535 to Hugo Sanchez
3 at P.O. Box 629, Boca Raton, Florida 33429.

4 Q Is this that claim form for that same claim, waybill 1372?

5 A Yes, it is.

6 Q And this is document No. DHL 583. On the top, is there
7 incoming fax information?

8 A Yes, there is.

9 Q And what is that?

10 A October 15th, '07, 4:05P from Brazil Express at phone
11 number -- from phone number or fax number 561-368-7347.

12 Q Is this the same fax number that we saw on earlier claims,
13 Sun and Moon and Sunshine Express and some others?

14 A Yes, it is.

15 Q Here the claim was for some lost shipments?

16 A Yes.

17 Q And is this a copy of the waybill No. 1372 --

18 A Yes.

19 Q -- as part of the claim for a shipment to Brazil, correct?

20 A Correct.

21 Q And this is document 592 within Government's Exhibit 12G.
22 What are we looking at here, Ms. Nelson?

23 A Again, this is a sort of typical form letter informing the
24 claimant that a check has been enclosed for the full settlement
25 of their claim.

1 Q And as with the summary sheet, it's addressed to
2 Electronika, attention Hugo Sanchez, at that P.O. Box 629
3 address, correct?

4 A Yes.

5 Q And this is DHL 600, still part of 12F. Is this a copy of
6 a check that -- the DHL Express check that was made payable to
7 Electronika?

8 A Yes, it is.

9 Q And at 601, DHL 601, is that the back of the negotiated
10 check?

11 A Yes.

12 Q I'm showing you another summary from 12F, which is --
13 excuse me, 12G. This is 12G. The last one was 12G. Is this
14 another summary form from a claim submitted by Electronika?

15 A Yes.

16 Q I'm sorry. Go ahead.

17 A Yes, it is.

18 Q And for the waybill ending in 4016?

19 A Correct.

20 Q And was it paid out?

21 A Yes, it was.

22 Q In what amount?

23 A For \$780.

24 Q And to where was the check addressed?

25 A It was sent to P.O. Box 629, Boca Raton, Florida 33429.

1 Q And at DHL 612, part of 12G, is this the transmittal
2 letter dated November 1, 2007, for waybill No. 5350?

3 A Yes.

4 Q And at DHL 619, is this a copy of the check to Electronika
5 issued by DHL Express?

6 A Correct.

7 Q One more. This is DHL 636. Is this a claim form
8 submitted -- excuse me, the claim summary for a claim submitted
9 by Electronika for the waybill ending in 5654?

10 A Yes, it is.

11 Q And was this one paid out?

12 A Yes, it was.

13 Q And in what amount and to whom?

14 A It was in the amount of \$109.99 payable to Hugo Sanchez at
15 P.O. Box 629, Boca Raton, Florida 33429.

16 Q And at DHL 629, also within 12G, is this the waybill 5654,
17 a copy of the waybill that forms the basis of the claim?

18 A Yes.

19 Q And this is for a package sent to where?

20 A It was sent to Brazil.

21 Q And at DHL 622, is this a copy of the claim form for that
22 same waybill 5654?

23 A Yes, it is.

24 Q Submitted by Electronika, P.O. Box 629,
25 Boca Raton, Florida, correct?

1 A Correct.

2 Q And at the top it has fax information, the date of
3 October 29, 2007, with the time, Roger, from fax 954-301-1834?

4 A Correct.

5 Q And at DHL 634, is this a copy of the check made to the
6 ordered of Electronika, Hugo Sanchez, at P.O. Box 629 that
7 DHL Express cut in settlement of the claim?

8 A Yes.

9 Q I think we have gone over two or three Electronika claims
10 so far. What I want to ask you is in Government's Exhibit 12G,
11 are there additional claims submitted on this Electronika
12 account?

13 A There are.

14 Q And are they paper clipped together?

15 A Yes, they are.

16 MS. MITRANI: Your Honor, if I can just have a second.

17 THE COURT: Yes.

18 BY MS. MITRANI:

19 Q Okay. Wake up. We are going to move on from claims.

20 A Okay.

21 Q All right. I think earlier in your testimony we talked
22 about a spreadsheet that you prepared during the course of your
23 investigation?

24 A Correct.

25 Q So I'm showing you what's been marked for identification

1 as the Government's Exhibit 132D. What is contained on 132 --
2 B, 132B, as in boy. What's contained there?

3 A It's a spreadsheet that lists numerous accounts that
4 provides details of the accounts, the shipment, who the
5 shipments were sent to, who they were sent from, and the
6 charges.

7 Q Okay. And this spreadsheet pertains to eight specific
8 accounts?

9 A It does.

10 Q So in a sense, is it eight separate spreadsheets combined
11 into one disc?

12 A It is.

13 Q And what information did you use to create the
14 spreadsheet?

15 A I used electronic information that was pulled during the
16 preparation of the waybills. So it took in information
17 documenting the account number, the account name, the person,
18 the shipment was sent to, and again the charge. And then each
19 sheet totaled the shipping cost for all of the packages sent on
20 that account.

21 Q So the underlying documents supporting the spreadsheet,
22 the billing and invoicing information for these particular
23 accounts?

24 A Yes.

25 MS. MITRANI: Your Honor, the government would offer

1 132B.

2 THE COURT: Any objection?

3 MR. SCOTTON: Your Honor, sidebar please.

4 THE COURT: All right.

5 (Thereupon, the following was heard sidebar.)

6 MR. SCOTTON: Your Honor, I'm trying to understand
7 here because once again from the CDs that have been brought to
8 me before in discovery, I have never seen this CD before.
9 Prosecutor just handed it to me. And I see the conversation
10 that she's the one created this, not created by the government.
11 I don't know when she handed this to the government.

12 THE COURT: All right. When did the government, if
13 ever, provide this CD previously to the defendant?

14 MS. MITRANI: I don't know.

15 MR. SCOTTON: Just in open court.

16 THE COURT: You have to let her talk. I can't hear if
17 you are going to talk over her.

18 MS. MITRANI: I don't have it off the top of my head.

19 THE COURT: Would you mind taking a quick look.

20 MS. MITRANI: It's going to be the same as the
21 Federal Express. Remember we were here a few days ago, he
22 claimed he didn't get a Federal Express. He had a disc that
23 was blank. I don't know if it's the same situation. We
24 provided him, handed him, documents, discs to the defendant
25 received from DHL, received from Federal Express. We gave him

1 broad -- in discovery, the broad universe of documents. I'm
2 sure I can put my hand on it.

3 THE COURT: Okay. So let's do this. The objection,
4 to be clear, is you say you didn't get it?

5 MR. SCOTTON: Yes.

6 THE COURT: I'm going to defer ruling on that
7 objection, and the government over lunch will go ahead and see
8 if it can find when it sent this information to the defendant.
9 I'll hear from the government after lunch and it can provide
10 the information that it has regarding that. And if it turns
11 out that the government hasn't provided it, then I will not
12 admit it. But right now, I will admit subject to the
13 government providing information regarding when it was
14 previously turned over to the defendant.

15 MR. SCOTTON: Once again for the record, I'm not
16 blaming the government for this. As you see, I haven't
17 received CDs from my lawyers as was empty. This one here, I'm
18 not seeing from the CDs has given back to me from the lawyers.
19 As far as I understand, I didn't receive that at least from my
20 lawyers.

21 MS. MITRANI: The Court can take a lunch break now and
22 we can resolve this because I was going to go into publishing
23 it. So if there is any issue --

24 THE COURT: All right. We will do that.

25 (Thereupon, the following was heard in open court.)

1 THE COURT: We are going to have an early lunch break.
2 So let's take lunch, let's take it until 1:15. And when we
3 return at 1:15, we will be ready to start up again. Please
4 remember my instructions, don't discuss the case with anybody,
5 don't disburse any information about the case, and don't do any
6 investigation about the case. Have a terrific lunch. We will
7 see you back here at 1:15. All rise for the jury.

8 (Thereupon, the jury exited the courtroom at
9 12:09 p.m.)

10 THE COURT: All right. Let's all return at five after
11 1:00. See you at five after 1:00.

12 (Thereupon, a recess was taken at 12:09 p.m.)

13 THE COURT: All righty. When we took the break, there
14 was an issue regarding a CD, and government was going to advise
15 me of when it previously provided the CD to defense.

16 MS. MITRANI: Yes, Your Honor. Special Agent
17 Van Brunt is downstairs and I can provide you with the
18 documents, but they were provided in 2012 in the first
19 discovery and they were reissued to Stuart Adelstein in the
20 second discovery in July of 2013. Special Agent Van Brunt has
21 a copy of the disc. Actually, there were two discs that were
22 turned over that says defense copy with the Bates label -- he
23 should be here any minute -- similar to what happened the other
24 day with the FedEx.

25 THE COURT: Okay.

1 MS. MITRANI: And just so we are clear and the
2 defendant is clear that we gave him many spreadsheets, but we
3 have distilled the relevant one for purposes of introduction of
4 Government's Exhibit 132A.

5 THE COURT: Can you check and make sure your
6 microphone is on, please. Thanks.

7 MS. MITRANI: Is this better?

8 THE COURT: Yes. Thank you.

9 MS. MITRANI: So I will pass this up to the Court.

10 THE COURT: Thank you. Let's mark this as Court
11 Exhibit 4.

12 MS. MITRANI: So if you go behind the cover letter, my
13 cover letter to Mr. Adelstein has a spreadsheet of documents.

14 THE COURT: I'm sorry. Court Exhibit 4 is the letter
15 and Court Exhibit 5 is the FBI 155 and DHL 804 Bates numbers.
16 I'm sorry, go ahead.

17 MS. MITRANI: So at FBI 155 is a copy of the disc that
18 was sent to the defense, Excel spreadsheets produced to FBI,
19 UPS, DHL, FedEx by the shippers. And then DHL 84 is thumb
20 drives provided to FBI by DHL which were burned on to the disc.

21 THE COURT: Okay. And I see that page 2 of Court
22 Exhibit 4 is the document inventory listing the DHL shipping
23 records that were sent starting Bates range 1, ending Bates
24 range 849, and DHL 804 which is from Court Exhibit 5 falls
25 within that range.

1 MS. MITRANI: I would just note because in case
2 there's any confusion, on the top of the spreadsheet says
3 June 2014. Obviously, we are not even at June 2014 yet. That
4 should say June 2013 in accordance with the cover letter which
5 says June 14, 2014 -- 2013. The cover letter says June 14,
6 2013. These were reproduced to Mr. Adelstein in June of 2013.

7 THE COURT: Okay. And they were -- that's the second
8 time they were produced to the defense?

9 MS. MITRANI: Yes, Your Honor.

10 THE COURT: And the first time was when?

11 MS. MITRANI: The initial production to Expedia, which
12 I want to say either May, somewhere between May and June of
13 2012.

14 THE COURT: What do you mean the initial production to
15 Expedia?

16 MS. MITRANI: I'm sorry, Your Honor. We actually gave
17 these discs -- okay. Let me answer your question. A lot of
18 documents were given to Expedia for them to copy that the
19 defense had requested, I think it was Mr. Friedman at that
20 time.

21 THE COURT: Is that a copy service?

22 MS. MITRANI: I'm sorry. Yes, Your Honor.

23 THE COURT: Okay.

24 MS. MITRANI: It's a copy service. So there was
25 discovery given to Expedia that the defense could have obtained

1 and paid for if it desired. I'm pretty sure at that point, the
2 defense didn't get it when he had privately retained counsel.
3 I'm pretty sure, almost positive, that Ms. Doakes got it when
4 she was appointed.

5 But to the matter at hand, the spreadsheets we
6 actually burned a disc and gave it to Mr. Friedman.

7 THE COURT: Mr. Friedman?

8 MS. MITRANI: Jonathan Friedman. He was the -- it was
9 either Mr. Friedman, who was Mr. Scotton's second attorney, or
10 Mr. Abreu, who was his third attorney. I'm pretty sure it was
11 Mr. Friedman because Mr. Friedman was on this case through the
12 first continuance.

13 THE COURT: And then in any case -- that's the first
14 production. And in any case, a second production was given and
15 that's the one that Court Exhibits 4 and 5 refer to?

16 MS. MITRANI: Yes, Your Honor. And, of course, we
17 brought it to the courtroom in August of 2013.

18 THE COURT: Well, that's true. I remember that.

19 All right. Mr. Scotton, any response?

20 MR. SCOTTON: I don't object, Your Honor.

21 THE COURT: No objections?

22 MR. SCOTTON: No.

23 THE COURT: Okay. Anything else we need to address
24 before we bring in the jury in five minutes?

25 MS. MITRANI: No, Your Honor.

1 THE COURT: All right then, if anyone needs to use the
2 restroom, now would be a good time because we will start up
3 right at 1:15. We'll see you then. Thanks.

4 MS. MITRANI: Thank you.

5 Your Honor, there is a matter we need to address.

6 THE COURT: Let's try to do this early.

7 MS. MITRANI: I can address it at the breaks.

8 THE COURT: What is it?

9 MS. MITRANI: So I have had two translators here all
10 day. One I'm informed went to the emergency room last night.
11 She's here. She's okay.

12 THE COURT: I'm sorry to hear that.

13 MS. MITRANI: So I'm just finding this out now. So
14 I'm sorry for not bringing it to the Court's attention before.

15 THE COURT: That's okay.

16 MS. MITRANI: I think we will be fine, but if
17 something is not fine, I'll go to sidebar. I just want you to
18 know it's not our fault, it's nobody's fault, it's one of those
19 things. But our next witness does need a translator.

20 THE COURT: Okay. Thank you.

21 All righty. Let's all rise for the jury.

22 (Thereupon, the jury entered the courtroom at 1:15
23 p.m.)

24 THE COURT: All right. I hope everybody had a great
25 lunch. And welcome back. Please be seated. Let me just ask

1 the question which you probably now hear in your sleep and that
2 is: Is there anybody here who discussed the case with anyone,
3 dispersed any information about the case, or did any research
4 into the case, if so, please raise your hand for me now. I see
5 no hands. Thank you all for that. And we are going to
6 continue with Ms. Nelson.

7 Ms. Nelson, I just need to remind you that you are
8 still under oath. Do you understand?

9 THE WITNESS: Yes.

10 THE COURT: All right. Thank you.

11 Whenever you are ready, Ms. Mitrani, you may continue.

12 MS. MITRANI: Thank you so much, Your Honor. I think
13 the government had offered 132A?

14 THE COURT: Is there any objection?

15 MR. SCOTTON: No, Your Honor.

16 THE COURT: 321A is admitted then.

17 (Thereupon, Government's 132A received in evidence.)

18 MS. MITRANI: Okay. So 132A, if we can --

19 THE COURT: I'm sorry. You know what? Maybe I wrote
20 it down wrong.

21 MS. MITRANI: No, Your Honor.

22 A JUROR: 132B. I apologize. I pay attention, right?

23 THE COURT: That's okay.

24 MS. MITRANI: I'm so sorry.

25 THE COURT: Let's make sure that we are on the same --

1 we're all talking about the same one.

2 MS. MITRANI: I really apologize.

3 THE COURT: No problem. It's okay. Which one are we
4 talking about?

5 MS. MITRANI: 132B.

6 THE COURT: 132B. Any objection to 132B?

7 MR. SCOTTON: No, Your Honor.

8 THE COURT: All right. 132B is admitted.

9 (Thereupon, Government's 132B received in evidence.)

10 MS. MITRANI: And just for the Court and the exhibit
11 list, it is a compact disc, not a zip drive.

12 THE COURT: Okay.

13 BY MS. MITRANI:

14 Q So while we are getting it up, is this -- we talked about
15 how it refers to eight different accounts. Let me go through
16 them. So is the Matte Lion account on here?

17 A Yes, it is.

18 Q Scottom, with an M, Racing?

19 A Yes.

20 Q Esmeralda?

21 A Yes.

22 Q Electronika?

23 A Yes.

24 Q Rio Motorsports?

25 A Yes.

1 Q Sun and Moon Corporation?

2 A Yes.

3 Q Sunshine Express?

4 A Yes.

5 Q And U.S. Trade International?

6 A Yes.

7 Q And for each of these accounts, do the spreadsheets total
8 up the invoices that were billed to these accounts and not
9 paid?

10 A Yes, they do.

11 Q All right. Let's actually start -- let's pull up Sun and
12 Moon Corporation, please. Let's maybe walk through the top
13 headers of all the information that's contained on this
14 spreadsheet. So it starts with what, Ms. Nelson, what's on the
15 extreme left?

16 A It starts with the account number connected to the
17 account.

18 Q Then?

19 A Then the name of the account, the account number.

20 Q I thought the -- okay. So it's twice?

21 A I'm sorry. It's the waybill number.

22 Q Okay. That's what I thought. So when it says number,
23 that's the waybill number that was billed on the account,
24 correct?

25 A That's correct.

1 Q Okay. Next?

2 A That's the date the shipment was sent out.

3 Q Next?

4 A That's the number of pieces contained in the shipment.

5 Q And what follows?

6 A That's a charge of the -- to ship the package.

7 Q The following?

8 A The consignee name is the name of the person to whom the
9 package was addressed, their address. There's a second field
10 for an address and a third field if need be. The city, the
11 state, the zip, the receiver's phone number. And the bill to
12 information, which is the account name. The bill to address is
13 the address connected to the account, the city is part of the
14 address and the state is part of the address.

15 The invoice number is the number of the invoice that the
16 package was billed on, that's the date of the invoice. Where
17 the shipment originated, where it was -- its destination, and
18 any other reference information that was captured.

19 Q Okay. Actually, I want to go to line 88 of the Sun and
20 Moon account. So I'm showing you line 88, and this is for the
21 account number for Sun and Moon ending in 2374?

22 A Yes.

23 Q And then this spreadsheet reflects that a DHL package with
24 the waybill number of 884061864 was sent on that account?

25 A Yes.

1 Q And the return address on the package on that 8684 waybill
2 is Sun and Moon Corporation, P.O. Box 629, Boca Raton, Florida?

3 A Yes.

4 Q And it was for a package sent to a J., an individual whose
5 initials are J.P. in Brazil?

6 A Yes.

7 Q And what is the total of unpaid invoices on the Sun and
8 Moon account, is it totaled on the bottom, Ms. Nelson? Do the
9 totals come down on the bottom the way you made the
10 spreadsheet?

11 A Sure. The total was \$50,985.56.

12 Q And that's of unpaid invoices?

13 A That's correct.

14 Q Let's go to Matte Lion, and you have go to the bill to
15 column. All the entries on the spreadsheet have the bill to,
16 to Matte Lion, LLC?

17 A Yes.

18 Q Okay. And what is the total of the unpaid invoices for
19 this particular account?

20 A \$181,566.52.

21 Q Let's go to the Scottom Racing account. And it, again, if
22 we go to the bill to, are all the invoices here billed to
23 Scottom Racing, LLC?

24 A Correct.

25 Q And what's the total of unpaid invoices on the

1 Scottom Racing account?

2 A \$519,090.17.

3 Q Let's go to Electronika. Actually, no, I'm sorry. Let's
4 go to Esmeralda, which is the next one. This
5 Esmeralda Corporation -- I'm sorry. That's all right.

6 What is the bill to address, can you see it for the
7 Esmeralda Corporation?

8 A 398 Southeast Mizner Boulevard, Apartment 19.

9 Q In what city?

10 A Boca Raton.

11 Q All right. And if we go all the way to the left, it gives
12 the account numbers associated with Esmeralda, correct?

13 A Correct.

14 Q But was all the bill to, to that 398 Southeast Mizner
15 address?

16 A Yes.

17 Q And what's the total of unpaid on Esmeralda?

18 A Yes. It's 50,000 -- I'm sorry. \$57,483.61.

19 Q Now let's go to Electronika, and let's go to bill to. And
20 everything on this Electronika spreadsheet was billed to the
21 Electronika account at that address, correct?

22 A Yes.

23 Q And what's the total of unpaid invoices on the Electronika
24 account?

25 A Yes. It's \$80,409.89.

1 Q All right. Let's go to Rio Motorsports and let's go to
2 the bill to. Okay. That's empty. Let's go to the account
3 name on the left, and what is the total unpaid on the
4 Rio Motorsports account?

5 A It's \$21,672.57.

6 Q Let's go to Sunshine Express, and the bill to here is
7 Sunshine Express in Concord -- in Somerville, Massachusetts?

8 A Yes.

9 Q And what's the total unpaid on Sunshine Express?

10 A \$36,162.26.

11 Q And let's go to the last account on this spreadsheet,
12 which is U.S. Trade International, and the bill to is all U.S.
13 Trade International?

14 A Correct.

15 Q And what is the total unpaid on this?

16 A \$64,545.93.

17 MS. MITRANI: Your Honor, the government has no
18 further questions.

19 THE COURT: Cross-examination.

20 CROSS EXAMINATION

21 BY MR. SCOTTON:

22 Q Hi, good afternoon. Nicole, right?

23 Nicole, during this case, how many times do you spoke to
24 the prosecutor?

25 A How many times did I what?

1 Q You spoke to the prosecutor?

2 A Probably half a dozen times.

3 Q And how many hours do you think you spent with her?

4 A I mean excluding my time down here right now?

5 Q Yeah.

6 A Half a dozen times.

7 Q Did you get together with the prosecutor yesterday?

8 A Yes, I did.

9 Q How many hours did you guys spent together?

10 A I'm sorry?

11 Q How many hours you guys spent together.

12 A We spent two days together.

13 Q Two days together?

14 A Yes.

15 Q So you are well prepared for this trial. You are
16 prepared. So she advised and prepared you for this trial?

17 A I turned the case over to him and we met for two days.

18 Q Okay. During your investigation, this so-called fraud
19 case, I see that in my accent might be having a problem here
20 for you. So I'll go slowly here.

21 A Okay. Thank you.

22 Q If you don't understand, please, you know --

23 A I will. Thanks.

24 Q During your investigation, do you recall a time that I
25 called your office and spoke to you?

1 A Yes, I do.

2 Q Do you recall that time?

3 A I don't recall the time.

4 Q You don't?

5 A I recall that you did, I don't recall the date.

6 Q Right. On your fraud department, do you guys also have a
7 database that you guys keep those calls?

8 A Where we maintain calls?

9 Q Yes, like a call center that they storage calls if you
10 need to verify a call, did you -- the fraud department has
11 doing the same thing?

12 A It depends who you would call. If a call came in like
13 through the fraud hot line, that was logged. But if somebody
14 just randomly called me out of the blue, that call would not be
15 logged.

16 Q So there's no way to address --

17 A There was a fraud hot line, so any calls that come into
18 the fraud hot line are logged. Those that don't go
19 specifically to that phone number are not logged.

20 Q And during that time, also, have you remembered receive
21 call from Mr. Osvaine Duarte?

22 A I'm sorry?

23 Q Have you received a call from Mr. Osvaine Duarte, a
24 gentleman from Atlanta, Georgia, Osvaine Duarte?

25 A I'm sorry. I'm having a hard time hearing you.

1 Q Osvaine, that's what his name. I think spells it
2 O-S-V-A-N-E-I (sic), Osvaine.

3 A That name does sound familiar.

4 Q Do you remember he also has probably called you?

5 A I can't recall.

6 Q Okay.

7 A The name does sound familiar, but I don't recall if it's
8 somebody I spoke with specifically.

9 Q Well, during the phone call that I made it to you, I have
10 complained to you about several packets that I had shipped and
11 was put on hold. The trace website shows I called DHL for
12 information, that's correct?

13 A Okay.

14 Q Most of the time when we call DHL, DHL do not give
15 information if you're not the shipper, correct? DHL do not
16 give the information if you are not the shipper, right, if you
17 call customer service?

18 A I really can't speak on behalf of like if you are talking
19 about customer service.

20 Q Right.

21 A I don't know what their rules are. That would be outside
22 of my area.

23 Q Okay. When I spoke to you, I advised you that you hold
24 some of my packets, and you advised me to send the information
25 about the packets and proof of payment, correct? Do you

1 remember that?

2 A I don't remember the specifics of our conversation.

3 Q But you remember that I send you a bunch of information,
4 including bunch of credentials of who I am, a license and all
5 kind of stuff?

6 A What we in situations like this, we would ask for proof of
7 identity and proof of purchase to show ownership of those
8 shipments.

9 Q Right. And have I provide you the information?

10 A You directly -- I do not recall getting any identification
11 from you.

12 Q Really?

13 A Really.

14 Q You don't recall, also, that you dispatched two vans to
15 return my packets back to me after I pay you some kind of fee
16 that you charge me for?

17 A I'm sorry, sir?

18 Q You don't recall that I have paid DHL. I spoke to you
19 over the phone, I faxed to you the waybills, commercial
20 invoice, and proof of the merchandise that belongs to me?

21 A Okay.

22 Q And you told me to pay some kind of set of fee, I think it
23 was \$50 if I'm not mistake. And a couple of days later, the
24 drives come back to my location and drop of my package, you
25 don't recall that?

1 A I don't recall that specifically.

2 Q Okay.

3 MR. SCOTTON: Your Honor, can I have a minute?

4 THE COURT: Sure.

5 Everybody doing okay over there? Have you found the
6 good lunch places or are we just bringing lunch? You're
7 bringing lunch?

8 A JUROR: Yeah.

9 THE COURT: That's what I do usually.

10 MS. MITRANI: I'm sorry.

11 MR. SCOTTON: That's okay.

12 MS. MITRANI: Go ahead.

13 BY MR. SCOTTON:

14 Q If I maybe show you the credential that I sent to you, it
15 might refresh your mind? If I show a picture of some of the
16 images that I sent to you, it might refresh your mind?

17 A It might.

18 I don't recall seeing these.

19 Q You don't have anything in your records to show that you
20 dispatched the drivers to release and return packets back to
21 me, you don't recall that either?

22 A I do recall that I had your packages.

23 Q And do you recall, sent back to 398 Southeast Mizner
24 Boulevard?

25 A I don't recall if they were sent back and where they were

1 sent back to.

2 Q All right. You don't remember a police report, also, that
3 I have faxed to your office, do you remember that?

4 A I received a police report, but it did not come from you.

5 Q Didn't come from me?

6 A It did not come from you.

7 Q And whose name was on the report?

8 A I believe it was -- it was a woman, maybe Claudia Olivera
9 or Adrian somebody.

10 Q You never saw --

11 A There were two -- two women had filed a police report.

12 Q Right. You never saw a police report say it's from
13 Rogerio Scotton, Boca police department report against
14 Ruebens Amaral?

15 A Yeah.

16 Q Lider Mundanca, do you recall?

17 A Right. During that, I recall dealing with -- I don't
18 recall her name exactly, but I remember speaking with a woman
19 about those shipments. I don't recall speaking with you
20 directly.

21 Q During this process, you mentioned to the prosecutor that
22 you have investigated this case, you have contacted several
23 different people from DHL. Have any of those people from DHL
24 has been dispatched to my location?

25 A Do any of them what?

1 Q Any of those people, any employees from DHL has you sent
2 them to come talk to me?

3 A I never sent anybody to go talk to you, no.

4 Q During the process of working as a fraud department, did
5 you ever been to the station in Miami?

6 A I have not been to that station, no.

7 Q No? So you don't know Robert Garcia and other individuals
8 that work within that station, right?

9 A I'm sorry. Say that again?

10 Q Robert Garcia, do you know anybody else out of that
11 station over there? Have you ever met anybody from the Miami
12 station?

13 A Yes, I do.

14 Q You have? So do you know the manager, Mr. Robert Garcia?

15 A Do I know the?

16 Q Manager, Robert Garcia.

17 A I knew the manager at the time, yes.

18 Q The name, it is Robert Garcia, correct?

19 A The name was Martin Stromeier.

20 Q No, but do you know Robert Garcia?

21 A Do I know who?

22 Q Robert Garcia.

23 A It doesn't sound familiar, no.

24 Q Justin Lopps, Diana Diaz?

25 A No.

1 Q What about Rosa Galdamez?

2 A What was the name?

3 Q Rosa Galdamez, she's from El Salvador?

4 A No.

5 Q Also you mentioned something about some kind of accounts,
6 and as you mentioned to the prosecutor, your statement saying
7 it was some kind of snowball accounts keeping pop up at DHL.
8 Have anybody from your office or yourself tried contacting me
9 about those snowballs accounts coming up?

10 A No. I do want to add that when you and I talked, the
11 reason we were holding them was because the accounts were not
12 paid up.

13 Q Just answer the question, Nicole, please. If I ask a
14 question, please just reference to the questions.

15 So you recall Osvaine Duarte call you several times,
16 right? You recall Osvaine Duarte has been calling you several
17 times?

18 A I recall you calling at least.

19 Q No, no, Osvaine Duarte.

20 A I'm sorry?

21 Q Osvaine Duarte, somebody else, not me?

22 A I know the name. I don't recall exactly.

23 Q Do you recall he has sent you email?

24 A Possibly.

25 Q Complain about some shipments?

1 A Possibly, yes.

2 Q Have you seen any document to you, any credentials, any
3 IDs to you?

4 A Your credentials or anybody's?

5 Q No, Mr. Duarte, have he sent to you any IDs to show who he
6 is?

7 A I don't recall if he did specifically, but people did send
8 me identification.

9 Q Some of the documents the prosecutor has shown here on the
10 screen today, some claim forms, on the top of the claim forms
11 has the fax number. Have you contacted the fax number or
12 attempt to contact that number?

13 A I did look at that number.

14 Q Did you call that number?

15 A No, I did not.

16 Q You didn't spoke to anybody at that number?

17 A No, I don't believe so.

18 Q So people has been used fraudulent accounts, submitted
19 claims, and the top of the claim has a fax number, nobody was
20 going to contact the number? I mean, don't you think it's
21 weird?

22 A You are asking if somebody would call a fax number?

23 Q Why not? It is a fraud, right?

24 A I mean, the faxes went into our claims department. I'm
25 not really sure what their procedures were.

1 Q You say that you're investigating this case?

2 A Yes.

3 Q You get a copy of the claim and the top of this claim has
4 a fax number. Don't you think it should be like a thing to
5 call the fax and verify who it is?

6 A Well, it's not usually possible to call a fax number.

7 Q Sometimes people have a fax and phone line together,
8 right?

9 A I'm sorry?

10 Q Sometimes people have a fax number together with a phone
11 line, correct?

12 A Yes.

13 Q You recall several checks here and claims has been
14 deposited to my account. Have anybody from your company, from
15 your fraud department contact me in reference to those checks
16 deposited to my account?

17 A Did anybody contact you about them?

18 Q Yes.

19 A No.

20 Q So I deposit claim checks from fraudulent accounts to my
21 account, DHL do not call the bank to reverse the check and
22 don't even bother to call me for the claims?

23 A Nobody in the fraud department did.

24 Q The government has already present some accounts that was
25 open online. Do you recall that this morning? Do you recall

1 account opened in the name of Sun and Moon Corporation?

2 A Yes, I do.

3 Q And has an address of 1801 Harbor Point Parkway, Atlanta,
4 Florida -- I mean, Atlanta, Georgia?

5 A Yes.

6 Q And the account has a credit card information on file, do
7 you recall that?

8 A I don't recall that specifically, but that would make
9 sense.

10 MS. MITRANI: Your Honor, may I?

11 THE COURT: Yes. How are we doing up there?

12 MS. MITRANI: I'm sorry, Your Honor, I'm assisting.

13 He wants No. 66.

14 THE COURT: Okay.

15 MR. SCOTTON: Your Honor, we are not fighting.

16 THE COURT: Okay. I just was asking.

17 MR. SCOTTON: I know they want to put me in jail, but
18 they were not fighting.

19 THE COURT: No, I didn't think you were. I was just
20 trying to move things along.

21 MS. MITRANI: I apologize, Your Honor.

22 THE COURT: That's okay.

23 BY MR. SCOTTON:

24 Q As you see on the box over there, you got a credit card on
25 file belongs to Mr. Osvaine Duarte, the gentleman that have

1 called you from Atlanta?

2 A I can see that now, yes.

3 Q Right. Have the credit card been charged at any time of
4 shipping packets?

5 A I am sorry?

6 Q Have the credit card been charged for any packets being
7 shipping under that account?

8 A I don't know about that specifically.

9 Q Right. And have anybody called Mr. Osvaine Duarte to
10 verify if he authorized this credit card be charged for those
11 accounts?

12 A I'm sorry. I'm not understanding.

13 Q Have anybody called Mr. Duarte to verify his credit card?

14 A I don't know how the exact setup procedure goes.

15 Q Also, I have here --

16 MR. SCOTTON: I don't think you -- this is something
17 else. This is not together, right?

18 MS. MITRANI: Your Honor, Mr. Scotton is showing me a
19 document. May I see what he's showing?

20 THE COURT: Sure.

21 MS. MITRANI: Thank you.

22 BY MR. SCOTTON:

23 Q I have a check and also here it seems to be was a claim on
24 the total amount of 299 -- \$299.99, also to the same location,
25 to the same address to Mr. Pablo Roberto. Have anybody from

1 DHL tried to go to the address and talk to Mr. Duarte in
2 reference to those checks?

3 A Not to my knowledge, no.

4 Q But you acknowledge that he opened the account with his
5 credit card, correct?

6 A It was opened with a credit card, yes.

7 Q And how long the account was open?

8 A I'm sorry?

9 Q For how long the account was open?

10 A I don't know.

11 Q Nicole, during your process working with DHL, how much you
12 end up getting familiar with the system, with DHL online. Did
13 you familiar with the system that they have? Are you familiar
14 with the system, the online system they have?

15 A Yes, I am.

16 Q It is possible that someone that opened this account here,
17 they can provide user IDs and passwords to others if you want
18 to?

19 A Yes.

20 Q So one account can have multiple user and password
21 information, correct?

22 A That's possible, yes.

23 Q Okay. Those accounts that has been used, have you guys
24 got information on the drop-off and pick-ups of those packets?

25 A I'm sorry. What's --

1 Q Those accounts that has been shown here this morning, did
2 you have also record on every single pick-up and drop-off?

3 A I don't know that those spreadsheets showed the pick-up
4 location, but that information is captured.

5 Q But on the course of your investigation, did you see
6 packets that was pick it up besides the defendant's address or
7 perhaps in the United States?

8 A The majority of shipments to the best of my knowledge were
9 dropped off.

10 Q But all in Florida, or different states?

11 A I can't say every single one was because I just don't know
12 the details of every single package. But I do remember getting
13 calls from the South Florida station saying that, you know,
14 shipments had been dropped off that were connected to these
15 accounts.

16 Q Have anybody dispatch any employee or any person from the
17 fraud department to Mr. Duarte's house to talk to him?

18 A No.

19 Q Let's try to get here to the claims situation here,
20 Ms. Nicole.

21 When a package, it is lost or damaged, the shipper has to
22 contact customer service to initiate some kind of claim, right?

23 A Yes. You would have to call the claims department for
24 that.

25 Q But before you call the claim department, you ship your

1 package through DHL website, you don't see any movement and you
2 call customer service, it is those calls has been saved?

3 A Would any of the customer service calls have been saved?

4 Q Yes.

5 A I don't know how they maintain their calls.

6 Q Through so many claims the prosecutor has presented here
7 today, do we have any calls here that shows who make those
8 claims?

9 A Not to my knowledge, no. The fraud department wasn't
10 involved with the claims portion.

11 Q So we ship a package to Brazil, the package get to Brazil
12 and have to go through customs and get lost. Shipper call
13 customer service, customer service advise that they have to do
14 some kind of, type of search on the package, correct?

15 A Yeah, if a package goes missing, there are efforts that
16 are made to try and find it and track it and see where it's at.

17 Q And most of the time, what is the period of time to take
18 for them to research this package?

19 A I really don't know what the search process is like.

20 Q After the customer service advised the shipper that they
21 couldn't find his package, what happened next?

22 A I don't know what they would advise specifically, but in
23 the event that a package is lost or damaged, the shipper is
24 entitled to file a claim for that package.

25 Q So in this case, Brazil, DHL Brazil advise USA that the

1 shipper can go ahead and submit a claim?

2 A I don't know exactly how that works, but if a shipment is
3 lost in Brazil, the people in Brazil would be looking for that
4 shipment.

5 Q What is the time frame for the claim department to send
6 you a check to a lost or damaged package?

7 A I'm sorry?

8 Q What is the time frame for them to submit a check?

9 A I don't know the exact time frame.

10 Q Does not the waybill on the back say 60 days?

11 A Oh, you mean the time to -- the window that you have to
12 submit a claim?

13 Q No. The time as when you submit your claim, from the time
14 you submit a claim to the time DHL pay the claim was not the
15 60 days as the DHL waybill saying in the back?

16 A Yeah, I don't know.

17 Q And when the claim has been submitted, what is the
18 requirements, what kind of paperwork did the shipper has to
19 provide with the company?

20 A Well, again, I'm not part of the claims department, but
21 what I saw based on my investigation from a fraud perspective
22 is the claim -- the claim form and proof of ownership, as well
23 as proof of shipping. The package had to have gone through our
24 system.

25 Q Is not the truth that one of the requirements when you

1 submit the claim that the claim form has to be filled out the
2 same way the waybill was?

3 A Can you clarify what you mean in terms of the same way?

4 Q When you submit a claim, the requirement from DHL is that
5 the waybill has to match the claim form. So, otherwise, is
6 that whatever the information is in the waybill need to be in
7 the claim form, who is the shipper and who is the receiver.
8 Can we agree on that?

9 A That's been my experience on -- that's what I have seen,
10 but that has not always been the case.

11 Q And in the case if the check need to be go to the
12 different location, the shipper has to call DHL require that,
13 right?

14 A I don't know how that works. That's out of my department.

15 Q So shipping package, getting package delivered in Brazil,
16 it is a damage, we call DHL, DHL advised they couldn't find the
17 package, we call claim department, 60 day, they cut a check,
18 send the check to the shipper. And all this time, the check
19 was deposited and no one from fraud department has contacted
20 the defendant to say, don't deposit the check, this has come
21 from fraudulent account?

22 A Again, I can't speak for how the claims people are
23 handling the claims.

24 Q In reference to the letter from Rio Motorsports that was
25 shown here previously this morning that Daniel Valente has sent

1 to claim department, does DHL has the phone call? Does DHL has
2 the phone call from Daniel Valente?

3 A Did the fraud department or claims department?

4 Q As far as I understand from the prosecutor, Daniel Valente
5 has made a call to claim the package and later on sent a letter
6 faxed last to you guys. Does DHL have that record?

7 MS. MITRANI: I'm going to object to the
8 characterization.

9 THE COURT: Sustained.

10 BY MR. SCOTTON:

11 Q For every single claim that has been submitted, have DHL
12 has record, a phone records from those claims?

13 A I'm sorry. Say that again?

14 Q Have DHL has phone records from the claims?

15 A Do we have phone records?

16 Q Yes.

17 A Not in the fraud department.

18 Q I'm talking about the claim department.

19 A I don't know.

20 Q You don't know. And you never investigate the location,
21 1801 Harbor Point Parkway, correct?

22 A Did I what?

23 Q You never have investigation the location of 1801 Harbor
24 Point Parkway in Atlanta, Georgia, have you?

25 A Meaning what, did somebody go there?

1 Q Package, shipping, pick-ups, drop-offs, accounts being
2 opened, no investigation at all?

3 A I don't recall that specifically.

4 Q You recall those claim has been paid because DHL has lost,
5 either lost or damaged the package of the client, correct?

6 A Say that again?

7 Q DHL either lost or damaged the packages, that's why they
8 pay for the claims, correct?

9 A Correct.

10 Q Nothing wrong in that, right?

11 A Otherwise what?

12 Q Nothing wrong on this, right? There is nothing wrong with
13 that, right? Is anything wrong on this ship -- you know,
14 shipping and you lost the package, submit the claim and you pay
15 the claim, is there anything wrong on that?

16 A There is nothing wrong with submitting a claim, no.

17 Q When there is a damaged box, DHL has to send someone to
18 the location to verify that the box was claimed, correct?

19 A If it's what?

20 Q Where there is a damaged box, a damaged box, DHL has to
21 send someone to the location to verify that the box has been
22 damaged, correct?

23 A I don't know that process.

24 Q Those accounts presented here by the government, Nicole,
25 have DHL receive any back invoice that was not delivery by the

1 post office?

2 A I don't know.

3 Q Because, you know, if you know someone, what the name of
4 the company, someone if it is not assigned to my address, the
5 post office is not going to deliver that mail to me, correct?

6 A Well, if your address is not on it, it would not -- I
7 mean, it wouldn't go --

8 Q It would not be delivered to me?

9 A Correct.

10 Q On the total amount of the accounts, the total amount of
11 the lost here, you claim lost is 50, \$100,000, \$80,000, it is
12 those claim -- it is the total lost including the claims also?

13 A The claims were a separate figure.

14 Q Right, because most of the time when the claim has been
15 initiated, you guys only pay the price -- or the cost of the
16 merchandise, not for the shipping, correct?

17 A Well, we are -- can you clarify that again?

18 Q Right. For example, the check here that I have in my hand
19 for 299.99.

20 A Yes.

21 Q This is the check you guys pay for the merchandise that
22 was broken, not for the shipping?

23 A Correct.

24 Q Because the shipping, you guys credit the account?

25 A I don't know how that's handled. But, yeah, I don't know

1 how the credits are applied to the accounts.

2 Q Well, I understand that you left the company in -- it was
3 2009, you left the company, DHL?

4 A Yeah, I left in 2009.

5 Q Right. So government has not shared with you the
6 information that I have a resell account and I become
7 authorized shipping center for DHL?

8 MS. MITRANI: Objection to form and the foundation for
9 the question.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q Have the government informed you that I opened a DHL store
13 in 2011?

14 MS. MITRANI: Same objection.

15 THE COURT: Sustained.

16 BY MR. SCOTTON:

17 Q So the total amount over there might be incorrect, right?

18 A I'm sorry?

19 Q The total amount of those accounts might be incorrect
20 then?

21 A No, they are not incorrect.

22 Q They are not incorrect? How can a claim --

23 A Those are the exact shipping charges that were billed to
24 the accounts.

25 Q Right, but a lot of those charges over there has been lost

1 and damaged, right? How can you, DHL claim lost -- claim those
2 charges when they lost and damaged the package and they pay on
3 the claim?

4 A Yes, that's possible.

5 Q So you agree with me that those amounts might even be
6 wrong because those accounts should have be credit by the
7 losts?

8 A Yes.

9 Q Ms. Nicole, we are talking about here four years'
10 investigation the prosecutor claim here of someone open
11 fraudulent accounts and even some of the accounts belonging to
12 other companies. Is there any reason why nobody came to my
13 address to talk to me about those fraudulent accounts?

14 A No.

15 Q Nobody called me, nobody sent me a bill?

16 A Well, you asked if there was a reason. The reason was --
17 I mean, there was an investigation going on.

18 Q Right. But investigation going on with my name and
19 information. I'm the one presenting IDs and credentials to you
20 guys. Nobody show me anything that says a fraud, Mr. Scotton,
21 this is wrong, this is fraud, it's just an investigation going
22 on?

23 A I didn't get any identifications from you.

24 Q Well, I faxed them to you, Ms. Nicole.

25 MS. MITRANI: Object to the form of the question.

1 THE COURT: Sustained.

2 Mr. Scotton, please don't testify. Please just stick
3 to asking the questions.

4 MR. SCOTTON: Your Honor, if the government give me
5 some time, I've got a box of a file over here that I pretty
6 much show that the fax that I sent to Ms. Nicole, it is in the
7 file because I have to see -- I need to research to be able to
8 recollect, you know --

9 MS. MITRANI: Your Honor.

10 THE COURT: Why don't you come to sidebar.

11 (Thereupon, the following was heard sidebar.)

12 MS. MITRANI: Your Honor, I request a curative
13 instruction. He's implying that there are documents that the
14 government is deliberately preventing him from showing. That's
15 completely improper in light of what we talked about this
16 morning.

17 THE COURT: It is improper, Mr. Scotton, why are you
18 doing that?

19 MR. SCOTTON: I'm asking a question. I have papers
20 here that I have a fax to them. They accept the fax, they got
21 my ID, they got my fax, they got waybill. The government has
22 given that to me so I can present it to Court as part of
23 discovery. I am trying to refresh the mind of the jury here.

24 THE COURT: Well, go ahead. You have to get the paper
25 though.

1 MR. SCOTTON: That's what I asked.

2 THE COURT: But you don't ask the government for the
3 time, you ask the Court for the time. You said if the
4 government permits me.

5 MR. SCOTTON: My mistake then. I was referring to the
6 Court.

7 MS. MITRANI: I would like an instruction.

8 THE COURT: Yes, I will give an instruction.

9 MS. MITRANI: I would like to see these documents he's
10 going to show.

11 THE COURT: Absolutely, they have to be shown to the
12 government before they are shown to the jury.

13 MR. SCOTTON: The government gave them to me.

14 THE COURT: Great. Then when you show them to her,
15 she will know what you are talking about. All right?

16 MR. SCOTTON: All right.

17 (Thereupon, the following was heard in open court.)

18 THE COURT: All right. Previously well in advance of
19 trial, the government has provided Mr. Scotton with what we
20 call discovery in this case. Mr. Scotton is going to go
21 through some of that discovery and see if there are any
22 documents that he wants to address with the witness.

23 If you all want to stand up and stretch a little bit,
24 turn around, whatever, feel free to do so while we are waiting.
25 And I think I will too. I tell you what. Let's take about --

1 until 20 after 2:00. I understand that some people may need to
2 use the restroom. So all rise for the jury. We will see you
3 back here at 20 after 2:00. Thank you.

4 (Thereupon, the jury exited the courtroom at
5 2:09 p.m.)

6 THE COURT: Mr. Scotton, I would appreciate it if you
7 are ready by 20 after 2:00. You have had these documents, you
8 have known that Ms. Nelson would be a witness, and you should
9 have had these documents ready. I would like to give you the
10 time you need to be ready for trial, but I'm not going to let
11 you waste this jury's time indefinitely. We will start up
12 again at 20 after 2:00.

13 (Thereupon, a recess was taken at 2:09 p.m.)

14 THE COURT: Please rise for the jury.

15 (Thereupon, the jury entered the courtroom at
16 2:20 p.m.)

17 THE COURT: All right. Welcome back. Please be
18 seated.

19 And, Ms. Nelson, I know I have already reminded you
20 about this, but since we are coming back from a break I will
21 just remind you again you are still under oath. Do you
22 understand?

23 THE WITNESS: I do.

24 THE COURT: All right. Thank you.

25 Mr. Scotton, you may proceed.

1 MS. MITRANI: Your Honor, he's asking me something.

2 THE COURT: All right. Are we set?

3 MR. SCOTTON: Yeah, I guess so, Your Honor.

4 MS. MITRANI: I think so. We'll see.

5 THE COURT: All right.

6 MR. SCOTTON: That's my initial roll.

7 BY MR. SCOTTON:

8 Q Ms. Nicole, I have email here. This is the one that I was
9 trying to recollect your memory here Mr. Osvaine has sent to
10 you on Friday, November 21st of 2008, 10:58 a.m. Any
11 recollection there?

12 A Do I remember you calling me then?

13 Q Sent an email and got two packets that seems to be, it was
14 on your possession. And you answer him on November 19 --

15 MS. MITRANI: Your Honor, wait, wait, wait.

16 Your Honor, I object to the publishing of the document. He can
17 ask his question, but I object to this document being
18 published.

19 THE COURT: Sustained. It's not in evidence.

20 BY MR. SCOTTON:

21 Q So you investigate -- how long you investigate this case
22 for, Ms. Nicole? How long you involved in this case during
23 your process of working with DHL?

24 A For approximately two years.

25 Q Two years?

1 A Uh-huh.

2 Q And you're full-time investigating this case but you can't
3 recollect anything at this point?

4 A I was managing this case, but there were other people who
5 were involved with the investigation as well.

6 Q Right. But my question to you is that you can't remember
7 any of those things that I am trying to ask you questions about
8 the case, but you can't remember anymore, right?

9 A Well, what are you specifically referring to?

10 Q Documents that has been sent to you, fax that has been
11 given to you?

12 A There is a fraud department and there are other people
13 that work within the department. I'm speaking just on behalf
14 of what I know and what I received from you. And what you've
15 told me so far, I do not recall.

16 Q Ms. Nicole, if someone ship a package through DHL, is it
17 any crime shipping a package through DHL?

18 A Is it a crime to ship a package?

19 Q Yes.

20 A No, it's not.

21 Q It is not. If I use a third party shipping company to
22 ship my package, is it a crime using a third party shipping
23 company?

24 A I'm sorry, what?

25 Q Is it a crime using a third party shipping company?

1 A Can you clarify what you mean by a third party shipping
2 company?

3 Q Someone to resell your service. It is a crime if somebody
4 else sell your service, you know, not your service directly?

5 A That's perfectly fine.

6 Q So can this be the case in here, I was using third party
7 shipping company and the third party shipping company didn't
8 want to pay the bill?

9 MS. MITRANI: Objection, Your Honor, to the foundation
10 of that question.

11 THE COURT: Sustained.

12 BY MR. SCOTTON:

13 Q We are talking here about thousand and thousand of dollars
14 of package here or billings you guys has claimed here.

15 A I was not aware of there being another party involved in
16 this, a third party shipper.

17 Q But you do recall Osvaine Duarte, right?

18 A I recall what?

19 Q Osvaine Duarte.

20 A Yes, that name does sound familiar.

21 Q And you agree with me that a spreadsheet of your guys
22 might be wrong because you guys need to dock all the losses on
23 the claim over there, right?

24 A I would like to clarify what we are talking about. The
25 spreadsheet showed the totals of all the shipments that were

1 sent out. If you are asking is it not accurate because you
2 would have to back out the shipping charges for those packages
3 that had claims connected to them, would it be inaccurate, is
4 that what you are asking?

5 Q Yes, that's why it is not accurate, right?

6 A Yes, they would be very slightly different, but
7 negligible.

8 MR. SCOTTON: No more questions, Your Honor.

9 THE COURT: Any redirect?

10 MS. MITRANI: Yes, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. MITRANI:

13 Q Good afternoon. The defendant was asking you questions,
14 he kept on throwing out this name Osvaine Duarte. Do you
15 recall a line of questions from the defendant?

16 A Yes. Yes.

17 Q Other than the name Osvaine Duarte which you said sounded
18 somewhat familiar, do you remember any details of this
19 Osvaine Duarte as it related to your investigation?

20 A I do not remember specific details.

21 Q How many different names and entities and what have you
22 popped up during the course of your investigation?

23 A Hundreds.

24 Q Ms. Nelson, are you a criminal investigator?

25 A I am not.

1 Q Was this matter referred to the FBI for investigation?

2 A Yes, it was.

3 Q Do you work for the FBI?

4 A I do not.

5 Q Do you know everything that the FBI may have done and not
6 done during the course of this investigation?

7 A I don't know what they were doing.

8 Q Now, the defendant was asking you questions about claim
9 checks and then getting credit back for the shipments on which
10 they were set. Let me break this down.

11 First, do you know the timing of when these claim checks
12 were paid in relation to when it was discovered that these
13 accounts were fraudulent in that the invoices were not being
14 paid?

15 A I learned of the claims after -- or I learned of the
16 claims after I determined that the accounts were fraudulent.

17 Q So did you flag the accounts as fraudulent first? That's
18 a unfair question. You --

19 A When I found out an account was fraudulent, I would flag
20 it as fraudulent. Claims were paid on accounts I was not aware
21 of in terms of whether or not they were fraudulent or not. It
22 was only until after the fact that I discovered they were
23 fraudulent.

24 Q So were the claims paid before the accounts had been
25 flagged as fraudulent?

1 A It had not been flagged as fraudulent, no.

2 Q At the time the claims were paid?

3 A Correct.

4 Q Now, how far after a shipment, if you know, if you don't
5 know, you don't know. Let me ask it this way: Do you know how
6 long after a shipment is made that the invoice is sent out?

7 A I don't know specifically, no.

8 Q Okay. With respect to your spreadsheet, do you know --
9 strike that.

10 Do you know whether the invoices for which the claims were
11 made had even been paid?

12 A I'm sorry. Say that one more time?

13 Q Strike that. Let's go to 132B. And of the eight accounts
14 or so listed on 132B, how many shipments were sent out on these
15 accounts and not being paid?

16 A None of them were paid.

17 Q Were there thousands and thousands -- were there thousands
18 of shipments reflected on these spreadsheets?

19 A Yes.

20 Q And the claims that we have identified in Government's
21 Exhibit Composite 12, about how many claims came to the
22 entirety of Exhibit 12?

23 A 30 maybe.

24 Q Maybe a dozen or two dozen approximately in the claims
25 files?

1 A The total of the claims, or the number of the claims?

2 Q The number of claims submitted in Exhibit 30, is it maybe
3 a dozen or two dozen claims total?

4 MR. SCOTTON: Object, Your Honor.

5 THE COURT: What's the objection?

6 MR. SCOTTON: Leading.

7 THE COURT: Sustained.

8 BY MS. MITRANI:

9 Q How many claims were there in relation to the amount of
10 shipments sent out? And I know you may not have an exact
11 number, but --

12 A I don't know exactly. A couple person maybe.

13 MR. SCOTTON: Objection, Your Honor, speculation.

14 THE COURT: Overruled.

15 THE WITNESS: I mean, I can speak specifically some of
16 these had two claims and hundreds of shipments.

17 BY MS. MITRANI:

18 Q So is it fair to say that the number of claims is very
19 miniscule in compared to the number of shipments on the
20 accounts set forth in Government's Exhibit 132B?

21 A Yes, that's completely true.

22 MS. MITRANI: No further questions, Your Honor.

23 THE COURT: All right. Thank you. You may step down.

24 The government may call its next witness.

25 MS. MITRANI: Actually, Your Honor, we will. But

1 actually at this point, Your Honor, the government would like
2 to move in documents, I believe they are without objection.
3 And those would be, Your Honor, okay, composite 16, which are
4 Bank of America records.

5 THE COURT: Any objection to composite 16?

6 MR. SCOTTON: No, Your Honor.

7 THE COURT: Composite 16 is admitted.

8 (Thereupon, Government's 16 received in evidence.)

9 MS. MITRANI: Composite 17, which are TD Bank records.

10 THE COURT: Any objection to composite 17?

11 MR. SCOTTON: No, Your Honor.

12 THE COURT: It composite 17 is admitted.

13 (Thereupon, Government's 17 received in evidence.)

14 MS. MITRANI: Composite 18, Citibank records.

15 THE COURT: Any objection to composite 18?

16 Mr. Scotton, I'm not sure if you heard me. Is there any
17 objection to composite 18?

18 MR. SCOTTON: No, Your Honor.

19 THE COURT: All right. Composite 18 is admitted.

20 (Thereupon, Government's 18 received in evidence.)

21 MS. MITRANI: Composite 19, which are Chase records.

22 THE COURT: Any objection to composite 19?

23 MR. SCOTTON: No, Your Honor.

24 THE COURT: Composite 19 is admitted.

25 (Thereupon, Government's 19 received in evidence.)

1 MS. MITRANI: And Exhibit 30, which are SunTrust Bank
2 records.

3 THE COURT: Any objection to composite 30?

4 MR. SCOTTON: No, Your Honor.

5 THE COURT: Okay. Actually, it's not a composite.

6 MS. MITRANI: It's not, right. That's the only one
7 that is not a composite.

8 THE COURT: All right. That one is also admitted.

9 (Thereupon, Government's 30 received in evidence.)

10 MS. MITRANI: The government calls Renata Mezentsef,
11 which I have completely butchered the name. And, Your Honor,
12 the witness will be requiring the assistance of interpreters
13 who are present in the courtroom.

14 THE COURT: All right. In that case, I want to just
15 advise the jury of an instruction. We seek a fair trial for
16 all regardless of what language they speak and we are going to
17 have an interpreter assist us through these proceedings. So
18 you all should know what she can do and what she cannot do.

19 Basically, the interpreter is here only to help us
20 communicate during the proceedings. She is not a party in the
21 case, has no interest in the case, and will be completely
22 neutral. Accordingly, the interpreter's sole responsibility is
23 to enable us to communicate with each other. Treat the
24 interpreter of the witness's testimony as if the witness had
25 spoken English and no interpreter was present. Please do not

1 Q How are you doing this afternoon?

2 A Everything is okay.

3 Q Let's tell the members of the jury a little bit about you.

4 Where were you born?

5 A Brazil.

6 Q Where in Brazil?

7 A Fortaleza.

8 Q And how long -- did you grow up in Brazil?

9 A Yes.

10 Q Did you go to school in Brazil?

11 A Yes, I completed school and then I went to university for
12 two and a half years.

13 Q Tell us about what you studied at university?

14 A Law.

15 Q And when did you come to the United States?

16 A March 30, 2005.

17 Q So you spent most of your life in Brazil?

18 A Yes.

19 Q Do you have children?

20 A Yes, two.

21 Q How old are they?

22 A One is 8 and the other one is 2.

23 Q Are you employed presently?

24 A No.

25 Q What was your last employment?

1 A Sky Air.

2 Q Okay. Well, let's talk about that a little bit. Did
3 there come a time when you started working for an individual
4 whose name is Roger Scotton?

5 A I didn't understand.

6 Q Did you work for Roger Scotton?

7 A Yes, I did work for him.

8 Q And approximately, tell the members of the jury, when did
9 you begin working for the defendant?

10 A The end of 2010.

11 Q How did you find out about the job?

12 A A friend we had in common introduced me.

13 Q And did you meet with Roger Scotton about the job?

14 A Well, I spoke with him over the phone, and after he said
15 for us to meet at the store, Merry Mailman.

16 Q Where was this Merry Mailman store located?

17 A The store was on Federal, and the store belonged to Carla.
18 And that same day he said that she was his girlfriend.

19 Q Do you know Carla's last name?

20 A Carla Felini.

21 Q So the first time you met the defendant was at
22 Ms. Felini's store, the Merry Mailman, is that correct?

23 A Yes.

24 Q I got that right?

25 A Yes.

1 Q And was Ms. Felini there when you met with the defendant?

2 A Yes.

3 Q Was anybody else there?

4 A That I remember, it was myself, Roger, Carla, and I think
5 her sister was also there.

6 Q And so at this first meeting, what were you told about the
7 nature of what you would be doing for the defendant?

8 A It was said to me that I would be helping with Sky Air and
9 also I would be helping Carla with Merry Mail. Whenever she
10 would need me, whenever it would be busy over there, I would
11 help her as well.

12 Q And how about Sky Air, what was Sky Air?

13 A Sky Air was introduced to me as a company that exported
14 things to Brazil.

15 Q Who told you that?

16 A Roger Scotton.

17 Q Do you see Mr. Scotton in the courtroom today?

18 A Yes.

19 Q Can you identify him by what he's wearing?

20 A He has a blue shirt, button-up shirt on, and a suit, a
21 gray suit.

22 MS. MITRANI: Your Honor, let the record reflect that
23 the witness has identified the defendant.

24 THE COURT: The record will so reflect.

25

1 BY MS. MITRANI:

2 Q So with respect to Sky Air, what did the defendant tell
3 you he wanted you to do for him?

4 A When I started, I would answer the phones. I would answer
5 clients' emails. I would prepare the shipments. I would
6 deliver the boxes, doing drop-off. Yes, I worked as a
7 secretary and checked his mailbox. I would also cash checks
8 for him.

9 Q Did you start working with him shortly after you had that
10 meeting at Ms. Felini's business?

11 A Yes.

12 Q Now, I believe you said that the business name was
13 Sky Air, did I hear that correctly?

14 A Sky Air Online, because sometimes they would say
15 Sky Online, sometimes Sky Air.

16 Q So were there variations on the name Sky Air that you were
17 aware of?

18 A Yes.

19 Q Did this business Sky Air have a website?

20 A Yes. Sky Air Online dot com.

21 Q And what did Sky Air Online dot com do?

22 A Some clients could look on the website and try to order
23 products online, but some clients were clients who would
24 purchase their own products and only used the company for a
25 shipment.

1 Q So if I understood you correctly, there were two aspects
2 of Sky Air's business?

3 MR. SCOTTON: Object, Your Honor.

4 THE COURT: What's the objection?

5 MR. SCOTTON: Leading.

6 THE COURT: Overruled.

7 THE WITNESS: Yes, the clients, for example, could be
8 in Brazil and so they would order online. Those clients that
9 were here would use the company for shipment.

10 BY MS. MITRANI:

11 Q To ship what and to where?

12 A Yes, there was a variety of products. There were some car
13 parts, there were tires that the clients would buy. Right, and
14 the clients in Brazil, they could order online. The form of
15 payment could be credit card, and they also needed the ID,
16 proof of address, and the address would have to be the same
17 address as the credit card.

18 Q Did the clients who purchased from Sky Air Online, did
19 they have to be in Brazil?

20 A No.

21 Q Could anybody access Sky Air Online and order if they
22 wished?

23 A Yes.

24 Q Where did the defendant conduct his business?

25 A From his townhouse in Boca Raton.

1 Q And do you remember where that townhouse was located?

2 A In Boca Raton.

3 Q Okay. Did you work -- did you work from that townhouse in
4 Boca Raton?

5 A Yes. In the beginning, I started to work there and later
6 he opened the store right in front.

7 Q Right in front of where?

8 A Right in front of the house. The store was Merry Mailman.

9 Q We talked about a Merry Mailman before. Was this the same
10 Merry Mailman, or a different Merry Mailman?

11 A He opened it with the intention of it being a second
12 store.

13 Q So you are talking about a different storefront, the
14 Merry Mailman that the defendant opened in front of his
15 townhouse?

16 A Yes.

17 Q Do you recall when that -- the defendant's Merry Mailman
18 opened up?

19 A No.

20 Q As best as you can recall, for how long did you work for
21 the defendant approximately?

22 A Almost two years.

23 Q So from -- you said you started in 2010, the fall of 2010?

24 A Yes.

25 MS. MITRANI: Wait. Your Honor, may I approach

1 sidebar?

2 THE COURT: Yes.

3 (Thereupon, the following was heard sidebar.)

4 MS. MITRANI: I'm just trying to get the dates of
5 employment without leading. I know she worked for him until he
6 was arrested. She said arrested. It's not proper. I was
7 going to say, did you work with him until the beginning of
8 2012.

9 THE COURT: Any objection?

10 MR. SCOTTON: I object. I wanted the Court to let her
11 know the witness, what is the penalty for perjury.

12 MS. MITRANI: I object to that.

13 THE COURT: I'm not going to --

14 MR. SCOTTON: Your Honor, I only -- we are here for
15 the truth, right?

16 THE COURT: Mr. Scotton, I am not going to argue with
17 you about this. You will have a chance to cross-examine her.
18 That's --

19 MR. SCOTTON: Your Honor, prosecutor playing this
20 game.

21 THE COURT: Mr. Scotton, Mr. Scotton, stop it right
22 now.

23 All right. Here's what we are going to do. Leading
24 is allowed under certain limited circumstances. It can be
25 allowed, for example, when it is being used to save time and it

1 is on general matters that are really not contested. So she's
2 already said it. Ms. Mezentsef apparently understood the
3 Portuguese on this part of it. She was going to say arrested.
4 It's appropriate that the question be rephrased to avoid that
5 answer.

6 MS. MITRANI: Thank you, Your Honor.

7 (Thereupon, the following was heard in open court.)

8 BY MS. MITRANI:

9 Q Ready? Is it fair to say that you worked for the
10 defendant from September of 2010 to sometime in the early part,
11 first part of 2012, first couple months?

12 THE COURT INTERPRETER: She wasn't hearing me, so I'm
13 going to repeat, okay? Is that okay, Your Honor?

14 MS. MITRANI: Is that okay? The witness didn't hear.

15 THE COURT: Yes, I heard. Yes, thanks.

16 THE WITNESS: Yes.

17 BY MS. MITRANI:

18 Q So in this time period, did you work mostly from the
19 townhouse, mostly from the store front? How would you
20 characterize that?

21 A Half and half.

22 Q How many days a week did you work?

23 A Yes, I worked five days a week from 8:00 to 5:00. Some
24 days, I would leave earlier in order to do the delivery of the
25 packages.

1 MR. SCOTTON: Your Honor, I'm going to object because
2 this is not what she's saying. I am hearing the Portuguese,
3 that's not what she's saying.

4 THE COURT: Mr. Scotton, come sidebar, please.

5 (Thereupon, the following was heard sidebar.)

6 THE COURT: What is the problem?

7 MR. SCOTTON: That's not what she say. That's not
8 what she say. She say something completely different.

9 THE COURT: We have two interpreters here.

10 MR. SCOTTON: They didn't say what she answered. Why?
11 She speak English. She work for me for two years.

12 MS. MITRANI: Objection.

13 (Thereupon, the following was heard in open court.)

14 THE COURT: All right. Why don't you ask the question
15 once more.

16 MS. MITRANI: I forgot the question.

17 THE COURT: How many days a week did you work.

18 BY MS. MITRANI:

19 Q How many days a week did you work?

20 A Five days a week, from 8:00 to 5:00. And some days I
21 would have to leave earlier to deliver the packages.

22 Q And were you paid for your labor?

23 A Yes.

24 Q Can you tell us about how were you paid?

25 A Yes. In the beginning when I was working at his house, I

1 would get \$400, I was paid \$400. After when it was transferred
2 to the store, he increased it to 500.

3 Q Were you paid by cash or check, how did that work, or
4 another method?

5 A Most of the time, at the end of the week he would give me
6 a check in an amount that was higher.

7 Q I'm sorry. Higher than what?

8 A Higher than what I was supposed to receive. Yes, I would
9 cash the check and he would give me what was supposed to be for
10 me and the rest he would keep.

11 Q And how frequently were you paid, on what type of basis?

12 A Weekly.

13 Q And with this procedure that you just described where you
14 were given a check greater than your salary, you cashed it and
15 gave the money to the defendant, was that consistent throughout
16 your employment?

17 THE COURT: Ms. Mitrani, would you mind moving the
18 microphone down.

19 MS. MITRANI: I'll just stand up.

20 THE WITNESS: Some weeks he would give me the money,
21 and then I wouldn't have to cash the checks. And in some other
22 weeks, he would give me some weeks before. What it seemed to
23 me is that he didn't like to keep the money in the bank, he
24 liked to keep the money at home.

25

1 BY MS. MITRANI:

2 Q Was anybody else working with you and the defendant?

3 A At the time when I worked at his house, no. But
4 afterwards and when we went to the store -- when it was
5 transferred to the store, there was a need for somebody else to
6 work and they worked in front of the store, the front desk.

7 Q What was the defendant's role in Sky Air?

8 A For me, he was my boss. He was the one who gave me the
9 orders of what to do, what not to do, and he would also deal
10 with the clients sometimes.

11 Q Did you also deal with the clients?

12 A Yes.

13 Q Now, you talked about these packages -- you talked about
14 individuals purchasing items on Sky Air and it being delivered,
15 sent to Brazil, correct?

16 A Yes.

17 Q How were the packages sent to Brazil?

18 A Well, they would be sent usually through DHL, FedEx, or
19 UPS, but mostly through DHL or FedEx.

20 Q And the other aspect of the business, you said that
21 clients here in the United States had stuff that they wanted to
22 send to Brazil and they engaged with the defendant, correct,
23 for that freight forwarding service?

24 A Yes. The clients who had already their own business, they
25 had already also their own products, so they would only call

1 for our shipping services. And my role was to fill out the
2 invoice and the label online and send it to the client after
3 the payment had been done.

4 Q Okay. We'll get to that in a minute, but my question was
5 a little bit simpler at this point. That's okay.

6 For the freight forwarding clients, how would those
7 packages get to Brazil?

8 A What do you mean? I don't understand.

9 Q Was DHL, UPS, and FedEx also used for those freight
10 forwarding shipments?

11 MR. SCOTTON: Object, Your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: Yes, the packages were shipped either
14 through DHL, FedEx, or UPS.

15 BY MS. MITRANI:

16 Q Now, did FedEx, DHL, or UPS pick up at the townhouse?

17 A No. The guidance that he would give me is that, you know,
18 I would have to fill out the invoice and the labeling for the
19 packages that were already at our location. I would have to go
20 and take them to drop-off location.

21 Q Did you ever speak with the customers, the freight
22 forwarding customers regarding costs for the freight forwarding
23 services?

24 A I was the one who would send the emails to those customers
25 and then they would inform me of the value of the products that

1 they desired to be shipping. Then based on that amount, I
2 would give them, you know, the value of shipping.
3 Roger Scotton always told me that I would have to charge
4 between 55 to 60 percent over the price of the merchandise.

5 Q And that would represent what?

6 A The shipping of the merchandise with all of the taxes paid
7 already in the -- already with customs in Brazil.

8 Q So let me make sure I understand you right. If let's say
9 I'm a customer, I'm calling you and I'm saying, I want to ship
10 stuff to Brazil and the value of the stuff is a hundred
11 dollars, what would you do with that information?

12 A I would first check to see if that was true, if that was
13 the real value of the merchandise. Then I would go ahead and
14 charge 60 percent over the value of the merchandise. Then I
15 would say that it would take between three to seven days for
16 the merchandise to arrive at its destination.

17 Q And this was all as the defendant instructed you?

18 A Yes.

19 MS. MITRANI: Your Honor, can I have just one second?

20 THE COURT: Yes.

21 MS. MITRANI: Your Honor, I'm just getting an exhibit.

22 May I approach the witness, Your Honor?

23 THE COURT: You may.

24 BY MS. MITRANI:

25 Q Ms. Mezentsef, I hate mispronouncing names. In any event,

1 I'm showing you what's been admitted into evidence as
2 Government's Exhibit 14A. Do you recognize this item?

3 A Yes.

4 Q There are two recordings contained on that compact disc,
5 correct?

6 A Yes.

7 Q Have you listened to them in their entirety?

8 A Yes.

9 Q I'm showing you Exhibits 14A1 and 14A2. Are these
10 transcripts of each of these phone calls?

11 A Yes.

12 Q Have you reviewed the transcripts?

13 A Yes.

14 Q Do they fairly depict the conversations on the phone call?

15 A Yes.

16 MS. MITRANI: Your Honor, government would move 14A1
17 and 14A2 into evidence.

18 THE COURT: Any objections?

19 MR. SCOTTON: I need to see, Your Honor.

20 THE COURT: Why don't you show them to Mr. Scotton
21 again, please.

22 MR. SCOTTON: Your Honor, can we have a sidebar,
23 please.

24 THE COURT: All right.

25 (Thereupon, the following was heard sidebar.)

1 MR. SCOTTON: Let me understand, this has already been
2 introduced as evidence yesterday?

3 THE COURT: The recording was introduced as evidence
4 yesterday through Mr. Midyett.

5 MS. MITRANI: It was actually last week.

6 THE COURT: Last week. Actually, it was on the 23rd.

7 MR. SCOTTON: This particular recording has been
8 introduced already?

9 THE COURT: Yes.

10 MR. SCOTTON: I thought the recording was introduced
11 as the one from DHL.

12 THE COURT: There may have been other ones introduced,
13 also, but this one that's numbered 14 --

14 MS. MITRANI: A and E were introduced through
15 Mr. Midyett, but have not been published yes.

16 THE COURT: Yes, sorry, 14A was introduced through
17 Mr. Midyett on the 23rd and so was 14E.

18 MR. SCOTTON: Okay.

19 THE COURT: Okay.

20 (Thereupon, the following was heard in open court.)

21 THE COURT: All right. We are going to take ten
22 minutes, until 20 after 3:00. So let's all rise for the jury.

23 (Thereupon, the jury exited the courtroom at
24 3:10 p.m.)

25 THE COURT: All right. Before we break, is there

1 anything that we are going to need to address before we bring
2 the jury back in? All right. There being nothing, we will see
3 you at 3:20. Thanks.

4 (Thereupon, a recess was taken at 3:11 p.m.)

5 THE COURT: Let's see if we can round up the jury.

6 (Thereupon, the jury entered the courtroom at
7 3:21 p.m.)

8 THE COURT: Welcome back, and please be seated. And
9 remind Ms. Mezentsef, hopefully I said that right, that you are
10 still under oath. Do you understand, Ms. Mezentsef?

11 THE WITNESS: Huh?

12 THE COURT: You are still under oath, do you
13 understand?

14 THE WITNESS: Yes.

15 THE COURT: Very good. Thank you. You may proceed.

16 MS. MITRANI: Well, I think we have 14A1 and 14A2 to
17 move into evidence.

18 THE COURT: Any objection?

19 MR. SCOTTON: No, Your Honor.

20 THE COURT: 14A1 and 14A2 are admitted.

21 (Thereupon, Government's 14A1 and 14A2 received in
22 evidence.)

23 MS. MITRANI: Your Honor, I'm going to start with
24 14A1, and may I pass out transcripts to the jurors?

25 THE COURT: Yes.

1 MS. MITRANI: Can I pass one to the Court as well?

2 THE COURT: Yes. Thank you.

3 MS. MITRANI: Go to Exhibit 14A. We are going to the
4 first phone call, and the transcript is on 14A1.

5 Sorry, Your Honor, bear with us. We are having some
6 technical difficulties.

7 (Thereupon, the audiotape was played.)

8 BY MS. MITRANI:

9 Q Ms. Mezentsef, do you recognize the male voice on that
10 call?

11 A Yes.

12 Q Who is it?

13 MR. SCOTTON: Object, Your Honor.

14 THE COURT: What's the objection?

15 MR. SCOTTON: No foundation.

16 THE COURT: Overruled.

17 BY MS. MITRANI:

18 Q You may answer.

19 A What's the question?

20 Q Who is the voice on the tape?

21 A Rogerio Scotton.

22 Q All right. Let's go on --

23 MS. MITRANI: Your Honor, if I could collect the 14A1
24 transcripts and pass out the 14A2 transcripts?

25 THE COURT: All right.

1 MS. MITRANI: Your Honor.

2 THE COURT: I have one. Thank you.

3 BY MS. MITRANI:

4 Q All right. So now we will -- still on 14A, we will play
5 the second phone call.

6 MS. MITRANI: Your Honor, we will play the second
7 phone call on 14A and the transcript has been handed out.

8 (Thereupon, the audiotape was played.)

9 BY MS. MITRANI:

10 Q Ms. Mezentsef, do you recognize the male voice on this
11 second recording?

12 A Yes.

13 Q Who is it?

14 A Rogerio Scotton.

15 Q All right. I'm showing you Government's Exhibit, which
16 has already been admitted into evidence, which is Government's
17 Exhibit 14E.

18 A Right.

19 Q Do you recognize this?

20 A Yes.

21 Q Does this contain three recordings that you have listened
22 to in their entirety?

23 A Yes.

24 Q And have you reviewed -- for two of the phone calls, have
25 you reviewed the transcripts in their entirety for the phone

1 calls?

2 A Yes.

3 Q And is the first transcript that you reviewed for
4 Exhibit 14F for the phone call pertaining to Walmart?

5 A Yes.

6 MS. MITRANI: Your Honor, the government would offer
7 14F, the transcript identified in 14F into evidence.

8 THE COURT: Any objection?

9 MR. SCOTTON: No, Your Honor.

10 THE COURT: 14F is admitted.

11 (Thereupon, Government's 14F received in evidence.)

12 BY MS. MITRANI:

13 Q And is Government's Exhibit 148H, the --

14 MR. SCOTTON: Your Honor, can we instruct the
15 translator to get closer to the microphone, because I'm not
16 hearing what the translator is saying.

17 THE COURT: Well, Mr. Scotton, I'm sorry, but the
18 translator does not speak in Portuguese for the entire court to
19 hear. She's speaking in Portuguese for the witness to hear.
20 It's a court certified interpreter. And, I'm sorry, but
21 otherwise it would just lengthen the proceedings if we have to
22 stop, wait for the court interpreter to state her
23 interpretation or translation over the microphone, and then
24 wait for the witness to answer. So, I'm sorry, but we are not
25 going to be able to do that.

1 All right. You may proceed.

2 MS. MITRANI: Thank you, Your Honor.

3 BY MS. MITRANI:

4 Q Is Exhibit 14H the transcript of a phone call opening a
5 Target account?

6 A Yes.

7 Q And is that a fair and accurate depiction of the
8 conversation contained in that recording where the Target
9 account was opened?

10 A Yes.

11 MS. MITRANI: Your Honor, the government would move
12 14H into evidence.

13 THE COURT: Any objection?

14 MR. SCOTTON: No, Your Honor.

15 THE COURT: 14H is admitted.

16 (Thereupon, Government's 14H received in evidence.)

17 MS. MITRANI: Your Honor, may I pass out the
18 transcript? We are going to start with 14F.

19 THE COURT: All right.

20 MS. MITRANI: Your Honor, do you mind if the jury
21 passes back the other transcripts first?

22 THE COURT: Not at all.

23 MS. MITRANI: All right. We will play the first
24 recording on Government's Exhibit 14E as transcribed in 14F.

25 (Thereupon, the audiotape was played.)

1 BY MS. MITRANI:

2 Q Ms. Mezentsef, do you recognize the male voice on the
3 recording that we just heard opening the Walmart account?

4 A Yes.

5 Q Who is it?

6 MR. SCOTTON: Object, Your Honor.

7 THE COURT: What is the objection?

8 MR. SCOTTON: As far as I understand, the whole call
9 has been played in English. There's no foundation. If she
10 doesn't speak English, the call has not been translated to her.

11 THE COURT: All right. The question was whether she
12 recognized the voice, not whether she understood the
13 conversation. So overruled.

14 THE WITNESS: Yes, Rogerio Scotton.

15 BY MS. MITRANI:

16 Q Rogerio Scotton.

17 MS. MITRANI: Okay. Can I request the jurors to pass
18 the transcript --

19 THE COURT: Yes.

20 MS. MITRANI: -- and I will hand them the next one?

21 THE COURT INTERPRETER: Your Honor.

22 THE COURT: Yes.

23 THE COURT INTERPRETER: Ms. Mezentsef would like to go
24 to the ladies room.

25 THE COURT: All right. Why don't we take a quick

1 little break and we will come back at 10 after 4:00. All rise
2 for the jury, please.

3 (Thereupon, the jury exited the courtroom at
4 4:04 p.m.)

5 THE COURT: All righty. Is there anything we need to
6 address -- you can go ahead and be excused to the bathroom. Is
7 there anything we need to address before we bring the jury
8 back?

9 MS. MITRANI: Nothing from the government.

10 MR. SCOTTON: No.

11 THE COURT: All right. Thank you. See you at
12 10 after 4:00.

13 (Thereupon, a recess was taken at 4:05 p.m.)

14 THE COURT: Mr. Scotton, I need your attention for a
15 moment, please. Mr. Scotton, I have been advised by the
16 courtroom deputy that when he was showing Ms. Mezentsef where
17 the bathroom was, she advised him that you tried to say
18 something to her on her way out. I'm not going to ask you
19 whether you did or not. At this point, I'm not -- I think we
20 are past that. But I want to be very clear. You are not to
21 speak to the witnesses unless you are cross-examining them or
22 examining them formally, but you are not to otherwise speak to
23 the witnesses. I don't want any kind of witness intimidation
24 going on. I don't want to have any problems. You can speak to
25 your own witnesses. We will take it from there.

1 MR. SCOTTON: Your Honor, I was here next to --

2 THE COURT: Just a moment, please. Let's send the
3 witness out, please.

4 (Thereupon, the witness exited the courtroom.)

5 MR. SCOTTON: Jason, can you get the investigator.

6 I was even going through files here when she passed
7 behind or in front. I was with the investigator.

8 THE COURT: Mr. Scotton --

9 MR. SCOTTON: I didn't say anything to her,
10 Your Honor.

11 THE COURT: Mr. Scotton, I am not --

12 MR. SCOTTON: Where is the record then? The
13 microphone is on.

14 THE COURT: All right. Mr. Scotton, I just explained
15 to you, I'm not passing on whether or not you did it. I just
16 want to be clear for the record.

17 MR. SCOTTON: Then I want to be clear for the record,
18 Your Honor.

19 THE COURT: Mr. Scotton, only one person can be taken
20 down at a time, so I will ask to please refrain from speaking
21 while I'm speaking.

22 What I was saying is and what I pretty clearly I think
23 said before is I'm not passing on whether you did it or not,
24 but I want to be clear for the record, you are not to talk to
25 the government's witnesses unless you are cross-examining them.

1 All right. Thank you.

2 MR. SCOTTON: Did I say anything to Renata here when
3 she was leaving?

4 THE COURT: All right. We are done with this,
5 Mr. Scotton. Thank you.

6 Please stand and we will bring in the jury.

7 (Thereupon, the jury entered the courtroom at
8 4:11 p.m.)

9 THE COURT: All right. Please be seated. We are
10 missing -- okay, we've got everybody. Terrific.

11 All righty. Let me let Ms. Mezentsef get her headset
12 on again.

13 MS. MITRANI: And, Your Honor, may I pass -- while
14 this is going on, may I pass out the transcripts for this?

15 THE COURT: Are we good?

16 THE COURT INTERPRETER: Yes.

17 THE COURT: All right. Miss Mezentsef, I'm sorry, I
18 know I already reminded you of this once, but once more for the
19 record, I just want to remind you that you are still under
20 oath. Do you understand?

21 THE WITNESS: Yes.

22 THE COURT: All right. Thank you. You may continue
23 when you are ready, Ms. Mitrani.

24 MS. MITRANI: Thank you so kindly, Your Honor. I pass
25 up transcript 14H for the Court and we will publish the Target

1 phone call from Government's Exhibit 14E in just a moment.

2 (Thereupon, the audiotape was played.)

3 BY MS. MITRANI:

4 Q Ms. Mezentsef, did you recognize the male voice on this
5 call opening the Target account?

6 A Yes.

7 Q Who is it?

8 MR. SCOTTON: Object, Your Honor.

9 THE COURT: Excuse me. What is the objection?

10 MR. SCOTTON: Foundation.

11 THE COURT: Overruled.

12 THE WITNESS: Rogerio Scotton.

13 BY MS. MITRANI:

14 Q Ms. Mezentsef, what is your native language?

15 A Portuguese.

16 Q Do you speak any English?

17 A Yes.

18 Q And do you understand some English?

19 A Yes.

20 MS. MITRANI: May I approach?

21 THE COURT: You may.

22 BY MS. MITRANI:

23 Q Ms. Mezentsef, I'm just showing you Government's Exhibit
24 29A, which is a cassette recording that's already in evidence.
25 Have you had the opportunity to listen to that call in its

1 entirety before today?

2 A Yes.

3 Q I am going to play an excerpt from it, and then I'm going
4 to ask you a question.

5 MS. MITRANI: Your Honor, may I?

6 THE COURT: Yes.

7 (Thereupon, the audiotape was played.)

8 BY MS. MITRANI:

9 Q We have played this -- strike that.

10 I'm just playing you an excerpt of this, but have you
11 heard this tape in its entirety before?

12 A Yes.

13 Q Do you recognize the male voice who is speaking to the DHL
14 representative, Fred Kennicutt?

15 A Yes.

16 Q Who is it?

17 A Rogerio Scotton.

18 Q I'm going to shift gears and I want to talk to you a
19 little bit about shipping labels. Did the defendant attach
20 shipping labels to these packages that he would ship to Brazil?

21 A Yes, I would do that, right.

22 Q Okay. Who created these shipping labels?

23 A Sometimes I would, sometimes he would. Whenever I would
24 create them, he would pass to me, on to me the log-in and the
25 password.

1 Q Okay. So I think maybe you jumped one step ahead, but
2 that's okay. So can you describe the process for the jury of
3 how you would create a label in connection with the defendant's
4 business?

5 A He would give me the log-in and password of the account
6 and tell me if it was FedEx or DHL. Then I would go into the
7 account and I would create the label.

8 Q So when you were talking about log-in and creating the
9 label, are you talking about creating a label online
10 electronically?

11 A Yes. Sometimes I would do it electronically, but
12 sometimes the system itself would not allow you to do it
13 electronically, so I would have to do it manually.

14 Q Okay. So -- all right. So let's start with -- let's
15 continue with the electronically generated labels, okay?

16 A Okay.

17 Q After the defendant would pass you the user name and
18 password, what would you do?

19 A I would log into the account and I would fill it out with
20 the data that the client would give me, provide me to do the
21 shipping. Usually, the shipper's name was already there, would
22 be already filled out. And also the guidance, and the
23 instruction was for me not also to change the name of the
24 sender.

25 Q Okay. I'm not quite sure I understood you. When the

1 label would come up electronically, would the sender's
2 information automatically be there?

3 MR. SCOTTON: Object, Your Honor.

4 THE COURT: What's the objection?

5 MR. SCOTTON: Leading.

6 THE COURT: Overruled.

7 THE WITNESS: Yes, the sender's name would usually be
8 there already. Sometimes I would be able to change it, but
9 usually not.

10 BY MS. MITRANI:

11 Q And under what circumstances would you change the sender's
12 information?

13 MR. SCOTTON: Object, Your Honor.

14 THE COURT: What is the objection?

15 MR. SCOTTON: She's coaching the witness.

16 THE COURT: Sorry? I didn't understand.

17 MR. SCOTTON: Coaching the witness. She helped --

18 THE COURT: All right. Overruled.

19 THE WITNESS: What's the question again?

20 BY MS. MITRANI:

21 Q Please correct me if I'm wrong, I understood your
22 testimony to be that the shipper's information would
23 automatically populate and on occasion it would be changed, is
24 that what you said?

25 A Yes.

1 Q So my question was under what circumstances would you
2 change the sender's information?

3 A It would it be very rare. I would not be able to tell you
4 what occasion exactly, but all I know is that usually we would
5 not change that.

6 Q Okay. Then how about the -- so that's the sender, the
7 from. How about the to, how would you go about populating the
8 to portion of the shipping label?

9 A When it was an out-of-state client, he would send me an
10 email with all of his information. So I would fill out with
11 all the information of, you know, the person that this was
12 going to. And also all of the -- list all the items, detail
13 list in the invoice.

14 THE COURT: It's about 4:30 and we need to end for the
15 day. So I am going to interrupt you at this point and wish the
16 jurors a wonderful evening. And you know the instructions.
17 Please don't discuss the case with anyone, please don't
18 disburse any information about the case, and please don't to
19 any independent research into the case. Please do have a
20 terrific night. We will see all tomorrow at 9:00.

21 All rise for the jury.

22 (Thereupon, the jury exited the courtroom at 4:29
23 p.m.)

24 THE COURT: All right. Please be seated. Are there
25 any issues that we are going to need to address before we bring

1 the jury back tomorrow morning?

2 MS. MITRANI: Not from the government, but should we
3 excuse the witness?

4 THE COURT: Yes. Let's excuse Ms. Mezentsef, and then
5 we can address any issues if there are any.

6 MS. MITRANI: Since I can't speak to her, can the
7 Court advise her to be here at tomorrow at 8:45 tomorrow
8 morning.

9 THE COURT: Sure. Miss Mezentsef, would you please be
10 here tomorrow at 8:45 in the morning and we will continue with
11 your testimony at that time, all right?

12 THE WITNESS: Yes.

13 THE COURT: Thank you. Have a terrific evening. Let
14 me thank the interpreters as well for your assistance today.
15 We all appreciate it.

16 All righty. Were there any issues that we needed to
17 address before we bring back the jury tomorrow morning?
18 Anything from the government?

19 MS. MITRANI: Nothing that's popping into my head
20 right now, Your Honor.

21 THE COURT: Anything from the defense?

22 MR. SCOTTON: All the documents that I have, I submit
23 to the government, the government has made a rule on those
24 documents.

25 MS. MITRANI: I don't know what -- Your Honor, we

1 received them on a disc today, so I haven't looked at them at
2 all.

3 THE COURT: I am not sure how the government actually
4 would have had a chance to look at them if they were on a disc
5 and they received them today since we have been in trial all
6 day.

7 All right. I will tell you what we will do then. Why
8 don't we get here tomorrow. Mr. Scotton, I need you to pay
9 attention so we can remember.

10 MR. SCOTTON: Well, Your Honor, what the government
11 received today was the documents, the paper documents, it
12 wasn't CD. I'm talking about the documents that has been given
13 to them on the pen drive before with the videos. I mean, there
14 was a bunch of documents as well.

15 MS. MITRANI: Your Honor, you know, this is very
16 unruly. We have gotten -- everything is very vague, he's not
17 labeling things, he's just talking about documents. We have
18 gotten some things. I know we got a disc today. So maybe if
19 the defendant can print out whatever he intends to use so we
20 can all be on the same page.

21 THE COURT: Or at least identify it by if there is,
22 for example, a JPEG number or something of that nature, then at
23 least the government will know what you are talking about and
24 we can all make sure we are talking about the same thing. All
25 right? Can you do that, Mr. Scotton?

1 MR. SCOTTON: Can I get the investigator here at 8:00,
2 8:30, so I can go over this? How am I going to be able to do
3 this from jail?

4 THE COURT: Mr. Scotton, this is something that you
5 should have done weeks ago, quite frankly. And I provided you
6 with an opportunity to come in here and review things. You
7 chose not to do that. So, I'm sorry, but you are not going to
8 be blaming it on the Court again. We will get you here as soon
9 as we can get you here and I don't know what that is. But the
10 marshals have other individuals who they also need to bring
11 over and other court schedules that they need to make. So
12 within the confines and constraints of what else the marshals
13 need to do, I will just ask that the marshals please bring
14 Mr. Scotton here as early as they can tomorrow.

15 All right. Anything else that we need to address
16 before tomorrow?

17 MS. MITRANI: No, Your Honor.

18 MR. SCOTTON: Your Honor, also my investigator just
19 brought in the -- reviewing the video with the meeting with the
20 FBI agent in Boca. It's empty as well.

21 THE COURT: I'm sorry?

22 MR. SCOTTON: Two sections of the video is not
23 working.

24 MS. MITRANI: Your Honor, I don't know what the
25 defendant is talking about. We've -- I don't know what to tell

1 the Court. We have given the defendant all the electronic
2 media.

3 THE COURT: I understand. I understand, and I can
4 appreciate the frustration. The documents, the media,
5 everything has been turned over on multiple occasions. Yet
6 every time something is brought up -- I shouldn't say every
7 time because recently that hasn't been happening. But for
8 several, several times during the first few days of this trial
9 when things were brought up, Mr. Scotton, you have been saying
10 that you never received it. And so I have to send the
11 government back to produce evidence that it -- that you
12 received it and that it provided it to you. And every time,
13 the government has been able to do so in complete detail.

14 Mr. Scotton, you have a responsibility here and you
15 need to review the evidence that you have. If you are saying
16 that there's something defective on the computer disc, we can
17 see if the government can produce a third copy of it. Is that
18 what you are saying, is there something defective on it?

19 MR. SCOTTON: Your Honor, let me correct the record
20 here. I am not saying that I have not received. They gave the
21 DVDs and the CDs. As a matter of fact, one, we saw the problem
22 here that the CD was empty.

23 THE COURT: Yes, and that was not a CD that was
24 provided by the government and that's another example of when
25 you are not completely truthful here with the Court. So,

1 Mr. Scotton, you need to be very precise in what you are saying
2 because so far throughout this litigation, you have told me all
3 kinds of things, you didn't get the discovery, your attorneys
4 didn't meet with you. You have had all kinds of other issues,
5 things were destroyed. And it turns out that every single one
6 of these things has turned out not to be accurate.

7 So, Mr. Scotton, you are going to have to excuse me if
8 I'm just not going to take your word for what you say. I mean,
9 I want to do what you need to have done here and make sure that
10 you get a fair trial. But, Mr. Scotton, at every juncture you
11 have not been accurate with this Court, and it makes it very
12 difficult for this Court to ensure that you are able to get the
13 things you need. The Court has tried to set up meetings for
14 you so that you can have time in the cell so you can review the
15 documents. You have declined to accept that. We have made
16 other kinds of special arrangements. I talked to you about
17 being brought down to FDC. You didn't want to do that.

18 There will have been occasions throughout this entire
19 thing where we have bent over backwards to try to insure that
20 you have the time and resources that you need to get this done.
21 You do not cooperate and then you say that you didn't get the
22 evidence. And that's just not accurate, Mr. Scotton. And, I'm
23 sorry, but at some point you need to take responsibility here.

24 Now, if there is a problem with a CD, we can go ahead
25 and see if we can get you yet another copy of it.

1 MR. SCOTTON: Your Honor.

2 MS. MITRANI: I don't want to interrupt the Court. We
3 are in the process of doing that and I believe we have an extra
4 copy that we are happy to turn over. And what's frustrating,
5 obviously, I don't want to bill the government, you know, we
6 bring all this stuff here in August for him to look at. And in
7 any event --

8 THE COURT: I know. It was all brought in and
9 Mr. Scotton chose not to look at it. I know. We set aside a
10 cell for him to do that, we told him he could bring all of the
11 material in. The court security officer provided him with a
12 coat so he wouldn't be uncomfortable or cold. His attorney,
13 his standby attorney brought him pens and pads and things of
14 that nature or the court security officer did so he could take
15 notes, and Mr. Scotton did not take advantage of that.

16 And that's a decision -- that's okay. Mr. Scotton,
17 you can decide to do that, that's all right. But what you
18 can't do is then later blame it on the government, the Court,
19 your prior attorneys, or any number of other people. You just
20 can't do that. You have to take responsibilities here,
21 Mr. Scotton. So here's what we are going to do. If there is a
22 second copy of the CD, we are going to provide it to you now.

23 Does the government have it?

24 MS. MITRANI: Yes, Your Honor.

25 THE COURT: All right. This is the third copy. But

1 let's do it in open court so that it can be on the record that
2 it was provided yet again.

3 MR. SCOTTON: Your Honor, I'm going to represent
4 myself, right? I'm representing myself right now to this
5 Court.

6 THE COURT: Yes.

7 MR. SCOTTON: Okay. Then I have the right to go ahead
8 and speak to put things on the record, right?

9 THE COURT: Go right ahead.

10 MR. SCOTTON: Right. So I'm not saying that I didn't
11 receive anything. Whatever the lawyer that give to me, as the
12 investigator now reviewing things, either the CD is empty or
13 the CD is not working.

14 Now, I don't want the Court to start putting things on
15 the record that is not even true either, Your Honor, that I'm
16 not cooperating here. I have been sitting here for 22 months.
17 Jason, you just mentioned Jason brought pens and pads. Yeah,
18 he brought it here Monday when we started the trial.

19 THE COURT: They have been previously given to you by
20 the --

21 MR. SCOTTON: No, Your Honor.

22 THE COURT: -- court security officer as well. It's
23 all on the record, Mr. Scotton. It's all in the record. Every
24 time we meet and every time that there's a problem, it's all in
25 the record.

1 MR. SCOTTON: Like I told you before on the record and
2 I say it again, if that's the way it is, I mean, the Court make
3 me here, you know, representing myself. And if I'm going to
4 represent myself in this condition, let's just go ahead and get
5 this thing done and find me guilty. That's the better way to
6 do it.

7 THE COURT: All right, Mr. Scotton, I'm just not going
8 to entertain this again. We have already addressed this. If
9 you want to plead guilty, that's your choice. But you need to
10 be able to get through in plea colloquy, and that includes
11 telling this Court that you are pleading guilty because you
12 are, in fact, guilty. It's up to you. I can't be involved in
13 your decision whether you wish to plead guilty or not.

14 If you don't wish to plead guilty, it's your right to
15 go to trial and that's what I'm trying to do. I'm trying to
16 give you the trial that I think you want. I'm trying to do the
17 best I can to do that. But, Mr. Scotton, I feel like you think
18 that everybody should be brought to you and people should cater
19 to you. We are doing our best to make sure that you get
20 everything you need, but you have to take responsibility too.
21 I'm sorry, Mr. Scotton, but it's just not appropriate that
22 every time that something is offered to you, you make a
23 complaint, we give to it to you and then you turn it down or
24 decline to do it. And then when evidence is brought in, you
25 claim that you didn't get it. Then I schedule a meeting or a

1 hearing for your attorneys to come in so you can cross-examine
2 them about not having received evidence from them, and you
3 refuse to question them.

4 So, Mr. Scotton, I'm very sorry but we are at the
5 point right now where we are proceeding with the trial. We
6 have given you the copy, the third copy of the disc. Do what
7 you need to do with it, but we are proceeding with the trial.

8 MS. MITRANI: So we are giving him a disc of the
9 8/29/2011 undercover meeting, it's FBI 15.

10 THE COURT: All right. Is there anything else that we
11 need to address before tomorrow morning?

12 MS. MITRANI: Nothing from the government, Your Honor.

13 THE COURT: Mr. Scotton?

14 MR. SCOTTON: I don't know what to say anymore,
15 Your Honor. You know, you want me to represent myself in this
16 condition. Now the Court -- just like I'm the one responsible,
17 I'm the one here that have to be blamed on everything here.
18 And it's not true, Your Honor.

19 THE COURT: All right. Say whatever you need to say,
20 get it out on the record.

21 MR. SCOTTON: Oh, no, it's not getting it out. It's
22 not getting my frustration. You know, it seems to be everybody
23 want to hide the truth here, that Renata come in here and
24 perjure herself and the jury here. This is a joke. This is
25 one big show, Your Honor. This is about my life and people

1 just playing with my life. This is ridiculous. I think this
2 is ridiculous. You know, she has committed a crime. Have she
3 been prosecuted for the crime, or she just be here and lie?

4 THE COURT: Mr. Scotton, you are going to have a
5 chance to cross-examine her.

6 MR. SCOTTON: This is a joke. I mean, I used to help
7 the Justice Department as directly here showing pictures, and
8 this is the Justice Department become. At all costs, let's go
9 ahead and just make this guy look like the worst scumbag in the
10 world and let's go ahead and convict him, because you know
11 what, if this Court says that I have the right to represent
12 myself, that I have the right to a fair trial, it will never
13 happen the way it is right now. That's my final taking of this
14 Court. I will never have a fair trial this way.

15 THE COURT: All right, Mr. Scotton, I'm sorry that you
16 feel that way, but I just don't think the record reflects that
17 at all. And I think that we have tried very hard to give you a
18 fair trial, but you have to take responsibility and you have to
19 do -- you have to do your role here. You have to -- you didn't
20 cooperate with attorneys. You have to take part in your role.
21 And we'll see you tomorrow. Hopefully before tomorrow you will
22 do what you need to do with respect to that other CD.

23 All right. Is there anything else then? If not, we
24 will see you tomorrow. We will be in recess for the evening.

25 (Thereupon, the trial adjourned at 4:43 p.m.)

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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

7/8/14

s/ Tammy Nestor
Tammy Nestor, RMR
Official Court Reporter
299 East Broward Boulevard
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,
Plaintiff(s),
vs.
ROGERIO CHAVES SCOTTON,
Defendant(s).

Fort Lauderdale, Florida
January 29, 2014

JURY TRIAL
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): Bertha Mitrani, Esquire
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FOR THE DEFENDANT(S): Rogerio Scotton, Pro Se

STANDY COUNSEL: Jason Kreiss, Esquire
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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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RENATA MEZENTSEF

BY MS. MITRANI	13		133	
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BY MR. SCOTTON		37		
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JOSE SANTIAGO

BY MS. MITRANI	139			
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1 Thereupon,
2 the following proceedings began at 8:45 a.m.:

3 (Thereupon, the government exited the courtroom.)

4 (Thereupon, a sealed hearing was held.)

5 THE COURT: What was the issue we needed to address,
6 Ms. Mitrani?

7 MS. MITRANI: It's a heads up issue, I guess, to try
8 to resolve something. So we are getting close to a point in
9 time in the near future, not today, but possibly as early as
10 tomorrow where the government is going to play the videotape of
11 the immigration interviews. I'm trying to get the exhibit
12 number for the Court which I think is going to be the 200
13 series.

14 THE COURT: And I think we are going to need to
15 address the issue of whether it's admissible, right?

16 MS. MITRANI: Not that one. I guess so. Mine was
17 even more narrow. We had submitted excerpts -- so the
18 hearing -- the DVD in its entirety is 201A and we have provided
19 the defendant with 201B which are excerpts. There's a
20 significant time difference between our excerpts and the entire
21 interview. So I guess I wanted to get a sense of whether it
22 was going to be the entire interview or not because that will
23 affect how many witnesses I bring in.

24 THE COURT: Mr. Scotton -- first of all, is this the
25 one that Mr. Scotton is having examined?

1 MS. MITRANI: No, it is not, Your Honor --

2 THE COURT: Okay.

3 MS. MITRANI: -- as far as I know.

4 THE COURT: Mr. Scotton, the government is saying that
5 it wishes to play just excerpts from this interview. And
6 generally that is permitted. But what the government wants to
7 know is whether you are going to object so it knows how to
8 schedule its witnesses. Instead of playing the entire
9 interview -- how long is the interview?

10 MS. MITRANI: Well, the entire tape, I think, is about
11 an hour and 40 minutes. There's the first part where the
12 defendant is with his -- with Ms. Reyes in front of the
13 immigration officer, and then the bulk of it is the defendant
14 with the immigration officer. And then very briefly there's
15 the part with Ms. Reyes along with immigration. So I don't --
16 so that's sort of the three parts.

17 So again, if the defendant wants the whole thing
18 played, then we will play the whole thing, but I just need to
19 know.

20 THE COURT: Mr. Scotton, what is your position on
21 that?

22 MR. SCOTTON: Yeah, Your Honor, the fact that I saw
23 the DVD, so I understand what the prosecutor trying to do. I
24 require the whole video to be played because it has been part
25 of the video that you can see intimacy between me and my wife.

1 You can see different things. Prosecutor going to bring in
2 something that, of course, will help their case.

3 THE COURT: I tell you what we are going to do. The
4 government will seek to put on the excerpts. You will object,
5 and then I will say, okay, play the whole thing. All right.
6 That's how it will work. Anything else that we need to address
7 before we bring in the jury?

8 MS. MITRANI: No, Your Honor, so I'm going to rely on
9 that.

10 THE COURT: Yes, I understand. We do actually have
11 one other issue. One of the jurors has a problem. So we are
12 going to bring in Ms. Raisman. So please rise for the jury --
13 well, for Ms. Raisman, I guess.

14 (Thereupon, a juror entered the courtroom at
15 8:57 a.m.)

16 THE COURT: Wherever you are comfortable, please be
17 seated. Good morning, Ms. Raisman. Thank you for being here
18 early. I understand that you are having an issue with your
19 employer, is that right?

20 A JUROR: You have no idea how upset I am. I feel
21 honored that I was chosen out of 56 people to be one of the 15.
22 And when I told my supervisor and I asked about the coverage,
23 she said, don't worry, your salary is covered, not to worry. I
24 was elated. I was happy.

25 And then she just told me yesterday that they sent the

1 paperwork to HR. She was misinformed. My company will only
2 pay for ten days and that's it. And today is actually day nine
3 because I served two weeks ago for four days and four days
4 here. And to be honest with you all, I'm self-supportive. No
5 one pays my bills with me, and I'm under a financial burden.

6 THE COURT: Let me ask you this: What I would like to
7 do is, I don't want to get you into trouble with your employer,
8 but I would like to speak with your employer and explain to
9 your employer the importance of the case, the importance of
10 having a jury that can make it through the case, et cetera.

11 There is case law actually that says that once they
12 have told you that you are going to be paid, that they have to
13 pay you, which I might delicately broach with them as well if
14 that were okay with you with the idea being, obviously, that --
15 and we very much appreciate, you know, your being here. It's
16 obvious that you are interested in the case, that you have been
17 paying attention. You switched seats so you can see. I have
18 seen you taking notes. So I understand your predicament.

19 And we don't want you to have financial problems
20 either. But I'm thinking there may be a way that we might be
21 able to work this out because your employer is a pretty large
22 employer, that under the circumstances where, you know, there
23 may have been some confusion regarding what the policy was that
24 was told to you which ultimately caused us to impanel you when
25 we otherwise would not have, that perhaps they could make an

1 exception and allow it this one time. Would that be all right
2 with you if I talked to your employer?

3 A JUROR: There is one thing that they did broach me
4 on. I'm just upset. I do have PTO, okay, but it is January
5 and February. And I was figuring it out. It's, let's just say
6 eight weeks, so that would be -- so I'm not good in arithmetic,
7 but I think that may be 32 business days. And I get 28 days a
8 year, so --

9 THE COURT: You would lose your -- let me say this as
10 well. The case I'm thinking of talks about how you can't take
11 action against a juror or in any way engage in conduct that
12 would -- I'm sure it's not intended to intimidate, but would
13 have the effect of intimidating a juror from engaging in jury
14 service. While as a general rule, of course, employers are not
15 required to pay employees for jury service, this case talks
16 about the fact that if an employee is told prior to jury
17 service that that employee will be paid for jury service which
18 then causes the juror to tell the Court that the juror is
19 available, that at that point, that is a problem if that
20 position is sort of reneged from.

21 So it would be my intention to just sort of have a
22 discussion explaining to your employer why this is so
23 important, why it would really be difficult for us to lose you,
24 and asking for your employer's cooperation to continue to pay
25 you and not require you or penalize you in some way by

1 requiring you to take paid time off or other things of that
2 nature. Would it be all right with you if you gave that a
3 shot?

4 A JUROR: Yes, but I wanted to add one more thing.
5 They sent me an email and I read it yesterday obviously before
6 I called Jermaine. And they said that if I wanted to work
7 Saturdays and Sundays, you know, I can do that and be taking
8 less time off of my PTO. But then I will be working seven days
9 a week. Because I said to her, Claudette, being in court, it's
10 working, it's a job. I said, I'm not sitting here filing my
11 nails. I said, this is a job. I said, this is not vacation
12 and I don't feel I should have to take my PTO. And she says,
13 well, this is what it says. I was so upset. You have no idea.

14 THE COURT: I can understand why you would be upset.
15 Let me see what I can do. I don't know for sure what I can do,
16 but I think it's worth a try if it's okay with you.

17 A JUROR: That's fine, Your Honor.

18 THE COURT: Do we have the contact information?

19 A PROSPECTIVE JUROR: I can give you a few numbers. I
20 can give you HR, and I can give you my supervisor.

21 THE COURT: That would be terrific, and what I will do
22 is --

23 A JUROR: I'm still good for today. Today's day nine.
24 Tomorrow is day ten.

25 THE COURT: During one of the breaks, I will see if I

1 can reach them and see if we can get this straightened out.

2 A JUROR: Thank you. I appreciate it. I really do
3 want to serve. That's the whole thing. And I don't feel I
4 should be penalized for it. It's a huge company. It's
5 nationwide. And they respect jury duty, but they don't pay for
6 it.

7 THE COURT: Right.

8 A JUROR: And that's not right.

9 THE COURT: Let me see if there's anything I can do.
10 I want to make sure I understand. You were originally told
11 that you would be paid for it, and then after, you were
12 subsequently told you would not?

13 A JUROR: Then when I said to her, Claudette, you said
14 I was okay with it, she said, well, they had to do payroll last
15 week or Monday, and she said, I thought it was just payroll. I
16 don't think she really knew herself, but she did tell me, don't
17 worry about your salary. Then I felt a breath of relief.

18 THE COURT: Of course.

19 A JUROR: Otherwise, I would have mentioned it right
20 from the beginning if I had knowledge.

21 THE COURT: I'm sure you would have because other
22 people did. You know, so, and that's something that I said in
23 the beginning if you have a conflict, let us know. So I'm sure
24 you would have let us know.

25 A JUROR: Yes, I would have.

1 THE COURT: Obviously, now we are four days in and we
2 don't want to have to start this trial again.

3 A JUROR: I know.

4 THE COURT: Let me talk to your employer and see if
5 maybe they can make this one exception. And, you know, in the
6 future they will just make sure they make their policy clearer
7 and then this won't happen again.

8 A JUROR: Maybe I should have looked like last week
9 but I just didn't. I served the week before four days and no
10 one said a word to me.

11 THE COURT: Right.

12 A JUROR: And I said, with a huge corporation, it
13 didn't even occur to me.

14 THE COURT: Okay. Thanks for letting us know.

15 A JUROR: Honestly. All right. Let me give you the
16 phone numbers.

17 MS. MITRANI: Your Honor, do I have time to run to the
18 restroom and put on a sweater or is the jury here?

19 THE COURT: I think the jury is here, but you just
20 need to change into something?

21 MS. MITRANI: Yes.

22 THE COURT: There's an office right outside here that
23 is one of my law clerk's, and if he's there, ask had him if you
24 can just borrow his office to change.

25 THE COURTROOM DEPUTY: She can go in mine.

1 THE COURT: He's got blinds. Make sure they are
2 closed.

3 MS. MITRANI: It will take three seconds.

4 A JUROR: Your Honor, I'm just thinking maybe -- I can
5 give you my supervisor, but HR is really who you probably need
6 to speak to.

7 THE COURT: Absolutely. I'll call HR.

8 MS. MITRANI: May I be excused, Your Honor?

9 THE COURT: Yes.

10 A JUROR: Sorry for the holdup.

11 THE COURT: No, that's perfectly all right. We
12 want --

13 A JUROR: I really hope you can do something.

14 THE COURT: I hope I can too. It's worth a try.

15 A JUROR: Anything is worth a try. That's how I feel.
16 Look, half full rather than half empty. Let me just get the
17 number.

18 THE COURT: Okay. Thank you so much.

19 MS. MITRANI: Thank you so much.

20 THE COURT: No problem.

21 MS. MITRANI: I don't know if your office is locked.

22 THE COURTROOM DEPUTY: Okay.

23 A JUROR: I'm hoping whatever you are going to say is
24 going to help the situation.

25 THE COURT: Well, I'm hoping so too.

1 A JUROR: Okay.

2 THE COURT: If we need to revisit it, we will revisit
3 it.

4 A JUROR: At least thank you for hearing me and for
5 understanding, and I hope I can continue to serve.

6 THE COURT: Thank you very much for your service so
7 far.

8 A PROSPECTIVE JUROR: Thank you.

9 THE COURT: Let's all rise. We are going to bring in
10 the jury.

11 (Thereupon, the jury entered the courtroom at
12 9:07 a.m.)

13 THE COURT: Please be seated. I'm glad to see
14 everybody made it back safely. Some yucky weather out there.
15 Glad everybody made it back safely.

16 Let me ask, is there anybody here who's discussed the
17 case with anyone, disbursed any information about the case, or
18 done any independent research into the case? If so, please
19 raise your hand for me now. I see no hands. We all thank you
20 for that. And, Ms. Mitrani, let's go ahead and continue with
21 the witness.

22 MS. MITRANI: Thank you, Your Honor.

23 THE COURT: Good morning, Ms. Mezentsef.

24 THE WITNESS: Good morning.

25 THE COURT: Let me just remind you -- let's get you

1 your headphones first. Let's see.

2 That's okay. I think the little soft thing fell off
3 there. If you can stick it back on. Terrific. Thank you. I
4 need to remind you you are still under oath. Do you
5 understand?

6 THE WITNESS: Yes.

7 THE COURT: All right. Thank you. Please be seated.

8 RENATA MEZENTSEF

9 after being duly sworn on oath was examined and testified as
10 follows:

11 DIRECT EXAMINATION (resumed)

12 BY MS. MITRANI:

13 Q Good morning.

14 A Good morning.

15 Q How are you today?

16 A All right.

17 Q So, Ms. Mezentsef, I believe yesterday we left off and you
18 were telling us about how you would go about creating the
19 shipping labels electronically. Do you remember that?

20 A Yes.

21 Q So now I want to ask you, did there come times when you
22 would fill out labels by hand, manually?

23 A When we would have any problems doing it on line, I would
24 have to do it manually. So I would have like a template with
25 the account number right there in my drawer that he would leave

1 for me, so if I needed to do it manually, I would have that.

2 Q And when you say he would leave for you, who would leave
3 for you?

4 A Rogerio Scotton.

5 Q Your boss?

6 A Yes.

7 Q And during the course of your employment with the
8 defendant, about how many shipping labels do you think you
9 created both electronically and manually?

10 A There's no way for me to know that. It's a lot.

11 Q Are we talking hundreds, thousands, can you give us a
12 sense of how many?

13 MR. SCOTTON: Object, Your Honor.

14 THE COURT: What's the objection?

15 MR. SCOTTON: Speculation.

16 THE COURT: Overruled.

17 THE WITNESS: There were a lot of packages, much more
18 than a thousand.

19 BY MS. MITRANI:

20 Q Did you ever see the defendant create shipping labels?

21 A Most of the time I would be in charge of creating the
22 labels, but he also did some.

23 Q As far as you know, did the defendant receive completed
24 shipping labels from anybody else?

25 A No.

1 Q Ever?

2 A I never saw it.

3 Q Okay.

4 MS. MITRANI: Your Honor, this is a heavy box. Can I
5 ask the witness to come down?

6 THE COURT: Sure.

7 BY MS. MITRANI:

8 Q Can you come right here. I want to ask you some questions
9 about Government's Exhibit 102E which has been admitted into
10 evidence. If you have the shipping label, you could publish it
11 online.

12 All right. Why don't you stand here. I will give you the
13 microphone. We will sort of share. I'm showing you what's
14 actually been admitted into evidence as Government's
15 Exhibit 10E. Do you see that there's a Fed-Ex shipping label
16 affixed to it?

17 A Yes.

18 Q Do you recognize the handwriting on that label?

19 A Yes.

20 Q Whose handwriting is it?

21 A Mine.

22 Q And the return address is listed as BHPV with an address
23 in New York, correct?

24 A Yes.

25 Q Where did you get that information from?

1 A He gave it to me, Rogerio Scotton.

2 Q And likewise, there's an account number, see where it says
3 sender's account number 236553027, do you see that,
4 Ms. Mezentsef?

5 A Yes, I had a template just like this one where everything
6 was already filled out.

7 Q Including the account number?

8 A Yes.

9 Q And the defendant gave that to you?

10 A Yes.

11 Q Now, in this package, 102E, it says an electric hydraulic
12 pump. Do you see that?

13 A Yes.

14 Q Do you have an independent memory of this package?

15 A Yes.

16 Q Tell us what you remember about this package.

17 A This package was shipped, but there was a problem. It
18 never arrived at its destination.

19 Q We know it didn't arrive because we have it here in the
20 courthouse, but how did you find out that it didn't arrive?

21 A Well, the customer himself, he called complaining that he
22 never got it. So we would go and check all of the remittances
23 that had been made. Not only this package, but many other
24 packages we were having the same problem. They would just not
25 arrive at their destinations.

1 Q I'll talk more about that issue with you later, but do you
2 remember speaking with this client about this package?

3 A Yes.

4 Q And did you discuss it -- strike that.

5 Did you bring it to the defendant's attention that this
6 client was complaining that the package was not delivered to
7 Brazil?

8 A Yes. Whenever that would happen, I would always tell him
9 when the packages wouldn't arrive at its destination, then I
10 would tell him and he would tell me to communicate it to Fed-Ex
11 to see what the problem was.

12 Q Like I said, I want to talk about that when I get you back
13 seated. You can stay there. This one is a little lighter,
14 102D. I'm showing you what's been admitted into evidence as
15 Government's 102D. Do you see the Fed-Ex shipping label on
16 102D?

17 A Yes.

18 Q And whose handwriting completed that label?

19 A Mine.

20 Q And like the other package that we saw on a different
21 date, this one is August 10 -- excuse me, yes, 2011. The other
22 was August 12, 2011. Did you receive the information on the
23 sender's BHPV with the account number from the defendant from
24 the template he provided?

25 A As you can see, it's the same information that it was on

1 the other label, already had this with me, so all I had to do
2 was to write it down and copy it.

3 Q Okay. Thank you. And so this is a package that was also
4 going to Brazil. And the contents were T-shirts, hats, and
5 shoes. Do you see that?

6 A This one is very easy to remember because this specific
7 client he would buy merchandise here in the United States and
8 he would store it in Rogerio's garage. And I, myself, would be
9 the one actually sorting out what would go into each box
10 because there was a lot of merchandise.

11 Q A lot of merchandise that belonged to the client?

12 A Yes, the client was someone who would buy many different
13 merchandise and would send to different people.

14 Q Different people in Brazil?

15 A Yes.

16 Q And do you remember receiving complaints from this
17 customer that this package had not arrived in Brazil?

18 A Yes.

19 Q And what do you remember about that?

20 A This client had so much merchandise that he, himself,
21 would be confused with whatever he had, he had so much. This
22 client, he actually made it to the store. He made it to
23 Rogerio's house, so he had direct contact with him.

24 Q With him, you are saying?

25 A Rogerio Scotton.

1 Q The client had direct contact with Mr. Scotton?

2 A Yes.

3 Q Anything else that you remember or is that it?

4 A No.

5 Q Okay. I'm showing you what's been entered into evidence
6 as Government's Exhibit 102B, 102B. And is this an example of
7 an electronic label that was completed with the defendant's
8 business?

9 A Yes.

10 Q I'm not sure if the jury can see it, but that's okay. And
11 the return address here is also BHPV, correct? The name is
12 also BHPV?

13 A Yes, this one wasn't filled out by me. It was filled out
14 by him.

15 Q Okay. Likewise, 103A is an electronic Fed-Ex waybill
16 showing return address of BHPV at the address of 934 North
17 University Drive, No. 329, Coral Springs?

18 A This address was a PO box address that he had.

19 Q And was this -- do you remember who filled out this label,
20 whether it was you or the defendant?

21 A No.

22 Q Did the defendant say it was either you or the defendant?

23 MR. SCOTTON: Object, Your Honor.

24 THE COURT: What is the objection?

25 MR. SCOTTON: Leading.

1 THE COURT: Sustained.

2 BY MS. MITRANI:

3 Q What did you say?

4 THE COURT: Well, I sustained it.

5 MS. MITRANI: Okay.

6 BY MS. MITRANI:

7 Q You don't remember who did the label?

8 A No.

9 Q Did anybody other than you or the defendant do labels for
10 Sky Air or for the defendant's business?

11 A No.

12 Q And inside Government's Exhibit 102A are two videos. Do
13 you recognize the man in the video that says retrospectiva da
14 amore on it?

15 A Yes, it's Rogerio Scotton with this lady who he told me
16 was his wife at the time, the lady who had he married.

17 Q And last but not least, it's Government's Exhibit 102C
18 which has been admitted into evidence. Is that another Fed-Ex
19 label that says Sky BHPV at the North 934 North University
20 Drive address?

21 A Yes. This is the year.

22 Q I think the date, the ship date, is September -- April --
23 the 7th of September 2010. Do you see that?

24 A Yes, this one was probably done by him.

25 Q You can go back to your seat.

1 So now I want to talk to you about the issue of packages
2 not being delivered. So did there come a time where it came to
3 your attention that packages being shipped by the defendant and
4 his companies were not being delivered to their intended
5 destination?

6 A Yes.

7 Q So how did you know?

8 A Well, every day when I would arrive at the office, I would
9 check on the accounts and also the shippings that were in
10 transit. So I would just take down notes of the ones that were
11 on hold due to some type of problem and then I would either
12 pass on this information to him or I would myself call and ask
13 what the problem was.

14 Q And did the defendant ever tell you what the problem was
15 as to why these packages were being held and not being shipped
16 to Brazil?

17 A When I would call, myself, Fed-Ex, some representative
18 from Fed-Ex would say that it was some problem with the
19 account. So then I would tell Rogerio about this, give him the
20 information. He would tell me there was probably a billing
21 problem and then he would work it out himself.

22 Q And did the defendant ask you to do anything with respect
23 to calling anybody with respect to the packages that were being
24 seized?

25 A Yes. He would tell me and ask me to call Fed-Ex to try to

1 work it out, to see what the problem was, to understand why,
2 but there was a time when there was so many packages that were
3 being seized that I wouldn't even do it anymore.

4 Q And how would you characterize the problems with the
5 packages being held throughout your employment with the
6 defendant?

7 A What do you mean?

8 Q I'll ask something different. Okay.

9 So how often would you discuss with the defendant this
10 issue of these packages being held by Fed-Ex?

11 A Well, it depends. There were times where a lot of
12 packages would be seized and there were times when there was
13 just, you know, be shipped and to get to their destination.
14 But by the end of my -- I would say the time that I was working
15 there, at the end of the period that I -- there were a lot of
16 packages that were being held.

17 Q Were packages being held by other shippers in addition to
18 Fed-Ex?

19 A There were packages being held by DHL, Fed-Ex, UPS, very
20 little, but there were some as well.

21 Q Very little by UPS?

22 A Yes.

23 Q While you were working for the defendant, do you remember
24 receiving phone calls from individuals asking for a Paulo or a
25 Paulo Roberto?

1 A Most of the clients, I would say almost all of them, would
2 never ask for Rogerio. They would ask for Paulo Roberto. So
3 when I first started working for him, when I would get those
4 calls, people asking for Paulo Roberto, so I would go to him
5 and ask him and he would ask me to give him the phone.

6 Q When you say you would go to him about these calls from
7 Paulo Roberto, who is the him that you are talking about?

8 A Rogerio Scotton. And it looked to me like what he was
9 doing was that he was telling these clients that his name was
10 Paulo Roberto.

11 Q When these clients asked for Paulo Roberto, would you pass
12 the phone to the defendant, Rogerio Scotton?

13 A Yes.

14 Q Would he then speak with the clients?

15 A Yes.

16 Q Did you ever take the packages to locations for dropoff?

17 A Many times.

18 Q Where would you take the packages? Let me rephrase that.
19 Strike that.

20 To what locations would you take the packages to drop them
21 off for delivery?

22 A When I first started working there, he guided -- yeah, he
23 told me that the address was to do the dropoff at the PO box
24 address that he had on University. And he would also instruct
25 me never to do the dropoff very close to where we were located,

1 to go very far away. So we would have to go to University.

2 Q And remind me, where were you located again?

3 A On Federal in Boca Raton.

4 Q So the defendant instructed you to drive from Boca Raton
5 to the address in Broward County in Coral Springs to drop off
6 the packages?

7 A Yes.

8 Q Do you remember taking the packages anywhere else?

9 A After some time, he asked me to stop doing the dropoff at
10 that location. Then I started doing around that area, around
11 the surroundings of University, but in that area.

12 Q Does the name Osvaine Duarte mean anything to you?

13 A Yes. Osvaine Duarte was one of Sky Air's clients.

14 Q And what services did Osvaine Duarte engage in with the
15 defendant?

16 A Osvaine Duarte would email me or call me, but most of the
17 time he would actually be in contact with him regarding some
18 merchandise like auto parts or video games that he wanted to
19 ship to Brazil.

20 Q That Osvaine wanted to ship to Brazil?

21 A Yes.

22 Q Did you have any discussions with the defendant about what
23 rate Osvaine Duarte should be charged by Sky Air?

24 A Yes. Rogerio Scotton told me to give a better rate to
25 him. That's it.

1 Q Okay. And did you give Osvaine Duarte a better shipping
2 rate as per the defendant's instructions?

3 A Yes, I would charge him less than I would charge the other
4 clients.

5 Q Was Osvaine Duarte -- strike that.

6 Do you know how much shipping the defendant -- sorry.
7 strike that.

8 Excuse me. I'm so sorry. Do you know how much shipping
9 Osvaine Duarte did with the defendant?

10 A Not much. As I recall, it seemed like he had another way
11 of shipping his merchandise because he did a lot but not
12 through us.

13 Q Did Osvaine Duarte pay the defendant for the defendant's
14 shipping services?

15 A Yes. Nothing would be shipped without being paid. In
16 order for it to be shipped, we would have to have a receipt
17 showing that it had been paid.

18 Q So was that the policy with all customers? Did all
19 customers have to pay the defendant for the defendant's
20 shipping services before the defendant would ship out the
21 packages?

22 A Yes.

23 Q So it applied to Mr. Duarte and it applied to everybody
24 else?

25 A Yes.

1 Q How would the customers pay the defendant for the shipping
2 services?

3 A It would be a deposit in the bank account.

4 Q How would the customers know what bank account to deposit
5 the money?

6 A I will send the clients through email all of this
7 information beforehand, the bank account, name of the bank, the
8 amount to be deposited.

9 Q And where did you get the bank account number and the bank
10 to which this money should be deposited?

11 A Rogerio Scotton would provide me with the information of
12 the banks. There were two banks.

13 MS. MITRANI: Your Honor, may I approach the witness?

14 THE COURT: You may.

15 BY MS. MITRANI:

16 Q I am showing you what's been marked for identification as
17 Government's Exhibit 9B as in boy. Do you recognize the
18 documents contained therein?

19 A Yes.

20 Q What are these documents?

21 A Email exchanges with clients.

22 Q Do these email exchanges, did they come from you or did
23 some of them come from you?

24 A Yes.

25 Q Do they concern the purchase of a camera?

1 A Yes.

2 Q Let me ask you, do you have an independent recollection of
3 buying a Sony Cybershot camera for delivery to Brazil?

4 A Yes.

5 Q Why don't you tell the members of the jury what you
6 remember about the Sony Cybershot camera.

7 A This client, he went into the website of Sky Air, he saw
8 the camera, so he ordered the camera. So then he -- you know,
9 he said he wanted to buy it. So I passed on all the
10 information that was necessary for him to make the purchase.
11 So he passed me a copy of his credit card, a picture of his
12 credit card, also resident's proof, also a copy of his ID card
13 back and front. Then, myself, I went to Best Buy and I
14 purchased the camera.

15 So when we shipped the camera, I remember there was a
16 problem because the camera never arrived. And I told the
17 client that it would take three to seven days or up to ten
18 days. And when I informed Rogerio, he told me to go ahead and
19 buy another camera.

20 Q Let me stop you now so I can stand back there. So does
21 this Exhibit 9B, is this the email exchange between Sky Air and
22 the client regarding the purchase of that camera?

23 A Yes.

24 MS. MITRANI: Your Honor, the government would offer
25 9B.

1 THE COURT: Any objection?

2 MR. SCOTTON: No, Your Honor.

3 THE COURT: 9B is admitted.

4 (Thereupon, Government's 9B received in evidence.)

5 BY MS. MITRANI:

6 Q From Exhibit 9B, let me show you one email at CHS38.

7 Okay. Ms. Mezentsef, this is an email from Sky Air, correct?

8 Do you recognize that?

9 A Yes.

10 Q And it says on the top, Renata Sky, correct?

11 A Yes.

12 Q What is Renata Sky?

13 A That was my email.

14 Q And here is an email to and it's been redacted out but an
15 email address of Raposa 1975 at hot mail dot com, correct?

16 A Yes.

17 Q And what were you emailing Raposa?

18 A The bank number. I just remembered here that this client
19 said that the camera was for his brother and that he was in the
20 United States.

21 Q Okay. Is this the email that you emailed the client to
22 provide him with the information where the payment for the
23 delivery should be made?

24 A Yes.

25 Q I'm showing you Exhibit 9D. What language is this email

1 in?

2 A Portuguese.

3 Q The second page of the email, so the first page is CHS50,
4 and it's an email from info sky at info, info at Sky Air online
5 dot com, correct?

6 A Yes.

7 Q Whose handle was info sky?

8 A Rogerio Scotton.

9 Q And this is an earlier email actually dated -- excuse me,
10 this is an email dated February 13, 2011 also to Raposa?

11 A Yes.

12 Q This is an email where the from has been redacted. It's
13 dated 3/14/2011 and it has an attachment, correct?

14 A Yes.

15 Q And the email we just looked at is CHS31, and this Bank of
16 America customer receipt is CHS32. Do you see that?

17 A Yes.

18 Q And is this the receipt that the customer sent to Sky Air
19 showing that he had deposited payment for the camera plus the
20 delivery charges?

21 A Yes.

22 Q And it's dated, I think I said it, it's dated March 14,
23 2011, correct?

24 A Yes.

25 Q This is Bates labeled at the bottom CHS48, still within

1 Government's Exhibit 9B, and that's from info at Sky Air online
2 dated May 22, 2011?

3 A Yes.

4 Q To Raposa 1975?

5 A Yes.

6 Q And is this -- it says at the top, it says, thank you for
7 shopping with at [http:// shop dot Sky Air online dot com](http://shop.dot.skyaironline.com),
8 correct?

9 A Yes.

10 Q And towards the middle has invoice number order date of
11 Tuesday, February 22, 2011 and an indication that the order
12 balance is \$219.99, please call 305-675-1965 to arrange
13 payments, correct?

14 A Yes.

15 Q And here is the invoice for the Sony Cybershot, 14.1
16 megapixel, W330, black, was \$219.99, correct?

17 A Yes.

18 Q We you testified before this was the receipt -- excuse me,
19 this is the Bank of America customer receipt showing 344.99
20 deposit into the bank account. So does this represent the cost
21 of the camera plus the cost of shipment?

22 A Yes.

23 Q So the camera was 219.99, and the cost of shipment was
24 \$125?

25 A Yes, but I recall also that this camera cost less. There

1 was some type of sale at Best Buy.

2 Q So when you purchased this camera for this customer, you
3 purchased it for less than 219.99?

4 A Yes.

5 Q Did you personally purchase the camera?

6 A Yes.

7 Q Do you remember how you paid for it? Did you pay cash,
8 credit card, check, if you remember?

9 A I believe it was cash.

10 Q Where did you get the cash from?

11 A Rogerio Scotton.

12 MS. MITRANI: May I approach, Your Honor?

13 THE COURT: You may.

14 BY MS. MITRANI:

15 Q I am showing you what's been marked for identification as
16 Government's Exhibit 22. Do you recognize this, ma'am?

17 A Yes.

18 Q And what is it?

19 A It this one was of Sky Air's fliers.

20 Q Is this how the website looked if I were to log on?

21 A Yes.

22 MS. MITRANI: Your Honor, government would offer
23 Exhibit 22.

24 THE COURT: Any objection?

25 MR. SCOTTON: Not at all, Your Honor.

1 THE COURT: All right. Government's 22 is admitted.

2 (Thereupon, Government's 22 received in evidence.)

3 BY MS. MITRANI:

4 Q So it's a little awkward talking about a website that's
5 been printed out, but at the bottom, it says Sky Air online.
6 Do you see that?

7 MR. SCOTTON: Object, Your Honor.

8 THE COURT: What's the objection?

9 MR. SCOTTON: She is leading. The defendant say this
10 is a flyer. This is not a flyer. This is a copy of the
11 website.

12 THE COURT: All right. Thank you, Mr. Scotton.
13 Sustained.

14 BY MS. MITRANI:

15 Q Is this a flyer or copy of the website?

16 A Website. Well, it's the website. I was confused since
17 you printed it out. I thought it was a flyer, but it was not.

18 Q And going to the next page, as best you can remember, is
19 this what the website looked like?

20 A Yes.

21 Q What language is in there?

22 A Portuguese.

23 Q Is there an airplane there on the upper left saying Sky
24 Air?

25 A Yes.

1 Q And then there are sort of in the middle -- not middle,
2 the upper part, there are links to Sky Air Express, Sky Envio,
3 Sky Air shopping, links, and contact us?

4 A Yes.

5 Q On the bottom, there are some red, two words in red. Do
6 you see that? It says busca rapida. What does that mean?

7 A Fast search.

8 Q And then if we go -- this is the third page of
9 Government's Exhibit 22. What are the members of the jury
10 looking at there?

11 A The purchase options.

12 Q The seventh page of Government's Exhibit 22, what is that?
13 What are the members of the jury looking at there?

14 A The options of items that could be purchased.

15 Q And there are some words that say bem vindos ao Sky Air
16 shopping online. Does that mean welcome to Sky Air shopping
17 online?

18 A Yes.

19 Q What are we looking at at the next page of Government's
20 Exhibit 22?

21 A Well, things for the house, barbecues, grills, or, you
22 know, computers, electronics.

23 Q Did Sky Air offer all of these things for sell with --

24 A If it was on the website, I believe so, right. We didn't
25 have it in stock, but they were there.

1 Q Well, like the camera, if you didn't have it in stock,
2 would you go out and purchase it?

3 A Yes.

4 Q And if it wasn't you, would the defendant go out and
5 purchase items as well?

6 A Yes.

7 MS. MITRANI: Excuse me, Your Honor. I think I
8 overlooked something.

9 BY MS. MITRANI:

10 Q And just one more page. Is this page indicating that Sky
11 Air can be contacted at info at Sky Air online dot com?

12 A Yes.

13 Q Okay. Do you know any individual by the name of Ruebens
14 Amaral?

15 A No.

16 Q Did that name ever come up during the course of your
17 employment with the defendant?

18 A This name sounds familiar, but I don't know who he is or
19 no.

20 Q No, the name didn't come up, is that your answer?

21 MR. SCOTTON: Object, Your Honor.

22 THE COURT: Sustained.

23 BY MS. MITRANI:

24 Q Did the name come up during your employment with the
25 defendant as being involved with the business?

1 MR. SCOTTON: Object, Your Honor.

2 THE COURT: Overruled.

3 THE WITNESS: No.

4 BY MS. MITRANI:

5 Q I think yesterday you testified you were with the
6 defendant, worked for the defendant approximately from
7 September or so of 2010 to early 2012, correct?

8 A 2012.

9 Q Oh, from approximately fall of 2010 to the beginning, the
10 first months of 2012?

11 A Yes.

12 Q Thank you for correcting me. How often would you see the
13 defendant during this time period?

14 A From Monday through Friday.

15 Q Did it seem to you that the defendant was making a lot of
16 money in his business?

17 A Yes.

18 Q What makes you say that? What did you observe?

19 A I would say the money coming in and being deposited into
20 the account because I was the one collecting on those deposits.
21 I would receive checks in very high amounts of money that I was
22 supposed to cash and then give him the money. Also I believe
23 that he live as a very wealthy man. He had a very nice car.
24 He lived in a nice neighborhood. He liked to pay everything
25 for everybody.

1 Q Did you have a baby while you were employed by the
2 defendant?

3 A Yes.

4 Q Did you have a baby shower?

5 A Yes, that actually makes me remember, it reminds me that
6 on the day of my baby shower, he actually purchased everything
7 that was on the list of my baby shower and gave it to me.

8 Q How many things were on your list?

9 A There was a lot of things.

10 Q Do you remember or have knowledge of the defendant buying
11 jewelry?

12 A Yes, he bought a ring for Carla Felini. He would always
13 be buying jewelry for her.

14 Q He would always be buying jewelry for Carla Felini?

15 A Yes.

16 Q And do you remember anything about Halloween costumes and
17 spending money on that?

18 A Yes, he loved to show off. And for Halloween, I believe
19 that he bought a costume. I'm not very sure, but I think that
20 it cost over \$2,000.

21 Q Do you remember what the costume was of?

22 A Batman.

23 Q Did the defendant travel?

24 A Yes, a lot. He would like to go away with Carla Felini's
25 family.

1 Q And remind us, who is Carla Felini?

2 A His fiancée.

3 Q The defendant's fiancée?

4 A Yes.

5 MS. MITRANI: Your Honor, may I have a moment?

6 THE COURT: Yes.

7 MS. MITRANI: No further questions, Your Honor.

8 THE COURT: Cross-examination.

9 THE COURT INTERPRETER: Your Honor, may we take a
10 five-minute break, please? I'm on my own. The other
11 interpreter is running a little late, but I didn't expect so
12 late.

13 THE COURT: Why don't we take until 20 after 10:00.

14 THE COURT INTERPRETER: Thank you so much, Your Honor.

15 THE COURT: All right. All rise for the jury.

16 (Thereupon, the jury exited the courtroom at
17 10:08 a.m.)

18 (Thereupon, the jury entered the courtroom at
19 10:21 a.m.)

20 THE COURT: Let's be seated. And when we left, we
21 were about to start cross. Mr. Scotton, whenever you are
22 ready, you may proceed.

23 CROSS EXAMINATION

24 BY MR. SCOTTON:

25 Q Good morning, Renata.

1 THE WITNESS: May I stand up?

2 THE COURT: If you want to.

3 THE WITNESS: I would like to. It would be at the
4 same height as he is.

5 THE COURT: Sure.

6 BY MR. SCOTTON:

7 Q Good morning, Renata.

8 A All right.

9 Q Are you okay?

10 A Yes.

11 Q How is the kids in those days?

12 A All right.

13 Q You spend a lot on diapers?

14 A He's out from the diapers.

15 Q That's good. Renata used to have a stinky boy, but now
16 he's out diapers. So good.

17 MS. MITRANI: Mr. Scotton, can you speak a little
18 louder. I'm having a hard time hearing you.

19 BY MS. MITRANI:

20 Q Ms. Renata, you told the government that approximately you
21 work for me from September of 2010 to somewhere around March of
22 2012, correct?

23 A Yes.

24 Q Do you still live in Pompano Beach, Ms. Renata?

25 A Yes.

1 Q Can you give to the Court and let the Court know how long
2 you live there?

3 A Three years, four. I don't know exactly.

4 Q Do you have any family member that live here in the United
5 States?

6 A Yes, my sister.

7 Q Anybody else?

8 A My sister, her husband, her daughter.

9 Q How many sisters do you have?

10 A One.

11 Q Did your mother used to live in the United States before?

12 A Yes.

13 Q How long ago did she return back to Brazil?

14 MS. MITRANI: Your Honor, it seems to be getting a
15 little bit intrusive.

16 THE COURT: Why don't we go sidebar for just a moment.

17 (Thereupon, the following was heard sidebar.)

18 THE COURT: Mr. Scotton, what's the relevance of this
19 questioning?

20 MR. SCOTTON: The motivation of this witness being
21 here.

22 THE COURT: How does it go to the motivation?

23 MR. SCOTTON: Well, Your Honor, I'm going to get to
24 the point. The motivation that she's been lying here on the
25 stand.

1 THE COURT: You need to say what the point is, though,
2 so I know why it's relevant.

3 MR. SCOTTON: She has to incriminate herself and
4 that's why she forced here to lie on the stand. She's facing
5 prosecution so she have to come in here and lie.

6 THE COURT: What does that have to do with where her
7 mother lives?

8 MR. SCOTTON: Everybody knows her mother. That's one
9 of the reasons her mother left the country. They couldn't get
10 a green card because that's not a citizen yet.

11 THE COURT: I'm so sorry. I need you to make it a
12 little clearer for me.

13 MR. SCOTTON: Your Honor, I will get straight to the
14 point of the crime that she has committed.

15 THE COURT: Tell me, what it is, so I know if it's
16 relevant.

17 MR. SCOTTON: About what?

18 THE COURT: What is the relevance of asking where her
19 mother lives.

20 MR. SCOTTON: You are not supposed to ask those kind
21 of questions to the witness?

22 THE COURT: Well, if it's not relevant, it shouldn't
23 be asked. If it's the kind of question that starts to get
24 personal, I'm sure you don't mean it this way, but it comes off
25 like your are trying to intimidate the witness. So I need to

1 know what the relevancy is. If it's relevant, that's fine.
2 But if it's not relevant, I'm going to ask you not to do that.

3 MR. SCOTTON: Okay. All right. That will be good.

4 THE COURT: Okay. But I need to know what the
5 relevance is.

6 MR. SCOTTON: I appreciate that, Your Honor. Like you
7 say, I'm not a lawyer and maybe then it was not appropriate,
8 but then I will try to get to the point of where case is.

9 MS. MITRANI: Wait. So since we are here, I just
10 heard him say something about she committed a crime and she's
11 under prosecution. Is defendant -- there's no indictments or
12 nothing against her.

13 MR. SCOTTON: I understand that. It's not anything
14 like that. I know. It's a deal on the table. That's what it
15 is. And I'm going to prove to this jury.

16 THE COURT: It's what?

17 MR. SCOTTON: It's a deal probably on the table to
18 come here and lie.

19 MS. MITRANI: There's no deal.

20 THE COURT: Well, you can ask her if she has a deal
21 with the government. And if she says no, then you are stuck
22 with that answer because there's no -- the government here says
23 there is no deal. And unless you have something that would
24 suggest that the government is not being accurate here, you are
25 going to be stuck with that answer. Do you understand?

1 MR. SCOTTON: Yes, I understand that, Your Honor.

2 MS. MITRANI: Thank you, Your Honor.

3 (Thereupon, the following was heard in open court.)

4 BY MR. SCOTTON:

5 Q Ms. Renata, you have testified to this Court and you have
6 told -- you answered the question to the prosecutor?

7 THE COURT INTERPRETER: She didn't hear, Your Honor.
8 Just one moment.

9 BY MR. SCOTTON:

10 Q You have testified to the Court that you used to work at
11 my house, correct?

12 A Yes.

13 Q How did you used to get to the house every day?

14 A Driving, by car.

15 Q I mean inside the house?

16 A I would ring the bell and you would open.

17 Q Have you ever been in the house by yourself before?

18 A No.

19 Q So you never have the key to the house or the garage
20 control?

21 A No. The control you used to give me sometimes.

22 Q Right. Then why I have to give the garage control for?

23 A I don't know. I don't remember. Sometimes, you know, to
24 do some packaging or to do a dropoff.

25 Q So you agree with me that I give the control because I was

1 not going to be home that day?

2 A Yes, but --

3 Q Please just answer the question. It's yes or no.

4 MS. MITRANI: Your Honor, he's interrupting in the
5 middle of an answer.

6 THE COURT: Mr. Scotton, when you ask a question, you
7 need to let the witness answer completely. And let me instruct
8 the witness, the witness can answer only the question that is
9 asked. But you can answer completely.

10 THE WITNESS: It's part of the question.

11 THE COURT: Okay. You can complete your answer.

12 THE WITNESS: He did give me the control, but between
13 the gate and the door to the house, there was a -- there was a
14 door and he would never give me the key to that door.

15 BY MR. SCOTTON:

16 Q During this process here, how many times did you get
17 together with the prosecutor, Ms. Renata?

18 A Twice or three times.

19 Q Do you recall the days?

20 A Of course not.

21 Q How many hours do you think you spend with the
22 prosecution?

23 A I don't remember.

24 Q Do you recall a name Edison?

25 A Yes.

1 Q Do you recall his last name?

2 A Yes.

3 Q Can you tell the court what his last name is?

4 A Edison Porto.

5 Q Do you recall how Edison got met the defendant?

6 A Met Rogerio?

7 Q Exactly.

8 THE COURT INTERPRETER: Your Honor, please instruct
9 both of them to wait until I finish.

10 THE COURT: Mr. Scotton, I know that you can
11 understand what the witness is saying in Portuguese, but the
12 rest of us can't so we need to hear what the interpreter's
13 translation is. And it's hard, I know. I do it sometimes when
14 Spanish is spoken. You have to wait for the interpreter to
15 interpret before you ask the next question.

16 MR. SCOTTON: I understand. It's something, I guess,
17 is automatic because I'm originally from Brazil.

18 THE COURT: I understand. That's why I'm bringing it
19 to your attention.

20 MR. SCOTTON: Thank you.

21 THE WITNESS: There's no way for me to know because
22 when I met Rogerio, when I met Rogerio, Edison was the one who
23 introduced me to him. So he already knew Rogerio. There's no
24 way for me to know how they met.

25

1 BY MR. SCOTTON:

2 Q Ms. Renata, I was a good boss to you?

3 A Yes. You had your good side, but your bad side as well.

4 Q Because I'm a very picky guy, right?

5 A Right. But when you used to get nervous, you were very
6 nervous.

7 Q Most of the time you used to freak out when I sit at my
8 desk and I see that you have been at my desk?

9 A No, I didn't understand the question.

10 Q Do you recall one time I came to the office, you were
11 already sitting in the office and I asked you, have anybody sit
12 at my desk, and you asked me how did I know that I sit at your
13 desk?

14 A No. Yes, I think what you mean to say is that you were
15 very picky and that, yes, you are.

16 Q Do you recall accident over there by Federal Highway in
17 Palmetto Park involved me in once?

18 A Yes.

19 Q Do you recall that day that I call you from the accident
20 location, you show up?

21 A Yes.

22 Q Do you recall from the accident I went straight to my
23 doctor?

24 A No.

25 Q Do you deny that date on the accident I have handed to you

1 my broke watch?

2 A I deny it.

3 Q You mentioned to the prosecutor earlier on
4 cross-examination that Mr. Raposa, the email that she have show
5 to you, that Mr. Raposa have emailed to you all the information
6 forms, copy of the credit card front and reverse, credit card,
7 and all the good stuff. Do you remember that?

8 MR. SCOTTON: Please, Your Honor, can you direct her
9 just to answer the question.

10 THE COURT: Let me ask you to stop for just a moment.
11 Okay. I need to hear the translation, and the interpreter
12 can't translate you and Ms. Mezentsef simultaneously. So you
13 need to wait for the interpretation. Go ahead.

14 THE WITNESS: I remember I said that, but after I
15 remember that the client was not in the USA. He was in Brazil.
16 And after, I passed the account number and I gave the correct
17 information.

18 BY MR. SCOTTON:

19 Q This two box present here to you in front of you, one of
20 them you say that you are pretty much familiar with the client.
21 Can you tell the court what the client name is?

22 A Four boxes were presented. I can't guess which one you
23 want me to talk about.

24 Q There's more, small box on top right here, the small box
25 with the clothes in here, who is the name of the client?

1 A On the label, it has a client's name, but that's not the
2 client and I don't remember who the client is.

3 Q You told to the prosecutor that the client used to come
4 all the time to the house, come to the house and drop off
5 things in the garage. So you don't remember his name?

6 A No.

7 Q The big box also, do you remember the client that shipped
8 this package?

9 A No. Sky Air has a lot of clients. There's no way for me
10 to remember after two years the names of the clients.

11 Q A lot of the deposits made it to the accounts, the two
12 accounts that you mentioned to the prosecutor. Some of the
13 money was deposited to buy merchandise for the clients,
14 correct?

15 My question to you, Ms. Renata --

16 MS. MITRANI: Your Honor, can we have a sidebar?

17 THE COURT: Yes. You have to remember to wait,
18 Mr. Scotton.

19 MR. SCOTTON: I know, Your Honor.

20 (Thereupon, the following was heard sidebar.)

21 MS. MITRANI: Your Honor, I am sympathetic to
22 Mr. Scotton that he understands. This is becoming almost every
23 question he's interrupting the answer. The witness has a right
24 to answer completely.

25 THE COURT: I agree. Mr. Scotton, I think you

1 understand that. Please try hard to remember to let the
2 interpreter give her answer first.

3 MR. SCOTTON: This is the answer here. She's fluent
4 in English. This is the strategy of the prosecutor to
5 understand and respect that happened here for her because
6 that's the thing, I ask a question yes or no, it's yes or no,
7 and then through the -- Your Honor, let me speak, please.

8 THE COURT: Sometimes it is a yes or no question.
9 Sometimes it requires an explain. When that's the case, the
10 witness is allowed to give an explanation. That's what the
11 rule is. So I know you have been saying yes or no and give me
12 a yes or no. And, you know, if there's no objection, and there
13 hasn't been, I'm not saying anything about it. But the actual
14 rule is that if it cannot be given in a yes or no, or if it's a
15 yes or no, you know, that requires some kind of an explanation
16 to give a complete answer, that that's allowed.

17 So, you know, if it's -- if you can't give a yes or no
18 that is unqualified, then you are allowed to give the answer.
19 In other words, sometimes the answer cannot be a simple yes or
20 no.

21 MR. SCOTTON: Okay. Then the Court want to do this
22 because both of us speak Portuguese. What about then I
23 cross-examine in Portuguese and the translator can translate
24 everything?

25 THE COURT: No. I'm sorry.

1 MR. SCOTTON: Exactly, because that's the strategy of
2 the prosecutor.

3 THE COURT: That has nothing --

4 MR. SCOTTON: Your Honor, she's fluent in English. We
5 going to come to this Court and lie to each other.

6 THE COURT: Mr. Scotton, as I recall, you had a
7 Portuguese interpreter for much of the proceedings in the
8 beginning. I understand you chose not to have a Portuguese
9 interpreter. That's fine. You have the right to do that.
10 Anybody who comes into this courtroom who would feel more
11 comfortable testifying in another language, the Court
12 accommodates that just as it did with you in the beginning.

13 I'm sorry, but this is the way we do it. And you are
14 going to have to wait for the interpreter to give the
15 translation. Okay. You cannot just hear the answer and decide
16 you don't like it and proceed to the next question. It doesn't
17 work that way. All right? Do you understand?

18 MR. SCOTTON: Yes.

19 THE COURT: Thank you.

20 (Thereupon, the following was heard in open court.)

21 THE COURT: I think there was a question pending.
22 There was a question and answer pending, but I don't think it
23 was translated.

24 THE COURT: Let me ask the interpreter. Do you recall
25 what the response was or do we need to have the question again?

1 THE COURT INTERPRETER: I'm sorry, Your Honor, no. We
2 have to have the question again.

3 THE COURT: Please ask the question again.

4 MR. SCOTTON: Please strike the question, Your Honor.

5 THE WITNESS: He doesn't want to do it. He wants to
6 strike it because he didn't like the answer.

7 THE COURT: Ms. Mezentsef, I need to ask you to please
8 refrain from saying anything unless you are answering a
9 question. All right. Thank you.

10 Mr. Scotton, you may proceed.

11 BY MR. SCOTTON:

12 Q Ms. Renata, the set of emails communication that you have
13 with the client pretend to be name Raposa. You deal with that
14 client direct, correct?

15 A Yes.

16 Q But you mentioned to the prosecutor earlier that it was my
17 email?

18 A Because you also interfered with the emails, you also
19 answered the emails.

20 Q Ms. Renata, have you used any of my credit cards to go buy
21 merchandise for clients before?

22 A No.

23 Q Have you signed your name in any my checks from the
24 companies before to cash check?

25 A To sign my name?

1 Q Have you signed my name under the check when I was not
2 even present to cash the check?

3 A No.

4 Q The prosecutor has asked you if you know Ruebens Amaral,
5 correct?

6 A Huh?

7 Q I'm sorry. The prosecutor asked you if you know Ruebens
8 Amaral.

9 A Yes.

10 Q And the reason you don't know Ruebens Amaral because at
11 the time you have no work for me when I dealing with Ruebens
12 Amaral, correct?

13 A I don't know. I don't know him and I never saw him. I
14 never heard of him.

15 Q How many times you went bring package to the PO box on
16 Coral Springs on University Drive do you think?

17 A Almost every day in the beginning.

18 Q And during this time, some of the merchandise including
19 the camera that you bought, how many times you can think that
20 you took merchandise to Mr. Scotton Baker at the PO box for him
21 to pack for us?

22 A I don't understand.

23 Q Have you take any packages to Mr. Scotton Baker -- do you
24 recall taking a package to Mr. Scotton Baker to be prepared to
25 be shipped to Brazil?

1 A Who is Scotton Baker?

2 Q The owner of the Pak Mail.

3 A I would take the packages for Pak Mail and they would wrap
4 it up.

5 Q Do you remember paying them with my credit card before

6 A No, he had an account there. Rogerio would pay for it.

7 Q You mentioned also to the prosecutor here before anybody
8 ship any packages with us, they have to go ahead and pay before
9 anything get shipped, correct?

10 A Yes.

11 Q You agree with me nobody work for free, right?

12 A Yes.

13 Q If you go yourself direct to Federal Express store, the
14 Federal Express going to go ahead and send you a package before
15 you pay them?

16 A In no time did I say they would.

17 Q Do you remember the location of this package shipping
18 store in Coral Springs?

19 A University.

20 Q Do you remember how many different stores around this
21 packing shipping store was?

22 A No.

23 Q So you have been over there many times. You don't
24 remember any stores around pack shipping store?

25 A No. I would go to Pak Mail, not to the other stores.

1 Q Where did you bought the camera that was shipped to the
2 client?

3 A Best Buy.

4 MR. SCOTTON: Your Honor, can we have a sidebar?

5 (Thereupon, the following was heard sidebar.)

6 MR. SCOTTON: I am getting tired of the game. All
7 right. You see, I ask her a question, even before the
8 translator answer the question now, she answer me, even before
9 the translator. So she speaks English. This get to the point
10 it's ridiculous. I want to bring it up to the record.

11 THE COURT: Let's not keep having sidebars about this.
12 Your objections are noted for the record. She's entitled to
13 the services of an interpreter just like you were if she feels
14 more comfortable testifying in Portuguese and --

15 MR. SCOTTON: Even the jurors started laughing before
16 she translated the question.

17 MS. MITRANI: Your Honor, let me put the government's
18 position on the record. This is ridiculous. We object to the
19 defendant's characterization. This defendant is a Brazilian
20 national. She requested a translator. We accommodated it.
21 There is no game going on here. And we object to this
22 characterization.

23 THE COURT: Thank you.

24 (Thereupon, the following was heard in open court.)

25 THE COURT: All right. I just need to also --

1 Ms. Mezentsef, I know that you testified yesterday that you
2 understand some English so you may be tempted at times if you
3 understand the particular question to answer before the
4 interpretation, but I need to ask you to wait for the
5 interpreter to give it to you in Portuguese. Do you agree to
6 do that?

7 THE WITNESS: Yes.

8 THE COURT: Thank you very much. I appreciate that.

9 All right. Whenever you're ready, Mr. Scotton.

10 BY MR. SCOTTON:

11 Q Do you recall when the Merry Mailman store was opened in
12 Boca Raton?

13 THE COURT INTERPRETER: Was what? I'm sorry.

14 BY MR. SCOTTON:

15 Q When the Merry Mailman store was opened in Boca Raton.

16 A No.

17 Q Do you recall on the beginning of the construction of the
18 store in Boca Raton?

19 A Yes.

20 Q Do you recall how many people used to work over there
21 during the construction?

22 A No, because he would always change the workers.

23 Q Do you recall Mr. Marco Moura work at the store?

24 A Yes.

25 Q What Marco Moura used to work over there?

1 THE COURT INTERPRETER: I'm sorry, repeat the
2 question.

3 BY MR. SCOTTON:

4 Q What did Marco Moura used to do over there at the
5 location?

6 A He did the electrical part of it.

7 Q Is anything else besides that?

8 A No.

9 Q Did he done any painting, any other construction?

10 A No.

11 Q You mentioned to the prosecutor that the defendant -- that
12 I used to travel a lot.

13 A Yes.

14 Q Do you recall that I used to travel to racing events and
15 some racing training?

16 A Only one of them was for that.

17 Q Do you recall when was the day that you remember?

18 A No.

19 Q Do you recall anybody that went with me during the race
20 event?

21 A This trip that he did, he made Sady, Carla Felini's father
22 went with him.

23 Q You don't recall exact the date that I went over there?

24 A No.

25 Q How long that I was -- I went away?

1 A I don't remember.

2 Q So during that time that I went away, Ms. Felini (sic),
3 how did you get in the house?

4 A During this time, he allowed me to go into the house. He
5 gave me the key.

6 Q So you are saying that's the only time?

7 THE COURT INTERPRETER: It's too loud, Your Honor.
8 She's just going to adjust the volume.

9 THE COURT: Okay.

10 THE COURT INTERPRETER: Your Honor, I'm going to
11 change because I think the battery is going bad.

12 BY MR. SCOTTON:

13 Q Ms. Renata, do you remember Marco Arce?

14 A Yes.

15 Q How many times can you say that Marco went to the house?

16 A I don't know. He used to go there many times.

17 Q Where is Marco from, Ms. Renata?

18 A Brazil.

19 Q How many times you can say that Mr. Junior Silva also was
20 in the house?

21 A Who?

22 Q Junior Silva.

23 A Twice, three times, I don't know.

24 Q And those times that you saw Junior Silva in the house,
25 did Junior Silva sleep over?

1 A Yes.

2 Q Can you tell this court where Junior Silva is from?

3 A Brazil.

4 Q When did Junior Silva leave?

5 A Leave from where?

6 Q United States, Ms. Renata.

7 A I don't understand.

8 Q Where did Junior Silva live here in the United States?

9 A Boston.

10 Q You have testified here to the prosecutor here a minute
11 ago, Ms. Renata, that you suspect that something was wrong of
12 shipping packets, and I paid for the shipping costs, correct?

13 A Yes.

14 Q You also have say here to the prosecutor that time to time
15 used to call Federal Express, DHL, other companies to request
16 what the problem with the box was, correct?

17 A Yes.

18 Q When you called Federal Express, do you recall what kind
19 of number that is to call, a 1-800 number?

20 A No, I don't remember.

21 Q You used to call Federal Express in the United States,
22 right?

23 THE COURT INTERPRETER: Can you repeat that, please.

24 BY MR. SCOTTON:

25 Q You used to call Federal Express here in United States as

1 well, right?

2 A Yes.

3 Q So in order to request information from Federal Express
4 here in United States, request that you speak the language of
5 English, right?

6 A Yes.

7 Q So was pretty much a request for you to speak English to
8 work for me, right?

9 THE COURT INTERPRETER: I didn't understand the
10 question. I'm sorry.

11 BY MR. SCOTTON:

12 Q Was it request from day one when I hire you that you speak
13 English as well, right?

14 A Yes.

15 Q Let's go back here to the pack and ship store. You
16 mentioned that I have account with the pack and ship store and
17 that's how they used to charge me for, right?

18 A (Speaking Portugese.)

19 Q This is not true.

20 MS. MITRANI: Your Honor.

21 THE WITNESS: Huh?

22 THE COURT INTERPRETER: I'm sorry, Your Honor, you
23 know what happens.

24 THE COURT: I'm sorry. I know this the third time you
25 are answering this question. Would you mind answering it a

1 third time, please.

2 THE WITNESS: I don't know what type of agreement he
3 had with the store's owner. Sometimes I would take the money
4 and I would pay cash.

5 BY MR. SCOTTON:

6 Q It's not true. Most of the time I would pay them with a
7 credit card, Ms. Renata?

8 A I don't know if it's true or not. If you would pay them,
9 the one who would know the truth is you.

10 Q You don't recall making payments use my credit card all
11 the time?

12 A No. He never trusted anybody. How would he give me his
13 card.

14 MS. MITRANI: Your Honor, the defendant is requesting
15 some assistance with some documents.

16 THE COURT: All right.

17 MS. MITRANI: I guess, for the record, the government
18 has put up TD166, 167.

19 THE COURT: You mean the defense?

20 MS. MITRANI: Yes, Your Honor. Thank you.

21 THE COURT: All right. Thank you.

22 BY MR. SCOTTON:

23 Q Can you see what the screen shows, Ms. Renata?

24 A Yes.

25 Q Can you see over there it shows Best Buy, Coral Springs?

1 A Yes.

2 Q Can you tell the jury what the Best Buy Coral Springs is?

3 A What is Best Buy?

4 Q Yes.

5 A It's a store that sells electronics.

6 Q Do you see there Pak Mail \$56.28?

7 A Yes.

8 Q Paid to Pak Mail, Coral Springs?

9 A Yes.

10 Q What the 56.28 was for?

11 A I don't know.

12 Q That's the Pak Mail you used to go drop off packages,
13 right?

14 A But you also used to go there.

15 Q So we can say to the court that I used to pay them for the
16 packing costs to shipping packets with my credit card, right?

17 A Yes, but there's also a chance of this document not being
18 true.

19 Q Ms. Renata, it is true. It came from the government.

20 A Okay.

21 Q Do you remember this picture, Ms. Renata?

22 A Yes.

23 Q Do you remember the day of this picture?

24 A No. Would you like to remind me of it?

25 THE COURT: You can respond.

1 BY MR. SCOTTON:

2 Q Do you remember what place we sitting there right now?

3 A Miami.

4 Q What are we seeing in the background?

5 A It's a racing track.

6 Q Which racetrack is that?

7 A I don't know the name. I don't remember it.

8 Q You say it was in Miami, correct?

9 A Yes.

10 Q Who is the man in the blue over there hugging you?

11 A My daughter's father.

12 Q Okay. Do you see on his finger, he's got a wedding band?

13 A Yes.

14 Q Did you recall this race in March 2011?

15 A Yes.

16 Q When supposed to be married to Mr. John Mezentsef?

17 A I was married to John.

18 Q Ms. Renata, have you commit immigration fraud?

19 A No.

20 Q Have you paid to marry Mr. John to benefit immigration?

21 A No.

22 Q Is not the truth that you have put the name of your baby
23 the name of John knowing that Mr. Marco Moura is the real
24 father?

25 A No.

1 Q As a matter of fact, you so afraid to get prosecuted, you
2 came to this court here and lied to this judge here and the
3 court?

4 MS. MITRANI: Objection, Your Honor.

5 THE COURT: I didn't actually understand the question.
6 Can you say it one more time.

7 MR. SCOTTON: Yes, Your Honor.

8 BY MR. SCOTTON:

9 Q You are so afraid of facing prosecution of the crime you
10 committed that you lied to this court?

11 MS. MITRANI: Judge --

12 THE COURT: I'm sorry. Just one second. The
13 objection is overruled, but you will have an opportunity to
14 redirect.

15 THE WITNESS: I don't have any reason to be fearful of
16 anything. I did not do anything wrong.

17 BY MR. SCOTTON:

18 Q Right, but 2011, March of 2011, you at the racetrack with
19 a man that was your husband have a wedding band on his hand,
20 and did you recall your so-called husband John at the racetrack
21 with us?

22 A No, he was not in the same racetrack. His girlfriend was
23 there and there is a picture of it also hugging him. This
24 doesn't mean anything. The wedding band doesn't mean that he's
25 married to me.

1 Q You cried in the court before. What was the reason you
2 cry in the court for?

3 A Yes, the reason I cried has nothing to do. It's my
4 feelings. I cried because I'm under pressure.

5 Q Let me get this straight.

6 MS. MITRANI: Your Honor.

7 THE COURT: Just a moment, Mr. Scotton. I'm sorry,
8 was the answer finished?

9 THE WITNESS: No. Ever since this started two years
10 ago, my life changed. Nobody wants to go through this, and
11 that's why I cried. I got emotional.

12 MS. MITRANI: Your Honor, I ask defendant to step back
13 to the podium and not be so close to the witness.

14 THE COURT: Yes, Mr. Scotton, if you are not using the
15 machine at the time, please do your questioning from the
16 podium.

17 BY MR. SCOTTON:

18 Q Here's another picture right here, Ms. Renata?

19 A Uh-huh.

20 Q Can you tell the jury who's in the picture?

21 A Marcos, you, and I.

22 Q And there's another picture right here. Can you describe
23 to the jury who those three people in the picture are?

24 A Marcos, myself, and Tiago.

25 Q And Tiago, is the boss of your husband, right?

1 A No.

2 Q So Tiago, so Marco --

3 THE COURT: Just a moment, Mr. Scotton. I'm sorry.
4 Let me ask the interpreter, you were putting your hands up. Is
5 there a problem?

6 THE COURT INTERPRETER: No, they were talking before I
7 finish. Sorry.

8 THE COURT: That's okay.

9 BY MR. SCOTTON:

10 Q So are you saying that Mr. Tiago is not your husband
11 Marco's boss?

12 A No.

13 Q Ms. Renata, if you have not done anything wrong, why are
14 you feeling pressure?

15 A Exactly because of that, because I never had to go through
16 that in my life.

17 Q Why are you feeling pressure?

18 A I have already answered.

19 Q You are currently right now separated from Mr. John?

20 THE COURT INTERPRETER: I'm sorry, I didn't understand
21 the question.

22 BY MR. SCOTTON:

23 Q You are now separated from Mr. John, correct?

24 A Yes.

25 Q Ms. Renata, what is the status for your husband Marco

1 Moura?

2 THE COURT INTERPRETER: I'm so sorry. I did not
3 understand the question.

4 MS. MITRANI: I didn't hear the question. Your Honor,
5 can I hear the question again?

6 THE COURT: He's going to ask it. It wasn't
7 translated anyway.

8 BY MR. SCOTTON:

9 Q All right. Then let me rephrase the question, Your Honor.
10 It is not the truth that your husband Marco Moura live in this
11 country?

12 MS. MITRANI: Objection to the foundation of that
13 question.

14 MR. SCOTTON: Your Honor, it is relevant. It is the
15 motive.

16 THE COURT: Mr. Scotton, if I need more information, I
17 will be happy to ask for it. Okay? Overruled.

18 THE WITNESS: First of all, Marcos Moura is not my
19 husband. What was the other question?

20 BY MR. SCOTTON:

21 Q Is Marco Moura living illegal in this country?

22 A Yes.

23 Q So he's not your husband, but he's the father of your
24 daughter?

25 A Yes.

1 Q And your boy?

2 A No.

3 Q No?

4 A No.

5 Q If this court required DNA on your boy, who is going to be
6 show the father?

7 MS. MITRANI: Objection, Your Honor.

8 THE COURT: Sustained.

9 THE WITNESS: I can answer.

10 THE COURT: That's okay. I sustained the objection.
11 So there's no need to answer.

12 BY MR. SCOTTON:

13 Q The prosecutor made any deal with you to come to this
14 court and lie?

15 A I am not a woman of agreements.

16 Q Ms. Renata, are you some kind of voice expert?

17 A No.

18 Q The prosecutor has showed to the court some recordings
19 yesterday, and you appoint that the recorder is the defendant?

20 A Yes. I didn't finish yet. I heard your voice for almost
21 two years.

22 Q But you are not a voice expert, have you?

23 A No.

24 Q Have you been trained for that?

25 A No. Were you trained to be an immigration officer?

1 MR. SCOTTON: Objection, Your Honor.

2 THE COURT: Let's just answer the questions that are
3 asked. All right? Thank you.

4 BY MR. SCOTTON:

5 Q Is any reason that you show this hostile here for me in
6 court?

7 A No. Because you were always hostile with everybody, you
8 are not used to somebody being hostile with you.

9 Q Is there any reason in particular you are here look like
10 mad to the defendant?

11 A The reason is that I didn't want to be in this situation.

12 Q You told the prosecutor here, Ms. Renata, that everything
13 seems to be suspect and everything else. But you never quit
14 the job. You continue to work for me. Is there any reason
15 why?

16 A I never saw that.

17 Q The prosecutor just asked you question. You told the
18 prosecutor was suspect. You called Federal Express. Federal
19 Express say some kind of problem with the account. But you
20 continue to work with me?

21 A I didn't say that. No, you can review it. I said that
22 when the packages had a problem, I would call to see what the
23 problem was.

24 Q Do you recall Mr. Osvaine Duarte?

25 A Yes.

1 MS. MITRANI: Your Honor, can we have a sidebar?

2 THE COURT: All right.

3 (Thereupon, the following was heard sidebar.)

4 MS. MITRANI: Your Honor, yesterday we made an
5 agreement with the defendant concerning admissibility of
6 records. He agreed to stipulate to Bank of America. We agreed
7 to stipulate to pictures Bates stamped RSPIC 1 through, I
8 believe, 39. So the 39 pages, some of the pages have multiple
9 images. He's now taking off --

10 MR. SCOTTON: Did we agree on 50 pictures here?

11 MS. MITRANI: We agreed on what was Bates labeled.

12 MR. SCOTTON: My question is, do we agree on 50
13 pictures?

14 THE COURT: Mr. Scotton, you have to let her say what
15 the position is so I understand what you are responding to
16 first. All right?

17 MR. SCOTTON: I'm sorry.

18 THE COURT: Finish explaining.

19 MS. MITRANI: So he gave me the pictures. We Bates
20 labeled it. I gave him a copy of the Bates label. And I think
21 one of the ones he showed had a Bates label on it. These don't
22 have Bates labels. If he wants to show them, fine, but I
23 haven't agreed to their admissibility. So the agreement was
24 the Bates labeled pictures we wouldn't object to.

25 THE COURT: Mr. Scotton, response?

1 MR. SCOTTON: Why didn't she approach at the desk. We
2 can agree on 50 pictures. Investigator hand her 50 pictures
3 and all those pictures. If the picture doesn't have label, I
4 should be object to the label on my pictures now. She has
5 control of the labels. I don't. The agreement was 50
6 pictures. Now she says 39 pictures. The agreement was we
7 agree on 50 pictures. If the pictures doesn't have a label, I
8 don't know what to tell you. I agree on 50 pictures. She just
9 confirm with you there's only 39 pictures here. So we missing
10 some pictures.

11 MS. MITRANI: That's not what I said. Some of these
12 pictures have multiple images. Mr. Scotton, I told you you can
13 pick out your pictures. You gave them to me. I Bates labeled
14 them anticipating this problem. If you want to show her that
15 one, fine, but I want to make it clear, you gave me those, we
16 Bates labeled it. Here's an example. Picture 35 has three
17 pictures on it.

18 MR. SCOTTON: This is on file. Just because I have
19 three images --

20 THE COURT: Mr. Scotton, there is apparently a
21 communication issue here. The government said 50 pictures.
22 The government says there are 50 pictures. It's just that it
23 has -- you have characterized what is a picture differently
24 from the government. But in any case, I guess it doesn't
25 matter because the government, if I'm understanding correctly,

1 these are all the pictures that Mr. Scotton gave you that he
2 said he wanted to include. Is that right?

3 MS. MITRANI: I think. He gave us a broad universe of
4 pictures and we did him a favor of printing them out. And we
5 gave them back to him and I told him to pick his pictures. He
6 gave me a stack. I don't know if there were 50, 40, or 60
7 images. He gave me the stack. I said, I'm going to label
8 them, I'm going to give you a copy, and I'm going to keep a
9 copy. That was our agreement. I don't want to hold this up.
10 If he wants to show one picture, fine. But if he wants to use
11 other pictures, we would have to address it with the court.

12 THE COURT: The reason the government puts the labels
13 on is so there are no questions during the proceedings which
14 pictures were agreed to or not. We can tell because the ones
15 agreed to have a label on them. And they are printed out which
16 they printed out for you. So it is their records at this
17 point. So they can put the labels on them like they wish to.

18 MR. SCOTTON: I appreciate that. The prosecutor
19 mentioned she did a favor to print those picture. The
20 agreement was 50 pictures. Here is only 39 pictures. So we
21 missing some pictures. If she want me to, I will provide with
22 the leftovers, but I should have 50 pictures labeled.

23 THE COURT: I tell you what, she said she's not going
24 to object to this one. We will do this one now, and over lunch
25 you two can figure out if there are any other ones you want to

1 agree to or not.

2 MS. MITRANI: All right.

3 MR. SCOTTON: Thank you, Your Honor.

4 (Thereupon, the following was heard in open court.)

5 BY MR. SCOTTON:

6 Q Who is this man in the picture, Ms. Renata?

7 A Osvaine.

8 Q Do you remember where Osvaine used to live?

9 A Georgia. I am not sure.

10 Q Georgia the state? Do you remember the city?

11 A No.

12 Q During your pregnancy, how many times did you work from
13 home?

14 A Very few times, almost none.

15 Q And during your very little time you work from home,
16 Ms. Renata, how did you used to communicate with the clients?

17 A Email.

18 Q Do you deny the defendant used to transfer the phone lines
19 to your cell phone?

20 A Yes, you must be talking about after I had the baby. I
21 think you are confused.

22 Q Ms. Renata, please just answer the question. I'm asking
23 the questions here, please.

24 A You were not my boss here. You don't place the orders
25 here.

1 MR. SCOTTON: Your Honor, can you direct Ms. Renata
2 please answer the questions.

3 THE COURT: Well, I have already explained to
4 Ms. Mezentsef what she has to do. But you have to allow her to
5 answer the questions that are asked. Go ahead and ask another
6 question.

7 BY MR. SCOTTON:

8 Q Have you given a false statement here to this court,
9 Ms. Renata?

10 A No.

11 Q Did you recall Mr. Frank Cavalcante coming to my house as
12 well?

13 A I think once.

14 Q Did he spend the night over?

15 A I think so.

16 Q Did you recall Patricia, the housekeeper?

17 A Yes.

18 Q Have Patricia been in the house without my presence
19 before?

20 A I don't know.

21 Q You work for me from Monday to Friday, correct?

22 A Yes.

23 Q So you don't know if Patricia has been to the house?

24 A No, because the day doesn't end at 5:00. It ends at
25 midnight, and she could have gone during the weekends.

1 Q If Patricia comes at night, I guess she's not my
2 housekeeper; she might be something else, right?

3 A You are the one who is saying it.

4 Q Due to my travel to Texas for the race, Ms. Renata, did
5 you work for me from your house or my house?

6 A Didn't you ask me if I had gone in your house?

7 Q Ms. Renata, please answer the question.

8 A Yes.

9 Q You did? You remember communicating with the clients,
10 Ms. Renata, that day?

11 A No.

12 Q Just sit in the house doing nothing?

13 A You asked me if I remember. I don't remember.

14 Q What did you do in the house that day then, Ms. Renata?

15 A I don't remember.

16 Q So you got the key to the house, you go to work, and you
17 don't know what you do in the house?

18 A Right.

19 Q During that day, did you engage in contact Federal Express
20 for any problems with the packets?

21 A There's no way for me to say. It's more than two years.

22 Q Ms. Renata, you are very familiar here with every single
23 question prosecutor asked about the question, but now you can't
24 remember anything?

25 A Because they showed me the evidence and I answered.

1 Q Because you have seen them before and talked to them for
2 several hours, right?

3 A No.

4 Q So you mention about a baby shower, your baby shower. I
5 bought all the gifts for you during your baby shower?

6 A Not all, but a lot of them, everything that was on the
7 list, you know, the store list. You brought some.

8 Q I was kind of nice to you most of the time, right?

9 A Yes, you were nice, but you wanted everybody to see that
10 you were being nice.

11 Q I used to be nice to your kids, right?

12 A You didn't see them that often, but when you saw them, you
13 were nice.

14 Q I used to bottle feed your boy, right?

15 A Sometimes, yes.

16 Q Ms. Renata, I used to be a nice guy to you most of the
17 time, right?

18 A Yes, you were nice.

19 Q I asked before here in the courtroom here at night that
20 you engage in committing fraud to immigration, correct?

21 A Yes.

22 Q Ms. Renata, when did you marry Mr. John?

23 A June 7, 2010.

24 Q When did you have your immigration, your immigration
25 interview?

1 A I don't remember. I had two interviews. I don't
2 remember.

3 Q So the interview was 2011, 2010?

4 A 2010.

5 Q And who was present during this interview?

6 A Myself and my husband, John.

7 Q Was any immigration officer there?

8 A The one who interviewed me.

9 Q Where is Mr. John from, Ms. Renata?

10 A New York.

11 Q Did he have dual citizenship?

12 A He's a Spaniard's son.

13 Q Did he speak Portuguese?

14 A Yes.

15 Q Does testify a Brazilian citizenship?

16 A He is the son of a Brazilian woman.

17 Q During the interview with your husband and the immigration
18 office, did you request an interpreter there too?

19 A No.

20 Q So the whole interview was conducted in English?

21 A Yes.

22 Q Did you already apply for your citizenship, Ms. Renata?

23 A No.

24 Q Do you deny that Mr. Marco Moura live with you,
25 Ms. Renata?

1 A No, I don't deny.

2 Q And Mr. Moura live with you in the same address in Pompano
3 Beach?

4 A He lives there.

5 Q Do you recall the day of baby shower, Ms. Renata?

6 A Some things, yes.

7 Q Can you give to this court the day of your baby shower?

8 A No.

9 Q Was Mr. Marco Moura present during the baby shower?

10 A Yes.

11 Q Because he's your husband?

12 A That's what you are saying. My husband is John.

13 Q Because he's the father of your kid?

14 A If he is my son's father or not, I can have sex with
15 anyone I want.

16 Q The reason here is that you engage in mail fraud and
17 because you are engaging in -- I mean, immigration fraud. You
18 tried to --

19 MR. SCOTTON: Your Honor, let me strike that and
20 rephrase the question, please.

21 THE COURT: All right.

22 BY MR. SCOTTON:

23 Q The way you attacked me here as I tried to cross-examine
24 you and you crying before and all this nonsense here is the
25 fact that you are nervous of getting prosecution because you

1 are engaged in illegal marriage, not only you have to separate
2 from Mr. John, you also engaged to put the baby on his name
3 knowing Marco is the father?

4 A If Marco is his father or not, it's my problem. I can do
5 sex with whoever I want. If we are going to talk about my
6 personal life, of course, let's start from the beginning
7 because I have a lot to say.

8 Q Ms. Renata, I'm going to ask you again to answer only the
9 question I'm asking you, please.

10 A I am answering.

11 MR. SCOTTON: Your Honor, the witness is out of order.
12 You already say for the witness to answer the question.

13 THE COURT: Mr. Scotton, thank you. Ask your next
14 question, please.

15 BY MR. SCOTTON:

16 Q During the opening of the store, Ms. Renata, how many
17 people work at the store?

18 A You have already asked that, and I told you I don't
19 remember.

20 Q So you don't know if any other people used to work at the
21 store?

22 A After it was ready?

23 Q Yes.

24 A In the beginning it was you and I, and after, you hired
25 another person.

1 Q Did you recall Christina Felini training you over there on
2 the computer?

3 A Not me, she never trained me. The other girl was already
4 trained from Carla's store, the girl that you hired.

5 Q Do you recall call me from the store and to advise that
6 Carla Felini was there to work on a price list off the
7 computer?

8 A No. If you would like to ask that question again, I
9 really didn't understand very well.

10 Q Ms. Carla Felini is the one who walked to the store to do
11 the price list on the computer?

12 A Once she did go the store because you asked her to do the
13 price list because she had experience from the other store.

14 Q During the process that I have been indicted with this
15 crime, Ms. Renata, is any particular reason why you and
16 Ms. Felini went to the store and took the box off the cameras?

17 A I didn't understand.

18 Q During my arrest and charge of this crime, you and
19 Ms. Felini went to the store and took the hard drive for the
20 cameras, the surveillance cameras from the store. Is there any
21 reason why?

22 A I didn't take any cameras.

23 Q Did you guys take files out of the store?

24 A No. I went to the store to get my belongings.

25 Q Did you recall my mother go to your house to get the key

1 of the store?

2 A No, she didn't go to my house. She did go to my house to
3 threaten me.

4 Q Right. 70 years old legally blind woman go to your house
5 to threaten you?

6 A Yes.

7 Q It is not the true the day she went to your house, she
8 just recovered from major surgery?

9 A Yes, but she have the strength to go to my house, yell my
10 name out, and the door was slightly open, and she went through
11 the door.

12 Q What is the reason that 70 years old legally blind woman
13 recovering from surgery go to your house and threaten your life
14 for?

15 A She's a mother. I am a mother.

16 Q What does that have to do with this, Ms. Renata?

17 A And what does all this questioning have to do --

18 MR. SCOTTON: Your Honor, please. Your Honor, please,
19 can you direct Renata again, Your Honor.

20 THE COURT: Mr. Scotton, come sidebar, please.

21 (Thereupon, the following was heard sidebar.)

22 THE COURT: All right. I don't mind giving you some
23 help, but you have to control your own witness. She's
24 answering your questions. It might not be the answer you like
25 or want. She's answering your questions. You are going to

1 have to live with the answers you get. All right. That's it.

2 MR. SCOTTON: Your Honor, she asked the question.

3 THE COURT: You cannot -- yes, it's somewhat sarcastic
4 in response, but her answer to anybody who's paying attention
5 is basically understood to mean, I don't know why she would do
6 it, but I also don't know why you are asking me these
7 questions. In other words, she's saying there's no sense to
8 either part of it. So she is answering your questions. You
9 need to ask the questions. You can't after every single
10 question ask me to instruct her. I'm not going to do that
11 unless she gets out of hand. But she has not been
12 inappropriate. So I've done it when she has not answered the
13 question. You need to ask questions.

14 MS. MITRANI: Can I bring something up here?

15 THE COURT: Yes.

16 MS. MITRANI: As he was asking these questions about
17 her marriage and kids and what have you, I was looking over my
18 notes from prep session. I want to say in the prep session she
19 said she was unsure. I think she said it here. So we are
20 clear and there's complete disclosure, she said she did not
21 know who the father of her son was. I think she answered that
22 way, but I want to make it crystal clear the disclosure to the
23 extent there's any Giglio or Brady issue.

24 THE COURT: Thank you.

25 MR. SCOTTON: She engaged in illegal marriage. That's

1 the bottom line. I'll go back to my questions.

2 (Thereupon, the following was heard in open court.)

3 BY MR. SCOTTON:

4 Q Let's go back here to the situation of 70-year-old lady
5 trying to attack you in your house.

6 A She did not attack me. I didn't say that. She didn't
7 even touch me.

8 Q Ms. Renata, did you return the keys to my mother?

9 A Yes.

10 Q Did you return -- after return the key, did you return to
11 the store with Felini also that has a key?

12 THE COURT INTERPRETER: Can you repeat the last part
13 of the question.

14 BY MR. SCOTTON:

15 Q Have you returned to the store after returning the key to
16 my mother?

17 A I don't remember if it was before or after.

18 Q So you returned the key, and without authorization, you go
19 back to the store, correct?

20 A I don't remember if I had the key or if I went there after
21 I gave her the key and I went there with Carla.

22 Q On March 6 of 2012, Boca Police Raton Department have
23 dispatched officer to the store, do you recall that day?

24 A I don't understand the question.

25 Q On March 6, 2012, we have investigation from officers from

1 Boca Raton at the Merry Mailman store. Do you recall that?

2 A Yes.

3 Q And do you recall the reason was?

4 A Yes.

5 Q Can you tell the court what the reason was?

6 A It's a pleasure.

7 Q It's not the truth that, Ms. Venusa, there used to be --

8 THE COURT: Mr. Scotton, I think she was saying she
9 would be happy to do it. You have to let her do it.

10 MR. SCOTTON: No, Your Honor. The question was what
11 the reason that police officer went to store and I'm going to
12 go ahead and rephrase it.

13 THE COURT: All right. Go ahead.

14 BY MR. SCOTTON:

15 Q It is not the truth that report that Ms. Venusa has stolen
16 identity of one of my companies?

17 A Yes, because you were upset because Carla showed and
18 talked --

19 THE WITNESS: No.

20 MS. MITRANI: Objection. The translator has to
21 translate it.

22 THE COURT: All right. Why don't you give the answer
23 one more time.

24 THE WITNESS: Yes. You were upset because Venusa, the
25 cleaner, went to Carla's store to talk about you, to talk bad

1 things about you, saying that she had videos of you. And you
2 were so upset with Venusa that in order to get back at her, you
3 called the police and made a police report.

4 BY MR. SCOTTON:

5 Q So someone called the police to make a report someone
6 because they mad?

7 A Well, coming from you, yes.

8 Q Not FPL and Comcast has called the store say my account is
9 past due and they are going to disconnect the accounts?

10 A I don't remember.

11 Q If I present the bills here right now to this court here,
12 it's going to show that you are lying, right?

13 A I don't know what he's talking about. I don't remember.
14 What bills, Venusa's bills?

15 Q Venusa has opened accounts, FPL accounts, AT&T, Comcast
16 under the name of my company, correct?

17 A Yes, I believe with your authorization.

18 Q Right. And with my authorization I called the cops to
19 report that?

20 A Yes, you always have something planned.

21 Q Did you enjoy work for Sky Air, Ms. Renata?

22 A Yes, I used to like working there. You know, sometimes
23 clients would complain, but that's common.

24 Q Have you got any calls from Federal Express or DHL or UPS
25 claim that Sky Air was committing fraud against them?

1 A No.

2 Q Have any employee from Federal Express, DHL, or UPS came
3 to our location?

4 A No.

5 Q Have we receive any kind of complaint of somehow from
6 anybody that I was committing any kind of fraud against
7 shipping packets?

8 A I didn't understand.

9 Q Have we got any kind of formal official complaint of
10 someone saying that we are committing fraud by shipping
11 packages?

12 A No.

13 Q So you work for me almost two years. No complaint has
14 came from those companies that a fraud was committed?

15 A Not that I remember.

16 Q Not only we have not received any complaint about any
17 fraud being committed, those companies that have been charged
18 of committing fraud has approved me to open a store, correct?

19 A In the beginning, you were not able to open accounts in
20 the store with the DHL.

21 Q Ms. Renata, that's not the question. The question is that
22 did I get approved and I open store, authorized shipping
23 center?

24 A Yes, anybody has the authorization, can have the approval
25 to open a store, DHL, Fed-Ex. But in the beginning, DHL did

1 not have any pickups and did not open the -- did not allow you
2 to open the account.

3 Q Ms. Felini (sic), have you seen anybody from the post
4 office come to the store?

5 A Felini?

6 Q Have anybody from the post office come to the Boca Raton
7 store?

8 A Yes.

9 Q Have they trained you how to operate the system?

10 A Yes.

11 Q Have they show you how to log into the website by stamps
12 and to also refill the machine?

13 A Not me, but the other girl who worked there Luely.

14 Q Have you seen employees from Federal Express come to the
15 store?

16 A Yes.

17 Q Have you see them picking up packages in the store?

18 A Yes.

19 Q Did you recall from in the back of the store was a sticker
20 that required every single driver needed to be scanned?

21 A Yes.

22 Q But sometimes the driver failed to scan it. Do you
23 remember that?

24 A No.

25 Q Do you remember if Grace Felini bring her baby to the

1 store several time when she was training us?

2 THE COURT INTERPRETER: I'm sorry. I didn't
3 understand the question.

4 BY MR. SCOTTON:

5 Q Do you remember Ms. Christina Felini bring her baby to the
6 store during the time that she was training us?

7 A Yes.

8 Q So remember because it was true?

9 A Yes.

10 Q Do you remember that Ms. Felini was helping us understand
11 the system that they have knowledge from the other store?

12 A Yes, she stayed with Luely.

13 Q How long Luely work for the store, Ms. Renata?

14 A You probably know that better than I do. I don't know.

15 Q Do you recall that I let Ms. Luely because the store was
16 too slow?

17 A Yes.

18 Q And at that point the only person work at the store was me
19 and you?

20 A Yes. And my two-month-old baby.

21 Q Her baby committed mail fraud?

22 MS. MITRANI: Objection.

23 THE COURT: Overruled.

24 THE WITNESS: No.

25

1 BY MR. SCOTTON:

2 Q Have I engaged in changing diapers in my store before?

3 A No, you never changed diapers, but you did complain about
4 the smelly diapers.

5 Q But I feeding him many times?

6 A Yes.

7 Q Do you think your son loved me?

8 A No, he doesn't even remember you.

9 Q What a shame. Ms. Renata, during this period that we work
10 by ourselves at the store, how did you get familiar with the
11 system, with the computer system, if you claim that Ms. Felini
12 never trained you, only trained the other employee?

13 A Without wanting to brag about myself, you know, I knew a
14 lot and Luely would be beside me and I would look at what she
15 was doing and I learned a lot with her.

16 Q So Ms. Luely that was working there for only three months
17 that has been training by Chris is still with difficulty on the
18 system, she is the same one that trained you?

19 A Wasn't trained only by Chris. She also worked at Carla's
20 store. She didn't need to train me. She would be beside me to
21 see how I would do the work. She could be lazy with other
22 things, but she was really smart with the program.

23 Q So are you saying that Ms. Luely used to be employee from
24 Ms. Carla Felini?

25 A She was Carla's employee.

1 Q How long she work for Mrs. Felini?

2 A I don't know. She went to Carla to be trained and then
3 she went to the store.

4 Q So you kind of confused. So she went over there for
5 training, now she work for Felini?

6 A No, I didn't -- I'm not confused. When the person gets
7 paid, she gets paid to work.

8 Q So Ms. Felini pay her to work in her store?

9 Ms. Felini has pay her to work in her store?

10 A I don't know if it was Carla or if you paid her.

11 Q The Federal Express drivers, they used to come either to
12 the house or the store complain about illegal shipments to you?

13 A No.

14 Q Did you remember any clients from Sky Air came to the
15 Merry Mailman store?

16 A Only the owner of that box. And after pregnancy, when I
17 was at home, I was home, I was not there.

18 Q You remember a client come to the store, but you know
19 that?

20 A Yes.

21 Q Besides being a good mother, now you are a magician?

22 A No, I'm not a magician.

23 Q How do you know this client went to the store when you are
24 not present in the store, Ms. Renata?

25 A You know what gossiper means?

1 Q Yes.

2 A Luely called me and told me.

3 Q Has Ms. Luely work for Sky Air, Ms. Renata?

4 A No, sir.

5 Q How can she know the person that went to store is from Sky
6 Air?

7 A She was in the desk right in front and the client was
8 there. She called me to tell me that the client was desperate,
9 was really upset, and he wanted to talk to somebody.

10 Q Do you remember that?

11 A If I'm saying it, it's because I remember.

12 Q But you don't remember the name of the client?

13 A This client Leandro.

14 Q Where is Leandro from, Ms. Renata?

15 A I have no idea.

16 Q Did he live in Florida?

17 THE COURT: Mr. Scotton, you have to wait for the
18 translation, please.

19 THE WITNESS: I don't know. I don't think so.

20 BY MR. SCOTTON:

21 Q Are you being coached to be here giving answers today?

22 A No.

23 Q And you still deny that you have not engaged in mail
24 fraud -- I mean, immigration fraud?

25 A Yes, I deny it.

1 Q Ms. Edison has prepared your application for immigration?

2 A No.

3 Q Did you have immigration lawyer?

4 A No.

5 Q Do you know deny Marco Moura enter the United States
6 through Mexico illegally?

7 A I don't deny it.

8 Q Did you recall cash \$2,000 check in the bank of Bank of
9 America?

10 A I don't remember only one. I remember many.

11 Q Renata, I asked you a question about a \$2,000 check. Do
12 you recall that?

13 MS. MITRANI: Objection, Your Honor.

14 THE COURT: Sustained.

15 BY MR. SCOTTON:

16 Q Do you still drive the white van, Ms. Renata?

17 A Yes.

18 Q The down payment of the van, was the defendant has give to
19 you?

20 A The car was \$75,000 and he gave me a thousand.

21 Q I just give a thousand dollars?

22 A Yes. The rest I paid in installments to a friend of mine
23 who went back to Brazil and I deposited the money in cash.

24 THE WITNESS: May I still answer?

25 THE COURT: If you need to complete the answer.

1 THE WITNESS: You offered \$1,000 because you were
2 going to buy a car and so I was to use the car in order to
3 transfer the boxes to Sky Air.

4 BY MR. SCOTTON:

5 Q Did you pay back the money to Sky Air, Ms. Renata?

6 A I considered that, yes, because I ruined my car carrying
7 those boxes for you.

8 THE COURT: I'm sorry, but I need to interrupt now. I
9 realize it's a little early from when we usually do our lunch
10 break. We are going to have to take a little longer lunch
11 break today. I have a meeting I have to go to and a couple of
12 short hearings during the lunch hour. Please return at 1:30.
13 Everybody enjoy you lunch. Please don't discuss the case with
14 anyone, please don't disburse any information about the case,
15 and please don't do any investigation into the case. We will
16 see you at 1:30. Enjoin your lunch. All rise for the jury.

17 (Thereupon, the jury exited the courtroom at
18 12:00 p.m.)

19 THE COURT: All righty. We will see you back here and
20 be ready to start at 1:30. Thank you. Have a good lunch.

21 MS. MITRANI: Thank you, Your Honor

22 THE COURT: All rise for the jury, please.

23 (Thereupon, the jury entered the courtroom at
24 1:38 p.m.)

25 THE COURT: Welcome back. Please be seated. Did

1 everybody have a good lunch, I hope? Thank you for your
2 patience. I'm sorry to have kept you a little bit longer. Let
3 me just ask, is there anybody here who's discussed the case
4 with anyone, disbursed any information about the case, or done
5 any research into the case? If so, please raise your hand for
6 me now. I see no hands. Thank you all for that.

7 And when we left, we were in the middle of
8 cross-examination. And, Ms. Mezentsef, I just need to remind
9 you once again, I'm sorry to keep reminding you, just for
10 purposes of our record, I do it, you are still under oath. Do
11 you understand that?

12 THE WITNESS: Yes.

13 THE COURT: Very good. Thank you.

14 Mr. Scotton, whenever you're ready, you may proceed.

15 BY MR. SCOTTON:

16 Q Ms. Renata, you mentioned this morning to the government
17 that I used to be a flashy guy, that used to spend so much
18 money. The business make a lot of money, that's correct?

19 A Yes.

20 Q Did I own my own house, Ms. Renata?

21 A No.

22 Q We agreed that you used to work from my home most of the
23 time before we opened the store, correct?

24 A Yes.

25 Q How many bedrooms was in the house, in the townhouse?

1 A Two.

2 Q Do you recall how much the rent? You used to drop off the
3 check to the office sometime for me?

4 A I can't say for sure, but I think it was 1,300.

5 MR. SCOTTON: Is to get it correct on the record, Your
6 Honor, it was \$1,700.

7 THE COURT: Mr. Scotton, I appreciate that, but if you
8 want to testify, you are going to have to do it from the stand.
9 All right?

10 MR. SCOTTON: That's all right, Your Honor.

11 BY MR. SCOTTON:

12 Q Did I have an airplane?

13 A Not that I know of.

14 Q Did I drive a Ferrari?

15 A Not that I know of.

16 Q I used to have a car. Was a purchase or lease?

17 A Lease.

18 Q How many cars I used to have, Ms. Renata?

19 A I think you only had this one, and then later you bought
20 the motorcycle.

21 MR. SCOTTON: Your Honor, can you please once again
22 direct Ms. Renata to please answer the questions.

23 THE COURT: I think she answered the question, so...

24 MR. SCOTTON: I didn't ask if I bought a motorcycle.

25 THE COURT: Don't argue about it now, Mr. Scotton.

1 Please ask the next question.

2 BY MR. SCOTTON:

3 Q Is the motorcycle new or used?

4 A Used.

5 Q You mentioned to the government as well that you used to
6 see a lot of money coming in and you used to see a lot of
7 checks that you cashed yourself. What kind of check was this,
8 Renata?

9 A What do you mean what type of checks?

10 Q Tell to the jury you cash checks. What checks you cash?

11 A It was paper. I don't understand the question. What type
12 of checks?

13 Q You say that you have cashed checks, Renata, for the
14 business. Where is those checks coming from, clients?

15 A The people would deposit the money in your account and I
16 would cash the checks in the amount that you would ask for.

17 Q How much was the checks for?

18 A Different amounts; 2,000; 2,500.

19 Q And this is a lot of money?

20 A For me it is, but that wasn't all.

21 Q So the business make a lot of money. I live this fancy
22 life. I spend so much money, but I live in a rented
23 condominium with a two bedroom, I have a rental car, and I have
24 a used motorcycle. So we agree that I have a fancy life?

25 A Yes. For me to pay \$1,700 for rent, have a car on a

1 lease, and the paying for the insurance, and more expenses for
2 me, that is living a luxury life.

3 Q Ms. Renata, did you know I was a professional race car
4 driver?

5 A Yes.

6 Q Did you know I used to advance in races?

7 A You told me.

8 Q Do you know the sponsor used to pay for some of those
9 advance some of the races?

10 A You told me.

11 Q Did you went to the races, Renata?

12 A Only the last race.

13 Q Did I say anything or you went to the race?

14 A Excuse me?

15 Q Did I say anything? I just mentioned to you a race or you
16 went to the race?

17 A I went to the race.

18 Q I'm going to go back here to answer that you have answered
19 me to this morning. Did you say that you don't know who is the
20 father for your baby.

21 A My God, again? I don't know.

22 Q You don't know who the father of the baby is?

23 A The father of my baby is registered as John, my husband.

24 Q Ms. Renata, do you lie to this jury here that I made those
25 phone calls to those companies to create those accounts because

1 you are afraid this prosecutor is going to prosecute you for
2 false information?

3 A I didn't lie.

4 Q So you are saying to this Court that I made those phone
5 calls?

6 A The ones I listened to?

7 Q Yes.

8 A I didn't say that you made the calls. I said that it was
9 your voice.

10 Q So now you are changing your statement, but you previously
11 stated that I made the phone calls, it is my voice?

12 A No, I said that it was your voice.

13 Q Ms. Renata, during this whole process work together from
14 my house, we become very close, and of course we share
15 information, families' information. You have spoken to my
16 father many, many time over the phone, correct?

17 A Yes.

18 Q Also I have a brother that live in Rio that you spoke to
19 him several time over the phone, correct?

20 A Sometimes, and most of the time it was about business.

21 Q Do you run a business with my father?

22 A No, these were things that -- they used to call for things
23 that they want to -- wanted me to send so they would call and I
24 would talk to them about whether it had been sent and about --

25 Q So you say is that my father call you to ask you to send

1 something for him?

2 A No, he would call to talk to you, but you never wanted to
3 talk to him so I was the one who had to.

4 THE COURT: Mr. Scotton, you have to wait for the
5 translation.

6 MR. SCOTTON: Your Honor, I apologize to the Court. I
7 forget.

8 THE COURT: That's all right.

9 BY MR. SCOTTON:

10 Q Why I don't want to talk to my father, Mr. Renata?

11 A You should know, not me. You said that he only called you
12 to ask for money.

13 Q Ms. Renata, do you know my father's ill and sick?

14 A No.

15 Q So you don't know my father is dying with cancer?

16 A No. That's the law of life. My mother is also suffering
17 from cancer.

18 Q During those calls that you have with my father, you
19 mention once that we sound like the same, do you recall that?

20 THE COURT INTERPRETER: I'm sorry, I didn't
21 understand.

22 BY MR. SCOTTON:

23 Q During the phone calls that you have with my family, you
24 you used to say we sound like the same, do you recall that?

25 A No.

1 Q What kind of type of payments did we used to accept from
2 clients?

3 A It was a deposit into a bank account.

4 Q Anything else?

5 A If the client was in Brazil, it would be payment with
6 credit card.

7 Q What is the requirement for every single client that want
8 to deal business with us that require shipping package that I
9 request?

10 A They had to send an email with all the information of the
11 merchandise that was inside the box with the amount, the value,
12 and I would send them the label when it would be ready for them
13 to put in the box and also when the deposit was made.

14 Q What kind of form did the client was obligated to fill out
15 and send back to the company?

16 A There was a form that was to be filled out by the clients,
17 but there were many old clients who didn't fill out that form
18 any longer. They would send the email with the information.

19 Q Do we have terms and condition form that was obligated for
20 every single client to sign?

21 THE COURT INTERPRETER: Repeat, please.

22 BY MR. SCOTTON:

23 Q Do we have a form that we used to send to the client they
24 have obligation to read and sign and send back to us, correct?

25 A There was one, but it wasn't used all the time.

1 Q Why didn't we use it all the time, Ms. Renata, one was
2 request and also was on website out of the photo -- the
3 prosecutor have shown a picture here that have all the
4 requirements over there?

5 A Because there were clients that would send an email with
6 all the data information. You said that it would be okay.

7 Q So I break the policy of the company?

8 A If you broke it or not, I don't know, but you said that it
9 would be okay.

10 Q Is any form there is to send to the client in reference to
11 regulations for Brazilian customs?

12 A Well, an invoice would be done.

13 Q Did we used to have forms on the website that give out the
14 laws and requirements for present at customs?

15 A I don't remember. Maybe it had that information.

16 Q Ms. Renata, the prosecutor has show different evidence
17 here today. You remember in details things that happened 2010,
18 August 2011, you remember clients, but every single question
19 that I'm asking you that even happened 2012, you do not
20 remember?

21 A Everything that I remember, I'm saying.

22 Q Everything you remember that the prosecutor told you to
23 come here today and testify against me, correct?

24 A No.

25 Q But you don't deny that you sit down with the prosecutor

1 several times and have a conversation about this case, do you?

2 A Yeah, I said that I did.

3 Q And that's the reason why you so nervous in court that you
4 start saying you stressing out because you are afraid to get a
5 prosecution because you come here and lied that I did those
6 phone calls, that you recognize my voice?

7 MS. MITRANI: Objection, Your Honor.

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q Ms. Renata, when you come to this country, you come with a
11 visa?

12 A Yes.

13 Q And you claimed of that you come in 2005?

14 A Yes.

15 Q What kind of visa you have in 2005, Renata?

16 A Tourist visa.

17 Q It's not true that the visa allowed you to stay in this
18 country for six months only?

19 A Yes, that's true. Yes, but the thing is that my mother
20 used to live here. My sister used to live here. And they knew
21 the information of how to apply to extend the visa. And I
22 applied. I got six months. And after that, I applied again
23 and got six more months.

24 Q So you say that immigration has renew a tourist visa for
25 you two times?

1 A I applied twice, and I remember that the first one it was
2 approved, but I'm not really sure about the second one.

3 Q So you not sure if they approve you, but you stay in the
4 country anyway?

5 A Yes.

6 Q When you marry your husband, he already had status when
7 you marry your husband, correct?

8 A What status?

9 Q Be legal in the country?

10 A Yes.

11 Q You marry your husband 2010, and you already separated
12 from him 2011, correct?

13 A Well, in reality, I'm still married to him. The
14 relationship was off and on, and then after a while, he left
15 home.

16 Q So he left your house in Pompano Beach?

17 A Yes.

18 Q The same house that you live with Marco Moura?

19 A Yes.

20 Q So you live with the two husband at the same time?

21 A John doesn't live there anymore. I just told you that.

22 Q Earlier today I asked how long Marco live over there in
23 the address, and you say three years, Ms. Renata?

24 A You asked me how long I lived at that address and I said
25 three years. I know it may seem funny, but Marcos lived there

1 at the same time that John lived there.

2 Q Do you remember why the name of the store called Merry
3 Mailman?

4 A Yes, because you wanted to open a second store for Carla.

5 Q So I want to open the store for Carla?

6 A Yes.

7 Q But during this process of opening the store for Carla, we
8 end up in a relationship, correct?

9 THE COURT INTERPRETER: What was the last part, end
10 up?

11 BY MR. SCOTTON:

12 Q End up in a relationship.

13 A You would go back and then separate, back and forth, and I
14 never knew if the relationship ended or not.

15 Q Ms. Renata, how Federal Express --

16 MR. SCOTTON: Say what?

17 BY MR. SCOTTON:

18 Q How the Federal Express used to charge us, our account,
19 from the Merry Mailman store?

20 A I don't know.

21 Q Did you recall that I used to ask you every week to pull
22 the reports out of the accounts?

23 A No.

24 MS. MITRANI: Your Honor, may we approach sidebar?

25 THE COURT: All right.

1 (Thereupon, the following was heard sidebar.)

2 MS. MITRANI: So the defendant's asking me about
3 documents that he may have given me yesterday. I haven't
4 looked through any of these documents. I don't know if he's
5 planning on trying to use any. I object to him using any
6 documents. If he wants to use something, he has to show me.

7 You know, we got sandbagged at the last minute. Half
8 of these documents -- I won't say half. We have to investigate
9 the authenticity of many of them. We have discovered some
10 highly irregular documents.

11 THE COURT: Let's do it this way. If there are
12 documents you want to show, show them to Ms. Mitrani. If you
13 have an objection, we will just do them on an objection by
14 objection basis.

15 MR. SCOTTON: Just for the record, Your Honor, they
16 are documents that one of them is bank statements that show
17 automatic Federal Express charge my account. Other one is
18 reports I request most of the time on a week printed out. Once
19 again, I'm trying to prove my innocence here, but it seems to
20 be very difficult to do such a thing.

21 THE COURT: Once again, show -- Mr. Scotton, this is
22 why I asked you to give the evidence over much earlier and you
23 didn't. Now, show her the documents you want to use at the
24 time you want to use them. If she has an objection, she can
25 let me know and I will rule on them at that time. All right?

1 MR. SCOTTON: All right, Your Honor.

2 (Thereupon, the following was heard in open court.)

3 MS. MITRANI: Your Honor, may we approach sidebar?

4 THE COURT: Yes.

5 (Thereupon, the following was heard sidebar.)

6 MR. SCOTTON: This is the inventory --

7 THE COURT: Wait.

8 MS. MITRANI: This is the inventory that the
9 government prepared very quickly last night of what's there.
10 We haven't reviewed the stuff.

11 THE COURT: Okay.

12 MR. SCOTTON: Your Honor, this is a real bank
13 statement from Wachovia and this is all the charges from
14 Federal Express to my account. I want to talk to the witness
15 about this is all the reports that shows all the transactions
16 in the store and it has been charged from me has print out out
17 of the system. You know, so if the government think that I
18 created those, I mean, I'm sitting in jail. How can I create
19 those evidence?

20 MS. MITRANI: I can show the Court, I mean, it would
21 take me a minute to put my hands on the document last week that
22 I can prove on its face is fraudulent. I don't know that this
23 is the witness. She testified that she doesn't know anything
24 about the Fed-Ex accounts. This stuff, I have no idea what it
25 is. I would have to look at it closely.

1 THE COURT: So for the record --

2 MR. SCOTTON: Transaction list.

3 THE COURT: For the record, we are looking at --
4 really, we should mark these with certain -- maybe we can.

5 MS. MITRANI: I didn't do the inventory, Your Honor.
6 Nathan Frank did it, so...

7 THE COURT: Great. Maybe what we can do is put Bates
8 numbers on them or something so there's no question on the
9 record what we are talking about if anyone needs to take a look
10 at this later. I will try to describe the documents that are
11 before me. The first one is entitled shipping transaction --

12 MR. SCOTTON: Your Honor, may I have one minute?

13 THE COURT: I'm just going to say what it is into the
14 record.

15 MR. SCOTTON: All right.

16 THE COURT: The first one is entitled shipping
17 transaction listing. It says the Merry Mailman, LLC, 100 Plaza
18 Real Southeast, Boca Raton 33432. This document is -- actually
19 there are several of these documents. There are three of these
20 documents each one is multiple pages in length. The first one
21 actually is rather short, two pages. The next one is three
22 pages. And the final one is nine pages. They list the package
23 ID tracking number, ship to name, company, customer name,
24 company, recorded delivered received by service, and
25 destination country and user defined. Behind that are the

1 Fed-Ex ground pickup manifests. There are -- actually there is
2 three of these. One is from a ship date of 12/29/2011, one is
3 from a ship date of 12/20/2011, and one is ship date 12/6/2011.

4 And then there are some documents regarding United
5 States postal service purported to be signed by Dennis W. Kelly
6 USPS approved shipper with license agreement and other
7 documents that appear to be related to that.

8 The next group of documents would be some Wells Fargo
9 bank records. The first one is a business market rate savings
10 for account number ending 9993 for the Merry Mailman, LLC,
11 statements dated January 1, 2012 to January 31, 2012, and Wells
12 Fargo advantage business package checking for an account ending
13 in 5605 or February 1st 2012 to February 29, 2012.

14 The third one is a Wells Fargo statement for business
15 market rate savings account No. 9993 for February 1, 2012 to
16 February 29, 2012. With an attached document that appears to
17 have been printed out from online dot Wells Fargo dot com. It
18 goes on from there, March 6, 2012.

19 That goes on for a few pages, five pages.

20 MR. SCOTTON: Your Honor just bring to attention of
21 the prosecutor.

22 THE COURT: Here is the problem. I shouldn't be doing
23 this sidebar while we have got the jury sitting here. The fact
24 that it's coming up for the first time in the middle of this
25 whole thing, really the timing is -- it's just not appropriate.

1 I mean, I can't --

2 MS. MITRANI: What I can try to do, I mean --

3 MR. SCOTTON: Your Honor --

4 MS. MITRANI: Hold on. One at a time.

5 I can show that I think we might be able to figure out
6 if this is authentic. If it is, he can ask her questions.
7 This other stuff, the problem is I don't know what it is. I
8 don't know that the witness knows what it is. Maybe he can ask
9 questions without using the documents, and if she knows about,
10 it maybe. If she doesn't --

11 THE COURT: How about if he shows it to her and asks
12 her if she knows what it is. If she knows what it is, then we
13 can take it from there. If she doesn't know what it is, then I
14 think that she's not an appropriate witness for it anyway.

15 Let me say for the record, there's nothing in here
16 that has her name on it or that appears in any way to be
17 something that she necessarily produced. At least from the
18 face of the documents, these appear to be records that purport
19 to be bank records or bank related records or Fed-Ex related
20 records produced by Fed-Ex related software, things of that
21 nature.

22 So if you want to show it to her without putting it on
23 for the jury, but you know, have her take a look at it and see
24 if she knows what it is, then we can take it from there. Is
25 that all right with you?

1 MS. MITRANI: Yes, but I would definitely request that
2 the first question is have you ever seen this document before,
3 are you familiar with it.

4 THE COURT: Right.

5 MS. MITRANI: And then if she is, he can ask his
6 questions. But ultimately I would object to it's admissibility
7 until I have had a chance to study these.

8 THE COURT: All right. It can always be admitted at a
9 later time. But at least so you can question her, if you feel
10 that there's something that she has information about it, you
11 can ask her if she recognizes the documents. If she recognizes
12 them, then we will take it from there. All right.

13 MS. MITRANI: Thank you, Your Honor.

14 MR. SCOTTON: Yes, Your Honor. Together these
15 documents that I'm going to present here, I'm going to take the
16 waybill over there that she wrote by hand.

17 THE COURT: The what?

18 MR. SCOTTON: The waybill.

19 THE COURT: Can you not point at the jury because they
20 might think you are talking about them.

21 MR. SCOTTON: I'm sorry, Your Honor. I wish I got
22 out. Think I can become a lawyer.

23 MS. MITRANI: I'm not quite sure, what do you mean you
24 are going to take the waybill?

25 THE COURT: He's going to show her the waybill, right?

1 MR. SCOTTON: Right.

2 MS. MITRANI: It's in evidence, that's fine.

3 THE COURT: All right.

4 MR. SCOTTON: Thank you, Your Honor.

5 (Thereupon, the following was heard in open court.)

6 THE COURT: Thank you for your patience. We know the
7 white noise can be a drain on you and we are sorry about that.
8 But we appreciate it.

9 BY MR. SCOTTON:

10 Q Ms. Renata, I'm going to show some documents rye now.

11 THE COURT: Those documents you need to show her
12 physically. Bring them up to her, not put them on the machine.

13 MR. SCOTTON: Just because the microphone is here.
14 That's why I'm asking her first.

15 THE COURT: Okay. Thank you.

16 BY MR. SCOTTON:

17 Q I want you to tell me if you know these documents from
18 before?

19 A Okay.

20 THE COURT: Mr. Scotton, if you would just return to
21 the podium for the questions, please.

22 BY MR. SCOTTON:

23 Q Have you seen those documents before, Ms. Renata?

24 A I think so, but I'm not sure.

25 Q Can you tell me if the writing on the document that is

1 yours?

2 A Yes, it looks like mine.

3 Q So you acknowledge that those documents you print out out
4 of the system out of the store in Boca Raton?

5 A No, I didn't acknowledge that. I acknowledged that I
6 recognize it's my handwriting.

7 Q So if it is your handwriting, where those documents coming
8 from, Ms. Renata?

9 A I don't know, you know, sometimes you would bring me the
10 documents. It may be that sometimes you would ask me to verify
11 what would come out of the store.

12 Q Exactly. Ms. Renata, a couple of minutes ago, I asked
13 you --

14 THE COURT: Mr. Scotton, you've got to wait.

15 MR. SCOTTON: My bad, Your Honor. Once again, I
16 apologize according to the jury.

17 THE WITNESS: I didn't understand.

18 BY MR. SCOTTON:

19 Q Ms. Renata, a couple minutes ago I asked you that I used
20 to require you to print out some records and some proof that we
21 been paid Federal Express for the shipments and you say that I
22 never asked for such a thing?

23 A Uh-huh.

24 Q Now I have provided with the documents that has been
25 printed out out of the system and also the check account from

1 Wells Fargo, and you acknowledge even your writing in those
2 papers. So what it is, you lying or are you telling the truth?

3 A I am not lying. I know that now that you are refreshing
4 my memory, I remembered.

5 Q On the Wells Fargo document, did you see a bunch of
6 charges over there?

7 A Yes, like every statement.

8 Q Was the charge that Federal Express took automatic from my
9 checking account?

10 A From this account that is right here.

11 Q Yes, there is a charge from resell accounts from the Merry
12 Mailman store, correct?

13 A Yes.

14 Q The same accounts that together with Carla Felini we have
15 open with Federal Express and that we open the store?

16 A No.

17 Q No what?

18 A Carla Felini's store had no link to your store from what I
19 know.

20 Q So you don't know the account, the resell account with
21 Fed-Ex used to be in the name of Carla Felini?

22 MS. MITRANI: Objection to the foundation to the
23 question.

24 THE COURT: Sustained.

25

1 BY MR. SCOTTON:

2 Q What is the involvement with Carla Felini at that store
3 location?

4 A I don't know.

5 Q You mentioned a couple minutes ago that I opened the store
6 for her?

7 A Yeah, but she didn't want it. You opened it to impress
8 her.

9 Q Opened a store to impress a woman?

10 A That's how you are.

11 MR. SCOTTON: I'm sorry, Your Honor.

12 THE WITNESS: That's how you are.

13 BY MR. SCOTTON:

14 Q That's the way I am?

15 A Yes.

16 Q You think the way to impress a woman is to open a store,
17 Ms. Renata?

18 A Well, I don't try to impress women like that, so I don't
19 know.

20 MR. SCOTTON: Your Honor, can I collect back the
21 documents?

22 THE COURT: Yes.

23 BY MR. SCOTTON:

24 Q A week after we open the store, do you recall a company
25 called AM Supply Company that asked delivery some box supplies

1 to my store? Do you recall that?

2 A You called.

3 Q Did I call?

4 A Yes.

5 Q Who ordered the supplies?

6 A The first time, you ordered.

7 Q Was not Ms. Felini that ordered those supplies?

8 A That's what I was just about to say, that it could have
9 been her. I don't remember that well.

10 Q Do you remember the day of March 15, 2012, Ms. Renata?

11 A What day?

12 Q March 15, 2012.

13 A Not now.

14 Q The day that the government has charged me with mail
15 fraud, do you recall that?

16 A Yes.

17 Q The next day you walked to the store with Ms. Felini, do
18 you recall that?

19 A No.

20 Q Do you recall that the store has somewhere around eight
21 cameras?

22 A Yeah, there were cameras. I never counted how many, but
23 you know, there were cameras.

24 Q And those cameras roll 24 hours a day?

25 A Yes.

1 Q Every 15 days I used to download the movies back to my
2 computer and save them?

3 A Yes. I misspoke. I know it's possible, but I have -- I
4 misspoke. I know it's possible, but I have never seen him
5 doing it.

6 Q Let's go back to the motive of your testimony here today,
7 Ms. Renata. On your immigration application, you have
8 committed fraud by saying that John is the father of the kid.
9 Do you recall that, that you put on application that John is
10 the father?

11 MS. MITRANI: Your Honor, I'm going to object. This
12 has been asked and answered both this morning and this
13 afternoon.

14 THE COURT: I agree. Sustained. Let's do another
15 topic, please, Mr. Scotton.

16 MR. SCOTTON: Once again, Your Honor --

17 THE COURT: It's time to move to on a different topic.

18 MR. SCOTTON: I want to prove my point here, Your
19 Honor.

20 THE COURT: We have already explored it so you can ask
21 on another topic.

22 BY MR. SCOTTON:

23 Q Ms. Renata, did you know I have been charged with given
24 false statement to immigration?

25 A Yes.

1 Q Do you know that government has charged me saying that I
2 have a filled out application with immigration and I have given
3 false statement?

4 A I don't think so. I don't know.

5 Q It's not the same thing you have done?

6 A What thing?

7 Q Put false statement on immigration application.

8 A I've already answered that. If it relates to the fact
9 that my son is registered under John's name, if he is his son
10 or not, that is my problem and I have already said that.

11 Q So you make statement here to this Court that you don't
12 know who the father is, but you put on immigration paper that
13 he is the father?

14 A Yes, because he's registered like that. He agreed with me
15 that he was the father at that moment. That's something else.
16 If he is or if he isn't and if a DNA is requested, then we will
17 see what happens. I will let you know.

18 Q By then you committed fraud to immigration?

19 MS. MITRANI: Your Honor --

20 THE COURT: Sustained.

21 THE WITNESS: No.

22 THE COURT: Mr. Scotton, it's time to move on to a new
23 subject area. All right?

24 THE WITNESS: I was enjoying it, Your Honor.

25 THE COURT: All right. But there's no question

1 pending at the moment, so we are going to let Mr. Scotton go
2 into the next area.

3 BY MR. SCOTTON:

4 Q Do you think it's funny, Renata?

5 A What's funny?

6 Q Do you think this whole scenario here is funny?

7 A No. Do you think it's funny? Do you think that it's
8 funny to talk about my personal life?

9 MR. SCOTTON: Your Honor, can you instruct once again
10 please --

11 THE COURT: Mr. Scotton, you asked her the question
12 and she's giving you the answer to the question that you asked.

13 MR. SCOTTON: Your Honor, she's here to answer
14 questions, not to ask questions.

15 THE COURT: Mr. Scotton, I'm not going to argue with
16 you. Please ask another question.

17 BY MR. SCOTTON:

18 Q So you agree that during the business was open, Federal
19 Express always has deducted the money out of the checking
20 account, correct?

21 A From Merry Mailman, yes.

22 Q Is the same goes for DHL and also goes for the post
23 office?

24 A Merry Mailman did not have an account with DHL. Only in
25 the end, it started to have one.

1 Q Ms. Renata, the question is those companies automatic
2 deduct the money out of the checking account?

3 A You asked me if DHL did the same thing and I say no and I
4 have already answered that.

5 Q You say that we have account with DHL or don't have
6 account with DHL, Ms. Renata?

7 A In the beginning we did not have.

8 Q Okay, Ms. Renata, and then when we have the DHL account,
9 do we pay DHL, Ms. Renata?

10 A I don't know.

11 Q Did you work for that store?

12 A No, I worked at Sky Air.

13 Q You just mentioned earlier before here to the jury,
14 Ms. Renata, the other employee was let go was because it was
15 slow and then you start working over there taking care of
16 clients from Sky Air but also from Merry Mailman?

17 A Long time after that, and I didn't take care of the store
18 businesses. You did and she did.

19 Q So you say long time. What is this long time?

20 A I don't know.

21 Q Did you recall when the store was open for business?

22 A No.

23 Q How long did Lusilly work for the company?

24 A Her name is Luely, and I don't know.

25 Q So you come to the office every day and open the store

1 because you have the key for the store, as you mentioned early
2 before, and you don't know how long that she work in the store?

3 A No.

4 Q But once again, every single thing the prosecutor has
5 offered here, you remember everything in details, correct?

6 MS. MITRANI: Objection to the form of the question.

7 He's also made that --

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q Did you remember every single thing that has been
11 displayed in evidence here today?

12 MS. MITRANI: Objection, Your Honor.

13 THE COURT: Overruled.

14 BY MR. SCOTTON:

15 Q Did you remember everything details that were was
16 presented here in evidence today?

17 A I remember what I said that I remember.

18 Q Details of a client go to my garage, drop of packets?

19 A What I remember, I said.

20 Q Details of waybills that has been made by the defendant?

21 A What I remember, I told you.

22 Q Details of packages that has been hold by Federal Express?

23 A What I remember, I told you.

24 Q And you tell this jury here --

25 THE COURT: Mr. Scotton, I'm so sorry, but you have to

1 wait for the interpreter.

2 MR. SCOTTON: I keep forgetting this, Your Honor.
3 It's the Portuguese, so I wish I no speak two languages. It
4 would be easy.

5 THE COURT: I'm sorry, I think -- was there an answer?
6 We need to have the question again, right? Okay.

7 BY MR. SCOTTON:

8 Q So details of clients and packages that has been ship and
9 hold by Federal Express, you remember all that?

10 A The boxes that are here are not even half of the half of
11 the half of the things that I can remember.

12 Q Right. So you remember all that, but every single thing
13 that I ask you, you can't remember?

14 A Many of the things that you asked me, I remember and I
15 answered. And some of the things I don't remember, I said I
16 don't remember.

17 Q Have you get any phone calls from those company?

18 A Which company?

19 Q Federal Express -- let me finish the question.

20 Have you got any phone calls from those companies complain
21 about anything in reference of fraudulent accounts?

22 A You've already asked that.

23 MR. SCOTTON: Your Honor, can you please tell the
24 witness to answer the question.

25 THE COURT: All right. But, Mr. Scotton, we do need

1 to move forward. You've already asked the questions once.
2 Let's go on to a new subject area. We are not going to keep
3 asking the same questions. You can answer this question,
4 Ms. Mezentsef.

5 THE WITNESS: No.

6 BY MR. SCOTTON:

7 Q Ms. Renata, sometime when I get stressed out with the
8 business with the personal life, I used to go fishing. Do you
9 remember that?

10 A Yes, you liked to fish.

11 Q Do you remember one time I gave you several fish that I
12 have caught, I have caught on the marina one?

13 A I remember that you did, you went fishing and you caught a
14 lot of fishes, but I don't know who you gave them to.

15 Q You don't remember that you went pick up your husband
16 Marco at the marina and you took some of the fish home with
17 you?

18 MS. MITRANI: I object. He keeps referring to Marco
19 as her husband.

20 THE COURT: Sustained. You can talk about Marco, but
21 don't characterize him one way or the other.

22 MR. SCOTTON: Say again, Your Honor.

23 THE COURT: You can ask questions about Marco if they
24 are relevant, but please do not characterize him.

25

1 BY MR. SCOTTON:

2 Q Mr. Marco went fishing with me before?

3 MS. MITRANI: Your Honor, relevance, objection to
4 relevance.

5 THE COURT: All right. What is the relevance here,
6 Mr. Scotton?

7 MR. SCOTTON: The motive, Your Honor.

8 THE COURT: Sorry?

9 MR. SCOTTON: Motive, the motive of her statement that
10 she's been doing lying here.

11 THE COURT: All right. Thank you very much,
12 Mr. Scotton. Sustained.

13 BY MR. SCOTTON:

14 Q It is possible, Ms. Renata, that those phone calls over
15 there might be somebody else talking than me?

16 A I lived five -- worked five days a week with you. For
17 me -- I always listened to your voice. For me, that was your
18 voice.

19 Q This is your opinion, right?

20 A Of course. I only can talk about my opinion, not anybody
21 else's.

22 Q Perhaps those phone calls was made by Paulo Roberto?

23 THE COURT INTERPRETER: I'm sorry, what was that?

24 BY MR. SCOTTON:

25 Q Perhaps those phone calls were made by Paulo Roberto?

1 A No.

2 Q Osvaine Duarte?

3 A You know that Osvaine Duarte was a client from Sky Air.

4 Q Do you know the reason why Mr. Osvaine left the country,
5 Ms. Renata?

6 MS. MITRANI: Objection, to relevance.

7 THE WITNESS: Yes.

8 THE COURT: Overruled.

9 BY MR. SCOTTON:

10 Q And what is the reason why he left the country?

11 A I can only say more or less because I'm not really that
12 sure. He had a problem where he lived and he was afraid that
13 the police would come to knock on his door with a problem that
14 he had with a shipment.

15 Q Because the fact that a company in New York City has find
16 out that he has used illegally their Fed-Ex account, correct?

17 THE COURT INTERPRETER: I'm sorry, used what?

18 MR. SCOTTON: The Federal Express account from a
19 company in New York City.

20 THE WITNESS: I don't know.

21 BY MR. SCOTTON:

22 Q You mentioned that he left the country because he's got
23 some problem with a shipment?

24 A Yes, but I can't say for sure because I'm not sure, but I
25 think that's what it was.

1 Q How many times have you seen Mr. Osvaine Duarte at my
2 house, Ms. Renata?

3 A I only saw it that time when this happened.

4 Q During Memorial Day, Renata, don't remember that
5 Mr. Duarte and Junior and somebody else was at my house?

6 A No.

7 Q You don't remember driving Mr. Junior and Duarte back to
8 the hotel, back to the airport?

9 A No.

10 Q Ms. Renata, do you remember the company has paid for you
11 to take some classes over the internet?

12 A What type of classes?

13 Q To become a notary?

14 A No, I paid for it. You said that you were going to pay
15 me, reimburse me, for it, but you never did.

16 Q I never pay you?

17 A No.

18 Q Just the way I never give you money to --

19 A Yeah, you didn't do it like in a mean way because you
20 thought you had paid. And so I thought it was something that
21 was going to be good for me, so I let it be.

22 Q Do you believe that I commit a fraud, Ms. Renata?

23 MS. MITRANI: Objection, Your Honor.

24 THE COURT: Sustained.

25

1 BY MR. SCOTTON:

2 Q During the process work for Sky Air, Ms. Renata, did you
3 think was something wrong with shipping packets?

4 THE COURT INTERPRETER: Did you what?

5 BY MR. SCOTTON:

6 Q Did you think there was something wrong shipping packets
7 for clients?

8 A Well, when started to have problems in the sending of the
9 boxes, I thought there was going to be -- I thought there was a
10 problem with it.

11 Q You thought it was a problem, but you continued to work
12 for Sky Air, correct?

13 A Yes, because it wasn't my problem. It was the company's
14 problem.

15 Q Is any reason why when you saw Merry Mailman the only
16 three companies we have associated with the company was Federal
17 Express, United States Post Office, and DHL, but we never have
18 a UPS. Do you remember what the reason was?

19 A I don't remember.

20 Q Is not the fact that UPS has explained to us that they
21 couldn't give us a store because less than one block is another
22 UPS store?

23 A Yes.

24 Q So acknowledge UPS people has come out to my store?

25 THE COURT INTERPRETER: Can you repeat the last part.

1 BY MR. SCOTTON:

2 Q Do you acknowledge that people from UPS has come to the
3 store as well?

4 A They came for what?

5 Q You explain to us, Ms. Renata, that we cannot have
6 accounts with them, we cannot have the business over there as
7 we wish because they have a store a block away from us?

8 A First of all, there's no we. There's no us. Everything
9 that was dealt with was dealt with with you.

10 Q Ms. Renata --

11 A But I do remember that that was the reason for sure, yes.

12 Q Ms. Renata, I have refer to us because you work at that
13 place, right?

14 A Yes, but when it was, you know, to take the money, you
15 never referred to us.

16 THE COURT INTERPRETER: Your Honor, I need a break.

17 THE COURT: All right. We are going to take a break.

18 Let's come back at five of. All rise.

19 (Thereupon, the jury exited the courtroom at
20 2:43 p.m.)

21 THE COURT: I have to go try to reach Ms. Raisman's
22 employer again.

23 MS. MITRANI: Can I bring something up? More of a
24 heads up, Your Honor. I want the Court to know that it's the
25 government's position that this cross-examination has now

1 become extremely repetitive, so we are going to start
2 objecting.

3 THE COURT: All right.

4 (Thereupon, a recess was taken at 2:44 p.m.)

5 THE COURT: Let's check and see how the jury is doing.

6 (Thereupon, the jury entered the courtroom at
7 2:56 p.m.)

8 THE COURT: All righty. Please be seated. Thank you.

9 And you can probably tell me this by now,
10 Ms. Mezentsef, but you are still under oath. Do you
11 understand?

12 THE WITNESS: Yes.

13 THE COURT: Great. Thanks.

14 Mr. Scotton, whenever you're ready, you may continue.

15 BY MR. SCOTTON:

16 Q Ms. Renata, do you remember a machine that we used to use
17 at the store that was for -- it was like a stamp machine. We
18 put the envelope in and we stamp?

19 A Yes.

20 Q And do you remember the day you guys went and closed the
21 store, Ms. Felini took the machine?

22 A I've already said no.

23 Q I never asked the question before, Ms. Renata?

24 A No, you wanted me to say something. You want me to say
25 something that I'm not going to say because I already told you

1 that I went -- you asked me if I went with Carla to the store
2 and I said no. I went to the store with Carla, but I don't
3 know if she took anything.

4 Q During the time you worked for me, have you collect child
5 support checks from the law enforcement?

6 MS. MITRANI: Objection, Your Honor.

7 THE COURT: Sustained.

8 BY MR. SCOTTON:

9 Q Did Mr. John claim him as his dependent on his IRS form?

10 MS. MITRANI: Objection, Your Honor.

11 THE COURT: Sustained.

12 BY MR. SCOTTON:

13 Q Have you talked to someone over there inside the store
14 from Fed-Ex before, Ms. Renata?

15 A Only if so, it would be the driver who went to the pick up
16 the boxes.

17 Q Ever talk about any -- with any sales rep?

18 A No.

19 Q How many different drivers come to the house and also to
20 the store, Ms. Renata?

21 A I don't know. At the store, I think most of the time was
22 the same driver.

23 Q Was the same driver that goes to the house?

24 A I don't know.

25 Q How far is the store from the house?

1 A You only cross the avenue.

2 Q And you don't know if it is the same driver?

3 A No.

4 Q Ms. Renata, client used to send emails request for price.
5 And after they accepted the price, we created the paperwork and
6 send to them via email, correct?

7 A Yes.

8 Q Which third party company did I used to use to be able to
9 use those accounts, do you recall that?

10 A No.

11 Q Do you recall a company called Brown Box?

12 A No.

13 Q You don't recall the company that I told you to call them
14 up and quote a price with them, and they charged my credit
15 card?

16 MS. MITRANI: Objection, Your Honor. The witness said
17 she doesn't know.

18 THE COURT: Overruled.

19 THE WITNESS: I remember the name Brown Box, but I
20 know it had nothing to do with Sky Air.

21 BY MR. SCOTTON:

22 Q I'm not saying it have anything to do with Sky Air. Do
23 you remember when we got a quote from that company?

24 A No. What you said is a third party, so a third party
25 means that you have some type of a connection.

1 Q Have we used another company, Ms. Renata, to ship
2 packages?

3 A What do you mean?

4 Q Have we used other companies to ship packages, Ms. Renata?

5 A You made -- you asked the same question. I didn't
6 understand.

7 Q How many companies did we use to ship packages,
8 Ms. Renata?

9 A If it is, if I'm understanding it correctly, we would send
10 it with Fed-Ex, DHL, and UPS.

11 Q Have we used another company?

12 A Not that I remember.

13 Q Do you recall a company called Adonai?

14 A I never heard of it.

15 Q Do you remember a company called Ipanema?

16 A No. Ipanema is the brand of shoe makers in Brazil.

17 Q Do you recall a company Baby Starts?

18 A I know of this company because the entire Brazilian
19 community knows of this company.

20 Q Have you shipped a package yourself to Brazil?

21 A No -- yes, one.

22 Q Have Sky Air ever ship anything illegal to Brazil,
23 Ms. Renata?

24 A What do you mean by illegally?

25 Q Have Sky Air ship anything illegal to Brazil, Ms. Renata?

1 A I didn't understand. That's why I'm asking. I did not
2 understand.

3 Q Do you know the requirements of Brazilian customs,
4 Ms. Renata?

5 A Yes.

6 Q Did you recall the limit of the value of the merchandise
7 to send to Brazil?

8 A I don't remember very well the value, the amount.

9 Q Do you remember this used to be one of the problems of the
10 companies to have clients falsifies voice and send packages to
11 Brazil and those packages get hold up by customs?

12 A Many packages would be stuck in customs in Brazil because
13 Brazil does that. It's an abuse of power.

14 Q It's not the fact that a lot of the clients try to claim
15 lower on the invoice to be able to not pay higher tax in
16 Brazil?

17 A No, because I think, you know, we told the clients we
18 would say to the clients that the taxes were included. They
19 were paid already.

20 Q How many times the merchandise has been stopped for
21 customs in Brazil to verify the charge shows on commercial
22 invoice because it was not true charge?

23 MS. MITRANI: Objection, Your Honor.

24 THE COURT: What's the objection?

25 MS. MITRANI: Beyond the competency of this witness.

1 THE COURT: Sustained.

2 BY MR. SCOTTON:

3 Q Ms. Renata, how many times do you have to send forms to
4 DHL, Federal Express, and UPS in Brazil that they required to
5 send approval value of the merchandise?

6 A Many times.

7 Q How many times did I have even lost so many packets
8 because Brazilian government do not agree that is what declared
9 on the commercial invoice was true?

10 A Many times.

11 Q How many our clients has lost the merchandise because they
12 lie the true of the value of the merchandise?

13 A If they were lying or not or telling the truth or not,
14 there's no way to tell. But always they want to charge a
15 higher value than what's shown on the invoice.

16 Q It is not the true, Ms. Renata, a lot of our clients used
17 to buy merchandise for us to be able to resell out of Ebay on
18 Brazil?

19 MS. MITRANI: Objection, Your Honor, relevancy.

20 THE COURT: Sustained.

21 BY MR. SCOTTON:

22 Q Do you recall the name of Emmerson Amorim?

23 A No.

24 Q Do you recall Mr. Emmerson Amorim work for me?

25 A I just said no.

1 Q Ms. Renata, the time you used to log into the Federal
2 Express website, create a document, who provide to you the user
3 name and password?

4 A You.

5 Q Is it not a fact Mr. Duarte used to give to me those
6 information to me from the emails?

7 A Not that I know of.

8 Q Have you had any problem log into those accounts whether
9 you work from your house?

10 A What do you mean?

11 Q Have you have any problem logging in to Federal Express
12 account create documents when you work from your house?

13 A I worked from the office.

14 Q Ms. Renata, just testified early in the morning that
15 during your pregnancy, several time you work from your house,
16 Ms. Renata?

17 A No, I was very clear and I said to you that I did not work
18 from home during my pregnancy. I did that after I had my baby.

19 Q Ms. Renata, after you have your baby, how many times your
20 baby have stay in the office, Ms. Renata?

21 MS. MITRANI: Objection, relevancy.

22 THE COURT: Sustained.

23 BY MR. SCOTTON:

24 Q Ms. Renata, every single thing you have say here in front
25 of this Court today, you told the true, nothing but the true?

1 A Yes.

2 Q And before this testimony here, you have to sit with the
3 prosecutor in that office and go over the details.

4 MS. MITRANI: Objection, asked and answered.

5 THE COURT: Sustained.

6 MR. SCOTTON: I have no more questions, Your Honor.

7 THE COURT: All right. Redirect.

8 MS. MITRANI: Yes, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. MITRANI:

11 Q Good afternoon.

12 A Good afternoon.

13 Q Ms. Mezentsef, what is your native language?

14 A Portuguese.

15 Q And in what language did you communicate with the
16 defendant?

17 A Portuguese.

18 Q And how does your fluency in Portuguese compare to your
19 fluency in English?

20 A I only speak Portuguese at home. With the children I only
21 speak Portuguese.

22 Q Ms. Mezentsef, it has certainly been a long day. The
23 defendant asked you questions, I believe, this morning about
24 how you are feeling and feeling pressure. Do you remember that
25 line of questioning?

1 A Yes.

2 Q Have you ever testified in court before?

3 A No.

4 Q Have you ever had to testify against a person with whom
5 you had a personal relationship?

6 A No.

7 Q Is this the first time you have had to do this?

8 A Yes.

9 Q Were you subpoenaed to appear here in this courtroom?

10 A Yes.

11 Q Did you meet with the prosecution team on approximately
12 three occasions?

13 A Yes.

14 Q And during those meetings, were you shown documents?

15 A Yes.

16 Q And were you asked questions about what those documents
17 were and other details concerning the documents?

18 A Yes.

19 Q Do you remember the defendant was asking you a lot of
20 questions about people who may have -- can you hear?

21 A Yes.

22 Q The defendant asked you a series of questions about people
23 who might have stayed over his house on occasion overnight from
24 time to time. Do you remember those questions?

25 A Yes.

1 Q Do you know where the defendant was living August 2011?

2 A Yes.

3 Q Where was he living?

4 A In Boca Raton.

5 Q In a townhouse that has been talked about throughout the
6 course of your testimony?

7 A Yes.

8 Q Do you know whether anyone lived with the defendant at
9 that Mizner address apartment in August of 2011?

10 A No.

11 Q So the defendant lived alone?

12 A Yes.

13 Q In August of 2011?

14 A Yes.

15 Q And throughout your employment and working at the
16 townhouse, did the defendant ever live with anybody?

17 A No.

18 Q The defendant asked you questions about speaking with his
19 father. Do you recall how many times you may have spoken to
20 his father?

21 A Very few times. His father would call once in a while and
22 he would wouldn't want to talk to his father.

23 Q Do you remember those four recordings that we played
24 yesterday of four separate accounts being opened with Fed-Ex?

25 A Yes.

1 Q Was that the defendant's voice as the caller opening the
2 new accounts?

3 A Yes.

4 Q The defendant mentioned all sorts of accounts in a very
5 general fashion. Do you recall those series of questions?

6 A No. Which accounts?

7 Q Let me just ask you this. Did you ever open an account
8 for the defendant?

9 A No.

10 Q And by account, I mean an account with any entity. So did
11 you ever open any accounts with Fed-Ex, DHL, or UPS?

12 A No, never.

13 Q Do you know the circumstances surrounding -- strike that.

14 If the defendant, in fact, had accounts with DHL, UPS, and
15 DHL at the Merry Mailman, do you know any of the circumstances
16 surrounding those accounts?

17 MR. SCOTTON: Object, Your Honor.

18 THE COURT: Overruled.

19 THE WITNESS: I didn't understand anything.

20 BY MS. MITRANI:

21 Q Were you aware of -- let me see how I can rephrase this.

22 Do you know any of the details or anything surrounding any
23 accounts the defendant may or may not have had between the
24 Merry Mailman and Fed-Ex?

25 A No.

1 Q Do you know, did the defendant keep you apprised of his
2 business dealings with other business entities?

3 A No.

4 Q The defendant asked you questions about Osvaine Duarte and
5 the circumstances surrounding his departure from the United
6 States.

7 A Yes.

8 Q From whom did you learn about these problems? Well, let
9 me rephrase that.

10 From whom did you learn about Osvaine Duarte's alleged
11 problems?

12 MR. SCOTTON: Object, Your Honor.

13 THE COURT: Overruled.

14 THE WITNESS: At Rogerio Scotton's house.

15 BY MR. SCOTTON:

16 Q When a client requested a quote to ship a package to
17 Brazil, would you give the client a price?

18 A Yes.

19 Q Did that price include the shipping charges that Sky Air
20 was going to be charging for shipping?

21 A In the price, it included the shipment fee plus the
22 customs fees that were going to be charged. And I should
23 remind you, point out, that in Brazil, these fees or taxes
24 sometimes go up to a hundred percent.

25 Q So that we are very clear, the price that Sky Air would

1 quote its clients for shipping included both what Sky Air was
2 going to charge for shipping and what Sky Air was going to
3 collect for the duties?

4 A Yes.

5 Q So Sky Air basically agreed to pay the duties from the
6 client by collecting the money from the client?

7 A Yes.

8 Q Did Sky Air ever receive any completed labels from anybody
9 else?

10 A No, not that I know of.

11 Q As far as -- strike that.

12 As far as you know, of course, were all the labels that
13 were used to ship packages by Sky Air and by the defendant's
14 companies all created by either you or the defendant?

15 A Yes.

16 MS. MITRANI: Can I have a moment, Your Honor?

17 THE COURT: Yes.

18 MS. MITRANI: No further questions, Your Honor.

19 THE COURT: Thank you very much, Ms. Mezentsef. You
20 are excused. And the government may call its next witness.

21 MS. MITRANI: The government will call Joe Santiago.

22 THE WITNESS: Thank you.

23 THE COURT: Thank you.

24 MS. MITRANI: Your Honor, may I speak with the
25 translator for a minute?

1 THE COURT: Sure did.

2 JOSE SANTIAGO

3 Having been first duly sworn on oath, was examined and
4 testified as follows:

5 THE COURTROOM DEPUTY: Please be seated. State and
6 spell your first and last name for the record.

7 THE WITNESS: My name is Jose Santiago.

8 DIRECT EXAMINATION

9 BY MS. MITRANI:

10 Q Do you also go by Joe?

11 A Yes.

12 Q Good afternoon. How are you today?

13 A Good. How are you?

14 Q Good. Okay. Mr. Santiago, by whom are you employed?

15 A UPS.

16 Q And how long have you been employed by UPS?

17 A 16 years.

18 Q In what capacity?

19 A Security investigator for the company.

20 Q Have you been a security investigator for the company
21 throughout your tenure there?

22 A All 16 years, yes.

23 Q I apologize. I'm cold. Excuse me. Can you tell us a
24 little bit about what UPS is?

25 A Sure. UPS, for all basic simplicity, we ship packages

1 from point A to point B depending on the customers, which is
2 the shipper. There are different services how quickly we can
3 get it there depending on their preference.

4 Q Do you ship packages throughout the United States?

5 A Throughout the United States and over 220 other countries.

6 Q Throughout the world?

7 A Yes.

8 Q Okay. And do you charge a fee for transporting packages
9 between states?

10 A Yes, we do.

11 Q And do you charge fees for shipping packages
12 internationally?

13 A Yes, we do.

14 Q Can you give the jury a sense of sort of the scope of UPS,
15 you know, how many packages might be delivered on any given
16 day?

17 A On any given day, UPS can deliver approximately 16 million
18 packages throughout, whether using package cars, regular brown
19 trucks that you normally see on the road, or air crafts that we
20 have which is about 235 aircraft that we have that we own.
21 Some of those packages travel through trailers, the big
22 trailers, and we also move those trailers on railroads.

23 Q And throughout, do you have like stations maybe you call
24 them hubs or something, I'm not a hundred percent sure,
25 throughout the United States where these packages, you know,

1 are processed?

2 A Yes, we do. We have centers which in most locations
3 basically you pick up a package, it goes to the center, center
4 then transports it to the hub to consolidate more packages, and
5 from there it either gets shipped to an airport if it's an air
6 package or ground to bigger hubs that then distribute it
7 throughout the country.

8 Q Okay. So this might be very basic, but in order to ship a
9 package from state to state or to ship a package
10 internationally, does there have to be some kind of shipping
11 label affixed to the package?

12 A Yes, there is. There is a label. And for the most part
13 we have transitioned to a very modern technology. That label,
14 what we call the label that you see nowadays, we would call it
15 a smart label. What happens with that label is once that label
16 is created, it automatically -- whoever created that label
17 automatically notifies UPS of that shipment. And, therefore,
18 UPS now has the ability to know where that package -- that that
19 package is coming in, where it's going, and therefore, it's
20 pre-alerted and we can then determine what's coming in to what
21 facility, when it's coming in, and provide a plan of delivery
22 for that package. The company's most important thing is being
23 as efficient to get the package from point A to point B as the
24 most efficient and cost efficient way of getting the package to
25 the customer.

1 Q And when did this smart label come to be?

2 A It's been around for years. I mean, what we call the dumb
3 labels now are the ones that are handwritten. For the most
4 part, the labels are printed or created. Once they are created
5 in the system, then it's a smart label.

6 Q Does the label have some kind of tracking number on it?

7 A Yes, it does.

8 Q Can you tell us a little bit about this tracking number?

9 A The tracking number that is used, it has 16 digits. And
10 underneath that, there's a bar code to make it easier to scan.
11 The first two numbers that you see on the majority of our
12 tracking numbers starts with a 1Z. And then following -- the
13 following six numbers after that 1Z is the account number of
14 the person that's shipping the package.

15 So those six digits afterwards, just looking at those six
16 digits, we can then determine who the account holder is for
17 shipping that package. The second two numbers behind those six
18 digits is the service level, whether you want it ground, next
19 day air, early a.m., three day select, two day. That is all on
20 that next two digits. The last eight digits are random numbers
21 that the system puts out so it doesn't duplicate the same track
22 number over and over again.

23 Q Tell us a little bit about what your responsibilities are
24 as a security investigator.

25 A In the old days, I just would do investigations on any

1 crimes against the company or our customers. I would do the
2 investigation. Since restructuring of the company and
3 departments, my tasks have changed to where now I also analyze
4 data to make sure and determine -- to make sure the packages
5 make it to their destination. And if they don't, if they are
6 damaged or lost, find out why they are getting lost or why they
7 are getting damaged.

8 If it's an issue with UPS, then we fix that. If it's an
9 issue with the customer the way they packed the package or the
10 way they are shipping the package or how they are shipping it,
11 then we discuss it. We have a meeting with the shipper and try
12 to change those.

13 That's the majority of my tasks right now trying to make
14 sure that all our packages make it in one piece to the rightful
15 customer. The other part is also investigating. We do -- I do
16 investigations for, not only internally, for any issues that
17 happen internally, again damages or theft that happen inside
18 the UPS system, but also for our customers that work with
19 fraud. A lot of customers, shippers get -- place fraudulent
20 orders and we also help them out.

21 Q So did you become an investigation -- excuse me. Did you
22 become involved in an investigation involving outbound
23 shipments to Brazil through UPS?

24 A Yes, I did.

25 Q So tell us a little bit about how you became involved as

1 best as you can remember.

2 A Apparently there was an issue with packages going to
3 Brazil. Not sure what the circumstances were, but as a
4 company, we have a department that handles packages going out
5 of the country. And when they go out of the country, they have
6 to clear customs at the other end.

7 This department which we call ODC, which is origin data
8 capture, they basically -- what they did in an agreement with
9 customs in order for UPS to be more efficient, get the packages
10 delivered, what this department does is they get the package
11 and there are certain paperwork attached to those packages
12 going internationally.

13 And they fill out all the information in the system, in
14 the computer, and they basically send it to U.S. customs. Then
15 U.S. customs, instead of looking at every package, opening the
16 invoices, looking at the paperwork, looking at the package, now
17 they can look at a computer screen and determine which package
18 they want to inspect if they choose to inspect it. That made
19 it for efficient for us.

20 What happened in this situation is that for -- I don't
21 recall the reason why, but they were flagging the packages
22 going to Brazil. And basically when that happens, they -- and
23 it's not only Brazil, but there are other countries that we
24 also -- at this point they get flagged and we as a security, we
25 have to investigate, find out if these packages are legitimate

1 and are they okay to forward them on to the country that they
2 are going to.

3 In this particular case, these packages were being held.
4 They were held up, and they were given to me to investigate.
5 One of the parts that I have to do is call the shipper and
6 verify what's in the package and what's the purpose of it going
7 to Brazil.

8 In this particular case, when I called the shipper, the
9 shipper did not have knowledge of these packages going to
10 Brazil. The shipper advised me that they don't ship out of the
11 country, that they ship only in the United States. They also
12 advised me that they deal in food products. In back and forth
13 conversations, I told them that I would look into this. I
14 looked at the packages and found out that there wasn't any food
15 products in there. I spoke with the --

16 Q I'm going to cut you off. I don't mean to be rude. Okay.
17 So you had some -- we will get back to it. Actually, Your
18 Honor, can I ask the witness to stand --

19 THE COURT: Sure.

20 MS. MITRANI: -- so I can show him something?

21 BY MS. MITRANI:

22 Q Mr. Santiago, I am showing you what's been marked as
23 Government's Composite Exhibit 100, that is 100A through G. Do
24 you recognize these packages?

25 A Yes, I do.

1 Q And what are these packages?

2 A These are the packages that were left for me to look into
3 and contact the shipper to verify that there --

4 THE COURT: Let me ask that we use the microphone for
5 the witness.

6 MS. MITRANI: I'm sorry.

7 THE WITNESS: These are the packages that were left
8 for me to look into to contact the shipper and to verify that
9 these packages were okay to be forwarded on to the destination
10 country.

11 BY MS. MITRANI:

12 Q And did you make a determination that they were not okay
13 to be forwarded on to the destination country?

14 A Correct. Once I got ahold of the shipping manager for
15 that company, quickly turned out to be that the packages
16 weren't theirs. They didn't authorize anybody to use their
17 tracking information to ship these packages.

18 Q And do you remember the name of the company?

19 A Yes. It was -- it's Triunfo Food Products, I believe.

20 Q And showing you composite 100, these packages, are these
21 the packages that you seized during the course of your
22 investigation?

23 A Yes, they were in a little bit better condition than this,
24 but yes, they were.

25 MS. MITRANI: Your Honor, the government would offer

1 100A through G.

2 THE COURT: Any objection?

3 MR. SCOTTON: No, Your Honor.

4 THE COURT: 100A through G are admitted.

5 (Thereupon, Government's 100A - 100G received in
6 evidence.)

7 BY MS. MITRANI:

8 Q All right. Let me share the microphone with you. So I'm
9 showing you Government's Exhibit 100A. Does it appear to be an
10 Epson printer?

11 A Yes, it does.

12 Q And the return address on this box which says Epson on it
13 is Thomas at 398 Southeast Mizner Boulevard, Boca Raton,
14 Florida 33442, correct?

15 A Yes.

16 Q And it's going to an E -- an individual who's initial are
17 EN in Brazil, correct?

18 A Yes.

19 Q And the date of this shipment is August 11, 2008, correct?

20 A Yes.

21 Q And then I guess the tracking number is sort of in the
22 middle, as you had indicated?

23 A Yes, correct.

24 Q And the account number, as you testified earlier, is
25 subsumed within that tracking number?

1 A Correct.

2 Q And that was the account number of Triunfo Specialty Food?

3 A Yes, yes, it was.

4 Q Oh, and over here affixed to the box is there a commercial
5 invoice?

6 A Yes, there is.

7 Q Is there a label on the side of this Epson printer?

8 A Yes, there is.

9 Q And that label, can you say who it's from, according to
10 that label? Well, first is it a Fed-Ex label that's on the
11 side of the package?

12 A Yes, it is.

13 Q And actually who's this box addressed to?

14 A On that label it says Rogerio Scotton at 398 Southeast
15 Mizner Boulevard, I would imagine it would be Apartment 1921,
16 Boca Raton, Florida 33432.

17 Q And it was sent from Epson accessories and an address in
18 Indiana, correct?

19 A That's correct.

20 Q This package was shipped from Epson to Rogerio Scotton by
21 Fed-Ex, correct?

22 A I would imagine so. If the label is on there, I would say
23 yes.

24 Q And the label on the front that we talked about before,
25 this is the UPS label that you inspected, correct?

1 A Correct.

2 Q Thank you. Trying to go -- all right. I'm showing you
3 Government's Exhibit 100B as in boy. Do you see that?

4 A Yes.

5 Q Did I just pulled out the UPS shipping label from the
6 plastic in front of this box?

7 A Yes, you did.

8 Q And does this shipping label reflect that this package,
9 Government's Exhibit 100B, was sent from Ghon, G-H-O-N, at 7797
10 Golf Circle Drive, No. 204, Margate, Florida?

11 A Correct.

12 Q And this was being shipped to an individual whose initials
13 are MC in Brazil, correct?

14 A Correct.

15 Q And there's the UPS tracking number is in the middle,
16 correct?

17 A Yes, it is.

18 Q And this was also shipped on that Triunfo account?

19 A Based on the account number, yes, it was.

20 Q And as part of the documents that were inside this plastic
21 pouch is a commercial invoice, correct?

22 A Correct. This is the invoice that is necessary to clear
23 customs when it goes to other countries. This is the
24 information that our people in our department put into the
25 system and then customs then can view it through a computer.

1 Instead of having to go to each package and open each package
2 and open it and see what's inside, they can basically look at
3 it from a computer and make a determination whether they want
4 to inspect this package or not when it reaches the destination
5 country.

6 Q Both the invoice and the shipping label reflect that it's
7 an Xbox, correct?

8 A Yes, it is.

9 Q Lo and behold, there's an Xbox inside Exhibit 100B?

10 A Correct.

11 Q I can take care of that later.

12 Okay. I'm showing you Government's Exhibit 100C. And am
13 I taking the shipping label out?

14 A Yes, you are.

15 Q I don't want to rip it though. Thank you. So
16 Government's Exhibit 100C on the outside, first of all, it says
17 HP, correct?

18 A Correct. It looks like a printer.

19 Q And is there what appears to be a printer on the inside?

20 A Yes, it does.

21 Q And was this package, 100C, also the return address is
22 Jhon, J-H-O-N at 7797 Golf Circle Drive, No. 204, Margate,
23 Florida, that is reflected as the sender?

24 A Yes, it is.

25 Q And this package was tendered to have delivery to UPS to

1 be delivered to an individual whose initials are EA in Brazil?

2 A Correct.

3 Q And the tracking number is, as it states on this shipping
4 label, ending in 2092?

5 A Correct.

6 Q All right. And this was all -- I guess so I don't have to
7 keep on asking, all of composite of 100 was being shipped on an
8 account that belonged to Triunfo, correct?

9 A Yes, they were. They are all basically -- the account
10 number is Triunfo's account number.

11 Q I'm showing you Government's Exhibit 100D. Do you see
12 that?

13 A Yes.

14 Q 100D also had the return address of Jhon, J-H-O-N, 7797
15 Golf Circle Drive, No. 204, correct?

16 A Correct.

17 Q In Margate, Florida?

18 A Yes.

19 Q And this package, 100D, was tendered for delivery to UPS
20 for shipment to an individual whose initials are MB in Brazil,
21 correct?

22 A Correct.

23 Q With a tracking number ending in 5872?

24 A Correct.

25 Q According to the invoice, what's inside this box, it says

1 Xbox 360, correct?

2 A That's correct.

3 Q And lo and behold, is there an Xbox inside Exhibit 100D?

4 A Yes, there is.

5 Q Thank you. I'm showing you what's now, I guess, in
6 evidence as Government's Exhibit 100E. These are pretty good
7 shipping labels here?

8 A Want to make sure it stays on box.

9 Q And 100E, the UPS shipping, okay -- strike that.

10 This 100E was tendered for delivery to UPS, correct?

11 A Yes.

12 Q And reflects a return address of Jhon, same address,
13 J-H-O-N, at 7797 Golf Circle Drive, No. 204, Margate, Florida,
14 correct?

15 A Correct.

16 Q And it was tendered for delivery to an individual whose
17 initials are WS in Brazil?

18 A Correct.

19 Q And it bears a tracking number ending in 1056?

20 A Correct.

21 Q And it indicates the contents are an Xbox?

22 A Correct.

23 Q And the contents are?

24 A Xbox 360.

25 Q Thank you. This one is 100F, is that right?

1 A Correct.

2 Q And this package, 100F, reflects a return address of Jhon,
3 J-H-O-N, at 7797 Golf Circle Drive, No. 204, Margate, Florida,
4 correct?

5 A Correct, it does.

6 Q And it was tendered for delivery by UPS to an individual
7 whose initials are FS residing in Brazil?

8 A Correct.

9 Q But with a tracking number ending in 5479?

10 A Correct.

11 Q And it doesn't appear to me that the -- unlike the other
12 labels, it doesn't appear to have an item with a description on
13 it?

14 A It's a Play Station 3, PS3.

15 Q Oh, PS3?

16 A Yeah, you got to know what it is.

17 Q It shows you how much I play. Apparently PS3s weigh more
18 than Xboxes. And is this it?

19 A That's a PS3.

20 Q Good news. We only have one more. And this is
21 Exhibit 100G, yes?

22 A Yes.

23 Q And this one also, sir, reflects a return address of Jhon
24 at 7797 Golf Circle Drive, No. 204, Margate, Florida, correct?

25 A Correct.

1 Q And it was tendered for delivery by UPS to be delivered to
2 an individual whose initials are AL in Brazil?

3 A Correct.

4 Q With a tracking number ending in 2444?

5 A That's correct.

6 Q And I'll let you handle this. What's inside?

7 A HP DVD discs.

8 Q And inside is a -- is inside HP DVD discs?

9 A Yes, there is.

10 Q I think you can return to your seat.

11 MS. MITRANI: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MS. MITRANI:

14 Q I'm showing you what's been marked as Government's
15 Composite Exhibit 15. That's 15A, B, and C. Do you recognize
16 these documents?

17 A Yes, I do.

18 Q And just first, just generally speaking, what is 15A?

19 A These are -- it's a printout of tracking numbers and
20 account numbers and the amounts, shipping amounts, and the
21 weights of each individual tracking.

22 Q And do these -- does 15A pertain all to shipments and
23 payments and the account status of an account under the name of
24 Brazil Express?

25 A It's Brazil Express and the account number, yes.

1 Q Okay. So that's the account detail for that one account,
2 Brazil Express, correct?

3 A Yes, it is.

4 Q And is 15B the account detail for a Sound Stream account
5 that was opened with UPS?

6 A Yes, it is.

7 Q And is 15C the account detail for the Triunfo Specialty
8 Foods account?

9 A Yes, it is.

10 Q And is the information contained in these spreadsheets
11 based on account information on records that UPS keeps
12 regarding shipments and invoicing?

13 A Yes.

14 MS. MITRANI: Your Honor, the government would tender
15 composite 15.

16 THE COURT: Any objection?

17 MR. SCOTTON: No, Your Honor.

18 THE COURT: Government's 15 is admitted.

19 (Thereupon, Government's 15 received in evidence.)

20 BY MS. MITRANI:

21 Q So let's start with 15C, the Triunfo Specialty Foods
22 spreadsheet. I think it will come up on your screen in a
23 moment.

24 A Okay.

25 Q Do you see it? I don't think the jury sees it?

1 A Yes.

2 Q I can ask you a question until they see it. Was this the
3 shipping number, this Triunfo Specialty Foods, that UPS
4 canceled the account?

5 A Yes, the account number is 716R as in Romeo, 9Y, yankee.

6 Q And the shipments on the spreadsheet were unauthorized
7 shipments on the Triunfo account?

8 A That is correct.

9 Q And on the top it says the status of the account was
10 canceled and canceled by UPS, correct?

11 A Correct.

12 Q And the reason for the cancellation was what?

13 A In this particular case, it was canceled because the
14 account was compromised. And to avoid any further fraudulent
15 charges to the account, they canceled the account and created a
16 new one for the customer.

17 Q Going to 15B -- excuse me, 15A, is this a spreadsheet of
18 shipments sent on an account that was called Brazil Express?

19 A Yes, it is.

20 Q And the account number of this particular Brazil Express
21 account, what was this account number?

22 A It's V as in Victor 319X, x-ray, 9.

23 Q And does this Exhibit 15A reflect the shipments on this
24 Brazil Express account?

25 A Yes, it does.

1 Q And the top, it says status canceled, canceled by UPS. Do
2 you see that?

3 A Yes.

4 Q And why was the Brazil Express account canceled by UPS?

5 A This account was canceled because of the lack of payment
6 of the account.

7 Q And 15B, are these account details of shipments sent under
8 an account that was called Sound Stream?

9 A Yes, it is.

10 Q With the account number of 85E8X3?

11 A Correct.

12 Q And does this spreadsheet reflect the shipments on this
13 Sound Stream account?

14 A Yes, it does.

15 Q And like the other two, on the top it says status
16 canceled, canceled by UPS. Do you see that?

17 A Yes.

18 Q Why was it canceled by UPS?

19 A This one, I don't remember why it was canceled.

20 Q Okay.

21 MS. MITRANI: Your Honor, can I approach?

22 THE COURT: Yes. Actually, is now a good time for
23 breaking for the day?

24 MS. MITRANI: Yeah, given the hour, yes, Your Honor.

25 THE COURT: All right, then we will break for today.

1 Please remember my instructions. Don't discuss the case with
2 anyone, don't with disburse information about the case, don't
3 do any investigation into the case, do have a terrific evening.
4 We will see you tomorrow at 9:00 in the morning. All rise for
5 the jury.

6 (Thereupon, the jury exited the courtroom at
7 4:00 p.m.)

8 THE COURT: All right. I have been playing phone tag
9 all day long with Ms. Raisman's employer so he's waiting for me
10 right now to give him a call back. If there's anything we need
11 to address, let me know if there is and I will come back
12 afterwards.

13 MS. MITRANI: Yes, there is, Your Honor, since we are
14 breaking early.

15 THE COURT: In that case, let me excuse the witness
16 for the day. We will see you tomorrow. We are going to start
17 actually at 9:00 so if you can be here a few minutes before, so
18 we can get started at 9:00, that would be terrific.

19 THE WITNESS: Yes.

20 THE COURT: Sorry to ask you to wait, but I don't know
21 how long this will take and I don't want to miss him again. So
22 I'll come out after I finish the call with Mr. Rogers, believe
23 it or not. It's a beautiful day in the neighborhood.

24 (Thereupon, a recess was taken at 4:01 p.m.)

25 THE COURT: Mr. Rogers was not there, so I left him

1 another message. What were the issues we need to address?

2 MS. MITRANI: Okay. Let me pass up three exhibits to
3 the Court. I have given them to the defendant.

4 THE COURT: All righty. By the way, if Mr. Rogers
5 calls my chambers while we are in here, I'm going to leave the
6 bench so I can take the call and come back. All right?

7 MS. MITRANI: So these are government's exhibits.
8 These are certified records. Well, what the Court has, of
9 course, is a copy of the certified record.

10 THE COURT: Can you use the microphone, please.
11 Sorry, thanks.

12 MS. MITRANI: It's off, I'm sorry.

13 THE COURT: No problem.

14 MS. MITRANI: So what the Court has is a copy of the
15 certified records, the official records we got from the state
16 department referencing two separate applications for visa,
17 non-immigrant visas that the defendant submitted. On
18 Government's Exhibit 204, the fourth page of the exhibit, the
19 defendant in response to the question have you ever been
20 arrested checks yes. So, you know, we are willing obviously to
21 be redact that, but I don't want to -- you know, one, I want to
22 know how the Court wants me to redact it.

23 THE COURT: Let's redact the whole question so we
24 don't have, have you ever been arrested, and then the missing
25 yes box.

1 MS. MITRANI: The whole box?

2 THE COURT: Yes. There's no evidentiary value to that
3 any way, correct.

4 MS. MITRANI: Right.

5 THE COURT: Okay. Mr. Scotton, we will handle that by
6 redacting the entire -- you won't see the question and you
7 won't see the answers. Do you understand?

8 MR. SCOTTON: Yes, Your Honor.

9 THE COURT: Is that all right with you?

10 MR. SCOTTON: Yes, Your Honor.

11 THE COURT: Okay.

12 MS. MITRANI: So then the issue is, again in fairness
13 to Mr. Scotton, in Exhibit 205 was an earlier application, so
14 there was an application in March, which is 205, I don't know
15 why it comes later, but anyway 205, and then 204 was a later
16 application. In the earlier application, question 38 is there
17 and he checks no. So, you know, does the Court -- I guess my
18 question is can we leave it as is or does the Court want me to
19 redact question 38 in that exhibit as well?

20 THE COURT: Let's redact 38 in that exhibit as well so
21 the jury doesn't look at it and wonder why 38 is redacted if
22 somebody picks up on that on the other one. All right?

23 MS. MITRANI: How does the Court want me to redact it?
24 I could use a sharpie pen.

25 THE COURT: How about some whiteout and then you won't

1 even be able to tell. It will just be a little blank area
2 there. It will look like -- because it's the first question,
3 so, you know, are any of the following, it will just look like
4 a big blank space there. Is that all right with everybody?

5 MS. MITRANI: So there's question 37, there's a box,
6 and then the whole box which starts 38, try to use whiteout or
7 I could try to put white -- like a white --

8 THE COURT: I'm sorry, isn't just the first question
9 under 38 or is it the entirety of 38?

10 MS. MITRANI: No, it's --

11 THE COURT: The first bullet point under 38?

12 MS. MITRANI: Correct.

13 THE COURT: Right. So what I'm saying is if you
14 delete the first bullet point under 38, it will look like the
15 bullet points start with have you ever been refused admission.

16 MS. MITRANI: Exactly. We will do the same. All
17 right. So what I will do I'll practice tonight on a copy, then
18 do it on the original. I'll show the court and the defendant.

19 THE COURT: You will have to photocopy the original or
20 else you are going to be able to see that we whited it out.

21 MS. MITRANI: Is there going to be any objection to
22 introducing a photocopy of the original because it's not going
23 to have the blue sheet with the ribbon?

24 THE COURT: Mr. Scotton, did you hear that?

25 MR. SCOTTON: Yes.

1 THE COURT: Are you going to have any objection? I'm
2 asking the government, instead of putting the whiteout tape on
3 the original because the original is the blue copy that is
4 certified from the -- I guess, from immigration.

5 MS. MITRANI: No, these are Department of State
6 documents.

7 THE COURT: Department of State, thank you. Instead
8 of having them do it on there, because if they do that, the
9 jury will be able to see that we covered something up, to have
10 them introduce into evidence, not the certified copy, not the
11 one -- not the certified original, if you will, but a copy of
12 the certified original so that they can make a photocopy of the
13 page with that first bullet point, question under 38, and you
14 won't be able to tell that something was whited out. Is that
15 all right with you?

16 MR. SCOTTON: Yes, Your Honor.

17 THE COURT: All right. So that's what we will do.
18 What else?

19 MS. MITRANI: That was it. I mean, the government
20 intends to move this in as an official record and we will
21 actually also have a state department witness. That's what I
22 wanted to flag for the Court's attention.

23 THE COURT: Thank you. And I appreciate that.
24 Anything else that we need to address before tomorrow?

25 MS. MITRANI: Not from the government, Your Honor.

1 THE COURT: Mr. Scotton?

2 MR. SCOTTON: Your Honor, we, for the rest of the week
3 here, we are going to have the trial from 9:00 to 5:00, is this
4 going to be or --

5 THE COURT: Well, it's just going to be tomorrow. And
6 it will be from 9:00 to 4:30 because juror No. 3, Ms. Flores,
7 has a class that she has to leave for on Tuesdays and Thursdays
8 at 4:30 and on Mondays and Wednesdays at 4:00. And on Fridays,
9 I reserve that day for my changes of plea, sentencings, and
10 hearings in civil cases so that I can continue to move those
11 cases forward while I'm in trial.

12 So it will just be tomorrow, and then we will be going
13 into next week?

14 MR. SCOTTON: Let me ask a question. If the marshal
15 says it is --

16 THE COURT: Mr. Rodgers is on the phone. I'm sorry,
17 Mr. Scotton. Can you hold that thought and I'll be right back?

18 MR. SCOTTON: Yes.

19 THE COURT: Thank you.

20 (Thereupon, a recess was taken at 4:12 p.m.)

21 THE COURT: Sorry about that. Mr. Scotton, you were
22 about to bring something up.

23 MR. SCOTTON: You know, Your Honor, I'm guessing by
24 talking to Jason here, can we do that on a sealed motion with a
25 seal give -- without the government present?

1 THE COURT: Do we need the government for anything
2 else today or can I excuse them for the rest of the day?

3 MS. MITRANI: If the Court has a little bit of time, I
4 wanted to address another matter.

5 THE COURT: Let's do that first, and then I'll hear
6 from you in a sealed proceeding.

7 MR. SCOTTON: Thank you, Your Honor.

8 MS. MITRANI: Judge, I think the government will be
9 resting next week. I am told that the defendant has 40 or 50
10 subpoenas outstanding. One, I would like a sense of who --

11 THE COURT: I don't think he has 40 or 50 subpoenas
12 outstanding. I could be wrong about that.

13 MS. MITRANI: That's a number I have heard. I'm not
14 saying that's what it is. I will say it's voluminous,
15 certainly more witnesses than the government would ultimately
16 call in its case. One, we don't know who these people are.
17 Two, I suspect there might be issues of relevancy and what have
18 you that we may need to address outside the jury because I can
19 see a situation where the jury is going to be kept waiting a
20 lot. I don't know how the Court wants to handle that.

21 THE COURT: Well, maybe what we will do, is everybody
22 available tomorrow, not tomorrow, Friday, I mean.

23 MR. SCOTTON: I'm going to have a busy schedule
24 Friday, Your Honor. I'm going to have some meetings, races,
25 sponsors to see if you don't mind give me that break.

1 THE COURT: Well, see if you can squeeze me in. How
2 about the government?

3 MS. MITRANI: Yes, we are available, Your Honor.

4 THE COURT: Mr. Creary, I don't have my schedule up.

5 THE COURTROOM DEPUTY: We only have a 9:30 on Friday.

6 THE COURT: Good, good. What is the 9:30 that we
7 have? Is it a sentencing?

8 Let's say -- how about 10:30 Friday to resolve any
9 relevancy related issues or any admissibility type issues,
10 motions in limine, things of that nature on any exhibits that
11 the defense is wishing to bring in in its case in chief.

12 MS. MITRANI: Okay. That's fine, Your Honor. That's
13 a little different than what I was talking about.

14 THE COURT: I'm sorry. I misunderstood. Tell me what
15 you wanted again.

16 MS. MITRANI: I realize it's a delicate situation, but
17 the witnesses, you know, I don't know based on what I have seen
18 the defendant do, I don't know who these witnesses are. And
19 there may be relevancy issues as to whether they can testify or
20 not. I don't know if we have to deal with that in the moment.
21 I was talking about the actual witnesses who the defense is
22 planning to call. I'm not seeking to invade any kind of
23 defense strategy.

24 THE COURT: Let me say this: The witnesses for whom
25 the Court has paid for subpoenas to be issued, I have already

1 done an initial screening and I think that they meet --
2 assuming that they say what I am understanding they are being
3 presented to say, that they meet at least minimal relevancy
4 standards, broadly construed. So that, I'm not sure we need to
5 have a hearing on.

6 And I am not sure -- I mean, I could -- I regularly do
7 ask the defense attorneys to provide a list of the witnesses
8 they will be putting on at the beginning of their case because
9 in fairness, I think that's allowed, but not before and only if
10 they are going to put on a case. So I'm not going to ask them
11 to turn over names at this point.

12 MS. MITRANI: Okay. That's fine.

13 THE COURT: Okay. But if you are talking about any
14 kinds of admissibility issues with respect to any documents
15 that Mr. Scotton has provided to the government and that you
16 think he might be trying to put on in his case in chief, that I
17 think is appropriate to be addressed by a motion in limine
18 which I would sort of do this as a motion in limine on Friday
19 and address those issues. That way we are all on the same
20 page. We save the jury the time not having to sit through a
21 bunch of sidebars as we figure out what's admissible and what
22 isn't. That's what I would say about that.

23 MS. MITRANI: The government is happy to be here at
24 10:30 and try to address those. It's a little bit difficult
25 because it was like a wholesale document delivery. Nothing has

1 been marked as exhibits. I can tell the Court, for example --
2 Mr. Frank was quickly scrolling down the documents. For
3 example, there was correspondence there from defendant's former
4 lawyers. We didn't read them. There was something there from
5 Mr. Friedman to Mr. Abreu. We didn't read it even though the
6 defendant disclosed it to us and arguably that's a waiver of
7 attorney-client, we skipped over it. So it's very hard --

8 THE COURT: Let's do this. Would it -- and I
9 understand that a few hours might not make a huge difference,
10 but what if we did the hearings at 1:30 on Friday, gives you a
11 little bit extra time, and whatever you have been able to get
12 through, we will address that on Friday. And whatever you
13 haven't been able to get through, we will have to find time to
14 do it after the weekend. That's the only thing I can think to
15 do.

16 MS. MITRANI: Very well.

17 THE COURT: Anything else we should address with the
18 government here?

19 MS. MITRANI: Will the defendant be providing with us
20 an exhibit list of any --

21 THE COURT: Yes. Mr. Scotton, in order so the
22 government doesn't have to go on a fishing trip and go through
23 all of this material, if you turn out not to decide to present
24 it, you do need to provide the government with an exhibit list.
25 That is the norm. And that way, you know, we don't have to

1 waste time on a motion in limine trying to keep documents out
2 that you don't intend to introduce. All right?

3 MR. SCOTTON: Let me ask this, Your Honor. Is it
4 necessary for me to be here on Friday because then I want to
5 spend time in jail that my investigator can come, that we can
6 go, she have her computer that we can go over and start
7 selecting and prepare the list. You know how things over there
8 get very difficult.

9 THE COURT: Well, if we do that, then I'm not going to
10 be able to have the hearing on Friday. That's the problem.
11 Friday is the one day that we have available to have
12 proceedings without the jury because on Monday we are going to
13 have the jury back again. And before you know it, if you wish
14 to put on a case, it will be your turn to do so. And if I
15 haven't ruled on these issues of admissibility, we are going to
16 have to have lengthy sidebars during your case.

17 MR. SCOTTON: Is any kind of room here that the
18 investigator can be with me and we can go over this, or would
19 it be too difficult for the Court also to --

20 THE COURT: I think we talked about this before. If
21 you want to do it here, you have to do it in the room, in the
22 attorney-client conference room with the window in between.
23 That's how it's set up. And that's for security reasons. I'm
24 sorry, but that's what's available. If you -- and, you know,
25 we can do that. If you want to do it face to face, then it's

1 something you probably have to do back at the jail. I mean, it
2 would still be face to face here, but it would just be with
3 glass in between.

4 MR. SCOTTON: Yeah, we would not able to change papers
5 and see. Those rooms has a power cord? I don't think even
6 those rooms has a power cord inside so probably not be able to
7 plug in the computer.

8 THE COURT: I don't know. I guess we could not have
9 the hearing on Friday and you could turn the list over to the
10 government on Friday. And then if we have to take a day off
11 from trial in between the government's case and the defense
12 case to resolve these kinds of issues, then that's what we will
13 have to do. That's the only solution I can think of unless
14 anybody has anything else they would like me to consider?

15 MS. MITRANI: I don't know. I also want to say for
16 the record that actually the government provided to the defense
17 a summary of what we believe was turned over. I don't know if
18 he wants to use that as a starting point as to what he intends
19 to introduce and not introduce. We gave the defendant --

20 THE COURT: An inventory.

21 MS. MITRANI: Yeah.

22 THE COURT: Okay. All right. So that's what we will
23 do. We are not going to have a hearing then, I guess, on
24 Friday. Mr. Scotton, you will need to provide the witness list
25 to the investigator in time for the investigator to get it to

1 the government before the close of business on Friday. You
2 understand?

3 MR. SCOTTON: Yes, Your Honor.

4 THE COURT: Because otherwise there's just no way --
5 let me say this. I want to be very clear about this. I'm not
6 trying to be difficult or anything, but really the time for
7 doing this should have been far long ago in the past. I am
8 trying to deal with the fact that you are representing yourself
9 and haven't done this before. So I am allowing you to do this,
10 but please understand that if something hasn't been turned over
11 and it's not on the witness list by the end of business on
12 Friday, it's not coming in. We are not discussing it any
13 further. That's it.

14 So please be very careful when you put together that
15 exhibit list. Make sure you don't leave anything off because,
16 otherwise, we are going to have a problem with getting that in.
17 You understand?

18 MR. SCOTTON: Yes, Your Honor. As a matter of fact,
19 then I need to understand here is what is going to be the rule
20 on the videos, what is the going to be the rule on the
21 paperwork as being turned to the government yesterday.

22 THE COURT: Okay.

23 MR. SCOTTON: And also --

24 THE COURT: Let me just stop you for a minute. You
25 can put whatever you want down on your exhibit list, okay,

1 providing that it's already been given to the government.

2 MR. SCOTTON: Okay.

3 THE COURT: Then the government is going to decide
4 whether it's going to object to anything. If it does object to
5 anything, I am going to have a hearing about those things and
6 decide whether or not they are admissible. Okay? But you can
7 put whatever you want down on that list to begin with. Do you
8 understand?

9 MR. SCOTTON: Yes, Your Honor.

10 THE COURT: And then if there's a problem, I'll let
11 you know. Okay?

12 MR. SCOTTON: Okay, Your Honor.

13 THE COURT: Does that answer your question?

14 MR. SCOTTON: Yes.

15 THE COURT: Okay. Good. So as I said, if there's
16 something you want, you need to have turned it over and it
17 needs to be on that list or it's not coming in. Okay?

18 MR. SCOTTON: Okay.

19 THE COURT: You understand?

20 MR. SCOTTON: Yes.

21 THE COURT: All right. Anything else we need to
22 address with the government here?

23 MS. MITRANI: No, Your Honor.

24 THE COURT: Thank you. Let me excuse the government
25 and now we will go on to our ex parte proceeding.

1 MR. KREISS: Your Honor, is there any way that either
2 we can break or I can be excused tomorrow at 4:15? I have an
3 obligation with one of my children.

4 THE COURT: Yes. And I'm sorry, you did mention that
5 the other day, and absolutely we will do that. We would
6 normally break at 4:30 tomorrow anyway because the juror has to
7 leave at that time, so we will just break tomorrow at 4:15.
8 Thank you for reminding me. And if I forget again tomorrow,
9 remind me again. Sorry for making you do that.

10 MS. MITRANI: Have a nice evening, Your Honor.

11 THE COURT: Thank you. You too.

12 (Thereupon, the government exited the courtroom.)

13 (Thereupon, a sealed hearing was held.)

14 * * * * *

15 C E R T I F I C A T E

16
17 I hereby certify that the foregoing is an
18 accurate transcription of the proceedings in the
19 above-entitled matter.

20

21

22 7/30/14

23

24

25

s/ Tammy Nestor
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,

Fort Lauderdale, Florida

Plaintiff(s),

January 30, 2014

vs.

ROGERIO CHAVES SCOTTON,

Defendant(s).

JURY TRIAL
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
JOSE SANTIAGO				
BY MS. MITRANI	6		34	
BY MR. SCOTTON		11		
LANER LIMA				
BY MS. MITRANI	41		52	
BY MR. SCOTTON		47		
KATHERINE MORTENSEN				
BY MS. MITRANI	53		88	
BY MR. SCOTTON		78		
CARLA FELINI				
BY MS. MITRANI	91			
BY MR. SCOTTON		123		
CARLA FELINI				
BY MS. MITRANI	173			
GOVERNMENT'S EXHIBITS				PAGE
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1 Thereupon,
2 the following proceedings began at 9:01 a.m.:

3 MS. MITRANI: I know it's 9:00. The Court likes to
4 start right away. Can we address that redacted issue?

5 THE COURT: Yes, we can. In fact, I have been told
6 that one of our jurors is going to be five minutes late.

7 Mr. Scotton, can I have your attention for a moment,
8 please?

9 MR. SCOTTON: Good morning, Your Honor.

10 THE COURT: Good morning. We are looking at the
11 exhibits that the government discussed yesterday, Government's
12 Exhibits 204, 205, and 206.

13 MS. MITRANI: 204 and 205. And, Your Honor, just for
14 the record, what we have handed up to the Court and to
15 Mr. Scotton, and I explained it to him, is on that box 38, both
16 of these forms is DS156. On one version, it has the first
17 bullet point blocked off where it says have you ever been
18 arrested. And the other version has the whole 38 arrests. One
19 question on Exhibit 205.

20 THE COURT: Sorry, they both look the same to me. Did
21 I miss something?

22 MS. MITRANI: They are both DS156.

23 THE COURT: They look different, but they both seem to
24 have had the same correction which is what I thought we were
25 going to do. But the way you just described it made it sound

1 like, maybe I misunderstood that you had done different
2 corrections on them.

3 MS. MITRANI: Let me go slower, if you turn to page 2
4 of 2, Exhibit 204, July 2008, DS156. In one version I just
5 blocked out the first bullet point of 38 which dealt with have
6 you ever been arrested. But then there is a bullet point that
7 says have you ever violated the term of a US visa, unlawfully
8 present or deported from the United States where the defendant
9 checked yes. I don't know if that matters. So in another
10 version, I just took 38 out in its entirety. This is all
11 within Government 204. Do you see that?

12 THE COURT: I do see that.

13 MS. MITRANI: It's up to the defendant which version
14 he wants, just the first bullet point, or the entire 38.
15 Basically 205 is the same thing. 38 has either the first
16 bullet point out or the whole block off.

17 THE COURT: You understand, Mr. Scotton?

18 MR. SCOTTON: Can I have a minute to review all this
19 and make a decision here?

20 THE COURT: So the government's position is 38, the
21 government doesn't think 38 is relevant but that if Mr. Scotton
22 wants any part of it in, then it will come in because it's part
23 of the document.

24 MS. MITRANI: Right. It's not so much that it's not
25 relevant. I just don't want to create any collateral issues.

1 THE COURT: Okay.

2 MR. SCOTTON: Your Honor, we can take the 38 out?

3 THE COURT: Totally?

4 MR. SCOTTON: Yes.

5 THE COURT: Okay.

6 MS. MITRANI: And just so we are clear, so we will
7 take the 38 out. We are going to introduce the copy of the
8 official record, and Mr. Scotton is not going to object that
9 it's not the original?

10 THE COURT: Right, Mr. Scotton?

11 MR. SCOTTON: Yes, Your Honor.

12 THE COURT: Very good. As soon as the jury is here,
13 we will bring them in.

14 (Thereupon, the jury entered the courtroom at
15 9:08 a.m.)

16 THE COURT: Now it's time for the questions. Is there
17 anybody here who discussed the case with anyone, disbursed
18 anything about the case, or did any investigation into the
19 case? If so, please raise your hand for me now. I see no
20 hands. Thank you all for that. We are going to return to the
21 government's case.

22 MS. MITRANI: Thank you, Your Honor. Mr. Santiago, I
23 believe, was still on the stand.

24 THE COURT: Mr. Santiago, I just need to remind you
25 that you are still under oath. Do you understand?

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: Thank you.

3 DIRECT EXAMINATION (resumed)

4 BY MS. MITRANI:

5 Q Good morning.

6 A Good morning.

7 Q How are you today?

8 A Good.

9 Q I think yesterday we left off on our spreadsheet regarding
10 Sound Stream, which is Government's Exhibit 15B. Do you
11 remember that?

12 A Yes.

13 Q And I think you didn't recall whether this account -- some
14 of the details of this account. So we will get to that in a
15 second.

16 MS. MITRANI: May I approach the witness, Your Honor?

17 THE COURT: You may.

18 BY MS. MITRANI:

19 Q I am showing you Government's Exhibit 15F. Do you
20 recognize this document?

21 A Yes.

22 Q And what is this document?

23 A It's a spreadsheet of the three accounts that were
24 canceled based on the investigation that we did.

25 MS. MITRANI: Your Honor, the government would offer

1 15F.

2 THE COURT: Any objection?

3 MR. SCOTTON: No, Your Honor.

4 THE COURT: 15F is admitted.

5 (Thereupon, Government's 15F received in evidence.)

6 BY MS. MITRANI:

7 Q So it's going to come up on your screen in just a second
8 and everybody else's screen.

9 Okay. Mr. Santiago, can you see Government's Exhibit 15F
10 okay on either screen?

11 A Yes.

12 Q Okay. So the first part of this summary sheet concerns
13 the Triunfo Specialty Foods account that we were discussing
14 yesterday?

15 A Correct.

16 Q And the account was closed on March 19, 2009?

17 A Yes.

18 Q And there was \$4,551.04 of unauthorized shipments on that
19 account?

20 A Correct.

21 Q All right. And then the -- the middle of the summary
22 sheet concerns that Sound Stream account that was opened with
23 UPS?

24 A Correct.

25 Q And that Sound Stream account was closed on December 22,

1 2008, is that correct?

2 A Correct.

3 Q And at that time it had \$15,302.20 in unpaid invoices, is
4 that correct?

5 A Correct.

6 Q And then last but not least is the account Brazil Express
7 slash returns department, is that correct?

8 A Yes.

9 Q And that account was closed on February 4, 2009?

10 A That's correct.

11 Q And actually, it was opened on January 13, 2009?

12 A Correct.

13 Q So you guys were able to close it pretty quickly?

14 A Yes.

15 Q And at that point there was \$15,314.57 in unpaid invoices?

16 A Correct.

17 Q With the first invoice having been sent out on or about
18 1/24/2009 for \$2,500 approximately?

19 A Correct. That's the -- 1/24 is like the week's ending, I
20 believe.

21 Q So right from the beginning, the invoices were not being
22 paid, is that right?

23 A Correct.

24 Q Since we are on Brazil Express, let's go back to 15A.

25 MS. MITRANI: Mr. Creary, can I use the microphone?

1 Is that okay?

2 THE COURT: Yes.

3 BY MS. MITRANI:

4 Q And the sender on the first package on this spreadsheet
5 lists Samara Scotton, Brazil Express, at 7797 Golf Circle
6 Drive, Margate, Florida, correct?

7 A Correct.

8 Q And that was for a package to be delivered in Brazil?

9 A Correct.

10 Q And likewise, the next two shipments, the next two
11 packages also list the same sender, Samara Scotton, Brazil
12 Express, at that 7797 golf Circle address?

13 A Correct.

14 Q Do each of these line entries represent one waybill, one
15 package on the invoice?

16 A Correct, that's the information of that particular
17 package.

18 Q So each entry is a package, correct?

19 A Correct.

20 Q Since this is not a memory test, I will give this 15A back
21 to you. Are the senders on all the shipments on the Brazil
22 Express account the same, Samara Scotton, 7797 Golf Circle
23 Drive?

24 A Well, there's four that are different.

25 Q Let me ask you this way. Are the majority of the senders

1 7797 Golf Circle Drive?

2 A Yes, the address is the same. The names are the only
3 thing that is different.

4 Q So the address the same, 7797 Golf Circle, but sometimes
5 it's not Samara Scotton?

6 A Yes. There's one that shows 1801 Harbor Point Parkway.

7 Q As a sender?

8 A As a sender in Atlanta.

9 Q And going to 15B, which is the Sound Stream account, so
10 the first shipment on the Sound Stream account, the sender is
11 listed as Simon, Sound Stream at 2234 North Federal Highway
12 Boca Raton, Florida, correct?

13 A Correct.

14 Q And the second entry has a different name. It says Keila
15 Waldon, but then says Sound Stream at the same 2234 North
16 Federal Highway address, correct?

17 A Correct.

18 Q For packages being sent to Brazil, correct? Can you see?

19 A Yes.

20 Q Is different --

21 A Yes, goes to Brazil, correct.

22 Q And on Government's Exhibit 15B for Sound Stream, are all
23 the return addresses listed as 2234 North Federal Highway in
24 Boca Raton, Florida?

25 A Yes, they are.

1 Q Those packages that, I guess, have been tucked away now,
2 but you remember all those packages we looked at yesterday,
3 Government's composite Exhibit 100?

4 A Yes.

5 Q To whom did you give those packages to?

6 A Those were released to the FBI under a subpoena.

7 Q I think the last spreadsheet I put up today is 15C and
8 this is the spreadsheet of the packages that were sent on the
9 Triunfo Specialty Foods Corp account that were not authorized
10 by Triunfo?

11 A That's correct.

12 Q And in this instance, let's go to the being sent to.
13 These packages were being sent to Brazil, correct?

14 A Correct.

15 MS. MITRANI: No further questions, Your Honor.

16 THE COURT: Cross-examination.

17 CROSS EXAMINATION

18 BY MR. SCOTTON:

19 Q Good morning, Joe.

20 A Good morning.

21 Q You prefer being called Joe, Santiago, does it matter?

22 A Joe is fine.

23 Q Mr. Joe, just to kind of refresh my mind, how long have
24 you worked with UPS again?

25 A 16 years.

1 Q The whole time you work as security?

2 A Yes.

3 Q Before you start working for UPS as security, did you have
4 any kind of background with law enforcement?

5 A No.

6 Q Any training that you have received to become a security?

7 A Security?

8 Q Yes.

9 A The training for my company, yes, for UPS and previous
10 jobs.

11 Q And what does the training involve to become security with
12 UPS?

13 A Training, we go through whatever programs are available
14 that assist us working in the UPS, working with systems within
15 UPS.

16 Q And that training involve also get familiar with other
17 departments of UPS?

18 A It does.

19 Q Claim?

20 A Yes.

21 Q Shipping packets international?

22 A Some, depending on the investigations, we do go back and
23 learn how the system works and then so we can do our
24 investigation.

25 Q Okay. You familiar with law requirements in reference to

1 Brazilian customs?

2 A No.

3 Q UPS did not provide you that training you needed?

4 A No.

5 Q Do you have knowledge on regulations of international
6 shipment?

7 A No.

8 Q Requirements?

9 A No.

10 Q Those are packets the government has shown you here. They
11 all went to Brazil, correct?

12 A Correct.

13 Q And do you have any knowledge what kind of paperwork need
14 to go together with these box?

15 A I know that they required items detailing what's in the
16 package and it requires where it's going to, the weights and
17 the values of the package.

18 Q Okay. You talking about the weights. Most of the time,
19 the weight, if it is not what seems like, let's say if the
20 client has declared a weight, that weight is not really
21 accurate, is it going to be any problem with that with the
22 shipping?

23 A It would be held back.

24 Q And when you guys collect the box, whatever pickup it is
25 or dropoff, get to the main station, the main station review

1 the information again, correct?

2 A Correct.

3 Q They will weight the box again?

4 A Yes, there's a department that does that.

5 Q Besides those accounts has not been authorized those
6 shipment, is any illegal things shipping out of those box?

7 A As far as I know, the packages, the boxes, what's inside
8 the box not important to us.

9 Q Okay. Now, another question I ask you is this. Those
10 packages has been shipping under authorized accounts, correct?

11 A It was an account, yes, it was --

12 Q Right. So but the real true about those box, those box
13 never really have been shipping, right, so it has been hold at
14 the UPS station, correct?

15 A Correct. They were picked up at one address and arrived
16 at her facility where it was held.

17 Q And which facility it will be?

18 A Deerfield from facility.

19 Q Deerfield Beach. So the drive come pick up the package,
20 or if it was dropped off to your facility, then you guys hold
21 for that and you guys realize it is unauthorized account. What
22 kind of policy UPS have in holing something that not belongs to
23 them? You don't think the fact that because it is some kind of
24 account, those packages should be returned to the client
25 because UPS did not pay for those merchandise?

1 A Absolutely. If the account belongs to the shipper who we
2 spoke with and they advise that that was not their packages and
3 they didn't authorize those packages, we don't know who those
4 packages belong to.

5 Q My question is this. For example, we ship through third
6 party shipping company and the package get hold up in your
7 station because the account was not authorized.

8 MS. MITRANI: I object to the form and foundation of
9 that question.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q So if come to your store and say I -- you know, they got
13 proof of a shipment in their hands, they have a copy of
14 waybill, copy of commercial invoice, they have a copy of the
15 receipt that they bought the merchandise and say the
16 merchandise mine, and, of course, you going to direct the
17 customer say, well, this account has been not authorized to be
18 used. But the person has proved to you that merchandise got
19 proved, they got a copy of the label, that merchandise should
20 be returned to the person that shows proof they bought that
21 merchandise?

22 A If you are asking me in this particular case or in
23 general --

24 Q In general.

25 A In general in the shipper is shipping a package and they

1 want their package back, we will return their package back.

2 Q What about if it is a third party shipping company, you
3 don't return it?

4 A It's returned to the shipper, the account holder.

5 Q It has to be the shipper?

6 A Correct.

7 Q So the label says Brazil Express but I prove to you with
8 receipt that the merchandise is mine, you are not going to
9 release the merchandise to me?

10 A No because the account holder is the person shipping the
11 package.

12 Q All right. Then how can UPS claim loss here when the
13 package was not shipping, but you hold the merchandise that not
14 belongs to you?

15 A It was not the shipper's merchandise. In this particular
16 case, these were not the shipper's merchandise.

17 Q Have you seen a person name Carlos Colon went to your
18 store before?

19 A I recognize the name, yes.

20 Q Do you recall Carlos Colon is my stepdad?

21 A He said he was, yes.

22 Q Do you recollect that I have sent emails out of town, I
23 sent him to talk to you about those package you be holding?

24 A Yes.

25 Q What did you advise him?

1 A I advised him that he was not the shipper, that I could
2 not release the packages to him because he was not the shipper.

3 Q Correct. So now, prosecutor has show you several packages
4 here that was shipped under Brazil Express Corporation, right?

5 A Correct.

6 Q Well, during your investigation, did you research Brazil
7 Express was the company that I used to own?

8 A What was the question?

9 Q During your investigation, did you do some kind of search
10 with SunBiz that I own that company?

11 A I believe your name shows up on the account, yes.

12 Q But you never contact me, right?

13 A No, sir.

14 Q Did you try to go to the address 7797 Golf Circle Drive?

15 A Me, personally?

16 Q Yes.

17 A No, sir.

18 Q Did you make attempt to contact Mr. Carlos Colon and
19 inform him those accounts been fraudulently used?

20 A No, sir.

21 Q Is any claim has been put through those accounts? Do you
22 have any recollection of any claim lost for those accounts?

23 A No, sir.

24 Q During investigation, did you try to get the date this
25 account has been opened, who opened the account? Have you run

1 some kind of investigation, perhaps call the call center and
2 get some recordings from the phone calls?

3 A No, we don't record phone calls.

4 Q Mr. Joe, as you just mentioned a couple minutes ago that
5 you see that Brazil Express was one of my companies. If I
6 ship, if I have shipped those packets through my company and if
7 I don't pay my bill, that make a fraud or that make a bill
8 issue?

9 A That's a billing issue.

10 Q So it would be a collection issue?

11 A Correct.

12 Q Okay. So by UPS saying that it claim that that account
13 was fraudulently used and you have your investigation done and
14 shows Brazil Express, why UPS have never tried to contact, you
15 know, my company to verify me that, you know, our name has been
16 used or if we have ship those packets?

17 A I'm not part of the finance and accounting department, but
18 I'm sure that they tried to contact your company with whatever
19 information is listed on the account for Brazil Express to try
20 to collect the money that was due.

21 Q Okay. So you say that the billing department tried to
22 call my company to collect the money?

23 A Yes, sir, I'm sure finance and accounting would contact.

24 Q Did you have any kind of billing you could present to this
25 court to show they have sent me a bill or tried to collect the

1 money?

2 A I don't.

3 Q Mr. Joe, one of the box here the government has exhibit
4 here has Epson print. I don't know if it's the one sitting on
5 top of the box there. But it was Epson print here that has on
6 the side another UPS label. Do you recall that?

7 A It has a Fed-Ex label.

8 Q It has a Fed-Ex label. Did you remember what the Fed-Ex
9 label was saying where they come from?

10 A I don't remember. I believe it was coming from a shipper,
11 from Epson, shipped out of Epson.

12 Q So pretty much shows there was a printer was bought from
13 Epson and Epson shipped to my location, correct?

14 A It doesn't say how, if it was purchased or not. It just
15 says it was shipped.

16 Q Shipped to my location?

17 A Correct.

18 Q Is it a crime?

19 A As far as I know, no.

20 Q Mr. Joe, are you familiar with those pack and ship stores?

21 A Pack and ship store?

22 Q Yes.

23 A Yes.

24 Q Do you agree with me that pack and ship store, they are
25 resellers from those companies?

1 A I'm not sure of your question, sir.

2 Q Do you agree with me the pack and ship store they resell
3 the service for UPS, Fed-Ex, and DHL?

4 A They ship packages.

5 Q They reseller the service. They resell the service of
6 your company, do you agree with me?

7 A No, sir.

8 Q If I go to pack and ship store right now, I'm shipping
9 packages, they are going to charge me whatever the rates is
10 based on what they doing. They reselling UPS service. They
11 have a contract to resell your service, is that correct?

12 A They ship a package and they pick whatever service they
13 want based on their price, I would imagine.

14 Q Right. So they have authorization to resell the UPS
15 service. That's what I'm asking you.

16 A I believe they have authorization to ship through UPS or
17 Fed-Ex or DHL, and it's also up to the customer that comes to
18 their store.

19 Q Right, but I'm saying that they have the right to resell
20 the service, right?

21 A I don't believe that that term is correct.

22 Q You go to pack and ship stores of UPS signs and Fed-Ex all
23 over the place say we authorize shipping center. Do you think
24 UPS going to allow someone hang a sign and say, hey, we sell
25 UPS store? I mean, they have authorization to resell the

1 service, correct?

2 A They have authorization to ship through UPS, yes.

3 Q So they reselling this because pack and ship store, they
4 are not UPS store, correct?

5 MS. MITRANI: Objection, asked and answered.

6 THE COURT: Sustained.

7 BY MR. SCOTTON:

8 Q Isn't it difference between pack and ship store and
9 original UPS store?

10 A No, the UPS stores are privately owned through -- it's a
11 franchise basically.

12 Q So it is no difference between pack and ship store and UPS
13 store, that's what you are saying?

14 A Correct.

15 Q If any client goes to a pack and ship store or UPS store
16 and they try shipping a package to whatever this destination
17 would be, which address is going to be shown on the label as
18 the sender?

19 A The UPS store.

20 Q If the client required that they want to have his address,
21 it is allowed to do that?

22 A No.

23 Q So if a person use a third party shipping company so the
24 address be on the label is the address that belongs to the
25 person, right?

1 A Repeat the question.

2 Q If a person ship a package to a third party shipping
3 company, they cannot change the information on the label; it
4 has to be the shipping company information on the label,
5 correct?

6 A The label is created at the pack and ship. If you are
7 talking about a pack and ship location, the label is created at
8 the pack and ship location and the only information that's
9 added on there is who's going to receive it, the two --

10 Q Right, but they cannot change the sender information?

11 A No.

12 Q Because they are the shipper?

13 A They are the shipper.

14 Q Is UPS allow you to put any kinds of information on the
15 label as the sender?

16 A As long -- the sender is just a return, who to return the
17 package to, and it should match the account. When we return a
18 package, UPS, when they return a package, they return it to the
19 account holder.

20 Q If the account holder has an office in one location and
21 has a warehouse in another location, can he say, my account has
22 address as the office, but if this package get returned, I want
23 it to be returned to my warehouse? Can he change that?

24 A It doesn't work that way.

25 Q He can't change it?

1 A No. It gets returned to the account holder address.

2 Q So if they put my address on the label, that's automatic
3 implicated the person who was shipping the package?

4 A If the address is on the label when they return it, it's
5 going to go back to that address that's on the label.

6 Q Right. For example, Brazil Express account, during
7 investigation that account has been opened under that address,
8 77 Golf Circle Drive?

9 A Correct.

10 Q When someone open account with UPS, does UPS produce some
11 kind of welcome kit?

12 A I'm not sure.

13 Q And how the person be able to register the account online?

14 A How can they open an account online?

15 Q How can they register the account online?

16 A Register the account? When they apply for the account,
17 the information that's put in there, that's what comes up.

18 Q Under the same account, can you have more than one user
19 name?

20 A I'm not sure how the system is set up.

21 Q But I take it it's possible to be able to have more than
22 one user name?

23 A You can go in there and edit and change the contact
24 information.

25 Q So if you have a UPS account and I came to you and said

1 you to that I have a package I want to ship to Brazil and you
2 say, all right, you can go ahead and use my account let me give
3 you, user, password, and I use the password and I create a
4 label and ship a package to Brazil, they are implicating me in
5 a crime because I made the label online?

6 A No, sir.

7 Q Have anybody from UPS contact the Brazilian UPS or
8 authorities in Brazil to let them know that this fraud was
9 going on here?

10 A I did not.

11 Q Basically this was more like domestic kind of thing; you
12 never involve anybody internationally?

13 A As far as I know, no.

14 Q Prosecutor has mentioned also some packages under the name
15 Samara Scotton. Do you recall that?

16 A Yes, sir.

17 Q Under your investigation, did you get familiar with the
18 name?

19 A No, I did not.

20 Q Did you search for who that person was?

21 A No.

22 Q Does anybody in the company tried to figure out who the
23 person is?

24 A Not sure.

25 Q Also during the cross-examination from the government, you

1 mentioned the account was -- some of the account was closed for
2 not payment, correct?

3 A Correct.

4 Q Did not say the account was closed due to fraud activity?

5 A Correct.

6 Q During the payments, this became a collection situation,
7 correct?

8 A Correct.

9 Q So no fraud in here then?

10 A No, sir.

11 Q Mr. Joe, the other account the prosecutor has mentioned
12 during this cross-examine, she mentioned account on the name
13 Triunfo. Do you remember that?

14 A Yes, sir.

15 Q Did you do any investigation through Triunfo?

16 A Yes, sir.

17 Q Did you get familiar with the company Triunfo?

18 A I know they ship food products.

19 Q Did you get to know what is the main office was located
20 from Triunfo?

21 A Somewhere -- the office I spoke with was in the Boca area,
22 I believe.

23 Q They have office in Boca area. Are you sure about that?

24 A Boca or Deerfield, somewhere in our area.

25 Q Okay. Have you talked to anyone from Triunfo?

1 A I talked -- at the time I talked to the shipping manager
2 to confirm the shipment of these packages.

3 Q And he say they never ship packages to Brazil?

4 A Correct, he said they ship domestically.

5 Q But they are in the business of import food back and forth
6 from Brazil, correct?

7 A I'm not sure what their business is.

8 Q And during the investigation, did you ever heard of a
9 company called Matte Lion?

10 A No, sir.

11 MR. SCOTTON: Your Honor, can I approach the witness?

12 THE COURT: All right.

13 BY MR. SCOTTON:

14 Q Present this document for you to take a look.

15 A Okay.

16 Q Can you see the picture of a man on that paper?

17 A I see an image. I don't know. I can't tell who that is.

18 Q Well, that picture was me. I got a lot of hair over there
19 on that picture. As you get old, things happen.

20 A Okay.

21 Q I used to own that company. That was the company that I
22 use to conduct business with the Triunfo. But nobody ever even
23 told you about that, right?

24 A No, sir.

25 Q Did you familiar during your investigation that my company

1 has a lawsuit against Triunfo filed in New Jersey?

2 MS. MITRANI: Objection, beyond the scope.

3 THE COURT: Sustained.

4 BY MR. SCOTTON:

5 Q When you talk to Triunfo, did Triunfo ever mention
6 anything about my name or my companies?

7 A No, sir. My conversation with Triunfo was to verify these
8 packages and to see if they authorized the shipment.

9 Q Right, and they denied they do not do any business in
10 Brazil?

11 A No, they just didn't authorize the shipment of these
12 packages.

13 Q Have anybody in Triunfo tried to contact my company?

14 MS. MITRANI: Objection, Your Honor.

15 THE COURT: What's the objection?

16 MS. MITRANI: Beyond the competency of this witness.

17 THE COURT: Sustained.

18 BY MR. SCOTTON:

19 Q Mr. Joe, do you recall any kind of time frame during this
20 process with these packages shipping back and forth to Brazil
21 stolen goods, stolen accounts, whatever we can call it at this
22 point, have you ever remember seeing me walk to the station
23 Deerfield Beach to retrieve package, pick up package that was
24 on the side sending labels to my door? Do you recall my coming
25 to your location?

1 A I personally have never seen you.

2 Q Are you the one in charge also over there with the
3 surveillance cam at that location?

4 A I was in charge of that facility, but we don't have
5 surveillance cameras at that location.

6 Q Government also mentioned that one of the packets over
7 there has address of 1801 Harbor Point Parkway in Atlanta,
8 Georgia. Do you recall that?

9 A Yes, sir.

10 Q Did you investigate the address location as well?

11 A No, sir.

12 Q Nobody has contact that location figure out why the
13 address is on the label?

14 A I have not.

15 Q Is any other department from your company involved on this
16 investigation?

17 A Not that I know of.

18 Q How long UPS has been investigating those accounts?

19 A Which accounts?

20 Q All the accounts that the government has presented as
21 fraudulent accounts.

22 A I believe it started when this investigation started.

23 Q Do you guys still shipping packages to Brazil?

24 A Yes, we ship packages to Brazil.

25 Q Do you guys still have problems shipping packages to

1 Brazil?

2 A Not that I'm aware of.

3 Q You guys still having problems with people paying their
4 bills from time to time?

5 A In general?

6 Q Yes.

7 A Yes, sir, we do.

8 Q So people open account and people don't pay their bill?

9 A Correct.

10 Q What happened with that?

11 A I'm not in that department, sir.

12 Q Does that become a fraud too?

13 A I haven't been asked to investigate one.

14 Q UPS has insurance?

15 A Yes, it does.

16 Q So when those scenarios of people using accounts was not
17 authorized, UPS claim those accounts under the insurance
18 company?

19 A Not sure.

20 Q Can you say that UPS have a lost with those packages that
21 was been seized?

22 A No, sir.

23 Q Because never has been shipped?

24 A No, sir.

25 Q So if it is not shipped, it is not lost?

1 A No, sir.

2 Q During this investigation you guys have a meeting one of
3 the drivers, Javier Hernandez, do you recall that?

4 A I recall meeting drivers. Give me some specifics. I can
5 probably give you a better answer.

6 Q I guess one of the drivers that most of the time go to the
7 location 7797 Golf Circle Drive?

8 A Yes.

9 Q And some kind of photo lineup was presented to the driver.
10 Do you recall that?

11 A I don't remember that.

12 Q You present with the FBI Agent Van Brunt on it?

13 A I might have been.

14 Q Say here, during the investigation, February --

15 MS. MITRANI: Objection. He's reading from a document
16 that's not in evidence.

17 THE COURT: Sustained.

18 MR. SCOTTON: Can I have a sidebar, Your Honor,
19 please?

20 THE COURT: We have already discussed this. You can't
21 read from the documents when they are not in evidence.

22 MR. SCOTTON: Your Honor, this is an FBI report.

23 THE COURT: I know. You can't read from it if it's
24 not in evidence. So please move on.

25

1 BY MR. SCOTTON:

2 Q Do you recollect that the driver says he remember some old
3 Spanish lady on that location?

4 A No, sir, I don't.

5 Q It is Mr. Javier still work for UPS as a driver?

6 A I am not sure. I haven't been there for about six years.

7 Q You no longer work for UPS?

8 A I work for UPS, not in that building.

9 Q Mr. Joe, have you received information direct from me on
10 your location?

11 A I'm sorry?

12 Q Have you received any information that I sent to UPS
13 myself?

14 A Not sure what information you are talking about.

15 Q Police reports.

16 A You sent UPS information, police reports?

17 Q Yes, sir.

18 A No, I didn't see any.

19 Q You never received that?

20 A I didn't receive any.

21 Q You never received any calls from me to complain to UPS
22 some wrong activity?

23 A I remember receiving a call. Other than, I believe,
24 Carlos, somebody else called. But I don't remember if it was
25 you that called me that I spoke over the phone trying to obtain

1 these packages back.

2 Q Right. Carlos Colon is one person. My name is Rogerio
3 Scotton.

4 A Correct. I understand, but I didn't remember the other
5 person I spoke with was with you.

6 Q Right. But beside the point of some conversation of the
7 phone, you never receive any documentation of police reports
8 has been sent to your department, right?

9 A No, sir.

10 Q Mr. Joe Santiago, do you -- did you under your
11 investigation know that I have opened myself a pack and ship
12 store in Boca Raton?

13 A No, sir.

14 Q Do you understand that those companies have given me
15 contracts to represent them?

16 MS. MITRANI: Objection, Your Honor.

17 THE COURT: Sustained.

18 BY MR. SCOTTON:

19 Q Do you know that UPS has paid the government over
20 \$40 million for drug scam?

21 A No, sir.

22 Q Did you know that I have reported the drug scam?

23 A No, sir.

24 Q So the government here claim a million dollar in loss or
25 three million dollar in loss. I mean, I presume is a million

1 dollar for UPS because there are three companies involved so a
2 million dollar for each of them?

3 MS. MITRANI: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. SCOTTON:

6 Q But UPS has not claimed 40 million dollar in loss either,
7 right?

8 A I'm not aware of what you are talking about, sir. I'm not
9 sure. I haven't heard of anything of that amount.

10 Q Did you recall receive a document that I faxed to your
11 office in reference packages was shipped with some inside and
12 some drug prescriptions?

13 A No, sir.

14 Q Did you recollect receive some kind of emails that has a
15 box with some illegal prescriptions inside the box?

16 A No, sir.

17 Q Have anybody from UPS get indictment or arrest during the
18 drug scam?

19 A Again, I'm not aware of what you are talking about.

20 Q You don't know UPS has paid \$40 million to settle that?

21 MS. MITRANI: Objection, Your Honor.

22 THE COURT: Sustained.

23 MR. SCOTTON: No more questions, Your Honor.

24 THE COURT: All right. Redirect?

25 MS. MITRANI: Yes, Your Honor.

1 REDIRECT EXAMINATION

2 BY MS. MITRANI:

3 Q I think the defendant was asking you about your
4 interactions with a Carlos Colon. Do you recall his questions?

5 A Yes.

6 Q So do you recall that interaction with an older
7 white-haired gentleman?

8 A Yes.

9 Q Can you tell the members of the jury what that interact
10 entailed? What happened?

11 A He came in and he wanted to pick up these packages.

12 Q When you say these packages, these Triunfo packages?

13 A The Triunfo packages.

14 Q Okay. Go ahead.

15 A And I advised him that he was not the shipper, that the
16 account belongs to Triunfo, and therefore they are the
17 responsible party and we would do whatever they asked us to do.
18 And being that those weren't their packages, it was really --
19 there was no way of proving who the packages belonged to.20 Q And did you -- so did you tell Mr. Colon that these
21 packages were on the Triunfo account and not the account that
22 he was coming in to collect the packages for?

23 A Correct.

24 Q And do you remember the expression on his face when you
25 told him that?

1 A No, I don't.

2 Q Okay. Did you ever see him again after that?

3 A No, just a couple phone calls afterwards.

4 Q Now, these, which agent Van Brunt was going to help me
5 bring out -- I appreciate it. But I'm not going to get them
6 all out right now, though I may eventually. But Composite
7 Exhibit 100, I think this is 100C, for example, were these all
8 tendered, were these all given to UPS with the intent that they
9 be delivered to Brazil?

10 A Correct, they were picked up at their location. It was
11 scanned in by a driver as a pickup and then brought to the
12 facility and scanned in the facility as to go out and then the
13 exceptions were put in.

14 Q Had the packages made it through, would there have been an
15 accompanying charge for those packages?

16 A Correct.

17 Q All right. Now, were these Composite Exhibit 100, A
18 through G which are the Triunfo packages shipped on the Triunfo
19 account, were these the only packages that UPS was able to
20 seize in relation to this Brazil fraud investigation as far as
21 you know?

22 A As far as I know, in my building, yes.

23 Q The packages we discussed and the other two accounts, the
24 Brazil Express and Sound Stream for which there were invoices,
25 did those make it all the way to Brazil?

1 A Yes, it did.

2 Q Now, the defendant was asking you a series of questions
3 about accounts not being paid and saying that it would be
4 merely a collections issue. Do you recall that line of
5 questioning?

6 A Yes.

7 Q Well, if an account is opened by an individual with no
8 intent to ever pay that account, is that a collections issue or
9 fraud issue?

10 A That would be fraud.

11 MR. SCOTTON: Object, Your Honor.

12 BY MS. MITRANI:

13 Q The defendant was asking you a series of questions about
14 Pak Mail stores and he was using the term shipper. Is it UPS,
15 do you remember those lines of questions?

16 A Yes.

17 Q And your response is no, in essence, understanding what
18 the defendant meant?

19 A Correct.

20 Q Does UPS have its own -- excuse me, does a Pak Mail store,
21 does it have its own account with UPS?

22 A Yes.

23 Q If a customer comes to a Pak Mail store and wants to ship
24 with Pak Mail, does Pak Mail then ship on Pak Mail's own
25 account?

1 A Correct.

2 Q So the Pak Mail store is a shipper using its own shipping
3 account with UPS?

4 A Correct.

5 Q Alternatively, do drivers have the ability to drop of
6 packages at Pak Mail and UPS with a label already on it?

7 A Yes, they do.

8 Q And can a customer drop off a package and ship it, let's
9 say, at a Pak Mail on his or her own account versus the UPS
10 account?

11 A Yes. We have what's called -- you know, the customer can
12 go and drop off a package at the UPS location, at a UPS store,
13 which is a pack and ship location. And then when the UPS
14 driver does his daily pickups at that particular UPS store, he
15 also picks up whatever packages other customers drop off at
16 that location.

17 Q So there's no requirement that if you drop it off at a UPS
18 store or pack and mail, if you have to use their account, you
19 could use your own account?

20 A Correct.

21 Q And if an entity ships on its own UPS account, it is
22 shipping -- that entity can ship on its own account?

23 A Correct.

24 BY MS. MITRANI:

25 Q The defendant asked you if it's a crime to ship a package.

1 Do you recall that question?

2 A Yes.

3 Q And he asked you if it's a crime to receive a package. In
4 this instance the Epson printer which is Government's
5 Exhibit 100A, I won't make you get up, but you remember from
6 yesterday that it had the Fed-Ex label to Mr. Scotton and then
7 the UPS label on the Triunfo account for shipment to Brazil?
8 Do you recall that?

9 A Yes.

10 Q So my question to you, is it a crime to ship on an account
11 that does not belong to you?

12 A Yes, it is.

13 Q And I think you testified -- strike that.

14 I think the defendant was asking you questions about when
15 you go online and fill out a shipping label about filling in
16 the shipper's, the sender's information, and the recipient's
17 information. Do you remember that line of questioning?

18 A Yes.

19 Q When a customer goes online to create a UPS shipping label
20 online and is successful in doing so, does it automatically
21 insert a tracking number?

22 A Yes, it does.

23 Q And who generates that tracking number?

24 A The system generates the tracking number based on
25 obviously the account number and the service level and again

1 the last eight digits, just a random number the system just
2 throws out.

3 Q When you mean the system, UPS computer system generates
4 the tracking number for the particular shipping label?

5 A Correct.

6 Q And is the account number included in the actual tracking
7 number?

8 A Yes, it is.

9 Q All of government's Composite Exhibit 100, were all of
10 those on the Triunfo Specialty Foods account?

11 A Yes, it was.

12 Q The defendant asked you a series of questions about -- for
13 example, do you remember this, do you remember that I sent
14 police reports, do you remember that line of questioning?

15 A Yes.

16 Q Do you have any knowledge of the defendant sending police
17 reports to UPS?

18 A No, I don't.

19 Q Do you know whether that ever happened or not?

20 A No, I don't.

21 Q The defendant asked you questions, do you remember I
22 reported some kind of drug scam to UPS. Do you recall that
23 question?

24 A Yes, I do.

25 Q Do you have any knowledge of the defendant reporting any

1 kind of illegal activity to the UPS?

2 A No, I don't.

3 MR. SCOTTON: Object, Your Honor.

4 THE COURT: Overruled.

5 BY MS. MITRANI:

6 Q Do you have any knowledge of the defendant reporting any
7 kind of illegal activity to UPS?

8 A No.

9 Q The defendant asked you questions. Do you remember there
10 was a packages with syringes and prescription bottles in it.
11 Do you recall that question?

12 A Yes.

13 Q Do you have any knowledge of the defendant reporting some
14 kind of package to that effect to UPS?

15 A No, I don't.

16 Q You can't say one way or the other whether that ever
17 happened?

18 A That's correct.

19 MS. MITRANI: Can I have a moment, Your Honor?

20 THE COURT: Yes.

21 MS. MITRANI: No further questions, Your Honor.

22 THE COURT: Thank you, Mr. Santiago. You may step
23 down. Government may call its next witness.

24 MS. MITRANI: The government calls Laner Lima.

25 LANER LIMA

1 Having been first duly sworn on oath, was examined and
2 testified as follows:

3 THE COURTROOM DEPUTY: Please be seated state and
4 spell your first and last name for the record.

5 THE WITNESS: My first is Laner. Last name is Lima,
6 L-I-M-A.

7 DIRECT EXAMINATION

8 BY MS. MITRANI:

9 Q Good morning.

10 A Good morning.

11 Q How are you today, Mr. Lima?

12 A Very good. Thank you.

13 Q Where are you originally from?

14 A I'm from Brazil.

15 Q Mr. Lima, where are you presently employed?

16 A I work for a company called Blue Vue Foods. I consult
17 entrepreneurs that are interested in investing in the United
18 States in the field of food and beverage.

19 Q I'm trying to juggle things around I don't want to
20 distract. Did there come a time, sir, when you worked for a
21 company called Triunfo Food Corporation doing business as
22 Triunfo Specialty Foods Corporation?

23 A Yes.

24 Q And what was the name of the entity as it existed in south
25 Florida?

1 A Triunfo Specialty Foods. Triunfo Specialty Foods, it's a
2 branch located in Deerfield Beach here in south Florida and
3 it's a company that belongs to a parent company called Triunfo
4 Foods Corporation.

5 Q Where is that parent company located?

6 A It's located in Newark, New Jersey.

7 Q Can you tell the members of the jury, first of all, how
8 long did you work for Triunfo? I'm just going to use the first
9 name.

10 A Yeah, I worked for Triunfo -- I began there in
11 October 2005 and I left the company in December of 2012.

12 Q So tell us a little bit, what does this company do?

13 A Triunfo is a food distributor company. They sell imported
14 foods, foods from around the world, mainly from Spain,
15 Portugal, Norway, Brazil, and some other South American
16 countries like Argentina and Columbia. But mainly the fine
17 foods.

18 Q And how does it get the food, import the food?

19 A Yeah, they import the food -- I will give you some
20 examples. Cod fish, they import cod fish from Portugal, from
21 Norway where the best cod fishes are. They bring in
22 containers. The company has lots of big refrigerators and
23 that's where this cod fishes stay. They also bring the best
24 chocolates. They also bring the best olive oils from Portugal,
25 from Brazil. They also -- they used to bring lots of nice

1 grape juice from Argentina and also from south of Brazil, those
2 type of products. And they have big warehouses. They have one
3 huge warehouse here in Florida and bigger warehouses in New
4 Jersey.

5 Q And then to where does Triunfo distribute this food that
6 it imports?

7 A Triunfo has lots of customers. Triunfo has another parent
8 company of retail stores. That's their main customer. But
9 they also sell to companies like Publix, Winn Dixie, and lots
10 of independent retail stores.

11 Q Okay. Does Triunfo sell electronics?

12 A No, ma'am.

13 Q Xboxes?

14 A No, ma'am.

15 Q Play Stations?

16 A No.

17 Q Does Triunfo do any shipping, international shipping,
18 exporting?

19 A No, Triunfo only brings stuff from other countries. But
20 we send some packages to customers in United States where our
21 trucks -- well, I don't work there anymore, but where their
22 trucks don't go, don't cover.

23 Q All right. Now, just tell us a little bit about what were
24 your responsibilities when you worked for Triunfo?

25 A Yeah, I was the general manager. I was responsible for

1 overseeing from administration to logistics. I would cover all
2 the administration problems of the company. I would oversee
3 the sales team. And also I would take care of the warehouse
4 and all the logistics problems that are within this field.

5 Q Did Triunfo have accounts with DHL, Fed-Ex, and UPS?

6 A At the time they had with Fed-Ex and UPS. I don't recall
7 if they had an account with DHL.

8 Q Okay. And did you have any involvement with the Fed-Ex
9 and UPS accounts when you were working there?

10 A Yes, because I was responsible, you know, when the
11 invoices came in, I would have to go over them and see if they
12 were correct, if we really shipped that product and if the
13 customer really received that product. Then I would have to
14 sign the invoice and say, okay, Triunfo headquarters in Newark,
15 okay, you can pay this invoice. I would sign it and they would
16 pay the bill.

17 Q So did there come a time when you noticed something
18 unusual with your UPS and Fed-Ex invoices?

19 A Yes. We start to get some invoices with huge amounts of
20 money

21 Q What do you mean by huge?

22 A For us at the time, like \$6,000, \$18,000, \$12,000, and
23 they never stopped coming. And I said, this is wrong. So we
24 started to call UPS and say, hey, this is not us because mainly
25 we were -- the invoices were saying that those products were

1 being shipped to Brazil. And if I'm not mistaken was to Sao
2 Paulo, a big city in Brazil. And we do not do this kind of
3 thing. We never ship anything to Brazil.

4 And also the amount of money on those invoices were very,
5 very wrong. Usually Triunfo would only send small packages to,
6 as I said, to customers outside of Florida where their trucks
7 would not cover and it would be like \$30, a hundred dollars,
8 \$150, things like that.

9 Q And did you notice the same problems with Fed-Ex invoices?

10 A Yes, yes.

11 Q And did you likewise contact Fed-Ex advising them of the
12 unauthorized shipments?

13 A Yes, immediately. And then when the invoices kept coming,
14 it seems that UPS and Fed-Ex, they already knew what was going
15 on. They said, okay, we know what's going on and there's some
16 kind of investigation going on.

17 Q After you discovered these problems with the invoices, did
18 there come a time when the FBI paid you a visit?

19 A Yes, yes. There was a day I was out of the company, I was
20 having lunch and my at the time my secretary, my assistant,
21 called me and said, the FBI is here. And I said, what. Yeah,
22 the FBI is here.

23 Q They don't call usually.

24 A Yeah, and they want to talk to you. I said, oh, my gosh.
25 I haven't done anything wrong. So I immediately left my lunch

1 and so I met the agent Roy and he said, listen, I want to show
2 you some stuff that is in my car. And he was in a van, so he
3 open his van and he showed me lots of boxes with the Amazon
4 logos and lots of electronic stuff like printers, Xbox, things
5 like that. He asked me, are these things yours, do you guys
6 ship this stuff. I said, no, no, our thing is food, we don't
7 deal with electronics. He said, I know you are having a
8 problem with UPS. And I said, yes, yes. Okay. So are you
9 sure this is not yours. I said, no, that stuff definitely not
10 ours.

11 Q Did Agent Van Brunt show you approximately seven packages,
12 does that comport with your memory?

13 A Yes, it was something like that. It was lots of boxes.

14 Q Okay. So that came after you discovered the problems with
15 UPS and the Fed-Ex invoices, correct?

16 A Correct, yes.

17 Q And did the invoices for Fed-Ex and UPS which had
18 unauthorized shipments, do you remember the exact number or
19 not?

20 A No, it was a long time ago. But I know it was beyond, you
21 know, \$10,000. It was huge for us. We never had anything like
22 it before.

23 Q Did you then tell, advise Fed-Ex as well as UPS of the
24 invoices for the packages that were not authorized to Triunfo?

25 A Yes, yes, we immediately told them, listen, this is not

1 ours and there is something really wrong. We don't do this.
2 We don't ship to outside United States, not this stuff. If
3 Triunfo does some kind of shipping outside of the country, not
4 this. We don't do that.

5 Q And did Fed-Ex and UPS then credit you back any moneys for
6 unauthorized shipments?

7 A Yeah. Actually, they said that we did not have to pay for
8 those things because it was already under investigation and
9 they knew that it wasn't us.

10 MS. MITRANI: No further questions.

11 THE COURT: Cross-examination.

12 CROSS EXAMINATION

13 BY MR. SCOTTON:

14 Q Mr. Lanier Lima, how are you doing today?

15 A Good. How are you?

16 Q Laner, it's a weird name to be a Brazilian?

17 A I agree. We all agree that. In Brazil too we all agree
18 it's a different name.

19 Q All right. Mr. Laner, the prosecutor has mentioned to you
20 about accounts be used without authorization of Triunfo,
21 correct?

22 A Yes.

23 Q And it say that you guys this seem like a bunch of
24 packages shipping through Triunfo's account, but you say
25 Triunfo has their own account, correct?

1 A Triunfo had their account, yes.

2 Q But was the same account, was under exactly the same
3 account this was be shipping?

4 A What do you mean by that? I don't think I understood the
5 question.

6 Q Triunfo has their own UPS account?

7 A Yes.

8 Q Right?

9 A Yes.

10 Q And what is the location?

11 A In here in south Florida. It's 1600 South Powerline Road,
12 Deerfield Beach, Florida.

13 Q During this process, has Triunfo received invoices from
14 those accounts?

15 A Yes.

16 Q And which address was on those invoices?

17 A Probably Triunfo address because the invoices came to that
18 address. They mailed the invoices to us, so...

19 Q Did you check if it is exactly the same account that you
20 guys owned by UPS? I mean, that's exactly the same account
21 that UPS has assigned to you guys?

22 A I assume since the invoices were being mailed to that
23 building and then that was our account.

24 Q But did you recall see the waybills and the waybills has
25 address of Margate, Florida?

1 A I don't recall that.

2 Q You don't have the Triunfo account number, do you?

3 A No, I do not, sir.

4 Q Have Triunfo suffered lost with this?

5 A I'm sorry?

6 Q Have Triunfo suffered any lost with this scenario?

7 A I don't know. I don't know.

8 Q Have UPS credit Triunfo account?

9 A No, they said that we should not have to pay for those
10 things because it was already under investigation.

11 Q So Triunfo never have a pay for those things?

12 A I don't think so.

13 Q Can you tell this jury here, Triunfo is a company, they
14 import food, right?

15 A Yes.

16 Q Triunfo has imported food from Brazil?

17 A Yes.

18 Q Triunfo have imported any type of drinks or anything from
19 Brazil?

20 A Triunfo imports lots of different beverages.

21 Q Do you remember a beverage named Matte Lion?

22 A Yes, I do.

23 Q How did Triunfo import that drinks from Brazil?

24 A Triunfo mainly contacts the manufacturer in Brazil.

25 That's their main business. They contact the manufacturer of

1 the company and they set up a price and all those things that
2 has to be done. Mainly if the product ready to go to United
3 States, it has the FDA labels requirements and everything else.
4 And when that is ready, Triunfo then imports a whole container
5 of that product or a line of products from that company and
6 then bring it to United States.

7 Q In order for Triunfo to do that, does Triunfo have to get
8 authorization from FDA?

9 A Yeah. Usually FDA works with the company that is buying
10 and the company that is selling in Brazil. They both have to
11 work together.

12 Q Do you recall Triunfo has a contract agreement with
13 company down here in the United States called Matte Lion?

14 A No.

15 Q Did you recall a problem that Triunfo was illegally sell
16 drinks from Matte Lion here in the United States?

17 MS. MITRANI: Objection, Your Honor.

18 THE COURT: Overruled.

19 THE WITNESS: No, I do not know that.

20 BY MR. SCOTTON:

21 Q Do you recall me, anytime see me in your stores?

22 A No, I don't.

23 Q Did you know that I used to be the official representative
24 for Matte Lion here in the United States?

25 A No, I don't.

1 Q So you don't remember, recall any problem that I end up
2 have spill problems in accord with Triunfo?

3 A As I said, I worked for Triunfo Specialty Foods, and all
4 those things with contracts, they were dealt with the parent
5 company in Triunfo, Triunfo Corporate Foods in Newark, New
6 Jersey. So I will not have access to that type of information.

7 Q Seabra under Triunfo or Triunfo is under Seabra?

8 A I don't know that.

9 Q It is not the same company, Seabra?

10 A Yes, they have the distribution center and they have the
11 retail stores. The resale stores is Seabra and the
12 distribution company is Triunfo.

13 Q And those stores use the same UPS and Fed-Ex accounts?

14 A I don't know that, sir.

15 Q Each store has their own different accounts?

16 A I don't know that.

17 Q But your location has one account with UPS and one account
18 with Federal Express?

19 A Yes.

20 Q So the bottom line, Triunfo has not done anything wrong,
21 UPS has paid, you know, credited your account, it didn't pay,
22 didn't suffer any loss?

23 A As far as I know, yes.

24 Q Have you tried to contact any of those parties involving
25 the labels?

1 A No.

2 Q Have Triunfo tried to contact the company Brazil Express?

3 A No, not that I know of.

4 Q So basically like Triunfo have received bills, but the
5 only part of those prospect of this business, Triunfo just call
6 UPS to let them know it is not us, we are not going to pay for?

7 A Yeah, it was a series of calls. I mean, it wasn't one
8 call. We had to spend some time dealing with that problem.
9 And, you know, the first thing that UPS wants is you pay the
10 bill. And we said, but this is not ours. So, you know, it was
11 a few calls and some time discussing the whole problem.

12 Q And the whole calls was true with UPS and Fed-Ex on it?

13 A Yes.

14 Q So basically you resolve all these problems just between
15 those two companies involve?

16 A Yes.

17 Q Billing issue you resolved, you didn't pay, no harm, no
18 foul, is that correct?

19 A That's correct.

20 MR. SCOTTON: Thank you so much. Have a good day.

21 No more questions, Your Honor.

22 THE COURT: Redirect.

23 REDIRECT EXAMINATION

24 BY MS. MITRANI:

25 Q Those packages have an address in Margate. Do you know

1 what that address is, any idea?

2 A No, I don't.

3 Q Is it Triunfo's address?

4 A No, probably not. Margate, no.

5 MS. MITRANI: No further questions, Your Honor.

6 THE COURT: You may step down. Thank you.

7 The government may call its next witness.

8 MS. MITRANI: The government calls Katherine
9 Mortensen.

10 THE COURTROOM DEPUTY: Please raise your right hand.

11 KATHERINE MORTENSEN

12 Having been first duly sworn on oath, was examined and
13 testified as follows:

14 THE COURTROOM DEPUTY: Please be seated. State and
15 spell your first and last name for the record.

16 THE WITNESS: First name is Kathrine spelled
17 K-A-T-H-R-I-N-E, last name is Mortensen, M-O-R-T-E-N-S-E-N.

18 DIRECT EXAMINATION

19 BY MS. MITRANI:

20 Q Good morning, Ms. Mortensen. I know you go by Katrina.
21 Is your name spelled K-A-T-H-R-I-N-E?

22 A Yes, it's Danish.

23 Q I apologize. I have been doing this to all witnesses.
24 Anyway, I apologize.

25 I want to tell the members of the jury a little bit about

1 who you are and your educational background, and then we will
2 go to your employment. Okay?

3 A Okay.

4 Q Did you go to college?

5 A Yes, I did.

6 Q Where did you go, what degree did you obtain, and in what
7 year?

8 A I went to the George Washington University and obtained a
9 BA in history in 1993.

10 Q And did you go to law school?

11 A Yes, I did.

12 Q Where did you go to law school and when did you obtain
13 your degree?

14 A I did my first year of law school in 1997 at the Catholic
15 University in Washington, D.C., and I completed my degree at
16 NYU, New York University, School of Law in 2000.

17 Q And you became a lawyer?

18 A Yes, I did. I was admitted to the bar in New York.

19 Q Did you practice law?

20 A Yes, I did.

21 Q Tell us a little -- tell the members of the jury a little
22 bit about your law practice.

23 A I practiced for eight years. I practiced four years as a
24 litigation attorney for a firm called Sullivan and Cromwell. I
25 focused primarily on antitrust litigation and also did

1 employment litigation. That was from 2000 to 2004.

2 In 2004 I joined a small litigation practice at a firm
3 called Kornstein, Veisz, Wexler and Pollard. I continued to
4 focus on antitrust litigation this time in the insurance
5 context.

6 Q By whom are you presently employed?

7 A I'm employed by the United States government, the
8 Department of State.

9 Q That's a big government.

10 A Yes.

11 Q The Department of State. All right. And when did you
12 begin with the Department of State?

13 A I joined the Department of State in September 2008.

14 Q So let's sort of run through your training and experience
15 from 2008 to the present. So starting with September 2008,
16 what was the first thing you did with the Department of State?

17 A I completed a seven-week basic introductory course. I'm
18 what's called a foreign service officer. I'm a generalist.
19 There's a seven-week introductory course to introduce you to
20 what's called foreign service officer.

21 Q What is a foreign service officer?

22 A As a generalist, a foreign service officer is overseas.
23 I'm a diplomat. I would be accredited to the country where I'm
24 serving or consulate where I'm serving. Domestically I work
25 for the department in various types of jobs. So when you first

1 join, you get seven weeks of training introducing you to United
2 States diplomatic history and the different things that we do
3 as officers overseas.

4 Q Okay. And after you finished your training, what was your
5 next step?

6 A After I completed our basic training, I completed a
7 ten-week course that trained me to be what's called a general
8 services officer which means I was essentially a procurement
9 officer serving overseas. And after that, I completed a
10 five-week course that trained me to be a consulate officer.
11 That's other basic consular course that introduces you to
12 immigration law and the various services that we provide
13 overseas.

14 Q And what are the various services that you provide
15 overseas?

16 A We provide visa services so we interview applicants for
17 immigrant or nonimmigrant reasons. And we also provide what we
18 call American services, providing passports, providing records
19 of birth abroad, visiting prisoners, and in general providing
20 services to Americans in distress.

21 Q We will get back to your experience with visas in just a
22 few minutes.

23 From June 2009 through August 2001, where were you
24 stationed?

25 A I was serving at the U.S. embassy in Islamabad, Pakistan.

1 I was assistant general services officer. So that means that I
2 was in charge of the housing pool. I procured housing for the
3 U.S. direct hires and I was also in charge of the warehouse in
4 our property and supplies.

5 Q And what did you do when you finished your post in
6 Islamabad, Pakistan?

7 A I came back to the United States for one month of leave.
8 And then in September of 2010, I began Mandarin language
9 training for my next post.

10 Q Where was your next post?

11 A My next post was Hong Kong, the special administrative
12 region in the People's republic of China. And I served there
13 from June 2011 until July of 2013.

14 Q What were you doing -- I'm sorry, you said you were in the
15 consular officers?

16 A I was a consular officer in Hong Kong, so I was --

17 Q What were you doing there?

18 A I was accredited to Hong Kong and Macau as a vice counsel.
19 And that means that I was providing counselor services, so I
20 conducted visa interviews for both nonimmigrant and immigrant
21 visas, and I also provided American citizen services.

22 Q Let's focus our attention to visas. Generally speaking,
23 what is a visa?

24 A A visa is a travel document it's usually almost like a
25 sticker that's put into a passport that permits someone who has

1 the visa in their passport to come to the border of a country
2 and apply for admission. A visa doesn't guarantee that you
3 will be admitted to the country, but it gives you the ability
4 to travel to the country that you want to enter and then ask at
5 the border to be admitted.

6 Q So if it's United States issuing the visa, it gives the
7 individual the permission to travel to the border of United
8 States and then request entry into the United States?

9 A That's correct. It's the two-part process where the visa
10 is issued overseas and the alien comes to the border and then
11 there's a determination at the border that the alien is
12 admitted but the visa provided the mechanism to come to the
13 border to seek admission.

14 Q And I think you already testified, there are two main
15 types of visas generally speaking, immigrant and nonimmigrant
16 visas?

17 A Two main categories, immigrant visas and nonimmigrant
18 visas, that's correct.

19 Q And what is -- very briefly, what is an immigrant visa?
20 What's a nonimmigrant visa?

21 A Immigrant visas comes in two kinds. It comes in family
22 based or employment based. And that's for somebody who wishes
23 to move to the United States and reside in the United States.
24 A nonimmigrant visa is for a trip to the United States. That's
25 temporary in nature. It's you are not planning to move to the

1 United States.

2 And there's also common a variety of categories. The most
3 common one is the tourist visa, a B1/B2. And then after that
4 we have a lot of people who will apply for an F-1, which is a
5 student visa. Both of those are nonimmigrant which means you
6 do not intend to stay in the United States you intend to return
7 either to your own country or another country after you
8 complete your stay in the U.S.

9 Q What does it mean to adjudicate a visa?

10 A When I adjudicate a visa, I make the decision whether or
11 not the alien in front of me is going to receive the visa. So
12 I either issue it or deny it. But what we call adjudication is
13 the process where I come to the decision whether I will issue
14 the visa or deny the visa.

15 Q Can you walk the members of the jury through the
16 adjudication process? How does it start and how does it end?

17 A The process has change a lot over time. Currently it's an
18 electronic process, so --

19 Q I'm sorry. Okay. Maybe talk about the process back in
20 2008.

21 A It would been in 2008, it was half computer based, half
22 paper based. So an alien who wanted to apply for a
23 nonimmigrant visa would sign it, bring it to the consulate or
24 embassy where they wanted to have their interview, and there
25 would be a process. Every consulate or embassy is different on

1 their intake process. It would be accepted and then it will be
2 randomly assigned to an officer like myself to conduct the visa
3 interview. So I will get the passport typically and the
4 application and I will review it, and then I will ask the alien
5 in front of me some questions to determine whether or not I'm
6 going to issue the visa or deny the visa. It's typically
7 anywhere between two to three minutes, sometimes a little
8 longer, sometimes a little shorter for the interview.

9 Q So that was my next question. Is an in-person interview
10 part of the adjudication process?

11 A That is correct. Visas are adjudicated overseas and it
12 requires an in-person interview with the alien.

13 Q And you said adjudicated overseas?

14 A They are adjudicated overseas.

15 Q Meaning the decision to grant it or not grant it is made
16 overseas?

17 A I make the decision at that time of the interview.
18 Usually I decide at the conclusion of the interview if I'm
19 going to issue or deny the visa. Sometimes I may not have
20 enough information, but I make that decision right there in the
21 country where I am serving.

22 Q And how many visas have you adjudicated personally?

23 A I have adjudicated personally approximately 16,000 visas.
24 Let me clarify that, nonimmigrant visas.

25 Q 16,000 nonimmigrant visas?

1 A Correct.

2 Q So that number is actually even higher than that?

3 A Yeah, in nonimmigrant, and I have also done immigrant
4 visas. But for the nonimmigrant, approximately 16,000.

5 THE COURT: You know what, we are going to take a
6 little break. I got so caught up in listening to the
7 immigration information that I didn't notice what time it was.
8 Why don't we take a break until 10 of 11:00 and we will return
9 at that time. All rise for the jury.

10 (Thereupon, the jury exited the courtroom at
11 10:33 a.m.)

12 THE COURT: All right. We will see you back here and
13 we will be ready to start at 10 of 11:00. Thank you.

14 (Thereupon, a recess was taken at 10:34 a.m.)

15 THE COURT: We are going to bring in the jury. All
16 rise for the jury, please.

17 (Thereupon, the jury entered the courtroom at
18 10:52 a.m.)

19 THE COURT: Welcome back. Please be seated.

20 And, Ms. Mitrani, you may continue.

21 MS. MITRANI: Thank you, Your Honor.

22 BY MS. MITRANI:

23 Q Is there a specific form that the alien slash applicant
24 for United States visa has to fill out?

25 A Yes, there is.

1 Q It's the government so does it have a form number?

2 A Yes, it does.

3 Q What would that be?

4 A Well, currently it's called the DS106. It's now an all
5 electronic application for the nonimmigrant visa. Previously
6 it was the DS156. And then there's a supplemental piece that's
7 identified as DS157.

8 Q And where is this DS156, the application for the
9 nonimmigrant visa, where is it submitted?

10 A Again, the process has sort of changed over time and every
11 post has a different process, but typically it's submitted at
12 the embassy or the consulate where the alien is going to come
13 for his or her visa interview.

14 MS. MITRANI: May I approach, Your Honor?

15 THE COURT: You may.

16 BY MS. MITRANI:

17 Q I'm showing you what's been marked as Government's Exhibit
18 205. And do you recognize this document?

19 A Yes, I do.

20 Q And what is it?

21 A This is a certified visa record that was produced by my
22 office in the Department of State. And it's a DS157 that's
23 included with the DS156 to make a complete nonimmigrant visa
24 application.

25 Q To makes a complete nonimmigrant visa application?

1 A Correct.

2 MS. MITRANI: Your Honor, the government offers
3 Exhibit 205.

4 THE COURT: Any objection?

5 MR. SCOTTON: No, Your Honor.

6 THE COURT: 205 will be admitted.

7 (Thereupon, Government's 205 received in evidence.)

8 BY MS. MITRANI:

9 Q Okay. So everybody can see, Exhibit 205 and the first
10 page, is it the certification from your office?

11 A That is correct, that is the certification from my office.

12 Q So I'm turning to the second page of Government's
13 Exhibit 205. I'm just going to quickly scroll down to the
14 bottom and then I'll go back to the top. And so where it says
15 DS156, that's the form that we talked about a few minutes ago?

16 A Correct, that's the form number of the nonimmigrant visa
17 application.

18 Q All right. So, Ms. Mortensen, can you tell the members of
19 the jury what they are looking at here at Exhibit 205?

20 A This is the first page of a nonimmigrant visa application
21 that has been completed. And it also reflects -- it reflects
22 the name and address and it's got information on the passport,
23 the Brazilian passport, of the alien. And it also includes the
24 visa categories.

25 Q Let's sort of run through it then. In this instance, did

1 an individual who claimed his name was Rogerio Chaves Scotton
2 submit this nonimmigrant visa application?

3 A I don't know if the individual submitted it, but it would
4 have been completed and every application is signed and
5 submitted to the consulate or embassy where it would be
6 processed.

7 Q Okay. So in this instance, the application for
8 Mr. Rogerio Chaves Scotton indicates in box 1 a passport
9 number?

10 A Correct.

11 Q And that passport was issued in Brasilia, Brazil?

12 A Correct.

13 Q The issuing country of the passport as reflected in box 3
14 is Brazil?

15 A Correct.

16 Q And the passport was issued January 12, 2005, correct?

17 A Correct.

18 Q And that passport, Mr. Scotton's passport, would expire
19 January 12, 2010?

20 A Correct.

21 Q And continuing on in the application, Mr. Scotton states
22 that his place of birth is in Brasilia?

23 A Correct.

24 Q In the country of Brazil?

25 A Correct.

1 Q And that's reflected in box 11, correct?

2 A Correct.

3 Q And box 13, the gender is checked off as male. And then
4 what is box 15?

5 A Box 15 is the alien's home address and it is an address in
6 Brazil.

7 Q And in box 17, what is reflected as the marital status for
8 Mr. Scotton?

9 A The box for married has been checked.

10 Q In box 18, who does Mr. Scotton indicate as his wife?

11 A The name listed is Samara Moreira Scotton.

12 Q What information is reflected in box 20?

13 A The name of his current employer and the address of the
14 current employer.

15 Q And in this instance, what's the name of the current
16 employer?

17 A It's listed as Roger Racing.

18 Q With an address where?

19 A The address listed is in Brazil.

20 Q What is reflected at box 22? It asks, when do you intend
21 to arrive in the United States?

22 A Box 22 indicates the date of March 8, 2008 as the date of
23 intended arrival in the United States.

24 Q And does box 23 request an email address?

25 A Yes, it does.

1 Q And what email address is provided?

2 A The email address was R Scotton at Roger racing dot com.

3 Q At box 25, what information is requested there?

4 A Information requested in box 25 is the name of the person
5 that the alien, the applicant, is going to visit in the United
6 States and contact information for that person.

7 Q And there's a name listed as Nate Thiesse or something to
8 that effect?

9 A Yes, the name Nate Thiesse and a business telephone
10 number.

11 Q And in box 28, what information is reflected there?

12 A Information reflected there is the name of the company
13 that the alien states will pay for the trip, Country Joe
14 Racing.

15 Q And box 26, what does that request?

16 A Box 26 asks how long you intend to stay in the United
17 States, and the response there is in Portuguese one year.

18 Q And how about box 29, what information is reflected there?

19 A Box 29 asks whether the alien has ever been in the U.S.
20 And in this instance, the box is checked yes. And it provides
21 a date, 11 November 1989. And the duration of that trip was
22 four months.

23 Q I am going back to the top of the document. There is like
24 a box towards the right-hand corner, it says, do not write in
25 this space. Do you see that?

1 A I see that box.

2 Q Of course it is written in, but we will talk about that in
3 a second. By the way, do you know -- there is typewritten and
4 handwritten information here, correct?

5 A Correct.

6 Q Can you tell the members of the jury what the handwritten
7 information is?

8 A The handwritten information indicates the class of visa
9 that's being sought and it also indicates the basis that -- the
10 reason why the visa was refused.

11 Q All right. Is that the handwriting by the immigration --
12 excuse me, by the consular officer who adjudicated this visa?

13 A The handwriting here, I don't know for certain, but it is
14 a mix of either someone who has provided administrative who has
15 written down 01 as the visa category, but then it also would be
16 the adjudicating officer that made the decision to refuse the
17 visa.

18 Q We are one step ahead that was refused, but I was going to
19 ask you that. But here it has a date of March 17, 2008,
20 correct?

21 A Correct.

22 Q A stamped date?

23 A Yes.

24 Q What is that?

25 A March 17, 2008 would be the date that the application was

1 submitted and the alien either came for the first interview,
2 but that would be the day that it was first started the
3 processing at the embassy or the consulate where the interview
4 took place.

5 Q March 17, 2008?

6 A Yes.

7 Q And in what country was this nonimmigrant visa application
8 submitted?

9 A It was submitted in Brazil.

10 Q And did Rogerio Chaves Scotton have an interview in
11 connection with this nonimmigrant visa application?

12 A Yes, he did.

13 Q And in what country did that interview take place?

14 A In Brazil.

15 Q In this instance I think you testified the application was
16 for an O1 visa?

17 A That's correct.

18 Q What is O1 visa?

19 A Visa for alien of extraordinary ability. It's not a
20 tourist visa which would be B1/B2. An O1 visa is what we call
21 a petition based visa. So it's someone who is applying to
22 United States for admission based on his or her extraordinary
23 ability in his or her field of specialty.

24 Q We will come back to that first page. Let me go through
25 to the second page. The top indicates -- what information is

1 requested at box 30?

2 A In box 30 it requests information on whether or not the
3 applicant has ever been issued a U.S. visa. And in this
4 instance, the answer is yes, has been checked yes. And that
5 visa was issued on October 5th, 1989 in Rio de Janeiro and it
6 was a B1/B2 visa.

7 Q Then at the bottom of the visa application, is there a box
8 that requests the applicants's signature?

9 A Yes, there is.

10 Q And is there a signature there?

11 A Yes, there is.

12 Q Then the fifth page of Exhibit 205, is this a DS157 that
13 you identified earlier?

14 A Yes, it is. This is DS157 which is the supplemental
15 information sheet.

16 Q And was this supplemental information sheet part of the
17 application for the nonimmigrant visa?

18 A Yes, it is.

19 Q And this supplemental sheet contains handwriting in
20 response to the questions or the information requested at the
21 various boxes, correct?

22 A That is correct.

23 Q So here it lists the name of Rogerio Scotton at the very
24 top, correct?

25 A That is correct.

1 Q And on box 12 it reiterates the name Roger Racing and it
2 says race driver?

3 A That is correct.

4 Q Do you know what language this DS157 is?

5 A This is completed in Portuguese and the application is
6 also in Portuguese.

7 Q So the consular offices overseas, what language are these
8 documents, the DS156 and DS157?

9 A They will be offered in both English and in the language
10 or languages of the host country.

11 Q Getting back to the first page of the DS156, the
12 nonimmigrant visa application, so you testified that there was
13 an interview in Brazil with relation to this visa, is that
14 correct?

15 A That is correct.

16 Q Was this visa adjudicated?

17 A It was adjudicated.

18 Q And what was the decision?

19 A It was denied.

20 MS. MITRANI: May I approach, Your Honor?

21 THE COURT: Yes.

22 BY MS. MITRANI:

23 Q Actually, going back to -- before I get to the next
24 document, going back to DS156 from March 17 is the refused
25 circle circled above the date?

1 A Yes, it is.

2 Q I'm showing you what's been marked for identification as
3 the Government's Exhibit 204. Do you recognize this document?

4 A Yes, I do.

5 Q What is it?

6 A This is a visa record that was produced by my office. It
7 is a nonimmigrant visa application consisting of the form
8 DS156, DS157, and a receipt for payment for the visa interview.

9 MS. MITRANI: Your Honor, the government would offer
10 204.

11 THE COURT: Any objection?

12 MR. SCOTTON: No objection.

13 THE COURT: 204 is admitted.

14 (Thereupon, Government's 204 received in evidence.)

15 BY MS. MITRANI:

16 Q So the first page of Government's Exhibit 204, little
17 sticker on the bottom, what is it?

18 A This is the certification from my office that this is a
19 visa record.

20 Q Okay. Ms. Mortensen, is this another, a different DS156
21 nonimmigrant visa application?

22 A Yes, it is.

23 Q So in this instance, the same individual, Rogerio Chaves
24 Scotton, an application was submitted requesting a nonimmigrant
25 visa, correct?

1 A That's correct.

2 Q And where was this nonimmigrant visa application
3 submitted?

4 A In Brazil.

5 Q The Country of Brazil?

6 A In the Country of Brazil.

7 Q Was there an interview --

8 A Yes, there was.

9 Q -- in connection with this second application?

10 A Yes, there was.

11 Q And where did that interview occur in connection with the
12 second application?

13 A It took place in Brazil.

14 Q In the Country of Brazil?

15 A In the Country of Brazil.

16 Q So here we have the applicant's name, the alien name is
17 Rogerio Chaves Scotton, correct?

18 A That is correct.

19 Q And before the name, there is information filled out about
20 the alien's passport number, the place of issuance, in this
21 instance Rio de Janeiro in Brazil, is that correct?

22 A That is correct.

23 Q The second row of information indicates that the passport
24 was issued. The issuing country was Brazil. It was issued
25 February 28, 2008 with an expiration of February 27, 2013?

1 A That's correct.

2 Q Is the passport issue date and expiration date different
3 from the issue date and expiration date of the previous
4 application?

5 A Yes, it is.

6 Q And that would be as the issue date in Government's
7 Exhibit 204 is different from the issue date in Government's
8 Exhibit 205, is that correct?

9 A That is correct.

10 Q I'm trying so hard not to confuse my documents here.
11 So Mr. Scotton indicates that his place of birth is in
12 Brasilia, Brazil?

13 A That's correct.

14 Q And at box 15, does Mr. Scotton give a home address?

15 A Yes, he does. He provides a home address in Brazil.

16 Q I'm sorry, I'm having trouble hearing you.

17 A Provides a home address in Brazil.

18 Q Okay. And now he indicates -- what does he indicate his
19 marital status is?

20 A He has checked the box divorced.

21 Q But Samara Scotton's name appears in box 18, correct?

22 A That's correct.

23 Q And here the name and address of the employer is Roger
24 Racing?

25 A That is correct.

1 Q And as present occupation in box 21, it's given as race
2 driver, correct?

3 A That is correct.

4 Q And at box 24, what address will you stay in the United
5 States, what address did Mr. Scotton provide?

6 A 7797 Golf Circle Drive, Margate, Florida 333063.

7 Q And at box 25, does it request a name and telephone number
8 of the person in the United States with whom you will be
9 staying or visiting?

10 A Yes, it does.

11 Q What name is that?

12 A Marina Chavez Colon, and the telephone number provided is
13 954-337-7871.

14 Q And at box 23, is there an email address provided?

15 A Yes, there is.

16 Q What is that email address?

17 A R Scotton at Roger racing dot com.

18 Q Is there a picture affixed to the bottom of this DS156,
19 this application?

20 A Yes, there is.

21 Q We will go back to the first page in a minute, but is the
22 second page of the DS156, the application for the visa, is
23 there a signature?

24 A Yes, there is.

25 Q Is the signature dated?

1 A Yes, it is.

2 Q And what is the date?

3 A The date is June 16, 2008.

4 Q And above that signature, it says application prepared by
5 at box 40?

6 A That is correct.

7 Q And what name is provided?

8 A Rogerio Scotton.

9 Q And is an address requested?

10 A An address is requested.

11 Q And is an address provided for an address in Brazil?

12 A Yes, there is an address in Brazil provided.

13 Q And did the second application for a nonimmigrant visa
14 also contain a DS157 requesting supplemental information?

15 A Yes, it did.

16 Q And is the document that's on the screen now, this DS157
17 with the supplemental information, provided for the applicant,
18 Rogerio Scotton?

19 A Yes, it is.

20 Q And is that -- strike that.

21 So let's go back to the first page. There's a date of
22 July 21st, 2008 stamped onto the visa application?

23 A That is correct.

24 Q And what does that date reflect?

25 A That date reflects the date that the application -- the

1 processing began on this visa application.

2 Q And was this visa application processed in the Country of
3 Brazil?

4 A Yes, it was.

5 Q Was there an interview in connection with this visa
6 application?

7 A Yes, there was.

8 Q And did that interview occur in the Country of Brazil?

9 A Yes, it did.

10 Q What was the decision on this visa?

11 A This visa was refused.

12 Q Mr. Scotton was refused a visa?

13 A That is correct.

14 Q Your Honor -- sorry. I just gave you a promotion.

15 I'm showing you what's been marked as Exhibit 207. Do you
16 recognize that?

17 A Yes, I do.

18 Q What is 207?

19 A This is a visa record that was produced by my office and
20 it's a letter.

21 Q A letter that was sub -- okay -- by Rogerio Chaves
22 Scotton?

23 A It is signed by Mr. Chavez Scotton.

24 MS. MITRANI: Your Honor, the government offers 207
25 into evidence.

1 THE COURT: Any objection, Mr. Scotton?

2 MR. SCOTTON: No.

3 THE COURT: 207 is admitted.

4 (Thereupon, Government's 207 received in evidence.)

5 BY MS. MITRANI:

6 Q Showing you 207, is the first page the same type of
7 certification you have been talking about?

8 A That's correct.

9 Q Government's Exhibit 207, is that a letter that is
10 addressed to the Department of State in Brasilia, Brazil?

11 A That is correct.

12 Q And it is regarding the declaration of Rogerio Chaves
13 Scotton?

14 A Correct.

15 Q And in the first paragraph, it reads, I, Rogerio Chaves
16 Scotton, am seeking entry into the United States and at 01
17 nonimmigrant alien of extraordinary available to compete in
18 automobile races sanctioned by NASCAR. In addition, I would
19 like to continue my charitable work in the United States as
20 that has become a very important part of who I am following my
21 motorcycle accident, correct?

22 A That is correct.

23 MS. MITRANI: Your Honor, may I have a moment?

24 THE COURT: Yes.

25 MS. MITRANI: Your Honor, no more questions.

1 THE COURT: All right. Cross-examination.

2 CROSS EXAMINATION

3 BY MR. SCOTTON:

4 Q Good morning.

5 A Good morning.

6 Q You say Katherine?

7 A Yes, that's correct.

8 Q Like the Hurricane Katrina?

9 A You could say that.

10 Q Katherine, you mentioned earlier you are a lawyer,
11 correct?

12 A That is correct.

13 Q You should be here and I should be there, right? We go
14 there.

15 I was looking at one application here, the first
16 application the government has submitted here, and more
17 important seems to be the visa was approved, right, and later
18 on they refused?

19 A I'm not sure which application you are talking about.

20 THE COURT: You may want to turn that, Mr. Scotton, so
21 that when it's up there, it won't be sideways. There you go.

22 BY MR. SCOTTON:

23 Q Right. In this part right here, they have me marked as
24 issued, but later on they mark as refused, right?

25 A It appears that it's issued was circled, and then it was

1 crossed out, and then refused was circled.

2 Q At one point the visa was granted, but then later on, they
3 decide to not give to me, correct?

4 A I cannot say that that's correct, sir.

5 Q Well, it's what they mark, so this is a federal form?

6 A I didn't complete the processing so I don't know that it
7 was ever granted.

8 Q But it is marked?

9 A It is marked on the document.

10 Q Right. Ms. Katherine, as you know, most of the time when
11 we go to immigration process, most of the time we seek a lawyer
12 advice and we retain lawyers and they handle all the paperwork,
13 correct?

14 A I have no idea, sir.

15 Q You have no idea that we have to go to a lawyer?

16 A Every visa applicant is different, so I couldn't speak to
17 every one.

18 Q When you say our office has submitted this application,
19 what does that mean, our office?

20 A I don't understand your question, sir.

21 Q During the cross-examination the prosecutor, you mentioned
22 to the prosecutor that she showed the application, say yes, our
23 office have submitted the application?

24 A No, I said my office, the Bureau of Consular Affairs,
25 these office legal advisory opinions reproduced that certified

1 copy of the visa record.

2 Q So the Brazilian consular, the United States embassy has
3 sent a copy of this to your office, correct?

4 A I don't know the exact process of it, but my office
5 obtained the copy and then produced the copy and produced the
6 certificate with it.

7 Q Have they produced to you guys also some kind of video
8 recording or audio recording from the interview?

9 A We do not record interviews, sir.

10 Q So if a consular say Mr. Scotton have to go back and talk
11 to your lawyer, have to go back to United States and figure out
12 what you are going to do here next, you have no kind of
13 recollection or no audio video recording?

14 A I have no personal recollection, I didn't conduct this
15 interview, but we don't audio or video record visa interviews.

16 Q What is the requirement for O1 visa?

17 A In general an O1 visa requires an approved petition by the
18 Department of Homeland Security. And then it requires that the
19 applicant demonstrate to the consular officer that he or she
20 has the extraordinary ability identified in the petition.

21 It also requires a demonstration that the alien doesn't
22 intend to reside in the United States and intends to exit the
23 United States once the period expires.

24 Q Right, but we don't know what the future can hold because
25 he can obtain the visa O1, and when he get to United States,

1 for whatever reason, things change, he can apply for something
2 else and end up staying here, correct?

3 A I'm not exactly sure.

4 Q If I have an O1 visa, Ms. Katherine, and I come to United
5 States O1 visa, if the team reapply for me for whatever reason
6 for another five years contract, so automatic immigration
7 lawyer probably going to submit another new process to
8 immigration and they might end up giving me some type of
9 residence or permit to stay here, correct?

10 A That's outside of my understanding. I deal with the visa
11 process. I don't deal with changes or adjustment in status
12 once an alien is in the United States.

13 Q Okay. Before this visa was granted to me, I went through
14 immigration process, I retain a lawyer, I pay a lot of money
15 through a lawyer, and I pay several different fees to
16 immigration and even one of them was some kind of --

17 MS. MITRANI: Objection, Your Honor.

18 THE COURT: Sustained. Mr. Scotton, please ask a
19 question.

20 MR. SCOTTON: All right.

21 BY MR. SCOTTON:

22 Q If immigration grant you a visa knowing that you are
23 leaving United States at this point and grant you a visa, and
24 send it to the embassy to retrieve the visa, is there any
25 reason why they do such a thing?

1 A That's not how the process works, sir. Immigration does
2 not grant the visa. INS at that point didn't grant visas.
3 Homeland Security did not grant visas. The Department of State
4 grants visas.

5 Q Are you familiar with the form called I797?

6 A I am not familiar with the I797.

7 Q Noticeable action?

8 A It's not a form that the Department of State issues.

9 Q U.S. Citizen Immigration Service?

10 A I do not work for the U.S. Citizen and Immigration
11 Service, sir. I work for the Department of State.

12 Q So if immigration sent you a letter and the letter say
13 your visa has been approved, that's what the letter say?

14 A Visas are not approved by the USCIS. Petitions are
15 approved by the USCIS. Visas are adjudicated by the Department
16 of State overseas.

17 Q So you go to a process, immigration pay a fee when you
18 fill out application, so what you say that you don't have any
19 experience with immigration, your experience is based only on
20 the visas issues?

21 A That's what I do. I do visas.

22 Q So any question that I ask you, anything in reference to
23 immigration, you can't even answer those questions?

24 A It would be speculation. I don't really -- I deal with
25 the visa process overseas. I do not deal with the petition

1 process domestically. That's done by counterparts at USCIS.

2 Q All right. So I go to the lawyer's office, I --

3 MS. MITRANI: Objection, Your Honor.

4 MR. SCOTTON: Your Honor, I'm going to ask the
5 question. She's going to allow me to ask the question? I
6 don't know.

7 THE COURT: Let's have the question then. All right.

8 BY MR. SCOTTON:

9 Q A lawyer has submit application ask seeking for a visa 01
10 on my behalf and immigration has approve. The application make
11 me in any kind of way here given false statements to United
12 States?

13 A I'm not sure what your question is, sir.

14 MS. MITRANI: Objection, Your Honor.

15 THE COURT: Sustained.

16 MR. SCOTTON: Your Honor, can I have a minute because
17 I need to find a form here that I will be able to ask this
18 question a better way.

19 THE COURT: All right.

20 BY MR. SCOTTON:

21 Q Ms. Katherine, this visa 01 has been initiated here in the
22 United States, correct?

23 A That is not correct, sir.

24 Q I went to immigration, I applied for immigration,
25 immigration approve here?

1 A The petition is approved in the United States, but the
2 visa is not approved.

3 THE COURT: Mr. Scotton, you've got to wait for her to
4 answer. All right?

5 MR. SCOTTON: I'm sorry, yes.

6 THE COURT: Please go ahead and answer.

7 THE WITNESS: The 01 petition is approved in the
8 United States, but 01 visas are not approved in the United
9 States.

10 BY MR. SCOTTON:

11 Q Right. So basically immigration approve a petition,
12 collect the money, all the requirements were fulfilled, and I
13 guess the lawyer advised me to go ahead --

14 MS. MITRANI: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MR. SCOTTON:

17 Q So petition was approve. The lawyer sent the defendant to
18 Brazil, is that correct?

19 MS. MITRANI: Objection, Your Honor.

20 THE COURT: Sustained. Mr. Scotton --

21 MR. SCOTTON: Can I have --

22 THE COURT: Mr. Scotton, remember, if you wish to
23 testify, you need to do it from the stand. Now is the time to
24 ask questions.

25

1 BY MR. SCOTTON:

2 Q 01 visa has been considered a temporary visa, correct?

3 A An 01 visa is a nonimmigrant visa, that is correct.

4 Q And it can be validated for a year or more than a year?

5 A It depends on the reciprocity for the country that the
6 national holds the passport for.

7 Q It is 01 visa. If it is denied, they can submit also what
8 they call waiver?

9 A It depends on the basis for the denial of the visa.

10 Q But in this case here, a waiver has been filed?

11 A In this case, based on the refusal, the applicant was
12 eligible to have a waiver filed, but the consular officer did
13 not pursue the waiver. And then there was an opportunity for
14 second review.

15 Q And they have applied for the second review?

16 A The applicant did.

17 Q Did, right?

18 A The applicant did apply for the second review.

19 Q And it was denied as well?

20 A It was denied.

21 Q So basically here immigration approve a petition, but they
22 have no jurisdiction or power to grant the visa?

23 A USCIS does not grant visas. The Department of State
24 adjudicates visas.

25 Q This particular application here that has been shown by

1 the government here most of the time was filled out online?

2 A Which application, sir?

3 Q The what you call here, U.S. department of nonimmigrant
4 visa application.

5 A There were two applications, sir.

6 Q It DS156?

7 A It's the same form, sir. They were submitted on two
8 different dates. I'm not sure which application you are
9 talking about.

10 Q March 17, the first one.

11 A Okay.

12 Q This application is application that was filled out
13 online, right, it's through the on line process?

14 A There is an online process, but this application was
15 printed and signed.

16 Q And most of the time this application, was the applicant
17 or the lawyer that filled out this application?

18 A It varies from every applicant who fills out the
19 application.

20 Q When you have a lawyer handling your case, most of the
21 time the lawyer handle this?

22 A Again, I can only say that the applicant has to sign the
23 application. I don't know how people choose to fill it out.
24 Sometimes fill it themselves, sometimes others, but the
25 applicant signs the application.

1 Q Is any false information has been given to those
2 applications?

3 A In general?

4 Q On my application, Ms. Katherine.

5 A On the March application?

6 Q March 17, 2008.

7 A Yes.

8 Q What is the false information was being given here on this
9 application?

10 MS. MITRANI: Your Honor, can we have a sidebar?

11 THE COURT: All right.

12 (Thereupon, the following was heard sidebar.)

13 MS. MITRANI: Mr. Scotton is ask asking a question.

14 I'm not objecting. I want the Court to know the witness is
15 going to answer the question truthfully.

16 THE COURT: Okay. So we did redact that whole
17 section, but now you are asking the questions so --

18 MR. SCOTTON: That paper doesn't --

19 THE COURT: Mr. Scotton.

20 MR. SCOTTON: That paper does no --

21 THE COURT: I'm not going to argue with you about it.
22 I'm telling you what's going to happen now. It's a decision
23 that you make.

24 MR. SCOTTON: I'm going to say no more questions, Your
25 Honor.

1 THE COURT: You are welcome to ask it if you want to.

2 MR. SCOTTON: No.

3 (Thereupon, the following was heard in open court.)

4 MR. SCOTTON: Your Honor, I have no more questions.

5 THE COURT: All right. Redirect.

6 REDIRECT EXAMINATION

7 BY MS. MITRANI:

8 Q The defendant was asking you questions about waivers and
9 petitions or what have you. Do you recall those lines of
10 questioning?

11 A Yes, I do.

12 Q Ultimately, Ms. Mortensen, was Rogerio Chaves Scotton
13 granted a visa in connection with his March 2008 application
14 for nonimmigrant visa?

15 A No, he was not.

16 Q Was Rogerio Chaves Scotton granted a visa by the
17 Department of State in connection with his July 21st, 2008
18 application?

19 A No, he was not.

20 Q On direct I said, were there two interviews, two separate
21 interviews, at least two separate interviews in connection with
22 each of these visa applications?

23 A Yes, there were.

24 Q And does the applicant have to appear in person for the --

25 A Yes, the applicant appears in person for the interview.

1 Q And the applicant in this case was Rogerio Scotton, would
2 have to appear in person for the interview in connection with
3 the visa application?

4 A That is correct.

5 Q And these interviews took place in what country?

6 A In Brazil.

7 MS. MITRANI: No more questions, Your Honor.

8 THE COURT: Thank you. You may step down. Thank you
9 very much.

10 The government may call its next witness.

11 MR. SCOTTON: Your Honor, can we have a break, a
12 little break?

13 THE COURT: Why don't you come sidebar.

14 (Thereupon, the following was heard sidebar.)

15 THE COURT: Why do we need a break because I already
16 took a break this morning.

17 MR. SCOTTON: I know that. It's just that I feel like
18 I need to do something.

19 THE COURT: What do you need to do?

20 MR. SCOTTON: Sick.

21 THE COURT: You are feeling sick?

22 MR. SCOTTON: Yes.

23 THE COURT: Okay.

24 (Thereupon, the following was heard in open court.)

25 THE COURT: We are going to take until 5 of 12:00.

1 All rise for the jury. See you back here at 5 of 12:00.

2 Thanks.

3 (Thereupon, the jury exited the courtroom at
4 11:44 a.m.)

5 THE COURT: All right. See you back here at 5 to
6 12:00.

7 (Thereupon, a recess was taken at 11:45 a.m.)

8 THE COURT: All righty. Let's go back on the record
9 for a minute. Is everything okay, Mr. Scotton?

10 MR. SCOTTON: Yeah.

11 THE COURT: Okay. Thank you.

12 MS. MITRANI: Your Honor, does the Court know what
13 time it's going to take lunch?

14 THE COURT: 12:30 or so. Will that work okay?

15 MS. MITRANI: Sure. I just need to know how to
16 structure certain things.

17 MR. SCOTTON: Are we going to go over anything today?

18 THE COURT: Such as?

19 MR. SCOTTON: If the Court has five minutes before we
20 close today, I need more stuff to bring in on the sealed
21 portion.

22 THE COURT: When we are done for the day, we will see
23 what we can do. Okay?

24 MR. SCOTTON: Thank you, Your Honor.

25 THE COURT: All right.

1 (Thereupon, the jury entered the courtroom at
2 11:55 a.m.)

3 THE COURT: Thank you. Please be seated. Thank you
4 for your patience and cooperation. We are going to pick up
5 where we left off.

6 MS. MITRANI: The government will call Carla Felini
7 who requires the services of an interpreter.

8 THE COURTROOM DEPUTY: Please raise your right hand.

9 CARLA FELINI

10 Having been first duly sworn on oath, was examined and
11 testified as follows:

12 THE COURTROOM DEPUTY: Please be seated, state and
13 spell your first and last name for the record.

14 THE WITNESS: Carla Roberta Felini, C-A-R-L-A
15 R-O-B-E-R-T-A F-E-L-I-N-I.

16 THE COURT: Thank you.

17 DIRECT EXAMINATION

18 BY MS. MITRANI:

19 Q Good morning, Ms. Felini.

20 A Good morning.

21 Q How are you?

22 A Good. Thank you.

23 Q Have you ever testified in a courtroom like this before?

24 A No, never.

25 Q Are you a little nervous?

1 A Yes.

2 Q Take your time with all your answers, okay?

3 Let's tell the members of the jury a little bit about you.

4 Okay? Where were you born?

5 A I was born in the State of Rio Grande do Sul in Brazil.

6 Q And where did you grow up?

7 A I grew up in the City of Curitiba in Brazil.

8 Q Did you obtain your schooling in Brazil?

9 A Yes.

10 Q Tell the members of the jury a little bit about that.

11 A I finished at the nursing school at the Catholic
12 University of Parana.

13 Q In Brazil?

14 A Yes.

15 Q So were you -- did you work as a nurse in Brazil?

16 A No, I did not.

17 Q All that work to get the degree and you didn't enter the
18 field. Why is that?

19 A I decided to move up here together with my parents.

20 Q When did you move up here?

21 A In the year of 2000.

22 Q And, of course, when we mean up here, do we mean to the
23 United States?

24 A Yes.

25 Q And in what city and state do you live in now?

1 A I live in Boca Raton.

2 Q Do you own a business?

3 A Yes, I have a business of packing and shipping.

4 Q What is your business's -- what is the name of your
5 business?

6 A The Merry Mailman, Inc.

7 Q Where is the Merry Mailman, Inc. located?

8 A In Pompano Beach, Florida.

9 Q And how long have you owned the store?

10 A Eight years.

11 Q And when you purchased it, was it an existing store? Did
12 you build it from scratch? Can you tell us a little bit about
13 that.

14 A I worked there for two years, and afterwards I bought the
15 store.

16 Q And can you tell us a little bit about what the Merry
17 Mailman does. What business occurs there?

18 A Packing, shipping, and mailbox.

19 Q We have heard a lot of about packing and shipping
20 throughout the course of this trial, but can you tell us a
21 little bit about your involvement with packing and shipping?

22 A Basically I do all of the work that deals with packing and
23 I also do shipping.

24 Q Does your store, the Merry Mailman, have accounts with
25 DHL, Fed-Ex, and UPS?

1 A Yes, we have with all of the companies.

2 Q And when individuals come to your store for shipping, on
3 whose account do those packages get shipped?

4 A To the Merry Mailman account, to my business account.

5 Q So just like -- maybe why don't you walk the jury through
6 it. I'm coming to your store. I have this package. I want to
7 deliver it to Brazil. What do you do?

8 A First of all, if the package is not packed, I pack it and
9 I proceed with the labeling of the package.

10 Q And where do you get the information to fill out the
11 label?

12 A I have a software.

13 Q Okay. And then would you quote the client a price to
14 ship, let's say, a package to Brazil?

15 A Yes, I need certain information in order to do the
16 quotation.

17 Q What information do you need?

18 A Where it's going to be shipped to, the weight, and the
19 volume of the package.

20 Q Can customers come to your store and just drop off
21 packages without shipping through you?

22 A Yes, they can.

23 Q And how does that work?

24 A If this would be a dropoff, since I have the business, I
25 have to receive these packages as dropoffs. If they only leave

1 the packages, I don't have to question anything.

2 Q Does the volume of mailings, that is how many packages an
3 entity ships out, does that affect the rate that the shippers
4 would charge?

5 A A lot.

6 Q How so?

7 A Especially for international shipping. Sometimes the
8 volume is more important than weight.

9 Q And do you know whether DHL, Fed-Ex, and UPS provide
10 better rates if you ship more packages with them?

11 A Yes.

12 Q Did you come to know a person by the name of Roger or
13 Rogerio Scotton?

14 A Yes.

15 Q How do you know him?

16 A I met him through some friends in 2010.

17 Q And where did you meet him?

18 A At a friend's house. It was a friend that we have in
19 common. It was their birthday.

20 Q And after you met Mr. Scotton, did you begin to date him?

21 A Yes.

22 Q Can you tell us a little bit about how that came about.

23 A Initially, it was only friendship, I think for about a
24 month. And afterwards our relationship, you know, we ended up
25 having or assuming a more solid relationship.

1 Q Would you call it boyfriend and girlfriend? Did you begin
2 dating in 2010?

3 A Boyfriend and girlfriend.

4 Q And that in 2010, Ms. Felini?

5 A Yes, it was 2010.

6 Q And did it continue throughout 2010?

7 A Yes, it started in July of 2010.

8 Q Did there come a time that you became -- well, strike
9 that.

10 You see Mr. Scotton in the courtroom today?

11 A Yes, I am.

12 Q Can you identify him by what he's wearing?

13 A Yes, with a gray jacket.

14 MS. MITRANI: Your Honor, let the record reflect
15 Ms. Felini has identified the defendant.

16 THE COURT: The record will so reflect.

17 BY MS. MITRANI:

18 Q Did you become engaged to Mr. Scotton?

19 A Yes.

20 Q When did the defendant propose to you?

21 A In June of 2011.

22 Q And do you remember the date in 2011?

23 I'm sorry, did you say June 2011?

24 A June 11.

25 Q Is that your birthday?

1 A Yes.

2 Q Did you accept Mr. Scotton, the defendant's, proposal?

3 A Yes, I accepted.

4 Q And did you remain engaged to the defendant -- well,
5 strike that.

6 Did that engagement end at some point in time?

7 A Yes, it did end.

8 Q Do you remember when?

9 A January of 2010 -- no, sorry, January of 2012.

10 Q So you were engaged to the defendant from approximately
11 June 2011 through January of 2012, is that correct?

12 A Yes.

13 Q So during the course of your relationship, how often would
14 you see the defendant in any given week?

15 A Almost every day.

16 Q Where did the defendant live?

17 A He lived in Mizner in Boca.

18 Q Did anybody live with the defendant at that apartment in
19 Mizner in Boca?

20 A No.

21 Q By the way, did the defendant have a fax machine in his
22 Mizner condominium or townhouse?

23 A Yes.

24 Q Do you know the defendant's mother's name?

25 A I know.

1 Q What is it?

2 A Marina Colon.

3 Q Do you know the name of the defendant's stepfather?

4 A No.

5 THE COURT INTERPRETER: Excuse me, Ms. Mitrani. The
6 interpreter needs to correct. The interpreter said father.
7 Did you say stepfather?

8 MS. MITRANI: I did say stepfather.

9 THE COURT INTERPRETER: I'm so sorry. Let me --

10 THE WITNESS: Carlos.

11 MS. MITRANI: Thank you.

12 Your Honor, may I approach?

13 THE COURT: Yes.

14 BY MS. MITRANI:

15 Q I'm showing you what's been marked and received into
16 evidence as Government's Exhibit 14A which contains two
17 recordings from Fed-Ex. Have you listened to these recordings
18 in their entirety?

19 A Yes.

20 Q And likewise, I'm showing you Government's Exhibit 14E
21 which also contains recordings from Fed-Ex. Have you listened
22 to these recordings in their entirety?

23 A Yes, I heard.

24 MS. MITRANI: All right. Start with 14A.

25 (Thereupon, the audiotape was played.)

1 BY MS. MITRANI:

2 Q Ms. Felini, do you recognize the male voice calling into
3 Fed-Ex to open the account?

4 A Yes.

5 Q Who is it?

6 A Roger.

7 Q Roger who?

8 A Scotton.

9 Q And I asked you when I was next to you have you listened
10 to these in their entirety, and you answered yes. My question
11 is have you actually listened to them more than once?

12 A Twice.

13 Q I'm going to go to the second. I'm going to play an
14 excerpt from the second call on Government's Exhibit 14A.

15 (Thereupon, the audiotape was played.)

16 MS. MITRANI: There's a pause so we are just going to
17 jump ahead a little bit in the call.

18 (Thereupon, the audiotape was played.)

19 BY MS. MITRANI:

20 Q We haven't played the whole thing. We have played a
21 portion of it. Do you recognize the male voice calling in to
22 open the global money remittance account?

23 A Yes.

24 Q And who is that male voice?

25 A Roger Scotton.

1 Q Now we are going to go to calls on Government's Exhibit
2 14E, and again we will play portions.

3 All right. We are going to skip towards the end because
4 she has to reboot her computer.

5 (Thereupon, the audiotape was played.)

6 MS. MITRANI: Do you want to skip a little more
7 because there's another break.

8 (Thereupon, the audiotape was played.)

9 BY MS. MITRANI:

10 Q Ms. Felini, did you recognize the male voice who
11 represented himself as Steve Duke wanting to open the Fed-Ex
12 account?

13 A Yes, it's Roger.

14 Q Roger Scotton, the defendant?

15 A Yes.

16 Q One more call on this exhibit.

17 (Thereupon, the audiotape was played.)

18 BY MS. MITRANI:

19 Q Ms. Felini, do you recognize the male voice purporting to
20 be Douglas Scovanner opening a Target account with Fed-Ex?

21 A Yes, it's Roger Scotton.

22 THE COURT: I'm sorry to interrupt, but I know we have
23 got some parking meters that need to be paid so I think we will
24 take our lunch break now. See you back here at 1:00. Have a
25 terrific lunch. Please don't discuss the case, please don't

1 disburse any information about the case, please don't conduct
2 any independent investigation about the case. See you at 1:30.
3 All rise for the jury.

4 (Thereupon, the jury exited the courtroom at
5 12:31 p.m.)

6 THE COURT: All right. Thank you. We will start
7 right up again right at 1:30, so please do be on time. See you
8 then. Have a good lunch.

9 (Thereupon, a luncheon recess was taken at 12:32 p.m.)

10 THE COURT: So I have spoken with Ms. Raisman's
11 employer and they are not willing to extend the paid leave.
12 And they also state -- unless I'm going to have a hearing on
13 this, which I don't want to interrupt the trial with a hearing
14 on this, and frankly, also in light of the fact that
15 Ms. Raisman served on a jury last week as well and has already
16 done jury service, I certainly don't want to make things bad
17 for her if I don't really need to do it.

18 The story that her employers have given me is that the
19 policy is posted on the website and she's known since day one
20 of her employment what the policy is and that her supervisor
21 never told her that she would be paid for all of the time and
22 that she was not told that, and therefore, they are not going
23 to do it.

24 So my thought is to bring Ms. Raisman in and tell her
25 that the government anticipates, although it's not for sure,

1 that the government anticipates that it might be done
2 presenting its case next week. We don't know if the defendant
3 will put on a case, and if so, exactly how long it will be, and
4 see if she still has a financial hardship in staying. If she
5 says that she does, I'm not inclined to force her to sit here
6 and incur a financial hardship, particularly in light of the
7 fact that she did serve on a trial the prior week. And maybe
8 in the future we can see if we can get jurors who haven't just
9 served on a trial because I can understand why employers might
10 not be too happy when we ask them to pay their employees for
11 two trials in a row. All right.

12 MR. SCOTTON: Your Honor, the investigator just
13 brought it in that when everybody left for lunch, she heard
14 some, and she can't quite remember the face, but seems like one
15 of the jurors talking over the phone to somebody about an
16 immigration issue.

17 THE COURT: Let me hear from the investigator. I
18 don't want to hear it second-hand from --

19 THE INVESTIGATOR: Good afternoon, Your Honor. I was
20 walking to the lunch break, and I didn't see the face, but I
21 heard somebody talking about an immigration officer testifying
22 today or something on the phone. I can't say who was the
23 person or what he say, but I heard a comment and I want to
24 bring it up just in case.

25 THE COURT: Thank you for letting me know. If all

1 that was said is that an immigration officer testified today
2 without saying anything about what was said or anything of that
3 nature, there's been a court reporter who sat here throughout
4 most of the proceedings and -- not a court reporter, a
5 newspaper reporter who sat here throughout most of the
6 proceedings, and all of that is public information anyway
7 because that is reported in the day's filings. So that's not
8 the kind of information that we are talking about. But I will
9 remind the jury once again not to discuss the case. If you
10 heard anything other than that, though, I obviously would want
11 to know that. Was there anything beyond that?

12 THE INVESTIGATOR: No.

13 THE COURT: I'm sorry?

14 THE INVESTIGATOR: No. I was passing by, so no.

15 THE COURT: Okay. Thank you. Let's bring in
16 Ms. Raisman first.

17 (Thereupon, a juror entered the courtroom at
18 1:33 p.m.)

19 THE COURT: Welcome back, Ms. Raisman.

20 A JUROR: I feel like this is my verdict.

21 THE COURT: I have spoken with Mr. Rogers over at your
22 employer's offices and he tells me he's the decision maker in
23 this regard and he says that the policy, I guess, is posted and
24 employees are advised and that your supervisor denied ever
25 telling you you would get paid for that time. I know you have

1 done your jury service. I'm not going to -- I don't want your
2 jury service to result in trouble to you at your job. I could
3 have a hearing on this. You know, we could take time out of
4 the schedule and do that. I could require them to bring in
5 your supervisor. I'm just thinking that that might not be
6 something that you would like to have happen.

7 A JUROR: No, because she is my direct supervisor.

8 THE COURT: I understand. So I will tell you this,
9 though. The government has said to me, to the Court, although,
10 you know, obviously things change and there's no way to know
11 for sure, we don't know how long, sometimes unexpected answers
12 are given, it's hard to gauge cross-examination. The
13 government expects that it will rest its case next week. The
14 defendant may or may not put on a case. If he chooses to put
15 on a case, we don't know how long that will be. I need to ask
16 you, would it still be a hardship for you to stay under the
17 circumstances that I have just indicated where you would not be
18 paid?

19 A JUROR: The only thing that, if I did want to stay,
20 I would have to work Saturday, Fridays, Saturdays, and Sundays.
21 I am self-supportive and no one pays my bills. I have a
22 mortgage like everybody else. I'm very disappointed. I
23 thought maybe you would have had -- I'm just saying, you know,
24 you are a federal judge. I thought maybe something -- they
25 would have --

1 THE COURT: As I said, I could bring them in and we
2 could have a hearing and I could follow the precedent that I
3 discussed previously. I could do all of those things. And I
4 would be happy to do that if you want me to.

5 A JUROR: No, I don't want to --

6 THE COURT: I figured that was how you might feel and
7 I didn't want to create a difficult situation for you at work
8 so I didn't push it. I could. But I didn't want to create
9 problems for you, so I didn't. But I would be more than happy
10 to do that if that's something that you would like for me to
11 do.

12 A PROSPECTIVE JUROR: You know, I don't want to start
13 a whole thing at work because I'm going to be reporting to her
14 and then to call her in and obviously, you know, he said she
15 said, that's what's going to happen. Nothing was written down.
16 And I don't think I was -- I have been on jury duty before, but
17 I don't recall if I was at this company or if I was -- I was
18 called but never served, so -- and I really didn't know. I
19 just assumed because it was such a huge corporation. It didn't
20 even occur to me -- I know they can't fire you, but it didn't
21 even occur to me that they wouldn't pay me my wages, you know.

22 And that's when I -- you know, because when I served
23 last week, I sent in the paperwork for the other trial and no
24 one said a word to me. No one said anything. So I figured it
25 was fine.

1 And then when I told my supervisor I was called back
2 to report, I didn't know I was going to be chosen. And then I
3 told her I was chosen. And then last week, I said to myself, I
4 better just make sure what's going on, you know, because no one
5 said anything to me, but let me ask her directly.

6 And then she says, don't worry, you'll get paid. They
7 were doing the payroll, so I guess -- then when she called me
8 back and she said, you know, you are getting an email from
9 Tiffany who is her manager stating the rules of my company,
10 that's when it says ten days. And then when I spoke to
11 Claudette again, she goes, well, I thought you meant your
12 salary was okay with, you know, just for that week for payroll.
13 And that's not really what I was implying. But, you know, I
14 meant is my salary okay.

15 THE COURT: Of course.

16 A JUROR: If it's okay for payroll, it's okay. But
17 apparently not. And, of course, obviously she doesn't want to
18 get in trouble because she obviously gave me the wrong
19 information. And, you know, I work with her. And the whole
20 thing is, you know, I don't think I really would want to go
21 that way. And in response to your -- you are thinking that --

22 THE COURT: Here are my thoughts on this. We have the
23 rest of today. Tomorrow we have off. The government thinks
24 that it will rest sometime next week and then the defendant may
25 or may not put on a case. If he does, we don't know how long

1 it will be. I said six to eight weeks because I didn't -- I
2 always like to have a pleasant surprise rather than an
3 unpleasant surprise, but really we don't know how long the case
4 will be.

5 A JUROR: The only thing I could do is, you know, I
6 have worked seven days before in my life. It's not the end of
7 the world. I have done it a long time ago. And I had two
8 jobs. I would have to work Friday, Saturday, and Sunday, so
9 that would mean that -- because it's a four-day court week. So
10 then I would be left with two days because if I went -- wait,
11 is that right? Yeah, because I will be working Friday,
12 Saturday, Sunday. So there's really only two days that I would
13 have to make up.

14 They told me that if I want to take the \$40 per day, I
15 would have to figure out how much PTO I would take so I would
16 get my whole pay. I would have to have payroll do that, to
17 figure out if I'm getting a gross of \$40. In other words, I
18 want to get my full day's pay.

19 THE COURT: I completely understand. Since you are
20 getting paid for today anyway and you have already been here
21 all day today, what if you think about this for the rest of
22 today and stay on the jury for now. And if there's any
23 possible way that you can work it out and it won't be a
24 debilitating economic hardship for you, then we would very much
25 appreciate it. If it's going to be something that presents the

1 kind of financial hardship that, you know, is just going to be
2 a significant problem for you, we understand and you should let
3 us know that at the end of today and we will figure out what to
4 do. Is that fair enough?

5 A PROSPECTIVE JUROR: Yeah. Okay. It's just a
6 matter -- but we don't know if the defendant is -- what the
7 defendant is going to do at this point.

8 THE COURT: That's true.

9 A JUROR: If you are resting next week. Right now I'm
10 an alternate. I don't know if anything is going to happen to
11 the others. If I'm an alternate, I'm not included in the
12 deliberations?

13 THE COURT: That's right.

14 A JUROR: Shucks, I wanted to be in the deliberations.

15 THE COURT: And we get to the point where the case
16 ends and we still have 12 members of the jury, then you would
17 be excused at that point, you wouldn't miss any more work.

18 A JUROR: Right.

19 THE COURT: We never know.

20 A JUROR: The decision is mine. I would just have to
21 decide if I want to work like seven days a week because it
22 would be four here and then Friday, Saturday, and Sunday. And
23 I know on two Sundays in February and March, you know, I belong
24 to the Broadway series.

25 THE COURT: Let me ask you something. Here's what I'm

1 thinking. On the two weeks that you have got those Sundays
2 that you would be able to work, maybe we could do a three-day
3 trial week instead of four days and then you would have -- you
4 would still be able to get the third day of work in. If you
5 are willing to work with us, is what I'm saying, I'm willing to
6 try to figure out a way.

7 A JUROR: I would like to work with you. I was
8 selected, and I said I am honored that I was selected by all of
9 you. And I would like to do it. I guess I will just have to
10 just -- I just hope it doesn't go for six weeks because, you
11 know, you can get burnt out working seven days a week.

12 THE COURT: Believe me, I completely understand. Let
13 me give you some time to think about it. As I said, we still
14 have the rest of today's testimony, and we have to end today at
15 4:30.

16 MS. MITRANI: 4:15.

17 THE COURT: 4:15, thank you.

18 We have to end today at 4:15 anyway. So at 4:15 take
19 a few minutes and let us know what you are thinking. Can you
20 do that?

21 A JUROR: Yes, I can do that.

22 THE COURT: Thank you very much. We appreciate it.
23 We are going to bring in the rest of the jury.

24 A PROSPECTIVE JUROR: Should I stay here?

25 THE COURT: Sure unless you need do get something.

1 A JUROR: Are there cups here?

2 THE COURTROOM DEPUTY: Yes.

3 A JUROR: Then I can just stay. I thought it was
4 going do be a different outcome.

5 THE COURT: I was hoping so. I was thinking so too
6 yesterday afternoon, but...

7 A JUROR: Let me just ask you before they come in, you
8 said on those two weeks, I think it's -- I would have -- so
9 that Sunday, I can go to my show without having to work?

10 THE COURT: If you tell me when it is and we have
11 enough advanced notice, we can work around it.

12 A PROSPECTIVE JUROR: Yeah, I think -- yeah, I'll have
13 to look to see. I don't remember offhand. I just have to look
14 and see.

15 THE COURT: Okay.

16 A JUROR: I guess for some reason -- I know you went
17 out on a limb to do what you did. And I'm appreciative of
18 that. If I chose not to do it, then today's my last day and
19 that's it?

20 THE COURT: Right, and then I won't make you stay.

21 A JUROR: Then you will be down to one alternate,
22 which is a hardship on your end.

23 (Thereupon, the jury entered the courtroom at
24 1:44 p.m.)

25 THE COURT: Please be seated. Welcome back. I hope

1 everybody had a great lunch. Just a reminder. I know we talk
2 about this every time. Let me first start by asking, is there
3 anybody here who has discussed the case with anyone, disbursed
4 any information about the case, or done any research into the
5 case? If so, raise your hand for me now, please.

6 I see no hands. I thank you all for that. Just so
7 there's no question about what it means to discuss the case, I
8 don't know if in the past you might have said, you know,
9 so-and-so testified today and you didn't go any further than
10 that, I think that was fine, but let's not do that anymore so
11 there's no question about that. We wouldn't want someone to
12 get the wrong idea if they hear a partial conversation and you
13 are saying, well, I heard -- you know, well, so-and-so
14 testified today without going into further detail.

15 Does everybody understand what I'm saying? Does
16 anybody have any questions about that at all?

17 I see no hands. Thank you all for that.

18 And we are going to continue with Ms. Felini.
19 Whenever you are ready.

20 Ms. Felini, I just need to remind you that you are
21 still under oath. Do you understand?

22 THE DEFENDANT: Yes.

23 THE COURT: Thank you. Whenever you're ready,
24 Ms. Mitrani.

25 MS. MITRANI: Thank you, Your Honor. May I approach,

1 Your Honor?

2 THE COURT: You may.

3 BY MS. MITRANI:

4 Q Good afternoon.

5 A Good afternoon.

6 Q Did you have a nice lunch?

7 A Yes.

8 Q I'm showing you what's been admitted into evidence as
9 Government's Exhibit 29A. It's a cassette tape of a recording.
10 Have you had the opportunity to listen to this in its entirety
11 before coming here today?

12 A Yes.

13 Q I'm going to play part of it, not the whole thing.

14 (Thereupon, the audiotape was played.)

15 BY MS. MITRANI:

16 Q Ms. Felini, do you recognize the voice of the man claiming
17 to be Pablo Servente?

18 A Yes, it's Roger Scotton.

19 Q So the person representing himself as Pablo Servente is
20 the defendant, Roger Scotton's, voice?

21 A Yes.

22 Q Ms. Felini, you said your store was the Merry Mailman,
23 Inc. or LLC. I'm going to put up on your screen Government's
24 Exhibit 6M which has been admitted into evidence. And we are
25 going to put on the screen the 12th page of this Exhibit 6M

1 which is a 2006 for profit corporation amended annual report.

2 Do you see that, Ms. Felini?

3 A Yes.

4 Q And is that the address of your store, Ms. Felini?

5 A Yes.

6 Q So your store is located at 3907 North Federal Highway,
7 Pompano, Beach Florida, correct?

8 A Correct.

9 Q And I see that there is a signature towards the middle of
10 this document, do you see that?

11 A Yes.

12 Q Is that your signature?

13 A Yes.

14 Q And is that your name and the date of August 11, 2006 next
15 to your signature?

16 A Yes.

17 Q Did you fill out this form?

18 A Yes.

19 Q Now, we are going to put on the bottom half of the same
20 document within Exhibit 6M. It lists towards the left-hand
21 column on the top, it says manager owner, Carla Felini, do you
22 see that?

23 A Yes.

24 Q Is that you?

25 A Yes.

1 Q And underneath it it says owner, Rodrigo Nascimento

2 A He's my ex-husband.

3 Q Does he still own the store with you?

4 A No.

5 Q So he owned it with you while you were married, and then
6 when you were no longer married, he was no longer an owner?

7 A Correct.

8 Q And then on the bottom, there is a signature with a date
9 8/11/06. Is that your signature, Ms. Felini?

10 A Yes.

11 Q Drawing you towards, I think it's the second to last page
12 on the exhibit, again for the Merry Mailman, Inc., and on the
13 bottom as officer and director, it lists your name and the
14 address of the store, Carla Felini at 3907 North Federal
15 Highway.

16 A I'm sorry, what was the question?

17 Q This document on the top says it's a 2012 for profit
18 corporation annual report. Do you see that?

19 A Yes.

20 Q And by this point it has only your name as the officer and
21 director of the company, correct?

22 A Correct.

23 Q And if you go back one to 2011, 2011 for profit
24 corporation only lists you as the officer and director?

25 A Yes.

1 Q When did you get divorced from Mr. Nascimento?

2 A In 2013.

3 Q Did you know -- did the defendant, your fiance, Rogerio
4 Scotton, have a business?

5 A Yes.

6 Q What was his business?

7 A Shipment.

8 Q And did it have a name?

9 A Sky Air.

10 Q Do you know where he was operating his business from?

11 A From his home.

12 Q From his home in Mizner Park in Boca Raton?

13 A Correct.

14 Q Did the defendant open a store called the Merry Mailman?

15 A He did.

16 Q And it was called the Merry Mailman, LLC?

17 A Correct.

18 Q Did you give the defendant permission to use your
19 company's name?

20 A I did.

21 Q Were you going to be operating that store jointly or
22 separately, what would be relationship between your store the
23 Merry Mailman, Inc. and the Merry Mailman, LLC?

24 A It would be operated totally separate.

25 Q Were you involved, did you have any involvement in the

1 Merry Mailman, LLC?

2 A No.

3 Q Were there any problems -- did any problems arise as a
4 result of your store being the Merry Mailman, Inc. and the
5 defendant's store being the Merry Mailman, LLC?

6 A Some problems.

7 Q And did you ask the defendant to do anything as a result
8 of those problems?

9 A I asked at the moment that he would start operating, try
10 not to use the name of my store.

11 Q Okay. So then did you -- I'm a little confused. Did you
12 let the defendant use the Merry Mailman, LLC? Did you give him
13 permission? Did you not give him permission? Did you revoke
14 permission? I'm a little confused?

15 MR. SCOTTON: Objection.

16 THE COURT: What's the objection?

17 MR. SCOTTON: Leading.

18 THE COURT: Overruled.

19 BY MS. MITRANI:

20 Q Can you just explain how that worked?

21 A Yes. With Fed-Ex accounts, they started to call my store
22 so I told him to contact these companies and to explain that it
23 was not Merry Mailman, Inc.

24 Q What was Fed-Ex contacting you about that led you to call
25 the defendant?

1 A Well, they started to contact to know about his account
2 and they will not go into detail about the subject, but I knew
3 that they were not my packages.

4 Q And did you contact the defendant, did you talk to the
5 defendant about these phone calls that you received from Fed-Ex
6 regarding packages and accounts that did not belong to the
7 Merry Mailman, Inc.?

8 A I contacted him.

9 Q And what did you tell him?

10 A I told him that this was bringing me problems. It was,
11 you know, being confusing about the companies and that he would
12 ask him to operate in a way that would not bring me these
13 problems.

14 Q And did you ask him to take any specific actions so that
15 you would not have any problems?

16 A Yes.

17 Q What was it?

18 A I asked him to contact the companies and tell them that
19 these were different companies and different ID tax numbers.

20 Q Do you know when the defendant's Merry Mailman, LLC became
21 operational?

22 A I don't remember exactly, but I think it was in 2011, at
23 the end of 2011.

24 Q So at the end of 2011 is when the Merry Mailman, LLC
25 became operational?

1 A Yes.

2 Q Did you work at the Merry Mailman, LLC?

3 A No.

4 Q Now, you said that the defendant's business with Sky Air
5 was shipping, correct? Did I hear you correctly?

6 A Sky Air.

7 Q And did you ever discuss shipping or shipping rates with
8 the defendant?

9 A Not a lot.

10 Q Did you discuss it a little?

11 A Yes.

12 Q What did you learn about the defendant's shipping rates?

13 A That he had prices that were much lower than my business.

14 (Thereupon, a cell phone rang.)

15 MS. MITRANI: Oh, my God. I'm so sorry.

16 I deeply apologize to the Court. It's one of those
17 things you want to throw the phone out the window. I'm so
18 sorry.

19 THE COURT: It's all right.

20 MS. MITRANI: And to the jury as well, I apologize.

21 BY MS. MITRANI:

22 Q Did you ask the defendant how his shipping rates could
23 have been so much lower than yours?

24 A I asked him and he said he had his means to have the rates
25 lower.

1 Q And do you remember how much lower than yours, a little
2 bit, a lot?

3 A A lot.

4 Q Ms. Felini, during the course of your relationship with
5 the defendant from June 2010 through January 2012, did you know
6 of a woman whose name was Aylin?

7 A I heard of it.

8 Q From whom?

9 A From Roger.

10 Q What did Roger tell you about Aylin?

11 A That he had married her for immigration papers.

12 Q And did you ever meet Aylin?

13 A No.

14 Q Did Aylin ever live with the defendant in Mizner Park?

15 A No.

16 Q Did Aylin ever live with the defendant anywhere while you
17 were involved with the defendant?

18 A Never.

19 Q Was Mizner Park the defendant's only residence?

20 A Yes.

21 Q Did the fact that the defendant told you he was married to
22 Aylin for papers have any impact on your relationship with the
23 defendant?

24 A No.

25 Q From what you could observe, did it appear to you that the

1 defendant was making a lot money in his business?

2 A It seemed that way.

3 Q What makes you say that? Tell the members of the jury,
4 what did you observe?

5 A By the amounts of money that he spent and the way that he
6 spent it.

7 Q What do you mean by that, Ms. Felini?

8 A When we would go out, he usually would pay everything for
9 everybody. We did some trips together with the family and he
10 made a point in paying for all members of the family.

11 Q Did he buy you jewelry?

12 A Yes, he would buy expensive jewelry and without any
13 specific dates.

14 Q I'm sorry, without any specific what?

15 THE COURT INTERPRETER: Dates.

16 THE WITNESS: No celebration, for example, Christmas
17 or birthdays.

18 BY MS. MITRANI:

19 Q Oh, so I'm sorry. So what you were saying, he would get
20 you jewelry for occasions and for non-occasions, is that what
21 you are saying?

22 MR. SCOTTON: Object, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: Correct.

25

1 BY MS. MITRANI:

2 Q How about handbags, did the defendant buy you expensive
3 handbags?

4 A Yes. And when he would give me purses, it would not be
5 one, it would be two.

6 Q Would you say that the defendant was very generous with
7 you?

8 A He was very generous.

9 Q When you were out with the defendant and he would purchase
10 things, would he purchase things in cash?

11 A Cash.

12 Q And what you could observe, did it seem the defendant
13 always carried a lot of cash on his person?

14 A He always had large amounts of cash with him.

15 Q Going back, I'm sorry, to the defendant's business for a
16 minute. Did anybody work for the defendant?

17 A Renata.

18 Q Do you know Renata?

19 A I know her.

20 Q Did anybody else work for the defendant?

21 A Not through Sky Air, no.

22 Q Did anybody work for the defendant at the Merry Mailman,
23 LLC?

24 A Yes, there was a girl who was called Luely and my sister
25 did start to help him so that the store could operate.

1 MS. MITRANI: Your Honor, can I have a moment?

2 THE COURT: You may.

3 BY MS. MITRANI:

4 Q A few more questions on a couple of topics.

5 Were you aware of an immigration interview that the
6 defendant attended in August of 2011?

7 A Yes.

8 Q How were you aware of that immigration interview?

9 A He told me that this interview had a date.

10 Q Did he tell you anything about preparing for the interview
11 or any actions he was going to take leading up to it?

12 A He said that he needed to meet his wife in reference to
13 the questions that were going to be asked so that they could
14 agree on the answers.

15 Q Do you know whether the defendant met with his wife to
16 review the answers to the questions, to the potential
17 questions?

18 A Yes, they did meet.

19 Q Were you there when they met?

20 A No.

21 Q Did the defendant tell you about the meeting?

22 A Yes.

23 Q Were you contacted by the FBI in 2012?

24 A Yes.

25 Q And have you met with the FBI and the prosecution team on

1 a few occasions?

2 A Yes.

3 Q And when you first spoke to the FBI, was it just you and
4 the FBI agents?

5 A Yes.

6 Q During that first meeting, did you tell the FBI about
7 Aylin?

8 A No.

9 Q Why not?

10 A I was very surprised with the visit. I didn't know what
11 was happening and I chose not to say anything.

12 Q Did you tell the FBI about Aylin in later interviews?

13 A I did.

14 Q Were you engaged to be married to the defendant at the
15 time the defendant went to the immigration interview?

16 A Yes.

17 MS. MITRANI: No further questions, Your Honor.

18 THE COURT: Any cross.

19 CROSS EXAMINATION

20 BY MR. SCOTTON:

21 Q Ms. Felini, during this process of this charge against me,
22 how many times did you get together with the prosecutor?

23 A About three times.

24 Q How many hours did you spend in that office?

25 A Not many.

1 Q She mentioned here the first time that you get together
2 with FBI, you surprised, you were afraid. What were you afraid
3 of?

4 A It was not fear. It was a certain surprise. I didn't
5 want to compromise what situations I was not sure what they
6 were about.

7 MR. SCOTTON: Just can you instruct the witness not
8 to --

9 THE COURT: No. Can you please wait for the
10 interpreter to give the interpretation.

11 THE WITNESS: I knew you were dealing with something
12 wrong, so at that very moment, I preferred not to talk.

13 BY MR. SCOTTON:

14 Q So you mentioned that I was doing something wrong, but
15 still in relationship with me?

16 A I continued.

17 Q You mentioned also to the FBI that we met through my
18 parents, and that's not true, right?

19 A I didn't say that.

20 Q I have reviewed some documents presented to me by the
21 government.

22 MS. MITRANI: Objection, Your Honor.

23 THE COURT: Sustained.

24 BY MR. SCOTTON:

25 Q You mentioned the FBI?

1 MS. MITRANI: Objection, Your Honor.

2 THE COURT: Why don't you come sidebar, Mr. Scotton.

3 (Thereupon, the following was heard sidebar.)

4 THE COURT: You can ask her if she ever said anything
5 different on another occasion. You can ask her if she ever
6 said things that were in there, but you can't say you told the
7 FBI such and such because that's not in evidence and you can't
8 do that.

9 MR. SCOTTON: So she can lie on the reports?

10 THE COURT: No, but that's not a document you can use
11 to impeach with because it is not a signed statement by her.
12 So you can't -- that is a rule of evidence. It's not something
13 I'm making up. That's the rule.

14 If you want to ask whether something different was
15 said on a different occasion, you might be able to ask the
16 agent if it's an appropriate question. I don't know because I
17 haven't heard what else is being said yet. But you can't ask
18 her if the agent wrote something down wrong or something like
19 that because that is not a signed statement under oath by her.
20 So you can't do that.

21 I don't want to have to explain this again. I think I
22 have explained it now several times. You can ask her if she
23 previously said something. If she says she didn't, you are
24 stuck with that answer unless and until the individual to whom
25 she allegedly said it testifies. Please don't put things on

1 the microphone. Okay. Do you understand?

2 MR. SCOTTON: Yes.

3 (Thereupon, the following was heard in open court.)

4 BY MR. SCOTTON:

5 Q Ms. Felini, are you afraid to be here today?

6 A Sorry, can you repeat?

7 Q Are you afraid of being here today?

8 A No.

9 Q Have you been forced to be here today?

10 A No.

11 Q Ms. Felini, are you afraid of getting prosecuted,
12 prosecution for any crime you might have committed?

13 MS. MITRANI: Objection, Your Honor.

14 THE WITNESS: No.

15 THE COURT: I'm going to overrule the objection.

16 MR. SCOTTON: Motivation, Your Honor.

17 THE COURT: I already overruled the objection.

18 BY MR. SCOTTON:

19 Q Ms. Felini, have your family engaged in serious violation
20 frauds of real estate, the violation of fraud of real estate,
21 they financed you to go ahead and buy your store?

22 THE COURT INTERPRETER: I'm sorry. Can you please
23 repeat that?

24 MR. SCOTTON: I'm going to rephrase this question.

25

1 BY MR. SCOTTON:

2 Q Have your family commit real estate fraud and real estate
3 fraud? They loan you money to buy your store?

4 A Never.

5 Q Have your family bought two house in United States
6 illegally through the false Social Security?

7 MS. MITRANI: Objection, Your Honor.

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q Ms. Felini, I got a report here by investigator seems to
11 have 46 link, I mean, do you know what everybody talk about tax
12 invasion (sic)?

13 MS. MITRANI: Objection to the form of the question.

14 THE COURT: Sustained.

15 BY MR. SCOTTON:

16 Q The reason you are here today and lying that I made those
17 phone calls is because you are afraid for your family and for
18 yourself to get prosecution and now you decided to help these
19 people incriminate me?

20 A No way. I am telling the truth.

21 Q So you are telling the truth that you never -- your family
22 never commit immigration fraud -- I mean, real estate fraud?

23 A This never happened.

24 Q How long your family live here in this country?

25 A 14 years.

1 Q During the two times they bought houses, one in Pompano
2 Pompano Beach and one in Deerfield, what kind of Social
3 Security did they offer to the banks?

4 MS. MITRANI: Objection, Your Honor.

5 THE COURT: Sustained. Mr. Scotton, please ask
6 questions about this witness.

7 MR. SCOTTON: It's the motivation.

8 THE COURT: Mr. Scotton.

9 MR. SCOTTON: That's why she's here lying.

10 THE COURT: Mr. Scotton, don't argue with me. Ask
11 questions about this witness, not about people she might be
12 related to, not about her friends, about this witness.

13 MR. SCOTTON: No friends, family, Your Honor.

14 THE COURT: Mr. Scotton, please continue.

15 BY MR. SCOTTON:

16 Q Did you have cases open with the government, federal cases
17 open right now with IRS?

18 A No.

19 Q The reports say you have a 46 case?

20 MS. MITRANI: Objection, Your Honor.

21 THE COURT: Sustained.

22 BY MR. SCOTTON:

23 Q You mentioned to the government that Renata used to work
24 for me, that's correct?

25 A What?

1 Q You have mentioned to the government that Renata used to
2 work for me?

3 A Yes.

4 Q Can you look at that picture in the screen and tell me if
5 Renata in that picture?

6 A Yes.

7 Q Can you confirm that the guy in the blue shirt is her
8 husband?

9 A It looks like it.

10 Q How many kids they have?

11 A One.

12 Q What about the boy?

13 A I don't know about Renata's life.

14 Q Did you mention also to the prosecutor that we start this
15 relationship back in July of 2010?

16 A Right.

17 Q It's not true, right?

18 A What do you mean?

19 Q It's not September of 2010?

20 A It was in July of 2010, Jamara's birthday.

21 Q Right. We met there. We didn't start a relationship in
22 2010?

23 A Yes.

24 Q You say yes, that we --

25 A Yes.

1 Q Right, but we no start dating --

2 THE COURT: Wait.

3 THE WITNESS: We met in July of 2010.

4 BY MR. SCOTTON:

5 Q But we not start dating in July of 2010?

6 A No.

7 Q So you mentioned to the government that you have the
8 store?

9 A Yes.

10 Q You used to work for the store but later on you bought the
11 store?

12 A Correct.

13 Q How did you finance the money to buy the store?

14 A My parents financed the store.

15 Q After illegal financed the houses?

16 MS. MITRANI: Objection, Your Honor.

17 THE COURT: Sustained.

18 BY MR. SCOTTON:

19 Q Do you recall when we opened the Merry Mailman store in
20 Boca, at one point you faxed me the insurance policy of your
21 store? Do you recall that?

22 A We didn't open the store. You opened it.

23 Q Ms. Felini, can you just answer the questions, please. Do
24 you recall?

25 MS. MITRANI: Objection, Your Honor. She did answer

1 the question.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q Do you recall that you faxed me the insurance policy from
5 your store?

6 A I remember.

7 Q Do you recall for me to call the insurance company to see
8 what would be better to put both insurance together to save
9 some money?

10 A First of all, yes.

11 Q I called the insurance company, and I did the insurance
12 company together, correct?

13 A The insurance, the policy together was not concluded
14 because the problems started so we did not do the insurance
15 together.

16 Q Ms. Felini, you mention to the government that start
17 problem with Fed-Ex? What kind of problem, Ms. Felini, about
18 that account with Fed-Ex?

19 A They started to send the invoices to my store.

20 MR. SCOTTON: Your Honor, yesterday I present some
21 documents to Ms. Renata. Can I present those documents to
22 Ms. Felini?

23 THE COURT: I'm sorry, I don't remember the documents.

24 MR. SCOTTON: The bank statement, the same bank
25 statements that were presented to Ms. Renata.

1 THE COURT: All right.

2 BY MR. SCOTTON:

3 Q So you mentioned that Fed-Ex would send you bills when
4 Fed-Ex every single time automatic deduct the money out of my
5 checking account. How that can be possible?

6 A I don't know. I can show you the bills that I received.

7 Q Ms. Felini, did you see the statement right there?

8 MS. MITRANI: Objection, Your Honor.

9 THE COURT: Sustained.

10 BY MR. SCOTTON:

11 Q That is Fed-Ex account was set up automatic to go ahead
12 and deduct from my account?

13 A I don't know how to answer that because --

14 Q Do you remember the lady named Jessica from Federal
15 Express?

16 A I remember.

17 Q Who is Jessica?

18 A She's Fed-Ex manager.

19 Q How do you know Jessica?

20 A Because she's my accounts manager.

21 Q And it's not the same manager who opened the account for
22 the other store?

23 A I don't know.

24 Q During the opening of the store also, did you recall you
25 called company called AAM?

1 A What's the name?

2 Q AAM Paid and Packing?

3 A I remember.

4 Q Do you recall that you order from your account for them to
5 deliver packets supply to the new store?

6 A It was not from my account. I only did the list of things
7 that your store may need.

8 MS. MITRANI: Your Honor, may we approach sidebar?

9 THE COURT: Yes.

10 (Thereupon, the following was heard sidebar.)

11 MS. MITRANI: Your Honor, I realize he's proceeding
12 pro se and everything, but what he's doing, showing documents
13 without any indication that the witnesses knows anything about
14 this, he can ask his questions. If he thinks that might
15 refresh their recollection, he can show them. But I object to
16 publishing these documents through witnesses that have nothing
17 to do with these documents.

18 THE COURT: I agree. You can't talk about the
19 documents. You can use the documents. You can ask questions,
20 but unless they are in evidence, you can't say what's in the
21 documents. I mean, that's --

22 MR. SCOTTON: All right. Then the Court allow me to
23 go ahead and show her as she showed the statements because this
24 came out of her account.

25 THE COURT: I allowed you to show it yesterday because

1 the government didn't object and it was easy to do. Now the
2 government is objecting.

3 MR. SCOTTON: I want she remember because she claim
4 right now that is not had account, that is her account that she
5 order. Of course, I pay with my check on delivery and I sign,
6 but she order this and send this to the store. I'm going to --

7 THE COURT: You need to stop. Slow down because I
8 don't understand what you are saying. What do you want to ask
9 her about this?

10 MR. SCOTTON: I want to ask her because she ordered
11 these and this come from her account. This is her account.
12 And I have also the paper over there that later on after the
13 first order, I called this company and I opened the account for
14 the store.

15 THE COURT: You can show her this document and ask her
16 if she recognizes it. And if she recognizes it and she can
17 tell you how she recognizes it and it's appropriate, then I'll
18 let you admit it. But you have to establish that it's an
19 admissible record before you can start asking her questions
20 about it. Do you understand?

21 MR. SCOTTON: Yes, Your Honor.

22 THE COURT: All right.

23 (Thereupon, the following was heard in open court.)

24 THE COURT: We are going to take a quick break. Let's
25 break until 2:45. All rise for the jury. See you back here at

1 2:45.

2 (Thereupon, the jury exited the courtroom at
3 2:34 p.m.)

4 THE COURT: All righty. We will see you at 2:45.

5 MR. SCOTTON: Your Honor, before we bring the jury
6 in --

7 MS. MITRANI: Can we excuse the witness?

8 THE COURT: Yes.

9 (Thereupon, the witness exited the courtroom.)

10 THE COURT: Mr. Scotton.

11 MR. SCOTTON: I was asking the government here that I
12 need to get the Jencks material and Brady in regarding the
13 false statement of admission made by Felini. And I wanted the
14 Court also to consider the fact that I'm trying to bring in the
15 crime of real estate is because she conspired with her family.
16 That's why she bought the store. Now because she's afraid of
17 getting prosecution, she's accuse me and say I made those calls
18 and all this nonsense there.

19 THE COURT: Number one, that's not the way you ask the
20 question. You ask the question about whether her family had
21 committed crimes. That's irrelevant, whether her family
22 committed crimes or not. Plus, I don't know if you have any
23 good faith basis for asserting this.

24 Does the government have any information about this?

25 MS. MITRANI: No, Your Honor, we don't.

1 THE COURT: Has the government withheld any Kyle or
2 Brady or Giglio information relating to this witness or to any
3 other witness?

4 MS. MITRANI: No, Your Honor. In response to the
5 defense, he said Jencks. There are no written statements by
6 Ms. Felini, but we did produce all the 302s. I think there
7 were at least two or three 302s of Ms. Felini's statements. So
8 that's all I have. And whatever documents -- she had given us
9 some documents at one point which we attached to the 302 which
10 we gave to Mr. Scotton.

11 THE COURT: Does the government have any reason to
12 believe that Ms. Felini was involved in any kind of crime
13 including but not limited to this real estate crime that
14 Mr. Scotton has alleged that she was involved in?

15 MS. MITRANI: No.

16 MR. SCOTTON: Tax invasion, Your Honor.

17 THE COURT: You mean tax evasion?

18 MR. SCOTTON: Yes.

19 MS. MITRANI: I have absolutely no idea what he's
20 talking about, Your Honor.

21 MR. SCOTTON: Your Honor, no only did the fact --

22 THE COURT: What is the basis for suggesting that
23 she's involved in these crimes?

24 MR. SCOTTON: Your Honor, is the motive for her --

25 THE COURT: I understand you are saying it's her

1 motive. What is your basis for believing that she is involved
2 in these crimes?

3 MR. SCOTTON: I got the reports, Your Honor.

4 MS. MITRANI: What reports?

5 THE COURT: Which reports?

6 MR. SCOTTON: She got federal cases open right now.

7 THE COURT: What are you talking about so the record
8 can be clear? Why don't you give us the Bates number.

9 Let's see if we can do this quickly, because the jury
10 is waiting.

11 MR. SCOTTON: Your Honor, here, file number here by
12 IRS 50040AS929, the case is still open. Some lien amount of
13 almost \$12,000 here against her business. Then the list goes
14 on. Another one here.

15 THE COURT: And you got that from the government?

16 MR. SCOTTON: No, I got it from my investigator.

17 THE COURT: Okay. Well, does the government have
18 knowledge of what he's talking about?

19 MS. MITRANI: I have no knowledge of what he's talking
20 about. I don't even know what kind of document he's looking
21 at. Based on my knowledge of IRS policies, I can't believe
22 that he has any kind of IRS document.

23 THE COURT: All right. Why don't you show it to the
24 government and then we can address it further. Let's do this
25 quickly. We are already late.

1 MR. SCOTTON: Right. And also, Your Honor --

2 THE COURT: Wait. Show it to the government now,
3 please.

4 I'm sorry, what is the second issue, Mr. Scotton?

5 MR. SCOTTON: The fact that she -- the money that she
6 owes to buy her store is through the real estate fraud they
7 committed.

8 THE COURT: Again, what is the evidence that you have
9 that a fraud was committed.

10 MR. SCOTTON: Your Honor, their family give me all the
11 paperwork at one point. The house about to foreclose.

12 THE COURT: Do you have any evidence?

13 MR. SCOTTON: The investigator is looking for it.

14 THE COURT: Where is the evidence, please?

15 MR. SCOTTON: Your Honor, government keeping these
16 people --

17 THE COURT: Mr. Scotton, please answer my question.
18 Where is the evidence?

19 MR. SCOTTON: She be able to retrieve the evidence.

20 THE COURT: Okay. Then go ahead and give it to me so
21 I can take a look at it. You have asked this witness about it.
22 She's denied it. I'm not sure what else you think you can go
23 into on this. If you have some evidence of it, then I will
24 consider if there is some kind of thing you can go into on it.
25 You have already asked these questions, and it's repetitive at

1 this point.

2 MS. MITRANI: So, Your Honor, very quickly because I
3 hear a commotion behind me, I think the investigator has some
4 kind of hearsay comprehensive report who God only knows what's
5 in there, and I think a quick perusal, and we would like to
6 look at this closely, by my agents is indicating that whatever
7 that reports is, I don't even know what it is, is not even her.

8 THE COURT: Are we straightened out? Now let me hear
9 from the investigator.

10 Do we have any evidence that she committed some kind
11 of a tax evasion? Is there any evidence of that?

12 THE INVESTIGATOR: No, it's reporting basically
13 comprehensive background check about the different lienholders
14 from different companies, but it doesn't say that she have
15 anything open with the IRS.

16 THE COURT: Okay. Let's bring the jury in, please.

17 Would you mind getting Ms. Felini, please. Thank you.

18 (Thereupon, the jury entered the courtroom at
19 2:52 p.m.)

20 THE COURT: Welcome back once again. Please be
21 seated. And, Ms. Felini, I'm sure you know this by now, but
22 just for purposes of our record, I'm going to remind you you
23 are still under oath. Do you understand?

24 THE WITNESS: Okay.

25 THE COURT: Do you understand?

1 THE WITNESS: Yes.

2 THE COURT: Okay. Great. Thank you.

3 BY MR. SCOTTON:

4 Q Before I start asking the questions, can I have a sidebar
5 again?

6 THE COURT: All right. Very quickly.

7 (Thereupon, the following was heard sidebar.)

8 MR. SCOTTON: Just to make sure --

9 THE COURT: Wait for the government, please.

10 MR. SCOTTON: Before things get out of control here,
11 so you are saying that I cannot use the financial thing that
12 she done to buy her store, the motivation that she's being
13 here? So I'm not supposed to use that?

14 THE COURT: What I'm saying is you have already asked
15 her these kinds of things plus you have no evidence whatsoever
16 that I have asked you now repeatedly for evidence. You say you
17 have it, but you won't show it to me. Under those
18 circumstances, I'm not going to let you go off on some errant
19 side trip here. There's no evidence that you provided. The
20 government has stated it's not aware of anything. If you have
21 evidence about this, then you need to let me know what it is.
22 I have given you a number of opportunities now to do that. I
23 will ask you once more, do you have evidence you want to show
24 me of this?

25 MR. SCOTTON: Your Honor, I will be able to have it

1 probably by tomorrow, not today, unfortunately.

2 THE COURT: You knew Ms. Felini was coming.

3 MR. SCOTTON: I don't know when she was going to come,
4 so...

5 THE COURT: Well, you've known she was on their
6 witness list since before the trial began. I'm sorry, but no,
7 you can't go down this road.

8 (Thereupon, the following was heard in open court.)

9 BY MR. SCOTTON:

10 Q Back to the Fed-Ex situation here, Ms. Felini. You say
11 you start receiving bills from Fed-Ex?

12 A Yes.

13 Q You provide this Court with a copy of a bill here that you
14 have received?

15 MS. MITRANI: Objection, Your Honor.

16 THE WITNESS: Yes.

17 THE COURT: What is the objection?

18 MS. MITRANI: Whether she's provided the Court with a
19 document.

20 THE COURT: Can you turn on the microphone.

21 MS. MITRANI: I'm so sorry. Whether she's provided
22 the Court with a document.

23 THE COURT: I'll overrule it for now since she already
24 said yes.

25

1 BY MR. SCOTTON:

2 Q And those bills from Fed-Ex, they come from shipping
3 packets?

4 A What was the question?

5 Q Those bills from Federal Express, they are for shipping
6 packets?

7 A For your having shipped packages.

8 Q Was international shipping?

9 A I don't remember.

10 Q Do you recall the day of the billing cycle?

11 A No.

12 Q This was before the defendant was indictment or after the
13 defendant been indictment?

14 A After.

15 Q Perhaps those bills has went to you, Ms. Felini, because
16 the store was closed and automatically they billed the second
17 store?

18 A I verified the number of the account. It doesn't belong
19 to me.

20 Q I understand because the other account, the account was
21 separate. My question is that maybe Fed-Ex send the bill back
22 to you because the other store is already closed, and because
23 it has the same name, they tried to send and bill you?

24 A It could be.

25 Q Because you saw the statements the account was set up to

1 be charged out of the bank automatically?

2 A I don't know how many accounts you opened with Fed-Ex.

3 Q That particular account you are talking about, Ms. Felini,
4 was in your name?

5 A No.

6 Q Did you have the account number with you, Ms. Felini?

7 A Mine, I have.

8 Q From the Boca store, Ms. Felini?

9 A I don't have why I should have it. There is no reason why
10 I should have that.

11 THE COURT: How are we doing, Mr. Scotton?

12 MR. SCOTTON: Your Honor, I'm trying to find the
13 contract that has the account number.

14 THE COURT: All right. Let's see if we can get moving
15 here. Okay? Thank you.

16 BY MR. SCOTTON:

17 Q Do you recall that I called Jessica and explained to
18 Jessica that I'm about to open a second store for you from
19 Federal Express?

20 A Not for me, for you.

21 Q So when I opened the store over there in Boca Raton, I
22 opened the store for me? I never mentioned that I opened the
23 store for all of us?

24 A You wanted to open a store for me, but I said I didn't
25 want it, it would be too much for me to handle another store.

1 Q How many times have you been at the store and work out of
2 the computer over there?

3 A From your store?

4 Q Yes.

5 A Until your computer? Never.

6 Q So you never went over there to work in the price list,
7 adjust the price list for post office and also Fed-Ex?

8 A I went once to help you with the rates.

9 Q Ms. Felini, do you still taking drugs? Do you still got
10 the drink problem?

11 MS. MITRANI: Objection.

12 THE COURT: Come sidebar, please.

13 THE WITNESS: I never had problems with drugs.

14 MS. MITRANI: Now can we some sidebar after she's
15 answered?

16 THE COURT: Yes, please come sidebar.

17 (Thereupon, the following was heard sidebar.)

18 MS. MITRANI: This is getting so ridiculous I'm not
19 even going to object anymore because the witness will answer
20 truthfully. But it gives the jury an impression that she's up
21 to something.

22 THE COURT: Mr. Scotton, if you don't have a
23 good-faith basis for asking your questions, they should not be
24 asked. They are not allowed to be asked. I want to know what
25 your basis is for believing --

1 MR. SCOTTON: Impeachment, Your Honor.

2 THE COURT: You can ask those questions if you have a
3 good-faith bases for --

4 MR. SCOTTON: Your Honor, I dated this woman. I know
5 she has drug problem.

6 THE COURT: So this is based on your -- I tell you
7 what. You can ask it one time. But so far you have proven not
8 to tell the truth a whole lot.

9 MR. SCOTTON: This is the agreement from Federal
10 Express when we opened together the store Fed-Ex has sent us.

11 THE COURT: Softer, please.

12 MR. SCOTTON: Federal Express has send this contract.
13 I can have the rest -- the contract for that right now and
14 bring to Your Honor and bring to you in a second.

15 THE COURT: Where does it say that she is involved?

16 MR. SCOTTON: Her name is there as the president.
17 It's in the contract.

18 THE COURT: Let me see it.

19 MR. SCOTTON: This is the letter, the welcome letter,
20 that Federal Express sent.

21 THE COURT: Point out to me the part.

22 MR. SCOTTON: Right there, Your Honor.

23 THE COURT: There's not her signature anywhere. I
24 mean, you can ask her about it.

25 MS. MITRANI: Also, Your Honor, I guess you could ask,

1 but I'm -- I have doubts about authenticity. For example, it
2 says title, presidente. That's not even English. The fonts
3 appear to be different between this and this. So, I mean, if
4 he wants to ask her some questions, ask her questions. What I
5 object to is this wholesale showing her documents without any
6 predicate or questions. If he wants to ask her questions, ask
7 her questions. That's fine.

8 THE COURT: He can show her the documents and he can
9 ask her a question about them. They just won't come into
10 evidence unless they are properly authenticated. And he can't
11 read from the document.

12 MR. SCOTTON: Let me ask a question, Your Honor. What
13 is the email that received this from Federal Express it is
14 authentication?

15 THE COURT: What?

16 MR. SCOTTON: The Federal Express has sent this
17 through the email so this will be authenticated.

18 THE COURT: No, you have to have somebody who -- if
19 it's a business record, you have to have someone who can come
20 in and testify.

21 MR. SCOTTON: Someone from Fed-Ex?

22 THE COURT: It could be someone from Federal Express.
23 It could be her if she did it. That's why I'm saying you can
24 show her the documents and ask her if she recognizes it and if
25 she authenticates it, fine, we can take it into evidence. If

1 she doesn't recognize it or can't authentic it, then, you know,
2 you are done with that exhibit until you can get it
3 authenticated and unless you can get it authenticate.

4 MS. MITRANI: The government perhaps can get a copy.
5 And I'm not trying to give you a hard time, but if I
6 independently authenticate it, I'm not going to bring you a
7 records custodian for that. If you want to ask her
8 questions --

9 MR. SCOTTON: I'm trying to just prove the case here
10 that, you know, people seems to say things here that is
11 completely different than what the record show. The reality is
12 that --

13 THE COURT: I'm not going to argue with you,
14 Mr. Scotton. The answer is, you can show her the document. If
15 she can authentic it or recognizes it, then you can ask her
16 questions about it. I can accept it into evidence, and that's
17 it. If not, you will have to authenticate it some other way.
18 That is it.

19 MR. SCOTTON: About what I just mentioned.

20 THE COURT: Again, if it's not a real document, if it
21 hasn't been authenticated.

22 MR. SCOTTON: I'm talking about to testify here when
23 she's kind of person that deals with drugs and pills.

24 THE COURT: You already asked her that and she denied
25 it. You are on another question now. You asked the question.

1 She answered it. It's time to ask another question.

2 MR. SCOTTON: Your Honor, it's just that as a matter
3 of fact here, I don't know if you notice a lot of people even
4 notice even before the prosecutor was asking a question, she
5 answered the question. This is ridiculous. She's been coached
6 because even before the question was finished --

7 THE COURT: Mr. Scotton, I am not going to argue with
8 you. Probably she understands some English. That's fine. As
9 I explained to you yesterday and as I explained to you when you
10 used a Portuguese interpreter, if a witness or a defendant is
11 more comfortable with an interpreter, then the witness or
12 defendant is provided with an interpreter. There's nothing
13 wrong or improper about that.

14 Testifying in court is somewhere you want to be
15 precise. And if she feels like she can be more precise with
16 the assistance of an interpreter, that's fine. There's nothing
17 wrong with that, nothing improper about that. You can question
18 her about whether she understands English and she'll answer
19 your questions. And then the jury will know and you can make
20 your arguments during closing argument about that. There's
21 nothing wrong or improper about her using an interpreter when
22 clearly English is not her first language.

23 MR. SCOTTON: She's allowed to see that, right?

24 THE COURT: You can show it to her and ask her if she
25 recognizes it.

1 MR. SCOTTON: Okay.

2 (Thereupon, the following was heard in open court.)

3 MR. SCOTTON: Your Honor, may I approach the witness?

4 THE COURT: Yes.

5 BY MR. SCOTTON:

6 Q Ms. Felini, can you tell the jury what kind of document
7 you got in your hand?

8 A At this moment I have no document. You mean this here?

9 Q Yes.

10 A It's an authorization for Fed-Ex.

11 Q Can you take a look at the last page, Ms. Felini?

12 A Yes.

13 Q Is Federal Express account number on the bottom of that
14 page?

15 A Yes.

16 Q Is the name of the page as well, Ms. Felini?

17 A This account you opened without my authorization and you
18 put my name on it as you did with other accounts.

19 Q Ms. Felini, can you please answer the question. Is your
20 name on the document, Ms. Felini?

21 MS. MITRANI: Objection, Your Honor. She answered.

22 THE COURT: Sustained.

23 BY MR. SCOTTON:

24 Q Ms. Felini, I use your name all this time that we have
25 been engaged, right? I'm trying to understand here. And can

1 you explain to the jury here why do I need to use your name
2 when I'm the guy that pay the bills?

3 A To impress, maybe you opened the accounts to throw on my
4 back things that I didn't want.

5 Q Throw things on your back? Do you remember that you have
6 a car accident during the time that you head back home drunk?

7 A That's not true.

8 Q Right. Did you remember that --

9 A I was never drunk and driving.

10 Q Did you remember that I pay to fix your car for you?

11 A I remember.

12 Q Almost \$2,300 in damage?

13 A Because you wanted to.

14 Q So I'm using your name, but I'm going around paying bills
15 just to impress who?

16 A Everyone.

17 Q So spending money to impress people, what I gain out of
18 this?

19 A This is the way that you do things in order to have
20 friendship and have your circle of people around you.

21 Q Is any particular reason why you are doing this?

22 A No.

23 Q You used to be accept the ring and say I love you, and now
24 this, helping these people here destroy my life. Any
25 particular reason why?

1 A I'm only telling the truth.

2 Q (Speaking in Portuguese.) All right.

3 MR. SCOTTON: My bad, Your Honor. It was in
4 Portuguese, but I'm sorry.

5 BY MR. SCOTTON:

6 Q Do you remember also during the opening the store, every
7 single time I bought it something for the store, bought it for
8 your store too?

9 THE COURT INTERPRETER: I'm sorry, can you repeat
10 that.

11 BY MR. SCOTTON:

12 Q Do you remember that I bought a couple of supplies for my
13 store and also I bought for your store?

14 A That's not true. Oh, no. Yes, it did happen. You bought
15 some.

16 Q You bought some what?

17 A A camera to be able to do passport pictures, a service
18 that I had told you I didn't want in my store.

19 Q You accept, right?

20 A You left it there. I didn't even want to learn how the
21 operation of the system worked.

22 Q Do you file a police department to the sheriff's
23 department that I stole your identity, correct?

24 A Correct.

25 Q So you engaged to a guy that pay the bills and the guy

1 stole your identity?

2 A Paid what bills?

3 Q You claim here that Federal Express has send you bills
4 when every single Federal Express bill has been paid automatic
5 out of my checking account?

6 MS. MITRANI: Objection, Your Honor, foundation of
7 that question.

8 THE COURT: Sustained. Please make sure your
9 microphone is on.

10 MS. MITRANI: Your Honor, I apologize.

11 BY MR. SCOTTON:

12 Q Ms. Felini, do you have American Express?

13 A I do.

14 Q Is the three last numbers -- the four last number of the
15 account 1009?

16 A I can't confirm that.

17 Q Do you remember spending almost \$600 in stamps for the new
18 store?

19 A I remember.

20 Q During the construction of the store, do you remember your
21 father work in the store?

22 A He helped you with some things.

23 Q During the closing of the store, do you remember your
24 father take everything to the store and put in my garage?

25 A I don't recall.

1 Q But you make statement to the FBI that was my stepdad that
2 went closed the store, correct?

3 A He was there as well probably.

4 MS. MITRANI: Your Honor, can we have a sidebar? I'm
5 sorry.

6 THE COURT: All right.

7 (Thereupon, the following was heard sidebar.)

8 MR. SCOTTON: There are some videos that we talk about
9 that have her father in the store.

10 THE COURT: Wait until she gets here.

11 MS. MITRANI: I promise I'm not going to turn the mike
12 off again. He's asking me about whether I made a decision on
13 the video. I don't know what video he's talking about. I
14 don't know what he wants to do. I think that's appropriate for
15 the Court to handle.

16 THE COURT: What video are you talking about?

17 MR. SCOTTON: Surveillance video from the store that
18 has father on the video.

19 MS. MITRANI: I haven't seen that.

20 THE COURT: I haven't seen that one either.

21 MR. SCOTTON: Your Honor, you told me that you saw the
22 video.

23 THE COURT: I told you that I described the videos
24 that were on there that I saw. I didn't see a surveillance
25 video. I told you all I saw was there was a still photo from a

1 surveillance video. I couldn't get the video to work. So I
2 have no idea what's therein.

3 MR. SCOTTON: As a matter of fact, the Court say that
4 the video --

5 THE COURT: Let me get my notes.

6 MS. MITRANI: Your Honor, may I get my notes?

7 THE COURT: Sure.

8 I'm sorry, I don't know which one you are talking
9 about. Do you know the name of it? I can maybe look it up on
10 my list of ones. I documented each one that was on there that
11 I found.

12 MR. SCOTTON: I'm going to have to look quick, Your
13 Honor.

14 MS. MITRANI: The only one I can see from our
15 inventory --

16 THE COURT: 22 dot EXE, that's what I have, still
17 photo of place with no people. That's what I have. I don't
18 know what's on the video. That was the one video.

19 MR. SCOTTON: It was me and her father inside the
20 store with a client walking in.

21 THE COURT: What are you going to ask her? I mean,
22 why don't you ask her if her father -- is it your store?

23 MR. SCOTTON: Yes, our store in Boca.

24 THE COURT: Why don't you ask her if her father ever
25 worked at your store?

1 MR. SCOTTON: She already answered that.

2 THE COURT: I'm sorry, I don't remember that.

3 MS. MITRANI: I'm not sure what the question is. The
4 problem is he just came and start talking about this video.
5 I'm not sure what question or what he wants to do.

6 THE COURT: That's why I'm asking. I apologize if I
7 missed it. I don't recall hearing you ask her if her father
8 ever worked at your store.

9 MS. MITRANI: Yes, she did. She say yes.

10 THE COURT: Why do you need to show the video? What
11 is it going to show?

12 MR. SCOTTON: She made a statement to the FBI, it's
13 right in the report, that my stepdad went to close the store.
14 And that's not true because my stepdad during the weekend was
15 working. Her father was not working. Her father went and
16 closed the store. Your Honor, that's why I was trying to
17 subpoena the telephone records here.

18 THE COURT: Let me stop you for a second. What is it
19 that you want to prove with this?

20 MS. MITRANI: I think I understand if I can address
21 it.

22 THE COURT: Okay.

23 MS. MITRANI: He wants to show the surveillance video
24 to show it wasn't his stepfather who closed the store, it was
25 somebody else. The surveillance video was October 2011. He

1 wasn't investigated until March 2012.

2 MR. SCOTTON: I want to show her father inside the
3 store.

4 THE COURT: She's testified he's been inside the store
5 according to you, so there's no reason to show that.

6 MR. SCOTTON: Is there any of her on this page that I
7 am allowed to put in?

8 THE COURT: I don't know what you want to put in and
9 I'll tell you --

10 MR. SCOTTON: Intimacy.

11 THE COURT: No, she already testified to intimacy.
12 It's not going to impeach her. If she said she hasn't been
13 intimate with you, then perhaps, but she didn't say that. She
14 admitted that she was engaged to you, that she was in a
15 boyfriend-girlfriend relationship with you, you know, so I
16 don't see how that -- if you think it contradicts what she said
17 in some way, you can let me know and I will reconsider.

18 MR. SCOTTON: Everything she said, that we ended the
19 relationship in January, not true. We ended on the Super Bowl.

20 THE COURT: Do you have any evidence from any of these
21 videos that contradicts what she said?

22 MS. MITRANI: Which videos?

23 THE COURT: Let me --

24 MS. MITRANI: Sorry.

25 THE COURT: Do we have any evidence from any of the

1 videos that contradicts what she said? If you do, then you are
2 right, it might be something that's admissible. But I don't
3 recall seeing anything like that. That's why I'm asking you.

4 MR. SCOTTON: I don't believe this, Your Honor. I
5 really can't believe people come in here --

6 THE COURT: Can you answer my question, please? Do
7 you have any evidence from any of the videos that contradicts
8 anything that she said?

9 MR. SCOTTON: By looking the video, Your Honor, I
10 probably find out everything, but not by just saying.

11 THE COURT: So the answer is, right now you are not
12 aware of anything, right?

13 MR. SCOTTON: Yes.

14 THE COURT: So there's no basis for playing a video.
15 Okay? All right. Thank you.

16 (Thereupon, the following was heard in open court.)

17 THE COURT: Let's have some questions, please.

18 BY MR. SCOTTON:

19 Q Ms. Felini, during all this problem that I went through,
20 you and Ms. Renata went at the store, the second store, the
21 Merry Mailman Two, and you guys take some machines out of the
22 store. Do you recall that?

23 A What is the question?

24 Q You and Renata, you guys went to the store at a point that
25 I was arrest, and you took machine out of the store?

1 A Yes. You asked us to go to the store to remove some
2 stuff, yes.

3 Q When did I ask you, Ms. Felini? Did I tell you to go to
4 the store to take stuff out of the store?

5 A What?

6 Q Did you take the machine over there from the camera
7 surveillance, the surveillance store? The video that record
8 all the cameras, did you took that out of the store?

9 A Yes. You asked us to remove it.

10 Q Why did I ask for you to take that off, Ms. Felini?

11 A Probably because there was something compromising on it.

12 Q Is there any other machine you took out of the store?

13 A Not that I remember.

14 Q Do you remember the credit card machine and also the stamp
15 machine?

16 A Yes.

17 Q Did you return that back to those companies?

18 A I did.

19 Q So you took them out of the store?

20 A I did.

21 Q So the reason why you send that back to the stores is
22 because those machines was in your name, right?

23 A They were under my name and you did it again without my
24 authorization.

25 Q Right, without authorization I put machines in your name,

1 but then you acknowledged to go to the store to pick it up and
2 return it?

3 A After I returned the machines is when I discovered that
4 they were under my name.

5 Q So you go to the store, you take machine at the store,
6 they have no clue that were machine in your name, and then you
7 return it for the company. Why you return a machine that is
8 not in your name to the company?

9 A I only tried to help you at that moment.

10 Q So you tried to help me to send a machine back to the
11 company with no knowledge the machine is in your name?

12 A Without knowing it.

13 Q The day that the FBI went see you on 2012, after close the
14 store, did you drove to my mother's house?

15 A I didn't understand.

16 Q Did you close the store, you went to my mother's house?

17 A What day?

18 Q After the FBI saw you in your store?

19 A I don't remember that.

20 Q So you don't remember also that you went over there to
21 drop off \$3,000 and just to help out in case I need some kind
22 of lawyer fee?

23 A I remember going to your mother's house. I don't remember
24 if it was the same day that the FBI went to the store.

25 Q You now acknowledge you went to my mother's house, but you

1 couldn't remember you went to my mother's house?

2 A No, I remembered that I went to your mother's house. I
3 didn't remember it was on that day.

4 Q Did you remember also put \$200 in the commissary?

5 MS. MITRANI: Objection, Your Honor.

6 THE COURT: What is the objection?

7 MS. MITRANI: Relevance and --

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q Do you remember when the time when you were at my mother's
11 house and I made a phone call and you told my mother to not
12 tell your dad?

13 THE COURT INTERPRETER: I told my mother?

14 MR. SCOTTON: She told my mother that she was not in
15 the house.

16 THE WITNESS: I remember.

17 BY MR. SCOTTON:

18 Q Do you remember make statements to my mother that
19 everything is going to okay and we going to go back together?

20 A I was worried about your mother. She was very sad at that
21 moment.

22 Q That's the only time you went to my mother's house?

23 A I believe so.

24 Q So you worried about my mom and that's the last time my
25 mom ever see you, right?

1 A It was.

2 Q But your family went to the house as well, correct?

3 A Who?

4 Q Your family.

5 A I don't know.

6 Q Do you recall your father went to my mother's house to
7 pick up the credit card machine?

8 A I don't remember that.

9 Q Had everybody lost their memory of those days?

10 A That happened a long time ago.

11 Q Ms. Felini, these people have accused me here of serious
12 charges here. Do you acknowledge that?

13 A I recognize it.

14 Q Because you have some problems in your life, you are going
15 to cooperate with these people here to destroy mine?

16 A I had problems with whom?

17 Q You are having problems financially. You have a problem
18 with your own crime that you committed. You want to go ahead
19 and help these people convict me now?

20 A I have no financial problem. And I did not commit any
21 crimes either. I don't know what you are trying to tell me.

22 Q Do you recall a girl named Paloma?

23 A No.

24 Q The time that FBI went to your store, did he present you
25 some pictures?

1 You don't recall taking to --

2 THE COURT INTERPRETER: One moment, please.

3 THE WITNESS: I don't remember.

4 BY MR. SCOTTON:

5 Q Did you remember the call they made to my mother on the
6 same day that you went to the house?

7 A No.

8 Q So you don't recall that someone had showed some pictures
9 to you and so mad believed that I was cheating you?

10 A But it wasn't Paloma. It was Venusa.

11 Q Do you recall the name Junior Silva?

12 A I remember.

13 Q Who was Junior Silva?

14 A Your friend.

15 Q Are we close?

16 A You are.

17 Q You don't like Junior too much, do you?

18 MS. MITRANI: Objection to the relevance, Your Honor.

19 THE COURT: Sustained.

20 BY MR. SCOTTON:

21 Q Ms. Felini, have I help you with your health as well?

22 A No, I don't have a health problem.

23 Q Have you get some kind of laser treatment paid by me?

24 A That's an esthetic treatment, not health treatment.

25 Q Have I went to your doctor to get prescriptions for you?

1 A What prescriptions?

2 Q Prescription that you use for depression, to sleep?

3 A You are lying. You never went to the doctor for me.

4 Q If we require your --

5 THE COURT: Mr. Scotton, you've got to wait for the
6 interpretation.

7 THE WITNESS: You never went to the doctor for
8 prescriptions.

9 BY MR. SCOTTON:

10 Q If I got records here, it's not going to show the
11 prescription that you take?

12 MS. MITRANI: Objection, Your Honor.

13 THE COURT: Sustained.

14 BY MR. SCOTTON:

15 Q So I open the store over there in your name. You have no
16 recollection that I open the store for you, right?

17 A No, it was not for me.

18 Q And my business --

19 A How are you going to open the store for me if I was never
20 present at the store?

21 Q You were never present at the store but your sister worked
22 there?

23 THE COURT: Mr. Scotton, you have to wait for the
24 interpretation.

25

1 BY MR. SCOTTON:

2 Q You sister work at the store, correct?

3 A Eventually she went there to help you with a few stuff.

4 Q So you claim that you never went to the store to help me
5 with it?

6 A Not during business hours.

7 Q But you went to store to help?

8 A I did.

9 Q You seems to be confused, Ms. Felini?

10 A No.

11 Q So you told the government here that I made a lot of
12 money, correct?

13 A Correct.

14 Q Did I drove a Ferrari before?

15 A I don't know. I don't know what you drove before. I
16 don't know.

17 Q During the time that we were together?

18 A No.

19 Q Do I live in a huge mansion?

20 A No.

21 Q Do I own my own house?

22 A As far as I know, no.

23 Q So because I go around and we go to some vacations or buy
24 some gifts to you, that makes like a I'm a millionaire?

25 A I never said you were a millionaire.

1 Q You said that I spend money like there's no tomorrow.

2 A You spend more money than a personal normally spends.

3 Q It is crime to spend money, Ms. Felini?

4 A No.

5 Q Did you enjoy when I spend money on you?

6 A All of them, yes.

7 Q Did you enjoy receive nice gifts, nice purse, some
8 jewelry?

9 A I have already said you did it because you wanted to.

10 Q Did you enjoy --

11 THE COURT: Mr. Scotton, please wait until the
12 interpreter has an opportunity to translate.

13 THE WITNESS: I never needed anything.

14 BY MR. SCOTTON:

15 Q Did you enjoy that? That's my question.

16 A Yes.

17 Q During time you receive all these great gifts and enjoy
18 life, you never complain about anything, do you?

19 A That was never the reason that I was with you. It wasn't
20 because you gave me gifts that I was with you, so...

21 Q The question is --

22 A Everything you gave me, I could have bought with my own
23 money.

24 Q Yeah, but it was easier to get it from me, right?

25 A You gave them to me because you wanted to.

1 Q Right. I go around spending money helping your family
2 open a store, right?

3 A You didn't help my family to open a store.

4 Q Is it not true that as soon as we start dating, I call you
5 one day and I told you to close the store and come to the house
6 and I laid down a bunch of papers in my office and I show you?

7 A What papers?

8 Q As a matter of fact, did I show you that I was married to
9 Aylin and explained to you what the situation of the marriage
10 was?

11 A Well, the situation of the marriage is because of your
12 green card.

13 Q So you say here once again to help these people that my
14 marriage also is a sham?

15 A I am not here to help anybody. I am here to tell the
16 truth, and that is what I am doing.

17 Q So let me get this straight. A guy asked you to marry, he
18 spent all this money on you. What do you gain here to come in
19 here now and tell the truth?

20 A That is my duty as a citizen.

21 Q Why didn't you report that before, Ms. Aylin --
22 Ms. Felini?

23 A Report what to who?

24 Q If 2010 my marriage was a sham, as a citizen of this
25 country here, why you not report me to the cops? Why you not

1 go to FBI and say this guy has done fake marriage?

2 A Nobody questioned me about it before.

3 Q You are here to tell the truth because your obligation to
4 tell the truth, right?

5 A Correct.

6 Q You are doing what's right because someone broke the law?

7 A I'm here to tell the truth, right. Right.

8 Q I break the law back then, you should have reported it as
9 a good citizen, right?

10 A When somebody questions me about anything, I will always
11 tell the truth.

12 Q But during that time enjoy life and has the defendant
13 spend all this kind of money on you, why report, let me enjoy
14 here now?

15 A If you think you were so nice then, you weren't really
16 that nice.

17 Q Why did you accept the engagement ring then, Ms. Felini?

18 A At that point it was like a setup that you asked me to
19 marry you. You know, you did it in front of my family. Your
20 formed this entire situation. So I just wanted them to see,
21 you know, who you really were.

22 Q So you say that you accept to marry someone just to make
23 nice nice to the family?

24 A No. I had enough time then to discover who you were, and
25 that's when we ended the relationship.

1 Q The relationship end, Ms. Felini, is it not true, because
2 I told you to stop taking those prescription, we going to end
3 up fighting again?

4 A That's not true. We ended because you acted totally out
5 of the norm. After that I discovered your housekeeper came to
6 the store to show me a video that you had shown her.

7 Q Right. Now I'm a criminal, right?

8 MS. MITRANI: Your Honor, I don't think the answer was
9 complete.

10 THE COURT: Was the answer complete?

11 THE WITNESS: A video that you sent her was a
12 pornographic video, and she admitted that for a long time you
13 were having a relation.

14 BY MR. SCOTTON:

15 Q Can you tell this jury who Venusa was?

16 A The housekeeper.

17 Q So I was having sex with my housekeeper and sending my
18 housekeeper pornographic movies?

19 A You were.

20 Q Do you recall this day, Ms. Felini?

21 A Not exactly. What date?

22 MS. MITRANI: Your Honor, does he have a picture?
23 Does he have a question? Is he doing something else? Should
24 we take the picture off.

25 THE COURT: Mr. Scotton, is there a question?

1 MR. SCOTTON: We have some of the pictures that the
2 government already saw. I'm going to --

3 THE COURT: You need to ask a question.

4 MR. SCOTTON: I already asked the question.

5 THE COURT: Let's hear the question without the
6 picture.

7 BY MR. SCOTTON:

8 Q Do you recall that picture, Ms. Felini?

9 A I don't remember where it was.

10 MR. SCOTTON: Are you okay?

11 THE COURT INTERPRETER: Yeah.

12 BY MR. SCOTTON:

13 Q It looked like a happy day, right?

14 A Yes, we had happy moments, but not all of them.

15 Q Do you recall that picture too?

16 A I remember.

17 Q When did that happen?

18 A The day you were in the race.

19 Q Do you remember the year of that race?

20 A No.

21 Q Is any other person that you know was in that race that
22 weekend?

23 A Several people were in that race.

24 Q Is your family present in that race?

25 A Yes.

1 Q Can you tell the members of the jury here what is the
2 member of your family was in that race?

3 A My parents, my sister, and my brother-in-law.

4 Q Ms. Felini, you want this jury to believe that I use your
5 name, that I open accounts, and Fed-Ex send you a bill?

6 A It's not that I want them to believe. That is the truth.

7 Q So almost a year and a half that we have relationship,
8 seems to be deeply in love, engaged, got a ring on the finger,
9 now I become this monster, right? That's correct?

10 A One thing has nothing to do with the other. If you did
11 something wrong, it has nothing to do with our happiness or our
12 relationship.

13 Q So you are going to continue here agree with them that I
14 use your name, that you never authorized me to use your -- you
15 know, we never opened the store together, correct?

16 A We never opened the store together.

17 Q And you acknowledge that your father, your mother most of
18 the time in the store, your sister in the store? Seems to be
19 the whole family has acknowledge of the second store but you.
20 We never opened the store together?

21 A The store was never opened together. You continued to
22 repeat the same thing and I will continue to answer the same
23 thing.

24 Q When I filed the papers with Tallahassee, do you remember
25 I filed the papers to open the new corporation? I put you as

1 president and I sign as the vice president of the company. Do
2 you recall that?

3 A Do you remember that I asked you to immediately take my
4 name out of there?

5 Q Do you recall also that during that other fight that we
6 have during, you was freaking out, drug overdose?

7 MS. MITRANI: Objection, Your Honor.

8 THE COURT: Sustained.

9 MR. SCOTTON: I closed --

10 THE COURT: Mr. Scotton, please refrain from that. We
11 have already discussed that.

12 BY MR. SCOTTON:

13 Q Did you recall that I took your name off the company?

14 A I remember.

15 Q And then a month goes by, we back together, and you asked
16 me why you took my name out of the business. Do you remember
17 that?

18 A No, I don't remember that.

19 Q It's not a fact that I even told you, you asked -- you
20 told me you didn't ask for it, I took your name off. You don't
21 remember that?

22 A The moment that I saw that you removed my name, I had no
23 questions about the store anymore.

24 THE COURT: I'm sorry, we are going to need to take a
25 break. So let's take until -- we are just going to take five

1 minutes. So let's take until 5 of 4:00. All rise for the
2 jury.

3 (Thereupon, the jury exited the courtroom at
4 3:49 p.m.)

5 THE COURT: Since Mr. Kreiss has to leave at 4:15 and
6 Mr. Scotton has some things he wants to discuss ex parte, what
7 I think is a better idea is I don't want to lose any more jury
8 time than I need to, is to have Mr. Scotton come for the
9 ex parte matters tomorrow and I'll address them with him at
10 that time. Okay, Mr. Scotton? Do you understand?

11 MR. SCOTTON: Your Honor, that will take just two
12 minutes.

13 THE COURT: I know, but that's what we are going to
14 do. I don't want to waste this jury's time, so I will see you
15 tomorrow.

16 MR. SCOTTON: Tomorrow I'll try to concentrate on the
17 things that the Judge told me I have to the end of the day to
18 get accomplished. So I don't want to --

19 THE COURT: Well, then say it right now. What do you
20 need? Let's dismiss everybody and come back in five minutes,
21 please. Thank you.

22 (Thereupon, a recess was taken at 3:51 p.m.)

23 (Thereupon, a sealed hearing was held.)

24 (Thereupon, a recess was taken at 3:54 p.m.)

25 THE COURT: Let's see if we can round up the jury.

1 broke up with who?

2 A I broke up.

3 Q Now, the defendant was asking you questions regarding the
4 fact that you knew he was engaged in a marriage for papers, but
5 you didn't report him to the police. Do you remember that line
6 of questioning?

7 A Yes.

8 Q Let me ask you about that. So, I guess, very broadly --
9 strike that.

10 Why did you date and then become engaged to the defendant
11 knowing that he was engaged in a marriage with a person to get
12 his green card, to get his papers?

13 A I ended up getting involved emotionally with him.

14 Q And when you say getting involved emotionally, did you
15 have feelings for him?

16 A Yes.

17 Q Did you love the defendant?

18 A I loved him.

19 Q Did it bother you that the defendant was in this paper
20 marriage to get his green card?

21 A Yes.

22 Q So then why did you still persist in your relationship
23 with the defendant?

24 A I hoped that he would resolve, you know, his life, that
25 this was going to resolve it.

1 Q And so while -- so I guess you said you had feelings for
2 the defendant. Were you in love with the defendant during that
3 period of time in 2011?

4 A Yes.

5 Q Now, was the relationship -- strike that.

6 Can you characterize a relationship throughout 2011 until
7 the time you broke up in the beginning of 2012, that is, was it
8 consistent, were there ebbs and flows?

9 A Ebbs and flows. You know, he would disappear for certain
10 weeks and then he would come back imploring for me to go back.

11 Q Would you characterize it then as periods of on again off
12 again throughout your engagement, excuse me, throughout your
13 relationship?

14 A Yes.

15 Q I think the defendant was asking you about you accepting
16 his engagement proposal notwithstanding these other things you
17 knew about him. Do you recall that?

18 A Yes.

19 Q And I believe you testified that it was a setup. Did I
20 hear you correctly?

21 A It wasn't, you know, in a bad way, you know. So he did
22 propose and I ended up accepting it.

23 Q But what were the circumstances where he was -- were you
24 and he alone? Were you with his family?

25 A The proposal was done in a boat. Everything was prepared

1 and it was done in front of my family.

2 Q And how did that affect you?

3 A At the moment, I felt somewhat surprised. But then later,
4 I felt a little bit apprehensive of what had happened.

5 Q But then ultimately did you accept the defendant's
6 proposal in June of 2011?

7 A Yes.

8 Q Ms. Felini, I'm going to show you what's in evidence as
9 Government's Exhibit 6L. These are the State of Florida
10 corporate records for the Merry Mailman, LLC.

11 If we go to the first page, it lists the address of the
12 Merry Mailman, LLC at 100 Plaza Real South, Suite F in Boca
13 Raton. Do you see that?

14 A Yes.

15 Q Was that the address of the defendant's store?

16 A Yes.

17 Q And then later on on that same page, which is the second
18 page of Government's Exhibit 6L, does it list Carlos Colon at
19 398 Southeast Mizner Boulevard, 1921, as the registered agent?

20 A I am seeing this document right now.

21 Q Okay. But that's what it says, right?

22 A Yes.

23 Q I'm going to show you within 6L another page within that
24 document. Can you see it okay, Ms. Felini?

25 A Yes.

1 MS. MITRANI: Can you see it, Ms. translator?

2 THE COURT INTERPRETER: Yes.

3 BY MS. MITRANI:

4 Q Have you ever seen this document before?

5 A No.

6 Q So it's addressed Boca Raton, July 15th, 2011, reference,
7 the Merry Mailman, Division of Corporations. We have filed a
8 LLC online and were rejecting. Please be advice that the Merry
9 Mailman, Inc. is my company also. We are open a second store.
10 This is the reason we will use the same name, but this one will
11 be a LLC. Please feel free to call me with any question.
12 Thank you. And it has a name Carla Felini and a phone number,
13 563-361-4348. Do you see that?

14 A Yes.

15 Q Is that your signature?

16 A No.

17 Q And is that your phone number?

18 A No.

19 Q Going back to Exhibit 6M, going back to 6M, which is the
20 Florida Department of Corporations records for your company,
21 and the 12th page of 6M, is the bottom part of the screen which
22 is 6M, is that your signature?

23 A Yes.

24 Q But the top one on the Merry Mailman, LLC is not?

25 A No.

1 Q Before we move on, so 6L, this letter, this is not your
2 letter, correct?

3 A No.

4 Q All right. Do you know who wrote that letter?

5 A No.

6 Q I'm showing you another page. There's no page number on
7 it, but it's also been 6L. On the top it says, cover letter,
8 and it says, subject, Merry Mailman, LLC. Do you see that?

9 A Yes.

10 Q And it indicates in the middle that, please return all
11 correspondence concerning this matter to the following. And it
12 says Roger Scotton, Merry Mailman, LLC, 7797 Golf Circle Drive,
13 No. 204, Margate, Florida 33063. Do you see that?

14 A Yes.

15 Q Are you familiar with that 7797 Golf Circle address?

16 A I believe it's his mother's house.

17 Q And it says Favio Scotton also on this cover letter. Do
18 you know who Favio Scotton is?

19 A His brother.

20 Q Ms. Felini, during your cross-examination, you responded
21 to the defendant that you are here to tell the truth because
22 you feel it's your obligation as a citizen. Is that what you
23 said?

24 A Correct.

25 Q And were you subpoenaed to testify here in this court?

1 A I received a subpoena, yes.

2 Q And I think the defendant showed you some kind of Wells
3 Fargo statement during your cross-examination. Do you remember
4 that?

5 A Yes.

6 Q Had you ever seen that Wells Fargo statement before?

7 A No.

8 Q Did you open any accounts for the defendant for the Merry
9 Mailman, LLC?

10 A No.

11 Q Do you know what accounts the defendant may have had or
12 not had with the Merry Mailman, LLC?

13 MR. SCOTTON: Your Honor, can we have a sidebar,
14 please?

15 THE COURT: No.

16 MS. MITRANI: This is the last question.

17 THE WITNESS: I'm sorry, what was the question?

18 BY MS. MITRANI:

19 Q That's okay. Had you ever seen that Wells Fargo statement
20 before?

21 A No.

22 MS. MITRANI: No further questions, Your Honor.

23 THE COURT: All right. Thank you.

24 Ms. Felini, you may step down and you are excused. We
25 thank you.

1 And we need to end a little bit earlier today. So we
2 are going to end for the day. We hope you all have a terrific
3 weekend. We will see you on Monday at 9:00 a.m., and that's
4 when we will begin. Remember, we don't have court tomorrow.
5 We will see you 9:00 on Monday.

6 Please remember my instructions. Don't discuss the
7 case with anyone including what witnesses may or may not have
8 testified today or anything else about the case, don't disburse
9 any information about the case, and don't do any independent
10 research into the case. And we will see you Monday at 9:00.
11 Thanks, and have a great weekend.

12 (Thereupon, the jury exited the courtroom at
13 4:15 p.m.)

14 THE COURT: Ms. Raisman is going to come in.

15 (Thereupon, a juror entered the courtroom at
16 4:55 p.m.)

17 THE COURT: Hello, Ms. Raisman.

18 A JUROR: Hi. It's a little difficult to think about
19 my own issue with listening to everything here. Do you think I
20 can sleep on it?

21 THE COURT: Of course. Absolutely.

22 A JUROR: This is just a really rough decision for me
23 because the thing that I'm really concerned about is my PTO
24 because if it is eight weeks, that's like 16 days of my 25.
25 And that's -- you know, I always like to plan ahead for a rainy

1 day. And if I get sick or something, you know what I mean?

2 THE COURT: I completely understand the position that
3 you are in. And I obviously I can't guarantee how long it will
4 be. I think in good faith at this point it's unlikely that it
5 would go for eight weeks just because -- let me just ask the
6 government.

7 Does the government still think after today that it
8 will rest sometime next week?

9 MS. MITRANI: Yes, Your Honor. We have every
10 reasonable expectation that we will rest next week.

11 THE COURT: If that's the case, and even assuming that
12 Mr. Scotton decides he wishes to put on a case, and again, I
13 don't know how long it will be, but the government's case will
14 have been at that point, I guess, at most nine or ten days and
15 possibly fewer days if it doesn't go all Monday through
16 Thursday of next week, so --

17 A JUROR: Can I ask you something?

18 THE COURT: Yes.

19 A JUROR: At this point does the defendant -- I don't
20 know if I'm speaking out of turn. Is the defendant going to
21 have witnesses?

22 THE COURT: Let me say this. Mr. Scotton does not
23 have to decide whether he's to going to put on a case until
24 after the government rests.

25 A JUROR: Okay. I don't know the procedure.

1 THE COURT: That's okay. That's why I'm telling you.
2 That's why I say we don't know whether there will be a defense
3 case. If he wishes to put one on, it's his right to do so. He
4 doesn't have to. As we have explained before it won't be held
5 against him if he doesn't. But there's no way to know at this
6 point whether he will be doing so, and if so, how long that
7 will be.

8 I'm just -- and it is a complete guess, I will say,
9 but I'm guessing that if the government's case at most turns
10 out to be ten days, it seems reasonable to expect that the
11 defense case at most should be ten trial days. I mean, it's
12 not required to be the same length, but it's a guess. It's an
13 educated guess.

14 A JUROR: I know there's no guarantee. I know there's
15 no guarantee on anything.

16 THE COURT: Right.

17 A JUROR: I just -- I just -- like I said, I want to
18 do my civic duty and I know you went over the line to do what
19 you did, and I really appreciate that. And I want to do the
20 right thing. I'm just a little nervous about it, that if for
21 some reason it went over -- because these are days that I have
22 to, you know, use some time. And it's only February. That's
23 what I'm a little concerned -- if it was like November or
24 something, at the end of the year, it's different. That's
25 what's going around in my head.

1 THE COURT: I completely understand. And that's why I
2 say, you know, because there is --

3 A JUROR: And I am involved.

4 THE COURT: Right. I can see that you are. Because
5 there is the issue that we would like to try to ensure that we
6 have enough jurors to make it through this so we don't wind up
7 having to spend the money for all the jurors again and for all
8 the witnesses to come in and --

9 A PROSPECTIVE JUROR: I completely understand.

10 THE COURT: I know you understand that. That's why
11 I'm saying if there's something that I can do to make this
12 easier within reason, I'm happy to try to adjust the schedule.
13 I'm willing to work with you, and you are willing to work with
14 us. We will do everything we can to meet you halfway.

15 A PROSPECTIVE JUROR: I didn't get a chance to speak
16 with payroll. I didn't have time. But I need to find out
17 exactly, you know, what's what. And I am going into work
18 obviously tomorrow. And I do have -- is that the office phone
19 number? I do have a phone number so I could call. But I
20 really am thinking about everything. It's not an easy
21 decision.

22 THE COURT: Right. We appreciate it. Obviously
23 anything that you can do to stay with us, we would greatly
24 appreciate.

25 A JUROR: I know that. I understand.

1 THE COURT: As I said, if there's something we can do
2 to help you out as far as being flexible with the schedule, I'm
3 more than happy to consider doing that. In the end, I'm going
4 to leave it to you. Only you know if it's going to be the kind
5 of economic hardship that you really can't tolerate. And if it
6 is, then we will respect that.

7 A JUROR: The only thing I have to say, and this has
8 nothing to do with anybody, I just have to say shame on my
9 company. That's how I feel. I think it's a shame. That's how
10 I feel. But that has nothing to do with anybody here. But I
11 don't think it's very nice. I'm there 17 years. I'm one of
12 their best employees they have. Everybody wants to clone me.
13 This is what they have told me. And they wouldn't even make an
14 exception. That's shame, shameful, so...

15 THE COURT: All right. Well --

16 A JUROR: Anyway, that's how I feel. I will call you
17 tomorrow after I speak with payroll and I am going to seriously
18 consider everything.

19 THE COURT: Thank you so much, Ms. Raisman.

20 (Thereupon, a juror exited the courtroom at 4:21 p.m.)

21 THE COURT: All right then. We will be in recess.

22 MR. SCOTTON: Your Honor, can I bring something to the
23 attention of the Court?

24 THE COURT: Mr. Scotton, I think I explained
25 previously that Mr. Kreiss needs to leave. In fact, he needed

1 to leave five minutes ago. So I'm going to excuse him. If you
2 want to continue without his being here, that's your decision.
3 Otherwise, you will have to wait until Monday. I did explain
4 this and we discussed this yesterday and the day before.

5 MR. SCOTTON: He can leave. It's not a big deal. The
6 government has --

7 THE COURT: Okay. Bye, Mr. Kreiss.

8 MR. KREISS: Thank you for the accommodation, Your
9 Honor.

10 THE COURT: No problem.

11 MR. SCOTTON: Government has present a document here,
12 the last document here, and, you know, once again, correct me
13 if I'm wrong because I'm not a lawyer, but on the document it
14 is a signature, and someone wrote the name Carla Felini. If
15 you look here when she notarized the application here that I
16 have my race credential, it is her writing, Your Honor, on that
17 document.

18 So the thing is that people keep coming to this court
19 here and perjuring themselves in the court here lying. And
20 there's nothing I can do to protect myself. It's right here if
21 the Court want to see. It's her name. It's notary that she
22 did for me. If you compare, not the signature, but the name,
23 it's her writing in her name. She say she have no acknowledge
24 of anything to do with me.

25 THE COURT: Mr. Scotton, I'm sorry, she's already

1 testified.

2 MR. SCOTTON: I guess I'm going to have to put my
3 defense here to prove all these people wrong then, Your Honor.

4 THE COURT: All right. Well, you are welcome to put
5 on your defense.

6 Anything else we need to address before we end for the
7 day? Seeing nothing, I will see you all -- why don't we say
8 8:45 on Monday just in case something arises.

9 MR. SCOTTON: Your Honor, with your permission, as we
10 mentioned yesterday, I'm going to take a couple of minutes just
11 to organize. I already spoke with the marshals, so the Court
12 know that.

13 THE COURT: All right. Let me just see the marshals
14 for just a second, if I could, please.

15 All right. We will see you Monday.

16 MS. MITRANI: Your Honor, just real quick for the
17 record, I'm going to hand the defendant a one-page document.
18 And I wrote on the back Mortensen Jencks. It's a document
19 dated January 30, 2014. It's my handwriting on the back. It's
20 a one-page document. On the top it says invoice number and
21 it's like a little spreadsheet.

22 THE COURT: Okay. Mr. Scotton, you are being handed
23 some evidence.

24 Thank you. We will be in recess.

25 MS. MITRANI: Thank you, Your Honor.

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MR. SCOTTON: Thank you.

(Thereupon, the trial adjourned at 4:24 p.m.)

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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

7/6/14

s/ Tammy Nestor
Tammy Nestor, RMR
Official Court Reporter
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,

Fort Lauderdale, Florida

Plaintiff(s),

February 3, 2014

vs.

ROGERIO CHAVES SCOTTON,

Defendant(s).

JURY TRIAL
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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FRED BROOKS

BY MS. MITRANI	9		108	
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BY MR. SCOTTON		41		
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AYLIN REYES MOLLINEDO

BY MS. MITRANI	118			
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1 Thereupon,
2 the following proceedings began at 8:57 a.m.:

3 THE COURT: Good morning. Back on the record. The
4 government has indicated that it has an issue it needs to
5 raise, so I'll hear that issue now.

6 MS. MITRANI: Your Honor, as the Court may recall,
7 last week the defendant requested that we play the entire
8 immigration interview, and we said, fine, and we viewed the
9 immigration interview. Rereviewing it last night, we noticed
10 that on page 72, the defendant has asked about whether he's
11 ever been arrested and he said it was some traffic incident.
12 He was asked if there was a warrant. And I think he said yes.
13 That's on 72.

14 Also, on page 99, which is the portion where Ms. Reyes
15 is along with the interviewer, she's asked about an arrest and
16 she said she wasn't sure but she said it had something to do
17 with bad checks or something. So if the defendant wants us to
18 play the interview in its entirety, we are happy to do so. If
19 the defendant wants, we can cut it off on page 71 and that will
20 be the end of the interview.

21 THE COURT: What do you want to do, Mr. Scotton?

22 MR. SCOTTON: Let the jury know the truth. I have
23 nothing to hide.

24 THE COURT: Okay.

25 MS. MITRANI: We will play the interview in its

1 entirety. In that regard, we need to bring this up. On the
2 I485 form, which is a -- well, the Court doesn't have it. It
3 will be Government's Exhibit 200. I could pass it up.

4 On the third page it says, have you ever been
5 arrested, et cetera. The defendant checks off yes, which is on
6 the certified copy. We have made two redacted copies, if the
7 defendant wants, one just taking out that question, one taking
8 out that whole section. If the Court wants to see, I can show
9 you what I mean. But again, it's up to the defendant. If the
10 transcript is coming in in its entirety, I assume -- well, I'm
11 not going to assume anything. It's up to the defendant.

12 THE COURT: What do you want to do, Mr. Scotton?

13 MR. SCOTTON: The jury need to know the truth so it's
14 going to find out the truth so they are going to find out the
15 truth.

16 THE COURT: So don't redact it, that's what you want
17 us to do?

18 MR. SCOTTON: Yeah.

19 MS. MITRANI: So the record is clear, the evidence of
20 his prior arrest is going to be presented to the jury?

21 MR. SCOTTON: Yes.

22 MS. MITRANI: Okay.

23 THE COURT: All right. I need to let the parties
24 know, we are not going to be in trial next week, but we will
25 continue with the trial the week following.

1 MR. SCOTTON: Your Honor, I got also a couple things
2 to bring in to the Court. Once again, I got two discovery DVDs
3 from the government. Once again, the CD was blank. It was
4 empty. So I have the two videos here from some kind of Fed-Ex,
5 North Federal Highway, two videos. The CD was blank. I need
6 to get that correct as well.

7 Also, I need to bring up something to the attention of
8 the Court here without the government present.

9 THE COURT: Okay. Is there some reason it needs to be
10 now because it's 9:00 and I would like to bring in the jury.

11 MR. SCOTTON: Yes, Your Honor, it's important.

12 THE COURT: Is it something we are going to be needing
13 to address this morning?

14 MR. SCOTTON: Yes, we have to.

15 MS. MITRANI: I'm happy to step out. Do you want me
16 to clarify this DVD thing or not?

17 THE COURT: In a moment.

18 MS. MITRANI: Okay.

19 THE COURT: Thanks.

20 (Thereupon, the government exited the courtroom.)

21 (Thereupon, a sealed hearing was held.)

22 THE COURT: All right. We are going to get started in
23 just a moment. Before we do, let me ask the government to
24 address the CD issue as quickly as it possibly can.

25 MS. MITRANI: Over the weekend, we provided

1 Mr. Scotton with additional documents in discovery. One
2 contained a CD. The CD contained either one or two
3 spreadsheets. If he's saying it's blank, we can give it to him
4 again. It's not something we are going to use today.

5 THE COURT: Okay. Let's make sure we get it to him as
6 soon as possible. And Mr. Scotton has advised me that there
7 are some allegations concerning alleged intimidation.

8 Is it your expert witness, Mr. Scotton? I didn't
9 understand.

10 MR. SCOTTON: It's one of the witnesses that can
11 testify that the video of Van Brunt with me in Boca Raton has
12 been corrupt.

13 MS. MITRANI: Your Honor, we need to address that,
14 maybe not right this second, but that's coming in this week.

15 THE COURT: I understand. And we are not going to
16 address it right now. I want to give you the heads up. Let me
17 have the specifics. I need to know which witness this is;
18 otherwise, it's difficult for me to be able to figure out
19 whether there's improper tactics going on.

20 MR. SCOTTON: The witness was present during the
21 interview, Your Honor.

22 THE COURT: Who is the witness, please?

23 MR. SCOTTON: Her name is Erica.

24 THE COURT: What is her last name?

25 MR. SCOTTON: Rantz. I knew this girl when she was

1 11. The day she passed by the table, she passed by to buy
2 sandwich. She come back. I have a little conversation with
3 her. Then she left. Not only that piece that is missing out
4 of the videos, but there is another piece that I even have
5 asked before to the Court that is missing out of the video.
6 And the expert say that Van Brunt has twos device on him during
7 that interview. So what is the video for the other device,
8 then where is the record for the other device?

9 THE COURT: Okay. We are not going to address that
10 now, but I wanted to give the government a heads up so when we
11 are ready to address it, we don't have to stop and figure out
12 what we are talking about.

13 MS. MITRANI: Okay. Your Honor, the government has
14 made a demand for expert disclosure and the government has
15 gotten no expert disclosure.

16 THE COURT: Apparently there's not an expert. I
17 thought it was an expert, but apparently now I'm hearing it's
18 not expert witness.

19 Who is the expert?

20 MR. SCOTTON: The guy who looked at the videos.

21 THE COURT: Then the expert report needs to be turned
22 over to the government. We can address it until reciprocal
23 discovery has been made. The government has to have an
24 opportunity to the review that, and if it wishes to do so, I
25 guess to find rebuttal expert testimony. So I'm not going to

1 be able to address it until that time. It's getting late for
2 these things because the government intends to end its case
3 this week. You will need to provide that today. That's it.

4 MR. SCOTTON: Also I have received this information
5 here yesterday from my investigator about the bank statements
6 they are going to try to bring in, bank records.

7 THE COURT: Is that coming in this morning?

8 MS. MITRANI: Bank records, first of all are already
9 in evidence and that's not going to be addressed this morning.

10 THE COURT: Let's not worry by that now. We can
11 address these things after, when the jury is not sitting here
12 waiting for us.

13 MS. MITRANI: That's fine, Your Honor. At some point,
14 not today, not this instant, but we may need to deal with some
15 kind of break to deal with it.

16 THE COURT: Well, we have to end at 4:00 today for the
17 witness, so we can deal with it then.

18 MS. MITRANI: All right.

19 THE COURT: All rise for the jury.

20 (Thereupon, the jury entered the courtroom at
21 9:09 a.m.)

22 THE COURT: Good morning.

23 A JUROR: Good morning.

24 THE COURT: Welcome back. I hope everybody had a
25 great weekend and everybody is refreshed and ready to go again.

1 I need to start, of course, as we start every day. Is there
2 anybody here who has discussed the case with anyone, disbursed
3 any information about the case, or done any research in the
4 case. If so, please raise your hand for me now.

5 I see no hands. We all thank you for that. I also
6 need to let you all know -- and everybody can be seated. I
7 need to let you know a change in the schedule. We will be off
8 trial next week. But we will be, if we feed to, if we need
9 additional trial days, we will be continuing the week
10 following. I want to let you know in case you need to make
11 plans with your work or personal plans or anything of that
12 nature. So we will not be in trial all next week.

13 All righty. Let me turn back to the government.

14 MS. MITRANI: Your Honor, the government calls Fred
15 Brooks.

16 THE COURTROOM DEPUTY: Please raise your right hand.

17 FRED BROOKS

18 Having been first duly sworn on oath, was examined and
19 testified as follows:

20 THE COURTROOM DEPUTY: Please be seated. State and
21 spell your first and last name for the record.

22 THE WITNESS: Fred Brooks, F-R-E-D B-R-O-O-K-S.

23 DIRECT EXAMINATION

24 BY MS. MITRANI:

25 Q Good morning, Mr. Brooks.

1 A Good morning, ma'am.

2 Q How are you?

3 A I'm doing fine. How about yourself?

4 Q Fine. Thank you.

5 A Good.

6 Q The way you respond, I feel like you are in the military.

7 A Yes, I am a retired sergeant, United States Marines, 25
8 years honorable and faithful service.

9 Q When did you become a retired United States marine?

10 A I became a retired marine in September 2002.

11 Q And what were you doing with the marines, all sorts of
12 different things?

13 A I started out as a supply technician in the aviation field
14 because I was too young to be military policeman. When I
15 became of age, I transferred over to be a military policemen
16 and worked my way all the way up to platoon commander in the
17 military police field.

18 Q I can see your pride. Are you presently employed?

19 A Yes, I am, ma'am.

20 Q By whom are you employed?

21 A USCIS.

22 Q What is USCIS?

23 A USCIS stands for United States Citizenship and Immigration
24 Services.

25 Q I'm not a drill sergeant, so you know, you can relax.

1 United States Citizen and Immigration Services?

2 A Yes.

3 Q And is that part of the Department of Homeland Security?

4 A Yes, it is, ma'am.

5 Q And let's talk about you a little bit and then we will
6 talk about USCIS. Okay?

7 A Correct.

8 Q For you how long have you been working with USCIS?

9 A I have been working with USCIS since March 20, 2004.

10 Q Okay. And have you had different roles and different
11 titles in your tenure?

12 A Yes.

13 Q Can you walk the jury through what your present title and
14 responsibilities are and then go back a little bit.

15 A Okay. Correct. Right now I work for the fraud detection
16 and national security division of USCIS. That is the
17 administration investigative arm of USCIS.

18 Prior to that, I was a senior adjudicator which is
19 considered the duty expert in the adjudicator's branch which
20 are officers that conduct interviews for naturalization and
21 residency.

22 Prior to that, I was a regular adjudicator when I just
23 came over from what is now known as legacy INS, which was the
24 former immigration and naturalization service.

25 Q So you say legacy, INS, so what used to be immigration and

1 naturalization services, INS, those functions are now carried
2 out by the United States Citizenship and Immigration Services?

3 A They are not.

4 Q Okay. So there's different jurisdictions?

5 A Two separate entities, yes.

6 Q All right. Why don't you tell us, what is USCIS, what are
7 its responsibilities?

8 A USCIS is mainly the branch of DHS that handles
9 applications and petitions when submitted by individuals,
10 nonimmigrants, aliens that want to try to adjust to become a
11 permanent resident of the United States. And if they are
12 already permanent residents, they want to attempt to become a
13 United States citizen of the United States. USCIS in the
14 adjudicative realm handles those applications and petitions.

15 Q Are there specific forms associated with applying to
16 adjust your status to that of either legal permanent resident
17 or United States citizen?

18 A Yes, there are.

19 Q What is the primary form?

20 A The primary form for adjusting status for the permanent
21 resident is a form called immigration form 485.

22 Q And what is an -- is it an I485?

23 A I485 for short for immigration form.

24 Q And when is this I485 form used?

25 A It is used when you want to become a resident, you get

1 married to a United States citizen and make a decision to
2 become a resident, you will fill that application and submit it
3 after filing an I130 which is a relative petition which
4 establishes that there is a relationship between the two
5 parties.

6 Q Now, is this form I485, this petition to adjust status, is
7 it used when an individual, an alien, wishes to adjust his
8 status based on a Cuban national?

9 A Yes, it is.

10 Q And by Cuban national, we mean an individual born in Cuba,
11 correct?

12 A Correct.

13 Q What does it mean to adjust status?

14 A Adjust status means that you are attempting to become a
15 permanent resident of the United States from a nonimmigrant.

16 Q And is there a procedure in place of how this process
17 occurs in an individual, an alien's attempt to adjust status?

18 A Yes.

19 Q Are you familiar with the procedure?

20 A Yes.

21 Q Can you please walk the jury through the procedure of, you
22 know, starting with the form I485, when that gets completed,
23 walk them through the process, please.

24 A Once that form is filled out by the individual and their
25 spouse, the form is then mailed off to a mailbox at one of our

1 service centers which it depends on the zip code that you are
2 filing from. It would either go to one out of three service
3 centers.

4 Q Let me stop you. What is a service center?

5 A A service center is where all our applications are filed
6 and properly vetted to make sure that the requirements that
7 need to be met initially are met and particular supporting
8 documents that need to accompany that application or petition
9 are submitted.

10 Q And where are these service centers located, sir?

11 A California has a service center, Vermont, and Dallas,
12 Texas has a service center.

13 Q The I485s make their way to one of these service centers?

14 A Correct.

15 Q What happens from there?

16 A Once it gets there, an individual could be a clerk,
17 whoever they assign, I'm not sure who does it over there, but
18 an individual receives these applications and receipts it into
19 the system. Then it passes over to a reviewer who would then
20 go through the form, make sure the blocks are filled out, make
21 sure if there is any requiring supporting documentation. They
22 would reach out to the applicant and request for them to submit
23 that evidence that is missing prior to saying that this file is
24 ready to go to a field office to be adjudicated.

25 Q What is a field office?

1 A A field office is the offices that do the most of the
2 interviewing for these applications to make sure that the
3 individuals meet the requirements and meet the burden of proof
4 to become either a permanent resident or a naturalized citizen.

5 Q And you work at a field -- do you work in a field office?

6 A Yes, I do.

7 Q Where is the field office that you work for located?

8 A It's located in Hialeah at 588 Northwest 183rd Avenue,
9 Hialeah, Florida.

10 Q And prior to working at the Hialeah field office, which
11 field office did you work at?

12 A It was at the Kendall field office.

13 Q Prior to that, did you work in Broward County in the
14 Southern District of Florida?

15 A Yes, I did, in the Oakland Park field office.

16 Q Okay. So then once the I485 and its supporting documents
17 clear the service center, they make their way to a field
18 office, is that correct?

19 A That is correct.

20 Q And how is it determined which field office the
21 application will go to?

22 A It's based on the zip code.

23 Q The zip code contained in the I458 application?

24 A That is correct.

25 Q Tell the members of the jury what happens at the field

1 office.

2 A Once these files make it to the field office -- let me
3 back up a little bit. Each file is assigned an alien file
4 number. It's a nine-digit number that is assigned to the file
5 with an A preceding the numerical sequence.

6 Once these files arrive at the field office, they are
7 broken down for scheduling of interviews. And each file
8 depending on how they are processing at that time, the file
9 gets assigned to an officer.

10 Q And these alien files that you just described, are they
11 internally and colloquially referred to as A files?

12 A That is correct, ma'am.

13 Q What happens to the alien's A file once it hits the
14 service center? Does it get assigned to an officer and
15 adjudicator?

16 A Once it reaches -- you said the service center?

17 Q I'm sorry. Once it reaches the field office.

18 A The field office, correct, it's assigned to a field
19 officer.

20 Q And what does that officer do?

21 A The officer would, given time, would review the file and
22 prepare for that day's interviews.

23 Q After the interview, what does the officer do?

24 A After the interview, there is one of two things that can
25 occur. If the file requires a little more research because

1 there are certain things that are not quite clear, you want to
2 review the law to make sure your application of the law is
3 correct. You would go ahead and continue that file so you can
4 have time to review it during your downtime.

5 Q And if you don't need, if you don't need additional
6 information, does the file then get adjudicated?

7 A Yes.

8 Q And then what are the possible adjudications?

9 A Approved, denied, or withdrawn.

10 Q And by adjudications, you mean it gets decided, you decide
11 whether the petition is going to be granted or not?

12 A A final decision is made whether it's going to be granted
13 or denied, yes, ma'am.

14 Q Now, I glossed over the interview. Can you tell the
15 members of the jury a little bit about what the purpose of the
16 interview is.

17 A The purpose of the interview is to ensure that all
18 information on that application or petition and its supporting
19 documentation that are required to make a final decision are,
20 in fact, correct.

21 Q And do you make assessments on the individuals based on
22 the interview?

23 A Yes, ma'am.

24 Q And explain that a little bit.

25 A There is a lot of moving parts that occur in an interview.

1 We study body language. We study the way you are applying, not
2 just because you are married, you will be applying under a
3 specific section of the law. So we have to make sure that
4 those laws are being adhered to again on the application. They
5 may have put the wrong section, so you would go ahead and make
6 that correction to reflect the right section of law that this
7 individual or individuals are applying under, and then you
8 prepare for your interview.

9 Q And the application to adjudicate status based on a
10 marriage, is that's before an officer, before you? Do you make
11 determinations as to whether it's a legitimate marriage or a
12 sham marriage entered for the purpose of obtaining immigration
13 benefits?

14 A Yes, ma'am, that is done during the interview.

15 Q And how many -- so how many adjudications have you done
16 personally?

17 A I have done well over 2,000 applications adjudicated, well
18 over 2,000 applications.

19 Q Do you recall being assigned an application of a Rogerio
20 Scotton?

21 A Yes, ma'am.

22 Q And were you handed the defendant's A file in connection
23 with this application?

24 A Yes, ma'am.

25 MS. MITRANI: Your Honor, may I approach the witness?

1 THE COURT: You may.

2 BY MS. MITRANI:

3 Q I am going to show you two exhibits. I'm talking loud,
4 but I'm not trying to yell at you. It's a common theme during
5 these proceedings.

6 A No offense taken.

7 Q All right. So the first exhibit I'm showing you is
8 Government's Exhibit 200. And do you recognize that, sir?

9 A Yes, ma'am, I do.

10 Q And what is Government's Exhibit 200?

11 A This is the application form I485 application to register
12 permanent residency or just status for Mr. Rogerio Scotton.

13 Q And it's a -- okay.

14 MS. MITRANI: Your Honor, the government would offer
15 Exhibit 200.

16 THE COURT: Any objection?

17 MR. SCOTTON: No, Your Honor.

18 THE COURT: Government's 200 is admitted.

19 (Thereupon, Government's 200 received in evidence.)

20 BY MS. MITRANI:

21 Q Then I'm showing you Government's Exhibit 200A. Do you
22 recognize these documents?

23 A These are some of the supporting documents that were
24 submitted with the application I845.

25 MS. MITRANI: Your Honor, the government would offer

1 200A.

2 THE COURT: Any objection?

3 MR. SCOTTON: No, Your Honor.

4 THE COURT: All right. 200A is admitted.

5 (Thereupon, Government's 200A received in evidence.)

6 BY MS. MITRANI:

7 Q Let's go through them. Okay. First let's -- we are going
8 to block off and zoom up the top part of the document. And is
9 this -- on the top, it says form -- I think the I is cut off,
10 form 485 application to register permanent resident or adjust
11 status?

12 A Yes, ma'am.

13 Q Part one asked for information about you, correct?

14 A Part one asks for information about the applicant.

15 Q Right. Well, right, not about Fred Brooks. Okay. You
16 got me.

17 All right. So in this instance, the individual gives his
18 name which was what?

19 A His last name, his family name, is Scotton. His first
20 name as Rogerio, and his middle name of Chaves.

21 Q And what address does Mr. Scotton give as his home
22 address?

23 A 7797 Golf Circle Drive, Apartment 204 in the city of
24 Margate, Florida 33063.

25 Q And following that, he indicates his birthday is

1 October 14th, 1970, and his country of birth is Brazil?

2 A That's correct.

3 Q And his nationality is?

4 A Brazil.

5 Q Brazilian. Okay. Now, it says A number and there's A
6 number there. To state the obvious, is this the alien file
7 number you were talking to us about before?

8 A Yes, ma'am.

9 Q And that's the alien file number, the A file number, that
10 belongs to the defendant, correct?

11 A That's correct.

12 Q Date of last arrival into the United States, what date
13 does the defendant claim his last arrival was?

14 A April 13, 1992.

15 Q It says current USCIS status, do you see that under --

16 A Yes, ma'am.

17 Q What does that mean?

18 A That stands for OOS.

19 Q That was his internal status?

20 A That was his status.

21 Q Okay.

22 A Out of status.

23 Q Okay. And then part two says, application type, I am
24 applying for adjustment to permanent resident status because,
25 and then it gives you options A through H, correct?

1 A That is correct.

2 Q And in this instance, Mr. Scotton checked box F, correct?

3 A That is correct, ma'am.

4 Q And can you read box F for us?

5 A I am the husband, wife, or minor unmarried child of Cuban
6 described above in parentheses, E, and I am residing with that
7 person and was admitted or paroled into the United States after
8 January 1, 1959 and thereafter have been physically present in
9 the United States for at least one year.

10 Q And then when it says, I am the husband, since it's a man,
11 we will keep it to the husband, I am the husband of the Cuban
12 described above in E, the Cuban has to be a native or citizen
13 of the United States admitted or paroled into the United States
14 after January 1, 1959 and thereafter have been physically
15 present in the United States for at least one year?

16 A Yes, ma'am.

17 Q The spouse has to be Cuban admitted into the United States
18 after '59, here for at least one year, and then that gives the
19 ability for the alien to apply based on the marriage to the
20 Cuban, correct?

21 A If the Cuban is adjusted as a permanent resident, yes.

22 Q And we will go to the right side and it says for USCIS use
23 only. Do you see that?

24 A Yes, ma'am.

25 Q And can you tell us, there is a -- well, first there is a

1 bar code with some letters and a date. Can you tell the
2 members of the jury what that is?

3 A The bar code and the date is the date of filing the
4 application, and the MSC is a receipt number that is assigned
5 at the service center.

6 Q So in this instance, this 485 was stamped in to the
7 service center on 7/19/2010?

8 A That is correct, ma'am.

9 Q Okay. In the middle is some red writing. Do you see
10 that?

11 A Yes, ma'am.

12 Q And it says, interviewed. Do you see that?

13 A Yes, ma'am.

14 Q Did you conduct the interview?

15 A Yes, ma'am.

16 Q It says country chargeable. What does that mean?

17 A That is the country that we would -- the alien, his
18 country of origin.

19 Q If we go to the next page, and part three is processing
20 information, correct?

21 A Yes, ma'am.

22 Q And so in this instance, Mr. Scotton states his city or
23 town of birth is Brasila?

24 A Correct.

25 Q What does he state is his current occupation?

1 A Race driver.

2 Q His mother's name?

3 A Marina.

4 Q And his father's name?

5 A Luiz.

6 Q And it says, place of last entry into the United States.

7 What does the defendant state?

8 A Washington, D.C.

9 Q All right. And he indicates that when he entered last the
10 United States, he entered as an investor, correct?

11 A That is correct, ma'am.

12 Q And then there is a nonimmigrant visa number provided?

13 A Yes, ma'am.

14 Q And according to the application, the date that that visa
15 was issued was October 5, 1988, correct?

16 A Yes, ma'am.

17 Q And that visa was issued in -- it says, consulate where
18 visa was issued, and the indication is it was issued in Rio de
19 Janeiro?

20 A Correct.

21 Q And then the defendant checks off his gender as male and
22 he states that he's married, right?

23 A Correct.

24 Q And then on part B, does defendant list his information
25 pertaining to his wife?

1 A Yes, below.

2 Q And what --

3 A There we go.

4 Q There we go. It's on the screen. Who does the defendant
5 indicate as his wife?

6 A First name is Aylin, and last name is Reyes Mollinedo

7 Q And her country of birth?

8 A Country of birth is Cuba.

9 Q And her date of birth?

10 A Her date of birth is May 30, 1984.

11 Q He lists his relationship as wife?

12 A Correct.

13 Q There's an A number next to wife. Is that Ms. Mollinedo's
14 A number?

15 A Yes, ma'am.

16 Q And it says applying with you, check yes?

17 A Yes.

18 Q And what does that mean, applying with you?

19 A That they were both applying at the same time.

20 Q And if you go to the last page of Exhibit 200, there is a
21 signature under where it says applicant, correct?

22 A Yes, ma'am.

23 Q And then the presented full name is Rogerio Chaves
24 Scotton?

25 A Yes, ma'am.

1 Q And the date is 7/13/10 with the daytime number included?

2 A Yes, ma'am.

3 Q Let's go to the attachments of this I485 form. Before I
4 do that, I have one more exhibit.

5 MS. MITRANI: Your Honor, may I approach?

6 THE COURT: You may.

7 BY MS. MITRANI:

8 Q Do you recognize Exhibit 200B?

9 A Yes, ma'am.

10 Q And what is 200B?

11 A 200B is a visa that was issued at the consulate in Rio de
12 Janeiro to Mr. Scotton on page 7. And on page 6, it's two
13 admission stamps of entry to the U.S.

14 Q Was this document contained in the A file?

15 A Yes, ma'am.

16 MS. MITRANI: Your Honor, the government of moves 200B
17 into evidence.

18 THE COURT: Any objection?

19 MR. SCOTTON: No, Your Honor.

20 THE COURT: 200 is admitted.

21 (Thereupon, Government's 200B received in evidence.)

22 BY MS. MITRANI:

23 Q And just so I don't have to keep going back and forth,
24 what is Government's Exhibit 208?

25 A It's an appointment notice that was issued to Mr. Scotton.

1 Q By you?

2 A Yes, ma'am.

3 MS. MITRANI: Your Honor, the government would offer
4 208 into evidence.

5 THE COURT: Any objection?

6 MR. SCOTTON: No, Your Honor.

7 THE COURT: 208 is admitted.

8 (Thereupon, Government's 208 received in evidence.)

9 BY MS. MITRANI:

10 Q So I'm going to go back to 200A which are the attachments
11 to the I485. And so just so everybody knows what I'm talking
12 about, I'm going to identify the documents within 200A by USCIS
13 number. So this is USCIS 396. And is this, of course, another
14 government form, a G325A biographic information?

15 A Yes.

16 Q And was this submitted in connection -- attached to the
17 I485?

18 A Yes, ma'am.

19 Q Okay. And, in fact, on the side, do you see that stamped
20 information there, Mr. Brooks?

21 A Yes, ma'am.

22 Q And can you tell the jury what that is?

23 A That is a receipt stamp that is done at the service center
24 when these supporting documentation are submitted.

25 Q Did the defendant submit a copy of his passport in

1 connection with his application?

2 A Yes, ma'am.

3 Q So I'm showing you what's still within Government's
4 Exhibit 200A, USCIS 400. Is this the first page of a passport
5 that the defendant submitted in connection with his
6 application?

7 A Yes, ma'am.

8 Q And there is a signature on the right half of this page
9 that appears to say Rogerio Chaves Scotton?

10 A Yes, ma'am.

11 Q Let me ask you, are you familiar with passports?

12 A I am pretty much familiar with them, ma'am, yes.

13 Q Are passports like a little book with one page on the left
14 hand and one page on the right hand?

15 A Correct. And they are numbered.

16 Q Oh, each page is numbered? Okay. So this is one page of
17 the -- the next page of the passport and has the name Rogerio
18 Chaves Scotton?

19 A Yes, ma'am.

20 Q And it has dates on the bottom, January 9th, 1989 to
21 January 8, 1995, correct?

22 A Yes, ma'am.

23 Q Are those the dates of the validity of the passport?

24 A Of the passport, yes, ma'am.

25 Q Do passports last indefinitely or do they have to be

1 renewed?

2 A Once they expire, based on my knowledge, they have to be
3 renewed unless you get an extension.

4 Q And then the next page of this passport, the Brazilian
5 passport, does that bear a photo?

6 A Yes, ma'am.

7 Q And again, like the other documents, does it contain the
8 file stamp from the service center indicating it was received
9 in connection with the I485 application?

10 A Yes, ma'am.

11 Q The next page is USCIS 402. That's the next page of the
12 exhibit which contains two pages of the passport. I'm showing
13 you one page of the passport, the left-hand side. What are we
14 looking at now, sir?

15 A We are looking at two admission stamps.

16 Q Okay. And it's stamped U.S. immigration, November 13,
17 1989, and then U.S. immigration, March 9, 1992?

18 A Yes, ma'am.

19 Q What are immigration stamps?

20 A Immigration stamps are stamps that show the date that you
21 entered and they should have a duration of stay date if there
22 is a duration of stay for the particular type of visa that you
23 are entering the country under.

24 Q Now, I'm showing you the right-hand package of the copy of
25 the passport, still on USCIS 402. And what are the members of

1 the jury looking at right now?

2 A They are looking at B1/B2 visa which is a visiter's visa
3 issued by the consulate in Rio de Janeiro to Mr. Scotton.

4 Q And it says, nonimmigrant visa issued at Rio de Janeiro
5 B1/B2 with a date and then the year 1989, correct?

6 A That is correct, ma'am.

7 Q And then underneath the star, there is another date,
8 October 5, 1993, correct?

9 A That's correct, ma'am.

10 Q This 1989 to 1993, is that the validity of the visa, the
11 effectiveness of it?

12 A Yes, ma'am.

13 Q So it was effective from 1989 through October 5, 1993,
14 correct?

15 A Correct, ma'am.

16 Q This might be a little hard to read, and if so, we have a
17 better copy. But can you make out an immigration stamp on the
18 upper right-hand corner of this page where the visa was
19 affixed?

20 A Yes, ma'am.

21 Q What date is that?

22 A It shows April 13, 1992.

23 Q Okay. Right over there. And then above, is there a U.S.
24 immigration stamp indicating an entry on April 13, 1992?

25 A Correct. It's a stamp showing the officer's number of who

1 admitted him that day.

2 Q Then the next page of Government's Exhibit 200A, is that a
3 copy of another passport for Rogerio Scotton?

4 A Yes, ma'am.

5 Q The front page?

6 A Correct, ma'am.

7 Q Okay. And the passport was issued by the Federal Republic
8 of Brazil, correct?

9 A That is correct, ma'am.

10 Q And then the next page, which is USCIS 404, all still
11 within Government's Exhibit 200A, is that the next page of the
12 passport?

13 A Yes, ma'am.

14 Q And it shows the name Rogerio Chaves Scotton, correct?

15 A Yes, ma'am.

16 Q And then the bottom right, it shows -- does it show the
17 effective dates of this visa?

18 A Yes, ma'am.

19 Q And what are the effective dates -- excuse me -- of that
20 passport. Does it show the effective dates of this passport?

21 A Yes, it shows that the passport was issued December 1,
22 2005 and expires November 1, 2010.

23 Q And then the passport, the passport on the bottom, which
24 would be the right-hand side of the passport, also bears a
25 picture, correct?

1 A That is correct, ma'am.

2 Q And then the next page that was submitted to USCIS is just
3 a stamp, correct?

4 A Yes, ma'am.

5 Q There was no additional visa affixed to the second
6 passport, correct?

7 A No, ma'am.

8 Q And Government's Exhibit 200B, is that just another copy
9 of the B1/B2 visa that we just reviewed in Government's Exhibit
10 200A?

11 A That's correct, ma'am.

12 Q And this was the only visa that was submitted to USCIS,
13 correct?

14 A That's correct, ma'am.

15 Q I'm going a little bit out of order so I don't have to
16 keep going back and forth and disrupt things. This is
17 Government's Exhibit 208. It's a one-page document at
18 USCIS 429. What are the members of the jury looking at now,
19 sir?

20 A The members of the jury are looking at an appointment
21 notice that was issued to Mr. Scotton for his interview.

22 Q And it was issued to Rogerio Chaves Scotton as 7797 Golf
23 Circle Drive, Apartment 204, Margate, Florida, correct?

24 A That's correct, ma'am.

25 Q The date of the notice was August 22, 2011?

1 A That's correct, ma'am.

2 Q Please come to this office at the time and place indicated
3 in connection with an official immigration matter, and the date
4 that is given is Wednesday, August 31, 2011, correct?

5 A That's correct, ma'am.

6 Q At 8:45 a.m.?

7 A That's correct, ma'am.

8 Q With an address in Oakland Park, Florida. What is that
9 address in Oakland Park, Florida?

10 A 4451 Northwest 31st Avenue, Oakland Park, Florida 33306 --
11 08 -- 09, sorry. My copy is a little blurred over here.

12 Q No problem. And that's the office you were working at,
13 correct?

14 A That's correct, ma'am.

15 Q And then the first sort of section here, the first section
16 requests that the petitioner, or the alien, in this case
17 Mr. Scotton, bring items specified at 1 through 7?

18 A Yes, ma'am, along with photocopies.

19 Q Okay. And I'm not going read them all, but for example,
20 evidence of petitioner's status, original passports with proof
21 of entry if applicable, photo ID, et cetera?

22 A Yes, ma'am.

23 Q And then at the bottom, it has your name, Officer Brooks?

24 A That's correct, ma'am.

25 Q And, I guess that's it. So did you conduct an interview

1 of the defendant and his wife?

2 A Yes, I did, ma'am.

3 Q On that date, August 31, 2011?

4 A Yes, ma'am.

5 Q And I think we went over it. Where did the interview take
6 place?

7 A In the Oakland Park field office, ma'am.

8 Q Who was present?

9 A It was Mr. Scotton, his wife, and their attorney and
10 myself.

11 Q And the attorney, it was a female, correct?

12 A That is correct, ma'am.

13 Q And did you record this interview?

14 A Yes, I did, ma'am.

15 Q And can you just tell the members of the jury a little bit
16 about how you recorded it?

17 A Back then the recorders that we were using were a two-part
18 system which comprised of a monitor, old-style monitor square
19 box and an old VHS, the big VHS cameras. And that's the
20 equipment that was used to videotape this particular interview.

21 Q And did you videotape the interview in its entirety?

22 A Yes, ma'am.

23 Q And after the interview took place, did you provide copies
24 to the FBI?

25 A Yes, I did, ma'am.

1 MS. MITRANI: May I approach?

2 THE COURT: You may.

3 BY MS. MITRANI:

4 Q I'm showing you Government's Exhibit 201A. Is this a CD
5 containing the recording of the interview that you conducted
6 with the defendant, his wife, in the presence of the lawyer?

7 A Yes, it is, ma'am.

8 Q And I'm showing you 201C as in cat. Is this a transcript
9 of that recording?

10 A Yes, it is, ma'am.

11 Q And have you reviewed this transcript in its entirety?

12 A Yes, I have, ma'am.

13 Q And does it accurately reflect what was said on that date?

14 A That is correct, ma'am.

15 MS. MITRANI: Your Honor, the government offers 201A
16 and 201C into evidence.

17 THE COURT: Any objection?

18 MR. SCOTTON: No, Your Honor.

19 THE COURT: 201A and 201C are admitted.

20 (Thereupon, Government's 201A and 201C received in
21 evidence.)

22 MS. MITRANI: Your Honor, I think at this point the
23 government was going to publish excerpts from the interview. I
24 believe --

25 THE COURT: Are there any objections to doing just the

1 excerpts, Mr. Scotton, or did you want to have the whole thing
2 done?

3 MR. SCOTTON: The whole thing. Let the jurors know
4 the truth. Let them see the truth.

5 MS. MITRANI: So he wants the whole thing?

6 THE COURT: Yes.

7 MS. MITRANI: Your Honor, may I take a moment to pass
8 out the transcripts?

9 THE COURT: Sure.

10 MS. MITRANI: Can I pass a copy for the Court?

11 THE COURT: Yes. Thank you.

12 Usually what we would do is we will break at a point
13 during the video and go again. If somebody needs a break now,
14 we could do it now instead.

15 A JUROR: Are we going to go through the entire thing?

16 THE COURT: I think it's a few hours. So we will take
17 a break in between, probably somewhere around 10:30 or so.

18 All right. Whenever you're ready.

19 MS. MITRANI: We're ready. Your Honor, may I be
20 seated during the playing of the video?

21 THE COURT: Yes.

22 (Thereupon, the videotape was played.)

23 MS. MITRANI: Your Honor, I think Your Honor mentioned
24 we would take a break at 10:30.

25 THE COURT: Yes. We are going to pause, take our

1 morning break, and we will be back at a quarter of. All rise
2 for the jury.

3 (Thereupon, the jury exited the courtroom at
4 10:29 a.m.)

5 THE COURT: We will be in recess until 10:45.

6 (Thereupon, a recess was taken at 10:30 a.m.)

7 (Thereupon, the jury entered the courtroom at
8 10:46 a.m.)

9 THE COURT: Welcome back. Please be seated.

10 And the government may resume the playing of the
11 video.

12 MS. MITRANI: Thank you, Your Honor.

13 (Thereupon, the videotape was played.)

14 BY MS. MITRANI:

15 Q Hello?

16 A Hello.

17 Q Okay. Mr. Brooks --

18 THE COURT: Can you check the microphone, please.

19 MS. MITRANI: I'm trying to put it on. There it goes.

20 THE COURT: Thank you.

21 BY MS. MITRANI:

22 Q In that interview, the defendant tells you that he and
23 Ms. Reyes live together at 7797 Golf Circle Drive, correct?

24 A Yes, ma'am.

25 Q Did you ever go to that address?

1 A No.

2 Q So you don't know who lives there, correct?

3 A That's correct.

4 Q In the interview, the defendant and Ms. Reyes indicate to
5 you that they were living together, is that correct?

6 A That's correct.

7 Q Is that an important fact in adjudicating the I485?

8 A Yes, ma'am.

9 Q The immigrant adjustment act?

10 A Yes, ma'am.

11 Q Let's go back to Exhibit 200, the I485. Can you see it
12 okay?

13 A Yes, I can, ma'am.

14 Q All right. So, now, in the application, the defendant
15 indicates his last date of entry is 1992, correct?

16 A That's correct, ma'am.

17 Q And you had asked him about it in the interview, and in
18 the interview, I think he mentioned 1989, correct?

19 A That's correct, ma'am.

20 Q All right. And then we talked about his status is 00S?

21 A Yes, ma'am, out of status.

22 Q So what does that mean?

23 A That means that he was here on a B1/B2 when he came in on
24 his last entry and that entry has elapsed.

25 Q And the date of the last arrival into the United States,

1 is that an important fact in adjudicating an I485 application?

2 A That's correct, ma'am.

3 Q Why is that?

4 A Because there are certain requirements based on how you
5 are attempting to adjust that your last date of entry, some of
6 those dates have what we call a midnight effect. It has to be
7 prior to a certain date for you to be able to adjust under
8 certain sections.

9 Q And was also the circumstances under which somebody enters
10 the United States, is that an important fact in adjudicating an
11 I485?

12 A Yes, ma'am, that's correct.

13 Q And if we go to the right-hand column now, did -- so you
14 had this interview at the end of August. And did you
15 ultimately adjudicate the defendant's I485 petition?

16 A No, I did not, ma'am.

17 Q Why not?

18 A Because soon thereafter, I was offered another position,
19 the one that I am currently in, and I was transferred from
20 Oakland Park field office.

21 Q Okay. So what happened to the file? What happened to
22 Mr. Scotton's I485 application?

23 A The files remains at the field office and/or it could be
24 sent to the officer who did the interview if they are still in
25 and I use the term in town, in the city, in the state, mainly

1 in the city because they wouldn't transfer it out of
2 jurisdiction. And I was in city.

3 Q Okay. And did you write a draft, a draft adjudication
4 letter?

5 A Yes, I did, ma'am.

6 Q And what did you do with that draft adjudication letter?

7 A I sent it to the Oakland Park field office as requested.

8 Q I see the name Yassir Navarete in red towards the bottom
9 of this I485 application. Do you see that, sir?

10 A Yes, ma'am.

11 Q Who is Mr. Navarete?

12 A Mr. Navarete now is one of the supervisors at the Oakland
13 Park field office, but at this time he was one of the officers.

14 Q One of the adjudicator officers?

15 A That's correct.

16 Q Was it transferred to him for ultimate adjudication of
17 this I485?

18 A That's what I have to assume because his name is on there.

19 Q Did you adjudicate it?

20 A No.

21 Q Mr. Navarete is an adjudication officer at the Oakland
22 Park office in 2011?

23 A That's correct, ma'am.

24 MS. MITRANI: If I can have a moment, Your Honor.

25 THE COURT: Yes.

1 MS. MITRANI: No further questions.

2 THE COURT: Cross-examination.

3 CROSS EXAMINATION

4 BY MR. SCOTTON:

5 Q Good morning, Fred.

6 A Good morning. How are you doing, sir?

7 Q Hanging in there.

8 A Good.

9 Q Let's go step by step here and try to get this thing to
10 make sure the jurors understand this proceeding. When you have
11 the first contact with Mr. Agent Van Brunt?

12 A Say that again.

13 Q When did you have the first contact with agent Van Brunt?

14 A I don't know the exact date, but it was in 2011, the early
15 part, probably about April, May.

16 Q And Agent Van Brunt is here today, right?

17 A Yes, he is, sir.

18 Q He's right behind me here, right?

19 A That is correct.

20 Q During that 2011, have Van Brunt mention to you that my
21 marry was a sham?

22 A Say that again.

23 Q During 2011 meeting that you have with Mr. Van Brunt, did
24 he advise you that my marriage was a sham?

25 A You say that he advised me that your marriage was a sham?

1 Q Yes.

2 A That is not correct.

3 Q Did he say anything about sham marriage to you?

4 A No.

5 Q How long, Mr. Brooks, do you work out at the Oakland Park
6 field office?

7 A I worked in the Oakland Park field office for
8 approximately a year.

9 Q And before that, did you work any other different
10 location?

11 A Yes, I worked in the Miami field office.

12 Q But during the time you work in Oakland Park, you work
13 only in Oakland Park?

14 A Your question is during the time I was at Oakland Park if
15 I only worked in Oakland Park?

16 Q Yes, sir.

17 A Yes.

18 Q Mr. Fred Brooks, February 23, 2011, my wife's I485 was
19 approved, correct? My wife's resident card was approved,
20 right?

21 A I can't answer that because I don't know for sure.

22 Q During this process, Mr. Fred Brooks, is my wife marriage
23 a sham?

24 A If during this process your wife's marriage is a sham?

25 Q Yes.

1 A Could you rephrase your question?

2 Q Did any time of this process, did you thought that my
3 wife's marriage was a sham?

4 A Your wife's marriage to you?

5 Q Yes.

6 A Yes.

7 Q And when that would be?

8 A When that would be?

9 Q Yes.

10 A It was when I reviewed the file before leaving to go down
11 to my next duty.

12 Q Before you left Oakland Park?

13 A It started before I left Oakland Park, yes.

14 Q Did you deny that during February 23, 2011 INS has lied to
15 me and my attorney?

16 Have INS lied to me and my attorney on February 2011?

17 A On February 2011, what did INS tell your family or your
18 attorney? I don't have a clue.

19 Q The question is just have INS lie to me?

20 A I can't answer that question because I don't know what INS
21 said to you.

22 Q INS sent me home saying my file was incomplete during the
23 interview, my first interview with INS?

24 A That your file was incomplete?

25 Q Yes.

1 A That your file was pending research, yes.

2 Q Was incomplete, that's what the paper shows?

3 A Okay. Incomplete. That could mean that there's things
4 that need to be finalized, yes, incomplete.

5 Q But it was not true, right?

6 A What do you mean it was not the truth?

7 Q It was not the truth that she sent me home because FBI
8 agent opened case and investigate me for some kind of fraud?

9 A No, you were sent home from what I know because there were
10 things pending in your file that needed to be researched to
11 make sure it was done. The FBI had an investigation, but that
12 wasn't the main reason why your case was descheduled that day.

13 Q Do you remember the name of the first office that
14 interview me and my wife on February 2011?

15 A If I remember the name of the first officer that
16 interviewed you and your wife?

17 Q Yes.

18 A No.

19 Q Is her name Yvette? You don't remember Yvette work over
20 there?

21 A What's Yvette's last name?

22 Q She's got initial as IVG?

23 A I don't remember anybody by the name of Yvette. You would
24 have to give me a full name, please.

25 Q Vallenio, that's her last name, right?

1 A Vallenio, no, I don't remember anyone at the Oakland Park
2 field office with that last name during the time that I was
3 there. Maybe you are pronouncing it in a different way. I'm
4 sorry.

5 Q Yes, probably. She made a note on the receipt of schedule
6 that she sending me back home during the problem with some
7 investigation of the FBI that you and her tried to get ahold of
8 the FBI and clarify things. Is that correct?

9 A That's the normal procedure that I do as a senior if that
10 comes up, yes.

11 Q Right. So then is it true then she lied to me? She told
12 me that there is a file missing when it is here in the files
13 here that she say she send me home because files miss, but the
14 true was she made a note that she need to contact you, then you
15 guys can contact Agent Van Brunt here to talk about this
16 possible investigation?

17 A I cannot speak for the young lady that you mentioned
18 earlier, so I don't know what she said or what she didn't say.
19 I saw what was on that paper, but I know what I did.

20 Q Right. Perhaps if I show the paper, it might recollect
21 your mind?

22 A You can show me the paper. I saw it, but my answer still
23 remains the same.

24 MR. SCOTTON: Your Honor.

25 THE COURT: Show it to the prosecutor.

1 MS. MITRANI: Thank you.

2 THE WITNESS: Okay. This doesn't recollect anything
3 because me and her never had this conversation about what she
4 wrote here. I saw that afterwards. I don't know why she put
5 this here. You would have to talk to her. I'm sorry.

6 BY MR. SCOTTON:

7 Q So you the senior officer over there, but then I have to
8 go back to talk to her in reference to what she lied to me on
9 paper, right?

10 A You are saying she lied to you. I'm telling you I don't
11 know about any lies. You would have to bring that up with her
12 and as a senior officer. I don't have all the answers as to
13 what you conversed with other officers about.

14 Q If I present INS with an application, pay all the fees
15 that was required to, Mr. Brooks?

16 A Is that a question or a statement?

17 Q It's a question, sir.

18 A It sounded like a -- could you please --

19 Q Have I presented INS application to pay all the fees that
20 was required?

21 A Did you present to INS your application and all the fees
22 that are required?

23 Q Yes.

24 A According to the file, yes, you did.

25 Q Do you deny that when you have application that involves

1 money, the application become a contract?

2 A If I deny when you have an application that involves
3 money, does it become a contract?

4 Q Yes, sir.

5 A I don't know what that is relative to. What are we
6 talking about? I don't understand.

7 Q I conduct some business with the INS, don't you agree with
8 me, involving money, I pay for some service and I should have
9 received the service. Don't you agree with me?

10 A I believe you should.

11 Q Do you deny INS lied to me, the contract has been broke?

12 A I don't know what INS told you that makes you believe that
13 they lied to you. If you believe that the immigration and
14 naturalization service lied to you, that's a matter that you
15 may have to pick up with them. I'm very sorry. I represent
16 them, but I didn't lie to you so I don't know.

17 Q Mr. Van Brunt -- Mr. Fred Brooks, have you given false
18 statements to Mr. Van Brunt about my case?

19 A What statement did I give Mr. Van Brunt that you are
20 stating could be false or was false?

21 Q There's a question, sir. Have you given any false
22 statement in reference my case to Mr. Van Brunt?

23 A No.

24 Q So you have a conversation with Mr. Van Brunt on
25 February 24 of 2011, correct?

1 A I would have to see my phone records. I can't tell you
2 exactly if I had a conversation on that day with him or not.

3 Q Where is my wife from again? Do you know where is my wife
4 from?

5 A Where your wife is from?

6 Q Yes.

7 A Your wife stated she's from Cuba.

8 Q Right. But did you mention to the FBI agent that reason I
9 was trying to engage on change my status, because I have marry
10 a United States citizen?

11 A I don't understand the question.

12 Q The agent has claimed that during the conversation, you
13 mentioned to him that I tried to change my status in the United
14 States because I marry a United States citizen, and you know my
15 wife is not a United States citizen, right?

16 A Because you married a United States citizen?

17 Q Yes, sir.

18 A I don't remember making that statement because your wife
19 is not a United States citizen. So I don't know where that is
20 coming from.

21 Q So then the statement was false statement, right?

22 A I don't make that statement, so I'm not going to say I
23 made a false statement.

24 Q Recall the FBI, they say you made it?

25 MS. MITRANI: Objection, Your Honor.

1 THE COURT: Sustained. Mr. Scotton, we have discussed
2 this numerous times. Please stick to the question.

3 BY MR. SCOTTON:

4 Q After the interview on August 30, when did you decide to
5 deny my application?

6 A Like I said earlier, after I reviewed your case and I was
7 transferred down, the doubts were in my mind when I was getting
8 ready to transfer down to the Kendall field office, but I
9 didn't get the time to finish it.

10 Q And what have would be the time?

11 A What would be the time?

12 Q The interview was August 30. Then when did you make your
13 mind of denying my case?

14 A Right after my interview, I had doubts about the marriage
15 in your case so I started formulating and articulating what I
16 need to articulate to put that draft denial together.

17 Q But you don't have a date; you can't give me a date?

18 A I can't give you a date.

19 Q You can't give it a date?

20 A No, I cannot.

21 Q Did you give the videotape to Van Brunt the same day?

22 A No, I did not.

23 Q Was Van Brunt sitting in the next room watching the
24 interview?

25 A From my knowledge, Mr. Van Brunt wasn't even in the

1 building.

2 Q Have you seen a copy of the denial letter to
3 Mr. Van Brunt?

4 A No, I did not send a copy of the denial letter to
5 Mr. Van Brunt. And I did not send a denial letter. I did a
6 draft letter.

7 Q You sent a copy of the draft letter?

8 A I sent a copy of the draft letter to the Oakland Park
9 field office as requested.

10 Q Mr. Van Brunt has claimed he in court that you sent direct
11 to him before they arrest me?

12 THE COURT: Sustained. Mr. Scotton, come sidebar
13 please.

14 (Thereupon, the following was heard sidebar.)

15 THE COURT: We have talked about this many times. You
16 cannot testify, nor can you say what you think other people
17 have said when you are asking questions. You can ask the
18 witness questions about things that he would have knowledge of.
19 You can't try to testify or try to say what you want other
20 witnesses to have said who aren't testifying.

21 If you want those witnesses to testify, then you will
22 need to call them as witnesses and you can question them about
23 what they said and did. It is totally inappropriate. I have
24 explained this on a number of occasions and I expect you to
25 follow my rules. My rules are being followed based on the

1 federal rules of evidence and the rules that govern this court,
2 the federal rules of criminal procedure, and the case law, and
3 you will need to follow them. Do you understand?

4 MR. SCOTTON: Your Honor, I'm not trying to a break
5 rule here. I understand -- the Court needs to understand I'm
6 not a lawyer. If things come up, I'm not trying to break the
7 rules.

8 THE COURT: Mr. Scotton, that excuse does not hold
9 water with me. First of all, you know, from day one I told you
10 you would be responsible for acting in accordance with all the
11 federal rules. You were told that at the beginning.

12 You don't get to play by some other set of rules
13 because you engaged in conduct that was inappropriate that
14 caused you not to be able to be represented at this time by an
15 attorney. You created your own situation. You don't benefit
16 from the problems you created. You need to play within the
17 rules like everybody else. You will need to follow the rules.
18 I have explained this on a number of occasions. I expect you
19 to follow the rules. Do you understand?

20 MR. SCOTTON: Yes, Your Honor.

21 THE COURT: All right.

22 (Thereupon, the following was heard in open court.)

23 BY MR. SCOTTON:

24 Q Mr. Brooks, prior to this interview here, this testimony
25 here, have you been in the office of the prosecutor?

1 A Yes, I have.

2 Q How many times you have been to their office?

3 A I believe it was three times.

4 Q How many times, how many hours you spend over in that
5 office?

6 A I didn't write minute for minute, so I can't tell you. It
7 was probably about two and a half hours one time and maybe
8 three hours the next, maybe a little more, maybe a little less.
9 I can't give you a specific inclusive set of time frame.

10 Q Is there any reason why it took INS seven months after my
11 interview to deny my application?

12 A I could not really answer that question. As I said, after
13 I finished your interview, shortly thereafter, I was
14 transferred out. And then I was asked to support with a draft
15 of the denial, which I did.

16 Q Is there any reason why you fabricated my address on that
17 draft?

18 A Say that again.

19 Q Is there any reason why you fabricated a different address
20 on that draft?

21 A Who fabricated your address on what?

22 Q You did it in your letter.

23 A I fabricated your address?

24 Q Yes, sir.

25 A How did I do that?

1 Q You just mentioned that my address -- what did you
2 mention, my address was Margate, correct?

3 A That is correct.

4 Q Why in your draft letter did you put Collins Avenue in
5 Miami Beach when I never lived there?

6 A That draft letter was made off a template. I have many
7 templates on my computer. If I do a draft letter, it's a
8 draft. It's not a final product. So I sent them the content
9 of the draft letter which is what's important. That draft
10 letter wasn't the letter that was sent to you. You were sent a
11 letter with your original address on it. So that was a draft
12 from a template, which had had somebody else's address on there
13 previously.

14 Q So you say that this letter has somebody else address, but
15 then you put at the top of somebody else address my name,
16 correct?

17 A Mr. Scotton, I just explained that that's a draft letter
18 from a template.

19 Q Sir, I understand. But you put my name on this template?

20 A That is correct, so when they get that template, this is
21 for Roger Scotton, they can enter the other pertinent
22 information. I put the substance of the draft of the denial on
23 that letter. The remainder, they just cleaned that up and make
24 sure that the address is correct and send it to the correct
25 address which I am pretty sure they did.

1 Q And did you also put the address of my lawyer on the
2 bottom of the template draft letter?

3 A Mr. Scotton, we can go around and around. That's a draft
4 letter. Whoever is on there is only a draft. What was more
5 important on that letter was the substance of why your
6 application was being denied.

7 Q Sir, what is important in the letter to me here is that
8 you answer my question, please.

9 A I thought I just did. It's a draft letter and that's from
10 a template.

11 Q The FBI claimed that you sent, when did you send this
12 letter to the FBI?

13 A I just explained that I never sent that letter to the FBI.
14 I sent that draft letter to the Oakland Park field office as
15 requested.

16 Q So then you say the FBI has made a false statement?

17 A I did not say that the FBI did anything. I just told you
18 I sent a draft letter to the Oakland Park field office.

19 Q So you never sent the letter to FBI?

20 A I answered that three times. I did not send the letter to
21 the FBI. I sent it to Oakland Park field office as requested.

22 Q But you can't recall the day you sent this letter to the
23 Oakland Park --

24 A I sure cannot.

25 Q It is a normal procedure for immigration to send draft

1 letters like this without signature and dates?

2 A Between us and immigration, we do that. And there's
3 nothing procedurally wrong with that. As I said, that is not
4 the final letter of denial that's going to the applicant. That
5 is a draft letter because of the situation that we find
6 ourselves in from time to time which I found myself in when I
7 got transferred.

8 Q So I asked the prosecutor has showed the application. You
9 recall this application here that my lawyer has on file with
10 immigration, correct?

11 A If I recall the application that the prosecutor showed me
12 that you and your lawyer filed with immigration?

13 Q Right.

14 A Correct.

15 Q So do you remember the address was on the application as
16 well, right?

17 A If I remember the address that's on the application?

18 Q Yes, sir.

19 A Yes, I do.

20 Q Fred, how long you think INS has committed fraud against
21 me?

22 A What is your question, sir?

23 Q How long you think the INS has been committing fraud
24 against me?

25 A How long INS has been committing fraud against you?

1 Q Yes, sir.

2 A I have no clue of any fraud committed against you by INS
3 so I can't answer that question.

4 Q How long documents has been fabricated in my case,
5 Mr. Fred Brooks?

6 A I have no clue what you are talking about.

7 Q Mr. Fred Brooks, are you familiar with the form DS156?

8 A Department of State form 156?

9 Q Yes, sir.

10 A You would have to show me a copy of it and I may not be
11 familiar with it because I don't work for the Department of
12 State.

13 THE COURT: Is it in evidence yet?

14 MR. SCOTTON: Yes, it is, Your Honor.

15 THE COURT: All right.

16 THE COURT: For the record, would you please state
17 what government's exhibit this is. It should be on the bottom.

18 MR. SCOTTON: Not on this one here, Your Honor.

19 MS. MITRANI: I think it's Exhibit 205; although, I
20 can't see it closely. It looks like it's Exhibit 205. I have
21 to see it.

22 BY MR. SCOTTON:

23 Q You have never seen this form before, have you, Mr. Fred
24 Brooks?

25 A Have I ever seen this particular form before?

1 Q Not this particular, but this kind of form before?

2 A I probably have, but it's been a while. I probably have.
3 I don't know.

4 Q Do you think this form has been modified?

5 A I don't know.

6 MS. MITRANI: Objection, Your Honor.

7 THE COURT: Sustained.

8 BY MR. SCOTTON:

9 Q Mr. Fred Brooks, this is a form from 01 visa that was
10 petitioned for me by a race team on 2008. At one point as you
11 see here the visa was granted, but later on was denied. Do you
12 see that?

13 A I can see where you are pointing. Okay. 2002, March 17,
14 correct?

15 Q Can you see right there at one point was marked as
16 granted, was issued, and then was marked denial? Can you see
17 that?

18 A I can't see that that clear. I'm not familiar with the
19 form so I don't know what it should read. That's a Department
20 of State form. Issued, refused. Okay. Again, I'm not
21 familiar with how they do their procedures. There's an X over
22 the word issued. There's a date of March 17, 2008. And it
23 says validity. I don't work for the Department of State, so I
24 cannot attest to anything on that form.

25 Q I understand that, sir, but you can see that it has been

1 marked twice. It has been shown and then issued and then
2 denied, correct?

3 A I don't know. As I said, I don't work for the Department
4 of State and I cannot attest to what they do on their forms.

5 THE COURT: We are going to take our lunch break now
6 and return at 1:30. Have a great lunch. Please don't discuss
7 the case with anyone, please don't disburse anything about the
8 case, and please don't do any independent research into the
9 case. See you all back here at 1:30. Please rise for the
10 jury.

11 (Thereupon, the jury exited the courtroom at
12 12:30 p.m.)

13 All right. See you all back here at 1:30.

14 (Thereupon, a luncheon recess was taken at 12:30 p.m.)

15 (Thereupon, the jury entered the courtroom at
16 1:30 p.m.)

17 THE COURT: Thank you. Please be seated. I hope
18 everybody had a really good lunch. And for purposes of keeping
19 our record clean, is there anybody here who discussed the case
20 with anyone, disbursed any information about the case, or did
21 any research into the case? If so, please raise your hand for
22 me now.

23 I see no hands. We all thank you for that.

24 And when we left off, Mr. Scotton was cross-examining
25 Mr. Brooks, and we will continue with that. Thank you.

1 THE WITNESS: Thank you, ma'am.

2 THE COURT: Mr. Brooks, I just need to remind you you
3 are still under oath. Do you understand?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Very good. Thank you.

6 THE WITNESS: You're welcome.

7 BY MR. SCOTTON:

8 Q Mr. Brooks, just to refresh me here, you said earlier you
9 never sent any denial letter to Agent Van Brunt, right?

10 A That is correct.

11 Q So no draft letter, no final letter, nothing has been sent
12 through you to him, correct?

13 A That is correct.

14 Q And from the day you left Oakland Park office to the Miami
15 office, you don't have any recollection when did you draft this
16 letter and send back to Oakland Park, right?

17 A No, I don't, and I left Oakland Park and went to Kendall,
18 not Miami.

19 Q Kendall. You don't keep any records of emails you might
20 send to them so you could have a recollection when you sent
21 that type of letter?

22 A There might be an email, but I can tell you right off the
23 top of my head. I can't give you a date.

24 Q And you mentioned earlier also the letter was some kind of
25 prototype you guys keep in the computer system, correct?

1 A I think I used the word template.

2 Q Template. And the template letter that you sent has come
3 from the Miami office, correct?

4 A No.

5 Q The template you use came from the Kendall office?

6 A The template that I use came out of my template. I have
7 templates of different types of denials in my computer.

8 Q Right. And which office apparent the letter, which office
9 location apparent on the letter?

10 A Say that again.

11 Q Which office location show on the top of this letter here?

12 A Which office location should be shown on the top of that
13 letter?

14 Q Yes, sir.

15 A To answer your question, sir, it's a template. So I don't
16 quite -- I don't see what you are getting at when you ask me
17 what address should on the top. Whatever address is on the
18 top, if it's not the address from that office itself, it's a
19 template because I may have a denial that I wrote way back
20 when, and I use it as a template.

21 Q So you wrote templates from different office?

22 A It's not that I write templates from different offices, I
23 have these templates in my own drive in the computer.

24 Q I understand that.

25 A It's a drive called FBrooks drive. So if I'm in Miami,

1 that goes with me. I just have my IT people transfer that.

2 Q When you say this letter here back to Oakland Park, you
3 didn't sign your name on the letter, do you?

4 A No, because it's a template. It's a draft.

5 Q Have you sent a copy of this draft to my lawyer?

6 A No, I did not.

7 Q Did you ever send of a copy of this draft to me?

8 A Drafts only go as an internal thing. The draft doesn't go
9 to the applicant or the attorney. The final goes to the
10 attorney and the applicant. So to answer your question, no.

11 Q So during this whole process of my application deny, has
12 Ms. Mollinedo application get denied too?

13 A I don't know anything about Ms. Mollinedo's application.
14 I only know about your application.

15 Q So half of my marriage you can say it is a sham, but half
16 marriage is not a sham?

17 A Can you rephrase that, because the person that came in
18 front of me, the parties that came in front of me, your wife
19 didn't come in front of me with her application for marriage.
20 I am pretty sure when your wife applied, she applied under
21 section 1 on her own recognizance. You were the one trying to
22 derive from your wife's residency.

23 Q We both applied together. Remember that?

24 A Yes, but the only file I have is your file.

25 Q Right, but you recall that both of us applied together?

1 A If you say I recall, that question was asked of me right
2 here today where I could answer that accurately because I know
3 what that means when they check that block, but I have never
4 seen your wife's file, per se.

5 Q Do you believe that to become a sham marriage takes two on
6 a sham marriage or two persons?

7 A That question could be answered in a myriad of ways.

8 Q Mr. Brooks, what took seven months then the final letter
9 come up and say my case is denied?

10 A What took seven months?

11 Q Yes.

12 A I cannot answer that question. Like I said, after I
13 finished your interview, I was immediately thereafter
14 transferred and the file remained in the Oakland Park field
15 office.

16 Q Is it denial of my application was come on March 31,
17 correct, of 2012?

18 A If that's the date that's on your denial, yes.

19 Q Mr. Van Brunt has received a draft letter saying before
20 March 15 my case was denied, correct?

21 A From who? You are asking me and you I can answer you.
22 No, he did not receive that from me, so I don't know what date
23 if he received a draft copy of the draft.

24 Q Let's make a better question here. The application was
25 denied March 31, right, of 2012? But way before that we got a

1 draft that said the case was denied, correct?

2 A You say we got at draft. Who got a draft? I sent a draft
3 copy to the Oakland Park field office as requested. I was
4 requested to send that draft back to branch chief and so I did.
5 So I can't say we or them or they. I can say I sent it to the
6 field office.

7 Q And whose maybe the branch chief?

8 A Excuse me?

9 Q Who is the branch chief over there in Oakland Park?

10 A The branch chief at that time was Ms. Rosalinda Fernandez.

11 Q Did you wrote the report of the denial?

12 A Did I write what?

13 Q Did you wrote the whole report of the denial? Did you
14 wrote that?

15 A I wrote a draft denial.

16 Q Right, but it never signed the final letter of the denial
17 letter?

18 MS. MITRANI: Objection, asked and answered.

19 THE COURT: Sustained?.

20 BY MR. SCOTTON:

21 Q Do you know that during March 29, prosecutor has waived
22 this letter in court and say she just received that letter?

23 A I wasn't in court and I don't know anything about that
24 hearing.

25 Q Do you know also that pretrial service has claimed that I

1 have a pending application with immigration appealing?

2 A Mr. Scotton, anything that happened in any hearing
3 previous to this one, I have no knowledge.

4 Q Right. But do I have any appealing in your knowledge of
5 this case? Do I have any appealing pending before the denial?

6 A Mr. Scotton, since I left the Oakland Park field office,
7 your file was left in Oakland Park field office. I was asked
8 to submit a draft of a denial and that's what I did.

9 Q My question to you, do you know if I have any appeal
10 pending. As you know, that you interview me and you have
11 knowledge in that case, is any appeal filed by my lawyer before
12 any denial?

13 A Not that I know of.

14 Q Then you agree with me that if I say I have appealing this
15 is a lie?

16 A If I would agree with you on what?

17 Q If I have say to the pretrial service of that I have an
18 open appeal, this is a lie, right?

19 A Mr. Scotton, I have no knowledge about an appeal, so I
20 don't know what you are talking about and I cannot agree to
21 something I have no knowledge about.

22 Q A lot of people come in here and say they have no idea
23 what I am talking about, sir.

24 A I'm sorry about that.

25 Q Do you know the prosecutor has claimed in court that I

1 have a lack of status in United States? Do you know that?

2 MS. MITRANI: Objection, Your Honor.

3 THE COURT: Sustained. Mr. Scotton, please stick to
4 asking questions that this witness can answer.

5 BY MR. SCOTTON:

6 Q Do I have a lack status in this country, Mr. Brooks?

7 A Do you have a what?

8 Q If I have a lack of status in this country?

9 A If you have a lack of status in this country?

10 Q Yes, sir.

11 A I would say you do.

12 Q You do. It is not the truth that on November 1, 2010,
13 immigration has approve work authorization for me?

14 A I don't approve work authorizations. I don't have
15 anything to do with work authorizations. So to answer that
16 question, I would have to look in a file. I don't have any
17 knowledge about your work authorization being approved, denied,
18 or still pending.

19 MR. SCOTTON: I'm going to show him this.

20 MS. MITRANI: Your Honor, whoa, whoa. Your Honor, I
21 think he's going to publish it to the jury. It's not in
22 evidence.

23 THE COURT: Mr. Scotton, you can't put things on -- we
24 have talked about this before. Remember, you cannot put things
25 on the screen until they are in evidence. That's not in

1 evidence, so you can show it to Mr. Brooks, but you can't put
2 it on the screen.

3 MR. SCOTTON: I asked the prosecutor if they have this
4 as evidence. They handed this to me before.

5 THE COURT: Apparently it's not evidence. So you need
6 to either show it to Mr. Brooks or move on to a different
7 question, please.

8 MR. SCOTTON: I don't understand, Your Honor. They
9 get to show --

10 THE COURT: Mr. Scotton, we are not going to discuss
11 it right now.

12 MR. SCOTTON: Then we need to go to sidebar, Your
13 Honor.

14 THE COURT: Is it in evidence or is it not in
15 evidence?

16 MR. SCOTTON: They get to present evidence and I
17 can't.

18 MS. MITRANI: It was produced in discovery. It's not
19 in evidence. So if he wants to show the witness and take it
20 from there, that's fine.

21 THE COURT: All right.

22 MR. SCOTTON: Your Honor, can I speak to you on a
23 sidebar, please?

24 THE COURT: Not right now.

25 MR. SCOTTON: I'm trying to understand the rules now

1 of me presenting my evidence.

2 THE COURT: Mr. Scotton, as we have previously
3 discussed, you can show the witness the document. If the
4 witness can identify it appropriately and authenticate it, then
5 you can seek to move it into evidence. Unless and until it's
6 in evidence, it cannot be shown to the jury.

7 BY MR. SCOTTON:

8 Q Mr. Fred Brooks, this is a history of the application,
9 dates that was approved?

10 A Okay.

11 Q Do you think this something provided by immigration?

12 A This is case results that comes out of the immigration
13 system.

14 MR. SCOTTON: Can I present this as evidence now, Your
15 Honor?

16 MS. MITRANI: No objection.

17 THE COURT: All right. Then let's admit it as
18 Defense -- let's see. I think we are up to -- is this
19 Defense 1?

20 Defense 2. Thank you.

21 (Thereupon, Defendant's 2 received in evidence.)

22 BY MR. SCOTTON:

23 Q Mr. Fred Brooks, this paper shows that on November 2010, I
24 deposit a work permit that was approved by immigration, by INS,
25 I765, correct?

1 A That's correct.

2 Q And then the work authorization was valid for one year,
3 then on August of 2011 was once again renewed for another year
4 and was expunged in 2012, correct?

5 A That is correct.

6 Q So that shows that I have a lack status when I'm allowed
7 to stay in the country and work and I have permits to drive and
8 everything else?

9 A That doesn't give you status.

10 Q That doesn't give you status?

11 A Anybody that has an I485 pending with USCIS can apply for
12 a work authorization, but it doesn't give you status. It gives
13 you the authorization to work while the application is still
14 pending.

15 Q But it doesn't show that I'm illegal in this country, does
16 it?

17 A It shows what?

18 Q It shows that I'm illegal in the country?

19 A That word you used in between illegal or live?

20 Q It those shows that I am illegal in this country?

21 A If it shows that you are illegal?

22 Q Yes, sir.

23 A No, it doesn't.

24 Q It doesn't, right?

25 A This doesn't show that you are illegal in this country.

1 Q Right. So I got some status to stay here?

2 A Well, we are going to mix apples and oranges here because
3 the bottom line, the application you submitted for adjustment
4 of status, just like anybody else who submits a I485 that has
5 the age to work and requests to submit a work authorization
6 permit can get that permit approved if they meet the
7 requirements. But that doesn't ask you if you are illegal or
8 legal because now you are being petitioned on an I485 that's
9 pending.

10 Q Yes, but that give me a full year to stay here in the
11 country?

12 A It gives you a full year to possibly work in the country
13 because it's a work permit.

14 Q Exactly. But then how can you say that lack of status
15 when United States say, okay, I allowed to stay here for a
16 year, right?

17 A Let me connect -- can I explain one second?

18 Q Yes.

19 THE WITNESS: Ma'am?

20 THE COURT: Go ahead.

21 THE WITNESS: When you come in -- if you come into
22 this country illegal, anybody comes into this country illegal
23 and they get married to a United States citizen, they are
24 illegal in the country. If they come into this country as a
25 B1/B2, they get a six-month duration of stay with the

1 possibility of an extension for six more months which only
2 evolves to one year. Anything after that, you are out of
3 status. You can still get petition for to try to adjust by
4 virtue of a marriage. It doesn't negate the fact that you are
5 legal or illegal. It doesn't. It just says that you have an
6 application that will be reviewed by immigration to make sure
7 that you meet the requirements. If there are exceptions, they
8 would implement those exceptions. But this here has nothing to
9 do with legal or illegal. This is an authorization work
10 permit. That's all it is. There's a 485 pending for
11 adjustment of status. That's all it is.

12 Q Right there it should I765 approve and give the status to
13 stay here one year to work?

14 A That didn't give status to stay. It says you have
15 authorization to work in this country during that period that
16 that card is valid. That's what it says.

17 MR. SCOTTON: Your Honor, can I show the card?

18 THE COURT: Yes, to the witness.

19 BY MR. SCOTTON:

20 Q There is a copy, Mr. Brooks, of the authorization
21 employment.

22 A Okay. It gives you the authorization to work.

23 Q Right. So it doesn't say here in the top, the person
24 identified to work in the United States --

25 (Thereupon, there was an interruption by the court

1 reporter.)

2 BY MR. SCOTTON:

3 Q The person identified is authorized to work in United
4 States for the valid of this card, correct?

5 A That's what it says, work authorization.

6 Q Right. So this --

7 THE COURT: Can you please go back to the podium to
8 ask the questions into the microphone. Thank you.

9 BY MR. SCOTTON:

10 Q So this card here give me -- allow me to stay here?

11 MS. MITRANI: Objection, asked and answered.

12 THE WITNESS: That card allows you to work in the
13 United States. It's a work authorization permit. Most people
14 that have a work authorization permit in this country that are
15 married and/or came into this country years ago, they are
16 illegal in the country. But they have a pending 485 based on
17 their marriage that allows them to apply for a work permit to
18 work in the country. It doesn't say that you are legal or
19 illegal. It just says that you have authorization to work and
20 that is granted to you as a privilege because you are pending
21 an attempt to adjust in the country under marriage.

22 BY MR. SCOTTON:

23 Q If I don't have the authorization approve, let's say the
24 authorization is out of the picture, I don't have the
25 authorization approve, now 'm live illegal in the country?

1 A Now you are what in this country?

2 Q Illegal in this country.

3 A You cannot have an authorization and still be illegal or
4 you can have an authorization -- it's a work permit,
5 Mr. Scotton.

6 Q Mr. Fred Brooks, do you deny that INS has either lied to
7 me or covered up for this agent on the facts of this case?

8 A I believe I answered that before and I said no. I said
9 you would have to ask immigration that question because you
10 are -- I represent immigration and I represent them in a very
11 professional manner with a lot of integrity. And to ask me if
12 INS lied to you, you are going to have to ask INS.

13 Q Do you believe -- well, do you think it is normal for
14 someone to pay over \$60,000 in several different cases and all
15 of them all has a problem? Do you think it's normal?

16 A I don't understand your question. And I cannot answer
17 that question because every case is case specific.

18 Q When this petition was filed, INS has knowledge that I was
19 in this country, correct?

20 MS. MITRANI: Objection, asked and answered and
21 relevancy.

22 THE COURT: Sustained.

23 BY MR. SCOTTON:

24 Q Migration attorney has testified this petition, Mr. Fred
25 Brooks, and she has put all the information on it, correct?

1 A I would assume so.

2 Q So INS know that I'm present in this country, correct,
3 when she filed the application?

4 A As far as I'm concerned, INS knew you were present in this
5 country when you came for the interview.

6 Q During this process of this application, I485, immigration
7 has conducted the background on me, correct?

8 A Correct.

9 Q You don't deny that immigration know that I have O1 visa
10 that was petitioned before and also I140 that was also
11 petitioned for me before, correct?

12 MS. MITRANI: Objection.

13 THE COURT: Sustained.

14 BY MR. SCOTTON:

15 Q Do you deny the INS know that previous I have applications
16 pending?

17 A If I deny that INS knows that you have other petitions
18 pending?

19 Q Yes.

20 A I don't know that you have other petitions pending.

21 Q When anybody apply with the INS, Mr. Fred Brooks, INS has
22 the knowledge of this person has been staying in country
23 illegal or if this person has any kind of status, right?

24 A We do our best to find out, but that's not a hundred
25 percent accurate.

1 Q When I apply for the I485, immigration has the knowledge
2 of all other applications from before, correct?

3 A Other applications that are pertinent.

4 Q So you say that INS do not have a recollection of the 01
5 visa that has been denied?

6 A I did not say that because that wasn't the question.

7 Q Do you agree with me that when I apply for 485, INS knows
8 that I have an 01 visa denied?

9 A I would say yes, it's in the file.

10 Q And also they know that I have an I140 pending?

11 A You have an I140 pending?

12 Q Yes, sir.

13 A Based on your file, your I140 was approved. I'm pretty
14 sure you know that.

15 Q Do you believe that the reason my application has been
16 denied is because the agent FBI has forced immigration to deny?

17 A Could you repeat that question again.

18 Q Do you believe that my I485 has been denied because
19 Van Brunt has advised immigration to deny that?

20 A I have no knowledge of that. And I don't believe anything
21 other than what I know to be factual and I don't know that to
22 be factual. So I don't believe it.

23 Q Do you have any records by INS that they have conducted
24 any investigation to see if my marriage was a sham or not?

25 A I did our interview, Mr. Scotton. I am the one that made

1 a decision that your case was going to be denied. That's why I
2 drafted a draft denial, because I was no longer present in the
3 Oakland Park field office.

4 Q And what is the basis of your denial, Mr. --

5 A It's all in the denial.

6 Q It's all in the denial?

7 A That is correct.

8 Q So isn't it true that you mentioned in denial that I give
9 wrong information about my wife's car?

10 A Say that again.

11 Q On your denial you mentioned that I gave wrong information
12 on my wife's car, is that true?

13 A In the denial it says that you gave wrong information
14 about your wife's car?

15 Q Yes.

16 A Can you read that word for word where it says that?

17 MS. MITRANI: Actually, Your Honor, I would ask that
18 if he's reading from the document, that he allow the witness to
19 look at the document.

20 THE COURT: All right.

21 MS. MITRANI: The entire document.

22 BY MR. SCOTTON:

23 Q Can you read that to the jury. They can understand what
24 he wrote.

25 MS. MITRANI: Objection, Your Honor.

1 THE COURT: Sustained.

2 MS. MITRANI: Also object to relevancy. It's a draft
3 denial.

4 THE COURT: It's overruled on relevancy, but it's
5 sustained on the first.

6 BY MR. SCOTTON:

7 Q So based on the denial, you decide to deny this case based
8 on the fact that I gave the wrong information about my wife's
9 car?

10 A From my information, what's on this document, what was
11 just said on the videotape, it's the same.

12 Q So you are saying that I have given information, the wrong
13 information, about the wife's car?

14 A I don't know where you are getting that from, but anybody
15 said specifically me that you gave erroneous information. What
16 is on here is exactly what you said on that videotape.

17 Q You wrote right on the paper, Mr. Fred Brooks, right there
18 in front of you. Am I lying that is not on the paper, that you
19 mentioned the paper over there that I have provide the wrong
20 information about my wife's car?

21 A Where does it say on this document that I said you
22 provided erroneous information? What I redacted on this
23 document is word for word what was said on that interview. The
24 question I asked you about the type of vehicle your wife drives
25 and the answer that you gave me. It's right here. That's

1 exactly what's on the videotape also.

2 So there is no -- you know, I'm not going to debate with
3 you, Mr. Scotton. But that is -- your question that I said
4 that you gave erroneous information, that's nowhere here and I
5 have never said that.

6 Q Mr. Fred Brooks, you asked me what is the make of the car
7 of my wife, correct?

8 A That is correct.

9 Q And what I say to you, a Honda, correct?

10 A That is correct.

11 Q In no other way in that video you have asked me what is
12 the year of the car of my wife. Have you asked the year of the
13 car of my wife? As a matter of fact, it is not true that I
14 offer you more information. I give the year and not only the
15 year, but finally I give the right year?

16 A Is there a question you are trying to ask me that you are
17 trying to get to? You are trying to say that I said something
18 that's not here. I didn't ask you the year of the card. I
19 asked you the model of the car.

20 Q Right.

21 A You decided to introduce it could be a '99, '96, '98.
22 That was your introduction. That wasn't part of my question.

23 Q But you mentioned on the denial letter that that's one of
24 the reasons you denied my application also?

25 A Mr. Scotton, your case was denied on discrepancies, not a

1 discrepancy.

2 Q Right.

3 A On discrepancies. So if you are going to hinge your
4 questioning about that one question, there are discrepancies on
5 this document, not a discrepancy.

6 Q Let's go to the second one then, Mr. Brooks. What is the
7 next one that you deny, you decide to deny the case say the
8 marriage was a sham?

9 A Mr. Scotton, it's a culmination of everything. Everything
10 that took place in that interview is here on this document and
11 those discrepancies were the discrepancies that led to a denial
12 of your case.

13 Q And you believe that by the jury see that video, the
14 marriage is a sham in your belief?

15 A I cannot tell the jury what to believe and I will never
16 try to tell the jury what to believe.

17 Q What makes a marriage a sham you to?

18 A Many things make a marriage a sham. And in your case,
19 Mr. Scotton, the discrepancies here led me to that conclusion.

20 Q Did you run investigation? Did you went to the house?

21 A There was no need for me to go to your house.

22 Q No need to go to the house. Do you think INS be satisfied
23 here if I play a videotape of me and my wife having sex?

24 A That's your decision. I don't know if that would be
25 appropriate, but that's your decision.

1 Q Why not? I'm face jail time here with all this coverup
2 here.

3 MS. MITRANI: Objection, Your Honor. This is
4 ridiculous.

5 THE COURT: Sustained. Mr. Scotton, please come over
6 sidebar.

7 (Thereupon, the following was heard sidebar.)

8 THE COURT: Mr. Scotton, you know that you are not
9 supposed to be talking about punishment. That is a matter for
10 the jury. I have previously discussed that in proceedings we
11 have had in this case. I expect that you won't go into that
12 again.

13 MR. SCOTTON: All right.

14 MS. MITRANI: Maybe at some point we request a
15 cautionary instruction.

16 THE COURT: I could do that.

17 MS. MITRANI: Thank you.

18 THE COURT: Punishment is a matter that -- I will read
19 it from the instructions. That's from the instructions.

20 MS. MITRANI: All right.

21 (Thereupon, the following was heard in open court.)

22 MR. SCOTTON: Your Honor --

23 THE COURT: One moment, please.

24 Members of the jury, I need to instruct you that you
25 must never consider punishment in any way to decide whether the

1 defendant is guilty. If you find the defendant guilty, the
2 punishment is for the judge alone to decide later. Is there
3 anybody who does not understand that instruction? If so,
4 please raise your hand for me now.

5 I see no hands. Thank you very much. Go ahead,
6 Mr. Scotton.

7 MR. SCOTTON: We need to go sidebar, Your Honor. I
8 don't want to upset anybody.

9 (Thereupon, the following was heard sidebar.)

10 THE COURT: Wait until she's up here, please.

11 MR. SCOTTON: Correct me if I'm wrong here, what I'm
12 trying to make him understand based on why he say he deny my
13 application, you and your spouse was asked to tell about your
14 spouse car. You said your spouse drive a Honda when they ask
15 what the model and year the Honda is. See, he never asked in
16 the video about the year of the car. I offered the year of the
17 car. So I asked him the question right now, you ask me, you
18 say deny because you ask the year of the car. Look at the
19 video. You never asked me the year of this car. I offered the
20 information. As a matter of fact, I give the right
21 information.

22 MS. MITRANI: Your Honor, that's not his denial
23 letter. That's not Mr. Brooks' denial letter. You are
24 misleading this Court.

25 MR. SCOTTON: Really, that's not my denial letter?

1 THE COURT: Listen.

2 MS. MITRANI: That's right. That's --

3 THE COURT: Stop. I don't know what you want me to
4 do, Mr. Scotton.

5 MR. SCOTTON: I'm getting sick and tired of this
6 coverup, Your Honor. I'm trying to defend myself.

7 THE COURT: Mr. Scotton, that's enough.

8 MR. SCOTTON: Prosecutor has accused me here --

9 THE COURT: Mr. Scotton, you have been disrespectful
10 of everybody involved in this process. You have been
11 disrespectful of the process, the Court, the witnesses, and the
12 prosecution and you have been disrespectful of your attorneys.
13 And you need to stick within the rules. You need to follow the
14 rules just like everybody else does. You don't get to do
15 different or special things that are not allowed by the rules.
16 You must follow the rules. That's really all there is to it.
17 I'm not going to keep taking sidebars for you to express
18 frustration.

19 MR. SCOTTON: Now the prosecutor is saying this letter
20 was fake this letter was handed to my lawyer. How is this
21 letter fake?

22 THE COURT: Mr. Scotton, I never heard her say it was
23 fake. I heard her say it was a draft which is a different
24 thing from a final copy.

25 MS. MITRANI: You can see it. It's before you. This

1 is not Fred Brooks' denial letter. This is the denial letter.
2 So he's misleading because he's implying that that is
3 Mr. Brooks' documents, Your Honor, and it is not.

4 THE COURT: I see what you are saying. If this is not
5 his letter, you can't question him regarding it. I mean, you
6 can ask questions. If he says he doesn't know what it is, then
7 it's not his.

8 MR. SCOTTON: On his draft letter, he never have
9 anything about the case. It's on page 11.

10 THE COURT: I'm not going to argue with you,
11 Mr. Scotton. You can't ask questions about this letters if
12 it's not his. It's that simple.

13 MS. MITRANI: I apologize for the arguments earlier.

14 THE COURT: That's all right.

15 (Thereupon, the following was heard in open court.)

16 BY MR. SCOTTON:

17 Q Mr. Fred Brooks, how many pages your draft letter has when
18 you send it into the office?

19 MS. MITRANI: Objection, relevance.

20 THE COURT: Overruled.

21 THE WITNESS: How many pages my draft letter had?

22 BY MR. SCOTTON:

23 Q Yes, sir.

24 A I am not sure. I didn't count the pages. I created a
25 draft and I submitted it.

1 Q So basic here my understanding is that you are the chief
2 office of the Oakland Park field before and you email a blank
3 letter that could be modified, in other words, by prosecutor to
4 whatever she would like to?

5 MS. MITRANI: Objection.

6 THE COURT: Sustained.

7 THE COURT: If anybody has a cell phone on, if you
8 could please turn it off. It does tend to interfere with the
9 microphone system even if it's on vibrate.

10 THE WITNESS: It might be mine.

11 BY MR. SCOTTON:

12 Q Mr. Fred Brooks, during the marriage process, if
13 individual has problem with his marriage, seeing another woman
14 on the side, that's become a sham marriage too?

15 A Not necessarily. That's an issue between husband and
16 wife. It's adultery.

17 Q During the interview Aylin was surprised I had insurance
18 policy in my name?

19 A That I was surprised?

20 Q Aylin was surprised.

21 A I don't recall if she was surprised or not. If she was
22 surprised, it's not for me to be surprised.

23 Q As a matter of fact, she punch me during the interview
24 when she find out insurance policy and she's the beneficiary?

25 A That's between you and your wife. I don't know why she

1 punched you. I don't know, but that's between you and your
2 wife.

3 Q You believe that someone that has almost a million dollar
4 policy in his name and the wife is the only beneficiary, it
5 shows the marriage is a sham too?

6 A I don't know where you are going with this, but if a
7 million-dollar policy is what you had on your policy, that's
8 what you had.

9 Q And that makes the marriage a sham, right?

10 A I didn't say that.

11 Q You don't know why Aylin never know about the policy, do
12 can? You never asked the question to her, right?

13 A If I didn't ask Aylin why she didn't know about the
14 policy?

15 Q Right.

16 A No, I didn't need to ask Aylin that.

17 Q And she never told you when her mother arrive here in the
18 United States, right?

19 A Her mother wasn't relevant to my interview so I didn't ask
20 any questions about her mother and she didn't tell me anything
21 about her mother's arrival.

22 Q You asked her how many relatives that she have live in
23 Florida, right?

24 A Absolutely.

25 Q During your investigation, Mr. Fred Brooks, do you know

1 that me and Aylin has broke up several times?

2 A Your question is if during my investigation, if I knew
3 that you and Aylin broke up several times?

4 Q Yes, sir.

5 A No, I don't.

6 Q And you don't know that in October of 2011, she went back
7 live with her mother in Hialeah, right?

8 A To be quite frank, Mr. Scotton, those questions were not
9 relevant to my interview. If you and your wife broke up or if
10 she decided to leave a couple nights and go live with her
11 mother, those questions weren't relative to my interview at the
12 time.

13 Q So during the interview on August 30, you are in the
14 office, right? You send a letter to the FBI before I was
15 arrested March 15, right?

16 A You said I sent the letter to the FBI?

17 Q Yes, sir.

18 A Mr. Scotton, I will repeat to you again, I did not send
19 any letter to the FBI, none whatsoever.

20 THE COURT: Mr. Scotton, let's move on to another
21 area. We have covered this several times now.

22 BY MR. SCOTTON:

23 Q Again, don't get mad at me, Mr. Brooks.

24 THE COURT: Mr. Scotton --

25 MR. SCOTTON: I go for information --

1 THE COURT: Mr. Scotton, please ask questions.

2 BY MR. SCOTTON:

3 Q But the letter never has your name on it, right? There
4 was no way to prove that the letter come from you, correct?

5 MS. MITRANI: Objection.

6 THE COURT: Sustained. Mr. Scotton, I just ruled on
7 this. Please move on to a new area.

8 BY MR. SCOTTON:

9 Q It seems you are the one interviewed me August 31. Is
10 there any particular reason why the final denial letter has not
11 your name on it?

12 MS. MITRANI: Asked and answered many times.

13 THE COURT: Sustained.

14 BY MR. SCOTTON:

15 Q If INS has made a final decision to deny my case, Mr. Fred
16 Brooks, is any reason why it was necessary a draft?

17 MS. MITRANI: Objection, asked and answered.

18 THE COURT: Sustained.

19 BY MR. SCOTTON:

20 Q Do you deny that this letter was intentionally sent to
21 avoid me get a bond during the hearing of March?

22 MS. MITRANI: Objection, Your Honor.

23 THE COURT: Sustained. Mr. Scotton.

24 MS. MITRANI: Asked and answered.

25 THE COURT: Move on, please.

1 MR. SCOTTON: I'm asking questions, Your Honor.

2 THE COURT: Move on, please.

3 MR. SCOTTON: I am moving on.

4 THE COURT: Mr. Scotton, I'm not going to discuss it
5 with you. There's no need for commentary. Please ask your
6 next question.

7 BY MR. SCOTTON:

8 Q Mr. Brooks, do you deny that Aylin has received immunity
9 from the prosecutor?

10 A Mr. Scotton, I don't have no idea of any conversations
11 between you, the FBI, the prosecution, and your wife with the
12 prosecution or the FBI, so to answer your question, I have no
13 knowledge what you are talking about.

14 Q But you acknowledge that you went two times or several
15 times to the prosecutor's office, right, recent to talk about
16 this case?

17 A I stated that before. I did go to the prosecution's
18 office, yes.

19 Q Right, so you don't have any knowledge that my application
20 was denied, but Aylin get to keep her green card, right?

21 MS. MITRANI: Objection, Your Honor.

22 THE WITNESS: I don't understand the --

23 THE COURT: Sustained.

24 BY MR. SCOTTON:

25 Q Is there any reason why immigration has put my I765 on

1 hold during 2010?

2 A I would not be able to know how to answer that question.

3 Q Is any reason to put my application I675 on hold?

4 A You would have to talk to the department and section that
5 adjudicates I765s. I don't adjudicate I765s.

6 Q So you are the senior officer, but you don't know anything
7 about that?

8 A Senior officer doesn't have anything to do with that.
9 Either you adjudicate the application and petitions or you
10 don't. And at a field office, we do not adjudicate I765s for
11 work permits.

12 Q Do you have a knowledge that every single thing happened
13 to every single application that I submit to immigration?

14 A What is your question, sir?

15 Q Do you have a knowledge that every single application that
16 I have submitted to immigration, they always put on a hold?

17 A I have no idea.

18 Q There is anything on immigration's files that shows that
19 during the II75 on hold here, immigration judge has go ahead
20 and release the hold?

21 MS. MITRANI: Objection to relevance asked and
22 answered and beyond this witness's competency, as he's already
23 testified to.

24 THE COURT: Sustained.

25

1 BY MR. SCOTTON:

2 Q Mr. Brooks, do you wish me to get deported out of this
3 country?

4 MS. MITRANI: Objection, Your Honor.

5 THE COURT: Sustained.

6 BY MR. SCOTTON:

7 Q Mr. Fred Brooks, do you see a lot of negligence from
8 immigration on those days?

9 MS. MITRANI: Objection, Your Honor.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q Mr. Fred Brooks, how much fabrication has been for this
13 jury to see and convict me of a crime that I have not done?

14 MS. MITRANI: Objection, Your Honor.

15 THE COURT: Sustained. Mr. Scotton, please ask
16 questions that are relevant to this witness and that he can --
17 he has the ability to answer. It's not time for argument.

18 BY MR. SCOTTON:

19 Q Mr. Brooks, my first interview with my wife was
20 February 24 of 2011, correct?

21 A If that's the date, Mr. Scotton, then that is the day. I
22 wasn't there for that interview.

23 Q Then you express yourself to FBI and say that they were
24 going to hold my case for 90 days without any interview with
25 me, correct?

1 A Could you repeat that question again.

2 Q You advised Agent Van Brunt that you are going to hold my
3 case for 90 days without setting up an interview with me,
4 correct?

5 A I did not advise anything to Mr. Van Brunt of that sort.

6 Q Six months later immigration has set up a new interview
7 for me, correct?

8 A Is that a statement or a question?

9 Q It's a question, sir.

10 A What is the question?

11 Q The question is, six months later has INS set up new
12 interview?

13 A Six months later from when?

14 Q From February 24.

15 A Yes, an interview was set up for -- if that's the
16 six-month period, between then and August, yes.

17 Q Is there any reason why it took six month for new
18 interview?

19 A Because there was research that needed to be done and
20 things needed to be cleared before the interview was conducted.

21 Q And what is the research that need to be done, Mr. Brooks?

22 A It's internal research that we have to do when there is
23 what we call a positive LHM, a positive reading that has to be
24 cleared up on anybody, not just you, Mr. Scotton, anybody that
25 has that.

1 Q And the policy was investigation by Van Brunt, correct?

2 A I don't know who that was right then and there.

3 Q So you don't know what the reason was, but they held my
4 case for another six month without any interview, correct?

5 A There was an investigation done on your case being
6 ongoing. There was other issues that needed to be cleared up
7 in your case and that's why your case took that long to be
8 rescheduled. And to make it perfectly clear and to put it on
9 the record, that's not a one-time occurrence for anybody. That
10 happens from time to time. And like I said, every case is case
11 specific.

12 Q Do you mention earlier today the application get a direct
13 to a field office by the zip code, correct?

14 A That the applications go to a field office by the zip
15 code?

16 Q Yes.

17 A That is correct.

18 Q Is there any reason why then why my application was
19 changed to Miami field office?

20 A I couldn't answer that question because I don't know if
21 and when it was changed to the Miami field office and why. I
22 couldn't answer that question.

23 Q Your letter come from the Miami field office, Mr. Brooks,
24 correct?

25 MS. MITRANI: Objection, asked and answered many

1 times.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q During the interview, Mr. Fred Brooks, did you make an
5 assumption or indication that my marriage was a sham to me and
6 my wife or my attorney?

7 A Mr. Scotton, I don't work on assumptions.

8 Q It was clear for the record that I have a lawyer that
9 represented me during the application, correct?

10 A Is your question that it was clear that you had a lawyer
11 that represented you?

12 Q Yes, sir.

13 A You brought a lawyer to the interview and the lawyer
14 presented the proper documentation to show that she was your
15 attorney, yes.

16 Q Do you know that she has filled out all the applications
17 to submit to INS?

18 A I don't know what your lawyer asked because your lawyer
19 didn't ask me.

20 Q It is a normal procedure when you say on application the
21 application say that OOS mean that I'm out of status in this
22 country, correct?

23 A That's what OOS stands for.

24 Q Right, right. With the knowledge that INS has that I'm
25 out of status in this country, there is a known for them to

1 approve the I765?

2 A Mr. Scotton, I explained earlier I do not -- I do not
3 review, adjudicate or entertain I765s. Nobody does that at the
4 field office, so I cannot answer that.

5 Q Do you know it was a mistake or so on the application,
6 Mr. Fred Brooks?

7 A Was that a question?

8 Q Yes, sir.

9 A What was the question, sir?

10 Q Do you acknowledge any mistakes on the application?

11 A If I acknowledge any mistakes on the application?

12 Q Yes, sir.

13 A Such as?

14 Q Dates, facts.

15 A I don't see where you are going with this. If I
16 acknowledge any mistakes on the application? If the
17 application has a mistake, we correct it on the spot by
18 clarifying it with the applicant, or if we don't need to
19 clarify it with the applicant, we can do so without that, we do
20 that. But to ask me a blanket question like that --

21 Q Have you corrected my attorney that my visa was issued in
22 1989, not 1988?

23 A Have I corrected your attorney?

24 Q Yes.

25 A I did not correct your attorney on anything.

1 Q Mr. Fred Brooks, did you hand a VHS tape to Van Brunt
2 about this interview?

3 A He was issued one. I didn't hand it to him, but he was
4 issued one.

5 Q You never handed to him the video?

6 A It was either me or the branch chief gave it to him, but I
7 don't remember specifically back then if I was the one that
8 personally gave it to him. I may have, and --

9 Q And then later on, he returned back to you, you sign a
10 form of receiving back?

11 A I remember him returning it back and I receipted it back,
12 yes.

13 Q Have this video been modified?

14 A Based on what I have seen on that video, that video was
15 not modified because that video is the same video that I
16 reviewed prior to that video being sent over to the FBI and
17 when I just reviewed it just the other day and saw it again
18 today. It's the same video.

19 Q But right now it is not on VHS anymore format; it's DVD
20 format, correct.

21 A Correct.

22 Q During the interview, did I comply with all the
23 requirements?

24 MS. MITRANI: Your Honor, I object. We have listened
25 to the interview this morning so it speaks for itself.

1 THE COURT: Overruled.

2 THE WITNESS: Could you be a little bit more specific
3 in your question.

4 BY MR. SCOTTON:

5 Q During the interview, Mr. Fred Brooks, can you say that I
6 have complied with all requirements immigration asking for?

7 A Let me see how to answer that question because that
8 question is, and I'll use the term, kind of loaded. When you
9 say did you comply with all the requirements, I would say you
10 showed up for the interview, you provided some supporting
11 documentation, and you went through the interview.

12 Q Right. And I provide proof of files, license, right,
13 correct?

14 A That's in the file.

15 Q Did I lie to immigration about all this stuff?

16 A How would I know if you lied to immigration about certain
17 things that was provided? I wasn't there when the photographs
18 were taken. I can't answer that question. I can tell you that
19 you provided it and we looked at it. That much I can tell you.

20 Q But you cannot tell if I lie or not?

21 A Mr. Scotton, you would be able to tell me if you lied. If
22 it's a blatant lie, I can tell you it's a blatant lie.

23 Q You just said, Mr. Fred Brooks, that you investigated the
24 case, and based on your knowledge, you believed the marriage
25 was a sham.

1 A I said I conducted research.

2 Q Mr. Brooks, the prosecutor claim that I have gave false
3 statement to immigration because I gave one address, later on I
4 live at another location. Is it any crime having two different
5 locations to live?

6 A I cannot answer to what the prosecution said. I was not
7 here and I did not hear the prosecution ask you that. I cannot
8 answer that question.

9 Q Then the question is, is it a crime if I live in two
10 different places?

11 A No, it's not a crime to live in two different places,
12 Mr. Scotton.

13 Q Is not my mother's house make it also my house?

14 A I don't know what your mother's house make for you,
15 Mr. Scotton. That's the address you put down. If that was
16 your mother's address and you claim you live there, I don't
17 know what that address does for.

18 Q Do you know that I pay the insurance, that I pay sometime
19 the mortgage, that I have a key of the house, that I stay over
20 there sometime? Do you have any knowledge of that?

21 A The only thing I know is that you stated that you pay rent
22 of \$1,700 and you said it was the mortgage. That's all I know.

23 Q But nobody from immigration know, the detect or nobody
24 else run any investigations to determine if I live there or
25 illegal marriage or any kind of investigation howsoever this

1 case, right?

2 A If there was a reason to go to that extent to conduct a
3 site visit, that would have been done. There's times when that
4 is necessary and there's times when it's not. In your case, it
5 wasn't.

6 Q Have the defendant hide to the immigration about his case
7 in North Carolina at any time?

8 A Did the defendant hide what?

9 Q About his case in North Carolina?

10 A I never said you lied about anything.

11 Q Have the defendant provided you with paperwork in court
12 and dismissal and everything else?

13 A Yeah, the video showed that you provided that.

14 Q Did you recollect that there was dismissal notice from the
15 Court?

16 A Say that again.

17 Q Did you recollect that dismissal notice from the Court?

18 A If I recollect dismissal notice from the Court?

19 Q Yes, sir.

20 A I saw the paperwork that you provided.

21 Q Do you deny that during the interview over there with me,
22 Mr. Brooks, did you engage and try to entrap me to commit a lie
23 or something like that?

24 A Mr. Scotton, first I'm going to answer your question with
25 a no. But secondly I'm going to tell you that the way I

1 conduct my business and my interviews is above reproach. It's
2 done in a professional manner. And it's done respectfully and
3 dignity to everybody who comes into my office. I have no need
4 to entrap or think or pretend to entrap anybody, specifically
5 you.

6 Q And that denial has nothing to do with FBI been talking to
7 you over a year?

8 A I think I have answered that question. The FBI agent and
9 I did not have anything of an influential conversation and I
10 cannot be influenced by nobody. I am influenced by the laws
11 and the policies and the guidelines that govern how I conduct
12 my interview in accordance with USCIS regulations. And the FBI
13 has nothing to do with that. They can't tell me how to do my
14 job and I can't tell them to how to do theirs.

15 Q Have anybody from INS go to 398 Southeast Mizner Boulevard
16 before?

17 A I don't know what that is. I can answer you I didn't go,
18 so I don't know. I don't know the address.

19 Q Anybody from INS go to 7797 Golf Circle Drive?

20 A I think I answered that question earlier and I said no.

21 Q Yeah, I forget things also from time to time.

22 A That's quite all right.

23 Q Mr. Fred Brooks, the first office that has interviewed me
24 and my wife, she has put up a memo at one point. I can
25 describe what her last name Valencio, whatever her last name

1 might be, did you have any recollection that I was a fugitive
2 from justice?

3 A If I had any recollection that you were a fugitive from
4 justice?

5 Q Right.

6 A I sure don't.

7 Q Do you know that on several of those forms and letters
8 something a by your office, she mentioned that I am a fugitive
9 from justice?

10 A You would have to ask her about mentioning that you are a
11 fugitive from justice. The only time I saw that was on that
12 paper that you brought here. And me and her never had any
13 conversation. Whoever that person may be, you can't give me a
14 full name, so I can't remember who that person may have been,
15 but we didn't have any conversation about you being a fugitive
16 so I don't know where that's coming from.

17 Q So you handle my interview. You questioned me during that
18 interview and you deny my application, but you don't know who's
19 involved in this application from day one.

20 Immigration do not have a file system, they don't have
21 people who has interviewed me during this process?

22 A If it's necessary during an interview to know all of that,
23 that is found out. If it's not necessary, then it's not
24 necessary.

25 Q Mr. Fred Brooks, you did not make the final decision in

1 this case, is that correct?

2 A I submitted a draft for a final decision. I did not write
3 the final draft, the final denial.

4 Q Part of the denial of this case was come from you or
5 another office, INS office?

6 A The denial of this case came from, based on the substance
7 and the body of the draft that I submitted upon request to the
8 Oakland Park field office while I transferred down to the
9 Kendall field office.

10 Q So based denial then came from you and they just made a
11 letter and sent out the letter, correct?

12 A In simple terms, yes.

13 Q Yes.

14 A But let's clear this up. I submitted a draft so we can
15 stay specific. I submitted a draft for a denial. I did not
16 draft the final denial.

17 Q Right. I understand this draft letter here because it
18 doesn't look to me, Mr. Fred Brooks. Let me try to get to
19 that.

20 So you sent a draft to deny my letter, correct?

21 MS. MITRANI: Objection, asked and answered many
22 times.

23 THE COURT: Mr. Scotton, we have been through this
24 many, many times. You will need to move on to a new area of
25 questioning.

1 MR. SCOTTON: I'm doing my best to ask questions.

2 THE COURT: We are not going to argue about it.

3 MR. SCOTTON: And I'm trying to.

4 THE COURT: Mr. Scotton, thank you.

5 BY MR. SCOTTON:

6 Q On March 31, 2011, immigration has denied my I485,
7 correct?

8 MS. MITRANI: Objection, asked and answered many
9 times.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q Do you know that on January 13 of 2012, immigration has
13 approved also an I113?

14 A No, I don't.

15 Q Do you want me to show you that form again to recollect
16 your mind?

17 A It's not to recollect my mind, Mr. Scotton. I had nothing
18 to do with your 131 so for me to answer you straight, I would
19 look at that or I can go in the system with immigration, I can
20 say, yeah, he submitted a 131 and this is the decision. To
21 answer you if I have any knowledge of that 131, absolutely not.

22 Q Don't you think it is bizarre here that you sent a draft
23 letter, immigration deny case, but in the meantime they still
24 proven something over this case?

25 MS. MITRANI: Objection, Your Honor. The objection is

1 sustained.

2 BY MR. SCOTTON:

3 Q We think we are here for the truth today, Mr. Fred Brooks?

4 A I hope so.

5 Q Do you believe in the truth?

6 A If I didn't believe in the truth, I wouldn't be here.

7 Q This is the truth. The prosecutor told you when you went
8 to the office to come here today to say to this jury?

9 A We have been through this before and I just explained to
10 you that nobody influences me or my decision. It's based on
11 the law, regulations that govern what I do. FBI cannot tell me
12 how to make a decision. And I cannot tell them how to make a
13 decision.

14 Q Right. So the immigration decision on August 31,
15 August 3rd, 2010 -- 2011, I mean, sorry, took them another
16 seven month and then wait another two days after bond hearing
17 to deny my case on March 31, is that correct?

18 A I don't know if that's correct. What you are saying is a
19 statement of truth. I don't know if it's a true statement
20 because I had nothing to do with that.

21 Q Don't you think there is a lot of things here that doesn't
22 make a lot of sense, Mr. Fred Brooks?

23 A I don't think anything. I just answer question. You ask
24 me a question and I'll answer it, but I don't think too much
25 and I don't believe too much.

1 Q I don't believe too much early because something here is
2 not right. Do you agree with me?

3 A I would not agree with you because I don't know what you
4 think is not right.

5 Q You agree with me that I spent so much money with
6 immigration and they keep approve applications to me but always
7 seems to be sabotage somehow? Do you agree with me?

8 A I'm not going to agree with you because I don't know how
9 much money you spent and I don't know about any sabotage and I
10 don't know about any of that. So I would not agree with you.

11 Q From 2008, Mr. Fred Brooks, from 2008 to 2012, I be spend
12 money with immigration, apply for applications?

13 THE COURT: Mr. Scotton, Mr. Scotton, it's not time
14 for testimony. Ask a question, please. If you want to
15 testify, you can do so, but you have to do it from the witness
16 stand.

17 MR. SCOTTON: Your Honor, I want to make a statement
18 here to the Court right now.

19 THE COURT: You've not going to make a statement to
20 the Court.

21 MR. SCOTTON: Then we need to go it sidebar.

22 THE COURT: Mr. Scotton.

23 MR. SCOTTON: Your Honor.

24 THE COURT: Mr. Scotton.

25 MR. SCOTTON: Your Honor, we need to go sidebar, Your

1 Honor --

2 THE COURT: Fine. Come sidebar.

3 MR. SCOTTON: -- because you have say something in
4 front of the jury four times already.

5 THE COURT: Mr. Scotton.

6 (Thereupon, the following was heard sidebar.)

7 THE COURT: Mr. Scotton, you need to comply with the
8 rules of the court. It's as simple as that. You cannot say
9 whatever you wish to say whenever you wish to say it. If you
10 continue to do so, I have tried very hard not to embarrass you
11 in front of this jury, but you continue to insist on doing
12 whatever it is you wish to do. And I can't keep interrupting
13 for sidebars for you so I can tell you the exact same thing for
14 the 17th time when you don't care what I say anyway.

15 You are not to make speeches in front of the jury.
16 You will have an opportunity to make argument. It's called
17 closing argument. But you may not testify unless you are on
18 the witness stand. And you may not make arguments in front of
19 the jury unless it is closing argument. It is as simple as
20 that. You ask questions now. That is what your job is and
21 that is all. Do you understand?

22 MR. SCOTTON: Your Honor, this Court has make four
23 times now in front of jury say that I have a right to testify
24 and my right to remain silent. This has violated my rights.

25 THE COURT: It does not violate your rights.

1 MR. SCOTTON: And I'm going to move -- I will move for
2 a mistrial here. I want to put it on the record that I'm
3 moving for mistrial. The Court has put it four time.

4 THE COURT: The motion is denied. As I have explained
5 previously and explained to this jury, there's no obligation
6 for you to testify it's up to you. If you want to testify it's
7 your right to do. What you cannot do and what I have explained
8 many, many times, I have done it sidebar many times, but you
9 continue to do it. So I'm going to continue to say it if you
10 continue to do it.

11 You may not testify from the stand where you are
12 asking questions because that confuses the jury. And I have an
13 obligation to instruct the jury as to what the law is. And the
14 law is that they cannot consider what you say when you are
15 asking questions.

16 They can consider what you say only when you are on
17 the witness stand and testifying as a witness.

18 So there is absolutely nothing improper about my
19 reminding you of that, particularly when you insist on
20 repeatedly doing it after I have instructed you on many
21 occasions about the impropriety of doing it.

22 Your motion for mistrial is denied. If you wish to
23 ask questions, you may do so, but you may not use this as an
24 opportunity to testify. If you want to testify, you have to do
25 it from the witness stand. It's up to you. No one can force

1 you to testify. You have the right not to testify. If you do
2 not testify, that cannot be used against you. On the other
3 hand, you cannot have it both ways. You can't choose not to
4 testify and simultaneously try to get evidence in from asking
5 questions. That is improper and it is not permitted and I will
6 not allow you to do it. That's it.

7 MR. SCOTTON: I understand that, Your Honor.

8 MS. MITRANI: Your Honor, I would just say it's up to
9 the Court and defendant if he wants a cautionary instruction
10 that he has a right to not testify and to testify if that will
11 help things.

12 THE COURT: I will be happy to do it. I said it at
13 the beginning I have said it throughout this trial I have no
14 problem saying it again. I will not allow you to try to
15 testify from the stand, to try to testify when you are supposed
16 to be asking questions and get evidence in by avoiding taking
17 the stand and swearing under oath. That is not permitted and I
18 will not allow it.

19 MR. SCOTTON: The Court seems to say that I'm
20 intentionally trying to do such a thing. That is not
21 intentional. Number one, I'm not a lawyer. I'm doing my best
22 to prove my innocence.

23 THE COURT: Mr. Scotton, you are a very smart man.
24 It's very clear that you are very smart man. I have told you
25 many, many times and you understand completely what I'm talking

1 about. And I don't believe you when you say that you are not
2 intentionally doing it. You know you are not supposed to be
3 doing anything other than asking questions. You can say what
4 you want, but I'm telling you right now I think you know darn
5 well what you are doing when you get up there and try to get
6 testimony in because you do exactly the same thing time after
7 time after time.

8 This morning you tried to read from an FBI report and
9 waved it around after I have told you specifically on numerous
10 occasions you can't do it. I've even shown you in the book
11 where the rule is. Mr. Scotton, I'm sorry, but I don't believe
12 you are not doing it intentionally.

13 MR. SCOTTON: I'm not allowed to defend myself.

14 THE COURT: That's not what I've said and you know
15 that's not what I have said. You may ask questions and if you
16 wish to testify --

17 MR. SCOTTON: I ask --

18 THE COURT: Excuse me. If you wish to testify, you
19 may do so, but it must be from the witness stand and it must be
20 under oath. You don't get it both ways. You don't get to get
21 evidence in when you are supposed to be asking questions and
22 you are not under oath. I have explained it several times.
23 I'm not going to do it again.

24 MR. SCOTTON: Let me explain to you what happened to
25 that report.

1 THE COURT: It's not appropriate, Mr. Scotton.

2 MR. SCOTTON: We are done. Thank you.

3 (Thereupon, the following was heard in open court.)

4 THE COURT: Members of the jury, I want to make sure
5 everybody is clear. I believe you are because we have
6 discussed it several times, but just to be on the safe side,
7 Mr. Scotton has the absolute right not to testify. If he
8 chooses not to testify, you cannot hold that against him. Is
9 there anybody here who does not understand that right? Don't
10 be shy. If you don't understand it, I want to explain it
11 better for you. Go ahead raise your hand for me.

12 Is there anybody who does not, raise your hand for me
13 now if you do not.

14 Once again I see no hands. Thank you all for that.

15 Mr. Scotton, you may continue.

16 MR. SCOTTON: No more questions, Your Honor.

17 THE COURT: Redirect.

18 MS. MITRANI: Yes, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. MITRANI:

21 Q Good afternoon, Mr. Brooks.

22 A Good afternoon, ma'am.

23 MS. MITRANI: May I approach --

24 BY MS. MITRANI:

25 Q Well, the defendant asked you numerous questions about

1 your draft denial. I'm not going to ask you if you remember
2 that line of questioning because I'm sure you do. Remember you
3 testified you didn't remember how many pages that draft denial
4 was, correct?

5 A Correct.

6 MS. MITRANI: Your Honor, may I approach the witness?

7 THE COURT: Yes.

8 BY MS. MITRANI:

9 Q Does this refresh your recollection as to how many pages
10 your draft denial letter was?

11 A Correct.

12 Q Does it remind you how many pages it was?

13 A Close.

14 Q Okay. How many pages was it?

15 A One, two, three, four, five, six, seven -- seven pages.

16 Q And did your draft denial contain one reason for denying
17 or many different reasons for denying the I485?

18 A Many different discrepancies, ma'am.

19 Q And again, as has been testified to many times, you didn't
20 write the final denial letter, correct?

21 A No, I did not, ma'am.

22 Q So whatever the officer put in the final denial letter,
23 the officer put in the final denial letter; that had nothing to
24 do with you, correct?

25 A That is correct, ma'am.

1 MS. MITRANI: Thank you.

2 BY MS. MITRANI:

3 Q During cross-examination the defendant showed you
4 Government's Exhibit 205. Remember that?

5 A Yes, ma'am.

6 Q And you indicated that this was a Department of State
7 document. This has nothing to do with you, correct?

8 A That is correct, ma'am.

9 Q The defendant was trying to ask you questions where it
10 says issued and then it was crossed out and then refused,
11 correct?

12 A That's correct, ma'am.

13 Q So this document said that the 01 visa was refused in
14 March of 2008, correct?

15 A That's correct, ma'am.

16 Q Now, the defendant didn't show you Government's Exhibit
17 2004 which is another United States Department of State
18 non-immigration visa application, correct?

19 A That's correct, ma'am.

20 Q And here there's a refused circled with July of 2008 date
21 on it, correct?

22 A That is correct, ma'am.

23 Q And do you recall this? This is Government's
24 Exhibit 200A. Do you recall from this morning the attachments
25 to the I485 application?

1 A Yes, ma'am.

2 Q And this is USCIS 402 within Government's Exhibit 200A, is
3 this a copy of B1/B2 visa that the defendant submitted to USCIS
4 in connection with his I485 application?

5 A Yes, ma'am.

6 Q And was this the only visa submitted to USCIS in
7 connection with the defendant's I485 application?

8 A Yes, ma'am.

9 Q So there was no 01 visa, correct?

10 A No, ma'am.

11 Q Now, during cross-examination, the defendant was referring
12 to a February interview and you testified that you weren't
13 involved with that, correct?

14 A That is correct, ma'am.

15 Q Do you know whether a February interview occurred or
16 didn't occur, do you have any knowledge?

17 A I have no knowledge of the February interview occurring.

18 Q And as far as you know, was your interview the only
19 interview that occurred?

20 A As far as I know, ma'am, my interview was the only one
21 that occurred.

22 Q Now, the defendant asked you a series of questions
23 throughout his cross-examination about your interactions with
24 the FBI and Special Agent Van Brunt. Do you remember that line
25 of questioning?

1 A Yes, ma'am.

2 Q Tell the members of the jury, in connection with
3 processing and adjudicating an I485 application, do you conduct
4 searches with other government agencies on the applicant, and
5 in this instance, on Mr. Rogerio Scotton?

6 A We do vetting with other agencies, yes, ma'am. And in
7 this case, it was with Mr. Roger Scotton.

8 Q And in your vetting, did you have an indication that
9 Mr. Scotton was under investigation by the FBI?

10 A Yes, ma'am.

11 Q And when you get that type of information, what do you do
12 with it?

13 A When we get that type of information, there's two
14 officers, two sections in the field office that can interact
15 with law enforcement. That is a senior officer or an officer
16 that is in the position that I'm now, the fraud detectives and
17 national security unit. And we would call the FBI, whether we
18 called two sector to find out who has the case, and just
19 confirm is there an ongoing investigation or is the
20 investigation closed. That would give us room to either wait
21 to see what's going on with the investigation if there is any
22 information that can be provided to us. If not, it's closed.
23 Then we can move forward with passing this on for adjudication.

24 Q And does it sometimes take time to get that information
25 from the FBI?

1 A Yes, ma'am.

2 Q And does USCIS want to vet the FBI's information and find
3 out more about it before an application is adjudicated?

4 A Well, we try to find out as much as we can find out
5 without jeopardizing anything that's ongoing.

6 Q Do you wish to find out as much as you can find out before
7 your final adjudication?

8 A Yes, ma'am.

9 Q And again, I know you testified to this on cross, did
10 Special Agent Van Brunt or the FBI influence your decision to
11 deny this adjudication? And I understand you only issued a
12 draft denial, but was your draft a denial?

13 MR. SCOTTON: Object, Your Honor.

14 THE COURT: What is the objection?

15 MR. SCOTTON: Speculation.

16 THE COURT: Overruled.

17 THE WITNESS: So your question is did they influence
18 my draft? No, they did not.

19 BY MS. MITRANI:

20 Q The interview that took place before you, when Mr. -- the
21 defendant showed up with Aylin Moura Mollinedo, whose
22 application were you there to adjudicate?

23 A Mr. Scotton's I485.

24 Q And only Mr. Scotton's I485?

25 A That's correct, ma'am.

1 Q Was Mr. Scotton applying to adjust his status based on his
2 marriage based to Ms. Reyes Mollinedo?

3 A Based on his marriage to Ms. Mollinedo under section 1.

4 Q Were you there to adjudicate Ms. Mollinedo's application?

5 A No, ma'am.

6 Q And was Ms. Mollinedo -- did she have a separate file and
7 a separate application?

8 A Yes, ma'am.

9 Q And what was the vehicle under -- she was seeking to
10 adjust her status, was it based on the marriage?

11 A No. She was adjusting under the Cuban Adjustment Act,
12 which is section 1.

13 Q So is that -- that's separate and apart -- is that
14 separate and apart from the defendant's I485 application?

15 A Yes.

16 Q And is Ms. Mollinedo's application judged on the basis of
17 her own file independent of that of the defendant's?

18 A Yes.

19 Q The defendant asked you a whole bunch of questions about
20 moneys he may or may not have paid to INS and applications
21 that, you know, may have been denied or pending, what have you.
22 Do you remember that line of questioning?

23 A Yes, ma'am.

24 Q Can you buy your way to status?

25 MR. SCOTTON: Object, Your Honor.

1 THE COURT: Overruled.

2 THE WITNESS: People have tried.

3 BY MS. MITRANI:

4 Q Can you lawfully buy your way to status?

5 A No, ma'am.

6 Q So do the amounts of money that the defendant may or may
7 not have paid INS have anything to do with adjudicating his
8 applications?

9 A Absolutely not, ma'am.

10 Q The defendant asked you a bunch of questions about, you
11 say you didn't know about whether he and his wife were on again
12 and off again. Do you have any knowledge of that?

13 A No, ma'am.

14 Q All right. But did the defendant clearly state to you
15 during your interview that he was residing with Ms. Reyes
16 Mollinedo at 7797 Golf Circle Drive?

17 A Yes, ma'am.

18 Q And I'm showing you Government's Exhibit 200. Can you see
19 that okay, Mr. Brooks?

20 A Yes, ma'am.

21 Q Can you see that okay, Mr. Brooks?

22 A Yes, ma'am.

23 Q All right. And in the defendant's I485 application, in
24 box F does he tell USCIS that he is residing with Ms. Reyes
25 Mollinedo?

1 A Yes, ma'am.

2 Q At any point did the defendant ever tell you, Mr. Brooks,
3 that he wasn't -- let me clarify that.

4 At any point while you were working on the case back in
5 2011 and before, did the defendant ever tell you he was not
6 residing with Ms. Reyes Mollinedo?

7 A No, ma'am.

8 Q That information was never given to USCIS?

9 A No, ma'am. First time I found out about that was a few
10 moments ago.

11 Q You didn't find out about anything because that was just a
12 question. So as far as you know, the defendant was residing
13 with Ms. Reyes Mollinedo?

14 A That is correct, ma'am.

15 THE COURT: Ms. Mitrani, I'm trying to decide whether
16 we should take the break now or whether you have a couple
17 minutes left and I should let you finish first. I don't want
18 to rush you.

19 MS. MITRANI: I think now would be a good time for a
20 break, Your Honor.

21 THE COURT: Let's take our break now and return at
22 3:15. All rise for the jury.

23 (Thereupon, the jury exited the courtroom at
24 3:04 p.m.)

25 THE COURT: All right. We will return at 3:15.

1 (Thereupon, a recess was taken at 3:04 p.m.)

2 (Thereupon, the jury entered the courtroom at
3 3:17 p.m.)

4 THE COURT: Welcome back. Please be seated. Thank
5 you.

6 And, Mr. Brooks, you can be seated too. Thank you. I
7 just need to remind you that you are still under oath. Do you
8 understand?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Thank you very much.

11 Ms. Mitrani, whenever you are ready to proceed.

12 MS. MITRANI: Your Honor, I looked over my notes. I
13 have no further questions.

14 THE COURT: I'm sure Mr. Brooks doesn't mind.

15 THE WITNESS: Doesn't mind at all.

16 THE COURT: You are excused. Thank you.

17 The government may call its next witness.

18 MS. MITRANI: The government calls Aylin Reyes
19 Mollinedo, who, Your Honor, needs the assistance of an
20 interpreter.

21 THE COURT INTERPRETER: Your Honor, I'm going to wear
22 a mask because the witness has the flu. So I'm going to wear a
23 mask.

24 THE COURTROOM DEPUTY: Please remain standing. Raise
25 your right hand.

1 AYLIN REYES MOLLINEDO

2 Having been first duly sworn on oath, was examined and
3 testified as follows:

4 THE WITNESS: Yes.

5 THE COURTROOM DEPUTY: Please be seated. State and
6 spell your name for the record, first and last.

7 THE WITNESS: Aylin Reyes Mollinedo.

8 THE COURTROOM DEPUTY: Spell the last name.

9 THE COURT: May I ask that the interpreter please pull
10 the microphone up so we can hear the response.

11 MS. MITRANI: Your Honor, can we use the headphones?
12 Would that --

13 THE COURT INTERPRETER: I'm not used to doing it that
14 way and I don't know if I could sort of experiment today. The
15 spelling of the last names of the witness is R-E-Y-E-S
16 M-O-L-L-I-N-E-D-O.

17 Your Honor, do you want a microphone for the witness
18 or just me?

19 THE COURT: I think we need to hear what you are
20 saying because that's what --

21 THE COURT INTERPRETER: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. MITRANI:

24 Q Good afternoon.

25 A Good afternoon.

1 Q How are you?

2 A Fine.

3 Q I think you have to answer in your native language.

4 A I'm well.

5 Q Little tired? Have you been waiting around all day?

6 A Uh-huh.

7 Q I'm sorry, you also have to say yes or no, not just
8 uh-huh.

9 A Oh, yes.

10 Q I'm so sorry. So how do you by? You are Ms. Reyes,
11 Ms. Mollinedo? How do you go by?

12 A Reyes.

13 Q And what is Mollinedo?

14 A My second sur name.

15 MR. SCOTTON: Your Honor, we need to go sidebar.

16 THE COURT: All right, Mr. Scotton.

17 (Thereupon, the following was heard sidebar.)

18 THE COURT: What is it this time?

19 MR. SCOTTON: For the record, we still legally
20 married. She should not be here testifying against me.

21 THE COURT: Mr. Scotton, this is no reason for a
22 sidebar.

23 MR. SCOTTON: My lawyer told me to go ahead and do
24 this, Your Honor.

25 THE COURT: Mr. Scotton, stop. You will have a chance

1 to cross-examine. We are not going to keep taking sidebars.
2 Go sit down and when it's your turn, you will have a chance.

3 MR. SCOTTON: Your Honor, the standby lawyer told me
4 to come here and say this. That's what he told me, he said
5 it's against the rules here that she's testifying against me
6 when we are still legally married. That's what standby told
7 me.

8 THE COURT: Let me hear what the government says.

9 MS. MITRANI: I have to get my rule book. One,
10 there's no privilege if it's sham marriage, and second, if they
11 are separated, not living together, she can testify. I have to
12 get my handbook.

13 THE COURT: Go ahead. I believe that's the correct
14 statement of the law anyway.

15 MR. SCOTTON: Your Honor, I'm sorry, I'm not trying to
16 give a hard time. It's just that I been told by the standby
17 lawyer.

18 MS. MITRANI: Okay. Here we go. Your Honor, section
19 343, it says the marital privilege may only be asserted by the
20 testifying spouse. Trammel versus United States. Moreover,
21 the privilege does not bar admission of out-of-court statement
22 of non-testifying spouse assuming the statements are otherwise
23 admissible. Moreover --

24 (Thereupon, there was an interruption by the court
25 reporter.).

1 THE COURT: You have to say it again.

2 MS. MITRANI: The marital privilege does not protect
3 those conversations made in furtherance of a conspiracy.
4 United States versus Malekezadeh, M-A-L-E-K-E-Z-A-D-E-H, at
5 855F2. Moreover, in United States versus Singleton, the 11th
6 Circuit held, that court held that spouses currently separated
7 with no reasonable expectation of reconciliation, their
8 communications are not privileged and the defendant may not bar
9 the estranged spouse from their communications.

10 MR. SCOTTON: This doesn't mean, how can the
11 government say that we never going to reconciliation when I
12 have been sitting here two years and I have not been able to
13 talk to my wife because a lot of --

14 THE COURT: All right. I'm going to overruled the
15 objection. I don't think -- first of all, whenever there is
16 sufficient indicia of fraud, which I think at least at this
17 point the record reflects enough to meet that standard, that
18 the privilege -- that a privilege does not otherwise apply such
19 as even advice of counsel would not apply if the attorney were
20 involved in alleged fraud or if -- well, if the attorney were
21 involved in alleged fraud. Whenever there is alleged fraud
22 involved, the privilege doesn't apply. Plus, based on the
23 cases cited by the government, I think that the government's
24 objection to the assertion of privilege by Mr. Scotton is
25 appropriate and should be sustained.

1 MR. SCOTTON: So basically the Court say then whatever
2 they say right now shows that my marriage is a sham, so like
3 even before the trial is over, I'm already being convicted.

4 THE COURT: First of all, I don't convict or not
5 convict you of anything. It's up to the jury what to do. But
6 I have to make evidentiary rulings. And I have to decide
7 generally when we are talking about making an evidentiary
8 ruling, although not always, but generally, on whether there
9 has been enough evidence that a reasonable jury could conclude
10 that the standard was met.

11 So, for example, if we are talking about 404(b)
12 evidence, that is evidence of other wrongs, that whether
13 there's enough evidence that a jury could reasonably conclude
14 that you did the crime that's alleged.

15 Now, obviously that's not applicable here, but I am
16 importing that standard in determining whether a jury could
17 reasonably conclude that there was fraud involved. And I find
18 that that standard is easily satisfied by the evidence that's
19 already been produced. So I'm finding that the marriage
20 privilege does not apply.

21 All right. Thank you.

22 (Thereupon, the following was heard in open court.)

23 THE COURT: All right. Thank you for your patience

24 BY MS. MITRANI:

25 Q I forgot my question. So let's just start at the

1 beginning.

2 What is your birth date? When were you born?

3 A May 30, 1984.

4 Q So I don't have to do the math, how old does that make
5 you?

6 A 29.

7 Q And where were you born?

8 A In Cuba.

9 Q Where in Cuba?

10 A Havana, Cuba.

11 Q And where did you grow up?

12 A In Havana.

13 Q Did you go to school in Havana?

14 A Yes.

15 Q How far did you get?

16 A Medium technician.

17 Q I'm sorry, I'm not sure what that means. What does that
18 mean?

19 A Middle technical in accounting.

20 Q And your native language is what?

21 A Spanish.

22 Q Do you speak any English?

23 A No, I am able to understand some things, but I cannot
24 speak it.

25 Q And when you say you are able to understand some things,

1 how would you characterize that?

2 A I don't understand the question.

3 Q Do you understand a lot of English, a little bit of
4 English here and there?

5 A More or less, something, yes, a little.

6 Q A little bit, you understand a little bit?

7 A Yes.

8 Q All right. In fact, have you met with the prosecution
9 team before today?

10 A The prosecution team?

11 Q Did you meet with me?

12 A Oh, yes.

13 Q And Mr. Frank was present also?

14 A Uh-huh, yes.

15 Q And what language were we speaking?

16 A Spanish.

17 Q Approximately how many times did you meet with, when I
18 refer to the prosecution team, I mean the U.S. attorney and the
19 FBI, approximately?

20 A I believe that was once or twice.

21 Q Okay. When did you come to the United States?

22 A In 2008.

23 Q How old were you when you came to the United States?

24 A I do not recall, but I was about 25 because I am 29.

25 Q How did you arrive into the United States?

1 A I came in a boat.

2 Q And where did you land?

3 A We arrived in Mexico.

4 Q And how did you get actually to the United States?

5 A We had to -- I had to go through the border.

6 Q And then you arrived in the United States?

7 A Yes.

8 Q When you arrived in the United States in 2008, once you
9 set foot in United States, were you given a status?

10 A Yes, a parole.

11 Q And when I say they gave you a parole, who gave you a
12 parole?

13 A At immigration after I went through the border, it was
14 given to me.

15 Q So your parole was given to you by immigration?

16 A Uh-huh, yes.

17 Q And what is your understanding of a parole in terms of
18 your ability to stay in the United States?

19 A That document was given to me with -- after that I had to
20 do the papers to obtain a work permit, and after one year and
21 one day, I could apply for the residency.

22 Q All right. So after a year and a day after receiving your
23 parole, you could apply to become a resident of the United
24 States?

25 A Yes.

1 Q And did you apply to adjust your status to that resident,
2 legal permanent resident?

3 A Yes, I had to do so in order to obtain the residency.

4 Q And did you obtain your residency?

5 A Yes.

6 Q By the way, I don't know if I asked you this, but where do
7 you live, in what city and state?

8 A In Hialeah.

9 Q In Hialeah, Florida?

10 A Yes.

11 Q Have you lived in Hialeah since your arrival in the United
12 States?

13 A Yes.

14 Q And have you continuously lived in Hialeah since you
15 arrived in the United States?

16 A Yes.

17 Q Did there come a time when you met the defendant, Roger
18 Scotton?

19 A Yes.

20 Q And tell the members of the jury how you came to meet him.

21 A He was introduced to me by a friend.

22 Q Do you remember when?

23 A No, it's been a long time.

24 Q Can you remember a year?

25 A I do not remember that.

1 Q And how is it that this friend introduced you to the
2 defendant?

3 MR. SCOTTON: Object, Your Honor.

4 THE COURT: What are is the objection?

5 MR. SCOTTON: Leading.

6 THE COURT: Overruled.

7 THE WITNESS: She -- we went -- she -- she introduce
8 him to me at her house.

9 BY MS. MITRANI:

10 Q And after that initial meeting, did you have further
11 contact with the defendant?

12 A Yes.

13 Q So tell the members of the jury a little bit what happened
14 after you first met the defendant?

15 A We met. We talked. We exchanged our telephone numbers.
16 And we talked for quite some time.

17 Q Do you know where the defendant lived?

18 A Not at that time.

19 Q Did you start dating one another?

20 A Yes, we went out several times and we would converse on
21 the telephone.

22 Q How would you characterize your relationship with the
23 defendant in the beginning?

24 A He was good to me. He treated me well.

25 Q Did he continue to be good to you and treat you well

1 throughout the relationship?

2 A Not afterwards.

3 Q We will get to that. Did you tell the defendant what your
4 status was in the United States?

5 A Yes, he knew that I had to apply for the residency.

6 Q So correct me if I'm wrong, please, then when you met the
7 defendant and first started dating him, was your status as a
8 parolee, you were paroled into the United States?

9 A Yes.

10 Q And at the time you first met him, then you had not
11 adjusted your status to real permanent resident?

12 A No, not yet.

13 Q Did the defendant discuss with you his status in the
14 United States?

15 A Yes, he told me that he did not have any documents.

16 Q Then did the issue of the defendant wanting to get
17 documents, that is wanting to adjust his status come up?

18 A I don't understand the question.

19 Q Did the defendant talk to you about his desire to adjust
20 his status to legal permanent resident?

21 A Yes.

22 Q So tell us, tell us about those conversations that you had
23 with the defendant regarding his status and what he wanted to
24 do.

25 A He knew that I had to apply for my residency and one day

1 we discussed the subject. And then he asked me to help him in
2 order for him to get his papers. He wanted to travel to
3 Brazil. His father was ill and he had not seen him in years.

4 Q So defendant asked for your help?

5 A Yes.

6 Q Tell us about that. What did the defendant want to do?

7 A He said that we should get married and that way when I
8 applied for my residency, he could obtain his residency through
9 our marriage.

10 Q So it was the defendant's idea that you get married in
11 order for him to obtain his residency?

12 A Yes.

13 Q And what was your reaction to the defendant's idea, his
14 proposal?

15 A I told him that we had been going out for a very short
16 time, that how could I marry him so soon. And he told me that
17 that's how I could help him so that he could obtain his papers.

18 Q So what was the defendant's reaction when you told him
19 that it was too soon to get married?

20 A He insisted that we get married so that I could help him
21 because he had to go see his father in Brazil.

22 Q And how would you characterize his insistence that you get
23 married?

24 A He told me several times, he asked me several times, he
25 insisted.

1 Q Did you want to marry him?

2 A I didn't want to because I didn't know him. It was too
3 soon.

4 Q Did you marry the defendant?

5 A Yes.

6 Q Do you remember when that occurred?

7 A No, I don't remember the date.

8 Q Why did you marry the defendant?

9 A Because he told me that was the only way, once we got
10 married, when I went to get my residency, he could go with me
11 to obtain his residency.

12 Q Did you want to apply for your residency with the
13 defendant or did you want to do it independent of him?

14 A At the beginning, I had told him that I was going to help
15 him. But later on I told him that I wanted to do it by myself,
16 that I didn't want him to go with me.

17 Q And what was the defendant's reaction when you said you
18 wanted to do it by yourself and without him?

19 A He got upset with me. He got mad at me.

20 Q Can you elaborate on that?

21 A Yes. He told me that if I didn't do what he was telling
22 me to do and if I didn't go with him, I had no idea what he was
23 capable of doing. He told me that if I didn't go to the
24 interview with him, that if I didn't do the interview together
25 with him so he could obtain the papers, he said he was going to

1 call immigration and he was going to tell them that he was
2 paying me money so I could marry him and that way they were
3 going to send me back to Cuba.

4 Q How did that make you feel when the defendant threatened
5 you in this manner?

6 A I became afraid of him.

7 Q Did you then try to back out of the marriage and back out
8 of assisting the defendant to adjustment status?

9 THE COURT INTERPRETER: Counsel, can you please repeat
10 the second part of the question?

11 MS. MITRANI: Let's start again. I forgot.

12 BY MS. MITRANI:

13 Q So after the defendant made this threat, did you try to
14 get out of the marriage?

15 A I told him that I did not want to go to the interview,
16 that I did not want to do anything else, and he would always
17 tell me the same thing.

18 Q Which is what?

19 A The same thing, that if I didn't go with him, if I didn't
20 do the interview, that I had to do everything he told me to do
21 or he was going to call immigration and he was going to say
22 that he was paying me money so that they would send me back to
23 Cuba and that I did not know what he was capable of doing, that
24 he was very able to find out where my family was.

25 Q And how did these threats make you feel?

1 A Bad and I am afraid of him.

2 Q How often would the defendant threaten you?

3 A Every time that he wanted me to go over to his house or
4 that he wanted something, he would threaten me.

5 Q Where did the defendant live?

6 A I don't know the exact address where he lived.

7 Q Let me ask you this: Did you ever live with the defendant
8 at 7797 Golf Circle Drive?

9 A No, we never lived together.

10 Q Did you ever live with the defendant at 398 Mizner Park
11 Boulevard?

12 THE COURT INTERPRETER: 398?

13 MS. MITRANI: Mizner Park Boulevard.

14 THE WITNESS: I don't know where that is.

15 BY MS. MITRANI:

16 Q Did you ever live with the defendant anywhere?

17 A We never lived together.

18 Q Did the defendant pay you money to marry him?

19 A No, he never gave me any money.

20 Q Did you change your driver's license to reflect that you
21 were living at 7797 Golf Circle Drive?

22 A Yes.

23 Q Why did you do that? You just told us you never lived
24 there.

25 A Because he told me that I had to switch my address to that

1 address so that when we went to the interview, they would see
2 that we were living together and so that all my correspondence
3 would go there to his house.

4 Q But it wasn't true. What it said on your license, was it
5 true?

6 A I don't understand.

7 Q When your license reflected that you lived at 7797 Golf
8 Circle Drive, that was not true?

9 A No, I never lived there.

10 Q So why, you know, why did you lie about that on your
11 driver's license?

12 A Because he told me that I had to change it so that the day
13 we went to the interview, that it would appear that we were
14 living together.

15 Q Did you change your address on other things such as bank
16 accounts and what have you?

17 A Yes. He told me that I had to switch my address on
18 everything, and all my mail was getting there to his address.

19 Q Did there come a time -- strike that.

20 So you were living at Hialeah, Florida, correct?

21 A Yes.

22 Q From the time that the defendant began threatening you
23 about wanting to adjust status based on his marriage to you
24 until the immigration interview, how often would you see the
25 defendant?

1 A Whenever he told me that I had to go over to his house, he
2 would pick me up and he would take me to his house.

3 Q And how often would that be if you could say?

4 A Once in a while he would call me and he would tell me that
5 he had to pick me up, that we had to go to his house.

6 Q Did there come a time when the defendant told you that he
7 wanted to take photographs with you?

8 A Yes.

9 Q So tell the members of the jury about the photographs that
10 you took with the defendant.

11 A He called me one day and he told me to get a -- something
12 where I put -- I could put my clothes in, and to get several
13 pieces of clothing so that I could change several times and
14 that we were going to take pictures of ourselves like if to
15 pretend we were going out on different occasions.

16 Q And did you go to the defendant's house to take
17 photographs?

18 A Yes.

19 Q Did you bring several different outfits with you?

20 A Yes.

21 Q Different changes -- strike that.

22 Different items of clothing?

23 A Yes.

24 Q And do you remember when that picture day was?

25 A No, I don't remember the date.

1 Q Okay. Tell the members of the jury what happened on the
2 day that you went to the defendant's house with your different
3 clothing.

4 A I arrived with the clothes, and there was a girl there who
5 was the one who was going to take our pictures, the
6 photographer.

7 Q Did you know who the photographer was?

8 A No, I had never seen here.

9 Q And then so walk us through the day. What happened that
10 day?

11 A She took pictures, several pictures of us at the house
12 like if we were doing the dishes, cooking, doing things at
13 home, and then we went out, the same thing, to different
14 places. So we went to different places and we took pictures
15 like if we had gone to all those different places. Then we
16 went to the boat and we also had pictures taken in the boat.

17 Q How many times did you change your outfit throughout the
18 day?

19 A I don't remember, but it was many times. I had to change
20 many times.

21 Q Do you know how many pictures were taken that day?

22 A Almost all the pictures that we took to the interview were
23 taken that day.

24 Q So was it lots and lots of pictures?

25 A Yes.

1 Q And what was the purpose of these pictures?

2 A So that when we went to the interview, they would see like
3 we were living together and that we were going out together
4 like if we were a real couple.

5 Q As a matter of fact, you weren't living together; you
6 weren't a real couple?

7 A We never lived together.

8 Q Now, you said almost all these pictures were taken on that
9 day. Was there another day where pictures were taken?

10 A Yes.

11 Q Can you tell us about that.

12 A Another day there were several friends of his. I don't
13 remember whether they came from Brazil. They were visiting
14 here and he told me that we had to go see them to go see them
15 so that we could have our pictures taken with them.

16 Q So what did you do?

17 A I went with him. We met with his friends and we had our
18 pictures taken.

19 Q Were there any picture days that you can recall?

20 A Sometimes I went with him to his house and he would tell
21 me to go out to lunch to a certain place. He took pictures of
22 me and of himself.

23 Q Were the majority of the pictures taken, though, on that
24 one picture day when the defendant told you to come to his
25 house with different outfits?

1 A Yes.

2 THE COURT: All right. We are going to have to stop
3 for the day. But we will continue tomorrow morning. So let me
4 just remind everybody, please don't discuss the case with
5 anyone, please don't disburse any information about the case,
6 please don't do any investigation into the case. Have a
7 terrific evening. See you tomorrow. All rise for the jury.
8 We will start again at 9:00 tomorrow. Thank you.

9 (Thereupon, the jury exited the courtroom at
10 4:01 p.m.)

11 THE COURT: All righty. There were some issues,
12 Mr. Scotton, that you wished to address?

13 MR. SCOTTON: Yeah, Your Honor, some of them.

14 THE COURT: I'm sorry, can you turn on your
15 microphone, please.

16 MR. SCOTTON: Some is going to be with the government
17 present, some not, Your Honor, if you don't mind.

18 THE COURT: Okay. Let's do the ones that we need the
19 government for first, and then I can excuse them.

20 MR. SCOTTON: Your Honor, government has present a
21 paper here with a bunch of information for bank accounts, and
22 the paper is not accurate. Some accounts that doesn't even
23 belong to me. I don't want to start go ahead think it's bunch
24 of stuff here that is not true.

25 THE COURT: Let me stop you for a minute. Let me stop

1 you. What documents are you talking about? Have they been put
2 into evidence or not in evidence?

3 MR. SCOTTON: No, they are going to try to bring it
4 in.

5 THE COURT: Are they marked as exhibits even though
6 they are not in evidence?

7 MS. MITRANI: They are recently marked. Let me
8 clarify something for the Court. We gave the defendant some
9 raw -- two spreadsheets, some raw data on Saturday. We have
10 since revised it to reflect any accounts that weren't here. We
11 have given him the revised spreadsheet. It is marked
12 Government's Exhibit 21. I can pass one up to the Court, if
13 the Court wants.

14 THE COURT: All right. I think it would make it
15 easier for me to understand what we are talking about.

16 MS. MITRANI: We are also going to give the defendant
17 revised 121.

18 THE COURT: All right. What's the problem,
19 Mr. Scotton?

20 MR. SCOTTON: Is a page missing here so should be two
21 pages.

22 MS. MITRANI: Like I just said, Mr. Scotton, we
23 consolidated both spreadsheets into one spreadsheet. We gave
24 you 121 and we eliminated accounts that did not belong to you.
25 So you may want to look at 121 overnight and address it with

1 the Court tomorrow or we can address it now.

2 MR. SCOTTON: Your Honor, can I have a minute?

3 THE COURT: Of course.

4 MR. SCOTTON: Was a paper provided me before, Your
5 Honor, and it has account here with the gentleman in Georgia,
6 Atlanta, Georgia.

7 THE COURT: Is it on the one that they just gave you?
8 Because I think they said they are not going to use the one
9 they gave you previously.

10 MR. SCOTTON: Also here, the situation with this
11 credit card here on the bottom, Your Honor, they don't have
12 previous balance. They have -- I mean, things is missing. And
13 besides the point this is the same credit card. The bank
14 lost -- like if I travel, if I don't tell the bank, the bank
15 cancel the card and send another card. It's the same account.
16 They are trying to make it like it's four accounts. It's one
17 account. I never have four different credit card accounts with
18 this bank.

19 THE COURT: I understand what you are saying. And if
20 I were to allow this into evidence, that would be a proper area
21 for cross-examination. I think you are saying I shouldn't
22 allow this into evidence and I'm asking what the reasons would
23 be.

24 MR. SCOTTON: I don't think it's relevant to the case.
25 This is personal. This has nothing to do with the business.

1 THE COURT: All right. Government, there's a
2 relevancy objection, so I'll hear the government's response.

3 MS. MITRANI: Well, Your Honor, these accounts are in
4 evidence. These are summaries of his bank accounts. These
5 show money in and out that shows, you know, to our argument
6 that he was running these businesses and making money,
7 defendant transferred moneys between his business accounts and
8 his personal accounts. I can tell the Court this is not a
9 document we are going to dwell on, but we are going to use it
10 in part to summarize moneys coming in and out of various
11 accounts.

12 THE COURT: Okay. I mean, I think that meets the
13 relevancy standards. So do you have other objections to it,
14 Mr. Scotton?

15 MR. SCOTTON: Your Honor, what this has to do with me
16 taking -- this a credit card, personal credit card.

17 THE COURT: Let me explain what I think I just
18 understood the government to say. I think what the government
19 said is that the accounts above, I guess, are the ones that
20 deal with the business, and the credit card accounts have
21 relevancy because they show you spending money. Am I
22 understanding that correctly?

23 MS. MITRANI: Right.

24 THE COURT: That you would have gotten from the
25 business or otherwise.

1 MS. MITRANI: Correct. And also the credit card show
2 purchases in Brazil and go to, not only the mail fraud, but go
3 to --

4 THE COURT: The immigration.

5 MS. MITRANI: Yes.

6 THE COURT: All right.

7 MR. SCOTTON: The credit card, Your Honor, is a
8 personal credit card. And I'm going to have also something
9 that would probably -- I don't know if the investigator has
10 handed it to the government. Some of the credit cards that I
11 have, Your Honor, even one here I'm going to submit as evidence
12 here, it is the race manufacturer give to me. The way they
13 used to go ahead --

14 THE COURT: And that's appropriate cross-examination
15 material for you. You can ask about that. You can say those
16 questions regarding --

17 MR. SCOTTON: You know, my concern with this whole
18 scenario here is this: I understand that sometime here I get
19 here to try to ask question, Your Honor about to swing me a bat
20 because you are losing your patience with me.

21 THE COURT: No, I would not ever engage in any kind of
22 physical altercation. I respectfully reject that
23 characterization.

24 MR. SCOTTON: The thing here is I'm trying to present
25 evidence here, and most of the time, it's not allowed.

1 Whatever reason, I don't know, maybe because I'm not a lawyer.
2 I don't know what I am doing.

3 Secondly is I don't want they to start bringing things
4 here that is not true, not even fact. And when I try to defend
5 myself, I can't because it seems to be I'm doing something
6 wrong.

7 What I'm saying about this credit card here, this
8 credit card has nothing to do with the business. I'm spending
9 money in Brazil with my credit card, Your Honor. I make money
10 doing racing. I make money doing events. So team has
11 deposited money in those credit cards for me. That has nothing
12 to do with the business.

13 THE COURT: You can testify to that. But the
14 government has these records and the government is putting it
15 in to try to show that you are spending money that you obtained
16 from this business. And it's up to the jury to decide whether
17 they believe the government's theory or your testimony if you
18 wish to testify. That's up to the jury.

19 MR. SCOTTON: Your Honor, I just --

20 THE COURT: Let me just say this. It's not -- you
21 know, I can't -- if there is a relevant basis for it, and your
22 only objection is on relevancy, I can't deny its admission.

23 Now, if there's some other basis for objecting, I will
24 consider any other basis. But on a relevancy ground, I think
25 it's relevant. I think it meets the standard. So I'll deny

1 that and overrule it.

2 MR. SCOTTON: On the beginning of that credit card,
3 Your Honor, I don't even have those business probably like
4 months later, you know, I start doing this kind of business. I
5 don't even have that business when the CitiBank approving that
6 card. It's just like I'm getting sick and tired of this whole
7 process here. I'm trying to defend myself here.

8 THE COURT: Mr. Scotton. Every day we have to go
9 through this. I understand you are not happy. I'm sorry about
10 that. I wish you were happy. I do. But this is not gripe
11 time. This is time for us to be able to resolve legal issues.
12 That's what I am trying to stick to.

13 MR. SCOTTON: That's what I'm trying to do, Your
14 Honor.

15 THE COURT: I can't look at it if you keep whining.
16 If you would just hold for a moment so I can take a look at
17 your objection that you are making and see if it has any merit
18 to it. Just a moment, please.

19 All right. The point that I think Mr. Scotton is
20 making is he is asserting that the first credit card number, I
21 guess -- there are three credit card numbers, right, and that
22 the earliest activity is between May 14, 2008 and June 12,
23 2008.

24 Mr. Scotton, I could be remembering wrong, but I
25 thought I saw packages being shipped in 2007 even. So maybe

1 I'm misunderstanding you. You are saying that this is before
2 you started do this? Is that what your point is?

3 MR. SCOTTON: If package has been shipped in 2007,
4 automatic it's me?

5 THE COURT: Mr. Scotton, it's not my job to pass on
6 whether you are guilty or not guilty. What I need to do is I
7 need to determine whether there has been evidence that has been
8 put in that would make this relevant to the charges against
9 you. You are saying it's not relevant because it's outside of
10 the time period. The government has put in evidence though
11 during this time period, at least that's my recollection. So
12 I'm not sure -- well, I am sure. I am sure that that's not a
13 basis for ruling it to be irrelevant. Do you want to try
14 something else? I will be happy to consider it.

15 MR. SCOTTON: Your Honor, if they can't to go ahead
16 and introduce the credit card, Your Honor, they need to do it
17 as the contract. The way the jury going to see this here is
18 like one, two, three, four, four different credit cards here.
19 It's not four different credit cards. It is the same account.
20 I lost the credit card. The bank replace with another credit
21 card. And every single credit card has different number, but
22 the account is the same. That's what I am trying to say to the
23 Court here.

24 THE COURT: I understand. And you can explain that.
25 You can either testify to that or you can cross-examine the

1 person who is testifying and ask them if they know if it's the
2 same account or whether it could -- whether it's four different
3 accounts or whether it to could be, you know, a single account
4 with four different cards issued on it. You can ask those
5 kinds of questions. That doesn't make it irrelevant. I mean,
6 when you look at this, two of them appear to have been in play
7 at the exact same time which would tend to suggesting that it's
8 not the exact same account.

9 MR. SCOTTON: Your Honor --

10 THE COURT: Let me show what you I talking about.
11 Transaction dates on the account ending in 2730 are between
12 May 14, 2008 and June 12, 2008. Oh, I see. I'm sorry. So the
13 one before.

14 So then you can ask the witness that none of these
15 cross over and these appear to be the same card on a single
16 account or different cards on a single account. You can ask
17 about that. You can say, you know, do these pertain to
18 different accounts or, you know, was this multiple cards issued
19 on the same account with different numbers because, for
20 whatever reason, whether it's alleged fraud in the account or
21 whatever. You can do that. There's nothing wrong with that.
22 But that doesn't make it irrelevant. Do you understand what
23 I'm saying?

24 MR. SCOTTON: Yes, Your Honor.

25 THE COURT: Did you have other objections?

1 MR. SCOTTON: No, Your Honor. It's just that I want
2 to avoid bringing in more things that is not real. That's all.

3 THE COURT: This is called a summary exhibit. It is
4 allowable under rule 1006 if the following conditions are met:

5 Rule 1006 says, the proponent may use a summary,
6 chart, or calculation to prove the content of the voluminous
7 writings, recordings, or photographs that cannot be
8 conveniently examined in court. The proponent must make the
9 originals or duplicates available for examination or copying or
10 both by other parties at a reasonable time and place, and the
11 court may order the proponent to produce them in court.

12 In this case, the government stated that it provided
13 you with all the underlying documents during discovery. So it
14 appears to me that all the requirements of rule 1006 are met.
15 And so as long as this is relevant, so long as there are no
16 other objections that are sustainable, then this is admissible.

17 MR. SCOTTON: All right. So then I can go ahead then
18 and present the photograph of all four cards then all as
19 evidence, Your Honor?

20 THE COURT: When you testify, you can do that if you
21 authenticate it, or if there is a witness from the credit card
22 company to authenticate it, you can do it at that time. What
23 you cannot do is try to bring it in as evidence with somebody
24 who is not able to authenticate the document. That's the rules
25 of evidence. I didn't make them up.

1 MR. SCOTTON: Right, but the real credit card is not a
2 physical evidence if I have the real card in hand.

3 THE COURT: The real card or a copy is fine, as I have
4 previously said, as long as it can be authenticated. But you
5 have to do it the right way. Do you understand?

6 MR. SCOTTON: Yes, ma'am.

7 THE COURT: Are there other things we need to discuss
8 with the government?

9 MR. SCOTTON: No, Your Honor.

10 MS. MITRANI: There are several things on our part.

11 THE COURT: All right.

12 MS. MITRANI: Regarding the Agent Van Brunt undercover
13 recording, first, again we want to know if -- it seems to me,
14 although I'm not sure, that the defendant -- I don't know. Is
15 the defendant objecting to its admissibility, Your Honor? And
16 if he has an expert report, we would like to see it. That's
17 sort of one issue.

18 THE COURT: Okay. That is something.

19 MR. SCOTTON: Well, as far as I understand from my
20 standby counsel, Nina has a report here, but it is to something
21 that we are not allowed to present, so she have to go back and
22 get the report from the expert.

23 MS. MITRANI: Well, Your Honor, what I would say is,
24 you know, we haven't been provided with anything. We have had
25 the hearing here in August to show its validity. Assuming it

1 goes into evidence, the second issue I need to know, Your
2 Honor, is, we intend to put excerpts. We have provided those
3 excerpts to the defendant.

4 THE COURT: Let's deal with the first issue first.

5 We did have a hearing, but at that time Mr. Scotton
6 did not yet have his expert appointed. So I'm not going to
7 hold that against him. That's not -- I mean, I don't think
8 that would be fair.

9 But Mr. Scotton, you have to turn over the expert, you
10 have to turn over an expert report, and I am not saying you
11 have to turn over whatever was given to you necessarily by
12 the -- I don't know what it is that you have, but you have to
13 turn over something that complies with the requirements.

14 MR. SCOTTON: I'm pretty much sure that Nina here can
15 get this thing done tonight, you know, call the expert and
16 maybe get some kind of report through the email or something.

17 MS. MITRANI: The problem is, Your Honor.

18 MR. SCOTTON: They may be able to do that, Your Honor.

19 MS. MITRANI: The problem is I think he had
20 authorization for experts in October, November. It certainly
21 wasn't last week. I know we had a hearing where Judge
22 Matthewman addressed that. The problem is now if he's going to
23 sandbag the government with some kind of expert report, I don't
24 know what they are going to say, we are going to need to get
25 our forensic people, and here we are in the middle of trial.

1 I'm not sure how the Court wants to handle that.

2 THE COURT: Well, it is rather late for this. And I
3 did tell you earlier to when you brought it up earlier that you
4 needed to get the expert report in today.

5 MS. MITRANI: I thought we were supposed to have
6 everything.

7 THE COURT: It was supposed to be last week. It was
8 supposed to be last week. I don't know what to tell you,
9 Mr. Scotton, but I have been very clear about when this stuff
10 had to be in and we have nothing. So, you know, I was giving
11 you a break in saying that you could turn it over to the
12 government today and that way the government can look at it,
13 and if it has objections, we can address it at that time. And
14 I'm not ruling one way or the other about whether anything is
15 coming in at this time, but I can't even address the issue
16 without the government being provided with any kind of a
17 report.

18 MR. SCOTTON: Your Honor, Nina has a bunch of
19 information from the expert, but as advice from the standby
20 counsel, you cannot give those away, you need to get a report
21 from him. This is a private. So counsel has can advised --

22 THE COURT: Let me explain something to you. While
23 this Court is very appreciative of Mr. Kreiss's efforts in this
24 case, as I have explained on numerous occasions, he is not here
25 to provide you with legal advice. You need to make these

1 decisions for yourself.

2 If there is something that you want for me to
3 consider, then you have to provide it to the government so I
4 can do that. I can't do it if the government hasn't seen it.
5 And we are, you know, we are into the seventh or eighth day of
6 trial now. The government is going to rest this week,
7 apparently. And the government is not going to have an
8 opportunity to determine whether any rebuttal expert is
9 necessary to have a rebuttal expert to the conduct his or her
10 own investigations of what it is your expert is saying and to
11 testify. So that's very problematic.

12 MR. SCOTTON: Then, Your Honor, this Friday I tried to
13 send a motion and it was going to be too late, so I'm going to
14 do a verbal motion to the Court because I want to compel the
15 second device that Mr. Van Brunt has during that interview. So
16 he's got two device on him. I want the government to turn over
17 the second device.

18 Also, we are going to have a witness going to come
19 testify. They are going to go ahead and shows that something
20 is missing because it is a witness present during this time and
21 the witness saw it. I get up the table. I talk to this
22 witness. This piece has dissolved. And other pieces, I
23 advised the Court before, it's not on this tape. He has a
24 another device that he's hiding they have to go ahead and then
25 turn over because, you know, the expert can say he has two

1 devices on him during that time. So where is the other device
2 then.

3 THE COURT: Well, I don't know what the expert said,
4 so there's no way for me to know --

5 MR. SCOTTON: Ms. Nina going to get the report today,
6 Your Honor.

7 THE COURT: Well, let me say this. We will address it
8 when we have it. But, Mr. Scotton, you are on notice that, you
9 know, I'm not going to allow sandbagging here.

10 MR. SCOTTON: I have email here, Your Honor, from him.
11 This is email that he sent to Nina explaining what is going on
12 in this situation here. If the government want to see his
13 email, fine with me.

14 THE COURT: It's not up to the government what they
15 want to see. It's what you are going to turn over. You have
16 to turn over an expert report. I don't know how else to
17 explain it. It's required that you turn over an expert report.
18 I'm not saying you need to turn over email you received from
19 him. The government has no way of being able to confront the
20 allegations that you are making without knowing what they are.

21 MR. SCOTTON: And then I will give this to the
22 prosecutor right now, and she can review what the expert is
23 saying then, Your Honor. It is an email that he sent to
24 Martinez, sent to Jason. And then Martinez will get the full
25 report today then.

1 THE COURT: Why don't you show it to me before you
2 show it to the government.

3 All right. I'm not going to make you turn this over.
4 But here's what we are going to do. Let me give that back. I
5 think there's really only one issue that we need to address and
6 that is that apparently -- and I just don't remember, but Agent
7 Van Brunt -- let me ask the government how it wishes to
8 respond, that Agent Van Brunt had more than one recording
9 device there and the audio from only one was turned over. Is
10 that accurate?

11 MS. MITRANI: I believe we turned over the Hawk and --
12 so the Hawk recording was what was turned over in discovery
13 back in 2012. And in August of 2013 when the Court asked us to
14 bring all the evidence, in addition to bringing the Hawk
15 recording, we did bring the second recording which is a fob,
16 F-O-B, fob recording.

17 THE COURT: And can you identify for the record what
18 Bates numbers those things had.

19 MS. MITRANI: So the key fob didn't have a Bates
20 number because it wasn't turn over in the original production.
21 I think we have it back in the office. We can make a copy of
22 it and turn it over.

23 THE COURT: Okay. Why don't we do that. Can you have
24 it by tomorrow morning?

25 MS. MITRANI: We can give it to the investigator this

1 evening if she wants it.

2 THE COURT: Very good. That takes care of that. What
3 other issues do we have?

4 MS. MITRANI: Well, is the defendant -- we were
5 planning to play excerpts. Is he going to object? Does he
6 want to play the whole thing?

7 THE COURT: Mr. Scotton, I'm not deciding right now
8 whether it's admissible or not, but in case I do decide that
9 it's admissible, I need to know -- the government again wishes
10 to play excerpts. Do you want the government -- do you have an
11 objection to the government playing just excerpts or do you
12 want the whole thing played or otherwise?

13 MR. SCOTTON: What are we talking about here, this
14 particular video?

15 THE COURT: Yes.

16 MR. SCOTTON: It has to be the whole thing.

17 THE COURT: Okay. All right. What other issues are
18 there that we need to address with the government here?

19 MS. MITRANI: I'm sorry, Your Honor, there maybe more,
20 but the recording is the only one that is popping out in my
21 head.

22 THE COURT: Okay. So let me ask the government to
23 make arrangements with Ms. Martinez to get that fob to her this
24 evening. All right. And if there's nothing further, then I
25 will just keep Mr. Scotton here and dismiss the government.

1 MS. MITRANI: I'm sorry, Your Honor, I'm confused. Am
2 I getting an expert report, am I not getting an expert report,
3 or does that remain to be seen?

4 THE COURT: There will have to be an expert report
5 today.

6 THE INVESTIGATOR: I am going to call the expert today
7 and let you know.

8 THE COURT: All right. Thank you.

9 MR. SCOTTON: Your Honor, I'm going to turn this to
10 the government.

11 THE COURT: What is it?

12 MR. SCOTTON: Part of the exhibit that the defendant
13 going to present.

14 THE COURT: I'm sorry, is this relating to the expert
15 or something else?

16 MR. SCOTTON: No, this is part of my defense,
17 something that was supposed to be printed out.

18 MS. MITRANI: Your Honor, we just need a minute to get
19 our stuff.

20 THE COURT: Of course. Take your time.

21 MS. MITRANI: Have a good evening.

22 THE COURT: Good night.

23 (Thereupon, the government exited the courtroom.)

24 (Thereupon, a sealed hearing was held.)

25 * * * * *

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

7/30/14

s/ Tammy Nestor
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,

Fort Lauderdale, Florida

Plaintiff(s),

February 4, 2014

vs.

ROGERIO CHAVES SCOTTON,

Defendant(s).

JURY TRIAL
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): Bertha Mitrani, Esquire
United States Attorney's Office
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Fort Lauderdale, Florida 33301

FOR THE DEFENDANT(S): Rogerio Scotton, Pro Se

STANDY COUNSEL: Jason Kreiss, Esquire
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I-N-D-E-X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
AYLIN REYES MOLLINEDO				
BY MS. MITRANI	4		57	
BY MR. SCOTTON		16		
BRUCE MARMAR				
BY MS. MITRANI	67		118	
BY MR. SCOTTON		88		
SCOTT KAMLET				
BY MS. MITRANI	124		184	
BY MR. SCOTTON		138		
GOVERNMENT'S EXHIBITS				PAGE
132C				131

1 Thereupon,
2 the following proceedings began at 8:57 a.m.:

3 THE COURT: Good morning. Anything we need to address
4 before we bring in the jury?

5 MS. MITRANI: Nothing from the government, Your Honor;
6 although, I'll put on the record that I'm going to hand the of
7 defendant a letter dated February 3, 2014 signed by myself.

8 THE COURT: Okay. All right. Well, as soon as the
9 jury is ready, we will bring them in and get started.

10 (Thereupon, the jury entered the courtroom at
11 8:59 a.m.)

12 THE COURT: Good morning. I hope everybody enjoyed
13 your evening last night. All refreshed and ready to start up
14 again?

15 Welcome back and please be seated. Is there anybody
16 here who discussed the case with anyone disbursed any
17 information about the case, or did any research into the case?
18 If so, please raise your hand for me now.

19 I see no hands. Thank you all for that. And we are
20 going to pick up where we left off. So if you want to bring in
21 Ms. Mollinedo.

22 MS. MITRANI: I will. Your Honor, I think the members
23 of the jury still have their transcript. Can I ask them just
24 to pass it back? That way they don't have to schlep it.

25 THE COURT: Sure. We definitely want to avoid

1 schlepping.

2 MS. MITRANI: Absolutely.

3 THE COURT: Good morning.

4 THE WITNESS: Good morning.

5 THE COURT: We are going to just make sure that we get
6 the interpreter. Terrific. Thank you. And if we could get a
7 microphone, perhaps, for the interpreter, please.

8 That will work fine. Thank you. Terrific.

9 Ms. Mollinedo, I just need to -- Ms. Reyes, I'm sorry, I just
10 he need to remind you that you are still under oath. Do you
11 understand? I'll need you to say yes or no.

12 THE WITNESS: Yes.

13 THE COURT: Great. Thank you very much. Please be
14 seated.

15 DIRECT EXAMINATION (resumed)

16 BY MS. MITRANI:

17 Q Good morning, Ms. Reyes.

18 A Good morning.

19 Q How are you today?

20 A Fine.

21 Q Ms. Reyes, you know, I think I neglected to ask you some
22 things yesterday on your background. Are you working right
23 now?

24 A Yes.

25 Q What do you do?

1 A I work for a dispatch agency.

2 Q And what do you do for that dispatch agency?

3 A We forward things nationally and internationally,
4 Dominican Republic, Columbia.

5 Q And what are your responsibilities?

6 A Well, I do like customer service.

7 Q And is it a full-time job?

8 A Yes.

9 Q How long have you been with this company and what is its
10 name?

11 A Well, I moved a few days ago.

12 Q So a new company?

13 A Yes, a new agency.

14 Q And so this job that you were telling us about about
15 international shipments, is that the new job you started a few
16 days or is that the job you had before?

17 A I have been doing this type of work for quite some time
18 now, but I moved. A few days ago I moved to another agency.

19 Q Same type of work, different employer?

20 A Yes.

21 Q Got it. Are you a student?

22 A Yes.

23 Q Can you tell us a little bit about where you study and
24 what you are studying.

25 A I'm studying English at the Miami-Dade College.

1 Q Are you studying anything else?

2 A English, and I am taking two college classes now.

3 Q What college classes are you taking?

4 A I am now taking psychology and one in computers.

5 Q And is that at Miami-Dade College as well?

6 A Yes.

7 Q So, Ms. Reyes, are you okay? Do you need some water?

8 A No.

9 Q So yesterday I asked you had you ever lived with the
10 defendant and you told us no, correct?

11 A Yes.

12 Q I hate to ask you this, but did you ever have any intimate
13 relationship with the defendant?

14 A No.

15 Q No, never?

16 A No, never.

17 Q I think I need water. Yesterday you started telling us
18 about how -- about the application with immigration for your
19 adjustment of status and that the defendant was also applying
20 to immigration to adjust his status. Am I correct?

21 A Yes.

22 Q Who prepared those papers?

23 A A lady attorney he had.

24 Q Did the defendant ask you to do anything or make any
25 preparations in anticipation of meeting with that attorney?

1 A Yes. He made me study the questions for the citizenship.

2 Q What do you mean by that?

3 A He had some questions and he made me learn the questions
4 that we were going to be asked when we went for the citizenship
5 interview.

6 Q Okay. Did he also ask you to practice questions for
7 meeting with the attorney?

8 A Yes.

9 Q So why don't you describe to the members of the jury a
10 little bit about how the defendant would ask you or approach
11 you about practicing these questions?

12 A He told me that we had to practice the citizenship
13 questions so that I would not make any mistakes on the day of
14 the interview.

15 Q So what kind of questions did you rehearse with the
16 defendant?

17 A All the ones that he showed me.

18 Q Do you remember anything specific?

19 A Those he had on a piece of paper, a printed piece of
20 paper.

21 Q The questions -- the defendant had the questions on a
22 printed piece of paper?

23 A Yes.

24 Q And those are the questions he asked you to rehearse with
25 him?

1 A Yes.

2 Q Do you remember any of the specific questions or specific
3 topics?

4 A There were questions that he told me about those that I
5 had to know where things were kept in the house, the color of
6 the things in the house. He told me that we would be asked
7 things such as what did we do on our off days, days off, what
8 was our routine as a couple. He also made me practice several
9 questions about things like the places we would go out to.

10 Q Did the defendant tell you how to answer those questions?

11 A Yes, he would ask me the questions and give me the answer.

12 Q What was the defendant's attitude towards you during these
13 rehearsal sessions?

14 A Several times he became upset with me. Sometimes he would
15 scream at me. He told me that I would have to learn all the
16 questions in order to avoid saying something wrong on the day
17 of the interview, that if I said something wrong, it would be
18 my fault.

19 Q How did that make you feel?

20 A Badly.

21 Q How bad?

22 A Sometimes he would become sort of crazy towards me.
23 Sometimes he would scream at me. And I would tell him that I
24 did not want to go. And on one occasion, he made me miss
25 school and everything. He told me he didn't care whether I

1 went to school or not, that I had to go over to his place to
2 practice the questions with him. And he would threaten me
3 again and tell me that he would call immigration and that I did
4 not know what he would be able to do unless I obeyed him.

5 Q Did you obey him?

6 A Yes.

7 Q Were these rehearsal sessions held at the defendant's
8 house?

9 A Yes, he made me go over to his house to practice the
10 questions.

11 Q Did you also practice over the telephone?

12 A Sometimes he would call me and ask me are you learning the
13 questions because I had to learn them well.

14 Q If you didn't learn them well, what would happen?

15 A He would tell me that it would be my fault if something
16 went wrong during the interview and he became annoyed with me.

17 Q Do you recall then attending the actual interview with
18 immigration with the defendant?

19 A Yes.

20 Q And during that interview, you told the citizen and
21 immigration services officer that you were living with the
22 defendant?

23 A Yes. He told me we had to say that we lived together.

24 Q Do you remember -- strike that.

25 Basically during the interview, you were trying to give

1 immigration the idea that the two of you were a happily married
2 couple, correct?

3 A Yes, and he told me that I had to answer the questions
4 well and I had to make believe that we were like a couple, that
5 we were a couple.

6 Q But were you a happily married couple?

7 A No, I never got around to living with him.

8 Q So you were -- strike that.

9 What did you think was going to happen to you if you
10 didn't follow the defendant's instructions in telling
11 immigration that you were living together and you were a
12 married couple?

13 A I did not understand.

14 Q You told us that basically you lied to immigration at the
15 direction of the defendant, correct?

16 A Yes.

17 Q What did you think was going to happen to you if you
18 didn't answer immigration in the fashion that the defendant had
19 instructed you?

20 MR. SCOTTON: Objection, Your Honor.

21 THE COURT: What is the objection?

22 MR. SCOTTON: Leading.

23 THE COURT: Overruled.

24 THE WITNESS: If I did not tell them what he told me
25 to?

1 BY MS. MITRANI:

2 Q Yes. Were you afraid of the defendant?

3 A Yes. He threatened me many times and said that unless I
4 said what he told me to tell them, he was going to tell them
5 that he was paying me so that they would send me back to Cuba
6 and that I did not know what he was capable of and that he
7 could do something to my family.

8 Q After the interview with immigration was finished, where
9 did you go?

10 A To his house.

11 Q What happened there?

12 A We arrived at the house and HE began to look up on the
13 computer to find out whether we had been approved or not.
14 That's what he said to me. Then he entered into -- well, I do
15 not know where he found it, but he told me that he found out
16 that I had been approved and that nothing about him had -- was
17 entered yet as if he had not been approved.

18 And then he became annoyed when I asked him to take me
19 back home. And he told me, no, wait for a while. I have to
20 find out whether I have been approved or not. And after a
21 while, when he wanted to, he took me back home.

22 Q What was the defendant's attitude towards the fact that he
23 believed that you were approved and he was not approved?

24 A He was annoyed. He became very annoyed, and on one
25 occasion, he screamed at me. He said that I had answered one

1 question wrong.

2 Q And that was when you were at his house after the
3 interview that he screamed at you?

4 A Yes, he screamed at me also on that day.

5 Q Do you know a lady by the name of Renata?

6 A Yes.

7 Q Who is Renata?

8 A She used to work with Roger at his home.

9 Q Did you have any interactions with her?

10 A I saw her the times I was there at his home, and sometimes
11 he would tell her to take me to the terminal near his house.

12 Q What kind of terminal?

13 A The train, the train station.

14 Q Why did you need to go to the train station?

15 A Because he was not picking me up from school as he used to
16 do at the beginning. He would tell me that I had to go to the
17 train station to take the train, and then he would come and
18 pick me up.

19 Q Are you still driving that '95 or '96 Honda?

20 A Yes.

21 Q Did you ever do anything for the defendant with respect to
22 his business?

23 A Yes, I worked with him for a while.

24 Q What did you do?

25 A He told me to help him to put the pictures of the products

1 he was selling on his website.

2 Q Did you do that?

3 A Yes.

4 Q On how many occasions?

5 A I do not remember well. I did it for a while.

6 Q Did you do anything else besides put the product pictures
7 on his website?

8 A No, I would just copy and paste what appeared on the
9 system.

10 Q Was that the extent of your involvement in the defendant's
11 business?

12 A Yes, because he told me to help him just with that because
13 since I do not speak English well, I could not do anything
14 else.

15 Q Did you know any of the details of the defendant's
16 business?

17 A No, what he always told me was that he would buy
18 merchandise here and then he would sell in Brazil, that that
19 was very expensive in Brazil, so that's why he made a lot of
20 money.

21 Q Did you have anything to do with the defendant's accounts,
22 business accounts?

23 A No.

24 Q Did you obtain your residence card?

25 A Yes.

1 Q Did that arrive before the interview or after the
2 interview?

3 A Later on, but I do not know exactly what date it arrived
4 because when we went to the interview, he told me -- when we
5 went back home and he saw that I had been approved, he told me
6 that I would receive it in 15 days.

7 Q Who is the he, the defendant?

8 A Yes.

9 Q So the defendant told you that your card would come in 15
10 days?

11 A Yes, that's what he told me. But at the end, I do not
12 know when it arrived because a long time went by. And I would
13 ask him if it had arrived, and he would tell me that it had
14 not.

15 Q And did you request -- well, had it arrived, was the
16 address that it was supposed to arrive that 7797 Golf Circle
17 Drive address?

18 A Yes, he received all my mail, all my things there.

19 Q Did you make repeated requests the defendant to give you
20 your green card your immigration papers?

21 THE COURT INTERPRETER: Can you please repeat that,
22 Counsel.

23 MS. MITRANI: Sure.

24 BY MS. MITRANI:

25 Q Did you make repeated requests to the defendant to give

1 you your immigration papers?

2 A Yes, I would ask him. I would call him often and I would
3 ask him if it had arrived. And he would tell me it had not.
4 And I told him, I told him several times, you told me that it
5 would arrive in 15 days, and over a month has already gone by.

6 Q And did he eventually give it to you?

7 A Yes, when I insisted many times and I told him that I
8 needed the card and to give it to me or I would call to
9 immigration and I would ask them why I had not received it.

10 Q So it was after you made that statement to the defendant
11 that he gave you your papers?

12 A He told me that for sure I would receive it in a few days,
13 and after a few days, when I called him back, he told me that
14 he already had my card.

15 Q Ms. Reyes, are you divorced from the defendant?

16 A No, but I want to divorce him.

17 Q Why aren't you divorced?

18 A Because I had not done the paperwork and I was told that
19 divorce was very expensive.

20 Q Do you have the money to pay for the divorce?

21 A Not now.

22 Q Do you wish to be divorced from the defendant?

23 A Yes.

24 Q Is it your intent to do so as soon as you can save up
25 enough money?

1 A Yes. I don't want to have anything else to do with him.

2 MS. MITRANI: Your Honor, if I could have a moment.

3 No further questions, Your Honor.

4 THE COURT: All right. Cross-examination.

5 CROSS EXAMINATION

6 BY MR. SCOTTON:

7 Q How are you doing, Aylin?

8 A Fine.

9 Q Are you good?

10 A Fine. Thank you.

11 Q Are you afraid?

12 A Yes.

13 Q Right now you are afraid. It's not to be afraid. You got
14 a marshal behind you. We have another marshal here. The U.S.
15 attorney is present. So it's no way for me to attack you. I'm
16 going to ask a few questions and it will be quick and then this
17 will be done for you.

18 THE COURT INTERPRETER: Can you please speak a little
19 louder. Can you repeat the last part.

20 MR. SCOTTON: I'm going to ask her a few questions,
21 okay? It's going to be quick, okay?

22 BY MR. SCOTTON:

23 Q Do you lie?

24 A I am not lying.

25 Q You never lie?

1 A I am not lying.

2 Q You are not going to lie to this judge here, you are not
3 going to lie to this jury, you are not going to lie to this
4 court, right?

5 A Yes.

6 Q You know there is a penalty if you lie to the court,
7 right?

8 A Yes.

9 Q You can be charged with a crime if you lie to the court?

10 MS. MITRANI: Objection, Your Honor.

11 THE COURT: Sustained. You have already made this
12 point, Mr. Scotton. Let's move on.

13 MR. SCOTTON: Right.

14 BY MR. SCOTTON:

15 Q Did you lie on your Miami College application?

16 A What do you mean if I lied? I don't understand.

17 Q Did you make any false statement when you applied for your
18 college to get accepted into the college of Miami?

19 A No, not --

20 Q Is there any reason --

21 THE COURT INTERPRETER: There is no answer yet. Can
22 you please wait.

23 MR. SCOTTON: Go ahead.

24 THE WITNESS: No, not that I remember.

25

1 BY MR. SCOTTON:

2 Q Did you tell them that you were living out of the country?

3 A I living out of the country?

4 Q Yes, Aylin.

5 A No.

6 Q If I show you application, it might refresh your mind.

7 A Like if I was living out of the country?

8 Q Yes, Ms. Aylin.

9 A I never lived out of the country.

10 MR. SCOTTON: Your Honor, can I approach and show
11 Ms. Aylin her application?

12 THE COURT: Yes. Show it to the government first,
13 please.

14 BY MR. SCOTTON:

15 Q Can you see the application in front of you?

16 A Yes.

17 Q And it state there you reside out of the country?

18 A Yes, but I have never lived out of here, out of the United
19 States.

20 Q May I have that back, please. Thank you, Aylin.

21 Do you have a degree, Ms. Aylin?

22 A Middle level accountant technician from Cuba. I had that
23 from Cuba.

24 Q But you lie again to the application to say you have got
25 associations on science degree?

1 A No, that was not true.

2 Q Do you want to look again?

3 A I do not have any sort of title of degree like that. I
4 never said that.

5 MS. MITRANI: Objection. I withdraw my objection.
6 Good ahead.

7 THE WITNESS: I don't know where he got that from. I
8 have never said that I have not lived in this country. I have
9 said that I am a medium level technician in Cuba, not here. I
10 don't know where he got that. I said that I was a middle level
11 science technician here.

12 BY MR. SCOTTON:

13 Q Are you done? You just saw the application, right?

14 MS. MITRANI: Objection, Your Honor. Can we go --

15 THE COURT: Just a moment.

16 MS. MITRANI: May we approach sidebar briefly?

17 THE COURT: Yes.

18 (Thereupon, the following was heard sidebar.)

19 MS. MITRANI: He didn't bring the document.

20 THE COURT: Can you get the document, please?

21 MS. MITRANI: Your Honor, first of all, I don't
22 believe this was turned over to us in discovery. Second of
23 all, he's calling this an application. It's not her
24 application. This is a letter that was addressed to her that
25 evidently the defendant opened because it came to his address.

1 So as she's said, she has never seen it. It's misleading to
2 say this is her application when this is some letter from
3 Miami-Dade County that we have never seen before.

4 MR. SCOTTON: I open -- I'm sitting in jail for two
5 years and I open the letter? The letter has a date of 2012
6 when I was sitting in jail. I opened the letter?

7 THE COURT: Well, the problem is we don't know what it
8 was that she said. This is their interpretation of the
9 information that she provided and --

10 MR. SCOTTON: Right. She provide of that information,
11 Your Honor, so basically she lied.

12 THE COURT: No, no. First of all, impeachment, this
13 is not a sworn statement by her. In fact, it's not a statement
14 by her at all. What it is is a statement by Miami-Dade College
15 interpreting what she said. But the way these documents
16 frequently work is that there are fields and you have to select
17 from the different things what you can put in. For example,
18 degree, because she got a degree in Cuba might not have the
19 same kind of title as a degree here. She said it was --

20 MR. SCOTTON: Accounting, Your Honor.

21 THE COURT: Excuse me. Would you please wait a
22 minute.

23 MR. SCOTTON: Yeah.

24 THE COURT: Right. So she said that she had a -- I
25 think she said it was a two-year accounting degree which here a

1 two-year degree is called an associate's degree. And if it's
2 accounting, it's frequently given as an associate's degree in
3 science. That's just the way it is as opposed to arts or other
4 things. So there's no way to know if this is their
5 interpretation of what she said which could have been accurate
6 because you don't have the underlying paper of what she
7 actually said. It's hearsay. You cannot impeach her with
8 this.

9 MR. SCOTTON: She can go ahead and said she's out of
10 the country. The college just fabricated that information,
11 Your Honor, when sending a letter to someone.

12 THE COURT: No, that's not what I'm saying at all.
13 What I am saying is we don't know what this means because it
14 says residency. That could mean that she is not an American
15 citizen, in other words, which is accurate. She wasn't an
16 American citizen, I guess, at the time so it says out of
17 country.

18 MR. SCOTTON: This is a message from the president of
19 college welcoming her.

20 THE COURT: I'm not going to argue with you about it.
21 It's hearsay, it's double hearsay, and we have no idea what
22 this means. You cannot use this to impeach her. All right.
23 Do you understand?

24 MR. SCOTTON: Yeah.

25 THE COURT: Thank you.

1 (Thereupon, the following was heard in open court.)

2 BY MR. SCOTTON:

3 Q Have the prosecutor promise you anything?

4 A No.

5 Q They give you immunity, right?

6 A No.

7 Q I got a document from the government saying that you can
8 testify and nothing is going to happen to you, so this --

9 MS. MITRANI: Objection.

10 THE COURT: Sustained. Come sidebar, please.

11 (Thereupon, the following was heard sidebar.)

12 THE COURT: What kind of document?

13 MS. MITRANI: I have no idea what he's talking about.

14 MR. SCOTTON: She sent a letter when she tried to give
15 me the plea agreement and the letter said that for your
16 information under this, Aylin is protected for her true
17 testimony.

18 THE COURT: Let me see the letter.

19 MS. MITRANI: Let me see the letter.

20 MR. SCOTTON: She's got immunity.

21 THE COURT: There is this letter that says, pursuant
22 to Giglio versus United States, we wish to advise you that
23 Ms. Reyes has been advised that her truthful testimony will not
24 result in criminal exposure. So I think he can ask about this.

25 MS. MITRANI: Okay. I will say, though, for the

1 record, I don't consider -- he can ask about that. I'm not
2 arguing with the Court. Just for the record, I don't consider
3 that immunity, so that's why.

4 THE COURT: Well, I think it is fairly construed as
5 immunity.

6 MS. MITRANI: Okay.

7 MR. SCOTTON: Then if it's not immunity --

8 THE COURT: You just won, so...

9 MR. SCOTTON: It's not about winning, Your Honor. We
10 are here for the truth.

11 THE COURT: I agree, but what I'm saying is there is
12 no reason to keep arguing.

13 MR. SCOTTON: All right. Thank you, Your Honor.

14 (Thereupon, the following was heard in open court.)

15 BY MR. SCOTTON:

16 Q So they offer you immunity, right?

17 A No.

18 Q You came here to say that our marriage is a sham, correct?

19 THE COURT INTERPRETER: I'm sorry, can you repeat
20 that.

21 BY MR. SCOTTON:

22 Q You came here to this court to say that our marriage is a
23 sham, correct?

24 A Yes.

25 Q Have this prosecutor charged you with a crime?

1 A No, she has never said anything like that to me.

2 Q How many people to do a sham marriage, Ms. Aylin, just
3 one?

4 THE COURT INTERPRETER: Can you repeat your question
5 slowly, please.

6 MR. SCOTTON: Yes, ma'am.

7 BY MR. SCOTTON:

8 Q How many people it take to have a sham marriage, just one
9 people or two people?

10 A I do not understand the question.

11 Q All right. Let me get it better here. So half of my
12 marriage is a sham. Your half is not a sham, correct?

13 A I do not understand what he's trying to ask.

14 Q How many times you went to the prosecutor office again?

15 A I only went there once.

16 Q Have you text messaged the prosecutor too?

17 A Text message?

18 Q Yes.

19 A One time.

20 Q When you went to the prosecutor's office did the
21 prosecutor show a couple of pictures of us?

22 A Yes.

23 Q Did you have breakfast this morning, Ms. Aylin?

24 A Yes.

25 Q Was it cafe con leche and bread and ham?

1 A No.

2 Q No, but it's still toast, sometimes the bread with the
3 ham, you still like it?

4 A I like it, but I no longer eat that.

5 Q Is this one of the pictures the prosecutor has shown you
6 inside the office?

7 A Yes.

8 Q How much money did I pay for those people to take
9 pictures, Ms. Aylin?

10 A How much money did he pay them?

11 Q Yeah. Well, we all fake, so how much money I pay them?

12 A To my knowledge, he did not pay them any money because
13 from what he said, you told me that these people were some
14 friends of yours.

15 Q Which mall is that one that we went that day? Do you
16 remember that?

17 A I do not recall.

18 Q Do you know who is the guy in the pictures? Do you
19 remember his name?

20 A No.

21 Q Do you remember this day, Ms. Aylin?

22 A Yes, that was the day that I went to your house, carrying
23 several changes of clothes.

24 Q Right, you mentioned to the prosecutor here yesterday and
25 today as you are crying that you are terrified?

1 A Yes.

2 Q Is that kiss show someone that is terrified?

3 A No, but you --

4 Q Aylin, just answer the question.

5 A No, but you know that you told me that we had to have the
6 appearance before everybody that we were a couple who got along
7 well.

8 Q Right.

9 A You were the one who would always kiss me. I never kissed
10 you.

11 Q Right. So that kiss over there, I told you if you don't
12 kiss me, then I'm going to go after your family, correct?

13 A You told me that I had to make it appear that we were all
14 together.

15 Q That's a good one. Right there did I tell you that I
16 worked for the FBI too?

17 THE COURT INTERPRETER: Can you repeat your question,
18 sir, please.

19 BY MR. SCOTTON:

20 Q Have I told you that I work for the FBI too?

21 THE COURT INTERPRETER: Please repeat your question.

22 BY MR. SCOTTON:

23 Q I have told you that I work for the FBI too?

24 A No.

25 Q Oh, but it's not the FBI like these men here work for,

1 right?

2 A I do not understand what he's trying to ask.

3 Q Well, that's a nice picture, right? Are you look like you
4 are afraid on that picture?

5 A No, but that was the same day that we went out with his
6 friends. They gave us that photograph.

7 Q And I work for the FBI, female body inspection, right?

8 A I do not understand what he means.

9 Q Is this picture show someone who has been intimidated and
10 is afraid?

11 A That's how the girl who took the picture told me to look.

12 Q I kind of look gay, but this your husband right here in
13 the picture?

14 A Yes.

15 Q Do you think I'm gay?

16 A No.

17 Q You hug me from behind, so..

18 A So what does that have to do with anything? That picture
19 was taken by that young girl. And you know that she told us
20 what position we had to take on that same day.

21 Q So on that position, she told me to pretend I'm gay?

22 A No, you did that by yourself.

23 Q Right. By the way, those pictures I showed, the
24 prosecutor already showed you in the office, right?

25 A Those are the same pictures that you took along to our

1 marriage.

2 Q My question is that the prosecutor showed those pictures
3 at the office, right?

4 A Yes. I had already seen them before. Those are the
5 pictures that he took along, the album that he prepared and the
6 pictures he took to the marriage.

7 Q Are you sitting by the bathroom here, Ms. Aylin?

8 A Yes.

9 Q Are you text messaging someone?

10 A Yes.

11 Q Fixing your hair?

12 A Yes.

13 Q Did you used to use the hot thing that you burn yourself
14 most of the time? Did you used to use that?

15 A That thing?

16 Q I think I have a picture here with that.

17 Did you used to burn yourself sometime with that thing?

18 A No.

19 Q This is a better picture, Ms. Aylin. Now you can say
20 that, I'm terrified, I want to eat you alive. Look at that.

21 And you are very afraid in this picture here, right?

22 Because it's all fake. We all pretend here.

23 MS. MITRANI: I think the witness needs to answer.

24 MR. SCOTTON: What's the question, please?

25 MS. MITRANI: What is your question?

1 THE COURT: All right. That's enough. Mr. Scotton,
2 please ask questions. You are not testifying right now.

3 BY MR. SCOTTON:

4 Q This is another picture here, again you in the bathroom?

5 A Yes.

6 Q Did I tell you to wash your hands otherwise I'm going to
7 go after your family?

8 A That happened on one of the occasions that I went to his
9 house to practice the questions. I went to the bathroom and I
10 washed my hands. He spent his time taking pictures of me, of
11 everything I did.

12 Q Ms. Aylin, remember accident that you have on January 15
13 of 2011?

14 A Yes, I have had only one accident on one occasion.

15 Q What happened over there during the accident, Ms. Aylin?

16 A I was exiting my work and a man hit me. And while I was
17 there with the police and they were taking care of me, he
18 called me and I told him that I had had an accident and he told
19 me not to worry about anything, that he was going to take care
20 of everything having to do with the accident.

21 Q Did you remember the name of the police officer?

22 A No.

23 Q Do you know that my investigator has spoke to him?

24 THE COURT INTERPRETER: Could you repeat your question
25 please, sir?

1 BY MR. SCOTTON:

2 Q Do you know that my investigator has spoke to him?

3 MS. MITRANI: Objection.

4 THE COURT: Sustained.

5 BY MR. SCOTTON:

6 Q It is not true, Ms. Aylin, that you told him to call me
7 because you couldn't speak English?

8 A No.

9 Q Officer, please call my husband?

10 A As far as I recall, I never said that.

11 Q On May 28, 2012, do you recall Mr. Van Brunt speak to you?

12 A Van Brunt?

13 Q That's not senorita. He's a man?

14 A Who is that?

15 Q That's the agent right here. Did you remember he came to
16 see you?

17 A Yes, but I do not remember the date.

18 Q Did you remember tell him that you used to live in Margate
19 at one point, but we separate?

20 A I never lived with him.

21 Q Ms. Aylin, do you remember saying to the agent that at one
22 point we lived together and we separate? Did you make that
23 statement to him?

24 A I do not know. I do not recall. I do not understand.

25 Q So you don't recall it?

1 A No, I do not know. I do not recall.

2 Q And then now on June 14, 2013, you change your story,
3 correct?

4 A I haven't changed any stories.

5 Q But the FBI went see you again on June 14 of 2013,
6 correct?

7 A June 14? June 14?

8 Q June 14, 2013.

9 A I do not recall the date.

10 Q You told the prosecutor that we sit down, we went over
11 questions about marriage, correct?

12 A Yes.

13 Q Did you remember any of those questions?

14 A The ones we practiced for the interview?

15 Q Yes.

16 A I don't know. I recall some, but I do not recall others.

17 Q And also you say to the prosecutor that after our
18 interview in February, we went to the house and I was on the
19 computer waiting for the confirmation from immigration,
20 correct?

21 A Yes.

22 Q How can I waiting for some answer from immigration when
23 you the only one has been interviewed, not me?

24 A You were also interviewed together with me.

25 Q Ms. Aylin, they didn't interview me that day. You don't

1 remember that?

2 A We went there once and they only interviewed me.

3 Q Exactly.

4 A And later on we went there again and we both were
5 interviewed. And after that interview, when we went home,
6 that's when you were looking on the computer and that's when
7 you told me that I had been approved.

8 Q On the second one?

9 A Yes.

10 Q When your green card was approved on the first one? That
11 doesn't make any sense, Ms. Aylin?

12 THE COURT INTERPRETER: Can you please repeat that.

13 BY MR. SCOTTON:

14 Q It is not the truth that your green card has been approved
15 on February 24?

16 A I do not know the date on which it was approved. He's the
17 one who told me that I had been approved.

18 Q Exactly. I was sitting my computer when immigration sent
19 email and I told you, right?

20 A Yes.

21 Q So how can you say to this prosecutor that I told you that
22 I'm not going to take you home until I get the information that
23 my green card has been approved since I have not been
24 interviewed?

25 THE COURT INTERPRETER: The interpreter requests

1 repetition.

2 BY MR. SCOTTON:

3 Q How did you tell to this prosecutor that I'm sitting at
4 the computer and I refused to take you home until I got
5 information that I been approved when I haven't even been
6 interviewed?

7 A The date when we were both interviewed on the second
8 interview, that interview, that's when we arrived home and you
9 told me that you had seen on the computer that I had been
10 approved. And after a while, you told me that you had not been
11 approved.

12 Q Ms. Aylin, you just told --

13 A But that I had been approved.

14 Q You just told the prosecutor here a minute ago that after
15 the first interview, I was holding your green card lying to you
16 that I have not received the green card and then you forcing
17 me --

18 MS. MITRANI: Objection.

19 THE COURT: Sustained.

20 MR. SCOTTON: I'll try to get this question a better
21 way here, Your Honor.

22 BY MR. SCOTTON:

23 Q You just told the prosecutor here that you told me that
24 the green card has not arrived and you told me again, right?

25 A I told -- he told me that I had been approved and that my

1 card would arrive in 15 days. And over 15 days went by and the
2 card, you told me that it had not arrived.

3 Q Did you see who sit with the prosecutor and went over the
4 video, the interview with immigration? Did you saw that video?

5 A What video?

6 Q The interview with Mr. Fred Brooks, the second interview.

7 A If I saw it?

8 Q Yes, Aylin.

9 A Yes.

10 Q When did you saw that interview, Ms. Aylin?

11 A I do not know. I do not recall.

12 Q And who showed that interview to you?

13 A The lady.

14 Q You don't recall when she show it to you, but you recall
15 that's the reason you went to her office?

16 A Yes.

17 Q When did you went to her office?

18 A I do not recall when I went.

19 Q Did you recall in the video that you hand to Mr. Fred
20 Brooks your green card?

21 THE COURT INTERPRETER: The interpreter requests
22 repetition.

23 BY MR. SCOTTON:

24 Q Do you recall during that interview, you handed your green
25 card to Fred Brooks?

1 A At that moment when we went into the interview, I did not
2 have the residence. All I had was a parole.

3 Q Perhaps we can play the video again for you to refresh
4 your mind.

5 A When I went to the interview, they asked me for my
6 documents. I showed them my parole and my ID.

7 Q I'm talking about the second interview, Ms. Aylin.

8 A Yes, I had to show those both times.

9 Q Is it not the true, in the second one you handed to
10 Mr. Fred Brooks your green card?

11 MS. MITRANI: Objection.

12 THE COURT: What is the objection?

13 MS. MITRANI: Asked and answered many times.

14 THE COURT: Sustained.

15 BY MR. SCOTTON:

16 Q Did you hand the green card to Mr. Fred Brooks during the
17 interview?

18 THE COURT: Sustained.

19 MS. MITRANI: Same objection.

20 MR. SCOTTON: Your Honor I would like to play that
21 part of the video then, Your Honor, as evidence, right? I'm
22 allowed to play that video, right?

23 THE COURT: Well, if you can find that part, but we
24 are not going to sit and watch three hours of it again, so...

25 Mr. Scotton, what are you doing?

1 MR. SCOTTON: I'm getting the video, Your Honor.

2 THE COURT: All right. Let's move along, please.

3 MR. SCOTTON: Your Honor, is there any place that I
4 can connect this computer in?

5 THE COURTROOM DEPUTY: You have to go to the
6 prosecution table.

7 THE COURT: I tell you what. Why don't we take our
8 morning break and Mr. Scotton can find the part on the video.
9 We can reconvene at 10:25.

10 All rise for the jury.

11 (Thereupon, the jury exited the courtroom at
12 10:13 a.m.)

13 THE COURT: Are we ready? Do we have it where we need
14 it to be? It is time for the jury to come back in and I have
15 given 15 minutes plus the time before. I think it's time to be
16 ready. Are we ready?

17 MR. SCOTTON: Yes, Your Honor.

18 THE COURT: All right. All rise for the jury.

19 (Thereupon, the jury entered the courtroom at
20 10:25 a.m.)

21 THE COURT: Welcome back, everybody. Please be
22 seated. Ms. Reyes, I just need to remind you that you are
23 still under oath. Do you understand?

24 THE WITNESS: (Nodding head.)

25 THE COURT: I need you to say yes or no.

1 THE WITNESS: Yes.

2 THE COURT: Great. Thank you.

3 Mr. Scotton, you may proceed.

4 BY MR. SCOTTON:

5 Q Do you see that picture right there, Mr. Fred Brooks has
6 handed back your green card?

7 A Which is the green card?

8 Q Your residence?

9 A No, you were the one who sent him in my residency card by
10 mail.

11 Q Ms. Aylin, did you see that Fred Brooks has required for
12 us to present your residence card and also our employer
13 authorization he has handed back to us? You don't remember
14 that day?

15 A You gave me my residency. You sent it to me by mail. I
16 am not crazy. I do remember that.

17 Q Did you remember the beginning of this interview, you
18 swear to tell the truth, nothing but the truth? Do you
19 remember that?

20 A Yes.

21 Q So you lie?

22 A Yes, I lied because you told me that I had to say
23 everything you said.

24 Q Otherwise, I would go after your family?

25 A Yes, that is what you made me understand.

1 Q Why did you not report to the police office?

2 A Because you told me you were going to hurt my family. You
3 told me I had to do everything you told me to do.

4 Q And the police cannot protect your family? I'm a very
5 dangerous person, right?

6 THE COURT INTERPRETER: Can you repeat.

7 BY MR. SCOTTON:

8 Q I'm a very dangerous person, right?

9 A You said all of that to me. I was afraid of you and I was
10 not going to tell anybody anything. You told me that I could
11 not tell anyone anything.

12 Q Ms. Aylin, you mentioned also here that you text message
13 with the prosecutor, was it yesterday?

14 A No.

15 Q When did you text message with the prosecutor?

16 A What do you mean when did I text her?

17 Q When did you text her? When did you pick up your phone
18 and text her?

19 A The only time that I sent a text message to the prosecutor
20 was because I could not come here in my car.

21 Q You mentioned that we sit down many times to go over
22 questions, correct?

23 A Yes.

24 Q Did you train well?

25 A He made me learn all the questions.

1 Q You learned them, right?

2 the court in: I'm sorry. Repeat your question,
3 Counsel.

4 BY MR. SCOTTON:

5 Q You learn them, right? Did you learn those questions?

6 A Yes.

7 Q Did you learn also when the prosecutor teach you how to be
8 here also to be here and lie?

9 THE COURT INTERPRETER: Can you repeat your question?

10 MR. SCOTTON: Did you learn how to lie here from the
11 prosecutor?

12 THE WITNESS: I do not understand your question.

13 BY MR. SCOTTON:

14 Q That she trained you to come here today for this hearing?

15 A No, she has never said anything to me. She has not told
16 me anything like that.

17 Q You mentioned that those pictures that are presented to
18 the jury here that we have a hire a photographer to take those
19 pictures, correct?

20 A Yes, it's true.

21 Q But you saw in the reflects of the mirror, I was the one
22 taking the picture of you, right?

23 A Yes, he took that picture on that day at his house.

24 Q Did you recall the day we went to the restaurant by the
25 beach called JB's?

1 A I do not recall. I do not recall.

2 Q You don't recall that day that your green card has arrived
3 to the house and we went over there to dinner to celebrate that
4 you got your green card?

5 A We did not go out to celebrate any kind of green card.
6 You sent it to me by mail. You sent it to me by mail.

7 Q Did you got proof here that I send it to you by mail?

8 MS. MITRANI: Objection, Your Honor, asked and
9 answered many times.

10 THE COURT: Sustained.

11 MR. SCOTTON: That's the first question I asked her
12 about the mail, Your Honor.

13 THE COURT: It's not a proper question anyway.

14 BY MR. SCOTTON:

15 Q How is your brother doing those days, Ms. Aylin?

16 A I do not know. I have not seen my brother for a few days.

17 Q Did he still claim false checks from the government?

18 MS. MITRANI: Objection, Your Honor.

19 THE COURT: Sustained.

20 BY MR. SCOTTON:

21 Q So, Ms. Aylin, let me get this straight. Half of my
22 marriage is a sham and your half is not a sham, correct?

23 A I do not understand.

24 Q Yeah, I presume that.

25 THE COURT: Mr. Scotton, please don't comment. Just

1 ask questions.

2 BY MR. SCOTTON:

3 Q It is true that recently you sent a note to the post
4 office to change your address?

5 A Did I send a note to the post office to have my address
6 changed?

7 Q Yes.

8 A Yes, I went to the post office and I asked that my
9 correspondence would come to my house because everything was
10 arriving at his house.

11 Q Two years for you to change your address?

12 A I do not understand. What do you mean two years?

13 Q The post office has sent a notification on April 13, 2012
14 that you change your address, correct?

15 A I do not remember when it was that I did it. I just went
16 there. I went to the post office, had my address changed, so
17 that things would arrive at my house.

18 Q Ms. Aylin, you say that we are still legally married?

19 A Yes, because I have not divorced him.

20 Q Did you say that people mentioned to you that it costs too
21 much money to get divorced, correct?

22 A Yes.

23 Q How many jobs do you have right now?

24 A One.

25 Q So over three years, you couldn't afford to pay 500 to

1 fees to file divorce?

2 A No, I have not had the money and that is the reason why I
3 have not gone to obtain the divorce.

4 Q You couldn't borrow the money from any family members or
5 anybody else to divorce from the monster?

6 A I did not want to ask anyone for money.

7 Q Aylin, when did your mother get to this country?

8 MS. MITRANI: Objection, relevance.

9 THE COURT: Sustained.

10 BY MR. SCOTTON:

11 Q Did you recall taking money from me to bring your mother
12 from Cuba?

13 A You never gave me any money. My mother was brought over
14 by my grandmother.

15 Q And how much money did you pay for that?

16 A Nothing. It was my grandmother who took care of all the
17 papers to bring my mother over.

18 Q With a visa?

19 A Yes, my grandmother is an American citizen so she was able
20 to claim my mother.

21 Q She didn't come illegal to the country, right?

22 THE COURT INTERPRETER: Please repeat your question,
23 sir.

24 MS. MITRANI: Objection.

25 THE COURT: I'm sorry, I didn't hear the question

1 either. All right. Sustained.

2 BY MR. SCOTTON:

3 Q Ms. Aylin, the scar that you got on your left knee still
4 bother you sometimes when you use shorts?

5 A No.

6 Q Do you mind if I present to this courtroom here right now
7 video that we engaged in having sex in the store?

8 A Is that so?

9 Q Maybe it is fake. Who knows. I'm fake sex now. You
10 fake. I don't know, right?

11 A We never had any sex. How can you have a video?

12 MR. SCOTTON: Am I allowed, Your Honor?

13 THE WITNESS: We never even slept --

14 THE COURT: You have not showed me any video. Even
15 though I have asked for it, you have not shown it, so no.

16 THE WITNESS: We didn't even sleep together. I want
17 him to show that.

18 MR. SCOTTON: I didn't brought popcorn, Ms. Aylin.

19 THE WITNESS: What a shame.

20 THE COURT: I tell you what, Mr. Scotton, why don't
21 you bring it up sidebar, the video, please.

22 (Thereupon, the following was heard sidebar.)

23 THE COURT: Mr. Scotton, are you coming?

24 MR. SCOTTON: I'm getting the video, Your Honor.

25 THE COURT: I'll give you two more minutes to find it.

1 All right. You either have it or you don't have it.

2 MR. SCOTTON: She even say --

3 THE COURT: Let me ask you this. I have been asking
4 you this now for weeks. The government has asked you for it.
5 You have never -- have you received it?

6 MS. MITRANI: Absolutely not, Your Honor. We have
7 never received it.

8 THE COURT: You have never turned it over previously.
9 I have asked you for it repeatedly. You haven't provided it to
10 the Court. I'm sorry. I don't understand why it is that you
11 are just coming up with it now and I still haven't seen it, by
12 the way. All right. I think I have given you enough time.
13 You have had weeks, months to come up with this, over a year to
14 come up with it.

15 MR. SCOTTON: The investigator, can you please come
16 over here.

17 MS. MITRANI: I'm going to object. This is eating up
18 court time. We are supposed to have a hearing on this.

19 THE COURT: I agree. That's okay. You can sit down.
20 Thank you.

21 MR. SCOTTON: She told me --

22 THE COURT: I'm sorry, I scheduled --

23 MR. SCOTTON: She put it on a CD and it got handed to
24 her.

25 THE COURT: I scheduled a special hearing for you.

1 You didn't bring it at that time. You have never brought it.
2 I told you you had to turn it over to the government. You
3 didn't. I don't believe that you have it. And if you do, it's
4 way too late for it now. You obviously haven't been able to
5 show it to me at this time, so I will not be complicit in your
6 attempts to make this jury believe that something exists that
7 doesn't. Close that up. Take it back. And you can continue.

8 MS. MITRANI: Thank you, Your Honor.

9 (Thereupon, the following was heard in open court.)

10 BY MR. SCOTTON:

11 Q Ms. Aylin, Cuban people get deported back to Cuba. Have
12 you heard Cuban people getting deported back to Cuba?

13 A Yes.

14 Q Back to Cuba, people getting deported?

15 A Yes, I believe so. I don't know.

16 Q Before the first interview we have with immigration the
17 night before, do you recall you eat a whole box of pizza?

18 A No.

19 Q You don't recall that even on the interview we been
20 laughing about that with the office?

21 A I do not recall.

22 Q But every single time the prosecutor ask a question, you
23 recall everything she asking for, right?

24 MS. MITRANI: Objection, Your Honor.

25 THE COURT: Sustained, argumentive.

1 BY MR. SCOTTON:

2 Q If I have a -- you know, if I have train you to learn
3 questions and I train you so well, is the prosecutor a better
4 teacher than I?

5 A She has -- she has not trained me in anything.

6 Q Ms. Aylin, since 2010, when we officially become marriage,
7 did you feel threat for your life since that time?

8 A Since you started telling me the things you told me when I
9 told you that I did not want to go to the interview, that I did
10 not want to do anything else.

11 Q So you by yourself inside the immigration office building
12 with the office and you couldn't tell him that you were forced
13 to be there?

14 A I was never by myself. I was with him most times that he
15 went with me.

16 Q Do you recall seeing the interview of the video, right?

17 A When?

18 Q At immigration, Aylin.

19 A Yes.

20 Q You don't recall that Mr. Fred Brooks told me to get out
21 of the room and you stay with him and the lawyer by himself in
22 the room?

23 A That was when they were asking us the questions. The day
24 we were both interviewed. First I was interviewed and then he
25 was interviewed.

1 Q Right. When you interviewed first, why didn't you tell
2 him that you had been threat?

3 A How was I going to tell them when you were telling me that
4 I could not tell anyone anything?

5 Q Because I'm very dangerous man, right?

6 A Yes.

7 Q Ms. Aylin, if I have not help you from all this time
8 financially, do you believe that you have a green card today?

9 A You are the one who told me that you were going to do all
10 the papers so that I could get the residency, for me not to
11 worry, that you were going to take care of everything, that I
12 did not have to do anything.

13 Q But you couldn't afford to do that by yourself, right?

14 A He told me that he was going to help me do it, that he was
15 going to do the papers for the residency.

16 Q Can you afford to do that without me?

17 A I had not done it before because I did not have the money.
18 He is the one who offered.

19 Q So after all, I was not really that bad because now today
20 you got your green card, right?

21 A Yes, I have my residency.

22 Q You are welcome.

23 That day at the restaurant, JB restaurant at Deerfield
24 Beach, do you remember what you eat that day over there at the
25 restaurant?

1 MS. MITRANI: Objection, relevancy.

2 THE COURT: Overruled.

3 THE COURT INTERPRETER: The interpreter requests
4 repetition of the question.

5 BY MR. SCOTTON:

6 Q Did you remember what you eat at the restaurant that
7 night, JB restaurant?

8 THE COURT INTERPRETER: What restaurant?

9 MR. SCOTTON: JB's.

10 THE WITNESS: What night?

11 BY MR. SCOTTON:

12 Q The night that I told you that I -- that we received your
13 green card.

14 A But it is that you mailed me the card. You sent it to me
15 by mail.

16 Q Do you remember going to the restaurant, Aylin?

17 A No. You sent me home after we had the interview. I told
18 you to send me home.

19 Q You never went to restaurant before?

20 A Yes, when we -- at the beginning, he took me to a
21 restaurant to eat.

22 Q Is it not true that you like coconut shrimp?

23 A Yes, it is true.

24 Q And what is the dessert that you like over there from the
25 restaurant that you eat so well?

1 A I do not know. I do not recall.

2 Q Fried calamari, you used to like fried calamari a lot too,
3 didn't you?

4 A No, I do not like fried calamari, only coconut shrimp.

5 Q During the interview, you mentioned Fred Brooks. Did I
6 used to come home 5:00 in the afternoon sometimes, I used to go
7 through the night working? Do you recall that?

8 THE COURT INTERPRETER: Repeat the question, please.

9 BY MR. SCOTTON:

10 Q Do you recall the interview during immigration that you
11 mentioned to Fred Brooks that I go home and sit all night at
12 the computer? Do you recall that?

13 A Yes, I believe so. Everything that I said were the things
14 that you told me that I had to say.

15 Q So then we never lived together, but you know that I used
16 to stay hours on the computer, right?

17 A That is what he told me that I had to say.

18 Q Ms. Aylin, you came to this court here today to cry, to
19 lie. Did you think it was right?

20 MS. MITRANI: Objection. Objection.

21 MR. SCOTTON: Do you think it was --

22 THE COURT: Sustained.

23 BY MR. SCOTTON:

24 Q Do you think it is okay for you to help these people
25 destroy my life? What did you gain?

1 MS. MITRANI: Objection, Your Honor.

2 THE COURT: Sustained.

3 MS. MITRANI: May I see what you are about to show?

4 Your Honor --

5 MR. SCOTTON: I already showed you this picture.

6 MS. MITRANI: I don't know what you are going to pull
7 up.

8 MR. SCOTTON: This picture was shown in the office.

9 THE COURT: Mr. Scotton, ask questions, please.

10 BY MR. SCOTTON:

11 Q Do you remember this day, Ms. Aylin?

12 A I believe so. I do not know.

13 Q It was close to the house, right?

14 A Yes, I believe that that was one day that you took me out
15 for breakfast.

16 Q Exactly. That's we have a great sandwich, eggs, ham, that
17 kind of stuff, right?

18 A I do not recall what I ate.

19 Q Is that face look like someone who is terrified,
20 Ms. Aylin?

21 A No.

22 Q How can you sit at a table with a guy who threat your life
23 and said they were going to do something to hurt your family?

24 A That was from before when we got along well, before you
25 started to tell me the things you started to tell me.

1 Q Ms. Aylin, this is way before interview, correct, or after
2 the interview?

3 THE COURT INTERPRETER: The last part.

4 BY MR. SCOTTON:

5 Q This is after the interview or before the interview?

6 A That was before the interview.

7 Q And you afraid?

8 A That was a long time before the interview.

9 Q You want to convince that to the jury, Aylin, you want to
10 convince the jury with that smile holding your phone text
11 message your friends, have I really done something bad for you
12 to be here today and lie?

13 MS. MITRANI: Objection.

14 THE COURT: Sustained.

15 BY MR. SCOTTON:

16 Q Is it not fact, you took the money, and after that, I
17 ended the relationship with you?

18 THE COURT INTERPRETER: Can you repeat the question,
19 please.

20 BY MR. SCOTTON:

21 Q It's not the relationship ends after you stole the money
22 from me?

23 A That I stole your money?

24 Q The money was to bring your mother from Cuba.

25 A You never gave me any money. My grandmother brought my

1 mother.

2 Q Why didn't you ask your grandmother go ahead to give you
3 \$500 for the divorce papers then, Ms. Aylin?

4 A Because I have not wanted to ask money from anyone. Why
5 do I have to ask money from anyone? Because you want me to,
6 because you are telling me to ask for money.

7 Q Is it better for you to keep staying married with me with
8 this monster for the rest of your life?

9 A I never ever saw you again. I never ever heard from you.

10 Q I know. It has been two years, right?

11 A It's been a long time. I don't even know how long.

12 Q Since March 15, 2012?

13 A I do not recall.

14 Q Do you recall my stepdad went to see you after the FBI
15 arrest me?

16 A Yes.

17 Q So from that day now we have not seen each other, right?

18 A It had been a long time before that that I had not seen
19 you.

20 Q And then you told my stepdad that you are not going to
21 come to the court because I have not given any money, right?

22 A I never told him that.

23 Q In the end it's all about the money, right?

24 A No. What money are you talking about?

25 Q Have you met my mother, Aylin?

1 A I just saw her once.

2 Q Just one time?

3 A Yes.

4 Q What about Edison?

5 A I do not remember who Edison is.

6 Q What about Renata?

7 A Yes, Renata is the girl who used to work with you.

8 Q Is anybody else that used to work at the store besides
9 Renata?

10 A Renata was at your house.

11 Q What about Lusilly at the store?

12 A Who's Rosalia? I do not know who Rosalia is. I only met
13 Renata. She was the one who would be at your house when you
14 made me go to your house.

15 Q So you are in college right now for how long?

16 THE COURT INTERPRETER: Please repeat your question,
17 sir.

18 BY MR. SCOTTON:

19 Q How long have you been in college now?

20 A I do not know. I do not recall how long.

21 Q What is the name of the college that I used to take you
22 every day down in Miami?

23 A Florida National College.

24 Q You no longer go there, right?

25 A No, I am attending another college now.

1 Q What is the name of the mall across the street that we
2 have lunch once?

3 A The mall across the street?

4 Q Do you remember there was a mall in front of Florida
5 College that we went Subways over there? Do you remember that?

6 MS. MITRANI: Objection, relevance.

7 THE COURT: Sustained.

8 BY MR. SCOTTON:

9 Q So all this time in school, you still didn't learn
10 English, huh?

11 A I understand it, but it's difficult for me to speak it
12 because I am ashamed.

13 Q Because you still watch the Peliculas and Telemundo,
14 right?

15 A No, I no longer do.

16 Q You got a different hobby now?

17 A I hardly have the time to watch television.

18 Q Ms. Aylin, have report me to the police office that I was
19 violent, that I was dangerous?

20 A No, I never did anything like that.

21 Q But you just told the prosecutor and the agent here that
22 I'm a violent man, right?

23 A Sometimes you would scream at me and you became like mad.

24 Q Do people get mad sometimes, Aylin? It is normal or not?

25 A Yes, but not in -- you would get like that with me

1 whenever I told you I did not want to do something, and you
2 would threaten me.

3 Q So you went to ICE?

4 THE COURT INTERPRETER: Could you please start your
5 question over again.

6 BY MR. SCOTTON:

7 Q You went to ICE, to immigration's office building, and to
8 ICE you swear to tell the truth, nothing but the truth, but you
9 lie, right?

10 MS. MITRANI: Asked and answered.

11 THE COURT: Sustained.

12 BY MR. SCOTTON:

13 Q Did you lie to immigration, to ICE, Aylin?

14 A Yes.

15 Q And those two times that you went to immigration, never
16 report to anybody that I am forcing you to go to immigration?

17 A No, I did not say anything. You had told me that I could
18 not tell anyone anything and that I had to do everything you
19 told me to do.

20 Q You told this to your brother?

21 A How's that?

22 Q You told this to your brother?

23 A No, my brother doesn't know anything.

24 Q So your mother and your grandmother, your uncle, nobody
25 knows anything?

1 A No.

2 Q So you been living under this fear for four years, you
3 never told anybody?

4 A No family members knows anything.

5 MR. SCOTTON: No more questions, Your Honor.

6 THE COURT: Any redirect?

7 MS. MITRANI: Yes, Your Honor.

8 THE COURT INTERPRETER: Ms. Mitrani, the witness is
9 requesting a break to go to the lady's room.

10 THE COURT: Let's take until 11:15. All rise for the
11 jury.

12 (Thereupon, the jury exited the courtroom at
13 11:07 a.m.)

14 THE COURT: Why don't you go ahead. Go ahead to the
15 bathroom.

16 MS. MITRANI: Your Honor, may I go as well?

17 THE COURT: Of course.

18 (Thereupon, a recess was taken at 11:08 a.m.)

19 (Thereupon, the jury entered the courtroom at
20 11:17 a.m.)

21 THE COURT: Welcome back once again. Please be
22 seated, everyone.

23 Ms. Reyes, I just need to instruct you again, you
24 understand you are still under oath?

25 THE WITNESS: Yes.

1 THE COURT: Very good. Thank you.

2 REDIRECT EXAMINATION

3 BY MS. MITRANI:

4 Q Good morning still. Just a few minutes ago in response to
5 a question by the defendant, you indicated your family doesn't
6 know anything about anything. Do you remember that response?

7 A Yes.

8 Q Can you explain to the jury about what you mean that your
9 family knows nothing about nothing?

10 A No, they know nothing.

11 Q Do they even know that you married the defendant?

12 A No, they do not know anything.

13 Q You never told them that?

14 A No.

15 Q And did you tell them anything about your interactions
16 with the defendant?

17 A No.

18 Q So as far as your family knows, Mr. Scotton doesn't exist?

19 A No, they know nothing about him.

20 Q Okay. Now, I know, Ms. Reyes, that you don't remember
21 exact dates. I'm not asking you exact dates. I just want to
22 set a little timeline so we are clear on things. Do you
23 remember that Special Agent Roy Van Brunt came to see you in
24 your apartment in Hialeah?

25 A Yes.

1 Q Do you remember, did he come once -- he came one time the
2 first time. Do you remember what year that was?

3 A No.

4 Q Then he came a second time, correct?

5 A Yes.

6 Q Was that about maybe a year to a year and a half later?

7 A Yes, a long time went by.

8 Q A long time went by between Agent Van Brunt's two visits?

9 A Yes.

10 Q Then you met with the prosecution team maybe two or three
11 times this year, is that right?

12 A Yes.

13 Q And maybe one time it was over the summer and -- one time
14 was over the summer and another time was more recent, is that
15 correct?

16 A Yes.

17 Q So two meetings with the prosecution team?

18 A Yes.

19 Q The defendant asked about text messages. The only text
20 message you received was the address of the U.S. attorney's
21 office where our meeting took place, correct?

22 A Yes.

23 Q And the only other text was a text advising you of the
24 identity of the individual who would be driving you to court?

25 A Yes.

1 Q Other than those two informational texts, there were no
2 other text communications between you and the prosecution,
3 correct?

4 A Yes, correct.

5 Q I want to show you part of the immigration video. I think
6 the defendant just showed you a still shot. I want to show you
7 a little clip and the members of the jury.

8 MS. MITRANI: For the record, it's Exhibit 201A which
9 is the recording of the immigration interview. And the excerpt
10 that we are showing is approximately one hour and 36 minutes
11 into the interview.

12 (Thereupon, the audiotape was played.)

13 BY MS. MITRANI:

14 Q Did you see that clip, Ms. Reyes?

15 A Yes.

16 Q And did the defendant take a document out of his wallet,
17 the defendant's wallet, and give it to the immigration officer?

18 A Yes.

19 Q And then the immigration officer gave that document back
20 to the defendant, correct?

21 A Yes.

22 (Thereupon, the audiotape was played.)

23 BY MS. MITRANI:

24 Q Is that where the immigration officer gives it to the
25 defendant and the defendant puts it in his wallet?

1 A Yes.

2 Q Do you know what the defendant gave to the immigration
3 officer? Do you know whether it was your parole papers or your
4 green card?

5 A I do not remember. I do not know.

6 Q But ultimately it was the defendant who mailed you your
7 green card, correct?

8 A Yes. He sent it to me by mail.

9 Q Ms. Reyes, do you remember, did the -- did we tell you,
10 the government, that truthful testimony would not result in any
11 criminal exposure to you?

12 A No.

13 Q Now, Ms. Reyes, I think you testified about this before,
14 but in the beginning when you first met the defendant, was it a
15 good relationship, good interactions?

16 A Yes.

17 Q And did the defendant show you maybe a picture? I think
18 you said you were having breakfast. Was that when things were
19 good between you?

20 A Yes.

21 Q And then things changed, correct?

22 A Yes.

23 Q And do you remember when they changed?

24 A After we were married, when we had to -- he told me that
25 we had to go to an interview and that we had to have our

1 pictures taken for the day that we went to the interview, the
2 one we were going together at immigration. And it was after
3 that that I told him that I wanted to take care of my residency
4 by myself. It was at that time when he started to change with
5 me. One day he became annoyed. He began screaming at me and
6 became upset.

7 Q And that happened -- strike that.

8 Do you remember the day you got married, the date?

9 A No, it was right away. He did everything very fast.

10 Q And it was after that that everything started changing,
11 correct?

12 A Yes.

13 Q I'm not going to make you repeat everything you said, but
14 as you testified in response to -- strike that -- As you have
15 testified regarding the threats that the defendant made to you
16 when you indicated you wanted to go back on the agreement.

17 MR. SCOTTON: Objecting, Your Honor.

18 THE COURT: What's the objection?

19 MR. SCOTTON: Leading.

20 THE COURT: Sustained.

21 BY MS. MITRANI:

22 Q Did the threats begin when the immigration stuff came up?

23 A Yes, when I told him -- after we got married, I told him
24 that I did not want to do the immigration thing for him, that I
25 wanted to do it by myself.

1 Q And was it from that point forward that the threats
2 continued?

3 A Yes.

4 MS. MITRANI: No further questions, Your Honor.

5 THE COURT: Let's come sidebar for a minute.

6 (Thereupon, the following was heard sidebar.)

7 THE COURT: I think you have to find a way to correct
8 the immunity problem.

9 MS. MITRANI: Okay.

10 THE COURT: And she's here now, so now would be the
11 time to do it.

12 MS. MITRANI: Okay.

13 MR. SCOTTON: Your Honor, let me ask a question
14 because I don't understand here. Do I still have my rights to
15 later on bring her back because I subpoenaed her? I need to be
16 able to bring her back.

17 THE COURT: Let's do it -- what else do you need to
18 ask her? I'm not going to allow you to bring her back and ask
19 her the same stuff over again.

20 MR. SCOTTON: It's going to be the lawyers testify,
21 and after the lawyers testify, I'm going to bring her back.

22 MS. MITRANI: I would object.

23 THE COURT: And ask her what?

24 MR. SCOTTON: I don't know, see how it's going to go,
25 how it's going to go with my witness.

1 THE COURT: We will see if you can bring her back
2 then. I'm not going to say yes or no, but I'm not going to
3 allow you to bring her back to ask her the same things over
4 again.

5 MR. SCOTTON: Why the prosecutor has no shared the
6 information with the Court from before.

7 THE COURT: The government doesn't have to tell the
8 Court that. What she's going to do now is clear up on the
9 record that there was immunity. Every side bar turns into an
10 argument.

11 MR. SCOTTON: I'm not arguing. I'm asking a question.

12 THE COURT: And I told you.

13 MR. SCOTTON: I want to ask a question to take this
14 quick time here. Is the government allowed to go ahead and use
15 what I gave to them a couple weeks ago and try to -- because
16 that's what she did.

17 THE COURT: Yes.

18 MR. SCOTTON: She showed all my pictures and trained
19 Aylin to come in here and say what she need her to say.

20 THE COURT: Yes, they can do that.

21 (Thereupon, the following was heard in open court.)

22 BY MS. MITRANI:

23 Q Ms. Reyes, we didn't -- you didn't -- strike that.

24 I asked you before, do you remember the government telling
25 you that if you testified -- let me get the exact.

1 Do you remember that we told you that truthful testimony
2 would not result in any criminal exposure to you? Do you
3 remember that?

4 A No.

5 Q Do you remember -- well, if I tell you that we did tell
6 you that, do you have any reason to doubt me?

7 MR. SCOTTON: Object, Your Honor.

8 THE COURT: What's the objection?

9 MR. SCOTTON: She's leading her to give the answer.

10 THE COURT: Why don't you all come sidebar for a
11 moment.

12 (Thereupon, the following was heard sidebar.)

13 THE COURT: She's trying to clear up the record so the
14 jury will know that she has given immunity for her testimony so
15 it would be fair to you. If you don't want her to do that,
16 that's your choice. What she's trying to do is make it clear
17 on the record that, as you suggested in cross-examination,
18 she's been provided immunity for her testimony. If you don't
19 want her to do it, that's fine. But this is the only way that
20 she can probably ask it. I leave it to you. Do you want her
21 to ask it or not?

22 MR. SCOTTON: I don't want her to continue lying on
23 the stand. That's all. So if she really has to know --

24 THE COURT: Okay. This is your chance for it to be
25 cleared up.

1 MR. SCOTTON: All right.

2 THE COURT: Do you understand that?

3 MR. SCOTTON: Yes, Your Honor.

4 MS. MITRANI: So I'm not -- is he withdrawing his
5 objection? Can I ask it?

6 THE COURT: Are you withdrawing your objection?

7 MR. SCOTTON: Yes.

8 THE COURT: Yes.

9 MR. SCOTTON: Yes.

10 THE COURT: Okay.

11 (Thereupon, the following was heard in open court.)

12 BY MS. MITRANI:

13 Q When you met with us, throughout the time we have met with
14 you, we have always told you, tell the truth. If you tell the
15 truth, everything will be okay, correct?

16 A Yes.

17 Q And if I tell you that we also told you that as long as
18 you tell the truth, there won't be any criminal consequences to
19 you -- let me rephrase that. Strike that.

20 If I tell you that we told you as long, as you tell the
21 truth, there will be no criminal consequences, you don't have
22 any reason to doubt that? You may not remember it, but we did
23 tell it to you.

24 A I don't understand the question.

25 Q If I tell you that the government told you that as long as

1 you testified truthfully and were truthful and honest with the
2 government, nothing -- there would be no criminal prosecution,
3 nothing, no criminal exposure for you, correct?

4 A No, they never told me that.

5 Q Is it possible that you just don't remember that that was
6 told and you just don't remember?

7 A No, they never told me anything about that.

8 MR. SCOTTON: I'm going to object, Your Honor.

9 THE COURT: Come sidebar one more time.

10 (Thereupon, the following was heard sidebar.)

11 THE COURT: All right. I think what you are going to
12 have to do is, after we dismiss the witness, you will do a
13 stipulation that the parties agree to that the government did
14 do that.

15 MS. MITRANI: Okay.

16 (Thereupon, the following was heard in open court.)

17 THE COURT: Any further questions?

18 MS. MITRANI: No, Your Honor.

19 THE COURT: Thank you. You may step down.

20 Do the parties have a stipulation to offer?

21 MS. MITRANI: Yes, Your Honor. The parties stipulate
22 that the government told Ms. Reyes that truthful testimony
23 would not result in any criminal exposure.

24 THE COURT: Thank you. The next witness may be called
25 by the government.

1 MS. MITRANI: And the government calls Bruce Marmar.

2 BRUCE MARMAR

3 after being duly sworn on oath was examined and testified as
4 follows:

5 THE COURT: Would you please state and spell your
6 first and last name for the record.

7 THE WITNESS: My name is Bruce Marmar.

8 THE COURT: Can you pull the microphone up. Thank
9 you.

10 THE WITNESS: My name is Bruce Marmar, B-R-U-C-E.
11 Last name is spelled M-A-R-M-A-R.

12 DIRECT EXAMINATION

13 BY MS. MITRANI:

14 Q Good morning, Mr. Marmar. How are you today?

15 A Good morning. I'm well. Thank you.

16 Q Where do you live? Just give us a city and a state.

17 A Yes, I reside in Miami, Florida.

18 Q And just a little bit about your educational background.

19 A Yes, I am a graduate of the University of Florida in
20 Gainesville.

21 Q What degree did you obtain?

22 A I have a BA in the field of psychology.

23 Q And when did you obtain that degree?

24 A In 1974.

25 Q Thank you, sir. We are going to turn to your employment

1 now. By whom are you employed?

2 A I work for USCIS which is United States Citizenship and
3 Immigration Services which is an agency within the Department
4 of Homeland Security.

5 Q And what is your title right now?

6 A I am the training officer for the south Florida area as
7 well as the Caribbean which includes the United States, Virgin
8 Islands, and Puerto Rico.

9 Q How long have you been involved in training approximately?

10 A Probably 30 years or so.

11 Q And what are your responsibilities as the district
12 training officer?

13 A I coordinate all training. We have six offices throughout
14 our district which is called district 9. And as I say, I make
15 sure all the training that is necessary for new officers as
16 well as experienced officers is completed properly.

17 Q So what are you training people on? What's the subject
18 matter?

19 A The subject matter is on immigration law, procedure, and
20 regulation.

21 Q And can you give us -- can you flush that out a little
22 bit? Specifically, what are you providing training as it
23 relates to the immigration law?

24 A The immigration laws are based upon what we call the
25 Immigration Nationality Act which is several hundred pages

1 long. In addition to the immigration laws, there are also what
2 we call regulations, and those regulations are also several
3 hundred pages long.

4 I can discuss my responsibilities and the responsibilities
5 of the officers.

6 Q Please do.

7 A We have very broad-ranging responsibilities. I'll list
8 some of the things we do. One of our major responsibilities is
9 granting benefits to perspective immigrants. For example, if a
10 prospective immigrant is seeking lawful permanent residence
11 through, as an example, through marriage to a U.S. citizen or
12 if a parent is a United States citizen, that is the type of
13 application that we take care of.

14 A second major application that we take care of is what's
15 called a naturalization application. And that is for people
16 who are lawful immigrants in the United States who are seeking
17 to become United States citizens.

18 And as an agency nationwide, we grant permanent residence
19 to between three-quarters of a million people to a million
20 people a year. And also in the course of a year, we grant
21 United States citizenship three-quarters of a million up to a
22 million people a year. That's throughout the United States
23 including places abroad where we also make United States
24 citizens of our military service members.

25 A couple other responsibilities that we have, we grant

1 political asylum to those foreign nationals who are fleeing
2 persecution, and we also take care of applications for those
3 who wish to enter the United States as refugees, again, those
4 who have suffered persecution at the hands of their governments
5 oftentimes.

6 Q So your charge is very broad. For purposes of your
7 testimony today, let's talk about the granting of lawful
8 permanent residence status.

9 A Yes. Immigration law is generally known as one of the
10 most complex areas of law in the United States, along perhaps
11 with tax law which is also enormously complex. When someone
12 wishes to seek permanent residence in the United States, that's
13 called -- in a broad sense it's called gaining a green card
14 which is evidence of lawful permanent residence. There are all
15 kinds of ways that a prospective immigrant can seek lawful
16 permanent residence. I will list a few if I may.

17 If you are married, for example, to an American citizen,
18 you may seek lawful permanent residence. If you are married to
19 a Cuban citizen who is a permanent resident, you may do the
20 same thing. If you are a prospective immigrant and your mother
21 and father are United States citizens, that is also another way
22 to seek residence. If you have a brother or sister who is a
23 United States citizen, that is another way to seek residence as
24 well.

25 Q As a training officer, are you familiar with the laws, the

1 rules, and regulations pertaining to the adjustment of status
2 to a legal permanent resident based on, you know, marriage or
3 family relationships?

4 A Yes. I have -- part of my job is, not just to coordinate
5 the training, but to give a very large part of that training to
6 hundreds of officers throughout the years, maybe thousands of
7 officers throughout the years. And in order to do that, I have
8 to be intimately familiar with law regulation, also with court
9 decisions that are issued by federal, state, and local courts.
10 But I have to be up on the most current decisions so that we
11 are giving our officers up-to-date information that is
12 accurate.

13 Q So how did you become knowledgeable in the law in the
14 rules and regulations pertaining to the adjustment of status?

15 A I suppose I could say in two ways, first of all, through
16 long experience and also through long study because I have been
17 through lots and lots of training myself at the local and also
18 at the national level.

19 I have also in my career, over these years, I have been
20 called to testify in court proceedings as an expert witness. I
21 have appeared on television, radio, and newspaper interviews,
22 and I have lectured before private immigration attorneys which
23 is something that I have done for well over 20 years. And, in
24 fact, this week I will be lecturing for and serving on a panel
25 before a group of immigration attorneys.

1 Q So, I guess, is it fair to say, not only is part of your
2 responsibility to train the people who are making the decisions
3 on legal permanent residence status, but also for you to stay
4 abreast of the rules and laws and regulations?

5 A Yes, I have to stay abreast of the laws and regulations;
6 otherwise, when I go into public to speak, I wouldn't know what
7 I'm talking about, and that's something I prefer to avoid.

8 Q Me too.

9 A On occasion I'll have to give lectures before foreign
10 diplomats in the United States and also before congressional
11 staffers. And they want information that's accurate and
12 complete because they work with the public as well.

13 Q So let me ask you this: Are you familiar with the Cuban
14 adjustment act?

15 A Yes, I am.

16 Q Can you give us a little primer, a little information
17 about what the Cuban adjustment act is?

18 A Yes. If someone who is a citizen or native of Cuba wishes
19 to become a lawful permanent resident in the United States,
20 there is a statute, there is a law which covers them. And it
21 can get complex, but essentially for a Cuban national to become
22 a lawful permanent resident in the United States under what we
23 call the Cuban adjustment act, he or she must have been
24 lawfully inspected by an immigration officer.

25 Second, the person must have lived in the United States at

1 least one year, to be physically present at least one year
2 before seeking permanent residence.

3 And the third essential component of the Cuban adjustment
4 act, the person would have to be what we call admissible to the
5 United States. That's a term of art. It's a term used in the
6 law. It means that a person seeking permanent residence in the
7 United States would be excluded typically if he or she had a
8 serious criminal record or had committed fraud against the
9 United States government or even a foreign government or if the
10 person posed a national security threat to the United States.

11 Q And when a Cuban -- are you familiar with the term for
12 Cubans who are paroled into the United States, what a parole
13 is?

14 A Yes.

15 Q What is a parole?

16 A A parole is a way of allowing someone to enter the United
17 States in, let's say, a temporary fashion. An example would be
18 if someone were to appear at a port of entry and did not have
19 proper legal documents to enter the United States but if that
20 person, for example, had a serious medical condition, that
21 person would be paroled into the United States to seek medical
22 help with the intent of returning to his or her country.

23 Under the Cuban adjustment act, there is that provision
24 that I mentioned that in order to be eligible, you must have
25 been inspected and admitted or paroled into the United States,

1 and the parole authority is strictly a function of the U.S.
2 government.

3 MR. SCOTTON: Your Honor, sidebar please.

4 (Thereupon, the following was heard sidebar.)

5 THE COURT: Wait for the government. All right?

6 MR. SCOTTON: Do we have conversation? Am I
7 understanding wrong that when prosecutor say she's going to
8 bring expert to talk about laws and immigration, you say you
9 are not going to allow he say the jury need to know anything
10 about. Do you remember saying you are not going to allow that?

11 THE COURT: You have not objected so far. So I'm
12 allowing whatever it is that there is. If you have an
13 objection you want me to hear, I will hear it.

14 MR. SCOTTON: The objection, Judge told that she's not
15 going to allow prosecutor to bring expert in to testify about
16 immigration laws.

17 MS. MITRANI: That's not true.

18 MR. SCOTTON: That has nothing to do with the case.

19 THE COURT: That's not what I said. What I said was
20 the law comes from the Court, not from the witness stand and
21 that I won't allow someone to testify as an expert in the law.
22 He has not been presented as an expert. If you have an
23 objection to what he's saying, you can let me know what it is
24 and I will consider it.

25 Obviously the legal instruction needs to come from the

1 Court. So I imagine, although I don't know because this is the
2 first time I'm hearing this testimony, that he is going to
3 testify regarding the statements that are on your 2011
4 applications and why it was that it was material which is an
5 element that the government has to prove. That, they are
6 allowed to do.

7 MR. SCOTTON: Okay. Because I mean, this is my
8 recollection in my notes.

9 THE COURT: Maybe I'm wrong.

10 MS. MITRANI: No, you are absolutely right. We have
11 discussed this.

12 MR. SCOTTON: You know, that if I understand it from
13 my notes, Your Honor told that it's not going to allow that
14 because he's saying --

15 THE COURT: Right, he cannot testify as an expert in
16 the law. But what the government has to do is show that the
17 allegedly false statement is material. And the way they do
18 that is they have to present someone to explain what is
19 material. That's what they are doing right now. That is
20 allowed. What he can't do is he can't say, you know, this is
21 what the law on such and such is or whatever for purposes of
22 instructing the jury. He can't instruct the jury. That comes
23 from the Court.

24 He can testify about whether something is material or
25 not in the eyes of customs and immigration service because that

1 is an element of the crime. Do you understand?

2 MR. SCOTTON: Yes, Your Honor.

3 THE COURT: All right.

4 (Thereupon, the following was heard in open court.)

5 BY MS. MITRANI:

6 Q And are you also familiar with the Cuban adjustment act as
7 it relates to an individual who enters into a marriage with a
8 Cuban and that individual, that alien's desire to adjust
9 status?

10 A Yes.

11 Q Does the Cuban adjustment act allow for that?

12 A Under certain circumstances, yes.

13 Q We will get to that in a little bit. So do you provide
14 training on the Cuban adjustment act?

15 A Yes. This last year or so we provided local training to
16 our officers, but we have also by video conferencing provided
17 training on the Cuban adjustment act to the entire United
18 States which would be composed perhaps of several hundred
19 immigration officers throughout the 50 states.

20 Q Have you written any materials on the Cuban adjustment
21 act?

22 A Yes. We have within our agency what is called the
23 adjudicators field manual which in a sense provides guidance to
24 all immigration officers across the United States. And several
25 years ago, I was asked to write a chapter for that publication

1 on the Cuban adjustment act, and it was published and it still
2 remains in force for the nation.

3 Q And when you provide the training to the officers of
4 USCIS, United States Citizen and Immigration Services, do you
5 instruct them on what criteria need to be met under the Cuban
6 adjustment act in order for an individual to be allowed to
7 adjust status under that act?

8 A Yes, that's the heart of the matter. We instruct the
9 officers as to what the law says, what the regulations say, and
10 also as to what the court decisions permit, and then we tell
11 them, in addition to that instruction, we also tell them how to
12 implement the law procedurally.

13 Q And if field officers have questions, can they reach out
14 to you or to individuals who work with you for answers?

15 A Yes, they can reach out to supervisors, to senior
16 officers, and then also to me as well. And oftentimes the
17 local officers would ask me as well as the senior officers for
18 advice. And also I do get questions from other states from all
19 over the United States concerning the Cuban adjustment act.

20 MS. MITRANI: Your Honor, the government would tender
21 Mr. Marmar as an expert in immigration law in general and
22 specifically on adjusting status pursuant to the Cuban
23 adjustment act.

24 THE COURT: Come sidebar for just a moment, please.

25 (Thereupon, the following was heard sidebar.)

1 THE COURT: I will need to do a limiting instruction
2 that this is only for purposes of determining the materiality
3 and that he's not to instruct the jury on the law.

4 MS. MITRANI: Sure.

5 THE COURT: You understand?

6 MS. MITRANI: I understand.

7 MR. SCOTTON: Yes, Your Honor.

8 (Thereupon, the following was heard in open court.)

9 THE COURT: First let me ask, is there any objection?

10 MR. SCOTTON: No, Your Honor.

11 THE COURT: All right. Let me just explain a little
12 something to the jury. Sometimes we have experts in different
13 areas. I will provide you with an instruction on what an
14 expert can and cannot do in just a moment. I want to make sure
15 when we are talking about someone who is offered as an expert
16 in the area of the law, that is a little bit different than the
17 usual experts that we might have.

18 The law comes from the Court and from the Judge, not
19 from the witness as far as your instructions on what you are to
20 consider in your deliberations. This witness is being offered
21 to testify as to an element of the government's case called
22 materiality. That is whether the allegedly false statement was
23 material to customs and immigration, which is an element that
24 the government has to prove. His testimony goes only to that
25 element and does not instruct you all on the law that you

1 should use to consider the rest of the case.

2 Does anybody have any questions about that or not
3 understand? If so, go ahead and raise your hand for me now.
4 Is there anybody who cannot follow that instruction? I see no
5 hands on either. Let me just give the expert witness
6 instruction.

7 When scientific, technical, or other specialized
8 knowledge might be helpful, a person who has special training
9 or experience in that field is allowed to state an opinion
10 about that matter. But that does not mean that you must accept
11 the witness's opinion. As with any other witness's testimony,
12 you must decide for yourself whether to rely upon the opinion.

13 Anybody who doesn't understand that instruction? If
14 so, go ahead and raise your hand for me now.

15 I see no hands. Is there anybody who cannot follow
16 that instruction?

17 Once again, I see no hands. Thank you very much.

18 And the witness is accepted as an expert in the areas
19 of the Cuban adjustment act, is that correct? Do you want to
20 say again what it was?

21 MS. MITRANI: An expert in the immigration laws as it
22 relates to adjustment and status in general and specifically
23 the Cuban adjustment act as it relates to the adjustment of
24 status.

25 THE COURT: Thank you. And the witness is accepted as

1 an expert in that field with the limitations I have already
2 explained. All right. You may proceed.

3 MS. MITRANI: Thank you, Your Honor.

4 BY MS. MITRANI:

5 Q So you know a lot, but I want to really focus you in on a
6 specific set of circumstances. Okay. And the circumstances I
7 want to talk to you about is an alien wishing to adjust status
8 based on a marriage to a Cuban. All right?

9 A Yes. Excuse me, yes.

10 Q All right. So in that scenario, if an alien wishes to
11 adjust status based on a marriage to a Cuban, does that
12 individual fill out an I485 form?

13 A Yes, they do.

14 Q Okay.

15 MS. MITRANI: And put up Government's Exhibit 200.

16 BY MS. MITRANI:

17 Q This is Government's Exhibit 200A. It's the defendant,
18 Rogerio Scotton's, form I485 application to register for
19 permanent residence or adjust status. Do you see that?

20 A I do.

21 Q Are you familiar with this form?

22 A I am.

23 Q I am going to start with actually the bottom part,
24 application type. And do you see that box F is checked off?

25 A I do.

1 Q And in this instance, the defendant is stating that he is
2 the husband of a Cuban described in paragraph E above, correct?

3 A Yes.

4 Q Stating that he's residing with that person, that Cuban?

5 A Correct.

6 Q And that he was admitted or paroled into the United States
7 after January 1st, 1959 and thereafter has been physically
8 present in the United States for one year. Do you see that?

9 A I do.

10 Q All right. Now, under the Cuban adjustment act, if a
11 foreign national wishes to adjust under that act based on the
12 marriage of the Cuban, does the foreign national have to
13 reside, have to live with the spouse?

14 A Yes, that's part of the law. It's an absolute requirement
15 and there is no flexibility on that requirement.

16 Q What do you mean there's no flexibility on that
17 requirement?

18 A The language of the law is taken literally word for word.
19 When it says a person must reside with, it means that the
20 person must live in the same household.

21 Q So is the information that's provided to USCIS that the
22 applicant is residing with his wife, is that something that's
23 important to the USCIS in making its determination as to
24 whether that I485 should be granted?

25 A It's an element of the application. It's critical. It's

1 something that we -- it cannot be overlooked. It's something
2 that must be pursued by an officer conducting an interview.

3 Q And if they are not residing together, what is its effect
4 on the decision to grant or deny an I485 application?

5 A If the two parties are not living together, then the
6 application must be denied as a matter of law.

7 Q Let me take you to the top half of this form I485. And
8 part one asks for information about the applicant, the alien in
9 this instance, Rogerio Chaves Scotton, correct?

10 A Yes.

11 Q And towards the bottom, it asks for the date of last
12 arrival. Do you see that?

13 A I do.

14 Q And in this instance, it was 4/13/1992 was stated,
15 correct?

16 A Yes.

17 Q All right. So is the date of last arrival, is that
18 information that's important to USCIS in making its
19 determination as to whether to grant or deny the form I485
20 application?

21 A Yes, it's another element that's critical to the approval
22 or denial of the application. In this particular case where it
23 says April 13, 1992, there must be evidence that on that date,
24 the applicant was lawfully admitted to the United States by an
25 immigration officer.

1 Q Let's say that date's not accurate. Is that important if
2 there was a later entry?

3 A Yes.

4 Q Explain that to the jury, please.

5 A Well, if that date were not accurate and there was no
6 subsequent or later date of entry, then that person would not
7 have been lawfully inspected and admitted into the United
8 States and he would not be eligible.

9 So that particular date of last arrival is critical. It's
10 something that we must know. And it's not simply something
11 that is self-reported. We must have documentary evidence of
12 that particular entry by a foreign national as admitted by an
13 immigration officer.

14 Q So if I understand you correctly, when the applicant puts
15 last day of arrival 4/13/1992, he has to submit proof as part
16 of his application that his last date of arrival is 4/13/1992,
17 correct?

18 A Yes, there must be United States government evidence,
19 documentary or in the computer databases that we use, there
20 must be very, very strong evidence that that is accurate and
21 that it is truthful.

22 BY MS. MITRANI:

23 Q I'm trying to zoom this up, and I'm not sure this machine
24 is working, but -- evidently it is working. Thank you so
25 kindly.

1 THE COURT: I'm not sure the microphone is on though.
2 We will get all of it working at once. Don't worry.

3 BY MS. MITRANI:

4 Q I'm showing you Government's Exhibit 200A for the record,
5 and this is within 200A USCIS 402. Do you see that,
6 Mr. Marmar?

7 A I'm sorry, 402?

8 Q Well, that's just a number on the bottom, USCIS 402. It's
9 a number how we identify this document.

10 A Yes.

11 Q Do you recognize what you are seeing?

12 A I do.

13 Q What are you seeing?

14 A I'm seeing on the -- right-hand page, page 7, it says Rio
15 de Janeiro. That is what we call an nonimmigrant visa. That
16 is a document issued by the United States Department of --
17 United States Department of State which, if granted, permits
18 someone to apply for admission to the United States as what we
19 call a nonimmigrant. And a nonimmigrant is someone who is
20 coming to the United States temporarily for a specific purpose.
21 In this case, this visa has the notation B2 which is directly
22 under the D in Rio de Janeiro.

23 Q (Indicating.)

24 A That's correct. A B2 nonimmigrant visa is a type of visa
25 which allows a foreign national to apply for admission to the

1 United States as a tourist strictly.

2 Q And does the B1/B2 visa then allow the individual to enter
3 the United States lawfully?

4 A It allows them to apply for admission to the United
5 States. In other words, the fact that someone has a B2 visa in
6 this case does not entitle them to enter the United States.
7 They must apply for admission. If someone had a B2
8 nonimmigrant like this who did not qualify otherwise for
9 admission, that person could be returned to his native country
10 without being admitted.

11 Q Okay. And you know what, let me even further narrow the
12 scope of your testimony, not only to the adjustment of a spouse
13 based on a marriage to a Cuban national, but now I want to
14 limit your testimony to if that spouse is Brazilian, so a
15 Brazilian national marrying a Cuban trying to adjust status
16 under the Cuban adjustment act. Okay?

17 A Yes.

18 Q All right. So in this instance, this is a -- the B2 visa,
19 and I don't know if you can see it, but do you see that this is
20 a U.S. immigration stamp on the right corner of April 13, 1929?
21 Can you see that?

22 A I do, yes. That's what's called an admission stamp. That
23 stamp gives evidence that an immigration officer at a port of
24 entry like an airport had admitted that person to the United
25 States for a temporary visit of no more than six months.

1 Q And is lawful admission into the United States a factor in
2 granting a I458 application?

3 A Yes, it's a critical factor. It's an absolute necessity.

4 Q Can you explain that?

5 A Yes. Under the Cuban adjustment act, in order to gain
6 lawful permanent residence in the United States, if you are a
7 foreign national married to a Cuban, you must show that an
8 immigration officer lawfully admitted you to the United States
9 and that particular stamp is evidence of a lawful admission.

10 Q So getting back to the I485 application then, again, is
11 the date of last admission an important fact in determining --
12 the date and the circumstances under the last admission an
13 important fact to USCIS?

14 A Once again, when we talk about critical elements, that is
15 a critical element for two reasons. First off, as I had
16 mentioned earlier, there must be a lawful admission. And the
17 second element of the Cuban adjustment act is that the foreign
18 national applying for permanent residence must have resided in
19 the United States for at minimum one year.

20 Q So if it turns out that -- going back to 200A, if it turns
21 out that the last arrival wasn't in 1992, let's say the arrival
22 was in 2008, without lawful admission into the United States,
23 would that be material to USCIS? Would that be an important
24 fact for USCIS in adjudicating this application?

25 A It would be central to taking -- whether approving or

1 denying an application because if someone had last entered the
2 United States in 2008, the first question we would ask is where
3 is the evidence of that lawful admission into the United
4 States. If the foreign national could not give us evidence,
5 documentary evidence, of a lawful admission, then that foreign
6 national would not be eligible for adjustment of status,
7 permanent residence under the Cuban adjustment act, and that
8 application would be denied.

9 Q And if the last arrival in the United States was not 1992,
10 but 2008, would evidence of lawful admission have to include
11 some type of visa from Brazil?

12 A It would have to include evidence that there was a
13 nonimmigrant visa issued to that person and that that
14 particular person had presented himself or herself at an
15 airport or seaport, had been inspected lawfully by an
16 immigration officer, and then had been given permission to
17 enter the United States which is what we call a lawful
18 admission.

19 Q So if there's no nonimmigrant visa from an individual from
20 Brazil in 2008, then there can be no lawful entry into the
21 United States, correct?

22 A That is correct. In order to enter the United States in a
23 nonimmigrant status as a tourist, as a student, something of
24 that nature, there must be a visa issued abroad outside of the
25 United States by the United States Department of State. And

1 then when you reach a port of entry like an airport, there must
2 be evidence that that person's visa was used to allow that
3 person to enter the United States lawfully.

4 Q Okay. So the visa is the first step, but then you would
5 actually need the second step from immigration, some kind of
6 stamp or other evidence that immigration inspected the person
7 and allowed them into the United States.

8 A That's exactly right. The visa itself is not proof of
9 admission. It's strictly in a sense -- I can make the
10 comparison it is a ticket to get in, but you have not entered
11 the auditorium until an official has actually allowed you in.

12 Q Is that kind of information, the date of arrival and the
13 circumstances under which arrival, important information to
14 USCIS in adjudicating these I485s?

15 A Yes, it's an essential element of what every immigration
16 officer is taught to look for.

17 MS. MITRANI: No further questions, Your Honor.

18 THE COURT: All right. Cross-examination.

19 CROSS EXAMINATION

20 BY MR. SCOTTON:

21 Q Mr. Bruce?

22 A Yes, sir.

23 Q Good afternoon.

24 A Good afternoon.

25 Q How are you doing today?

1 A I'm well. And you?

2 Q I have had better days, but I'm going there.

3 Mr. Bruce, let me ask you a quick question here, because
4 for many years also I'm try to understand the immigration laws.
5 As the prosecutor has showed the application -- do you want me
6 to put the application back that you can look and see what we
7 are talking about?

8 A That would be helpful. Thank you.

9 MR. SCOTTON: Do you mind if I put the application
10 back up there?

11 MS. MITRANI: No.

12 MR. SCOTTON: Your Honor, can I use the mike?

13 BY MR. SCOTTON:

14 Q Right here on F, as the attorney has marked, that the
15 defendant is -- I am the husband, wife, or minor, so you can
16 see pretty much on here, right?

17 A I can. Thank you.

18 Q Okay. This part of this say here, Mr. Bruce, that a
19 person has been physically present in the United States for at
20 least one year. Does the application talk about the Cuban
21 person?

22 A The application does, but this -- you are referring to
23 this particular block?

24 Q Right. So what the immigration law over there say is that
25 the Cuban person has to be here over a year before applying,

1 correct?

2 A Well, this particular block refers to someone who is the
3 husband, wife, or child of a Cuban.

4 Q But they are talking about the Cuban person, correct?

5 A This particular block, block F, does not refer to the
6 Cuban himself or herself. This refers to the husband, wife, or
7 child of the Cuban.

8 Q Residing with a person and was paroled into the United
9 States. So the person that have received a parole in the
10 United States is the Cuban, right? Correct?

11 A Well, where it says I am the husband, wife, or minor
12 unmarried child of a Cuban, so we are referring to someone who
13 is married to --

14 Q The Cuban?

15 A -- that particular Cuban.

16 Q Okay.

17 A So in other words, it's not the Cuban who is applying for
18 permanent residence under that particular block.

19 MR. SCOTTON: Thank you.

20 BY MR. SCOTTON:

21 Q Mr. Bruce, during this process, did you get familiar with
22 all my six immigration cases that I used to have pending with
23 immigration?

24 A The six immigration cases?

25 Q Yes.

1 A No, I have not reviewed that record.

2 Q How many records of my cases that you review with the
3 prosecutor?

4 A The case that I reviewed relates to the I485 application
5 which relates to the seeking of permanent residence.

6 Q No other one, right?

7 A I'm not aware that there were others, no.

8 Q Thank you, sir. Can you explain to us here what is the
9 authorization of employment means?

10 A Well, someone who is in the United States may seek
11 employment authorization through my agency. If that benefit is
12 granted, that permits the foreign national to work lawfully in
13 the United States for a specific period of time.

14 Q As the application shows the last entries of 1992, when
15 submit to application I485, it is not true that background has
16 to be done?

17 A Yes, every person over a certain age who applies for
18 lawful permanent residence on that particular form must have a
19 background investigation conducted. The main part of that
20 background investigation is to take fingerprints of that person
21 and to submit them to law enforcement agencies.

22 Q And this include fingerprints, pictures, DNA, or any kind
23 of thing like that?

24 A Fingerprints, signature, and photograph, yes, not DNA
25 though.

1 Q And you say that goes to different agents, right?

2 A Yes, that's correct.

3 Q To just make sure this person be safe for the community?

4 A That's right. We have to make certain that the person has
5 not committed a fraud. And we also must make certain that the
6 person has not committed criminal acts. And we also have to
7 make certain that that person is not a danger to the national
8 security of the United States.

9 Q And when during this process immigration also check their
10 databases, right?

11 A Yes.

12 Q When is the last time this person entered to the country,
13 correct?

14 A Yes.

15 Q When they left the last time would also be on the
16 database, correct?

17 A Presumably. But the databases are something that we have
18 to review individually in each case.

19 Q Right. When every single individual leave the country,
20 Mr. Bruce, there any documentation that immigration receive to
21 have identified that that person leave the country?

22 A There is nothing that goes automatically into the file,
23 no.

24 Q The airline, is the airline supposed to give to
25 immigration -- I can't remember right now the file, but there

1 is a file that has to surrender to immigration with all the
2 passengers that it was in airplane left the country?

3 A Yes.

4 Q And then based on that paperwork, immigration do what?

5 A That's a question you would have to ask for a customs and
6 border protection officers.

7 Q You don't have knowledge on that?

8 A I have a basic knowledge of it, but it's not a system that
9 I work with on a daily basis.

10 Q So it is not the truth that that form is used that
11 immigration know who the person that has left the country?

12 A I'm sorry. What form is that?

13 Q The one that airline company has handed to immigration?

14 A Are you -- which form, though, specific by what number. I
15 want to make certain I'm giving you an accurate answer.

16 Q I can't remember, but is a printout airline give a
17 printout to immigration, all these passengers were aboard, all
18 these passengers left the country, is that correct?

19 A There is what they call a manifest which has a list of the
20 passengers who have entered the United States.

21 Q And that will give the information to the immigration that
22 every single passenger aboard that airplane left the country,
23 correct?

24 A That would have to be verified by a customs and border
25 protection officer.

1 Q You testified that you expert on immigration laws, is that
2 correct, Mr. Bruce?

3 A Yes, sir.

4 Q Are you a lawyer?

5 A I am not.

6 Q This might be silly, but we are here to understand
7 everything, and I love to understand everything about
8 immigration at this point. Do I look like an ET?

9 A I'm sorry?

10 Q Do I look like ET?

11 A I'm sorry?

12 Q ET, like ET, like the movie?

13 A I wanted to make sure that was what you were asking me.

14 Q Yes.

15 A Not in my opinion, no, not at all.

16 Q Is any particular reason that you call us aliens?

17 A The term alien is a term that refers to people who are
18 foreign nationals. In other words, the term alien means
19 someone who is not a citizen of the United States. And when
20 the term alien is used, it's a neutral term. It's neither
21 negative nor positive. The term alien is a term that actually
22 appears in the law as passed by congress.

23 Q I'm not from another planet, right?

24 A To the best of my knowledge, you are not from another
25 planet.

1 Q It is not the true that applications through a marriage,
2 both couples has to show bona fide marriage relationship?

3 A That's correct.

4 Q Do you recall a case Lutivar versus United States?

5 A Yes.

6 Q So it is not the true that on a marriage application, the
7 couple need to show intimacy relationship, not if they have
8 been separate?

9 A Well, when you say intimacy, I'm not entirely sure what
10 you mean by that.

11 Q Well, based on application here, marriage application is
12 based on through love, couples fall in love, they get married,
13 correct?

14 A Yes.

15 Q Sometimes love ends. Love ends as well, right?

16 A I have heard that.

17 Q And it makes a crime if couples decide to divorce or
18 marriage is falling apart?

19 A No, it is not a crime.

20 Q It is not the truth that no longer immigration has changed
21 the law because it gets to the point they couldn't stop force
22 couples to being marriage just because a law?

23 A I'm sorry. I'm not entirely sure that I'm understanding
24 your question.

25 Q All right. As far as I understand here in my research,

1 and correct me if I'm wrong, you are the expert, I'm not,
2 immigration has changed the law not long ago. It used to be
3 required for individuals to be married at least for five years.

4 A I'm sorry, I'm not aware of any law to that effect, no.

5 Q Did you agree that it is against the law for immigration
6 to force a person to be married just because they are under
7 some obligation?

8 A I am not aware of any law that requires people to be
9 married.

10 Q Mr. Bruce, you mentioned earlier to the prosecutor that it
11 is a very -- it is very -- one of the laws that you mentioned
12 is very particular for immigration that the couple has to live
13 together, right?

14 A Yes, sir, that's correct.

15 Q But it's not the true that the couple has to prove the
16 intention of the marriage is not to defraud; it is they fall in
17 love and they marry?

18 A The law itself requires that they must prove that their
19 intention when they got married was to have a legitimate life
20 together. And under the Cuban adjustment act, they must show
21 that they are living together. So it's both elements that are
22 absolutely critical.

23 Q Right. Then we can say here by the testimony of earlier
24 today, Ms. Aylin, when she say that in the beginning of the
25 relationship, everything was about love, but things got out of

1 hand and love is gone, that make the marriage fake?

2 MS. MITRANI: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MR. SCOTTON:

5 Q When the couples broke up, is that against the law?

6 A Not to my knowledge, no.

7 Q Mr. Bruce, when you end up get my I485, you understand
8 that I have approve work authorization, correct?

9 A That, I don't know.

10 Q The prosecutor never shared with you that I have work
11 authorization?

12 A I don't recall seeing that, no, sir.

13 Q Would you like to see that work authorization?

14 A I would leave that to your discretion.

15 Q And by have work authorization here, so that would give
16 some kind of status to the defendant, right?

17 A If a person has work, employment authorization, all that
18 does is permit the person to work in the United States. It
19 does not give them lawful status.

20 Q Right. But he's not even allowed to leave the country
21 under that, right?

22 A No, there is nothing prohibiting the person from leaving
23 the United States at any time.

24 Q But he have a chance to have application denied, correct?

25 A I'm sorry, I'm not clear on what you are asking.

1 Q During the process of I485, if the defendant leave the
2 country during this process, it was a reason to have his
3 application denied?

4 A If a person has filed application for permanent residence
5 on form I485, if he were to leave the United States without
6 permission of the United States government, that application
7 would be void. It would not exist anymore.

8 THE COURT: All right. I think we are going to take
9 our lunch break now. We will return at 1:30. Everybody enjoy
10 lunch. Please don't discuss the case with anyone, please don't
11 disburse any information about the case, and please don't do
12 any independent research into the case. We will see you at
13 1:30. All rise for the jury.

14 (Thereupon, the jury exited the courtroom at
15 12:32 p.m.)

16 THE COURT: We will see you back here at 1:30.

17 MS. MITRANI: Thank you, Your Honor.

18 (Thereupon, a luncheon recess was taken at 12:32 p.m.)

19 THE COURT: Welcome back. Please be seated.

20 All righty. Is there anybody here who discussed the
21 case with anyone, disbursed information about the case, or did
22 any independent research on the case? If so, please raise your
23 hand for me now.

24 I see no hands. Thank you very much for that. And we
25 are ready to continue.

1 Welcome back, Mr. Marmar.

2 THE WITNESS: Thank you.

3 THE COURT: I just need to remind you that you are
4 still under oath. Do you understand?

5 THE WITNESS: I do.

6 THE COURT: Very good. Thank you. You may proceed.

7 BY MR. SCOTTON:

8 Q All right. Mr. Bruce, let's continue. So when we left
9 here, I was trying to ask you questions specific about on the
10 application that the lawyer have advised that the last entry
11 was 1992, correct? Do you remember that?

12 A That is the date that is on the I485, yes, sir.

13 Q Okay. When the lawyer submit the application, Mr. Bruce,
14 a background has been concluded on that application, correct?

15 A I don't know that it was completed. The standard
16 operating procedure would be that a background investigation
17 was completed.

18 Q And those background is immigration also retrieve previous
19 case?

20 A I'm sorry, I'm unclear.

21 Q During the background, is immigration officer try to go to
22 the database?

23 A The background investigation is for security purposes.
24 The background investigation involves fingerprint checks with
25 the law enforcement authorities.

1 Q But also immigration concluded the investigation on the
2 individual status in the country as well, right?

3 A Yes, that is a part of the record.

4 Q On 2010 we apply. As you review my case, do you recall
5 that immigration has approved work authorization 2010?

6 A No, I don't recall that.

7 Q You don't recall that?

8 A No, sir.

9 Q On 2010, Mr. Bruce, if immigration has approved
10 authorization of employment, is because they already did the
11 background, correct?

12 A No.

13 Q Why then they approve the authorization for employment
14 then?

15 A The application for employment authorization is submitted
16 at the same time as the application for permanent residence,
17 the form I485. The background investigation is not necessarily
18 completed before the background for employment authorization is
19 approved.

20 Q So they approve status to someone in the country without
21 the background be finished?

22 A The employment authorization application can be approved
23 before the background investigation is completed.

24 Q But don't immigration say that before giving any status to
25 anybody in this country, they want to make sure this person is

1 safe to be in this country?

2 A Well, in order to grant someone lawful permanent
3 residence, we must complete the background investigation.

4 Q So if you -- okay. If a person then -- if the background
5 is not complete, you have no knowledge if this person perhaps
6 is a terrorist, so you guys go ahead and approve the employment
7 authorization?

8 A The employment authorization form is completed and
9 approved or denied before the background investigation is
10 completed.

11 Q Right, so then anybody can go ahead and apply for employee
12 authorization?

13 A No.

14 Q I don't quite understand the answer, Mr. Bruce. When you
15 submit application to immigration in this whole process of
16 background has been in place, the requirement is that
17 background has been concluded. And if everything checks out,
18 then immigration approve employment authorization?

19 A No. Once again, as I said, the employment authorization
20 investigation is completed before the background investigation
21 is completed.

22 Q What kind of requirement for you have the right employment
23 authorization to be approved?

24 A If an application for lawful permanent residence is
25 submitted with the request for employment authorization, that

1 would allow the person to be employed lawfully if we granted
2 that application.

3 Q Do you know how long state background to be done?

4 A I don't have the exact figure on that, no, sir.

5 Q Any time frame you might, any --

6 A I would think that within 30 days, but that is not always
7 the case. It can be far more extensive than that in certain
8 cases.

9 Q It can go to a year, two years?

10 A In very rare cases.

11 Q So with the knowledge that the defendant was in United
12 States without any status, so immigration went approve
13 authorization of work, is that correct?

14 A Well, no. Once again, in order for employment
15 authorization to be approved, there must be an underlying basis
16 in law. It cannot be granted simply because someone has
17 applied.

18 Q Right. So then what can we say here was a mistake of INS
19 to approve authorization for me?

20 A I'm sorry, I'm not quite certain what you mean by a
21 mistake.

22 Q If the application saying that I am 00C, out of status,
23 the immigration is still knowing I was out of status, they
24 still approved the authorization of work?

25 A Well, as a matter of law, if someone is applying for

1 lawful permanent residence, the fact that they are in the
2 United States without permission does not necessarily prevent
3 us from approving employment authorization. Those are two
4 separate things.

5 Q Right. How many people did you think on a daily basis get
6 approved I485 when they enter through Mexico?

7 A I'm sorry, I'm not clear on your question.

8 Q All right. People come from Mexico all the time, enter
9 this border here illegally, but they still most of the time
10 apply and receive their green card, right?

11 A I'm afraid that's not accurate.

12 Q What is not accurate, Mr. Bruce, my statement that people
13 come here and apply and receive a green card?

14 A No. Please correct me if I'm wrong, I believe you had
15 asked if people who cross the United States border from Mexico,
16 I think that you had said that they received permanent
17 residence most of the time. My answer was that that was not
18 accurate.

19 Q I guess, let me rephrase the question, make you understand
20 a better way here. If I come through Mexico, let's put me as
21 example here, I come through Mexico, I am legally in this
22 country, and then I'm married to a United States citizen, can I
23 apply for I485?

24 A Only under very limited circumstances.

25 Q And what is that?

1 A Well, there is a special section of law which permits
2 people who have entered the United States illegally across the
3 Mexican border to become lawful permanent residents. But that
4 law expired many years ago.

5 Q And because the law expired most of the time, some of the
6 people that apply under the I485, they apply also for a waiver,
7 right?

8 A I'm sorry, I'm not clear what you are asking.

9 Q Is there people that apply for waivers?

10 A Yes, there is such a thing under the law as a waiver.

11 Q So during all this time here, Mr. Bruce, on this
12 application here, immigration has knowledge, complete knowledge
13 that I live in this country, right?

14 A First of all, what type of application are you talking
15 about, the form I485?

16 Q Yes, sir.

17 A When the I485 form is submitted, there must be evidence
18 that the individual who was applying entered the United States
19 in a lawful status.

20 Q Then if it is not a proven record, automatic is denied?

21 A Well, that determination is made at the time of an
22 interview by an immigration officer.

23 Q Did you see that the determination that he see
24 specifically that denial say we deny it because it is not
25 something in the record to show that I am not in the country

1 legally?

2 A I'm sorry, what denial are we discussing, please?

3 Q Mr. Fred Brooks. In my case, did you see the denial
4 application in that situation?

5 A Yes, I did.

6 Q Did my denial show anything related to the day that I
7 entered into this country or not?

8 A I don't recall whether there was exact reference to the
9 date or not. I would have to look at the denial notice itself.

10 Q Do you want me to show you that, that may recollect your
11 mind?

12 A If you prefer, yes.

13 MR. SCOTTON: Your Honor?

14 THE COURT: What.

15 MR. SCOTTON: May I just approach, show him the paper?

16 THE COURT: Okay.

17 THE WITNESS: Thank you.

18 BY MR. SCOTTON:

19 Q Take your time, Mr. Bruce.

20 A Yes, sir.

21 Q It is not the true that based on that deny, the office say
22 that the deny is based on some questions that he have specific
23 asked me and my wife?

24 A That's correct.

25 Q So it is not on the application say anything enter this

1 country legal or illegal, correct?

2 A Yes, because in the official record it showed that there
3 was a lawful entry in 1992 so that this decision was based upon
4 that entry. In other words, there was no evidence
5 contradicting the statement in the application that you entered
6 in 1992.

7 Q Right. So did you mention that I enter unlawful in 1992?

8 A No, your entry in 1992.

9 Q Okay. With a visa?

10 A With a nonimmigrant visa, yes, sir.

11 Q Do you familiar with the requirements in law for coast
12 guard?

13 A Coast guard?

14 Q Yes.

15 A No, sir.

16 Q Have you went to Bahamas before?

17 A I have been to the Bahamas.

18 Q Did you went by boat?

19 A Yes.

20 Q When you came back to the United States, did you came with
21 boat?

22 A I don't recall. It was on a boat, but I was a very small
23 child.

24 Q Oh, okay. So you are not going to be able to recall if
25 you guys have a call --

1 A No, it was a while ago.

2 Q Did you know that anybody leave the country through the
3 boat, when they come back, they have to report to coast guard?

4 A They have to report to immigration authorities.

5 Q But it's not such a thing as immigration authorities on
6 the ocean, right?

7 A Yes, actually there are.

8 Q There is the coast guard?

9 A No, you had asked if there were immigration authorities on
10 the water.

11 Q Right.

12 A And, yes, there actually are.

13 Q One of the requirements was to call channel 60 and report
14 to the coast guard?

15 A I'm not familiar with coast guard regulations. That's
16 outside of my work, sir.

17 Q Okay. You say that you have been working with immigration
18 for over 20 years, correct?

19 A Yes.

20 Q Over the 20 years you work in immigration, did immigration
21 make mistakes?

22 A Yes.

23 Q Did immigration damage people's lives for mistakes?

24 A That would be a judgment that I would prefer not to make.

25 Q Immigration got sued by individuals because they --

1 A Oh, yes.

2 Q -- because of the mistakes?

3 A Yes, certainly.

4 Q So are you familiar with the form I131?

5 A Yes.

6 Q Can you explain to the jury what the form is for?

7 A The form I131 has many purposes. One of the purposes is
8 to permit someone who has filed the form I45 for permanent
9 residence. The I131 form, if it is approved, permits that
10 applicant for permanent residence to leave the United States
11 temporarily and then return to the United States to continue
12 pursuing the form I145.

13 Q In this case, in this case, did you get familiar with this
14 case and saw immigration approved form I131 in January 2012?

15 A That, I don't recall.

16 Q Do you -- as you research my case, Mr. Bruce, did you
17 think that is something bizarre in that case at all?

18 A I don't recall. I'm not sure what you mean by bizarre.
19 In what sense?

20 Q It is not the truth that most those marriages applications
21 immigration say on application, report, whatever you guys call
22 it, that the time frame for application to be concluded is --
23 can go to six months to a year?

24 A It does happen in some cases, yes.

25 Q But it's not the case in my here, right?

1 A I don't know that, sir.

2 Q Do you know that I apply in 2010?

3 A According to the record, yes.

4 Q And then the application was denied in March of 2012.

5 A Yes.

6 Q So almost two years here?

7 A That's correct.

8 Q Did you think it is possible someone intentionally tried
9 to interfere with my case?

10 A I'm not aware of anyone intervening in the case, sir.

11 Q Do you know that during this whole proceeds with
12 immigration, the defendant has contact office of Senator Bill
13 Nelson?

14 A No, sir, I did not know that.

15 Q Did you know that immigration has sent a letter to Senator
16 Bill Nelson claim that we cannot give authorization of
17 employment or any status to someone that the background was not
18 concluded?

19 A No, I have not seen that letter.

20 Q And do you know the letter has arrived in his office on
21 July 2010?

22 MS. MITRANI: Objection.

23 THE COURT: Sustained. Mr. Scotton, if you wish to
24 testify, you need to do it from the stand.

25 MR. SCOTTON: Your Honor, I'm not testifying.

1 THE COURT: Please ask questions.

2 MR. SCOTTON: I'm asking questions.

3 THE COURT: Please ask questions.

4 BY MR. SCOTTON:

5 Q On the application form, Mr. Bruce, the most of the
6 application from immigration, they came with a little
7 instruction, correct?

8 A Yes.

9 Q And under that instruction also has instruction for
10 paperworks, time frame, time to apply, correct?

11 A Yes. On the USCIS website, there are time frames, yes.

12 Q And then also they have the penalties for fraud marriage,
13 correct?

14 A Yes.

15 Q And do you know by your head what the penalties is?

16 MS. MITRANI: Objection, Your Honor.

17 THE COURT: Sustained.

18 BY MR. SCOTTON:

19 Q It is not the truth that individual committed marriage
20 fraud can go five year to prison?

21 MS. MITRANI: Your Honor.

22 THE COURT: Mr. Scotton, sidebar, now.

23 (Thereupon, the following was heard sidebar.)

24 THE COURT: Mr. Scotton, I told you this yesterday. I
25 told you this the day before. There is no discussion of

1 punishment. We have been through this and you know it. Don't
2 act like you don't know it. You know exactly what you are
3 doing. Don't you pretend you don't know. I just told you on
4 the question before this when you asked what the penalty was
5 that the objection was sustained. You clearly knew this. We
6 have discussed it previously. I expect you to abide by the
7 rules. If you don't abide by the rules, I'm going to give
8 corrective instructions to the jury. Do you understand?

9 MR. SCOTTON: Your Honor, I understand.

10 MS. MITRANI: Your Honor --

11 THE COURT: That's it.

12 (Thereupon, the following was heard in open court.)

13 THE COURT: Members of the jury, I just do need to
14 remind you that you must never consider punishment in any way
15 to decide whether a defendant is guilty. If you do find that a
16 defendant is guilty, the punishment is for the judge alone to
17 decide later. All right? Thank you.

18 You may proceed, Mr. Scotton

19 BY MR. SCOTTON:

20 Q Mr. Bruce, pretty much immigration has the whole files and
21 all records about all my cases, about my life here in the
22 United States, correct?

23 A I'm sorry, when you say all, please clarify, if you would.

24 Q Right. So from the date that I entered into this country
25 and I get a visa approved, immigration has knowledge of that,

1 right?

2 A Well, I'm not -- again, I'm unclear what you mean by that.

3 Q So anything that implicate immigration, every single time
4 you go to immigration office, you apply, visa get approved,
5 immigration pretty much has knowledge of everything that get in
6 the system, correct?

7 A We do have records of every application that an applicant
8 would submit with our agency. We also have a record of any
9 time that a person of that nature would come in and would be
10 interviewed formally by an immigration officer.

11 Q Is it not the true then when I apply for my I485,
12 immigration has the knowledge that I have an open approve I140?

13 A I don't know that we would be aware if there was an I140
14 approved in your particular case.

15 Q Why not?

16 A Well, I don't know that we would have knowledge of
17 something that's not in the official record that the officer
18 had before him.

19 Q Did you mention earlier today that immigration has
20 knowledge of all the cases? They do backgrounds. They should
21 know that I have other cases either close or open, but they
22 have a history of the defendant, right?

23 A Yes, absolutely.

24 Q So they should have known then when I apply for this I485,
25 my immigration past, how to say?

1 A We would be aware of every document, every encounter that
2 was in the official record.

3 Q So knowledge with previous visas deny in visa 01 and open
4 a visa that is still pending I140, immigration still approved
5 the authorization employment, right?

6 A Well, once again, the employment authorization approval is
7 based strictly upon the submission of an I485 application.

8 Q But they approve?

9 A I don't know that it was approved. As I mentioned
10 earlier, I'm not aware of --

11 Q Do you mind if I recollect your memory with this?

12 A No, sir. Please.

13 Q I'm sorry, Bruce, did you saw that form?

14 A Yes, sir.

15 Q Okay. Did you see in the form that on 11 1st of 2010, the
16 work authorization was approved, correct?

17 A I do.

18 Q And the work authorization was valid for a year, correct?

19 A That, I don't know. I would have to see the document.

20 Q On the top one?

21 A This one.

22 Q Both of them. Both of them right here?

23 A Yes, sir.

24 Q It is right?

25 A Yes.

1 Q And immigration once again come back and renew on
2 August 2011?

3 A Yes, that's correct.

4 Q And it was valid for another year?

5 A That's right.

6 Q Are you familiar with this form called personal subject
7 information from immigration?

8 A I'm sorry?

9 Q Personal subject information.

10 A Personal subject information, I don't know that term.

11 Q I think the form is F024?

12 A F024 is not a form I have heard of.

13 MR. SCOTTON: Your Honor, I'm going to show him again.

14 THE COURT: Okay.

15 BY MR. SCOTTON:

16 Q Mr. Bruce, have you saw that form before?

17 A No, I have not.

18 Q No, but that particular information came from immigration?

19 A I don't know. I am not familiar with the form.

20 Q Did you see on the top of the letter USCIS fax number?

21 A Where are you pointing that out, sir?

22 Q Right on the top, right on the very top of the form.

23 A It says USCIS DD.

24 Q Right. So it seems to be a fax transmitted from USCIS,
25 correct?

1 A I don't know what the source of this was.

2 Q What is a CIS stand for, Mr. Bruce?

3 A CIS?

4 Q Yes.

5 A That's the agency I work for, USCIS.

6 Q So immigration has that information, Mr. Bruce?

7 A Once again, I'm not familiar with this form so I'm not
8 sure what the immigration officer would have or would not have.

9 Q Right. Well, basically, immigration has the knowledge
10 that I have been in this country since 1989, correct?

11 A I am not sure that we would have that knowledge.

12 Q The prosecutor has show you the passport of the visa that
13 was granted in 1989, correct?

14 A Yes.

15 Q And then you got two or three entries, dates on that
16 passport, correct?

17 A Yes.

18 Q So immigration has knowledge that I exist and that I
19 entered into this country several times, correct?

20 A Yes.

21 Q With the knowledge that I be in this country here, so I
22 submit applications, I pay for the fees, and they approve those
23 application, correct?

24 A Well, the application that was approved was the work
25 authorization, not the -- there was no permanent residence

1 granted in this case.

2 Q I do understand that, Mr. Bruce, but it was approved?

3 A I'm sorry, that what was approved?

4 Q The work authorization.

5 A Yes, it was.

6 Q And you don't have the knowledge the information on I140
7 was approved, do you?

8 A I am not aware of that, no.

9 Q So the knowledge the immigration approve me work
10 authorization I140?

11 MS. MITRANI: Objection, Your Honor, this witness has
12 testified about I140.

13 THE COURT: Sustained.

14 BY MR. SCOTTON:

15 Q Just recollect me again that letter that I showed to you,
16 the denial letter, it doesn't say anything about the defendant
17 application being denied in this country because he's out of
18 status, it doesn't, right?

19 A No, it does not say that.

20 Q As a matter of fact, the application say that I485, it is
21 denied because the officer did not believe that the marriage
22 was a real marriage?

23 A That is absolutely correct.

24 Q And because the defendant has been indictment with this
25 charge of mail fraud?

1 A I have not read the entire application. I skimmed through
2 it.

3 Q Be my guest, Mr. Bruce.

4 A Which particular section would you like me to read? It's
5 fairly lengthy.

6 Q I guess we can go into here. This is mail fraud.

7 A Would you like me to read the entire paragraph or just --

8 MS. MITRANI: Objection.

9 THE COURT: Sustained. It's not in evidence.

10 BY MR. SCOTTON:

11 Q Well, just acknowledge my question, that -- let me go back
12 and I will ask you the question. Well, I asked if the denial
13 was because the officer believed the marriage was not a real
14 marriage, and the second thing that officer say on that denial
15 say that I been indictment with mail fraud, correct?

16 A It does say there was unsealed indictment filed on
17 March 8, 2012.

18 Q But nothing state immigration has complained or say
19 anything about the defendant entered into the country
20 illegally, right?

21 A That's correct.

22 MR. SCOTTON: No more questions, Your Honor. Thank
23 you so much.

24 THE COURT: Redirect.

25 MS. MITRANI: Yes, Your Honor.

1 REDIRECT EXAMINATION

2 BY MS. MITRANI:

3 Q Good afternoon.

4 A Good afternoon.

5 Q What is an I140?

6 A An I140 is a petition that is filed by a company to bring
7 a foreign national into the United States to work permanently
8 for that company.9 Q Does that one -- does the filing of an I140 give an
10 individual status in the United States?

11 MR. SCOTTON: Object, Your Honor.

12 THE COURT: What is the objection?

13 MR. SCOTTON: I tried to talk about the I140 and she
14 said I'm not allowed and she's now going to talk about I140.

15 THE COURT: Overruled.

16 BY MS. MITRANI:

17 Q Does an I140 give an individual status in the United
18 States?

19 A No, it does not.

20 Q And does an I140 give an individual a visa to enter the
21 United States?

22 A No, it does not.

23 Q So an I140 is filed by an employer who wants somebody to
24 obtain a visa to come into the United States?

25 A Yes, an I140 if approved permits a foreign national to

1 enter the United States as a lawful permanent resident if
2 otherwise qualified.

3 Q But in and of itself doesn't give an individual status,
4 correct?

5 A That's right. The I140 itself is simply an application.

6 Q The defendant was asking you questions about the coast
7 guard. Do you recall that?

8 A I do.

9 Q Do you have anything to do with the coast guard?

10 A I do not.

11 Q Is the coast guard like a separate entity, a separate
12 agency, a separate part of the government?

13 A That's correct.

14 Q If an individual enters the United States through, you
15 know, a boat as defendant was hypothesizing to you, is there a
16 requirement to present himself to immigration for inspection?

17 A Yes, anyone who is arriving from foreign territory must be
18 inspected by an immigration official.

19 Q And what does that immigration have to do upon the
20 individual presenting himself to immigration?

21 A They would have to review the passport, the nonimmigrant
22 visa, or the lawful permanent resident card. It would depend
23 upon the status of the individual, and then the immigration
24 officer at the port of entry would determine whether that
25 person could enter the United States lawfully.

1 Q If the immigration officer made a determination that that
2 person could enter lawfully, would there be any indication in
3 the individual's passport?

4 A If the individual was attempting to enter the United
5 States as a nonimmigrant, as let's say the B2 tourist that we
6 had mentioned earlier, yes, there would be a stamp in that
7 person's passport.

8 Q If an individual does not present themselves to
9 immigration, then there can be no stamp in the passport, is
10 that correct?

11 A That's correct.

12 Q Does a non-alien wishing to enter the United States
13 lawfully, does he need to present himself to immigration?

14 A Yes, in all cases.

15 Q And is a lawful entry into the United States important to
16 the decision as to whether to grant the I485 application?

17 A It's critical.

18 Q How so?

19 A Because if you cannot prove that you made a lawful entry
20 into the United States, then as a general rule, you are not
21 eligible for permanent residence.

22 Q And does that apply for a Brazilian foreign national
23 wishing to adjust status on the basis of I485 application?

24 A Yes.

25 Q The defendant was asking you some questions about some

1 kind of waiver. Does a waiver allow -- have anything to do
2 with an I485 application to adjust status?

3 A It can, and I can define the term for you, if I may. A
4 waiver is a way for someone to overcome a ground of
5 ineligibility. An example would be if someone is applying for
6 lawful permanent residence in the United States and has been
7 convicted of a criminal act, if that person wishes to become a
8 lawful permanent resident, he or she would have to file what we
9 call a waiver. And if that waiver application is approved,
10 then the person can become a lawful permanent resident. But
11 just as a waiver application can be approved, it can be denied
12 as well. It would depend upon the unique circumstances of that
13 case and the severity of the crime.

14 Q In this case, with respect to the I485 application
15 submitted by the defendant, did you see any waiver?

16 A I did not.

17 Q I think the defendant was asking you some questions about
18 manifests that are turned over to customs and border
19 protection.

20 A That's correct.

21 Q Is Customs and Border Protection, what is the
22 relationship, if any, of Customs and Border Protection to the
23 United States Citizen and Immigration Services?

24 A We are both agencies or subagencies within the Department
25 of Homeland Security and we deal with them on a fairly regular

1 basis, but we are separate subagencies.

2 Q You are separate subagencies?

3 A That's correct.

4 Q So is the manifest, the passenger manifest, handed over to
5 customs and border protection, or is it handed over to citizen
6 and immigration services?

7 A Anything dealing with passengers arriving or departing
8 from the United States is handled by customs and border
9 protection.

10 Q CBP?

11 A CBP.

12 Q As it's referred to --

13 A CBP, is correct.

14 Q -- internally. Okay.

15 The defendant was asking you questions about being out of
16 status and questions to that effect. My question to you is, is
17 there a difference between overstaying a visa and becoming out
18 of status that way and not obtaining a visa at all but yet
19 being inside the United States for purposes of adjudicating an
20 I485 application?

21 A Yes, they are entirely different concepts. Should I
22 explain?

23 Q Please. That was my next question.

24 A Yes. If someone has entered the United States as a
25 tourist, we mentioned earlier the term B2 which is a tourist

1 coming for vacation, if that applicant has been admitted
2 lawfully by an immigration officer and let's say has been
3 admitted for a period of six months, if that applicant stays
4 longer than the six months, he or she may still be eligible for
5 permanent residence in the United States. The law is very
6 clear on that.

7 But if the same individual had entered the United States
8 without being inspected by an immigration officer, that person
9 would be ineligible to adjust status and become a lawful
10 permanent resident under the Cuban adjustment act.

11 Q The defendant asked you some hypothetical about Mexico.
12 Do you recall that?

13 A I do.

14 Q Are the rules for Brazil different from the rules for
15 Mexico?

16 A No, the rules are the same for every nationality.

17 Q The defendant was asking you some questions about intimacy
18 and marriage and relationships. Do you remember that line of
19 questioning?

20 A Yes, I do.

21 Q Is the requirement that the husband and wife reside
22 together, again, important for purposes of determining the I485
23 application?

24 A When the I485 is filed under the Cuban adjustment act,
25 it's essential that the couple be living together at the time

1 that the application is adjudicated where we make a decision on
2 it.

3 MS. MITRANI: If I could have a moment, Your Honor.

4 THE COURT: You may.

5 MS. MITRANI: No further questions, Your Honor.

6 THE COURT: You may step down. The government may
7 call its next witness.

8 MS. MITRANI: The government calls Scott Kamlet.

9 THE COURTROOM DEPUTY: Please raise your right hand.

10 SCOTT KAMLET

11 Having been first duly sworn on oath, was examined and
12 testified as follows:

13 THE COURTROOM DEPUTY: Please be seated. State and
14 spell your first and last name for the record.

15 THE WITNESS: My first name is Scott, S-C-O-T-T. Last
16 name is Kamlet, K-A-M-L-E-T.

17 DIRECT EXAMINATION

18 BY MS. MITRANI:

19 Q Good afternoon. Sorry. I had a technical matter to
20 attend to.

21 A Good afternoon.

22 Q How are you doing this afternoon?

23 A Just fine. Thank you.

24 Q Okay. So where do you live, Mr. Kamlet, just the city and
25 state is sufficient?

1 A Houston, Texas.

2 Q How long have you been in Houston?

3 A About seven years.

4 Q Did you attend college?

5 A Yes.

6 Q Okay. And who do you presently work for?

7 A DHL Express.

8 Q How long have you been with DHL Express?

9 A About 13 and a half years.

10 Q Have you had different roles with DHL Express?

11 A Yes, I have.

12 Q We will get to that in just a second. Can you tell the
13 members of the jury a little bit about your employment
14 background prior to joining DHL Express?

15 A I have been with different companies, many retail
16 companies as well as the shipping industry, been in security
17 for over 25 years in different roles as an investigator, store
18 detective in retail, moving into management roles over many
19 years, and then ended with when I started with Airborne Express
20 which was then purchased by DHL Express as an investigator in
21 Manhattan and New Jersey and then promoted to the fraud
22 position I currently hold.

23 Q Okay. So what is your title?

24 A My title now is the fraud department manager for the U.S.

25 Q Fraud department manager for the U.S.?

1 A Yes.

2 Q How long have you been the fraud department manager for
3 the U.S.?

4 A Eight years.

5 Q And prior to that, what were you doing with DHL?

6 A I was a corporate investigator doing internal and external
7 investigations.

8 Q All right. And what type of investigations did you do as
9 a corporate investigator?

10 A Primarily theft, and there was also -- you know, I would
11 assist in any law enforcement agency with any of their
12 investigations. Sometimes there would be possibly drug
13 shipments moving through the network and we would try to
14 intercept those and work with the authorities, get it in their
15 hands.

16 Q So tell us a little bit about your present department.
17 It's called the fraud department?

18 A Fraud department for DHL.

19 Q Can you tell the members of the jury what the fraud
20 department does?

21 A The ultimate responsibility of the fraud department is to
22 protect DHL from financial and reputational losses or from
23 exposure to negative financial losses and the reputation which
24 is closely tied.

25 Q What types of matters does your department look into?

1 A We look into anything that can be tied to fraud, but
2 primarily the way that DHL could be negatively affected, if
3 someone were to use stolen credit card information to ship --
4 to make shipments on the internet or present a package for
5 shipment at one of our locations or use a DHL account number,
6 we extend credit to our customers, and if someone were to use
7 those account numbers without authorization, it's our job to
8 kind of go out and find those, stop it to keep -- that helps
9 our reputation as well as our finance because if our customers
10 are negatively affected, they look upon us negatively and so
11 does the general public. So it's our job to stop those
12 shipments and reduce the financial impact of those shipments
13 moving through our network without being paid for.

14 Also do internal investigations if there's anybody
15 committing anything, any type of fraud internally such as sales
16 commission fraud or things of that nature.

17 Q All right. So that's what your department does. And can
18 you tell us a little bit about what are your responsibilities?

19 A Ultimately, I run the department, I make sure that
20 everything I just discussed, and there's a lot of minutia like
21 in any job, that everything has to be taken care of, that the
22 department is functioning as it should, doing what it's
23 supposed to do and ultimately all of the larger investigations,
24 internal and external, fall to me to conduct.

25 Q Do you know an individual by the name of Nicole Nelson?

1 A Yes, I do.

2 Q Who was -- who is, she's still alive, who is Nicole Nelson
3 or who was Nicole Nelson?

4 A Nicole Nelson, who still is, was an investigator that
5 worked for me at DHL Express.

6 Q And were you aware of her investigation into the
7 defendant, Roger Scotton?

8 A Yes.

9 Q All right. And what was -- so how would you characterize
10 Ms. Nicole Nelson's activity with regard to that investigation?

11 A She spent quite a long time gathering information, doing
12 research about many different accounts, web activity,
13 individuals trying to tie -- tying together a lot of the facts,
14 gathering information, preparing it for the potential of
15 bringing it to law enforcement.

16 Q So would you say that she was basically in charge of the
17 investigation and running the show?

18 A Absolutely, this was her investigation. She reported up
19 to me about the investigation.

20 Q And then when she left DHL in early 2009, what happened to
21 the Roger Scotton investigation?

22 A At that point the investigation had already been turned
23 over to law enforcement, and anything from that point on that
24 was needed by law enforcement who was handling the
25 investigation at that point, I provided support and information

1 from DHL.

2 Q And when you say the investigation had been turned over to
3 law enforcement, what agency had it been turned over to?

4 A To the FBI.

5 Q All right. So by the time your were handed the file, the
6 FBI now was in a sense running the show, conducting the
7 investigation?

8 A Correct.

9 Q And so how would you characterize your role as it related
10 to the FBI?

11 A I was taking a backseat in a support role.

12 Q During the course of supporting the FBI's investigation,
13 did you and your team conduct research on fraudulent accounts
14 that were opened after Ms. Nelson left?

15 A Yes.

16 Q Tell us a little bit about that.

17 A There were accounts specific to this case that there were
18 accounts that were open using companies such as Target or
19 Wal-Mart, Amazon, household names, that were opened without
20 those companies being aware that they were opened and shipping
21 many packages, many shipments through the DHL network from the
22 U.S. to Brazil and none of those shipments were ever paid for.

23 Q And did you -- let me show you an exhibit.

24 A Okay.

25 Q Just waiting for Special Agent Van Brunt for a minute.

1 But did you create a spreadsheet of accounts that you had
2 linked to the Roger Scotton investigation?

3 A Yes, I did.

4 Q And what kind of information did that spreadsheet contain?

5 A Financial and shipping information.

6 Q And can you be a little bit more descriptive?

7 A It had the airway bills, the account numbers, the account
8 names, the shipping address, and shipping company as well as
9 the consignee or recipient address and name and all the charge
10 information that would have been associated with each shipment.

11 Q And what were the underlying documents or information that
12 gave rise to the information contained in the spreadsheet?

13 A Ultimately it ties back to the waybills that were
14 generated or the tracking information that was generated when
15 the shipments were created.

16 Q The waybills -- and do the waybills then relate to
17 invoices that are sent out on those waybill?

18 A Correct. As the waybills are charged, then they get
19 associated with the account, they are added to an invoice which
20 is then sent to the customer for billing purposes.

21 Q As a matter of fact, if a waybill is created online, is
22 the information captured immediately by DHL?

23 A Yes.

24 Q And it's preserved in your computer system?

25 A Yes.

1 MS. MITRANI: May I approach the witness?

2 THE COURT: Yes.

3 BY MS. MITRANI:

4 Q I'm showing you Government's Exhibit 132C. Does this
5 Exhibit 132C contain a spreadsheet that was prepared with, I
6 think, seven different accounts on it?

7 A Yes.

8 Q And it's -- the accounts were business accounts of DHL,
9 correct?

10 A Correct.

11 Q And I think we said before, the waybills and the invoices,
12 are those business records of DHL kept in the ordinary course
13 of business?

14 A Yes, they are.

15 MS. MITRANI: Your Honor, the government would offer
16 132C.

17 THE COURT: Any objection?

18 MR. SCOTTON: No, Your Honor.

19 THE COURT: 132C is admitted.

20 (Thereupon, Government's 132C received in evidence.)

21 BY MS. MITRANI:

22 Q I'm going to try to pull up the spreadsheet, but let me
23 ask you some general questions about the spreadsheet. Have you
24 had the opportunity to review it recently?

25 A Yes.

1 Q Does this spreadsheet cover the period of July 2009
2 through approximately October 7, 2010?

3 A Yes, it does.

4 Q And do you recall approximately how many packages are
5 contained in the spreadsheet?

6 A Approximately 1500.

7 Q It's not up yet, so...

8 A It's up here on the screen.

9 Q Okay. Let me ask you some questions, and then we will go
10 to the spreadsheet. It's approximately 1500 packages for the
11 time period July 2009 through October 2010, correct?

12 A Correct.

13 Q And were all the packages -- excuse me. Does this
14 spreadsheet contain specific billing information for each
15 package that was sent out?

16 A Yes, it does.

17 Q And were any of the accounts listed -- strike that.

18 Were any of the invoices and accounts listed on the
19 spreadsheet paid for?

20 A They were not.

21 Q So all of these are outstanding invoices that were never
22 paid?

23 A Correct.

24 Q The accounts listed on the spreadsheet are Apple, Amazon,
25 Sears, Havoc Distribution, Inc., Target Corporation, Visa

1 International, and Wal-Mart, correct?

2 A Correct.

3 Q If we do a run on the name Roger Scotton or Roger Chaves,
4 do you remember doing that sort of search in the last few days?

5 A Yes.

6 Q And when you do the sort of the consignee is either Roger
7 Scotton or Roger Chaves, do 23 packages show up both on the
8 Wal-Mart account as well as the Havoc Distribution account?

9 A Yes.

10 Q And are we looking on the spreadsheet now the consignee
11 name Roger Scotton, is that what we are seeing on the
12 spreadsheet now?

13 A Yes.

14 Q And so we will remember, what is a consignee?

15 A The consignee is the receiver of the shipment.

16 Q And moving over to the right part of the spreadsheet, does
17 that show that Mr. Scotton was the consignee, receiver of
18 packages sent on the Havoc account as well as the Wal-Mart
19 account?

20 A Yes.

21 Q All right. Then did you do an analysis of packages sent
22 to an Alexander Scotton or Luiz Scotton?

23 A Yes.

24 Q And did that show -- did that search show packages being
25 sent to Brazil to either Alexander Scotton or Luiz Scotton on

1 the Apple, Visa, Wal-Mart, and Havoc Distributions accounts?

2 A Yes, it did.

3 Q On the screen are we seeing consignee name here Alexander
4 Scott and Luiz H. Scotton?

5 A Yes.

6 Q If we move over to account name, does it show Apple
7 Computer?

8 A It does.

9 Q Does it show Visa International?

10 A Yes.

11 Q Wal-Mart?

12 A Yes.

13 Q And Havoc Distributions, Incorporated?

14 A Yes.

15 Q Do you remember doing a sort with the address 934 North
16 University Drive?

17 A Yes.

18 Q Does that come up with shipments on the Havoc Distribution
19 account?

20 A Yes.

21 Q And the sort -- and so if you do a sort on shipper
22 address, we see 934 North University Drive, correct?

23 A Correct.

24 Q As the shipper of packages and if we go to the left, it
25 shows the account as Havoc Distributions, Inc., correct?

1 A Correct.

2 Q Did you also do a sort of the spreadsheet on Sky Air
3 Express, Sky Express, and variations of those names?

4 A Yes.

5 Q And did that sort come back to the Apple account, the Visa
6 account, and the Havoc account?

7 A Yes.

8 Q So now if we see the shipper's name, it states Skair
9 spelled S-K-A-I-R, correct?

10 A Yes.

11 Q And then there's variations like Skyier with S-K-Y-I-E-R,
12 correct?

13 A That's correct.

14 Q And other variations like further down we see Sky Express,
15 correct?

16 A Correct.

17 Q And these Sky Air accounts, these Sky Air shipments go
18 back to the Apple account, the Visa account, and the Havoc
19 Distributions account, correct?

20 A That's correct.

21 Q And with respect to the Sears, Wal-Mart, and -- excuse me,
22 the Target and Sears account, and the Amazon account, did you
23 run searches showing similar consignees, excuse me, the same
24 consignee on the Amazon, Target, and Sears account as were in
25 the other accounts we have been discussing, the Apple, the

1 Havoc, the Wal-Mart, and the Visa?

2 A Yes.

3 Q You were able to link it up that way?

4 A Yes, correct.

5 Q And if we total up the all the shipments on this
6 spreadsheet, Government's Exhibit 132 on the accounts that I
7 read, the loss to DHL is what?

8 THE COURT: I'm sorry, I know you have a question
9 pending, but I think what we are going to do is take a break.
10 Let's take until 2:45. All rise for the jury.

11 (Thereupon, the jury exited the courtroom at
12 2:34 p.m.)

13 THE COURT: All right. We will be in recess until
14 2:45.

15 (Thereupon, a recess was taken at 2:35 p.m.)

16 (Thereupon, the jury entered the courtroom at
17 2:47 p.m.)

18 THE COURT: All righty. Please be seated. Thank you.
19 And I just need to remind you that you are still under oath.
20 Do you understand?

21 THE WITNESS: I do.

22 THE COURT: Very good. Thank you, Mr. Kamlet. And
23 you may continue.

24 MS. MITRANI: Thank you, Your Honor.

25

1 BY MS. MITRANI:

2 Q Mr. Kamlet, what is the total amount of unpaid shipments
3 as represented on this spreadsheet, Government's Exhibit 132?

4 A \$833,516.63.

5 Q And does that represent the loss to DHL regarding these
6 particular packages?

7 A Yes, it does.

8 Q And does this loss figure include both the shipping costs
9 that were unpaid as well as the duties and taxes that DHL
10 fronted the customer?

11 A Yes.

12 Q And ultimately, were these, this Amazon, Apple, Sears,
13 were these specific accounts with the specific account numbers
14 listed on the spreadsheet closed for fraud?

15 A Yes, they were.

16 Q Does the real Apple Computer pay its bills?

17 A Yes, it does.

18 Q Does the real Target pay its bills?

19 A Yes.

20 Q Does the real Wal-Mart pay its bills?

21 A Yes.

22 Q Does the real Sears pay its bills?

23 A Yes.

24 Q Does the real Visa International pay its bills?

25 A Yes.

1 Q I think I got them all. Okay. But these particular
2 account numbers were closed for fraud, correct?

3 A Correct.

4 MS. MITRANI: No further questions, Your Honor.

5 THE COURT: All right. Cross-examination.

6 CROSS EXAMINATION

7 BY MR. SCOTTON:

8 Q Good afternoon.

9 A Good afternoon.

10 Q Do you mind if I call you Scott?

11 A Please.

12 Q Scott, let me try to understand here, because on my notes
13 the spreadsheet offer here by the government was not created by
14 Mrs. Nicole?

15 A No, it was not.

16 Q So you created the spreadsheet?

17 A Correct.

18 Q And the spreadsheet is created in which format?

19 A It's an Excel spreadsheet.

20 Q This is a spreadsheet that anybody can go and edit, modify
21 in any way they want to, right?

22 A It's not protected, yes.

23 Q And a spreadsheet is something that you create as you
24 wish, right?

25 A As I created it, yes.

1 Q So you put the information you needed, information you
2 wanted, you typed anything you wanted inside that information,
3 correct?

4 A The information was information that came from our
5 systems.

6 Q I understand, but that particular spreadsheet we are
7 talking here, you can go ahead and open up and type anything
8 you want there, change, put numbers, whatever you want to do,
9 correct?

10 A I can.

11 Q Right. So out of the \$800,000 or 2,000 shipments, did DHL
12 present to this court every single waybill?

13 A Every single waybill number.

14 Q No, every single real waybill, the label, has every single
15 label been present either to the government or to the court,
16 all the 2,000 shipments?

17 A No.

18 Q Don't you think it is on those days that it is very weak
19 for us to present just a spreadsheet to this jury to convince
20 them that 8,000 shipments went without the real evidence on the
21 table?

22 A As I understand it, this is real evidence.

23 Q Your spreadsheet that you made it, right?

24 A The spreadsheet that I created, correct.

25 Q Some you work with the security on your company, correct?

1 A I'm sorry, I didn't understand the question.

2 Q You work in the security department in your company?

3 A Security department, correct.

4 Q Do you have knowledge of any other department of your
5 company?

6 A Limited knowledge of other departments, of course.

7 Q Let's go over there then with the claim department. Did
8 you have any familiar knowledge with the claim department?

9 A I am familiar with the claims department. I am not an
10 expert in claims, however.

11 Q Right. Did you know that during my business, several
12 claims have been submitted by other company or myself through
13 DHL about lost and damaged packets?

14 A I'm not familiar with any specific claim information with
15 regard to you.

16 Q So that spreadsheet over there doesn't show any claims
17 just show the losts?

18 A That spreadsheet contains the financial information and
19 the shipment information.

20 Q Right. Mr. Scott, do you have any knowledge if when a
21 package get lost and claim has been paid, do you have a
22 knowledge that DHL only pay the merchandise, not the shipping?

23 A I don't know the specifics of how claims handles their
24 claim process.

25 Q Do you have a knowledge that most of the time on the lost,

1 damaged package, the shipping cost has been credit back to the
2 account?

3 A I don't have any specific knowledge as to that.

4 Q So if we can prove to this court that this is a fact that
5 shipment sent to Brazil or to any other place has been damaged,
6 DHL pay the claim and return back credit back the account, if
7 we have the proof here to show to this Court, we can say this
8 spreadsheet is not accurate?

9 MS. MITRANI: Object to the form of the question.

10 BY MR. SCOTTON:

11 Q Correct?

12 THE COURT: Sustained.

13 BY MR. SCOTTON:

14 Q It the spreadsheet numbers accurate?

15 A Yes, they are.

16 Q But it doesn't include the loss on it?

17 A The spreadsheet contains the information requested for it
18 to be made.

19 Q Only lost?

20 A As I said before, it lists -- the summary is that those
21 are the numbers that have been lost, but it contains the
22 shipping and financial information associated with those
23 waybills.

24 Q So out of those thousand box, you know, on the
25 spreadsheet, DHL couldn't provide at least half of the waybills

1 and commercial invoices here in evidence right here now, right?

2 A The information from those waybills is what's on that
3 spreadsheet. That's what's represented. The hard waybills are
4 not always available to be recreated after a certain period of
5 time.

6 Q So DHL cannot provide the real evidence, the waybills,
7 because we talking about here fraud, facts, the waybills on the
8 table here that can go head and prove that your information
9 that you add on spreadsheet can back it up?

10 A This is generated from our internal systems. It is the
11 information that came from the waybills. So the evidence is
12 being presented correctly.

13 Q My question, Mr. Scott, is that can you put on this table
14 all the waybills, the real waybills that was created for those
15 shipping?

16 A Can I put them on the table?

17 Q Yes, sir.

18 A I can't put them on the table, no.

19 Q Out of those two box, the 2,000 on your spreadsheet, out
20 of those, you claim was 20, 25 thousand shipments, that's what
21 was shown?

22 A No, it was about 1500.

23 Q 1500 packets shipping, right?

24 A Yes.

25 Q All the packages shipping to Brazil?

1 A Yes.

2 Q And all these 50 pockets was shipped to Brazil, in every
3 single waybill, did you see the defendant's name.

4 A You said 50. I want to make sure I understand the
5 question.

6 Q All the 15,000 packets, did you see the defendant names on
7 every single waybill?

8 A No, your name was not on every single waybill.

9 Q Is the defendant address on every single 15,000 waybills?

10 A No, it is not.

11 Q So packets, some of them, the packet have the defendant
12 address, have DHL attempt contact the defendant?

13 A Has DHL -- in regard to what?

14 Q In reference not paying bills, fraudulent accounts?

15 A I'm not aware of what contact has been attempted to those
16 addresses to this date.

17 Q So you have no records of any individual from your
18 corporate office for fraud department of DHL customer service
19 contact the defendant, correct?

20 A I have no memory of that. There may be records. I don't
21 have memory of it.

22 Q How long have you been involved in this case, Mr. Scott?

23 A Probably, I believe, since the end of 2007.

24 Q Have you heard of this name Osvaine Duarte before?

25 A I don't believe so.

1 Q In your spreadsheet, that name does not come up?

2 A I don't recall that name.

3 Q What about the address 1801 Harbor Point Parkway?

4 A I don't recall the address.

5 Q Do you deny that this behavior of packets getting shipped
6 to Brazil is still going on as we speaking and not getting
7 paid?

8 A I don't deny that.

9 Q You don't deny it because it is the truth, right?

10 A Correct.

11 Q So are you investigating those packets?

12 A We investigate all fraudulent shipments.

13 Q Did you have any recollection if those packets have any
14 thing related to the defendant?

15 A I don't believe that any of the current fraud shipments
16 have any connection to you.

17 Q Any those waybills perhaps has the defendant's address or
18 numbers, contact information?

19 A Not that I am aware of.

20 Q And those packages recent been shipping to Brazil under
21 fraudulent account, did you already contact the FBI as well?

22 A I made them aware of those shipments, yes.

23 Q Have your office, Mr. Scott, got any police reports sent
24 by the defendant?

25 A I have never seen any police report sent by you.

1 Q Have call anybody else out of the fraud department seen
2 any police reports sent by the defendant?

3 A Not that I'm aware of.

4 Q Have anybody has given -- I mean do have recollection of
5 anybody saying that Mr. Scotton has report basis of fraudulent
6 shipping to Brazil?

7 A I don't believe anybody could because I haven't received
8 any.

9 Q Do you know that the defendant used to use a third party
10 shipping company to ship his packets?

11 A I don't know that to be true.

12 Q So during the several years that you have been involved in
13 this investigation, did you get familiar with the defendant?

14 A I became familiar with the shipments and the shipping that
15 was going on, the fraudulent shipping that was going on to
16 Brazil.

17 Q Did you know anything personal about myself?

18 A I don't know anything personal about you.

19 Q Did you know that I used to associate myself with DHL on
20 several occasions?

21 MS. MITRANI: Objection, Your Honor.

22 THE COURT: Sustained.

23 BY MR. SCOTTON:

24 Q So during investigation, you run the addresses, correct?

25 A We ran many addresses.

1 Q Right. At least those links to me, have DHL sent anybody
2 over there to verify those address?

3 A I'm not sure if anybody has been sent to those addresses.
4 As I said before, Nicole Nelson was in charge of the
5 investigation reported to me. That specific information, I
6 don't know.

7 Q When do you recall was assigned to this case?

8 A I'm sorry?

9 Q When did Nicole was assigned to this case?

10 A From the very beginning.

11 Q When is the beginning for Nicole?

12 A As I recall, the end of 2007.

13 Q And she report back to you, correct?

14 A Correct.

15 Q Mr. Scott, do you have any information when I have spoke
16 to Nicole several times?

17 A I don't know that that's true. I don't have any
18 information regarding that.

19 Q So she never report to you that I have a fax to have some
20 information, waybills off a package that has been hold by DHL?

21 A If that happened, I wasn't made aware of it.

22 Q During the time of your investigation, did you became
23 familiar with the defendant's websites?

24 A I became aware of the websites. I didn't become
25 intimately familiar with the websites.

1 Q Which website did you become familiar first?

2 A I don't remember the names of the websites. That was
3 years ago.

4 Q Did you try to contact anybody out of the website?

5 A I personally did not, no.

6 Q Nobody from DHL tried to contact or send email to the
7 website?

8 A I'm not sure if Nicole did as part of her investigation.
9 That specific information would not have been passed to me.

10 Q Mr. Scott, the government claim that those accounts used
11 was fraudulently created accounts, but this is not the true
12 here, right?

13 A That's absolutely true.

14 Q Some the accounts over there not really belongs to
15 Wal-Mart, Visa, Amazon; they are true accounts, correct?

16 A The accounts are fraudulently created or fraudulently
17 used.

18 Q Either that account was fraudulently used or fraudulently
19 created, which one, Mr. Scott?

20 A It can be both depending on the account.

21 Q On your spreadsheet over there, some of the accounts over
22 there from visa, that is a fraudulently created account or was
23 the account belongs to Visa?

24 A I don't remember the specifics for 500 shipments and all
25 the accounts.

1 Q You don't remember?

2 A I believe all seven accounts were all fraudulently
3 created.

4 Q Right. You being working on this case for -- from 2007,
5 correct?

6 A I have been in charge of the department since then, yes.

7 Q But you can't remember if those accounts belongs to those
8 companies?

9 A What I specifically remember is that there were
10 fraudulently created accounts, and I believe that those on the
11 spreadsheet were all created fraudulently.

12 Q During your investigation, did you learn if any employees
13 from DHL was involved in this?

14 A No employees from DHL were involved with this.

15 Q Did you think perhaps they might be involved with this?

16 A We investigated every avenue.

17 Q Do you think it's possible that some employees is selling
18 those companys' information to people outside?

19 MS. MITRANI: Objection, calls for speculation.

20 THE COURT: Overruled.

21 THE WITNESS: I don't believe that's true as part of
22 the investigation.

23 MR. SCOTTON: Your Honor, sidebar please.

24 (Thereupon, the following was heard sidebar.)

25 THE COURT: What's the problem?

1 MR. SCOTTON: All right. Investigator has give all my
2 information everything I intend to use as evidence. This has
3 been handed to the investigator through the gentleman that I
4 used to used third party shipper. This is invoice. I want to
5 talk to him about the invoice, if he recognize this invoice.
6 It came from DHL.

7 MS. MITRANI: I can't authenticate that. I don't know
8 if that's an authentic document or another one of his
9 fabrications.

10 THE COURT: You can ask him if he can authenticate it,
11 then you can ask him about it. But he obviously has to be able
12 to authenticate it.

13 MR. SCOTTON: Let me ask this question. I guess my
14 understanding, I'm not allowed to show to the jury, but I'm
15 allowed to show it to him?

16 THE COURT: You show it to him and say do you know
17 what this is. See if he knows what it is. Then if he can
18 authenticate it, which would be probably as a business record,
19 and there are questions that you have to ask, these right here,
20 6A through E. He has to be able to answer all of those.
21 Otherwise, they can't come in unless you can authenticate it in
22 some other way.

23 MR. SCOTTON: You say can come in as evidence?

24 THE COURT: This is federal rule of evidence 803.6.
25 Okay. To come in, unless there's some other exception, which

1 is not occurring to me, but maybe there is, but it's not my job
2 to find it, if you are seeking to include it or get it admitted
3 as a business record, he has to be able to answer all of these
4 questions in a way that would authenticate the document. If he
5 can do that, you can seek its admission. You can ask him if he
6 recognizes the document and then you can ask him if he can
7 authenticate it with that.

8 MR. SCOTTON: Okay.

9 THE COURT: Okay.

10 MR. SCOTTON: Yes, Your Honor. Thank you.

11 (Thereupon, the following was heard in open court.)

12 BY MR. SCOTTON:

13 Q Mr. Scott, so you from Texas, correct?

14 A Correct.

15 Q Do you have a recollection of employees that work at the
16 Miami facility, perhaps the manager Robert George?

17 A I don't recall that name.

18 Q I'm going to present you with some documents. I want you
19 to take a look and tell me what this document was.

20 A Okay.

21 Q Thank you, sir.

22 A These appear to be billing statements.

23 Q Is billing statement from DHL, correct?

24 A That's what it appears to be. I haven't seen them in this
25 format before.

1 Q It is on the top corner over there has the name of a
2 company, correct?

3 A The name is on the document. But as I said, I'm not sure
4 if this is a real statement or something that is fabricated.
5 I'm not familiar enough with the statements. The ones that I
6 have seen have not been in this format.

7 Q You acknowledge the name of the company on the bill?

8 MS. MITRANI: Objection, Your Honor.

9 THE COURT: What is the objection?

10 MS. MITRANI: He said he's not familiar with the
11 document. He's never seen it before.

12 THE COURT: Sustained. Can you just turn on your
13 microphone?

14 MS. MITRANI: I'm so sorry.

15 BY MR. SCOTTON:

16 Q Mr. Scott, the question was not about the bill. It was
17 about the company name that is on the bill. Citrix, correct?

18 A I see the name Citrix on this document.

19 Q It's not one of the accounts that has been used
20 fraudulently?

21 A Are you asking me, because you are pointing, about this
22 spreadsheet?

23 Q Yes, sir.

24 A It was not one that was on the spreadsheet, no, sir.

25 Q So Citrix is not on the spreadsheet?

1 A It does not appear on that spreadsheet, correct.

2 Q Right, but then government counts 27, it is out of Citrix
3 account, but that account is not on your spreadsheet?

4 A Correct. Citrix does not appear on the spreadsheet that
5 covers that time frame that we discussed.

6 Q And the time frame, it is 2007 to 2011?

7 A The spreadsheet was only from, I believe, the mid 2009 to
8 the end of 2010.

9 Q 2010. During the investigation, any other companies, any
10 our Brazilian third party shipping companies come up?

11 A I'm sorry?

12 Q During the investigation between you and Nicole, any other
13 Brazilian companies on third party shipping companies' names
14 come up?

15 A I don't remember. It's been going on quite a long time.
16 I don't have that information in front of me if it does exist.

17 Q Dell Company seems to one of the biggest client DHL has?

18 A You say Dell?

19 Q Yes.

20 A Dell Computer is a large customer of ours.

21 Q Some of Dell's accounts has been used as well, correct?

22 A I don't recall at this time.

23 Q If you have some of the account numbers in front of you,
24 that might recollect your memory?

25 A Account numbers that are contacts would not help me

1 remember.

2 Q Would the contacts, names, address?

3 A I'm saying the context putting it without the
4 investigation, the full investigation, how they came into play,
5 and the other business documents. Why they were closed and how
6 they were handled by DHL, I would be unable to tell you whether
7 they were involved with my investigation or not.

8 Q So then your statement now says that without the real
9 evidence in front of your hand, you can't say it is accurate or
10 not?

11 A Without the rest of the investigation in context with what
12 you are discussing, I could not rule that out.

13 Q How can you say that spreadsheet is accurate when we don't
14 have every single waybill and every single commercial invoice
15 to prove that every single product has went to Brazil and it
16 was from the defendant?

17 A Because I have recently reviewed that information on the
18 spreadsheet in context with the investigation and how it was
19 related to the investigation and the losses.

20 Q But that's your opinion, correct?

21 A That is fact.

22 Q The fact of what?

23 A The fact that all those shipments were sent fraudulently,
24 were never paid for on accounts that they weren't allowed to
25 have.

1 Q You mentioned earlier here that DHL cannot provide which
2 waybills to prove?

3 A DHL can't provide the paper waybills but all the
4 information from the waybills is captured in our system and
5 presented on that spreadsheet that was provided.

6 Q You don't agree with me the information today on the
7 computer can be modified?

8 A I don't agree with you if you are suggesting that the
9 information on that spreadsheet has been modified.

10 Q You don't agree that information on the spreadsheet can be
11 modified?

12 A Information on spreadsheets can be modified.

13 Q Right.

14 A But it wasn't on that spreadsheet.

15 Q That's not the question, Mr. Scott. Can you tell to the
16 jury here how many box in a day the driver come to locations
17 and pick it up? Thousands and thousands of boxes, right?

18 A I'm not sure I'm understanding the question. You are
19 saying for the whole company?

20 Q Yes, a typical driver go to dropoff location on a daily
21 basis, how many packages do you think they pick up?

22 A It various from driver to driver, station to station,
23 country to country. Volumes are all different.

24 Q So if you driver go to your location Texas to pick up a
25 box over there to ship to Brazil, that box automatic shipping

1 by the defendant?

2 A No.

3 Q So as the prosecutor went down over there with those
4 information over there, I will serve myself here, I see boxes
5 being shipping from everywhere, so that automatic is
6 defendant's box?

7 A I'm not really understanding the question of exactly what
8 you are asking here. If you could be more clear.

9 Q Right. So if a box is picked up at your location in
10 Texas.

11 A Okay.

12 Q My name not over there. I'm not in Texas. This automatic
13 link that this is my box?

14 A No.

15 Q The defendant is the only person -- let's not say the
16 defendant, let's say me because I'm not a lawyer, so I'm the
17 only person shipping packets to Brazil?

18 A No.

19 Q Do you deny that there might be another person also
20 shipping packets to Brazil under those accounts?

21 A No, I'm sure there's -- on those accounts?

22 Q Yes, sir.

23 A I don't believe that there's anybody shipping packages on
24 those accounts.

25 Q Because they already has been shut down, correct?

1 A They have been shut down, correct.

2 Q Before, because they just say early here that if a package
3 get shipped out of the Texas, automatically it's not the
4 defendant, right?

5 A Correct, but those questions don't have anything to do
6 with each other. Texas being an origin and those accounts
7 being those accounts, those shipments on those accounts I
8 believe belong to you.

9 Q Right. And because you did this spreadsheet?

10 A I created the spreadsheet, yes.

11 Q You never came to Miami house, talk to me and reference
12 any fraud accounts, you just did spreadsheet investigation and
13 let's drop the accusation to Mr. Scotton, correct?

14 A I made no accusations. I provided information.

15 Q But no one single person from DHL has come to the
16 defendant's location and question him or even send him a bill,
17 correct?

18 A I don't know that that's true or not, and we would send
19 the bill to the address provided when an account was created.
20 If your address was not provided, then it wouldn't get to you.

21 Q Okay. So if the account was not provided and the bill is
22 not created to me but your investigation link that I am the one
23 doing this, why DHL have not approached me and charged me with
24 the money?

25 A As I said, I didn't identify you as being the person

1 committing -- we have provided the information.

2 Q Do you know a person on DHL Barbara Anna, last name
3 S-C-H-U-Y-L-E-R?

4 A Can you repeat the first name, please.

5 Q First name, I think, is Barber Anna?

6 A I don't recall that name.

7 Q It seems to be she's involved in a claim 2061546. Do you
8 remember she sent an email?

9 A I get thousands of email a month. I don't recall one from
10 many years ago.

11 Q Do you remember she send you reference of package shipping
12 electronic?

13 MS. MITRANI: Objection, Your Honor, the witness said
14 he doesn't remember.

15 THE COURT: Sustained.

16 BY MR. SCOTTON:

17 Q Do you remember the address 1801 Harbor Point Parkway?

18 A I don't remember a specific address, no, at this time.

19 Q DHL has information about packets picking up most of the
20 time, correct, pickups, schedules, you have that stored in your
21 database, correct?

22 A About pickup locations?

23 Q Yes, sir.

24 A Yes, we do.

25 Q All the 2,000-some, 15,000 packages has been picked up at

1 my locations?

2 A Those 1500 packages, some of them apparently were from
3 your specific location. I don't remember all of the addresses.
4 I don't remember all 1500 addresses.

5 Q Did you ever investigate if defendant used third party
6 shipping company to ship his box?

7 A I don't recall if that was part of the investigation, and
8 I don't believe that to be true.

9 Q You never receive a report that the defendant has reported
10 to the authorities some illegal drugs being shipped under his
11 packets?

12 A Can you clarify that question?

13 Q Did you have recall any reports sent to your department
14 that the defendant reports some illegal drugs being shipped
15 under his packets?

16 A I don't believe that to be true. I have never heard that
17 before.

18 Q Well, the question is that you never receive a report from
19 the defendant then, right?

20 A From you? I have never received a report from you.

21 Q So it is not recollection DHL receive any kind of police
22 reports by me?

23 A I have never received any police report from you.

24 Q One of the accounts over there showing the spreadsheet has
25 the name Rio Motorsport. Can you recollect that?

1 A I missed the name.

2 Q Rio Motorsports?

3 A Rio Motorsports. I'm not sure. I don't remember that
4 name. I'm not clear.

5 Q So you did not search that name of the company, do you?

6 A I'm sorry.

7 Q You have not searched that company at all then?

8 A I don't recall if I did or not. There's many things that
9 I have done seven or five years ago that I can't recall the
10 specific event.

11 Q Anyone from DHL contacted Mr. Paulo Roberto Araujo before?

12 A I haven't, and I don't know that anybody else has at DHL.

13 Q Mr. Scott, do you believe that someone going to conduct
14 that kind of fraud going to have DHL come to their own
15 location?

16 A Do I believe -- again, I'm sorry, but I'm not
17 understanding the question.

18 Q Simple question. Do you believe that someone is going to
19 commit this kind of fraud is going to have your driver come to
20 their own location?

21 A It could absolutely happen, sure.

22 Q Over and over again?

23 A Until the fraud is detected, yes.

24 Q Do you believe that I'm a dumb person?

25 A I have no information with which to make that --

1 Q So during your investigation, did you get information that
2 I was a professional race car driver, Microsoft certified,
3 educated? I'm not dumb, right?

4 A I have no opinion as to the state of your intelligence.

5 Q The DHL has any records of a phone call from the
6 defendant that has been with the timestamp authentication to
7 any call?

8 A I have no knowledge of any phone calls that may have
9 occurred. I don't believe that they did.

10 Q So you don't have any phone calls either from the
11 defendant call DHL customer service?

12 A I am not aware if that occurred.

13 Q But --

14 A And if it did, then I don't have the records, no.

15 Q Don't you agree with me that during this process of being
16 on a business and shipping packets to those companies, I have
17 to call the customer service most of the time?

18 A No.

19 Q No. I don't have to -- don't you think it's a known
20 procedure of checking packets online to call customer service
21 if there is a problem with the package?

22 A Again it's getting a little muddier. Can you repeat the
23 question.

24 Q If I'm doing business with DHL, I have to call DHL,
25 correct?

1 A Not necessarily.

2 Q Why not? I'm ship packets. I have to track packets,
3 correct?

4 A Shipping and tracking can be done online.

5 Q If I have a lost, do I have to talk to the lost
6 department? Do I not have to file a complaint? Do I not have
7 to call customer service for that?

8 A If you are going to file a complaint, yes.

9 Q So DHL has no recollection of any phone calls the
10 defendant has made to them about lost and damaged packages?

11 MS. MITRANI: Objection, asked and answered.

12 THE COURT: Sustained.

13 BY MR. SCOTTON:

14 Q Mr. Scott, I saw some accounts over there that was be open
15 on the companies the defendant used to own back in the days.
16 So that make fraud or make a billing issue?

17 A I'm sorry, I didn't understand.

18 Q If account was open under the defendant's name, this is a
19 fraud or a billing issue?

20 A If an account was opened in your name --

21 Q Yes, sir.

22 A -- is it fraud?

23 Q Yes.

24 A I would have assumed so at the time, yes.

25 Q Why is it fraud if it is in my name? I didn't provide any

1 false information.

2 A Because of the association of the other ongoing fraud.

3 Q I open account in my name. It is my name on the account.

4 A Okay.

5 Q Because I don't pay the bill, is it fraud now?

6 A No. If you don't pay the bill, that becomes a billing
7 issue.

8 Q But this is not the truth here, right? That is not the
9 case here, right?

10 A That is not the case here, no.

11 Q And it's still with the knowledge DHL know that those
12 companies used to belong to me, nobody howsoever from DHL
13 approach me to say anything about fraud, correct?

14 A I didn't approach you. I don't know if anybody from DHL
15 did or did not.

16 Q Don't you get a report from Nicole when she has to do an
17 investigation?

18 A If it was in there, it's been reviewed years ago, and I
19 don't remember.

20 Q So don't you think it's kind of accurate for you to come
21 testify if you can't remember anything from the investigation
22 you did on your own?

23 A No. What I had to know, I spoke about very well.

24 Q Did you get together with the prosecutor yesterday?

25 A Yes, I did.

1 Q And for how long?

2 A A couple of hours.

3 Q Did she remind you -- you know, did she rephrase -- you
4 guys went over paperworks, remind things, right, to say here
5 today, correct?

6 A We reviewed the evidence.

7 Q During this trial day here, the prosecutor has present a
8 waybill to the jury that has the name of Targentine with
9 address.

10 (Thereupon, there was an interruption by the court
11 reporter.)

12 BY MR. SCOTTON:

13 Q During this trial here, the prosecutor has present a
14 waybill to the jury and to the court and has a name of
15 Targentine. Do you recall that specific waybill?

16 A I don't recall any specific waybill.

17 Q Do you want me to refresh your mind and show the waybill?

18 A I didn't see one before. I don't know if it's going to
19 refresh -- I can certainly look at it if you would like me to.

20 I don't recall this specific waybill.

21 Q So because this particular waybill has one of the previous
22 defendant's address, does it make the defendant in charge of
23 the shipment?

24 A Out of context, I can't tell you anything about that
25 waybill or that shipment.

1 Q It is allowed to do a third party shipping through DHL?

2 A With our authorized reshippers, correct.

3 Q And how can you know someone has authorized somebody else
4 to use their account?

5 A Only by speaking with the account holder.

6 Q If you approach me and say I will ship your package on my
7 account, that illegally?

8 A Again, if I could ask you to clarify.

9 Q If you approach me and say I'm going to authorize you to
10 ship this package through my account, that's not illegal, is
11 it?

12 A If I authorize you to use it, then you are allowed to use
13 it.

14 Q How can I know that if you tell me the truth, that the
15 account belongs to you?

16 A That would be your responsibility to make sure you are
17 dealing with an authorized person before you use that account
18 in my estimation.

19 Q So if some company over there outside everywhere offering
20 service to shipping packets, I have obligation to know that
21 he's shipping through DHL and he has account?

22 A You, I guess, would have an obligation to do your due
23 diligence who you are shipping with before you ship.

24 Q So any waybill that the prosecutor has presented to the
25 Court here during this trial here, you have no recollection?

1 A I was only here for this portion of the trial. I don't
2 know what was presented before I came in.

3 Q But has been you that turned the spreadsheet and all the
4 information to the prosecutor?

5 A Have I -- I'm sorry.

6 Q Has been you and turned all the evidence and the waybills
7 and information to the prosecutor, to the government?

8 A No.

9 Q Was Nicole?

10 A There were actually other people who presented evidence
11 and information.

12 Q But you don't say earlier today that you are the one that
13 drop off the spreadsheet to the prosecutor?

14 A I am the one who provided that spreadsheet, correct.

15 Q Did you get familiar with some video shots from DHL
16 location Delray?

17 A No.

18 Q Have the government show you two videos of civilian
19 cameras from the DHL location to you?

20 A I have never seen video.

21 Q So from 2007 to 2010, investigator there, nobody has
22 brought that to your attention, and you are the head of the
23 security in the United States, correct?

24 A I am the head of the fraud department for the United
25 States. I'm not the head of security.

1 Q But nobody has given those surveillance videos to take a
2 look?

3 A I have never seen the videos.

4 Q Did you familiar with all the locations DHL has in United
5 States?

6 A I couldn't recite them, but I know, I could probably find
7 them if I needed to.

8 Q Did you familiar with the surveillance system they use in
9 the stores?

10 A Yes.

11 Q Is there any particular reason those surveillance videos
12 do not have audio?

13 A There's no particular reason, no.

14 Q Do you have any knowledge that those videos have audio or
15 without audio?

16 A No. To my knowledge, none of our surveillance -- none of
17 our camera systems have audio.

18 Q So the defendant went several times to Delray location,
19 excuse me, to drop of packets and retrieve packets that was put
20 on hold. Any recollection anybody over there say anything to
21 the defendant about fraud?

22 A I have no knowledge about what other people discussed with
23 you.

24 Q But you don't have any knowledge that I went to locations
25 that DHL has too, right?

1 A I have knowledge that you have been to those locations or
2 some locations, yes.

3 Q So you have knowledge that I have went to location, but no
4 knowledge there was a video in the hands of the government that
5 I was at the location, correct?

6 MS. MITRANI: Objection, asked and answered.

7 THE COURT: Sustained.

8 MR. SCOTTON: Your Honor, can you excuse me for a
9 minute?

10 THE COURT: All right.

11 BY MR. SCOTTON:

12 Q Do you deny that most of the time if I call any customer
13 service or any employee from DHL and complain about any
14 shipment, do you deny they have been instructed to not give
15 information because I am not shipper?

16 MS. MITRANI: Objection, Your Honor. He's talking
17 about --

18 THE COURT: Sustained.

19 BY MR. SCOTTON:

20 Q Is DHL allowed to give information from somebody else
21 account to anybody?

22 A No.

23 Q So if anybody call and ask information on a specific
24 shipment, if you are not the shipper or the receiver, does DHL
25 give that information to you?

1 A Tracking information. If you have a tracking number, you
2 can receive some tracking information regarding the shipment
3 but nothing about the company or internal payment information.

4 Q So if I call DHL, the problem with a package that has been
5 lost or damaged and I'm not the account holder or my name is
6 not on that particular waybill, DHL not authorized to give me
7 any information, correct?

8 MS. MITRANI: Objection, Your Honor.

9 THE COURT: What is the objection?

10 MS. MITRANI: This witness testified -- it's an
11 improper hypothetical since this witness has testified --

12 THE COURT: Sustained.

13 BY MR. SCOTTON:

14 Q During the course of your investigation, did you come
15 accord that the defendant -- that I have two locations; one is
16 my mother's house and one is my place in Boca?

17 A I was not aware of any specific locations. There were
18 many addresses that were part of the investigation.

19 Q And they all have addresses was mine?

20 A I don't believe so, but I don't know.

21 Q So all this time, Mr. Scott, this fraud is going on for
22 four years, five years. No one single person from DHL has come
23 to me, right?

24 MS. MITRANI: Objection, asked and answered.

25 THE COURT: Sustained.

1 BY MR. SCOTTON:

2 Q Have anyone from DHL come to the defendant during this
3 five years during the investigation of this fraud?

4 MS. MITRANI: Objection, asked and answered.

5 THE COURT: Sustained.

6 BY MR. SCOTTON:

7 Q Have anybody from your department investigate Mr. Ruebens
8 Amaral?

9 A I don't recall the name.

10 Q Have anybody investigated a company called Lider Mundanca?

11 A I don't recall the name.

12 Q Have anybody sent a fax to Nicole complain about shipping
13 that has been hold by Lider Mundanca before?

14 A If a fax was sent, I'm unaware of it.

15 Q So she not report to you every single thing that is going
16 on in that case?

17 MS. MITRANI: Objection.

18 THE COURT: What's the objection?

19 MS. MITRANI: He said he's not aware.

20 THE COURT: Overruled.

21 THE WITNESS: The case went on, as you said, for many
22 years. There were many things that were brought to my
23 attention, many things that I remember, many things that I have
24 forgotten. So I don't remember that.

25

1 BY MR. SCOTTON:

2 Q May 2, 2009, do you recall, do you recollect that Nicole
3 has received an email from individual Claudia Scotton?

4 MS. MITRANI: Objection, Your Honor, foundation. He's
5 talking about an email to someone else.

6 THE COURT: Sustained.

7 BY MR. SCOTTON:

8 Q So, Mr. Scott, I'm trying here to do my best here and
9 understand that you said Nicole is investigation. She's
10 supposed to report everything to you. But you don't seem to
11 have recollection of anything about this case, do you?

12 A I don't recall details about the case, no.

13 Q This is because you sit down with the prosecutor in her
14 office and that's what's supposed to be here today, right?

15 A No.

16 Q Do you recall here on the beginning of the
17 cross-examination by government here, you got a lot of
18 knowledge of accounts, you got knowledge of amounts, but you do
19 not have any recollection of anything sent to Nicole or any
20 questions that I have to ask you, right?

21 A The accounts and the amounts were on a spreadsheet in
22 front of me.

23 Q What is the last time that DHL has confiscated a shipment
24 that went to Brazil, Mr. Scott?

25 A Probably as recently as last week.

1 Q And how many packages all together was that?

2 A I don't recall the number.

3 Q Do you know where all those packages leave from, where
4 those packages has leave?

5 A That was in the Boston area.

6 Q And do you know the Boston area has a huge Brazilian
7 community?

8 A I was not specifically aware of that, I don't know that to
9 be true.

10 Q Do you know that the defendant has not been shipping
11 packages to Brazil since March 15 of 2012, correct?

12 A That's my belief, correct.

13 Q The name Andrew Fabian has come to your recollection?

14 A I believe I do remember that name.

15 Q Seems to be this man has posted so many advertise and bad
16 stuff about DHL all over the internet, correct?

17 A I believe so.

18 Q And he have done this, excuse me, somewhere around August
19 of 2012, correct?

20 A I don't remember the date. I don't remember the time
21 frame, but that could be right.

22 Q How can DHL been having communication inside and claim
23 that this has something to do with me?

24 A I'm not sure. I don't know that that's true.

25 Q If I showed the email correspondence between your

1 employees and you, it might recollect your mind?

2 A It might.

3 MS. MITRANI: Is there a pending question?

4 THE COURT: No.

5 MS. MITRANI: Ask a question.

6 MR. SCOTTON: I did already. If I should present this
7 to him to recall the email.

8 THE COURT: There was no question pending.

9 BY MR. SCOTTON:

10 Q Mr. Scott, if I show you this email, it might going to
11 refresh your mind what I'm talking about here about this
12 Mr. Andrew Fabio?

13 THE WITNESS: It may.

14 MR. SCOTTON: Your Honor, can I approach the witness?

15 THE COURT: Yes.

16 THE WITNESS: Okay. I remember the issue.

17 BY MR. SCOTTON:

18 Q All right. So did you investigate this man, Andrew Fabio?

19 A Yes.

20 Q And during the investigation, did you find anything that
21 links to the defendant?

22 A No.

23 Q Part of the email, some people in your company claims to
24 be something related to the defendant, Brazil Express, or some
25 kind of thing links to the defendant, right?

1 A Not specifically that I see, no. It mentions Brazil but
2 no particular business or you.

3 Q And the date over there is 2012, correct?

4 A I see October of 2012.

5 Q Thank you, sir.

6 A You're welcome.

7 Q During your investigation about this scenario here with
8 Andrew Fabian, did you learn that Mr. Fabian been shipping
9 packets illegally?

10 MS. MITRANI: Your Honor, objection, relevance.

11 THE COURT: Sustained.

12 BY MS. MITRANI:

13 Q During your investigation, Mr. Andrew Fabian has nothing
14 to do with me, correct?

15 A To my knowledge, that's correct.

16 Q But this has been given to the government saying there was
17 something links to me, correct?

18 MS. MITRANI: Objection, Your Honor.

19 THE COURT: Sustained.

20 BY MR. SCOTTON:

21 Q Mr. Scott, are you familiar with the call center from DHL?

22 A Yes.

23 Q When someone made a call to DHL, how long did the call be
24 able to be storage outs of your database? What is the time
25 frame for your server to be cleaned?

1 A I have no idea.

2 Q During this investigation, have DHL tried to collect any
3 calls from those accounts opened?

4 A I am not even aware that we have the capability of
5 recording our calls at our call center.

6 Q So because the defendant has a website and ships packages
7 to Brazil, the investigation shows that he is the one that is
8 doing the fraud?

9 A I think there is many other things that would be part of
10 the investigation that would lead to that. That's not my
11 conclusion from that.

12 Q During the period of 2007 to 2008, do you have kind of
13 figure how many box went through between 2008, 2007 -- I mean,
14 2007 to 2008, Mr. Scott?

15 A Through DHL network or from where to where?

16 Q Those accounts be using fraudulent. How many packages you
17 think more or less between 2007, 2008 went to Brazil?

18 A I don't have a number. Any guess I would have would be
19 just that, a guess.

20 Q And 2007 DHL ready to conclude that the defendant -- that
21 I was the one shipping those packets fraudulently?

22 A We didn't come to any conclusion other than we were
23 investigating an ongoing fraudulent matter.

24 Q But then 2000, I came, nobody contacted the defendant, but
25 they allowed the defendant shipping packets, correct?

1 A I don't know what contact DHL had with you during that
2 time if any.

3 Q Do you know whose Camilla Lariu is?

4 A Can you spell the last name?

5 Q L-A-R-I-U.

6 A No.

7 Q Have you investigated that name or anybody in your
8 company?

9 A I don't know the name and I don't know what anybody else
10 may have investigated regarding that name.

11 Q Government has shown a waybill here during the course of
12 this process and has the name of Camilla Lariu. And you don't
13 have any recollection of that name, right?

14 A I don't have any recollection of that name.

15 Q Let me ask you this, Mr. Scott. It seems every single
16 waybill has different information, different address. During
17 the investigation of this major fraud, nobody has been
18 dispatched to any different location to figure out if how they
19 got authorization to ship on those accounts?

20 A I don't remember who was dispatched where if at all.

21 Q But you have any recollection if anybody has been
22 dispatched to any location to try to investigate those address?

23 A I don't remember.

24 Q Besides my address, other packages has different address
25 too, right?

1 A There are many different addresses, correct.

2 Q It is DHL investigating those address too?

3 A Those investigations, those addresses were investigated,
4 not just by DHL. The investigation was handed off to the FBI
5 who continued the investigation.

6 Q So did you have a report that shows that anybody went to
7 all the address investigating, talking to those people?

8 A I don't have a report that shows that, no.

9 Q Is it possible that one account can hold different user
10 names?

11 A Yes.

12 Q During the investigation, did you become familiar with
13 those Wal-Marts accounts be using?

14 A Yes.

15 Q And some of those accounts was Wal-Mart accounts, correct?

16 A I don't recall.

17 Q You don't recall if it's opened fraudulently or if it
18 was --

19 A I don't recall.

20 THE COURT: We are going to take a little break until
21 4:00. All rise for the jury.

22 (Thereupon, the jury exited the courtroom at
23 3:52 p.m.)

24 THE COURT: A juror needed to use the restroom. So we
25 will be back at 4:00.

1 MS. MITRANI: I assume we can as well?

2 THE COURT: Of course.

3 (Thereupon, a recess was taken at 3:52 p.m.)

4 (Thereupon, the jury entered the courtroom at
5 4:00 p.m.)

6 THE COURT: All righty. Please be seated. And,
7 Mr. Kamlet, I need to just remind you you are still under oath.
8 Do you understand?

9 THE WITNESS: I do.

10 THE COURT: Very good. Mr. Scotton, you may continue.

11 BY MR. SCOTTON:

12 Q Mr. Scott, can DHL create all the waybills on the
13 spreadsheet?

14 A I'm sorry?

15 Q Did DHL create all the waybills on the commercial invoice
16 that was on the spreadsheet?

17 A At this time, can they recreate all those waybill, the
18 paper waybills?

19 Q Yes, sir.

20 A No, they can't.

21 Q You mentioned earlier today that those information is in
22 storage on the system and that's how you obtained that
23 information on the spreadsheet, correct?

24 A Correct.

25 Q But then DHL cannot provide with the evidence of the

1 waybills and the commercial invoice, correct?

2 A The information from those waybills is provided from the
3 spreadsheet.

4 Q When we talking about the real evidence of the waybills,
5 the labels, we say. So you have numbers on the spreadsheet
6 that you created?

7 A I guess I can't determine what's real evidence.

8 Q Something that a juror can touch, can see it.

9 A I said this before, the spreadsheet contains the real
10 evidence that --

11 Q That you created?

12 A That I created from our systems, correct.

13 Q But your system cannot show right now one single waybill
14 out of your creation?

15 A If it can be, I don't know how it can be done.

16 Q It is not the true that times to times, DHL recycle
17 waybills.

18 A Waybill numbers can be recycled.

19 Q So this might be the reason why DHL cannot provide the
20 original waybills out of those shipments?

21 A I'm not technically knowledgeable enough to tell you
22 exactly why it can or cannot be done.

23 Q You say that you responsible for this investigation,
24 Mr. Scott, that's correct?

25 A Yes.

1 Q But now you say you have no memory, correct?

2 A No, that's not correct. I say I have no memory about
3 specific waybills and events that have been asked of me.

4 Q I asked you questions about Nicole. Did you have any
5 recollection of those questions I asked you about Nicole
6 receiving materials? You don't have any recollection of those
7 questions, do you?

8 A I remember your questions, yes.

9 Q But you claim that Nicole never received any fax or email
10 from any other person, even from me, correct?

11 A I claim that I don't remember.

12 Q Don't you think if you have been the leader on this
13 investigation, you should have such information in your hands?

14 A I don't believe that to be true. I think that I have the
15 appropriate level of communication information.

16 Q If Nicole is the person behind this investigation, don't
17 she have to report and pass to you those information that has
18 been given to her?

19 A She does.

20 Q Do you think she's hide that information for any reason?

21 A No, I don't believe Nicole's ever hidden any information
22 from me.

23 Q You never receive one single fax or one single report that
24 has been sent by me, correct?

25 MS. MITRANI: Objection, asked and answered,

1 mischaracterizes.

2 THE COURT: Sustained. Let's move on to a new area,
3 Mr. Scotton.

4 MR. SCOTTON: Sorry, Your Honor, I couldn't hear.

5 THE COURT: Sorry. Let's move on to a new area.

6 BY MR. SCOTTON:

7 Q During the investigation, how many times did you get
8 together with the FBI agent, Mr. Scott?

9 A Never.

10 Q You never sit down with the FBI agent and talk about this
11 fraud?

12 A I never had any personal meetings with the FBI agent.

13 Q But you have report to him, Mr. Van Brunt?

14 A We had many phone calls over the many years.

15 Q During all those investigation years, did you provide him
16 with all the waybills and commercial invoice from the
17 spreadsheet?

18 A I provided him with many different pieces of evidence. I
19 don't recall exactly what it was over the time period.

20 Q Do you agree with me, Mr. Scott, that investigation has
21 been contact under fraud, every single piece of evidence is in
22 court for the investigation?

23 A I think every piece of evidence important, yes.

24 Q Don't you agree with me that every single waybill and
25 commercial invoice should have been printed out of your system

1 as evidence?

2 A I don't necessarily agree with that. I think the evidence
3 has been presented in a different format. But it came from our
4 systems.

5 Q But the only waybills provided to this court here is the
6 waybills that has the defendant's address, correct?

7 A I have no knowledge what was presented besides what I went
8 over with you and the FBI.

9 Q You are the leader of this investigation, but you have no
10 recollection, no memory of investigation whatsoever because
11 time went by, correct?

12 A That's not what I said.

13 MS. MITRANI: Objection, Your Honor.

14 THE COURT: Well, there's no question pending.

15 BY MR. SCOTTON:

16 Q How long now has been investigation, Mr. Scott, during
17 this --

18 MS. MITRANI: Objection, asked and answered.

19 MR. SCOTTON: -- other persons send packages to
20 Brazil.

21 MS. MITRANI: It's been asked and answered.

22 THE COURT: Sustained. Let's see if we can ask some
23 new questions. All right, Mr. Scotton?

24 MR. SCOTTON: That's a new question.

25 THE COURT: Ask some new questions, please.

1 BY MR. SCOTTON:

2 Q Mr. Scott, is Mr. Osvaine Duarte linked to this new
3 investigation?

4 A I don't recall that name.

5 Q Company Brazil USA import expert, it is under
6 investigation right now?

7 A I'm not aware of what you are talking about and I don't
8 know that.

9 Q You mention early that packages still going to Brazil
10 under fraudulent accounts, correct?

11 A Correct.

12 Q It is Brazil Express, under investigation right now?
13 Brazil USA Import Export is under investigation?

14 A No.

15 Q Is Mr. Osvaine Duarte name come up in your investigation?

16 A I don't remember that name.

17 Q But this is investigation going on right now, right?

18 A There are many investigations going on right now.

19 Q And you can't remember the names or specifics at all about
20 that investigation that is fresh and new, right?

21 A I don't recall what you have asked me about.

22 Q Is ms. Nicole no longer with the company, am I correct?

23 A You are correct.

24 Q Do you know when she left the company?

25 A The first part of, I believe it was the first quarter of

1 2009.

2 Q How did you claim she was reporting you in 2010 when she
3 left the company?

4 A I don't remember claiming that she reported to me at 2010.

5 Q I asked specific question of things sent to Nicole on 2010
6 and you say that you don't remember her sending anything to
7 you, so basically statement you assume that she is still
8 working over there, right?

9 A I think that's an incorrect assumption.

10 Q But she left the company in 2009?

11 A She left the company in 2009.

12 Q Did you familiar with the employee names Gonzalez from
13 Miami field office?

14 A Is there a first name, or is that a first name?

15 Q This is the last name.

16 A I couldn't tell you specifically.

17 Q Let me correct, Galdamez, G-A-L-D-A-M-E-Z, Rosa Galdamez?

18 A It doesn't ring a bell.

19 Q No, right. So it does not ring a bell that Mrs. Rosa
20 Galdamez was fired from DHL in Miami?

21 A I wouldn't have any knowledge of that.

22 Q So then you don't have any knowledge that she was fired
23 because --

24 MS. MITRANI: Objection, Your Honor.

25 THE COURT: Sustained.

1 MS. MITRANI: Objection, Your Honor.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q Did you know that she sued DHL?

5 MS. MITRANI: Objection, Your Honor.

6 THE COURT: Sustained. Mr. Scotton, we have talked
7 about this. Ask questions that the witness has a basis for
8 knowing.

9 MR. SCOTTON: Your Honor, he's --

10 THE COURT: No argument, Mr. Scotton. Please ask a
11 question.

12 MR. SCOTTON: I'm done, Your Honor. I'm not allowed,
13 so that's it.

14 THE COURT: All right. Redirect.

15 MS. MITRANI: Yes, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. MITRANI:

18 Q Mr. Kamlet, is the information contained -- what forms the
19 basis of the information contained in your spreadsheet which is
20 Government's Exhibit 132B as in boy -- C as in cat?

21 A The electronic business records about the waybills and
22 financial information.

23 Q Right. In other words, I mean, did you just make up
24 waybills and start typing in random numbers into that
25 spreadsheet?

1 A No, it was fraudulent --

2 MR. SCOTTON: Objection, Your Honor.

3 THE COURT: What is the objection?

4 MR. SCOTTON: Speculation.

5 THE COURT: Overruled.

6 THE WITNESS: Fraudulent shipping specifically from
7 the U.S. to Brazil.

8 BY MS. MITRANI:

9 Q But when you say that the spreadsheet was generated from
10 the information in our system, can you explain to the members
11 of the jury what you mean by that?

12 A A query is put in for shipments that go from the U.S. to
13 Brazil. It's not something that is manually entered onto the
14 spreadsheet. A query is entered into the system and the
15 resulting information is what appears on the spreadsheet.

16 Q And can you query the system by account number?

17 A Yes, you can.

18 Q And can you query the system by waybill number?

19 A Yes, you can.

20 Q Can you query the system by invoice number?

21 A Yes.

22 Q Do those fields appear on this spreadsheet, Government's
23 Exhibit 132C, the account number waybill and invoice?

24 A Yes, it does.

25 Q And defendant was asking you a line of questions

1 suggesting that Excel spreadsheets can be altered. Do you
2 recall that line of questioning?

3 A I do.

4 Q Can you change any of the information contained in the
5 spreadsheet that you prepared, Government's Exhibit 132C?

6 A No, I did not.

7 MR. SCOTTON: Object, Your Honor.

8 THE COURT: What is the objection?

9 MR. SCOTTON: He say.

10 THE COURT: I'm sorry, ask the question again one more
11 time, please.

12 BY MS. MITRANI:

13 Q Did you change any of the information contained in
14 Government's Exhibit 132C, the spreadsheets that you prepared?

15 MR. SCOTTON: Objection, Your Honor.

16 THE COURT: Objection is overruled.

17 THE WITNESS: No, I did not.

18 BY MS. MITRANI:

19 Q Is all the information contained therein based on the
20 business records of DHL, the invoice numbers and the waybill
21 numbers?

22 A Yes.

23 Q Were you aware that Ms. Nelson prepared her own
24 spreadsheets dealing with the accounts that she dealt with?

25 A Yes.

1 Q And speaking of Ms. Nelson, did Ms. Nelson report to you
2 every single detail of everything she did in this investigation
3 every day?

4 A No, she did not. It was unnecessary.

5 Q So basically you were her supervisor?

6 A Correct.

7 Q She was based in Chicago?

8 A Correct.

9 Q You were in Houston?

10 A Yes.

11 Q And she would give you -- is it fair to say she would just
12 give you periodic updates on the case?

13 A Periodic updates, any new information that was necessary
14 or pertinent.

15 Q Did she send you daily reports, I did this today, I called
16 this person today, I received this email today?

17 A No, she operated often independently.

18 Q I'm showing you what -- from your exhibit I'm going to
19 search for DHL package with a waybill of 7402574911. Does that
20 waybill ending in 4911 appear on your spreadsheet?

21 A Yes, it does.

22 Q And does it appear that it was shipped on the Apple
23 Computer account that was closed for fraud?

24 A Yes.

25 Q And 4911, waybill 4911, indicates that a guitar hero

1 control was the shipping reference for the package?

2 A Correct.

3 Q And I'm going to put up what's already been admitted into
4 evidence as Government's Exhibit 3B. And do you see, is that
5 the waybill that we just talked about, the waybill ending in
6 4911?

7 A Yes, it is.

8 Q And this particular shipment then was sent on that
9 fraudulent Apple Computer account, correct?

10 A Correct.

11 Q Let me show you is waybill No. 7402582095 contained on
12 your spreadsheet?

13 A Yes, it is.

14 Q And that package two, excuse me, that package as well, the
15 waybill ending in 2095, was also shipped on the fraudulent
16 Apple account, correct?

17 A Correct.

18 Q And that indicates that waybill No. 2095 was an Xbox elite
19 as the shipping reference, correct?

20 A Correct.

21 Q I think it says Xbox Elite Splinter?

22 A Correct.

23 Q Now I'm going to show you what's been entered into
24 evidence as Government's Exhibit 3A. Do you see that on your
25 screen?

1 A Yes.

2 Q And this is the same waybill that we just pulled up on
3 your spreadsheet, correct, the waybill ending 2095?

4 A That's correct.

5 Q And again, this waybill ending in 2095 was shipped on the
6 fraudulent Apple Computer account, correct?

7 A Correct.

8 Q And if you see the reference on this waybill, do you see
9 where it says reference code?

10 A Yes.

11 Q And can you read that?

12 A Xbox Elite Splinter Cell.

13 Q Same information that's contained on your spreadsheet?

14 A Exactly.

15 Q Does your spreadsheet contain the waybill No. 7402664721?

16 A Yes, it does.

17 Q And was that as well sent out on the fraudulent Apple
18 Computer account?

19 A Yes.

20 Q And what does that indicate as the shipping reference?

21 A Xbox Elite game.

22 Q And I'm showing you what's been entered into evidence as
23 Government's Exhibit 3C. And is 3C that same waybill ending in
24 4721?

25 A Yes, it is.

1 Q And this waybill again was sent on that fraudulent Apple
2 Computer account?

3 A Yes.

4 Q And what's the reference code on this waybill 4721?

5 A Xbox Elite game.

6 Q And if we go to the shipper, the from field, can you read
7 that to the jury?

8 A Air Express M. Cancado, phone 305-675-1765, 934 North
9 University Drive, 329, Coral Springs, Florida 33071, United
10 States.

11 Q And we talked during your direct examination, these were
12 one of the fields you searched for, Sky Air, Air Express, and
13 variations of those names?

14 A Correct.

15 Q Are there other waybills on the fraudulent Apple Computer
16 account contained in the spreadsheet?

17 A Yes.

18 Q Many other waybills, correct?

19 A Correct.

20 Q The defendant asked you about a Citrix account. Do you
21 remember that?

22 A I recall the question, yes.

23 Q This spreadsheet does not include shipments in 2011,
24 correct?

25 A Correct.

1 Q How would you describe the volume of fraudulent shipments
2 that were being sent on the fraudulent accounts that DHL in
3 conjunction with the FBI had linked to the defendant?

4 A It was significant. The volume was a lot, many, many,
5 thousands.

6 Q Well, on your spreadsheet alone, it's 1500 and change,
7 correct?

8 A Correct.

9 Q And that's not including Ms. Nelson's spreadsheets or any
10 other spreadsheets we may get, correct?

11 A That's correct.

12 Q Did you notice anything with respect to the shipping
13 activity, the volume, as of when, after March 2012?

14 A It ultimately, for a period of time, stopped.

15 Q And did it stop in March 2012?

16 A It did.

17 Q And it stopped throughout 2012, correct?

18 A Yes.

19 Q And I think you already testified to this. Correct me if
20 I'm wrong. Is your testimony that the accounts here were
21 either fraudulently created or fraudulently used, correct?

22 A That is correct.

23 Q Now, the defendant was asking you about shipments that may
24 have originated in places other than south Florida. Do you
25 recall that?

1 A I do.

2 Q Can an individual take a DHL waybill, print it out, stick
3 it in the mail, stick it in a Fed-Ex envelope, and send it to
4 somebody in another state?

5 A Yes, absolutely. It can even be sent via email.

6 Q And then that person in another state can take that
7 waybill and put it on their package?

8 A Yes.

9 Q So does the point of origination of the package indicate
10 to you where the waybill was created?

11 A No.

12 Q The defendant was asking you about certain names and you
13 indicated that you didn't know these individuals, at least
14 certain individuals, correct?

15 A Correct.

16 Q For example, he asked you about a Paulo Roberto Araujo.
17 Do you remember that?

18 A I remember the question, correct.

19 Q Do you know if this person even exists?

20 A No.

21 Q The defendant asked you about accounts that he created in
22 his own name and the nonpayment of those accounts, correct?

23 MR. SCOTTON: Object, Your Honor.

24 THE COURT: What is the objection?

25 MR. SCOTTON: She made a statement that I say that I

1 open accounts. I didn't make those statements.

2 THE COURT: All right. Just a moment. Why don't you
3 reask the question.

4 MS. MITRANI: Sure.

5 BY MS. MITRANI:

6 Q Do you remember the defendant asking you a series of
7 questions about whether nonpayment would be a collection issue?

8 A I remember the question being whether it be a billing
9 issue or a fraud issue.

10 Q Okay. Let me ask you this: If an account is opened
11 without the intent to pay, is it a collections issue or a fraud
12 issue?

13 A That would be a fraud issue.

14 Q The defendant asked you a series of questions suggesting
15 that he used a third party shipper, didn't use a third party
16 shipper. Do you recall those lines of questions?

17 A I do.

18 Q Do you have any evidence that the defendant got these
19 waybills from any other entity?

20 MR. SCOTTON: Object, Your Honor.

21 THE COURT: What's the objection?

22 MR. SCOTTON: Speculation. He already say he's got no
23 recollection.

24 THE COURT: Overruled.

25 THE WITNESS: I have no evidence that they were

1 obtained from a third party shipper.

2 BY MS. MITRANI:

3 MS. MITRANI: Can I have a moment, Your Honor?

4 THE COURT: Yes.

5 MS. MITRANI: No further questions, Your Honor.

6 THE COURT: All righty. Thank you. You may step
7 down. And we are going to conclude for the day since we need
8 to end by 4:30. So we will see you all here tomorrow at
9 9:00 in the morning when we will start again. Of course,
10 please remember my instructions. Don't discuss the case with
11 anyone, don't disburse any information about the case, and
12 don't do any investigation into the case. And do have a great
13 evening. We will see you tomorrow at 9:00. All rise for the
14 jury.

15 (Thereupon, the jury exited the courtroom at
16 4:28 p.m.)

17 MS. MITRANI: Your Honor, it's my understanding that
18 Mr. Kamlet was also subpoenaed by the defendant so he wants to
19 know if he's now excused from his subpoena based on his
20 appearance today.

21 THE COURT: Was there any other area that you needed
22 to question him about that we haven't covered already?

23 MR. SCOTTON: Yes, Your Honor.

24 THE COURT: What is it?

25 MR. SCOTTON: From the evidence that we going to get

1 authentication here, the government didn't allow me to show to
2 them, but I'm going to get authentication of those evidence and
3 other people are going to come and testify, is going to go
4 through this spreadsheet his testimony from today.

5 THE COURT: And Mr. Kamlet's from out of town, right?

6 MS. MITRANI: Yes.

7 THE COURT: All right. What we are going to do is so
8 that I don't have to make Mr. Kamlet fly back and incur
9 expenses on behalf of the government twice, Mr. Scotton, you
10 can reopen it. I'll just call it recross. But we will know
11 that it's direct and the government will have a chance to do
12 its cross. Do you understand?

13 MR. SCOTTON: I don't quite get it, Your Honor. You
14 say when this is going to be taking place?

15 THE COURT: Tomorrow.

16 MR. SCOTTON: It has to be tomorrow?

17 THE COURT: Yes, because I'm not going to make
18 Mr. Kamlet fly back here twice and incur additional expense to
19 the government. As far as the jury knows, I'm just going to
20 allow you to ask questions that would otherwise be outside the
21 scope of -- as far as the jury knows, they will think it's
22 recross. But I'm going to allow you to ask questions outside
23 of the scope of direct so that -- I'm sorry, outside of the
24 government's scope of direct so you can conduct your direct
25 examination. The government will have a chance to do cross and

1 then you can redirect. But that way we keep Mr. Kamlet here
2 tonight and he can leave after tomorrow instead of making him
3 come back in a week or two and making the government incur
4 unnecessarily two plane expenditures.

5 MR. SCOTTON: I understand all the concern about the
6 expense and everything else, Your Honor, but this kind of hurts
7 my defense as we prepare here so far in a way that we plan on
8 doing one thing, and now we are going to have to be forced to
9 do cross-examination tomorrow when we have witness that we need
10 to cross-examined before, we cross-examined Mr. Scott.

11 THE COURT: Let's excuse the witness for now and we
12 will talk about it outside of the witness's presence.

13 MS. MITRANI: I'm going to ask the witness to stay
14 just outside so he will know whether he's flying out.

15 THE COURT: Yes, of course. What are the documents
16 that you intend to ask him about that you can't ask him about
17 now?

18 MR. SCOTTON: Your Honor, I'm not going to review this
19 in front of government right now. This is part of my defense.

20 THE COURT: I'm telling you that this is the order in
21 which we are doing things. And I will allow you to bring in on
22 your -- I will allow you to bring it in on cross, but the
23 problem I don't want to have to, we are flying in already a
24 bunch of witnesses, you know, that the government is paying for
25 and I don't want to have to pay to have witnesses flown in a

1 second time. There's not a good reason for it.

2 MR. SCOTTON: Right, Your Honor. Government claims
3 they have already received documents look like this one here
4 that the judge saw previous today, invoices from DHL. Of
5 course, government claim that it is not authentication, might
6 be fraudulent invoice that --

7 THE COURT: Okay. So again --

8 MR. SCOTTON: Right, we have employees that work for
9 DHL that has knowledge that those information has been sold to
10 Osvaine Duarte.

11 THE COURT: All right. Let me stop you. Are you
12 saying -- if you have an employee or somebody who can
13 authenticate the records -- is that what you are saying?

14 MR. SCOTTON: He can authenticate the record, Your
15 Honor.

16 THE COURT: Okay. So if the records are, in fact,
17 authenticated, let's give the government an opportunity to see
18 if they agree. If they do, then there's no problem and you can
19 use the records. The problem the government is having is the
20 government as I understood it sidebar was indicating that it
21 had no indication that the records were authentic. And when
22 you showed it to the witness, he said that they were not in a
23 form that he has traditionally seen so he couldn't authenticate
24 them.

25 Now, if the records -- let me ask the government. If

1 it's demonstrable that the records are authentic, does the
2 government intend to object to their authenticity?

3 MS. MITRANI: If he's talking about the DHL records,
4 we will have to conduct investigation. If we can independently
5 verify their authenticity, we won't make a custodian come in.
6 I don't know that these are authentic.

7 MR. SCOTTON: Your Honor, as a matter of fact, if they
8 do the investigation, they are going to see a lot of those
9 accounts -- this is just one. We got accounts that was made on
10 this spreadsheet here. It is abuse.

11 THE COURT: Give her the records or tell her what the
12 records are so she know which ones she has to find out if she
13 authenticate.

14 MR. SCOTTON: They already have all those records.

15 THE COURT: All right. But presumably you've
16 provided -- I don't know what you've provided. I don't want to
17 presume anything. Whichever records it is that you intend to
18 use with this witness would be the ones that you need to let
19 her know so she can see if -- she might not have any objection
20 if she can determine that they are authentic, or maybe she will
21 have an objection on another basis but not authenticity.

22 Maybe I'm misunderstanding you, so I need to make sure
23 you are clear with me. I'm understanding you to say that you
24 want Mr. Kamlet to be called back here so that you can ask him
25 about certain records that the government at this point doesn't

1 know whether they are authentic or not, is that right?

2 MR. SCOTTON: Not only that, it is question that I
3 have even ask him, he deny, he say that it's not accurate what
4 I ask him. So some the evidence going to show it and some
5 employees are going to come here to testify that what he said
6 is not even true.

7 So I mean, correct if I'm wrong, Your Honor, witness
8 from the prosecutor come here and make false statement. If my
9 bring my witness in and prove they are not giving a true
10 statement here, I want to put them back so they can go ahead
11 and tell the jury.

12 THE COURT: Let me explain something you to. I'm
13 trying my best to accommodate everybody's concerns and give a
14 fair trial and I like to think I'm succeeding in doing that.

15 But I want to make it clear that the rules state that
16 the Court has a lot of latitude in how the proceedings are
17 conducted. And I would like to avoid bringing people back when
18 it's going to involve additional expenditure to the government
19 if there's not an extremely good reason why they should be
20 brought back. I'm understanding you to say two things. One,
21 there are documents you want to ask him about that the
22 government objects to because it doesn't know if they are
23 authentic, which the government is going to check into and see
24 if we can figure out whether it can authenticate them.

25 If there's somebody there that you want them to

1 contact so that they can decide whether they are authentic,
2 then you can let them know. Otherwise, they will conduct their
3 own investigation, I suppose.

4 The other thing I understand you to be saying is that
5 you think there are other witnesses who are going to come and
6 testify and say things that are different from what this
7 particular witness has said. So you don't need -- we don't
8 need to have those witnesses come and testify first. You can
9 ask this witness, Mr. Kamlet, about the issues, not about what
10 these other witnesses would say. You wouldn't be able to ask
11 him -- you wouldn't be able to say, so-and-so came here and
12 testified X, Y, Z, what do you have to say about that, even if
13 Mr. Kamlet were to testify after the other witness. Do you
14 understand what I'm saying?

15 You can ask Mr. Kamlet now about the substance of
16 those issues that you think are going to be different. You can
17 ask him about the substance. I think you probably have already
18 done that, but maybe I missed something. It seemed to me like
19 that's what you were trying to do when you were doing your
20 cross-examination. If there are other issues that you didn't
21 get to, that's fine. I'm going to give you a chance to do
22 that.

23 But unless I hear a very good reason, I'm not going to
24 require the government and the court in particular to incur the
25 expense of flying Mr. Kamlet back here a second time, not to

1 mention the inconvenience of Mr. Kamlet of having to fly back
2 and forth two times in the span of two or three weeks. That's
3 where we are on that.

4 MR. SCOTTON: I understand that the Court want to play
5 fair with everybody else, Your Honor. And I'm appreciate the
6 Court also concerned with Mr. Scott convenience of keeping fly
7 back and forth. And I really hope the Court appreciate here my
8 concern of a man that is facing time in jail here.

9 THE COURT: Mr. Scotton, of course I do. And this is
10 a procedure that I regularly employ in all of my criminal
11 cases. And I will tell you that I have never had a problem
12 with it before. There's never been an issue with it before.
13 Usually the parties are in agreement that they don't want to
14 unnecessarily inconvenience the witness or require the
15 expenditure of unnecessary funds from the court. I'm sorry if
16 you don't agree with it, but unless you can provide me with a
17 good reason why I shouldn't do it here, I'm going to rule that
18 way and that's what we will be doing.

19 MR. SCOTTON: The thing here, like I say, Your Honor,
20 concern is that I am going to have some management people come
21 from Miami in different locations to testify. They are going
22 to go ahead and testify about his spreadsheet in reference that
23 I asked him several questions about claim. My concern here is
24 that every single witness from the prosecutor seems to have so
25 much knowledge about the case, but they don't have any

1 knowledge when I ask questions. That's why I'm going to have
2 my witness here to clarify things. It's going to be he say or
3 he say. So we need to put the balls on the table here. If my
4 witness is going to say something different from what the
5 government witness say, I mean, don't you think --

6 THE COURT: That happens sometimes. But that's not
7 necessarily how it's done. It doesn't mean we recall every
8 witness when the witness has said something contrary to the
9 prior witness. That's not how it works; otherwise, we would
10 never finish a trial.

11 MR. SCOTTON: I will agree with the Court here that I
12 don't bring him back here, but I want to see what is going to
13 be my options. If I have a witness here with proof in hands
14 authentication rules and records that show that his testimony
15 is false, what's going to be here my option when I
16 cross-examine my witness here to open up and let the jury know
17 that this testimony from Mr. Scott is not accurate, it is
18 false?

19 THE COURT: Okay. You cannot, when you are
20 questioning, opine on or comment on the evidence. You will
21 have an opportunity to do that, but that will be in your
22 closing argument, as we have previously discussed.

23 What you can do is you can ask questions that you
24 think will expose any falsity, maybe not falsity, but an
25 problematic inconsistency, anything of that nature in the

1 witness's testimony. That's what you can do with your
2 questioning. That's what cross-examination is.

3 But for you to make arguments that, you know, he has
4 not testified in a credible way and to back it up with examples
5 of what he's testified to versus what other people have
6 testified to, that's a matter for closing argument. That's not
7 a matter for opining before the jury when you are doing
8 cross-examination. Do you understand?

9 MR. SCOTTON: Yes, Your Honor.

10 THE COURT: All right. So let me ask the government.
11 In an effort to avoid having to bring Mr. Kamlet back a second
12 time, and I recognize it might be difficult at this hour, but
13 whatever you can do to try to go ahead and try and see if we
14 can authenticate those records that Mr. Scotton has provided.
15 If you can't authenticate them, you can't. And Mr. Kamlet may
16 have to come back if they are later authenticated. I don't
17 know what else I can do about that. But if you can
18 authenticate them, then he won't.

19 Maybe what we do is the government calls a different
20 witness in the morning and gives somebody on the government's
21 team an opportunity to see what they can find out about those
22 records and then Mr. Kamlet could be recalled in the afternoon
23 if necessary.

24 MS. MITRANI: You know, I can try to do that. But the
25 point is, let's say hypothetically speaking these are

1 authentic. I really honestly genuinely don't know that. He's
2 already said he's not familiar with these records. It's not a
3 format he sees. I don't see how that would go to questioning
4 Mr. Kamlet. DHL is a huge company. If they have records he's
5 not familiar with, there's no basis with which to ask him the
6 questions.

7 THE COURT: Well, and that may or may not be the case,
8 but if the reason -- and maybe what we need to do is find out
9 from the witness, if the reason that he's not familiar with it
10 is because, you know, if you hit a button on one computer in
11 Texas, it prints out one way, and you hit a button on another
12 computer in New Jersey that maybe has an older system, it
13 prints out a different way, but it still has the same
14 information, he may actually be able to opine on it if the
15 information that's contained therein is information that he
16 otherwise uses. I don't know.

17 And maybe what we need to do is, you know, maybe we
18 need to look at it and see if it's the same kind of information
19 that appears in other records. I don't know. I hesitate to
20 say that he can't ask questions about records if they turn out
21 to be authenticated when they are from the company that
22 Mr. Kamlet works for and Mr. Kamlet is the fraud investigator
23 in charge of the fraud department and allegedly these records
24 are connected with fraud. So I don't know if they are or not.

25 MS. MITRANI: That's the problem. I have no idea,

1 Your Honor. I frankly haven't seen records like this myself.

2 So where are we at? I guess we will try to see if we
3 can authenticate them or not. I guess we will tell Mr. Kamlet
4 to not fly out tonight. We will have to deal with that. I
5 will make my best efforts, Your Honor, but frankly, we have DHL
6 witnesses tomorrow morning so I'm not sure if I am going to be
7 able to accomplish this. In other words, I will do the best I
8 can.

9 MR. SCOTTON: Your Honor, if the Court can submit some
10 kind of letter to Mr. Jason, he's in agreement, he can go ahead
11 and try to contact customer service and try to get as much
12 information about those accounts also those invoice if the
13 Court be able to release some kind of document that he can
14 contact DHL company as well.

15 THE COURT: Well, it's not really -- Mr. Kreiss, maybe
16 I should hear from you.

17 MR. KREISS: I don't think they are going to release
18 any information to me without a subpoena duces tecum.

19 THE COURT: So you are asking for a subpoena?
20 Mr. Scotton is asking for a subpoena?

21 MR. SCOTTON: Yes.

22 MR. KREISS: I think that's what Mr. Scotton is asking
23 for. A letter from me unfortunately doesn't hold that much
24 weight these days. If the Court would permit a subpoena duces
25 tecum to be issued, again, I will have my office do what we can

1 do facilitate what we can getting it served as soon as
2 possible. But I don't think that's going to get records here
3 tomorrow.

4 THE COURT: No, I don't think it is either.

5 MS. MITRANI: I'm going to try to reach out to have
6 DHL tonight so the quicker I can get out of here, I will.

7 THE COURT: I recognize it's a difficult situation,
8 but I think this whole case is unusual. And what I'm trying to
9 avoid is -- well, let me put this way. Obviously we want to
10 give everybody, Mr. Scotton and the government, a fair trial.
11 In addition, I would like to try to avoid any errors that we
12 can.

13 MS. MITRANI: I can already, I'm pursuing this
14 document right now. I already see that it's not one document.
15 I can already see that something has been inserted that's not a
16 DHL document. In any event --

17 THE COURT: Well, look at the document and tell me
18 about the document tomorrow.

19 MS. MITRANI: I will.

20 THE COURT: And I will consider any arguments that you
21 make tomorrow that would tend to show that there's some reason
22 why Mr. Kamlet should not be required to fly back here to be
23 questioned about that document because it's not relevant or
24 some other reason. But barring a convincing showing that it is
25 not authentic or that it is not relevant, then if we let

1 Mr. Kamlet go, I'm going to need to allow Mr. Scotton to bring
2 him back if Mr. Scotton establishes the authenticity of those
3 records. We could also -- we could have Mr. Kamlet testify
4 about the other matters that don't relate to the records, so if
5 the records are not properly authenticated or are otherwise
6 ruled inadmissible or maybe they are admissible or determined
7 not to have any relevance to Mr. Kamlet, then we wouldn't have
8 to have Mr. Kamlet come back.

9 But, you know, I don't, I don't know enough about the
10 records to be able to make that determination. All that I know
11 is that they say DHL on top. The witness says he's never seen
12 actual DHL records in that format before. The government
13 doubts the authenticity of the records.

14 MS. MITRANI: Well, let me clarify. I don't know.
15 But I do know that interlaced with the purported DHL documents
16 are three documents that are clearly not DHL invoices, and I
17 can show them to the Court.

18 But like I said, I will try. I have DHL contact. I
19 will see if I can authenticate -- if this is authentic, I can
20 authenticate the authentic part. And if it has been doctored
21 with insertions, I'll see what I can do about that.

22 MR. SCOTTON: Your Honor, can I make a comment those
23 are the documents that she tried to flag here in court? Those
24 documents has been provided together with those accounts. For
25 the same person that has provide those accounts, they provide

1 those accounts. So you can say it's the person that provide
2 this, his spreadsheet --

3 THE COURT: I understand what you are saying, but
4 everything has to be authenticated before it can come in. Do
5 you understand? We have to -- it has to be authenticated. If
6 it is authenticated and is otherwise admissible that is not a
7 relevancy problem or some other issue, then it can come in.

8 MS. MITRANI: Maybe we can short-change this. If the
9 defendant wants to tell me where he got these documents from,
10 from whom, then I can authenticate them that way. I have no
11 idea where he got them from.

12 THE COURT: Mr. Scotton?

13 MR. SCOTTON: No, I'm not going to talk about my
14 defense here because everything I tried to present is fake.
15 They keep throw in my face that every evidence that I tried to
16 present is fake.

17 MS. MITRANI: I mean, that would certainly expedite
18 matters, Your Honor.

19 MR. SCOTTON: The documents come from Osvaine Duarte,
20 Your Honor. Osvaine Duarte has released those documents to the
21 lawyer in Brazil. That has been -- all these document has been
22 give before to Abreu. Abreu has confirmed to Martinez that he
23 received those documents.

24 THE COURT: But Osvaine Duarte doesn't work for DHL.
25 How is that going to authenticate that?

1 MR. SCOTTON: He got this from the employees.

2 THE COURT: He's not here to authenticate it.

3 MR. SCOTTON: DHL can authenticate this come up out of
4 the corporate office. They come up out of the billing
5 department.

6 THE COURT: Mr. Scotton, Mr. Duarte is not here to
7 authenticate it. Even if he were -- well, he's not here to
8 authenticate it. You have blamed fraud on Mr. Duarte which
9 makes it even less trustworthy of a document if it came from
10 Mr. Duarte. Unless you have some other way of authenticating
11 it, I don't see how that is going to come in.

12 MR. SCOTTON: This document didn't come from Osvaldo
13 Duarte. It has been given to him. This document is official
14 invoice coming from DHL company.

15 THE COURT: Right. But you are saying -- I understand
16 that that's what you think it is and it may well be that. On
17 the other hand, and maybe I have misunderstood you, but I think
18 what you are saying is you got it from Mr. Duarte. If you say
19 you got it from Mr. Duarte, I know that he says he got it from
20 DHL, but in view of the fact that you have accused Mr. Duarte
21 of engaging in a massive large scale fraud and even if he --
22 and we have the other problem that he's not even here to
23 authenticate it, I can't otherwise find it to be trustworthy.
24 Now, if you have someone from DHL who is going to testify --

25 MR. SCOTTON: Exactly, Your Honor.

1 THE COURT: Okay. But who do you have from DHL who is
2 going to testify as to this?

3 MR. SCOTTON: The employee that I mentioned here that
4 she has been fired from DHL here. As a matter of fact, she
5 sued DHL for fire her because she acknowledge what they doing
6 for that and implicated one of the managers over there, that
7 this manager been selling this information to Osvaine Duarte.
8 Why do you think this man testified today that they still
9 shipping packages on the fraudulent accounts? Because their
10 employees is involved, Your Honor. I am going to bring those
11 employees here to prove they are involved in the fraud.

12 THE COURT: I don't see how -- let me see the
13 document.

14 MS. MITRANI: I don't know that we are talking about
15 the same documents.

16 THE COURT: Why don't you come up too so we can all
17 make sure we are talking about the same document.

18 MR. SCOTTON: This is a piece why print out
19 everything, Your Honor. Pretty much if you call the number,
20 they are going to verify it is them. And they will give you
21 the information this is a real account. Everything, I
22 guarantee DHL will verify this.

23 THE COURT: All right. So it seems like there's an
24 account number here and is seems like we can ask DHL to look up
25 this account number and see if there is a bill dated 1/20/2011

1 that has this information on it.

2 MS. MITRANI: Right, so that's a -- if I may, it
3 appears to be a three-page document. What I think the
4 defendant gave the government is like several hundred pages.
5 And, for example, Your Honor, I found this interspersed with
6 the alleged DHL invoices. So I don't know what -- that's
7 clearly not a DHL invoice.

8 So then, Your Honor, we have a Citrix account which
9 Mr. Kamlet didn't even talk about Citrix though another witness
10 will. Then we have Dell which hasn't been mentioned at all.
11 So I don't see why Mr. Kamlet has to be here for a Dell account
12 that has not been part of what the defendant is charged with.

13 MR. SCOTTON: I didn't say --

14 THE COURT: Just a moment.

15 MS. MITRANI: I don't know what this is. I mean --

16 THE COURT: Let me say this. Let the government look
17 at the documents and we will revisit this issue tomorrow. I
18 mean, it would be nice if we could figure it out tonight so
19 Mr. Kamlet could go home. In any case, I guess there are
20 additional questions anyway. And I'll make a ruling on whether
21 or not -- it may well be the case -- let me put it this way.
22 I'm thinking we do the questioning on the other area, and then
23 with respect to these documents, the government does what it
24 can to figure out if it can authenticate the documents. And if
25 it can't authenticate the documents or if it can authenticate

1 the documents -- well, if it can't authenticate the documents
2 or it can authenticate the documents and thinks that they are
3 irrelevant, then we can let Mr. Kamlet go home knowing that
4 there is a possibility he will have to come back. I don't see
5 any alternative.

6 MS. MITRANI: I understand. But, Your Honor, I'm
7 confused. So it's -- he had a wide latitude on cross. In
8 other words, my direct was pretty much limited to the
9 spreadsheet.

10 THE COURT: I agree. Let me say this for the record.
11 Mr. Scotton, if there is another witness who is on your witness
12 list and you would otherwise need to call that witness back, I
13 want you to go ahead and question that witness on
14 cross-examination as though you are doing the direct. And I'll
15 let you go outside the scope to do that. I don't want to have
16 to keep inconveniencing witnesses by bringing them back.

17 MR. SCOTTON: What you mean to say if I cross-examine
18 a witness right now? I don't get it, Your Honor. I don't
19 really get it.

20 THE COURT: If you want --

21 MR. SCOTTON: For example, we --

22 THE COURT: Why don't you return to your desk. If you
23 want to ask a witness -- if you want to call a witness in your
24 case, you just ask the questions now during this -- when the
25 witness is here.

1 MR. SCOTTON: Well, I have a subpoena my wife as well,
2 Your Honor, and I'm going to have one of her friends come to
3 testify.

4 THE COURT: I know. They are local and they have
5 already -- and she's already testified, so she's here. I
6 understand. It's not the same issue with respect to her
7 because we don't have to fly her in or anything of that nature.

8 MS. MITRANI: But, Your Honor, I'm sorry, I understood
9 our conversation sidebar to mean if he had new areas, he could,
10 but if he's just going to resubpoena her --

11 THE COURT: Of course. It's only for new areas. You
12 can't go over the same stuff that's already been gone over.
13 It's been examined and cross-examined and that's it. If you
14 have new areas that you want to present in your case, then I
15 will allow you to do it on cross-examination particularly --
16 you can do it for any of the witnesses that you are going to
17 call in your case, but I will insist that you do it on
18 witnesses who are out of state because I don't want to have a
19 situation where they have to fly back here twice. It's not
20 fair to the witness. It's not fair to the court to have to
21 expend that money. And the court is in a tight budget
22 situation and it is not -- there's just no reason for it.

23 So you are on notice, Mr. Scotton. Do you understand?

24 MR. SCOTTON: Yes, Your Honor.

25 THE COURT: All right. Is there anything else?

1 MR. SCOTTON: Yes, Your Honor.

2 MS. MITRANI: Wait. Before we move to the next topic,
3 I'm confused. I understand we are going to try to authenticate
4 or not authenticate, I understand that, but is Mr. Kamlet going
5 to be here tomorrow?

6 THE COURT: I guess Mr. Kamlet is going to be here.
7 There are apparently a couple areas that Mr. Scotton did not
8 ask about that are unrelated to the questionable documents so
9 he will ask about those and we will let Mr. Kamlet go home.
10 And that way if for some reason it turns out that the documents
11 are not authenticated or they are authenticated but they are
12 not relevant to Mr. Kamlet, we won't make him come back.
13 That's what I'm trying to avoid. Does that make sense?

14 MS. MITRANI: I think. We will see. Yes, Your Honor.
15 Yes.

16 THE COURT: All right. Okay. Anything else?

17 MR. SCOTTON: I got something I need to direct to the
18 Court without the government present, Your Honor.

19 THE COURT: All right.

20 MS. MITRANI: Your Honor, can we have -- if we are
21 excused, we need a few minutes to pack up for the night. How
22 should we handle that?

23 THE COURT: Would you mind stepping outside for just a
24 moment, please.

25 MS. MITRANI: Sure.

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THE COURT: Thank you.

(Thereupon, the government exited the courtroom.)

(Thereupon, a sealed hearing was held.)

* * * * *

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

7/30/14

s/ Tammy Nestor
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,
Plaintiff(s),
vs.
ROGERIO CHAVES SCOTTON,
Defendant(s).

Fort Lauderdale, Florida
February 5, 2014

JURY TRIAL
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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WITNESS	DIRECT	CROSS	REDIRECT	REXCROSS
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1 Thereupon,
2 the following proceedings began at 8:56 a.m.:

3 THE COURT: Are we starting with Mr. Kamlet this
4 morning?

5 MS. MITRANI: No, Your Honor. I would like to start
6 with Mr. Cory. Mr. Cory was the witness that we had on --

7 THE COURT: That's fine.

8 MS. MITRANI: There's also another matter I wanted to
9 address with the Court.

10 THE COURT: Okay. Let's do it now.

11 MS. MITRANI: So I was thinking last night,
12 Your Honor, when we went sidebar on the whole sex tape issue
13 and you had told the defendant that you are not going to let
14 him mislead the jury into thinking there was one. And I
15 thought -- I got confused, I thought you had actually told the
16 jury that. But as I thought about it, I think we only took
17 that up at sidebar. So I would like an instruction to the jury
18 this morning that there is no sex tape, because that was the
19 implication that the defendant led and he went up with his
20 computer and, you know, who knows what they are thinking.

21 THE COURT: Mr. Scotton?

22 MR. SCOTTON: Your Honor, it is a sex tape and
23 Ms. Martinez saw the tape with me in the jail. So under one
24 minute, I'm saying here --

25 THE COURT: Ms. Martinez, is that correct?

1 THE INVESTIGATOR: I have to say, Your Honor, I didn't
2 saw the tape. I was in jail with him sitting next to him and I
3 heard something and he said, close your eyes, so I --

4 MR. SCOTTON: She didn't want to see the tape.

5 THE INVESTIGATOR: I turned my face on the side. I
6 didn't saw the tape.

7 MS. MITRANI: This is so deceptive and so misleading.

8 THE COURT: I'm going to say that there's no evidence
9 of the tape at this point. I asked you to bring it in weeks
10 ago, and you didn't bring it in. I set a special hearing. I
11 then extended the time for you to bring it in. You still
12 didn't bring it in. Yesterday I gave you a chance to show it
13 to me sidebar, you couldn't find it. Now you're telling me
14 that Ms. Martinez saw it, she says she didn't. I'm going to
15 instruct the jury that there is no evidence of a tape.

16 MS. MITRANI: Thank you, Your Honor.

17 The other thing I want to do is I know the Court
18 customarily takes its break when it takes its break midmorning.
19 I'm still trying to find out about those invoices, whether they
20 are legitimate account numbers. I have gotten some indication.
21 So if maybe we could have a little break after Mr. Cory, I can
22 see if I got the information back from my contact.

23 THE COURT: Okay. How long do we anticipate will be
24 required for Mr. Cory?

25 MS. MITRANI: Well, he's on cross so I have no idea.

1 So it may be quick, it may not be quick, or maybe I will put on
2 the witness after Mr. Cory and we will do it then. I'll just
3 have to -- I'll gauge the time if that's acceptable to the
4 Court.

5 THE COURT: Sure. I'm just thinking that if Mr. Cory
6 is quick, I may not want to take a break quite then because
7 then we will have to take a second one, which takes more time
8 out of our day.

9 MS. MITRANI: No, I understand. That's why I
10 warranted to front the issue with the Court. I will do
11 whatever the Court's pleasure.

12 THE COURT: Okay. All right. Thank you. Anything
13 else we need to address before we bring in the jury? All
14 right. Then we will bring in the jury.

15 Good morning. Take your time. Please be very careful
16 and watch yourself on those wires there.

17 THE COURTROOM DEPUTY: Your Honor, a juror is going to
18 be about ten minutes late, so I'm going to tell the jury.

19 THE COURT: Okay.

20 MS. MITRANI: Your Honor, is it okay if the witness
21 doesn't stand when the jury comes in?

22 THE COURT: Yes.

23 (Thereupon, the jury entered the courtroom at
24 9:10 a.m.)

25 THE COURT: Good morning, everybody.

1 A JUROR: Good morning.

2 THE COURT: Welcome back everybody and please be
3 seated. Is there anybody here who has discussed the case with
4 anyone, disbursed any information about the case, or done any
5 research into the case, if so, please rise your hand for me
6 now. I see no hands. Thank you all for that.

7 Yesterday when Mr. Scotton was cross-examining
8 Ms. Reyes, he asked the Court for permission to show a video of
9 himself and Ms. Reyes allegedly engaged in some intimate acts.
10 And I just want to -- I was concerned that that might have
11 created the appearance that I had previously seen such a video
12 and that such a video exists. I need to make sure that the
13 jury is clear that I have not seen such a video and at this
14 time, there is no evidence of such a video.

15 All right. With that, let's return to the
16 government's case.

17 MS. MITRANI: So, Your Honor, I think we left off on
18 day two, many moons ago, with Mr. Cory on cross-examination.
19 And he's back here so the defendant can complete his
20 cross-examination.

21 THE COURT: All right. So, Mr. Cory, welcome back.
22 And I just need to remind you that you are still under oath.
23 Do you understand?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: All right. Thank you very much.

1 label it as a cash-only basis or they would shut it down
2 totally.

3 Q So then on this particular Target account was closed on
4 September of 2009, that's when the account has been flagged as
5 a fraudulent account, correct?

6 A I just don't remember the date.

7 Q But if it is closed on that day, so that would be the day
8 it was flagged as a fraudulent account?

9 A Most likely.

10 Q Right. So then we see here by the time frame when I saw
11 the paperwork was -- the account was open for six months, six
12 months later was flagged as a fraudulent account, correct?

13 A If that's the dates that you are talking about. I just
14 don't remember the dates that you are referring to.

15 MR. SCOTTON: Your Honor, may I approach the witness?

16 THE COURT: All right.

17 BY MR. SCOTTON:

18 Q The day of September 24?

19 A Okay. And what's the question?

20 Q So if the account has closed on that day, so basically
21 your department has discovered was a fraudulent account and you
22 guys shut down the account, correct?

23 A Yes, that would be typical.

24 Q All right. Then from that point, perhaps you or
25 Mr. Christian has conducted an investigation, correct?

1 A Yes.

2 Q And you guys start to collect evidence and you guys
3 collect the phone record of who opened the account, correct?

4 A Yes.

5 Q Okay. Well, I'm trying to understand here that we got a
6 testimony here from Mr. Larry that has so much knowledge on
7 call center calls. Mr. Larry has testified to the Court here
8 that your server only hold calls for 30 days, correct?

9 MS. MITRANI: Objection to the form of the question.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q It is not the truth that your server hold the calls for
13 only 30 days, call center calls?

14 A I'm not familiar with the system.

15 Q Right. Did you -- have you spoken to Mr. Larry before?

16 A No, I have not.

17 Q Nobody in your company has given information about how
18 long that your server can hold the calls?

19 A Again, I am not familiar with how long the server holds
20 the calls.

21 Q Right. Do you think here this call is not accurate since
22 your server only holds for 30 days and now we pass six months
23 here, and you guys claimed to collect the call from the server?

24 A Again, I don't know how long the systems hold the call.

25 If you maybe have a different question or help me out with what

1 you are looking for.

2 Q Do you know that Mr. Larry has say they only hold for
3 30 days?

4 MS. MITRANI: Objection to the form of the question.

5 THE COURT: Sustained.

6 BY MR. SCOTTON:

7 Q How can you present a recorder here to the Court when your
8 call center server only holds for 30 days on an account that
9 has already been closed six months ago?

10 MS. MITRANI: Objection, Your Honor.

11 THE COURT: Sustained.

12 BY MR. SCOTTON:

13 Q It is not the truth the Walmart account was closed on
14 October 10, 2008?

15 A Again, I'm not sure what date the account was closed.

16 Q I'm going to leave this with you for now, sir, and we can
17 go over the closing dates.

18 Walmart account open October 8 of 2008 and closed 10 of
19 2008, correct?

20 A According to the chart here, it shows opened October the
21 8th, 2008, and closed October the 10th, 2008.

22 Q Sound Stream was opened in November 24th of 2008 and it
23 was closed on December 1st of 2008, correct?

24 A Yes.

25 Q And by your recollection, by those closed dates was the

1 days those accounts was put on the fraud flag, they flag as a
2 fraud accounts?

3 A I'm not sure.

4 Q Do you know who's the tech who has collected the time
5 stamps of those calls?

6 A Say that again, please?

7 Q Do you know who's the tech, the tech, the official tech
8 who has collected those calls.

9 A The tag?

10 Q Yes, the technician that has collected those calls.

11 A Oh, the technician. No, I don't.

12 Q Was those calls collected from a database or some kind of
13 ANFL?

14 A I don't have any idea of how they were collected.

15 Q Did you guy have the caller ID information on all those
16 calls?

17 A All of which calls?

18 Q The ones brought up here to the Court from your call
19 center.

20 A Which calls though?

21 Q The calls that was opened the accounts of Target and the
22 others the government has showed here.

23 A I'm not privy to all of the different accounts that were
24 submitted into evidence.

25 Q You are part of the investigation, right?

1 A Yes.

2 Q Was it not you that has surrendered all the evidence to
3 the government?

4 A Well, yes, we gave the government all the copies of the
5 accounts that were associated, but I don't know which accounts
6 that they entered into evidence, if all of you them were, and
7 if we have recordings on all of them, which I don't think we
8 do.

9 Q But you turn into the government a couple recordings,
10 right?

11 A Yes, I gave the government two recordings.

12 Q And do you recall what which recording it is?

13 A Global Money Remittance and Impulse Energy Drink.

14 Q Do you have the caller ID information, those calls as
15 well?

16 A I'm not sure what you mean by the caller ID.

17 Q From the receiver and from the sender, so it has to be a
18 communication.

19 A I asked for the call center to preserve a recording of the
20 opening of those two accounts.

21 Q But the time stamps and the call ID information?

22 A I don't know what part or the time stamps, I don't know
23 the format in which they come out. I just ask for the
24 information to be held and provided to me.

25 Q So you don't deny that the call ID information has not

1 been provided to this Court, right?

2 A I have no idea if it has or it hasn't.

3 Q Do you guys recall when you collect those calls?

4 A When I asked for them?

5 Q Yes, sir.

6 A I think Impulse Energy Drink was asked for on
7 January 15th.

8 Q And also 2008 as well?

9 A No, that would have been 2009.

10 Q How did you hand those calls to the FBI?

11 A I gave them to them on a disc.

12 Q It's a CD disc?

13 A Yes.

14 Q So did you come -- so the FBI came to Boca Raton to your
15 station and you handed the calls to him on a CD disc, correct?

16 A No, I don't work out of Boca Raton.

17 Q So then how did you hand the calls to Mr. Van Brunt?

18 A He came to the Pompano Beach station where I work out of
19 and I gave him the calls.

20 Q So he came to the Pompano Beach station and you handed him
21 the CDs?

22 A Yes.

23 Q Is any other CDs has been handed by him by you or anybody
24 else in your company?

25 A I can only speak for the ones that I gave him.

1 Q Can you provide the Court with authentication of the
2 original tech on those calls?

3 A The authentication of the tech?

4 Q Yes, sir.

5 A I'm not sure what you mean by the authentication of the
6 technician. Is that --

7 Q Can you explain to the Court how did you guys collect
8 those calls out of the database?

9 A Again, I didn't collect the calls. I asked for the calls
10 to be preserved and given to me.

11 Q And to who you asking for?

12 A I asked through our accounting section.

13 Q And the accounting section has given you some kind of
14 report how the call was collect, informations?

15 A No, there was -- there was an email exchange that I had
16 asking for it and return email, and in the email was attached a
17 wave file with the recordings.

18 Q So there was a wave file on emails but no authentication
19 whatsoever, correct?

20 A I'm not sure what you mean by authentication.

21 Q Attached to the email, did you have information, time
22 stamps, call IDs, information?

23 A I don't remember the whole context of the email, but I'm
24 not sure if -- there may have been something about the dates
25 and the times, but I'm not sure what you are actually looking

1 for.

2 Q During the cross-examination from the prosecutor here, she
3 has showed some claims that was submitted to FedEx, correct?

4 A I don't know.

5 Q You don't remember, you are here, she showed it to you?

6 A Claims?

7 MS. MITRANI: Objection Your, Honor.

8 BY MR. SCOTTON:

9 Q Yes, sir.

10 THE COURT: What is the objection?

11 MS. MITRANI: He's saying I showed him claims. I
12 didn't show him claims.

13 THE COURT: All right. Well, it's overruled. He can
14 answer what he remembers.

15 MR. SCOTTON: I want to show him this.

16 BY MR. SCOTTON:

17 Q During this process, Mr. Cory, have you seen any claim
18 that has been submitted under those companies' accounts?

19 A I don't remember if I've handled any claims. I don't
20 usually handle claims themselves.

21 Q I understand you don't handle the claim, Mr. Cory, but
22 during your investigation, did you saw any claim form attached
23 to any of those accounts?

24 A There may have been some claims.

25 Q Did you saw in the top of the claim, it is the defendant

1 names and fax number?

2 A I wouldn't remember it. You would have to be specific.

3 And if you have a claim I can take a look at it, but I don't

4 remember all the --

5 Q Do you see on the top of the form, there is a fax number?

6 A Okay. You are referring to the 561?

7 Q Yes, sir.

8 A Okay.

9 Q So the claim has been submitted, and do you have any
10 recollection of anybody from Federal Express or anybody from
11 your department tried to contact that number?

12 A I don't know. I don't handle claims.

13 Q I understand that, sir, but you run the investigation on
14 that case, right?

15 A Mr. Scotton, I don't handle claims. I don't know what --

16 Q Did you run the investigation in this case, Mr. Cory?

17 A Yes.

18 Q Right. So if you run the investigation, did you call that
19 number to investigate that number?

20 A I don't -- again, I did not investigate this claim.

21 Q I'm talking about the fax number at the top.

22 A I did not investigate this claim.

23 Q During your investigation, did you attempt to call any of
24 those numbers on the label?

25 A I did not investigate this claim.

1 Q I'm asking your investigation, Mr. Cory.

2 MS. MITRANI: Objection, asked and answered.

3 THE COURT: Overruled.

4 THE WITNESS: On which one, on this one?

5 BY MR. SCOTTON:

6 Q I'm asking during your investigation, all the numbers that
7 has on the labels, on the claim forms, nobody from your company
8 has contacted those numbers, correct?

9 A I can't answer, again, for everybody in my company.

10 Q Right. Did you run investigation of this case, Mr. Cory?

11 A Yes, I worked on the investigation.

12 Q Right. And did you call any number to investigate if
13 those calls --

14 A I called some numbers. Yes, I made calls to some numbers
15 on some of the claims. In fact, the last time I was here,
16 remember I told you that when I called one of the phone numbers
17 that the recipient wanted to speak with about the package, I
18 called first the company number, which was Impulse Energy
19 Drink, and you answered the phone as Roger Scotton. And that
20 was one of the numbers that I called.

21 And I -- you called me back on a different phone number.
22 I called the number for the Impulse Energy Drink number that
23 was opened with the account that our records indicated was
24 specifically asked for by Impulse Energy Drink. When I called
25 that number, you answered the phone. So that was one of them

1 that I did call.

2 Q Right. So you called my number looking for Impulse and
3 who answered the phone, Roger Scotton, correct?

4 A Yes.

5 Q Right.

6 A At least that's what I was told.

7 Q Right. Did you mention anything about you're shipping a
8 package to a fraudulent accounts to Roger Scotton?

9 A Not at that time.

10 Q Not at that time?

11 A No, because it was still an active investigation.

12 Q Most of the time people make a claim to FedEx, FedEx
13 instruct the client how to proceed to do the claim, correct?

14 A Please say it again.

15 Q If you file a claim to Federal Express, Federal Express
16 claim department instruct either the shipper or the receiver
17 how they can file the claim, correct?

18 A Yes, if you call customer service, they give you the
19 instructions on how to file a claim.

20 Q If you use a third party shipping company, the third party
21 shipping company will instruct also the shipper or the sender
22 also the same way, right?

23 A They would -- yes, same process.

24 Q If the sender has some kind of instruction of the company
25 how to file the claim, they find him guilty of doing any wrong

1 of filing the claim?

2 A If the sender?

3 Q Has been instructed by the company to file the claim, fill
4 out the paper the way it is, is it any fault of the shipper of
5 following instructions?

6 A Well, our company only acts on what they would normally
7 tell the person. If the information has been presented
8 fraudulently, then the call center has no idea if it was
9 fraudulent or not. They just give the instructions for normal
10 people.

11 Q Once those claim that was filed with the claim department
12 has on the top of the form a number from Citrix and that
13 account was Citrix account, did you call that number and
14 confirm if it was Citrix?

15 A Citrix? Where is that claim, is it in here?

16 Q I'm not sure, sir. I got this from the prosecutor.

17 A You are asking about a Citrix claim?

18 Q Yes, sir.

19 A I don't see a Citrix claim in here, but Citrix was one of
20 the first companies that brought this whole investigation to
21 light.

22 Q Have FedEx provide the time stamps authentication for
23 Citrix call too?

24 A Again, I don't know what time stamps were provided.

25 Q Mr. Cory, are you familiar with softwares?

1 A Software?

2 Q Yes. Do you have a knowledge of software, phone calls
3 software, are you familiar with those type of things?

4 A Well, I'm familiar with some softwares, but I'm not sure
5 which software you are talking about.

6 Q Do you know today that with the technology, you can make
7 calls look like come from China?

8 A I imagine.

9 MS. MITRANI: Objection, Your Honor, beyond the scope.

10 THE COURT: Overruled on that ground.

11 MR. SCOTTON: Your Honor, did you overrule the
12 question?

13 THE COURT: No, I overruled the objection.

14 BY MR. SCOTTON:

15 Q During the investigation, Mr. Samuel, as you understand
16 about those claims of the lost and damage packages, the check
17 was -- some of the checks was deposited in my account. Do you
18 have any recollection if anybody from your company tried to
19 call me to discuss anything about those checks?

20 A I don't know what anybody else may have done or may not
21 have done.

22 Q Did you done anything in reference to those checks?

23 A Again, I do not investigate claims and I didn't follow up
24 on any of that.

25 Q But you investigate the case, right?

1 A Yes.

2 Q Do you know if Federal Express put any stop payment on
3 those checks?

4 A I don't know if they did or not.

5 Q So information has been submitted to the claim department,
6 but the claim department or even your fraud department has
7 never contacted the defendant, correct?

8 A About what?

9 Q About fraud claims.

10 A Never contacted who?

11 Q Me.

12 A I don't know if -- our department from Memphis, is that
13 where you are referring?

14 Q Mr. Samuel, have you seen me during the process of
15 investigation, have you seen that I always try to hide my
16 identity?

17 A Well, it was pretty obvious on a couple of phone calls.

18 Q Really? Can you explain that to the jury.

19 A Okay. The two recordings that I asked for and received,
20 again, they were recordings that somebody used a false name to
21 open up the accounts. The Impulse Energy Drink --

22 Q Are you some kind of a voice expert?

23 MS. MITRANI: Your Honor, he was in the middle of his
24 answer.

25 THE COURT: Sustained.

1 THE WITNESS: The two phone calls that I had, one was
2 from the Impulse Energy Drink and Global Money Remittance.
3 Those had your voice on it, but it was a different name.
4 Steve Berian was one on Impulse Energy Drink, and I can't
5 remember the other one for Global Money, but that was obvious
6 to me that you were using false names.

7 BY MR. SCOTTON:

8 Q Well, let me ask this question, because on the day before
9 you were here, you claim never see me before in your whole
10 life, correct?

11 A Yes. And, you know, I remember one other instance now
12 that you brought to my memory, and it's a little embarrassing,
13 it's kind of like forgetting your wife's birthday. But, yes,
14 there was a time when I was having lunch with some of my
15 coworkers and you came up to me in the restaurant and knew me
16 specifically by my name and I didn't know you from anybody
17 else, I had never met you before that. And you introduced
18 yourself as Roger Scotton. And, of course, I immediately knew
19 who the name was. But that was the only other time that I
20 had -- saw you.

21 Q And when this time would be?

22 A And what?

23 Q In what location was that?

24 A It was in a restaurant, and I believe it was the Grand Lux
25 Cafe out at Sawgrass.

1 Q Was it not a Cheese Cake Factory that we sit down at the
2 table and have a couple of --

3 A Well, from what I remember it was the Grand Lux Cafe.
4 They are adjacent to each other.

5 Q Right. So prior to today, you never remember seeing me
6 before, but now you got a recollection of seeing me before?

7 A Yes.

8 Q Are you a voice expert?

9 A Am I a voice expert? No.

10 Q So it's your opinion about the voice call, right?

11 A It's just my opinion.

12 Q Right, because you don't have the call ID and the time
13 stamps here to prove that the voice on the phone was mine?

14 A No, I don't have that.

15 Q And during that day that we sit over there in the
16 restaurant that now you remember me, did you remember me
17 complaining about drugs being shipping through my boxes?

18 A Well, first off, we didn't sit together.

19 Q Right.

20 A Yeah, we weren't having lunch together. You came up to
21 me, and that was it. I don't remember a conversation about
22 drugs. And as a police officer for 30 years, I wouldn't
23 discuss drugs from somebody who I didn't know, and then once
24 the person identified himself to me as one of my targeted
25 investigations that I'm doing, I certainly would discuss any

1 criminal activities with him.

2 Q So you claim that I just walked to a restaurant and
3 sitting at the table with some employees, and I just walked to
4 you and I said, hey, Mr. Samuel, how are you, is that correct?

5 A I don't remember if you asked how I was, but you did
6 approach me.

7 Q And how did I know who you were --

8 A Good question.

9 Q -- if I never met you before?

10 A Very good question. I wish I knew.

11 Q Yeah.

12 A In fact, I even expressed some concern to Mr. -- or Agent
13 Van Brunt and told him that, you know, if I end up missing, I
14 made a suggestion who he could look for.

15 Q It's not the truth that we set up a meeting in that
16 location and I saw you over there because, oh, you are
17 Mr. Samuel? Yes, I'm Samuel. Is that not correct?

18 A We have never had a lunch date, we have never had or asked
19 for a meeting on any occasion.

20 Q But you said in Court before here that you never saw me
21 before, but now you recollect sitting at a table there and I
22 approach you, right?

23 A Yes, I remember that. But we did not have a lunch date to
24 go sit down and talk about anything.

25 Q During your years of a police officer and investigator,

1 have you seen anybody commit a crime and put the address and
2 number, I am going to commit a crime, this is my number, call
3 me?

4 A You know, criminals are people that make mistakes just
5 like everybody else. Some of them plan better than others.
6 So, yes, I have seen criminals do that.

7 Q So people make mistakes, so you don't think you made a lot
8 of mistakes in this investigation of yours?

9 A I don't think I made too many.

10 Q During your investigation, the name of John Smith has come
11 to your mind?

12 A John Smith?

13 Q Yes, sir.

14 A I'm not familiar with it. I can't remember in what
15 context that would be.

16 Q Did you provide to the government a BlueZone Mainframe
17 screen that has the name of John Smith?

18 A That may have been on a list that I provided, but I just
19 don't remember.

20 Q Have anybody called Mr. John Smith?

21 A Have I what?

22 Q Have anybody called Mr. John Smith?

23 A Have I or anybody called John Smith?

24 Q Yes, sir.

25 A I don't think I have. I don't remember calling him.

1 Q Have anybody from your department or FedEx call me in
2 reference, shippings through an Amazon account?

3 A I haven't, but someone may have.

4 Q Do you have a proof of that, Mr. Cory?

5 A I obviously don't have proof that nobody else in my
6 company ever called you.

7 Q But then you come here and testify and help these people
8 accuse me of a mail fraud when you don't have the evidence to
9 show to the jury, right?

10 A Well, I didn't know that I was going to be asked for proof
11 from every person in my department to prove that they didn't
12 call you. Otherwise, I would have come prepared for that.

13 Q If someone accused of a crime, do you want to see the
14 proof on the table or not?

15 MS. MITRANI: Objection, Your Honor.

16 THE COURT: Sustained.

17 BY MR. SCOTTON:

18 Q Mr. Samuel, can you provide here to the Court every single
19 waybill and every single commercial invoice for all the
20 shipping that has been shipped through those accounts?

21 A No, not all of them.

22 Q Not all of them, just the ones that have my address,
23 correct?

24 A No, there are others that don't have addresses.

25 Q And they also mine?

1 A And there are some of those in there, yes, but I don't
2 have all of them. There were thousands of packages.

3 Q So you provide here some CDs or some writing things on the
4 Excel here, but you do not have the real evidence here on this
5 table for the jurors to see, right?

6 A There's -- again, there's a lot of airway bills with a lot
7 of addresses. Not every one on thousands, no, but there are a
8 lot. I don't know the total number that I have provided to the
9 government.

10 Q And where is all the waybills and commercial invoice?

11 A Well, we may or may not have them in our records now.
12 Some of the records get purged after so many years.

13 Q Right. But then you started investigation in 2008?

14 A Yes.

15 Q So as you start investigation, did not collect the
16 evidence to save?

17 A Didn't collect all of those airway bills.

18 Q No, didn't collect. So you are doing investigation, but
19 you did not collect the evidence, right?

20 A Well, I collected some.

21 Q Some. Any recollection of any claim under Amazon account?

22 A No, I don't remember any claims under Amazon.

23 Q And Federal Express didn't call the bank here to reverse
24 the claim checks on the Amazon account either, correct?

25 A Again, that's something that I would not have done.

1 Q On the account BH40 Video, do you have a recollection of
2 that account, Mr. Cory?

3 A Yes.

4 Q Are you familiar with the name Matt, Mathman, Matthews,
5 Mathman?

6 A No, not specifically.

7 Q You never contact him either, right?

8 A No.

9 Q Have you contacted Mr. Victor Schickman from
10 Florida Video?

11 A No.

12 Q And he's connected to the BHV?

13 A He may be, I'm not sure.

14 Q Have you contacted BH Photo Video to ask them if they ship
15 packages to Brazil?

16 A BHVP?

17 Q Yes, sir.

18 A No, I did not contact them.

19 Q Does anybody from Federal Express has contact the company
20 to verify if they ship packages to Brazil?

21 A I'm not sure if anybody has or not. The sales department
22 may have, but if I remember, the account was being abused and
23 they were asking for refunds on packages that they did not
24 ship.

25 Q Did you investigate if they shipped things to Brazil?

1 A They do ship things. But, again, I did not investigate
2 every one of their shipments.

3 Q Have you went through the BH Photo website before?

4 A No.

5 Q Do you have any knowledge of the website also being in
6 Portuguese?

7 A No, I have never been there, so I don't know if it's in
8 Portuguese or English or not.

9 Q So you don't have any recollection that they have a huge
10 clientele in Brazil as well, do you?

11 A They may. They may well have.

12 Q And you investigated that case since 2008, correct?

13 A Yes.

14 Q The name Mrs. Moses, last name K-L-I-S-C-H, do you
15 recollect from BH Photo Video company?

16 A No, I'm not remembering that name.

17 Q It is one of those BlueZone Mainframe that you have given
18 to the government. Do you recollect that on that account?

19 A I would have to see it to see if it would help my memory.

20 MS. MITRANI: I'm sorry, Your Honor, is there a
21 question pending?

22 MR. SCOTTON: Yes, there is.

23 MS. MITRANI: What's the question?

24 MR. SCOTTON: The question if he knows Mrs. Moses.

25 THE WITNESS: Mrs. Moses?

1 BY MR. SCOTTON:

2 Q Yes, sir.

3 A Which account is that associated with?

4 Q BH Photo Video. Bottom of the page has a number, it say
5 FedEx 777 in one of the documents you might have in your hand.
6 The BlueZone over there shows that Ms. Moses has provided a
7 credit card to pay the bills, correct?

8 A According to this, Moses requested a fax number to send a
9 form for authorization for a payment.

10 Q Do you or FedEx has the credit card information?

11 A I don't know if it was ever given or not.

12 Q Does anyone at FedEx has this call also, authenticate a
13 phone call?

14 A I don't know.

15 Q And FedEx investigate this over to -- from 2008, right?

16 A Investigated what part, this?

17 Q This case, since 2008, correct?

18 A Yes.

19 Q And they -- you don't know that information either?

20 A No.

21 Q Did you ever receive any computer sheet from the device
22 that the call was retrieved?

23 A Did I receive a computer what?

24 Q Any computer information sheet from the device that the
25 call has been retrieved?

1 A Which call?

2 Q The government presented to Court. Impulse?

3 Global Money?

4 MS. MITRANI: Objection, asked and answered.

5 THE COURT: Overruled.

6 THE WITNESS: No, the calls, I don't have access to
7 that system. I don't know anything about the system. And,
8 again, when I sent my request, I just sent it through the
9 accounts and they forwarded it to the people who do pull the
10 phone recordings.

11 Q So they send you the call through the email, but they do
12 not send you any computer sheet and say what kind of device
13 they use to collect those calls, correct?

14 A No, I don't know what they used to collect the calls.

15 Q What kind of format those call has been collect, Mr. Cory?

16 A What kind of format?

17 Q Yes.

18 A I don't know the format.

19 Q And when you received the call, what kind of format was
20 the calls in?

21 A It was in a wave file.

22 Q And you add it to a DVD, correct?

23 A Yes.

24 Q You agree with me that the call has been modified --
25 modified because when you burn on a DVD, the quality of those

1 calls and the percentage of the voice -- degree of the
2 circumstance?

3 (Thereupon, there was an interruption by the court
4 reporter.)

5 BY MR. SCOTTON:

6 Q The call, you agree with me that the call was modified
7 because when you burn to a CD, the quality of the call change
8 and the person of those voice degree that the -- you know, the
9 voice as you burn to DVD, you know that the quality change. Do
10 you agree with that with me?

11 A No, I don't agree.

12 Q You expert in recordings?

13 A No.

14 Q How many of those calls -- how many of those DVDs did you
15 burn?

16 A Two. Well, for the different voice recordings.

17 Q Did you make any extra copies?

18 A I have one in my case file.

19 Q Is any retrieval sheet from the calls?

20 A Say again, please?

21 Q Is any retrieval sheets from the call?

22 A I couldn't understand the last word.

23 Q Calls, the last word is calls.

24 A You said retrieval what?

25 Q Yes. Any retrieval report, any retrieval sheet from the

1 calls?

2 A No.

3 Q So you don't agree with me that the evidence of the DVD is
4 incomplete if you don't provide the analysis report, you aware
5 of that?

6 A I read what?

7 Q Are you aware of that?

8 A Oh, am I aware. No, but I don't agree that it makes the
9 call incomplete.

10 Q It's not an analysis of the report, Mr. Cory, do you agree
11 with that, that you do an investigation, you collect the
12 evidence, there needs to be some report to follow through
13 together with the evidence?

14 A Well, the evidence is the recording.

15 Q There's a lot of holes in a -- on the report here, don't
16 you agree with me?

17 A Well, it depends on your definition of holes.

18 Q Did you collect some evidence yourself?

19 A Some, yes.

20 Q So if you collect evidence from a -- let me strike that.

21 So if you work in a crime scenes, you are going to collect
22 the gun but not the gloves?

23 MS. MITRANI: Objection, Your Honor.

24 THE COURT: Sustained.

25

1 BY MR. SCOTTON:

2 Q It's not the truth this investigation, it is incomplete
3 because you collect few facts of this case but not all facts of
4 this case?

5 A There's -- again, I am not sure which facts you are
6 referring to, but if you are referring to all of the airway
7 bills, no, we didn't collect all of those.

8 Q Waybills, reports, time stamps of the calls?

9 A Well, again, the time stamps. I don't know anything about
10 the airway bills. I already told you that we did not collect
11 all the airway bills.

12 Q The government has presented Excel spreadsheet here with
13 the total lost of the shipment. Do you recall that?

14 A Yes. Well, it depends. Not the -- if it was a
15 compilation of the whole case, no, but I gave the government a
16 compilation of FedEx losses. And I don't know that there was
17 one exact total that was submitted because it was continuing
18 for years.

19 MR. SCOTTON: Your Honor, can I have a minute?

20 THE COURT: Yes.

21 BY MR. SCOTTON:

22 Q So did you made those spreadsheets yourself?

23 A No, I did not.

24 Q Do you recall who did the spreadsheet?

25 A It would have been one of two people, and that would have

1 been Susie Johnson or Sharon Caldwell.

2 Q And they also use the Microsoft Excel in the spreadsheet,
3 correct?

4 A Yes.

5 Q And all those information on the spreadsheet was manual
6 created, correct?

7 A That many what?

8 Q Manual created on the spreadsheet in Excel, correct?

9 A Either I'm having trouble with your accent or something,
10 but many created?

11 Q When you create the spreadsheet on Excel, that was put a
12 manual on there, right?

13 A A menu?

14 Q Yes. So someone has to type all the information, correct?

15 A Well, at the top of the spreadsheets, there's a header
16 line that tells what each column is and what it's for, if
17 that's what you are referring to.

18 Q Right. But someone manual has created that, someone
19 manual has to go to a computer and type that information in,
20 correct?

21 A Well, it's -- I know the spreadsheets are gathered from
22 different systems, billing accounts primarily because each one
23 of those tracking number that a package is shipped registers
24 all of the information that you see, the shipper name, the
25 shipper address, the city, the receiving name, shipper, city.

1 And when that tracking number is associated with -- in billing
2 and the account becomes abused, they cut and paste that
3 information into the spreadsheets that I provided to the
4 government.

5 Q So you are saying that you don't know the information to
6 Excel of your database?

7 A I don't know what data --

8 Q You got all the information in your computer system,
9 correct, of every single shipment?

10 A I don't have access to all of those different systems.
11 Those are accountings, primarily all the accounting and
12 billing, I don't have any access to their systems.

13 Q Then who provide all the information to you, Mr. Cory?
14 Which department has provided all the information, all the
15 shipments?

16 A Again, that was Sharon Caldwell and Susie Johnson.

17 Q They provided the information to you?

18 A Yes.

19 Q And they created the Excel format spreadsheets, right?

20 A Yes.

21 Q And you have no recollection, also, on those accounts has
22 been some credit in reference to claims as well, right?

23 A I don't know if there was any credits issued or not.

24 Q And we can say here that the total amount of lost also is
25 not even accurate on the spreadsheet?

1 A I don't know what the total amount shows so I don't know
2 if it's accurate or not.

3 Q You don't know, but you investigated it from 2008,
4 correct?

5 A Yes.

6 Q It is not the truth that the waybill become a contract
7 service between the Federal Express and client?

8 A I am pretty sure you could consider it a contract.

9 Q So if FedEx not deliver that box, then a contract has
10 become broken, right?

11 A Well, depending on the circumstances.

12 Q If a package has been shipped under an unpaid account, by
13 law can FedEx keep the merchandise for themselves?

14 A We offered -- on most any case, if we seize a package and
15 it's on an account that has been abused, we will gladly turn it
16 over to the person if they render the cash for the shipment,
17 whatever that amount might have been.

18 Q But if the package has not even been shipping, why are you
19 going to charge the person for?

20 A Well, because once we ship it, it's a little too late to
21 get the money, isn't it?

22 Q So you say you seize the package. So if you pick up a
23 package in a drop-off location and you never even ship the
24 package, you get to keep the package?

25 A If it's been on an abused account, yes, and then we will

1 notify the shipper or the recipient or both that if they want
2 the package they would have to pay us the money that would be
3 due for the shipping.

4 Q So in this case become the FedEx being -- holding stolen
5 merchandise, correct?

6 A No, it's not stolen.

7 Q But does not belong to FedEx, right?

8 A Well, it was submitted to our care and custody and we
9 become the responsible party, so we are not stealing the
10 package.

11 Q You're responsible to deliver from A to Z. So that
12 contract --

13 THE COURT: Mr. Scotton, let's move on to a new
14 subject, please.

15 BY MR. SCOTTON:

16 Q The BH Photo account was not account that has been
17 created, it was a true account from BH Photo Video, correct?

18 A Yes, that account was a legitimate account that was being
19 abused.

20 Q Can you address to the Court how could someone get
21 account, that information from account from BH Photo Video?

22 A Again, as you pointed out, the account could have been
23 compromised. It could have been sold by one of the employees
24 of FedEx or BHPV. There's numerous ways that the account
25 number could have been obtained.

1 Q By employee from FedEx?

2 A Could have been, yeah.

3 Q And can the same account be used by multiple users?

4 A Sure.

5 Q If a third party shipping company provide their clients
6 with a user and a password information on account that has been
7 compromised, whose fault it is?

8 MS. MITRANI: Objection.

9 BY MR. SCOTTON:

10 Q The third party shipping company or the client's?

11 MS. MITRANI: Objection, Your Honor, improper
12 hypothetical.

13 THE COURT: Sustained.

14 MR. SCOTTON: Your Honor, I didn't get the answer from
15 the Court.

16 THE COURT: Sustained.

17 BY MR. SCOTTON:

18 Q Mr. Cory, if someone come to your office and use your
19 computer --

20 MS. MITRANI: Objection, improper hypothetical.

21 THE COURT: Sustained.

22 BY MR. SCOTTON:

23 Q Those authorized shipping sent from FedEx, Mr. Cory, they
24 receiving packets all the time, correct?

25 A The authorized shippings?

1 Q Yes. They always receiving drop-offs, correct?

2 A Say again, please?

3 Q A Federal Express authorized shipping center, they receive
4 drop-offs most of the time, correct?

5 A Yes, that's one way to ship.

6 Q And your drivers come and pick it up, correct?

7 A Yes.

8 Q If you're a drop-off location and someone drop off a
9 package on your location, how can they flag account that is
10 being fraudulently used?

11 MS. MITRANI: Objection, improper hypothetical.

12 THE COURT: Sustained.

13 BY MR. SCOTTON:

14 Q Can you flag a fraudulent account by just looking at the
15 label?

16 A Not just by looking at one label.

17 Q How many labels would it take for you to figure out there
18 was a fraudulent account?

19 A You don't just do it by the label, you look at the history
20 of the account. You look at any of the names associated with
21 the account. You look at all the different methods, how the
22 account was established, who made the calls to open the
23 account, and several things. But not just by looking at the
24 shipping label.

25 Q But that's the kind of thing that only person can identify

1 it is someone who work inside FedEx, correct?

2 MS. MITRANI: Objection, improper hypothetical.

3 THE COURT: Overruled.

4 THE WITNESS: Repeat the question.

5 BY MR. SCOTTON:

6 Q You made statement that several different things to
7 identify account that has to go through, but this is only
8 someone at FedEx can identify, right? Not a single person from
9 the jury can look up a label say that this label is fake,
10 right?

11 MS. MITRANI: Objection, Your Honor.

12 THE COURT: Sustained.

13 BY MR. SCOTTON:

14 Q Do you have on your hands, Mr. Cory, document FedEx 771,
15 the BlueZone Mainframe?

16 A It's in here, I saw it.

17 Q Do you need any help?

18 A I can find it.

19 MR. SCOTTON: Your Honor, can I have a sidebar,
20 please.

21 THE COURT: All right.

22 (Thereupon, the following was heard sidebar.)

23 MR. SCOTTON: Just Court instruct the prosecutor and
24 the agents over there, when I'm cross-examining, I don't want
25 them to start laughing every time I start.

1 THE COURT: I didn't hear any laughing.

2 MR. SCOTTON: I'm right there. My investigator told
3 me they look at the jury. They make --

4 THE COURT: I haven't seen that. I look very
5 carefully, I watch the jurors and I watch the parties. I
6 didn't see any of that. But I'm sure --

7 MR. SCOTTON: I don't want to start making suggestions
8 to the jury, shaking heads and things like that.

9 THE COURT: All right. I'm sure that's not what's
10 going on. Obviously, if you ask a question that you intend to
11 be funny and the jury and/or anyone else present laughs,
12 there's nothing wrong with that, or if you get an answer that
13 turns out to be funny that no one was expecting.

14 MR. SCOTTON: So if there is nothing funny in the
15 questions I ask Mr. Cory, Your Honor.

16 THE COURT: I'm not saying that there is. What I'm
17 saying that if there is, there's nothing wrong with laughter.
18 Now, you know, obviously within the confines of the setting
19 here. But I haven't seen that at all.

20 One other thing though. If you could please stick to
21 relevant questions. The whole thing about whether there's a
22 contract and whether there is -- whether it's been breached, it
23 has no bearing whatsoever on whether you committed fraud. I
24 don't see the relevance of it. I let you have some latitude
25 and go because the government wasn't objecting, but it is a

1 huge waste of the jury's time. So please constrain yourself to
2 asking questions about relevant issues. All right? Thank you.

3 (Thereupon, the following was heard in open court.)

4 BY MR. SCOTTON:

5 Q Mr. Cory, you have that information with you, 771?

6 A Yes.

7 Q How many accounts in the name of Brazil Express has been
8 opened with FedEx?

9 A I'm not sure of the total amount.

10 Q Accounts.

11 A I'm not sure of the total -- account numbers? I don't
12 know how many total accounts under Brazil Express.

13 Q Do you or anyone at FedEx has the stamp or record phone
14 from those accounts?

15 MS. MITRANI: Objection, Your Honor, asked and
16 answered.

17 THE COURT: Sustained.

18 BY MR. SCOTTON:

19 Q Does the call center has any record from Fabio Fusa?

20 MS. MITRANI: Objection, beyond the scope of this
21 witness's --

22 THE COURT: Sustained.

23 BY MR. SCOTTON:

24 Q It is not on this BlueZone Mainframe here the name of
25 Fabio Fusa? Can you see over there on that screen, Mr. Cory?

1 A On 771?

2 Q Yes, sir.

3 A I see it's --

4 Q On the date of 11/22of 2010.

5 A Right.

6 Q Do you see what it says right there on the screen?

7 A Account requested via telephone by Fabio Filva.

8 Q During the investigation, did you collect that call as
9 well?

10 A No, I did not.

11 Q Did you contact Brazil Express Online?

12 A No, I did not.

13 Q Have anybody from your department verified with the Sunbiz
14 if the company still active at the time?

15 A Again, I don't know what everybody in the company may have
16 done or not.

17 Q I have the document 770. Do you have that document with
18 you also, Mr. Cory?

19 A Okay.

20 Q This is another different account opened under the name of
21 Brazil Express, correct?

22 A Yes.

23 Q Let me get this straight. Knowing that we got a previous
24 account that has been abused and closed, Federal Express went
25 and opened another account in the name of Brazil Express, is

1 that correct?

2 A Again, I don't know when the account was opened, but if
3 Walmart had accounts that were being abused as well, that
4 doesn't mean that we wouldn't open another account for Walmart.

5 Q So Brazil Express abuse account and they open another
6 account, correct?

7 MS. MITRANI: Objection, Your Honor, it's
8 argumentative and it goes beyond --

9 THE COURT: Sustained.

10 BY MR. SCOTTON:

11 Q Has anyone else tried to contact Brazil Express on this
12 account as well?

13 MS. MITRANI: Objection, Your Honor.

14 THE COURT: What's the objection?

15 MS. MITRANI: Does anybody else. He doesn't know what
16 everybody -- he's testified he doesn't know what everybody in
17 FedEx may or may not have done.

18 THE COURT: Overruled.

19 THE WITNESS: No, I don't.

20 BY MR. SCOTTON:

21 Q Let me rephrase the question.

22 A Okay.

23 Q Make everybody in the courtroom happy. Have anybody from
24 your department or fraud department call this account here to
25 ask any questions?

1 A Again, I did not. I don't know what other investigators
2 may or may not have done.

3 Q If any other investigation besides you on this account,
4 they don't report to you?

5 A No, I'm not a supervisor.

6 Q But don't you think a report should be filed through that
7 investigation of Brazil Express?

8 A Well, I periodically filed updates on my case files with
9 my supervisors, as did Christian Driskill.

10 Q But you don't have any other recollection that anybody
11 else has filed any reports under that?

12 A No.

13 Q Do you know any Paulo Moreira?

14 A Who?

15 Q Paulo Moreira?

16 A I have heard the name.

17 Q But do you ever tried to investigate if this person
18 exists?

19 A No.

20 Q Mr. Cory, any report or any recollection from your
21 recollection fraud department that several accounts under the
22 defendant's -- under my name has been opened, any report that
23 you can show here to this Court that the fraud department has
24 attempt to contact me?

25 MS. MITRANI: Objection, improper question.

1 THE COURT: Sustained.

2 BY MR. SCOTTON:

3 Q Mr. Cory, let's go to the form No. 769 now, please.

4 A Okay.

5 Q Can you see that on 2008, account number 417365486 was
6 opened under Brazil Express and then 2011, another account was
7 opened on the Brazil Express, again, number 28141975-7. Can
8 you see that right there on the scene?

9 A Yes.

10 Q Can you see on the screen, a phone number of 892-1404?

11 A I'm not seeing that.

12 Q On January 13, '11?

13 A I see a 561, a 754.

14 Q The exact day of the call was January 13, 2011. Do you
15 see that on the screen?

16 A The only thing I see there is a 561 number.

17 Q 892-1404, correct?

18 A Yes.

19 Q Have you or anybody from your fraud department provided
20 the government with the recording from this account as well?

21 MS. MITRANI: Objection, asked and answered.

22 THE COURT: Sustained.

23 Mr. Scotton, let's move on to a new area that we have
24 not asked about. All right?

25 MR. SCOTTON: Your Honor, this is different accounts.

1 I am going as the documents that I have.

2 THE COURT: Yes, but you have asked the question with
3 respect to all accounts and all information. So after you ask
4 it about all of them, you can't go through and ask about each
5 one individually.

6 BY MR. SCOTTON:

7 Q Did you investigate who Eddie Gomez is, Mr. Cory?

8 A Eddie Gomez?

9 Q Yes, sir.

10 A No, I did not.

11 Q On the screen, it says that Federal Express has returned
12 back Mr. Gomez's box. Do you have a recollection of that?

13 A Is that on 769?

14 Q Yes, sir.

15 A All I see is that he requested his shipments be returned.

16 Q But you don't have that information if it have been
17 returned or not, do you?

18 A No, I don't.

19 Q So if everything points to Brazil Express doing all this,
20 you think Federal Express not open another account for them, do
21 you?

22 MS. MITRANI: Objection, improper hypothetical.

23 THE COURT: Sustained.

24 BY MR. SCOTTON:

25 Q Now we go to the form 767, if you mind, Mr. Cory.

1 A 767?

2 Q 767.

3 THE COURT: All right. We are going to take our
4 morning break right now. So let's all be back here at 10:45,
5 and please remember my instructions and we will see you back
6 here at 10:45. All rise for the jury.

7 (Thereupon, the jury exited the courtroom at 10:30
8 a.m.)

9 THE COURT: And let me excuse the witness for just a
10 moment.

11 (Thereupon, the witness exited the courtroom.)

12 THE COURT: All right. Mr. Scotton, I want to make
13 sure I give you a fair chance to ask the questions you need to
14 ask. But at the same time, I really -- I cannot have you
15 wasting this jury's time. They have already sat here now, this
16 is the third week. And if you decide that you ultimately wish
17 to put on a defense case, I'm not sure how long that will be.
18 So I can't have you wasting their time. Do you understand what
19 I am saying? You can ask relevant questions, certainly, and
20 you can go through those questions. But what I would like to
21 avoid is having you repeat the same questions over and over
22 again or small variations on the questions that are effectively
23 the same questions over and over again and asking about
24 irrelevant area like we discussed sidebar; for example, whether
25 or not it is considered a contract between the sender and

1 the -- in DHL when you ship a package. I don't understand how
2 that relates in any way to whether or not you committed the
3 fraud that is alleged against you.

4 And so, really, I don't want to do it, but I will
5 start breaking in because I -- and saying we need to move on
6 because it's just not fair to this jury who has sat here and
7 sat here and will continue to sit here for us to waste their
8 time.

9 So again, of course, please feel free to ask relevant
10 questions. Just I'm requesting that you keep it to relevant
11 questions and that you not be repetitive. Do you understand?

12 MR. SCOTTON: Yes, Your Honor.

13 THE COURT: All right. Thank you.

14 MR. SCOTTON: I'm just trying to go over the evidence
15 provided here.

16 THE COURT: I understand. All I am saying -- and you
17 can go over the evidence that's provided. All I am saying is I
18 am requesting that do you it in a nonrepetitive way that does
19 not waste the jury's time.

20 All right. We will be in recess until 10:45.

21 (Thereupon, a recess was taken at 10:33 a.m.)

22 THE COURT: Okay. I think we are all set. All rise
23 for the jury.

24 MR. SCOTTON: Your Honor.

25 THE COURT: Yes, Mr. Scotton.

1 MR. SCOTTON: I have a quick question.

2 THE COURT: What is it?

3 MR. SCOTTON: I see we have people here in the
4 courtroom. Are those people going to testify, because they are
5 present in Court.

6 THE COURT: I don't know if they are testifying or
7 not. No one has invoked the rule so far. If you wish to
8 invoke it at this time.

9 MR. SCOTTON: Yes, I want.

10 THE COURT: All right. The rule has been invoked and,
11 therefore, each party is responsible for ensuring that none of
12 its witnesses are present in the courtroom during testimony.
13 If a witness is present during testimony and then is later
14 called to testify, then that witness will be excluded. So each
15 party is responsible for enforcing the rule with respect to its
16 own witnesses.

17 All right. Let's bring in the jury.

18 (Thereupon, the jury entered the courtroom at
19 10:49 a.m.)

20 THE COURT: Welcome back everybody and please be
21 seated.

22 Mr. Cory, I just need to remind you, you are still
23 under oath. Do you understand?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: All right. Very good. Thank you.

1 Mr. Scotton, you may continue.

2 MR. SCOTTON: Thank you, Your Honor.

3 BY MR. SCOTTON:

4 Q Mr. Cory, I've got so much of those papers here, I'm not
5 going to make the jury falling asleep here, go every single one
6 of them here. But in general here, the question I'm going to
7 ask you is that so many of those information has been provided
8 to the Federal Express, individuals calling giving the numbers,
9 information, and some of this information has been linked to
10 me. But on your recollection here, you in particular have not
11 pursued me or called me at those numbers to verify any credit
12 cards that was present or verify if those accounts were for
13 real, right?

14 A No, not on all of them.

15 Q One of the accounts that was opened under my name,
16 Mr. Cory, if you recollect is Matte Lion, USA, Inc. Do you
17 recall the name?

18 A Say it again?

19 Q Matte Lion, USA.

20 A Matte Lion?

21 Q Yes, sir.

22 A It may be. I don't remember the name on that account.

23 Q So you don't have any recollection of that company how so
24 ever, right?

25 A No.

1 Q The name Alex Donato, do you have any recollection of that
2 name?

3 A No, I don't recall that name.

4 Q Do you remember account under the name of Rio Motorsports?

5 A Yes.

6 Q Do you have the document in front of you, Mr. Cory, is
7 762, the customer history?

8 A Okay.

9 Q Do you see right almost on the bottom, on January of 2011,
10 individual by name Marco Arce has called FedEx. Do you recall
11 that name?

12 A Well, I don't recall the name, but I can see here that
13 this Marco Arce called to let us know that he received a
14 package from FedEx that doesn't belong to them.

15 Q And do you got any reports saying that FedEx has called
16 him back?

17 A No.

18 Q Any reports that you can remember on your investigation
19 that you wrote investigation under Marco Arce?

20 A No.

21 Q Do you have any reports or information, this package that
22 was delivered to Mr. Marco Arce?

23 A I'm not sure what the package was.

24 Q Does FedEx has any information on this check, give by
25 phone, in order to pay Rio Motorsports' account?

1 A I'm not sure which check you are talking about.
2 There's -- I don't see a copy of any check in here.

3 Q On the BlueZone Mainframe, got information that a check
4 was given by phone in order to pay this account, correct?

5 A I'm not seeing where you are talking about.

6 Q 5/06/2011.

7 A All it says is check X phone transaction for January 12,
8 2011, failed and invoice payments need to be processed.

9 Q During your investigation, do you have any report or any
10 information on Rio Motorsports?

11 A No.

12 Q Is there any report by your department that anyone has
13 contact from your department, Rio Motorsports?

14 A Not that I know of.

15 Q Mr. Samuel, do you recollect the name Alex Chavez?

16 A Yes, I have heard that name before.

17 Q Document 761, do you --

18 A Okay.

19 Q Sky Air Express account was opened somewhere around 2011,
20 correct?

21 A I'm not sure when it was opened.

22 Q Mr. Cory, those accounts that has been opened, some of
23 those accounts has been opened under the authorization of those
24 companies, correct?

25 A Yes, some of them.

1 Q During your investigation here, did you approach me to ask
2 me if I have authorized anybody to open account under my names?

3 A No, I have not.

4 Q Any reports that you have contacted Sky Air?

5 MS. MITRANI: Asked and answered, Your Honor.

6 THE COURT: Sustained.

7 BY MR. SCOTTON:

8 Q Mr. Cory, have you met with Mr. Julio Columba before?

9 A Have I met with him?

10 Q Yes.

11 A No.

12 Q Do you know who he is?

13 A No.

14 Q Just to remind me here, how long have you been working for
15 FedEx?

16 A Seven years.

17 Q Did you know who is the vice president of South America
18 for FedEx?

19 MS. MITRANI: Objection, relevance.

20 THE COURT: Sustained.

21 BY MR. SCOTTON:

22 Q Did you recall any of those police report that I have a
23 fax to your department?

24 MS. MITRANI: Objection, improper foundation.

25 THE COURT: Sustained.

1 BY MR. SCOTTON:

2 Q Have you seen any police report, Mr. Cory, filed by the
3 defendant?

4 A No.

5 Q During your investigation, have anybody report to you that
6 I have a fax backed to FedEx some police reports?

7 MS. MITRANI: Objection, Your Honor.

8 THE COURT: What is the objection?

9 MS. MITRANI: He just said he has not seen any police
10 reports.

11 THE COURT: Overruled.

12 THE WITNESS: Repeat the question.

13 BY MR. SCOTTON:

14 Q Besides you, Mr. Cory, have anybody else in the fraud
15 department report to you that I have a faxed them some police
16 reports in reference the crimes?

17 A No.

18 Q During your investigation, Mr. Cory, did you get any
19 report or information that my brother used to work for FedEx as
20 well?

21 A No, not that I remember.

22 Q So you guys run investigation, but you have no idea that
23 my brother was working for FedEx at that time, do you?

24 A No, I didn't know that you had a brother.

25 Q Well, we don't talk. Family thing, so what can I say.

1 During the investigation, is anybody from corporate office
2 has advised you the relationship that they have with me?

3 A That corporate office --

4 Q Yes.

5 A -- has a relationship with you?

6 Q Yes, sir.

7 A No.

8 Q You have no reports or no information that anybody from
9 Federal Express has contacted me, have relationship with me,
10 correct?

11 A No.

12 Q Mr. Cory, what do you know about Mr. Duarte Osvaine,
13 Osvaine Duarte?

14 A The name is only vaguely familiar.

15 Q Some of the spreadsheets that was show here to the Court,
16 some packages has his name on it. Did you investigate that
17 individual?

18 A Some packages, I did.

19 Q And you never find out who Osvaine Duarte is?

20 A No.

21 Q Do you know Mr. Duarte has made statements --

22 MS. MITRANI: Objection.

23 THE COURT: Sustained.

24 BY MR. SCOTTON:

25 Q You still work for the fraud department, correct?

1 A Yes. It's not called the fraud department, it's -- I work
2 for corporate security.

3 Q All right. And any recollection then, recent any boxes
4 been shipping through FedEx on a unauthorized accounts or
5 accounts that has not been paid?

6 A Yeah, there's boxes that get shipped every day on
7 unauthorized accounts.

8 Q And some of them, those boxes going to Brazil?

9 A Maybe.

10 Q On your previous testimony here with the -- for the
11 government, you have advised the Court that most of the time
12 you investigate those accounts and you go to that location to
13 make verification, correct?

14 A Yes, I went to some of the locations.

15 Q Sky Air, Brazil Express, some of those accounts has either
16 7797 Golf Circle Drive or 398 Southeast Mizner Boulevard,
17 correct?

18 A That's two common addresses.

19 Q You went to those address from the other accounts, but
20 those particular accounts you never came to the address,
21 correct?

22 A You mean -- I'm not sure I follow what you're asking.

23 Q Have you went to 7797 Golf Circle Drive?

24 A Yes.

25 Q Did you knock on the door?

1 A Yes.

2 Q Did you spoke to someone over there?

3 A No one was home when I knocked.

4 Q No one was home?

5 A Uh-uh.

6 Q Did you left your business card on the door?

7 A No.

8 Q Did you try to go back over there and talk to anybody?

9 A No.

10 Q You went to Mizner Boulevard?

11 A Yes.

12 Q Did you knock on the door?

13 A Yes.

14 Q Anybody answer the door?

15 A No.

16 Q You never leave your business card?

17 A No.

18 Q You never go back to that place to ask questions either?

19 A No.

20 Q Did you instruct your drivers to ask question or maybe
21 perhaps give your business card?

22 A I never asked my drivers to give my business card, but I
23 did ask my drivers to intercept any packages at the 7797 Golf
24 Circle address and let me know when deliveries were made or
25 pickups.

1 Q Earlier today you mentioned that I approach you at the
2 restaurant and you have several friends, several employees from
3 perhaps FedEx there with you and I approach you on that table,
4 correct?

5 A Yes.

6 Q What did I approach you on that table for?

7 A I honestly can't remember what the conversation was about.

8 Q You mentioned that I never met you before and approached
9 you at the table?

10 A Yes.

11 Q Is any woman at the table?

12 A At my table?

13 Q Yes.

14 A I don't think so.

15 Q So you think it's kind of weird for you to tell the Court
16 that I approach you at the table with a bunch of mans and --
17 for no reason?

18 A No, I said my coworkers. And at the time, there were no
19 female security specialists.

20 Q Did you have anybody introduce me before that day?

21 A I had -- like I said, I had never seen you to know you by
22 name or by sight.

23 Q But you are saying that I approach you without knowing
24 me -- without knowing you, I approach you flat out and say, hi,
25 are you doing, Mr. Samuel Cory, right, or whatever that I say

1 to you, right?

2 A Yes.

3 Q In which location was the restaurant?

4 A As I said, I believe it was at the Grand Lux Cafe in the
5 Sawgrass Mall.

6 Q Do you recall or do you have a report of the personnel
7 from FedEx that offer me to open that store?

8 MS. MITRANI: Objection, Your Honor.

9 THE COURT: What's the objection?

10 MS. MITRANI: One, to the foundation of the question.
11 Also, asked and answered. He's asked and answered --

12 THE COURT: Sustained.

13 BY MR. SCOTTON:

14 Q During your investigation, Mr. Cory -- well, let me
15 rephrase the question. When did you end your investigation?

16 A Basically, I kept providing information just about up
17 until the time you were indicted.

18 Q So then you have a recollection that during that time, I
19 have a possession of authorized shipping center by FedEx?

20 A You had possession?

21 Q Yeah, I own authorized shipping center by FedEx.

22 A You may have a company that FedEx allows you to ship
23 through, is that what --

24 Q Authorized shipping center, yes.

25 A Maybe. I don't know.

1 Q So you didn't check that?

2 A No.

3 Q You never have any reports saying that Mr. Scotton just
4 opened the store and now he present, has a logos and signs on
5 the window?

6 A No.

7 Q If you have a knowledge out there, you report that
8 immediately to your corporate office?

9 A Yeah, if I would have known about it.

10 Q Does FedEx approve people to open a store that are
11 committing fraud against them?

12 A If they --

13 MS. MITRANI: Objection, Your Honor.

14 THE COURT: Sustained.

15 BY MR. SCOTTON:

16 Q Every single package shipped through FedEx, Mr. Cory, go
17 through some kind of scan process, correct?

18 A Yes.

19 Q If you driver come to the store, it is a such regulation
20 and bar codes that has to be scanned on the place, correct?

21 A Yes.

22 Q It is a policy and obligation of the driver to come to the
23 store and always scan that code bar, correct?

24 A Yes.

25 Q If it's not scanned, that code bar, he broke the policy,

1 correct?

2 A If he goes to a store and doesn't scan the bar code?

3 Q Yes, sir.

4 A Yes, that's a violation of policy.

5 Q It is a order from your department to tell your driver to
6 not scan the code bars in my store?

7 MS. MITRANI: Objection, relevancy.

8 THE COURT: Sustained.

9 MR. SCOTTON: This goes to the motive of the drug
10 scam, Your Honor.

11 THE COURT: All right. One question on this, but I
12 think you've already explored it, this particular question.

13 BY MR. SCOTTON:

14 Q Mr. Cory, have a Mrs. Doneta Todd, T-O-D-D, has reported
15 anything to you in particular of this scan?

16 A About the scans?

17 Q Yes.

18 A No, I don't think I have ever spoken with Mrs. Todd.

19 Q Do you know that she work out of the location,
20 Myrtle Beach, North Carolina?

21 A No, I don't know her.

22 Q So you deny know her or had involvement on this case?

23 A Both. I don't know her and I don't know if she's involved
24 in the case at all.

25 Q Has a Mr. Julio Columba has present to you some evidence

1 from Mr. Duarte?

2 A I'm not sure who Julio is.

3 Q He's the vice president of South America, Federal Express.

4 A Has he ever met with me?

5 Q Yes.

6 A I have not met with Mr. Julio.

7 Q Do you recollect the name Johnny Holt, H-O-L-T?

8 A No.

9 Q You guys have a station in Kentucky?

10 A A station where?

11 Q I guess the city is Kentucky?

12 A Kentucky?

13 Q Yes.

14 A Yeah, I'm sure we have several stations there.

15 Q But you don't know all the employees that work out of that
16 station, right?

17 A No.

18 Q Do you know the station supervisor in Ohio, James, last
19 name, K-L-I-N-G-N-B-R-G?

20 A No.

21 Q Any reports on your investigation that he was involved in
22 this?

23 MS. MITRANI: Objection, Your Honor.

24 THE COURT: Sustained.

25

1 BY MR. SCOTTON:

2 Q Mr. Cory, after the day here that you testify here, did
3 you get together again with the prosecutor?

4 A No.

5 Q Did you get together with Agent Van Brunt?

6 A Agent Van Brunt picked me up at my house this morning and
7 drove me here.

8 Q As a DHL security, did you get to travel to different
9 stations most of the time to investigate a crime?

10 A I don't work for DHL.

11 Q Oh, I'm sorry, FedEx.

12 A Do I travel to other stations?

13 Q Yes, sir.

14 A Mostly only in the South Florida area.

15 Q But you are not going to recall names of employees from
16 those locations, correct?

17 A Very few.

18 Q During your interview with the government, have the
19 government advise you that I sent a letter to the California
20 United States --

21 MS. MITRANI: Objection.

22 BY MR. SCOTTON:

23 Q -- Attorney's Office about the legal --

24 MS. MITRANI: Objection.

25 THE COURT: Sustained.

1 BY MR. SCOTTON:

2 Q Has the government tell you that I sent to her a letter
3 too?

4 MS. MITRANI: Objection, Your Honor.

5 THE COURT: Sustained.

6 BY MR. SCOTTON:

7 Q Mr. Samuel, did you get a recent call from your legal
8 department in reference to this case for me?

9 A From my legal department?

10 Q Yes.

11 A No.

12 Q Did you get any calls from the Federal Express legal
13 department in Brazil?

14 A No.

15 Q Does Federal Express also recycle track numbers?

16 A No, I'm pretty sure we don't. Sometimes there are
17 duplicate numbers issued, but that's by accident.

18 Q Did you recall here back on 2008, you engage in exchange
19 of emails with videos from Citrix?

20 A Yes, and we had some exchange of emails.

21 Q And also Sherry, Cheryl Caldwell?

22 A Sharon Caldwell.

23 Q Caldwell. Do you recall those emails?

24 A I don't recall them word for word, but I remember that we
25 did exchange some emails.

1 Q Is Jessie Lascano work for Citrix or for DOG?

2 A I'm not sure.

3 Q Do you recall an email, you have a number that was
4 provided to you as a cell phone number?

5 MS. MITRANI: Your Honor, I'm going to object to the
6 form of the question.

7 THE COURT: Sustained.

8 BY MR. SCOTTON:

9 Q So you don't have with you emails here with you to
10 recollect your mind, right? That's what you say, right? I
11 can't ask any question because you are not going to be able to
12 answer because you don't have any emails from all your
13 investigations, right?

14 THE COURT: Sustained. Ask a question, please.

15 BY MR. SCOTTON:

16 Q Did you have a report that once I went to a location,
17 FedEx location in Pompano Beach --

18 MS. MITRANI: Objection.

19 THE COURT: Sustained.

20 BY MR. SCOTTON:

21 Q Do you recall, does anybody report to you that I presented
22 myself at a location?

23 MS. MITRANI: Objection. Objection.

24 THE COURT: Sustained.

25 MR. SCOTTON: What is this I'm doing wrong here,

1 Your Honor? I'm not supposed to ask him questions and tell him
2 the truth here?

3 THE COURT: Mr. Scotton, I'm very sorry.

4 MR. SCOTTON: This is ridiculous.

5 THE COURT: Mr. Scotton, please ask a question.

6 MR. SCOTTON: I'm trying to, Your Honor.

7 THE COURT: Mr. Scotton, please don't argue and ask a
8 question.

9 BY MR. SCOTTON:

10 Q When I came to a FedEx location, have anybody ask for my
11 IDs?

12 MS. MITRANI: Objection, Your Honor.

13 THE COURT: Sustained.

14 MR. SCOTTON: Well, Your Honor, then I have no more
15 questions. I can't ask him questions.

16 THE COURT: All right. Thank you. Redirect?

17 MS. MITRANI: Yes, Your Honor. Your Honor, may I
18 approach the witness?

19 THE COURT: Yes.

20 REDIRECT EXAMINATION

21 BY MS. MITRANI:

22 Q Good morning.

23 A Good morning.

24 Q I'm showing you what's already been entered into evidence
25 as Government's Exhibit 14A. Do you recall this CD?

1 A Yes, ma'am.

2 Q And is this the CD of the two recordings that you
3 retrieved in connection with your investigation?

4 A Yes.

5 Q All right. Did you listen to them in their entirety when
6 you received them?

7 A Yes.

8 Q Have you listened to them in their entirety -- have you
9 listened to the whole thing recently?

10 A Yes.

11 Q I'm just going to play a clip, and this is Government's
12 Exhibit 14A.

13 MR. SCOTTON: Your Honor.

14 THE COURT: Yes.

15 MR. SCOTTON: I'm going to object to the evidence here
16 as Mr. Cory say that he's got no time stamp, no evidence, no
17 reports. It's just a CD recording here.

18 THE COURT: It's already been admitted. Overruled.

19 (Thereupon, the audiotape was played.)

20 BY MS. MITRANI:

21 Q Mr. Cory, do you remember that recording?

22 A Yes.

23 Q Has this recording been changed, altered -- strike that.
24 Has this recording been changed, altered in any fashion?

25 A No.

1 MR. SCOTTON: Object, Your Honor.

2 THE COURT: What's the objection?

3 MR. SCOTTON: He say because he already said that he's
4 got no knowledge of how the call was obtained by FedEx.

5 THE COURT: Sustained.

6 BY MS. MITRANI:

7 Q Did you listen to this recording at the time that you
8 obtained it back when you obtained it a few years ago?

9 A Yes.

10 Q And have you listened to it in its entirety since then?

11 A Yes.

12 Q Are the two the same exact items?

13 A Yes.

14 Q So has the recording that the government has introduced
15 into evidence, has it been changed, altered, or modified from
16 the recording that you received?

17 MR. SCOTTON: Object, Your Honor.

18 THE COURT: Overruled.

19 THE WITNESS: No.

20 BY MS. MITRANI:

21 Q And by the way, Mr. Cory, do you know who Larry Midyett
22 is?

23 A He worked for us in the IT department. I'm not sure of
24 his position.

25 Q So you are familiar that he's with IT?

1 A Yes.

2 Q Are you familiar with -- okay. I guess FedEx is a very
3 big company and everybody has different roles, is that fair to
4 say?

5 A Yes.

6 Q Okay. But he's in IT, so he's the IT person to ask any
7 technical questions, would that be accurate?

8 A That's correct.

9 Q All right. Let's listen to a portion of the second
10 recording from Government's Exhibit 14B.

11 (Thereupon, the audiotape was played.)

12 BY MS. MITRANI:

13 Q So I'm going to ask you the same question I did before,
14 only with respect to this recording. Has the recording of the
15 Global Money Remittance account opening, has it been changed,
16 altered, or modified from the recording that you heard at the
17 time that you received it?

18 MR. SCOTTON: Object, Your Honor.

19 THE COURT: Overruled.

20 THE WITNESS: No.

21 BY MR. SCOTTON:

22 Q Now, the first account was the -- that we listened to was
23 the account opening for the Impulse Energy Drink account,
24 correct?

25 A Yes.

1 Q And remind us, how did that account play into your
2 investigation?

3 A That was the account where I pretty much was certain that
4 Mr. Scotton was involved. As I said, when I was calling the
5 recipient of the package and the shipper, Impulse Energy Drink,
6 I looked at the shipper number that appeared on our screen and
7 I called that number first. And when I called that number,
8 Mr. Scotton, and he told me he was the recipient of the
9 package. And I couldn't understand why if I called the
10 shipper, Mr. Scotton would be asking -- or answering the phone
11 number as the recipient.

12 MS. MITRANI: May I approach, Your Honor?

13 THE COURT: Yes.

14 BY MS. MITRANI:

15 Q I'm showing you what we admitted when you were here last
16 time as Government's Exhibit 100A and 100B. Do you remember
17 these packages?

18 A Yes.

19 Q Were these two packages that you seized that were being
20 sent on that fraudulent Impulse Energy Drink account?

21 A Yes.

22 Q The same account number that's given on the recordings,
23 correct?

24 A Yes.

25 Q And when you seized these packages, these two FedEx

1 packages on the Impulse Energy Drink account that was given in
2 that call opening, did you see that the return address said on
3 Government's Exhibit 101A, said Steve -- Steven Brian, Impulse
4 Energy Drink, but with the address 2234 North Federal Highway,
5 Boca Raton, Florida?

6 A Yes.

7 Q And then did you see the second one, Government's
8 Exhibit 101B, again sent on the fraudulent Impulse Energy Drink
9 account, and the return address said Paulo Impulse Energy
10 Drink, but this time it had the address of P.O. Box 629,
11 Boca Raton, Florida, correct?

12 A Yes.

13 Q In fact, there's a Post-it note affixed to Government's
14 Exhibit 101A, correct?

15 A Yes.

16 Q And is that your handwriting?

17 A It is.

18 Q And is this how you turned it over to the FBI?

19 A Yes.

20 Q And inside both of these packages, 101A and 101B, there
21 were purported -- that were being sent on the fraudulent
22 Impulse Energy Drink account, were there flyers saying
23 Brazil Express?

24 A Yes.

25 Q And through these flyers saying Brazil Express, was this

1 another way that you were able to link the fraudulent Impulse
2 Energy Drink account to the defendant?

3 A Yes.

4 Q Now, the defendant on cross-examination asked you a series
5 of questions on the BHPV account. Do you remember that?

6 A Yes.

7 Q Do you have an Exhibit 14K up there with you?

8 A No.

9 MS. MITRANI: Your Honor, may I approach?

10 THE COURT: Yes.

11 THE WITNESS: Is it a spreadsheet? Oh, part of that.
12 Sorry.

13 BY MS. MITRANI:

14 Q So I don't have to go back and forth, I'm going to ask you
15 one question and then I'm going to show you something. Do you
16 know who William or Billy Seligstein is?

17 A Yes.

18 Q And who is Mr. Seligstein?

19 A He works at our legal division and does high-risk
20 investigation, account abuse.

21 Q Was he involved in this investigation?

22 A Yes.

23 Q And this spreadsheet 14K of fraudulent accounts, did you
24 prepare this?

25 A No.

1 Q Do you know who did?

2 A Well, it would have --

3 Q Well, if you know or you don't know?

4 MR. SCOTTON: Objection.

5 THE WITNESS: I'm not certain.

6 THE COURT: I'm sorry, was there an objection?

7 MR. SCOTTON: Yes, there was. Leading.

8 THE COURT: Overruled.

9 BY MS. MITRANI:

10 Q Now, this 14K which has been admitted into evidence lists
11 the B&H Photo Video account with an account number ending in
12 3027, correct?

13 A Yes.

14 Q And on Exhibit 14K, it lists, there's a \$55,143 and I
15 think 22-cent fraud loss on that BH -- BHM --

16 A BHPV.

17 Q -- account?

18 A Yes.

19 Q I'm showing you what we, again, entered into evidence the
20 last time that you were here of Government's Exhibit 102A,
21 102B, and 102C. Do you remember these packages?

22 A Yes.

23 Q And these three packages were packages that were seized by
24 FedEx that were being shipped on that same BH Photo Video, BHPV
25 account, correct?

1 A Yes.

2 Q So these three packages pertain to the same account number
3 on Exhibit 14K, correct?

4 A Correct.

5 Q But here, let's see, 102B says Sky BHPV at the address of
6 934 -- 943 North University Drive, 329, Coral Springs, Florida,
7 correct?

8 A Correct.

9 Q And it's being shipped to Duarte in Atlanta, Georgia,
10 correct?

11 A Yes.

12 Q And inside were the videos that we passed around last
13 time?

14 A Yes.

15 Q 102A, another package shipped on the fraudulent BHPV
16 account also stated on the return address, Sky BHPV at
17 934 North University Drive, 329, Coral Springs, Florida,
18 correct?

19 A Yes.

20 Q And that was being sent to a Duarte in Sao Paulo?

21 A Yes.

22 Q And also had the videos that we passed around last time?

23 A Yes.

24 Q The third package shipped on the fraudulent -- or the
25 account takeover of BHPV, which is Government's Exhibit 102C,

1 that also had a return address of Sky BHPV, 934 North
2 University Drive, 329, in Coral Springs, Florida, correct?

3 A Yes.

4 Q And this was being shipped to an individual in Georgia?

5 A Correct.

6 Q And it had one video that we passed around last time?

7 A Yes.

8 Q I'm showing you Government's Exhibit 102D, which we
9 admitted last time you were here. Do you remember this
10 package?

11 A Yes.

12 Q This was another package that you seized on the account
13 takeover of BHPV?

14 A Yes.

15 Q Now, this airway bill lists the return address as BHPV
16 with an address in Airmont, New York, that's what the label
17 says, correct?

18 A Correct.

19 Q But this one actually has the account number on it,
20 correct?

21 A Yes.

22 Q So let me ask you, when an individual or an entity or a
23 person handwrites an airway bill label, does the account number
24 have to be handwritten into that label?

25 A It should be, yes.

1 Q That's like --

2 A Typically.

3 Q Is that standard?

4 A Typically, yes.

5 Q And why is that?

6 A Well, so they know who to bill it against.

7 Q Now, which were the first couple of accounts that came to
8 your attention when you began your investigation?

9 A Triunfo's Specialty Foods and Globex Money, I believe
10 those were the first two, and Citrix Online as well.

11 Q Once you identified these accounts, did you take any steps
12 to identify historical accounts; that is, the accounts that may
13 have been opened before these?

14 A Yes. I asked Sharon Caldwell in the high-risk accounts
15 section in Memphis to go through on any other of the accounts
16 that were either delinquent or that they could tie in either by
17 name, address, or IP address information to see if there was
18 any other accounts that we could compile to put all in this
19 group.

20 Q To link it? Okay. And did you receive information that
21 there had been prior accounts --

22 A Yes.

23 Q -- opened?

24 A Yes.

25 Q Yes?

1 A Yes.

2 Q And were you able to link these prior accounts to the
3 accounts that you had before Triunfo, Impulse Energy Drink, and
4 I think you said Citrix?

5 A Yes.

6 Q And then after you -- so you had the current accounts,
7 Citrix, Triunfo, Impulse, you had the historical accounts. Did
8 you then develop your investigation into other accounts?

9 A Yes.

10 Q And how did that happen?

11 A Primarily through the IP address when the accounts were
12 opened up online, and by addresses and names.

13 Q Physical addresses?

14 A Yes.

15 Q All right. Now, the defendant kept on asking you
16 questions about you have been investigating this case since
17 2008, a lot of questions to that effect. Do you recall that?

18 A Yes.

19 Q Let me ask you, did there come a point in time where you
20 turned over the investigation to another entity?

21 A Yes. It's -- I'm not a police officer any longer and as
22 such, once we develop probable cause that we have somebody
23 that's stealing from us, you know, that's where I typically
24 have a meeting with law enforcement, in this case. We all met
25 with Agent Van Brunt and gave him the information to. And as

1 such, he would be the one that would do the investigation on
2 the specific names and people that Mr. Scotton was referring
3 to.

4 Q I'm sorry -- strike that.

5 So you work for FedEx, you're a FedEx employee, correct?

6 A Right.

7 Q All right. So then you turned it over -- you turned over
8 the investigation to the FBI and to Special Agent Van Brunt,
9 correct?

10 A Yes.

11 Q Do you recall when that was?

12 A We first met in December of '08, and that was right before
13 the holidays and we knew that there wasn't going to be much
14 that we could get accomplished because of everybody's schedules
15 and time off. And it was shortly after that when we gathered
16 more spreadsheets from all three companies and started feeding
17 the information to Agent Van Brunt.

18 Q And was it at that point, then, that the FBI in December
19 of '08 or January of 2009 took over the lead in investigating
20 this crime?

21 A Yes. And as such, you know, as a civilian, it's not
22 proper for us to interfere with their investigation.

23 Q And how would you characterize your role, then, following
24 its being handed off, so to speak, to the FBI?

25 A Supportive, and obtaining any documents that may be asked

1 for and providing any other information regarding accounts or
2 seizing of packages if we had any.

3 Q And did you do that?

4 A Yes.

5 Q Are you familiar with Dwight Coot? I may be pronouncing
6 that name wrong.

7 A Yeah. No, it's Dwight Coot. He was a driver that worked
8 out of my facility.

9 Q And do you remember the name Flavio, Flavio Scotton?

10 MR. SCOTTON: Object, Your Honor.

11 THE COURT: What's the objection?

12 MR. SCOTTON: Oh, I asked him the question and he
13 don't remember, so now he's going to remember?

14 THE COURT: Overruled.

15 THE WITNESS: Flavio Scotton, I remember the name and
16 didn't remember there being a connection with Mr. Scotton.

17 BY MS. MITRANI:

18 Q Do you remember providing Special Agent Van Brunt with
19 information regarding Flavio Scotton?

20 A Yes. After refreshing my memory now, I did. And I gave
21 him the information when he was a driver as well.

22 Q When who was a driver?

23 A Flavio.

24 Q So Flavio Scotton was a driver for FedEx?

25 A Yes.

1 Q Do you remember when you turned over that information to
2 the FBI?

3 A Gosh, no.

4 Q Years ago?

5 A Yes.

6 Q So had you forgotten about it and now that we have been
7 talking about it, does that refresh your recollection?

8 A Yes.

9 Q Do you remember anything else about Mr. Flavio Scotton
10 other than he was a driver for FedEx and you turned over
11 information to the FBI?

12 A No.

13 Q Do you know whether you turned over that information
14 regarding Flavio Scotton to the FBI before you encountered the
15 defendant at the restaurant in Sawgrass or after, if you
16 remember?

17 A I'm not sure. I don't remember when that was.

18 Q Okay. The defendant asked you about a whole bunch of
19 names, he would read out names to you. Do you remember a
20 series of questions to that nature?

21 A Yes.

22 Q Okay. During your investigation, did you see the evidence
23 of the defendant using false names?

24 A Yes.

25 Q Tell us about that.

1 A Well, the first one was obviously Impulse Energy Drink and
2 Globex Money, but -- and then I was pretty sure that --

3 MR. SCOTTON: Object to that question, Your Honor.

4 THE COURT: I'm sorry. What is the objection? What
5 is the objection?

6 MR. SCOTTON: It's improper evidence, Your Honor.

7 It's he say.

8 THE COURT: Overruled.

9 THE WITNESS: There's also I was pretty certain that
10 he used Alex as another false name, and I can't remember other
11 ones.

12 BY MS. MITRANI:

13 Q Now, you say you are a corporate security investigator for
14 FedEx now, correct?

15 A Yes.

16 Q But I think you mentioned that you were a police officer
17 prior to that?

18 A Yes, for 30 years.

19 Q And so in your collective experience both as a law
20 enforcement officer and as a fraud security investigator with
21 FedEx, is your experience that individuals use false names
22 when --

23 MR. SCOTTON: Object Your Honor.

24 BY MS. MITRANI:

25 Q -- perpetrating certain crimes?

1 THE COURT: What is the?

2 MR. SCOTTON: Relevance to the case.

3 THE COURT: Overruled.

4 THE WITNESS: Yes.

5 BY MS. MITRANI:

6 Q Tell us about that.

7 A Most of the cases that I investigated in law enforcement
8 was regarding title fraud investigations for vessels and they
9 would obviously use someone else's name or fictitious name and
10 address to get the boat registered in their name so as to
11 prevent somebody tracing back to that person. A lot of them
12 were used for drug running and they didn't want to be
13 associated. Hence, they used false names.

14 Q So would you say that the use of false names is an effort
15 at concealment?

16 A Yes, it is.

17 Q And these names that the defendant sputtered out at you,
18 do you even know if these individuals even exist?

19 A No, I don't.

20 Q And as we heard from the FedEx calls, when an individual
21 contacts FedEx, does FedEx ask them to provide a name or they
22 volunteer their name?

23 A We ask for a name, but there's no way to obtain proof
24 positive ID, you know. So we are really at the mercy of
25 whoever is on the other end of the line and telling us whatever

1 name they choose to give.

2 Q And then when the person gives whatever name they choose
3 to give, is that reflected on FedEx's records?

4 A Yes.

5 Q So if somebody calls in saying, I'm Marco Arce, would
6 FedEx just record Marco Arce called today and this was the
7 substance of his call?

8 A Yes.

9 MR. SCOTTON: Objection, Your Honor.

10 THE COURT: All right. It's already been responded
11 to. But, Mr. Cory, just so you know, if there is an objection
12 if you could wait until I have a chance to respond. Thank you.

13 THE WITNESS: Sorry, Your Honor.

14 THE COURT: That's all right.

15 MS. MITRANI: Sorry, Your Honor. I think it was
16 after, but anyway.

17 BY MS. MITRANI:

18 Q All right. So then FedEx would take that information,
19 whatever the caller provides and it in their records?

20 A Yes.

21 Q And is there any independent investigation of whether the
22 person is who he purports to be?

23 A No.

24 Q So in that regard --

25 MS. MITRANI: May I approach, Your Honor?

1 THE COURT: Yes.

2 BY MS. MITRANI:

3 Q The defendant was asking you a series of questions about
4 Government's Exhibit 14K, correct?

5 A Yes.

6 Q And these just reflect the notes of whoever took calls and
7 then recorded the information as it came to them?

8 A That's correct.

9 Q So whatever was said to the FedEx caller is recorded
10 there?

11 A Yes.

12 Q And is there any independent verification of the veracity?

13 A No.

14 Q And by the way, are these your documents? Did you provide
15 these to the government?

16 A I don't know if I -- I don't think I provided those. In
17 fact, I'm pretty sure I didn't because they are in color and I
18 don't have a color printer.

19 Q That's wrong.

20 A I know.

21 Q Okay. So -- but you are -- okay. So you didn't provide
22 them, but you are familiar with what customer service does
23 when --

24 A Yes.

25 Q -- it receives phone calls?

1 A Yes.

2 Q And you are familiar with that based on your
3 responsibilities as a fraud investigator?

4 A Yes.

5 Q The defendant asked you a lot of questions about
6 spreadsheets in general. Do you recall that?

7 A Yes.

8 Q Did you provide spreadsheets to the FBI in connection with
9 the investigation?

10 A Yes, I did.

11 Q Are you aware whether other individuals in FedEx provided
12 the FBI with spreadsheets?

13 A Yes. I am sure that Susie Johnson did as well, and maybe
14 Billy as well.

15 Q You are not saying that you are the only person who were
16 provided spreadsheets --

17 A No.

18 Q -- to the FBI?

19 The defendant was asking you a series of questions about
20 waybills and whether the information taken alone would lead an
21 individual to conclude it's fraudulent. Do you recall that
22 line of questioning?

23 A Yes.

24 Q Let me ask you: If a label has an entity with an address
25 not associated with that entity, is that an indicia of fraud?

1 A Yes.

2 Q And tell us about that. Is that something that you did
3 during the course of your investigation?

4 MR. SCOTTON: Object, Your Honor.

5 THE COURT: What is the objection?

6 MR. SCOTTON: Speculation.

7 THE COURT: Overruled.

8 THE WITNESS: Yes. We looked at different addresses
9 and you look at the account and where the account is
10 established and what the billing address is. And then when you
11 see different addresses being used for the return address on
12 the airway bill, that's an indication that it's being
13 fraudulently used.

14 BY MS. MITRANI:

15 Q And in that regard, if the label has an entity Impulse
16 Energy Drink, with respect to Government's Exhibit 101A, with
17 an address that is not associated with Impulse Energy Drink,
18 what does that tell you?

19 A Usually that it's being abused.

20 Q The defendant asked you a series of questions about
21 whether you ever went to certain addresses and he named
22 7797 Golf Circle as one, 398 Mizner as another. Do you recall
23 that?

24 A Yes.

25 Q And do you recall a series of questions where he said,

1 well, have you ever tried to contact me, contact
2 Brazil Express. Do you remember that?

3 A Yes.

4 Q And so my question to you is as a -- both as a law
5 enforcement officer and as a -- then as a FedEx fraud
6 investigator, when you have an open investigation on an
7 individual you believe is committing fraud, do you necessarily
8 contact that person and advise them of that?

9 A No, you would not.

10 Q Why not?

11 A Because it would be obstructing the investigation being
12 conducted by the FBI in this case.

13 MS. MITRANI: Your Honor, can I have a few minutes, a
14 minute?

15 THE COURT: A minute, sure.

16 MS. MITRANI: No further questions, Your Honor.

17 THE COURT: All right. Mr. Scotton, I want to give
18 you a chance to do cross-examination regarding
19 Mr. Flavio Scotton if you wish to, but only regarding
20 Mr. Flavio Scotton.

21 RE-CROSS EXAMINATION

22 BY MR. SCOTTON:

23 Q Mr. Samuel, when I asked you questions before about
24 different names the prosecutor mentioned, one of the name was I
25 asked you if you know my brother Flavio Scotton.

1 A Yes.

2 Q Do you recall that?

3 A Yes.

4 Q But, of course, you say that you have no recollection of
5 that?

6 A I didn't recall. It was a while ago.

7 Q Right. But the prosecutor come and always ask the
8 question, people manage to remind things, right?

9 A Well, she said things that made me recall giving
10 information to Agent Van Brunt.

11 Q What did she say to you that was also different than what
12 I say, because I say, do you recall that my brother used to
13 work for FedEx and you say no, correct?

14 A That's correct. But --

15 Q So she say the same thing, do you recall that he used to
16 work, he used to be a driver for FedEx. So I asked the
17 question, did you recall my brother, and you said no.

18 A Well, she said driver. And there's many positions at
19 FedEx that it was just a lapse of memory. Again, this case has
20 been going on for a long time.

21 Q Right.

22 A And I didn't recall all of the facts and information.

23 Q So I ask a question, if you know if my brother worked for
24 FedEx, you say no, but the prosecutor ask you, then you
25 recollect and you say yes, correct?

1 A Yes.

2 Q So that's -- when is the last time you went to the
3 prosecutor's office again?

4 A The last time I was there, before trial started.

5 Q Before trial started. And how many hours did you spend
6 over there?

7 MS. MITRANI: Your Honor, beyond the scope.

8 THE COURT: Overruled.

9 THE WITNESS: Maybe three or four.

10 BY MR. SCOTTON:

11 Q You guys go over everything on this case, correct?

12 A Well, everything is pretty vague. We covered a lot of
13 material.

14 Q Right. Right. The kind of strategy for the trial and
15 training coach, and that kind of thing, right?

16 A One of the things we didn't cover was the fact that your
17 brother used to work for --

18 MR. SCOTTON: Your Honor, no more questions.

19 MS. MITRANI: Your Honor, can he finish his question
20 (sic).

21 THE COURT: All right. Let's let Mr. Cory finish his
22 answer.

23 MS. MITRANI: Actually, could I ask a question?

24 THE COURT: Well, in a moment. But let's let Mr. Cory
25 finish his answer first.

1 THE WITNESS: One of the things that we did not cover
2 was the fact that Mr. Scotton's brother was a driver for us at
3 one point in time.

4 THE COURT: All right. Thank you.

5 MS. MITRANI: May I ask another question?

6 THE COURT: You can have redirect on this one issue.

7 MS. MITRANI: One issue.

8 REDIRECT EXAMINATION

9 BY MS. MITRANI:

10 Q The defendant asked you -- when he asked you the question,
11 he just said his brother. He didn't give a name, correct?

12 A Right.

13 Q When I asked you the question, I actually gave you a full
14 name?

15 A Yes.

16 Q I actually said the name Flavio Scotton, right?

17 MR. SCOTTON: Objection, Your Honor.

18 THE COURT: What is the objection?

19 MR. SCOTTON: It is speculation because I have given
20 my name -- my brother's name.

21 THE COURT: Overruled.

22 THE WITNESS: Yes. Your -- when you said
23 Flavio Scotton, it was one of the key triggers.

24 BY MS. MITRANI:

25 Q And the defendant said when you went to the office and we

1 coached you, did the government coach you on what to say on
2 anything?

3 A No.

4 MS. MITRANI: No more questions.

5 THE COURT: All right. Thank you very much, Mr. Cory,
6 and you are excused for good this time.

7 I think we are going to take an early lunch today. I
8 heard someone say yay. And so let's see, why don't we come
9 back at -- I've got a couple of little hearings, they shouldn't
10 be too long. So let's come back at 1:15.

11 All right. Everybody enjoy your lunch. Please
12 remember my instructions, don't discuss the case with anyone,
13 don't disburse any information about the case, and don't do any
14 research into the case. We will see you back here at 1:15.
15 All rise for the jury.

16 (Thereupon, the jury exited the courtroom at
17 12:06 p.m.)

18 THE COURT: Mr. Scotton.

19 MR. SCOTTON: Yes, Your Honor.

20 THE COURT: I understand that you do not agree with
21 all of my rulings. I'm quite certain that the government does
22 not agree with all of my rulings either. But please do not
23 express frustration in front of this jury. It's not helpful to
24 your case and it is not appropriate in court.

25 All right. Thank you. We will see you at 1:15.

1 MS. MITRANI: One quick thing. Are we going to pick
2 back up with Mr. Kamlet, is that the plan? So he can be
3 released?

4 THE COURT: Yes.

5 MS. MITRANI: And then if it's his case, then he has
6 to ask it as if it's his direct exam, correct?

7 THE COURT: That's correct.

8 MS. MITRANI: Okay. Thank you, Your Honor.

9 MR. SCOTTON: I know you probably going to have other
10 things to do, but are we going to have time to go over some
11 stuff today under seal without the government? It's something
12 to do with the subpoenas.

13 THE COURT: I'm not sure if I'm going to have time.
14 What do you need?

15 MR. SCOTTON: And, also, the investigator want to
16 correct the record with the Judge later on today or so in
17 reference the video.

18 THE COURT: Well, the investigator is here now so I'll
19 hear -- if there are any corrections, I will be happy to hear
20 them.

21 MS. MITRANI: Can you put her under oath?

22 THE INVESTIGATOR: I already said to the Judge that I
23 just heard the voice. I didn't saw anything in particular. I
24 already told to the Judge.

25 THE COURT: She did say that already. Thank you.

1 MS. MITRANI: Thank you, Your Honor.

2 THE COURT: We will be in recess until 1:15.

3 (Thereupon, a luncheon recess was taken at 12:08 p.m.)

4 MR. SCOTTON: Your Honor, now that the government is
5 not here, can I save some time and go over some --

6 THE COURT: No, we will do it at 4:00 because we are
7 supposed to be starting now and the government should be here
8 any second. I don't know why they are not here. Can we see if
9 the jury is ready?

10 MS. MITRANI: Real quick. So we are going to call
11 Scott Kamlet next with respect to those DHL invoices, we can
12 verify that those are valid account numbers. If the defendant
13 wants to use it, though, I want to see exactly what he's going
14 to use because what he has is a jumble of paper. So if he
15 separates it and gives it to me document by document, I may be
16 able to not object.

17 THE COURT: All right. Thank you.

18 (Thereupon, the jury entered the courtroom at
19 1:19 .p.m.)

20 THE COURT: Welcome back. Please be seated. And let
21 me just ask, is there anybody here who discussed the case with
22 anyone, disbursed any information about the case, or did any
23 research into the case, if so, raise your hand for me now
24 please. I see no hands. Thank you all for that.

25 And at this point we are going to -- is it Mr. Kamlet?

1 We are going to recall Mr. Kamlet. There were some areas that
2 we needed to go into in a little bit more detail, so we are
3 going to bring him back. And I think we will be starting with
4 the cross. Welcome back, Mr. Kamlet.

5 THE WITNESS: Thank you.

6 THE COURT: We missed you.

7 THE WITNESS: It's good to be back.

8 THE COURT: And, of course, you understand you are
9 still under oath, right?

10 THE WITNESS: Yes, I do.

11 THE COURT: Very good. Thank you. Whenever you are
12 ready, Mr. Scotton.

13 SCOTT KAMLET

14 After being duly sworn on oath was examined and testified as
15 follows:

16 CROSS EXAMINATION (resumed)

17 BY MR. SCOTTON:

18 Q How are you, Mr. Kamlet?

19 A Good. Thank you.

20 MR. SCOTTON: Your Honor, may I approach?

21 THE COURT: Yes.

22 MS. MITRANI: Your Honor, wait, could we have a
23 sidebar for a minute?

24 THE COURT: All right.

25 (Thereupon, the following was heard sidebar.)

1 MS. MITRANI: Can I see what you are showing, the two
2 pages?

3 MR. SCOTTON: Two pages, you told me that everything
4 related to the bill. So this is the bill.

5 MS. MITRANI: Your Honor, from what I can see, these
6 are -- can I see that? Okay. It's the same, Your Honor, okay,
7 for the record, this purports to be a statement of account for
8 Citrix invoice with a DHL logo on the top. It says page 1 of 2
9 and it says page 2 of 2, so I'm showing two pages. So it's a
10 copy so you can show the witness one. I just saw that he had
11 more than two pages.

12 THE COURT: Maybe we can straighten this out without
13 doing sidebars.

14 MS. MITRANI: I will try, but I know it's a two-page
15 document, and what I saw in his hand was more than two pages.

16 THE COURT: Okay. Thanks.

17 (Thereupon, the following was heard in open court.)

18 MR. SCOTTON: Your Honor, I'm going to need a minute
19 because Ms. Martinez is not here.

20 THE COURT: All right. Well, let's try to do this
21 quickly because the jury is waiting.

22 How are we doing, Mr. Scotton?

23 MR. SCOTTON: Just a minute, Your Honor. Can I hook
24 up this computer to someplace here?

25 THE COURTROOM DEPUTY: You have to do it at the

1 prosecution table.

2 THE COURT: Mr. Scotton, let's see if we can move this
3 along. All right?

4 MS. MITRANI: Your Honor, may we approach sidebar?

5 THE COURT: All right.

6 MS. MITRANI: I don't know what else to do.

7 (Thereupon, the following was heard sidebar.)

8 MS. MITRANI: Your Honor, I don't know what to do. He
9 had this two-page DHL documents from Citrix he wanted to show
10 the witness. I said fine. Now he's getting his computer and
11 he's getting some other document and he wants to show it
12 electronically. And I said, first, you have to ask the
13 witness. But, more importantly, I don't want him scrolling
14 through electronically because I don't know what's in those
15 documents. If he wants to hand me and the witness a physical
16 document, that's fine.

17 THE COURT: Why can't you give her the physical
18 document? You had it before.

19 (Thereupon, there was an interruption by the court
20 reporter.)

21 THE COURT: I understand, but yesterday you came in
22 with a stack that was an inch thick of documents. So why do we
23 have to do it on the computer when I don't know what's on the
24 computer?

25 MR. SCOTTON: The stack of documents, she's not going

1 to allow me to use the stack of documents.

2 THE COURT: That's not what she said.

3 MR. SCOTTON: Do you want me to show the documents
4 that she say she's going to object.

5 THE COURT: What I don't want to do -- it's been
6 15 minutes since I brought this jury back and you haven't asked
7 the first question yet. You are wasting their time. It's not
8 fair. It's not appropriate. You asked if you can use the
9 documents yesterday. Today you bring in a computer. It
10 doesn't hook up. We don't know what's on it. You haven't
11 previously shown it. So, I'm sorry, no.

12 MR. SCOTTON: The prosecutor has a stack of documents.

13 THE COURT: I'm not going to argue with you. If you
14 want to use the documents, use them, that's fine. You need to
15 show them to the prosecutor so she knows what you are using.
16 We are not going to go through random stuff in your computer
17 that I have not seen before.

18 MR. SCOTTON: She showed here --

19 THE COURT: Okay. Thank you, Mr. Scotton.

20 MR. SCOTTON: Am I allowed to show the documents she
21 already know about?

22 THE COURT: Mr. Scotton, ask about the documents you
23 brought up here 15 minutes ago. And then if there are other
24 ones you want to ask about, show them to the government. If
25 the government has an objection, I will deal with the

1 objection, okay? Do you understand?

2 MS. MITRANI: I can tell the Court what the problem
3 is. He's going to want to show something electronically and I
4 don't want what's interspersed.

5 THE COURT: I know that. That's what I already ruled
6 on.

7 MR. SCOTTON: I am not able to show it electronically?

8 THE COURT: Right. You cannot show it electronically
9 because I don't know what you have.

10 (Thereupon, the following was heard in open court.)

11 THE COURT: You can use the ELMO if you want,
12 Mr. Scotton. You can use the ELMO.

13 MR. SCOTTON: The what?

14 THE COURT: You can use the ELMO which will do the
15 same thing as if you were showing it on the computer.

16 BY MR. SCOTTON:

17 Q Mr. Scott, yesterday I have present you some invoices from
18 DHL. Do you remember that?

19 A I do.

20 Q And you say that you have no recollection if DHL has such
21 an invoice?

22 A I remember saying I didn't see it in that -- I don't
23 remember it being in that format.

24 Q Have the government talked to you about those invoices or
25 showed you those invoices?

1 A No.

2 MS. MITRANI: Your Honor, I would ask that before he
3 publishes it that he ask the witness if he's familiar and if he
4 has the ability to testify to them.

5 THE COURT: Well, all right, let's do this. It's not
6 currently in evidence. Are you seeking to move it into
7 evidence?

8 MR. SCOTTON: Yes, Your Honor.

9 THE COURT: Is there any objection?

10 MS. MITRANI: No, Your Honor.

11 THE COURT: All right then. So let's put it in as
12 Defendant's Exhibit 3 and he can put it on the screen to ask
13 questions about it since it's in evidence.

14 (Thereupon, Defendant's 3 received in evidence.)

15 MS. MITRANI: I guess for the record, Your Honor, it's
16 our understanding that Defendant's Exhibit 3 is a two-page
17 document.

18 THE COURT: Okay. Thank you.

19 BY MR. SCOTTON:

20 Q Mr. Scott, have you seen those invoice printout from any
21 database from DHL before?

22 A This particular invoice?

23 Q Yes, sir.

24 A No.

25 Q Did you see it on the top, the name of a company called

1 Citrix System?

2 A I see that, yes.

3 Q Did you see also in the left corner, account number? On
4 the top left corner -- on the right corner.

5 A Oh, the right corner?

6 Q Sorry.

7 A I see the SAP account number.

8 Q And on the bottom, you got a bunch of different accounts
9 of what seems to be two different accounts, but a bunch of
10 invoices with the dates of 2010 and 2011, correct?

11 A Correct.

12 Q And during the investigation, is one of the accounts being
13 used belongs to Citrix?

14 A I don't recall.

15 Q It is any -- strike that.

16 Is there any particular way that some individuals can get
17 ahold of such a document from DHL?

18 A Well, the invoices are sent to all of our customers.

19 Q And besides sent to the customers, is there any way that
20 somebody else can get ahold of such a thing?

21 A I'm sure there are other ways. I don't know any specific
22 way that I can mention right now. It could be intercepted out
23 of someone's mailbox, I suppose.

24 Q Do you think an employee from DHL was involved in this
25 investigation of yours?

1 MS. MITRANI: Objection, calls for speculation.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q Have it occurred to your department that someone in DHL
5 company selling those information to individuals?

6 MS. MITRANI: Objection, calls for speculation.

7 THE COURT: Overruled.

8 THE WITNESS: Can you repeat the question, please?

9 BY MR. SCOTTON:

10 Q Is this that possible employee from DHL selling those
11 information to individuals outside?

12 THE COURT: That one, however, is sustained.

13 BY MR. SCOTTON:

14 Q Have you had any kind of report or any recollection of
15 someone from your department has information that employee has
16 provided that information to somebody else outside?

17 A I'm not sure I am understanding the question.

18 Q Can an employee from DHL get ahold of such a document and
19 give it somebody else outside?

20 A It's possible for certain employees to be able to access
21 these documents.

22 Q During your investigation in this case, did you guys get
23 any kind of report of invoices being out, invoices being
24 returned?

25 A Invoices being out and being returned?

1 Q Yes, sir.

2 A I'm not sure in what capacity. By --

3 Q Thousands and thousands of accounts has been shipping
4 over, right?

5 A Right. And invoices --

6 Q DHL bill those accounts, correct?

7 A Correct.

8 Q And those accounts has been -- those invoices has been
9 went out to those address?

10 A Correct.

11 Q Have DHL got any mail back from the post office with those
12 accounts?

13 A I have no knowledge of that.

14 Q Do you deny that this invoice belongs to DHL?

15 A I don't know it to be an invoice from DHL specifically
16 because I don't remember the format of the invoices.

17 Q Did you recall the phone number over there, where this --
18 the customer service phone number from DHL?

19 A That number doesn't look familiar to me.

20 Q If we called the number, what happens right now, you think
21 customer service would answer the number?

22 MS. MITRANI: Objection, relevance.

23 THE COURT: Sustained.

24 BY MR. SCOTTON:

25 Q Did you recall that billing email address over there?

1 A That is a billing customer service email address.

2 Q You confirmed it is, right? It is their email address,
3 correct?

4 A It is the billing customer service email address, correct.

5 Q Besides the invoice, Mr. Scott, have come to acknowledge
6 here other invoices. Pfizer account was mentioned in one
7 investigation, right? Dell Computer, HP, Johnson & Johnson,
8 Walmart, do you recall those accounts that are part of this
9 case?

10 A I remember some of them specifically, but there were
11 hundreds of accounts over the past several years and I don't
12 remember which accounts are included except the ones we
13 recently discussed.

14 Q And you do not have recollection of any reports or any
15 communication between the fraud department or billing account
16 flagging those invoice been given away?

17 A Again, I'm not really clear on what you are asking in that
18 question.

19 Q You don't have any reports that shows that any employee of
20 your company has selling those invoice to individuals outside,
21 do you.

22 A That was never part of the investigation, no.

23 Q If someone get ahold of such a document and shows account
24 numbers, can an individual use those accounts?

25 A Are you saying could they use them without authorization

1 if they had the account number?

2 Q No. If someone has that information in their hands, can
3 they just go ahead and start using those accounts?

4 A Does that provide them with authorization just because
5 they have it, is that what you are saying?

6 Q With authorization or without authorization he has
7 information now in his hands, can now he use that information
8 to shipping packets?

9 A That's not a question that I can really answer accurately.
10 It can be manipulated. If you have authorization, then you can
11 ship on it; if you don't have authorization, you shouldn't ship
12 on it. Could there be a way to manipulate the system to use
13 it, yes.

14 Q So any person can get that particular first account number
15 over there and put in any label and ship a package, correct?

16 A It would take more work than that, but it could happen.

17 Q So if you have a -- I'm not talking about the electronic
18 bill, I'm talking about paper bill, a waybill. So an
19 individual got a waybill, have account number, can he ship a
20 package?

21 A Yes.

22 Q And for him to do it electronic, he's going to need more
23 requirements to do electronic, correct?

24 A Correct, yes.

25 Q But now that he has all the information in hand, he can do

1 it electronic as well, correct?

2 A Not without further manipulation.

3 Q And what manipulation that would be?

4 A Well, I have an issue with providing the ways to get
5 around our network security.

6 Q This particular account here, did you see that Citrix has
7 in several occasions in 2010 and 2011 used this account, do you
8 see several open invoices?

9 A Can you repeat the dates?

10 Q 2010 to 2011.

11 A I see invoices for 2010 and 2011.

12 Q You see invoice for \$68.49?

13 A Yes, I do.

14 Q And they are what, international or domestic?

15 A I have no way -- I have no way to tell.

16 Q It is not the minimum starting in Brazil, if you ship a
17 package to Brazil, somewhere around \$70 and up?

18 A I'm not aware of our billing. I'm not a billing expert or
19 a freight charge expert.

20 Q But as you see here, this is a true account from Citrix,
21 correct?

22 A I have said several times it has information from an
23 invoice. I don't know about the format, if it matches our
24 current or former invoice format. So I can't validate whether
25 it is or not without taking further action.

1 Q Perhaps if the Court authorize, we can call DHL right now
2 over the court phone here and then you can ask for them.

3 MS. MITRANI: Objection.

4 THE COURT: Sustained. Please ask questions.

5 BY MR. SCOTTON:

6 Q So you don't deny that employees from DHL has provided
7 people with outside information from individuals' accounts, do
8 you?

9 A I don't know that to be true or have any findings to that
10 fact as part of this investigation.

11 Q Right. That particular bill is addressed to Citrix at
12 Fort Lauderdale address, the corporate office location,
13 correct?

14 A I don't know where Citrix corporate office is.

15 Q That shipped that. So if that waybill -- this invoice has
16 been shipped to Citrix to their location, right, only them can
17 receive that invoice, correct?

18 A If this is the legitimate invoice, it should have been
19 shipped to the address on the invoice.

20 Q So nobody else should get ahold of the invoice besides
21 Citrix, right?

22 A Nobody should, that's correct.

23 Q Right. So if somebody else has ahold of that invoice,
24 it's because DHL has provided somebody else with that invoice,
25 correct?

1 A That's incorrect.

2 Q It is not?

3 A It is not.

4 Q Mr. Kamlet, I got the invoice in my hand. How did I
5 obtain the invoice?

6 MS. MITRANI: Objection, Your Honor.

7 THE COURT: Sustained.

8 MS. MITRANI: Jesus.

9 THE COURT: Ms. Mitrani.

10 Go ahead, Mr. Scotton.

11 BY MR. SCOTTON:

12 Q Is there a way for me to obtain that invoice, Mr. Scott?

13 A I did mention one other possible way that someone could
14 obtain an invoice without being authorized to have it. There's
15 intercepting it in the mail, mail theft.

16 Q So, now, did you investigate a mail theft on this case?

17 A I don't recall specifically every action that my
18 investigator who handled the case took in this case.

19 Q So if someone went to the Citrix corporate office location
20 and he stole their mail, correct?

21 A I'm not saying that's what happened. You asked me for
22 something that could happen, I gave you a possibility. I have
23 no way of knowing how -- where this came from.

24 Q So you deny any involvement of your people from
25 Miami Airport location involved on such a thing?

1 A I have said that I have -- I don't know that that's true
2 or part of the investigation. That did not become a fact as
3 part of the investigation.

4 Q Is the billing department involved with you during this
5 investigation?

6 A Yes, I'm sure that we did work with the billing
7 department.

8 Q They provide you the billings and all the waybills and
9 commercial invoice and documents from those international
10 shipments?

11 A Yes, this would be true.

12 Q And during this investigation, did you specifically with
13 this Citrix account, did you guys investigate if partial of
14 those accounts has been used fraudulently but the other portion
15 be used by Citrix?

16 A I don't have any specific recollection of the Citrix
17 account being part of or not part of the investigation.

18 Q Just refresh my mind here. You say that you have been
19 working this case since 2008, correct?

20 A Probably more, 2007.

21 Q 2007. And you decline the invoice might not be the
22 accurate invoice, right?

23 A I said that I'm not sure if it's accurate or not. I can't
24 validate it because I'm not an expert in that area and I don't
25 remember seeing it in that format.

1 Q Can we say, also, the spreadsheet is not accurate?

2 A I would say the spreadsheet is accurate 100 percent.

3 Q But no waybills and commercial invoice has been provided
4 to back up all the thousands of accounts?

5 A I actually don't know what you were provided with.

6 Q Did you have those waybills? Did you manage to retrieve
7 those waybills from those 15,000 shipments?

8 A I didn't try to retrieve them since yesterday.

9 Q But DHL cannot provide those waybills at this point,
10 right?

11 A I don't believe that we can.

12 Q And during your 2007 investigation, you didn't print out
13 any of those waybills either, right?

14 A I don't recall if we did or we did not.

15 MR. SCOTTON: No more questions, Your Honor.

16 THE COURT: All right. Redirect?

17 MR. SCOTTON: Your Honor, do you mind if I retrieve
18 the computer?

19 THE COURT: All right.

20 REDIRECT EXAMINATION

21 BY MS. MITRANI:

22 Q So if I understood you correctly, and please correct me if
23 I'm wrong, Citrix is not something that you are recalling
24 whether that was part of your personal involvement in this
25 case, correct?

1 A Correct.

2 Q All right. So that invoice that the defendant showed you,
3 do you have any idea whether those shipments were authorized
4 shipments or unauthorized shipments?

5 A None whatsoever.

6 Q You have no idea one way or the other?

7 A No idea.

8 MS. MITRANI: No further questions.

9 THE COURT: All right. Anything else, Mr. Scotton?

10 MR. SCOTTON: No, Your Honor.

11 THE COURT: Thank you, Mr. Kamlet. You are excused.

12 Thank you very much.

13 THE WITNESS: Thank you very much.

14 THE COURT: Have a great day.

15 MS. MITRANI: The government would call

16 Janice Morrison.

17 THE COURTROOM DEPUTY: Please raise your right hand,
18 ma'am.

19 JANICE MORRISON

20 Having been first duly sworn on oath, was examined and
21 testified as follows:

22 THE COURTROOM DEPUTY: Please be seated, state and
23 spell your first and last name for the record.

24 THE COURT: I'm sorry. Before you do that, that
25 buzzing sound that we hear is somebody's cell phone. So if

1 everybody can make sure their cell phone is in the off
2 position. If it's in the silent position, it still interferes.
3 Thank you.

4 I'm sorry. Please go ahead.

5 THE WITNESS: My name is Janice Morrison, J-A-N-I-C-E,
6 last name M-O-R-R-I-S-O-N.

7 THE COURT: Thank you. Whenever you are ready,
8 Ms. Mitrani.

9 MS. MITRANI: I will be right there.

10 DIRECT EXAMINATION

11 BY MS. MITRANI:

12 Q Good afternoon, Ms. Morrison. How are you doing?

13 A Hello. I'm fine. Thank you.

14 Q Ms. Morrison, where did you grow up?

15 A I grew up in New York City.

16 Q Where did you go to college?

17 A I went to Smith College. It's in Massachusetts, an
18 all-women's college.

19 Q And did you graduate?

20 A I did, in 2003.

21 Q With what type of degree.

22 A A bachelor's degree. I focused on political science and
23 international relations.

24 Q By whom are you presently employed?

25 A I am presently employed with DHL Express.

1 Q So how long have you been so employed?

2 A I have been employed fully with DHL for five years, two
3 years as a consultant and three years as an employee.

4 Q What is your current title?

5 A Compliance manager.

6 Q So why don't you walk the members of the jury a little bit
7 through what your current responsibilities are and maybe what
8 your prior responsibilities were?

9 A Okay. Well, they haven't changed much. I started with
10 DHL as a consultant and my focus was on responding to subpoenas
11 sent in by the U.S. government. And that's still what my focus
12 is. It's still my focus. So I respond to subpoenas that come
13 in from the U.S. government.

14 Q And so are you a records custodian for DHL?

15 A I am a records custodian for DHL.

16 Q So as a records custodian have you become familiar with
17 the records that DHL maintains in the ordinary course of
18 business?

19 A Yes, I have.

20 MS. MITRANI: May I approach, Your Honor?

21 THE COURT: Yes.

22 BY MS. MITRANI:

23 Q I am showing you what's been marked for identification as
24 Government's composite Exhibit 32, that is 32A through and
25 including 32L. Are you familiar with these documents?

1 A Yes, I am.

2 Q Did you provide these documents to the government?

3 A Yes, I did.

4 Q And are these -- do these documents consist of waybills,
5 commercial invoices, and accompanying DHL invoices?

6 A Yes, they do.

7 Q Are these business records of DHL?

8 A Yes, they are.

9 Q Kept in the -- are these records kept in the ordinary
10 course of business?

11 A Yes, they are.

12 Q And have these records been changed or altered in any way?

13 A No, they have not.

14 MS. MITRANI: Your Honor, the government would offer
15 composite 32.

16 THE COURT: Any objection?

17 MR. SCOTTON: Yes, Your Honor.

18 THE COURT: What is the objection?

19 MR. SCOTTON: Those documents are incomplete. There
20 is documents missing.

21 THE COURT: All right. Why don't you ask Ms. Morrison
22 one more time what exactly the documents are.

23 BY MS. MITRANI:

24 Q All right. Do these --

25 MS. MITRANI: Your Honor, may I just take a drink of

1 water?

2 THE COURT: Sure. Of course.

3 MS. MITRANI: Thank you, Your Honor. I apologize.

4 THE COURT: That's all right.

5 BY MS. MITRANI:

6 Q Does composite 32 contain a complete record of DHL
7 waybill?

8 A Yes, it does.

9 Q Does it contain the complete record of the accompanying
10 commercial invoice?

11 A Yes, it does.

12 Q Does it contain the complete invoice that was billed to --
13 that was billed to the waybill that's part of each specific
14 subsection?

15 A Yes, it does.

16 MS. MITRANI: Your Honor, we would offer 32.

17 THE COURT: Any objection?

18 MR. SCOTTON: Yes, Your Honor.

19 THE COURT: What is the objection?

20 MR. SCOTTON: It is pages here missing. It's not
21 complete, it's not accurate.

22 THE COURT: Overruled. Government's 32 is admitted.

23 (Thereupon, Government's 32 received in evidence.)

24 BY MS. MITRANI:

25 Q Okay. Ms. Morrison, we are going to start and we are

1 going to go through all of them. So let's start with 32A. So
2 can you see that okay, Ms. Morrison?

3 A Yes, I can.

4 Q All right. So what we have before us says on top, archive
5 doc, not to be attached with package, and then the waybill
6 underneath. Do you see that, ma'am?

7 A Yes, I do.

8 Q Can you tell the members of the jury a little bit what
9 that archive doc means?

10 A This is a copy of a waybill. So you would have -- so that
11 that means that there are two copies that were, you know,
12 initially with the waybill. This is just a copy that came from
13 a DHL system.

14 Q Okay. And this particular waybill is 740258, 2095,
15 correct?

16 A Yes, that's the tracking number or the airway bill number.

17 Q And this package was sent from -- according to, according
18 to the waybill, this package was sent from A Computer/Fernando
19 at 934 North University Drive with a phone number, 329 Coral
20 Springs, 33071, in the United States, correct?

21 A Yes.

22 Q And it was sent to an individual whose initials are CS in
23 Brazil, correct?

24 A Yes.

25 Q And drawing your attention to the middle, where it says

1 reference code and account number, what is the account number
2 associated with this waybill?

3 A 775429527.

4 Q So when the waybills are archived in your system, does the
5 account number appear?

6 A Yes, it does.

7 Q All right. And what was the reference code on this is an
8 Xbox Elite Splinter Cell, correct?

9 A Yes.

10 Q And if we go to the second page of Government's
11 Exhibit 32A, this is the same waybill without the archive
12 information on top, correct?

13 A Correct.

14 Q And if we go to the third page of the waybill -- excuse
15 me. If we go to the third page of Government's Exhibit 32A,
16 what are the members of the jury looking at here?

17 A This is the commercial invoice.

18 Q That pertains to that shipment?

19 A Yes. It pertains to the shipment and it's a customs
20 document that would need to be included with an export.

21 Q And it has the same reference as the shipper and the same
22 receiver as that in the waybill, correct?

23 A Yes, it does.

24 Q We are going to go to the fourth page of Government's
25 Exhibit 32A, and can you tell the members of the jury what they

1 are looking at?

2 A This is a DHL outbound invoice. So this is the invoice
3 for the shipment that you see in the airway bill.

4 Q Okay. And so this airway bill that ends in 2095, you can
5 actually see that on the second page of the outbound invoice,
6 correct? On the second page of the outbound invoice, it
7 says -- it has the air bill, same air bill number ending in
8 2095?

9 A Yes.

10 Q And the charge for that shipment was approximately \$21,
11 correct?

12 A Correct.

13 Q Now, going back to the first page of the invoice, the DHL
14 outbound invoice, this waybill ending in 2095 was billed to
15 whom?

16 A It was billed to Apple Computer, 1 Infinite Loop in
17 Cupertino, California.

18 Q So the account number that we saw on the first page on the
19 waybill ending in 9527 is an Apple Computer account, right?

20 A Yes, it is.

21 Q Was this waybill paid?

22 A To my knowledge, no, it was not.

23 Q In fact, was that shipment written off by DHL as fraud?

24 A Yes, it was.

25 Q So let's go to the next one, 32B. Is this the archival

1 copy of the waybill 7402574911?

2 A Yes, it is.

3 Q And this shipment is represented as the shipper is also --
4 is represented as A Computer Fernando at 934 North University
5 Drive, Coral Springs, in the United States, correct?

6 A Correct.

7 Q And this was being shipped to -- this was tendered to DHL
8 for delivery for shipment to an individual whose initials are
9 GD in Brazil?

10 A Yes.

11 Q And the account number here?

12 A The account number is 775429527.

13 Q And if we go to the second page of Exhibit 32B, is this
14 the accompanying commercial invoice for the shipment to Brazil?

15 A Yes, it is.

16 Q And if we go to the third page of 32B, is this the
17 outbound invoice that was billed for the shipment that we just
18 talked about for the waybill ending in 4911?

19 A Yes, it is.

20 Q And, in fact, we can see that waybill number on the second
21 page of the invoice ending in 4911, correct?

22 A Correct.

23 Q And the approximate charge for that shipment?

24 A 24.05.

25 Q And when it says -- actually, these are the weight

1 charges, correct? It says total weight, weight charge, and
2 then a total charge based on the weight, correct?

3 A Correct.

4 Q And then I guess underneath -- excuse me. Going back to
5 the first page, this waybill ending in 4911 with the account
6 number ending in 9527 was also purported to be an
7 Apple Computer account, correct?

8 A Correct.

9 Q And so this shipment was shipped to -- was billed to
10 Apple Computer?

11 A Correct.

12 Q And was this shipment also written off as fraud?

13 A Yes, it was.

14 Q We go to 32C. And the first page of 32C, is that the
15 archival DHL waybill?

16 A Yes, it is.

17 Q And this was for a package that was purported to have the
18 return -- excuse me, that had the return address of
19 Air Express, M. Cancado at 934 North University Drive in
20 Coral Springs, Florida, correct?

21 A Correct.

22 Q And this package was tendered for delivery to DHL to an
23 individual whose initials are FP in Brazil, correct?

24 A Correct.

25 Q And I don't know if I said the waybill, but just to make

1 it simple, it's the waybill ending in 4721, correct?

2 A Correct.

3 Q And the account number is in the middle under the
4 reference code, correct?

5 A Yes, it is.

6 Q And is it the same Apple Computer account number that we
7 saw in 32A and 32B?

8 A It is account number ending in 9527.

9 Q And, in fact, Government's Exhibit 32A through the letter
10 that comes before L, which would be K, 32K, those are all
11 shipped on an Apple -- what purports to be an Apple Computer
12 account, correct?

13 A Yes.

14 Q And then on 32C, the second page is the accompanying
15 commercial invoice for that, for waybill 4721, correct?

16 A Correct.

17 Q And the third, the third and fourth page of 32C was the
18 outbound invoice that is the charge for that package waybill
19 ending in 4721?

20 A Correct.

21 Q And, actually, I don't know if we have even shown the
22 bottom half of the invoice. Let's show the bottom half of the
23 invoice to see what it looks like. Is this the bottom of the
24 first page of the outbound invoice?

25 A Yes.

1 Q And so it has the invoice date of 5/3/2010 with an amount
2 due of \$22 and a payment due date of 6/17/2010?

3 A Correct.

4 Q Billed to Apple Computer at 1 Infinite Loop in California,
5 correct?

6 A Yes.

7 Q And was this 32C, written off as fraud?

8 A It was written off as fraud.

9 Q Let's go to 32C -- oh, 32D. We just did C. And is this
10 the archival waybill for -- the archival copy for waybill
11 ending in 0304?

12 A Yes, it is.

13 Q And the sender purports to be Apple Computer, Scott, with
14 the phone number, at 7797 Golf Circle Drive in Margate,
15 Florida, correct?

16 A Correct.

17 Q And this package was tendered to DHL for delivery to an FD
18 in Brazil, correct?

19 A Correct.

20 Q And the account number stated in the middle and it's that
21 same Apple Computer account, correct?

22 A Yes.

23 Q And the date of this is 4/30/2010, correct?

24 A Correct.

25 Q And I haven't been saying the dates, but do all the

1 waybills have the date next to the account number?

2 A Yes, all of the waybills have the date listed on the
3 waybill.

4 Q And the second page of 32D, is that the accompanying
5 commercial invoice for the shipment to Brazil?

6 A Yes, it is.

7 Q Again, showing the same -- showing Apple Computer at this
8 Margate, Florida, address, correct?

9 A Correct.

10 Q The third and fourth pages of 32D is a two-page outbound
11 invoice, correct?

12 A Correct.

13 Q And the second page shows the airway bill number?

14 A Yes, it does.

15 Q The same one, 0304?

16 A Yes.

17 Q And the amount due for this one was \$130, correct?

18 A \$130.01.

19 Q And was this one written off as fraud by DHL as well?

20 A Yes, it was.

21 Q Going to 32E, and this is a shipment with a waybill number
22 ending in 9756, is that right?

23 A Yes, it is.

24 Q And from A Computer Fernando at 934 North University Drive
25 in Coral Springs, Florida?

1 A Yes.

2 Q It was tendered for delivery by DHL to an individual whose
3 initials are SB in Brazil?

4 A Yes.

5 Q And in the middle it has that same Apple Computer account
6 number, is that right?

7 A Yes, it does.

8 Q And the date of shipment here is 4/30/2010?

9 A Yes.

10 Q And the second and third pages are the two-page outbound
11 invoice, correct?

12 A Correct.

13 Q Showing a charge of \$90 for this package, correct?

14 A Correct.

15 Q And like the others, this invoice wasn't paid, it was
16 written off as fraud, correct?

17 A Yes, it was.

18 Q 32F, as in Frank, the first page. And this is the
19 archival DHL waybill for -- ending in 4764?

20 A Correct.

21 Q And here it shows from Applecomputer, Applecomputer, am I
22 reading that correctly?

23 A Yes.

24 Q Slash M. Cancado at the address of 934 North University
25 Drive in Coral Springs, Florida?

1 A Correct.

2 Q And it was tendered for delivery to DHL to an individual
3 whose initials are AS in Brazil?

4 A Yes.

5 Q And the middle the same Applecomputer account number ending
6 in 9527?

7 A Yes.

8 Q And the second page of the exhibit is just another copy of
9 the archival, same archival air bill, correct?

10 A Yes.

11 Q The third page is the accompanying commercial invoice?

12 A Yes, it is.

13 Q And the fourth and fifth page is the outbound invoice that
14 was billed for the shipment of this package, correct?

15 A Correct.

16 Q And the bill for this package ending in 4764 was
17 approximately \$33.10?

18 A Yes, it was.

19 Q It wasn't paid and it was written off as fraud by DHL,
20 correct?

21 A Correct.

22 Q 32G shows a return address also of Applecomputer?

23 A Correct.

24 Q Also, M. Cancado with a phone number at 934 North
25 University Drive, Coral Springs, Florida?

1 A Correct.

2 Q And this package was tendered to DHL for delivery to an
3 individual whose initials are JP in Brazil?

4 A Correct.

5 Q And the waybill of -- ends in 6514?

6 A Correct.

7 Q And, of course, the full waybill number is on the
8 document, correct?

9 A Correct.

10 Q The account number is right there in the middle under the
11 reference code and it is the same Apple Computer account
12 number, correct?

13 A Correct.

14 Q The second page of 32G is the accompanying commercial
15 invoice, is that right?

16 A Correct.

17 Q The third and fourth pages of 32G is the two-page outbound
18 invoice that DHL sent to Apple Computer?

19 A Correct.

20 Q And like every other invoice, the airway bill number is on
21 the second page of the outbound invoice, correct?

22 A Correct.

23 Q And this -- the charge for this package was \$21.37,
24 correct?

25 A Yes.

1 Q And this invoice wasn't paid and was written off as fraud
2 by DHL, correct?

3 A Correct.

4 Q 32H, what is the waybill number, what does it end in?

5 A 8382.

6 Q And who is it from according to the invoice?

7 A According to the waybill, it's from Applecomputer,
8 M. Cancado, at 943 North University Drive in Coral Springs.

9 Q And it was tendered for delivery to an individual whose
10 initials are JB in Brazil?

11 A Correct.

12 Q And it was tendered for delivery on April 30, 2010, with
13 the Apple Computer -- under the Apple Computer account number,
14 correct?

15 A Correct.

16 Q The second page is the accompanying -- is the second page
17 the accompanying commercial invoice for this shipment?

18 A Yes, it is.

19 Q Are the third and fourth pages of 32H, DHL's outbound
20 invoice for this shipment?

21 A Yes, it is.

22 Q And this particular shipment was billed at \$21.21?

23 A Correct.

24 Q And like the others, this invoice wasn't paid and was
25 written off as a fraudulent shipment, correct?

1 A Correct.

2 Q 32I. So 32I is a waybill ending in what?

3 A A waybill ending in 9294.

4 Q And from?

5 A This is from Applecomputer, M. Cancado, 943 North University
6 Drive in Coral Springs.

7 Q Tendered for delivery to an individual whose initials are
8 AN in Brazil?

9 A Yes, correct.

10 Q On the same Apple Computer account?

11 A Yes, account ending in 9527.

12 Q And the second page is the accompanying commercial
13 invoice, is that right?

14 A Correct.

15 Q And the fourth and fifth pages are the accompanying
16 two-page outbound invoice for that particular --

17 A Correct.

18 Q And the third and fourth -- excuse me, the fourth and
19 fifth pages are the outbound invoice, correct?

20 A Correct.

21 Q And like the others, was this shipment written off as a
22 fraudulent shipment on the Apple Computer account by DHL?

23 A Yes, it was.

24 Q That was 32I. We're getting there. The next one is 32J,
25 and what is the waybill ending for 32J?

1 A 1884.

2 Q And it's the same Applecomputer at the same 934 -- excuse
3 me, this one says 943 North University Drive address, correct?

4 A Correct.

5 Q And it was tendered for delivery -- to DHL for delivery to
6 an individual whose initials are AN in Brazil?

7 A Correct.

8 Q And this package was shipped on or about April 30, 2010,
9 on the Apple Computer account, correct?

10 A Correct.

11 Q And the second page is the accompanying commercial
12 invoice?

13 A Yes, it is.

14 Q And the third and fourth pages is the two-page outbound
15 invoice to Apple Computer for the shipment of this package with
16 waybill ending in 1884, correct?

17 A Correct.

18 Q Like the others?

19 A (Nodding head up and down.)

20 Q And this was written off by DHL as a fraudulent shipment
21 on an Apple Computer account?

22 A Yes, it was.

23 Q 32K, this is waybill ending in what, Ms. Morrison?

24 A Ending in 7520.

25 Q And who is it -- what does the waybill say it is from?

1 A From Apple Computer, Scott going to -- or Scott with the
2 address, 7797 Golf Circle in Margate, Florida.

3 Q Going to an individual whose initials are FM in Brazil?

4 A Correct.

5 Q And this was tendered for delivery to DHL on May 3rd,
6 2010, on the same Apple Computer account?

7 A Correct.

8 Q And the second page of 32K is the accompanying commercial
9 invoice?

10 A Correct.

11 Q And the third and fourth pages of 32K are the two-page
12 outbound invoice of DHL to Apple Computer, correct?

13 A Correct.

14 Q And this shipment was written off as a fraudulent shipment
15 on an Apple Computer account, correct?

16 A Yes, it was.

17 Q So that's 32A through K. Now we will do 32L. What is the
18 waybill on 32L? And this is the first page of 32L.

19 A The waybill number is ending in 6503.

20 Q And who does this -- what is listed as the from on this
21 waybill?

22 A Citrix, Inc., M. Templeton, 851 West Cypress Creek Road in
23 Fort Lauderdale, Florida.

24 Q Okay. And this was tendered to DHL for delivery to an
25 individual whose initials are GO in Brazil, correct?

1 A Correct.

2 Q And let's go to the middle, and this package was tendered
3 to DHL for delivery on March 15, 2011, correct?

4 A Correct.

5 Q And this is a different account number than the account
6 numbers we have seen through 32A through 32K, correct?

7 A Yes, it is.

8 Q And what is the account number, if you can read it?

9 A 7001. The full account number is 802397001.

10 Q And the reference code of this package was a camera,
11 correct?

12 A Yes.

13 Q Now let's go to the second page of Exhibit 32L. And this
14 is -- is this the accompanying commercial invoice?

15 A Yes, it is.

16 Q And, again, it lists the camera as the contents of the
17 package?

18 A Correct.

19 Q All right. Then we go to the third and fourth pages --
20 no, excuse me, the third, fourth and fifth, sixth and seventh
21 pages of the exhibit. Is this a five-page outbound invoice?

22 A Yes, it is.

23 Q And the account number is on the right-hand side of the
24 invoice, correct?

25 A Correct.

1 Q And who is -- to whom does that account number belong?

2 A It belongs to Citrix Systems in Santa Clara, California.

3 Q That is the entity that was associated with that account
4 number, correct?

5 A Correct.

6 Q All right. If we go to the second page of the outbound
7 invoice, we can -- there are many packages and airway bill
8 numbers on this particular invoice, correct?

9 A Correct.

10 Q And the air -- the waybill number ending in 6503 is
11 contained on the second page of the outbound invoice, correct?

12 A Correct.

13 Q Okay. Can you see it okay, the 6503, the subtotal for
14 that particular waybill number?

15 A Yes, I do. It looks like 34.

16 Q Yeah, hold on. I'm just trying to actually -- I'm sorry.
17 We are experiencing some technical difficulties. We just
18 wanted to blow up this particular one, which I think we did.

19 All right. So that shows -- that actually shows two
20 charges for that shipment, correct?

21 A Correct.

22 THE COURT: I'm sorry to stop you, but we are going to
23 have to take an afternoon break. So let's all come back at
24 2:40. All rise for the jury.

25 (Thereupon, the jury exited the courtroom at 2:30

1 p.m.)

2 THE COURT: All right. Thank you. And we will be
3 back at 2:40.

4 (Thereupon, a recess was taken at 2:30 p.m.)

5 MR. KREISS: Your Honor, may I bring something to your
6 attention?

7 THE COURT: Sure.

8 MR. KREISS: It doesn't have to be on the record.
9 There may be additional subpoenas that may need to be
10 authorized that were brought up in a sealed hearing prior to my
11 involvement in the case.

12 THE COURT: Okay. At 4:00 maybe.

13 MR. KREISS: I'm going to read the transcript now and
14 see if I can highlight --

15 THE COURT: Thank you.

16 MR. KREISS: -- to get a list.

17 (Thereupon, the jury entered the courtroom at
18 2:41 p.m.)

19 THE COURT: All righty. Please be seated. And we
20 have got everybody here. So we are going to pick up where we
21 left off. I just need to remind you, Ms. Morrison, you
22 understand you are still under oath?

23 THE WITNESS: Yes, I do.

24 THE COURT: All right. Terrific. Thank you.

25 Whenever you are ready, Ms. Mitrani. I'm sorry interrupt.

1 MS. MITRANI: No, not at all. Thank you, Your Honor,
2 so much.

3 BY MS. MITRANI:

4 Q I think we are on 32L, and does that reflect DHL's charge
5 for that shipment of that camera?

6 A Yes, it does.

7 Q Now, let's go to the whole invoice. This invoice contains
8 many shipments, correct?

9 A Yes, it does.

10 Q All right. Is that unusual?

11 A No, it's not.

12 Q Was this whole invoice written off as fraudulent shipments
13 on a Citrix account?

14 A Yes, it was.

15 Q I think one exhibit, 32E, did not have an accompanying
16 commercial invoice. Does that mean that the system didn't have
17 it?

18 A Yes, it does.

19 MR. SCOTTON: Object, Your Honor.

20 THE COURT: What is the objection?

21 MR. SCOTTON: Speculation.

22 THE COURT: Overruled.

23 THE WITNESS: Yes, it does.

24 BY MS. MITRANI:

25 Q Okay. Have you ever functioned like as an account rep or

1 anything of that nature?

2 A No, I have not.

3 Q Okay. So are you versed in the intricacies or the details
4 of like the Citrix account, for example?

5 A No, I would not be.

6 Q Okay. As the records custodian, did you do research on
7 specific invoices and specific accounts to be able to testify
8 to the jury here today?

9 A I'm not sure I understand the question.

10 Q Okay. Did you -- the documents we have been reviewing,
11 did you gather those and provide those to the government in
12 connection with your testimony?

13 A Yes, I did.

14 Q And did you do specific research on the specific accounts
15 that we have talked about here today?

16 A No, I didn't really. I just pulled the documents from the
17 system.

18 Q Okay. Ms. Morrison, in connection with your testimony,
19 did you prepare a spreadsheet summarizing the fraudulent
20 shipments on the account?

21 A The spreadsheet was prepared by our billing department.

22 MS. MITRANI: Okay. No further questions, Your Honor.

23 THE COURT: Cross?

24 MR. SCOTTON: Yes.

25

1 CROSS EXAMINATION

2 BY MR. SCOTTON:

3 Q Mrs. Morrison, how are you doing today?

4 A I'm fine. Thank you.

5 Q Ms. Morrison, as the prosecutor was trying to present her
6 documents here, and you probably have heard and understand that
7 I was trying to object and contested that the documents is
8 incomplete. Do you recall that?

9 A Yes, I do.

10 Q Do you recall when I was calling to say that the documents
11 that is incomplete present to the Court?

12 A I did hear you say that.

13 MS. MITRANI: Object to the form of the question.

14 THE COURT: Overruled.

15 BY MR. SCOTTON:

16 Q Which department you working for again?

17 A I work for the legal department.

18 Q The legal, DHL legal department?

19 A Yes, I do.

20 Q Can you kind of explain to us here exact -- you know, on
21 your position, what you handle over there in the legal
22 department?

23 A I respond to subpoenas issued by the U.S. government.

24 Q So basically the subpoena, it is the government requesting
25 information?

1 A Yes.

2 Q And when the subpoena has sent to your department, the
3 subpoena has explanation what the government was looking for?

4 A Yes, they do provide information on what they are looking
5 for.

6 Q And how do you start getting the information for the
7 government?

8 A I can either pull the documents myself or cause the
9 documents to be pulled, request that the documents be pulled
10 from another department within the company.

11 Q So basically, then, you can either retrieve those
12 documents yourself or call a specific department to retrieve
13 those documents for you, that's correct?

14 A Correct.

15 Q Do you as a -- someone that work in the legal department,
16 do you familiar with those paperwork on the shipping that goes
17 international?

18 A Yes.

19 Q Okay. Do you agree with me that those documents present
20 to the Court, missing papers?

21 A I'm not sure.

22 Q How many -- when you create a electronic waybill, how many
23 waybills was print out -- how many paperwork was print out
24 altogether for the shipping to leave to the final destination?

25 A Each package is accompanied by a waybill.

1 Q And how many waybills need to be on that box when they
2 leave?

3 A There is one waybill.

4 Q That's not accurate, right?

5 A I don't understand.

6 Q Do you disagree with me there is two waybills placed on a
7 box in a certification of origin?

8 A I don't understand what you are saying.

9 Q You don't understand my question, or you don't understand
10 the documents that goes on the box?

11 A I don't understand your question.

12 Q The question. Do you disagree with me there is more than
13 one bill that has to be placed on the box?

14 A I still don't understand your question. Sorry.

15 Q You don't understand my question?

16 A No.

17 Q How many waybills need to be on a box, Mrs. Morrison?

18 A One waybill.

19 Q Just one waybill?

20 A (Nodding head.)

21 Q And the one that the government has showed here, you claim
22 to be a copy from the DHL database, correct?

23 A There was an original and there was a copy.

24 Q If I show you the other waybills that will need to go on
25 the box to certificate of origin, would that recollect your

1 memory?

2 A I'm really not sure what documents you have.

3 MR. SCOTTON: Your Honor, may I approach the witness?

4 THE COURT: Yes.

5 BY MR. SCOTTON:

6 Q Ms. Morrison, do you see those paperwork in front of you?

7 A Yes, I do.

8 Q The first one is a DHL WPX, correct?

9 A From the looks of it, it looks to be a DHL waybill. I see
10 that the printout is from 2007.

11 Q And the other one has place in a pouch waybill, correct?

12 A Which document are you referring to?

13 Q Also another waybill?

14 A Are you pointing me specifically to a waybill here that
15 you --

16 Q Okay. This is the WPX, correct?

17 A This is a DHL waybill.

18 Q Right. And can you tell what -- which one is that one?

19 A I see two DHL waybills.

20 Q Exactly. They are the same shipment, right, the same
21 waybill?

22 A They do have the same waybill number.

23 Q Exactly. And which document is this one here,

24 Mrs. Morrison?

25 A This is a certificate of origin.

1 Q And we got a one document missing here still, correct?
2 The commercial invoice, correct?

3 A I don't see a commercial invoice.

4 Q It is missing, yes, but to be altogether --

5 THE COURT: I'm sorry, Mr. Scotton, can you return to
6 the podium if you are going to ask questions. Thank you.

7 BY MR. SCOTTON:

8 Q So the only document missing over there out of that
9 shipment is the commercial invoice, correct?

10 A I can't say for sure.

11 Q The prosecutor has present to you waybill, commercial
12 invoice, and you confirm that that's the documents provided to
13 be able to ship a box. Out of that shipment over there, the
14 only documents missing right now, it is the commercial invoice,
15 correct?

16 A I'm not sure about this particular shipment.

17 Q Did you don't agree with the prosecutor that to ship a
18 package, you need a commercial invoice?

19 A I'm not sure about this particular shipment that you
20 are -- that you have in front of me here.

21 Q What are you not sure about that particular?

22 A Because I don't know the details of the shipment.

23 Q Right. But you agree there is two waybills?

24 A There could be a commercial invoice, but I'm not sure
25 about this specific shipment.

1 Q Mrs. Morrison, it's not the fact that when you generate a
2 paperwork to ship international, all those paperworks has to be
3 together? So basically, you know, the information you give to
4 the prosecutor is not accurate, correct, because you don't have
5 the knowledge exactly how --

6 A The information that I provided to the prosecutor was
7 pulled from the DHL database.

8 Q Right. But was not the full entire information that has
9 been pulled out of the database, correct?

10 A Everything that I provided to the prosecutor was pulled
11 from the DHL database.

12 Q Do you have a knowledge on the international shipping?

13 A Limited. I'm really a records custodian and I pull
14 information from DHL's databases.

15 Q Right. So but basic -- pulling information out of the
16 database, that will give you knowledge of exactly the
17 requirements and documents that need to be present to be able
18 to ship a package international?

19 A Pulling information from the database provides me with the
20 information that was actually sent with the shipments.

21 Q Right. So then they give you the information that was on
22 that shipment?

23 A Right.

24 Q So then we can say that when you pull those information
25 given to the government, waybills and the certificate of origin

1 out of those shipment, it is missing?

2 A No.

3 Q It is not?

4 A No.

5 Q It is not a requirement to shipping and have the
6 certificate origin international? This is the rule of DHL,
7 right?

8 MS. MITRANI: Asked and answered.

9 THE COURT: Overruled.

10 BY MR. SCOTTON:

11 Q Do you deny that DHL has a policy to ship international,
12 you need the certificate of origin?

13 A I'm not sure.

14 Q The document is in front of you, Mrs. Morrison. I didn't
15 create that, DHL did it.

16 THE COURT: Is there a question, Mr. Scotton?

17 BY MR. SCOTTON:

18 Q It is not required for DHL to have those documents in
19 place to be able to ship a box international?

20 A I'm not sure.

21 Q So then how can you give statement to the prosecutor that
22 your information is accurate and those documents provide it is
23 fully taken out of the database complete?

24 A Well, I didn't pull this shipment that you have in front
25 of me, I didn't pull any records.

1 Q I understand that Ms. Morrison, but my question was that
2 in all the shipments that you pulled out of the records, all of
3 this paperwork should have be together also, right?

4 A All of the paperwork that was provided to the prosecutors
5 went along with the shipment. So that means that the shipment
6 was complete and was able to move to its destination.

7 Q I understand that. But when you pull all the information
8 out of the database, you missing information, correct? You
9 deny that you are missing information by look in those papers
10 and see that those papers should have be on the shipments?

11 A I have no knowledge of this shipment that you put in front
12 of me.

13 Q Ms. Morrison, I'm not asking for you to have knowledge on
14 this shipment that is front of you. I'm just asking to have a
15 knowledge that every single package that goes international
16 need to have those type of forms. And you --

17 A It would at a minimum need to have a waybill, a waybill
18 image.

19 Q Right. Both of them and the certificate of origin and
20 commercial invoice?

21 A It would at least have to have a copy of a waybill.

22 Q Right. And then those provide here now from the
23 government do not have those copies or those certificate of
24 origin, right?

25 A For all of the shipments -- the shipment information that

1 I provided to the government, each had a waybill image.

2 Q The prosecutor has been asking questions about if the
3 Apple account has been paid or not paid. Do you remember that
4 question?

5 A Correct.

6 Q And you said the account was not paid?

7 A Correct.

8 Q And did you work also for the billing department?

9 A Can you repeat that, please?

10 Q Did you also work for the billing department?

11 A No, I do not work for the billing department.

12 Q You got that information from the billing department?

13 THE COURT: Mr. Scotton, you've got to wait until she
14 answers the question because the reporter --

15 MR. SCOTTON: I'm sorry.

16 THE COURT: -- can only take down one. All right?

17 MR. SCOTTON: Don't punish me.

18 BY MR. SCOTTON:

19 Q Does anybody from the billing department has provide that
20 information to you?

21 A Yes.

22 Q And who might be the person -- do you recall the person
23 who gave you that information?

24 A I don't have the name on the top of my head, no.

25 Q Have you been part of this investigation?

1 A Only to the extent that I provided records to the
2 prosecutor.

3 Q And when did you start providing the information to the
4 prosecution?

5 A Summer of 2013, I would say late summer.

6 Q In 2013, you have provide them those information?

7 A Correct.

8 Q Mrs. Morrison, do you have knowledge in reference of those
9 track numbers how the system created those track numbers?

10 A The tracking numbers?

11 Q Yes.

12 A For?

13 Q DHL.

14 A For DHL?

15 Q Yes.

16 A Yes.

17 Q Do you disagree with me that those track numbers after
18 30 days get a recycle?

19 A Tracking numbers are recycled. I'm not sure of the time
20 frame.

21 Q Then you just mentioned record that you provide some of
22 those information that I said is incomplete to the prosecutor
23 in 2013, and some of the information has a date of 2008, 2009.
24 How -- knowing that DHL recycle waybills, how can you provide
25 that information on a spreadsheet?

1 A Well, there are other pieces of information that can be
2 used to link the tracking number to a specific shipment.

3 Q Did you have -- provide them all the waybills from those
4 accounts and all the commercial invoice and all the
5 certificates of origin to the prosecutor?

6 A Could you repeat that, please?

7 Q Have you provided to the prosecutor all the waybills, the
8 original waybills with the commercial invoice and the documents
9 that is in front of you right now to the prosecution?

10 A The documents in front of me right now, I'm --

11 Q When you provide them the information you have provide,
12 that you mentioned that you provide, did you find a way to get
13 also all the waybills out of the system, all of the commercial
14 invoice, all of the certificate of origin, of those documents
15 the prosecutor present to the Court?

16 A I provided the information that was in the system.

17 Q So then the information was incomplete, correct?

18 A I don't understand what you are talking about.

19 Q All right. Do you work also for the fraud department on
20 DHL, or just for the legal department?

21 A I do not work for the fraud department.

22 Q And during the cross-examination with the prosecutor here,
23 you claim that the accounts was fraudulent accounts, correct?

24 A Correct.

25 Q And how did you get that information?

1 A I received information from the billing department
2 confirming that there were specific transactions that were
3 written off as fraud.

4 Q And they give that information to you also in 2013?

5 A Correct.

6 Q The legal department for DHL that you working for is in
7 Plantation?

8 A Correct.

9 Q Before this hearing here, have you sit down with the
10 prosecutor in her office?

11 A Yes, I have.

12 Q How many times you done that?

13 A I would say less than ten times for varying times.

14 Q And all the ten times during 2013?

15 A I would say less than ten times for the remaining periods.

16 Q How many hours do you think you might spend over there in
17 that office?

18 A In one sitting or over the --

19 Q Over the course of --

20 A Maybe across less than ten visits, maybe four to five
21 hours. I'm not sure.

22 Q And basically your only involvement in this case here was
23 by just provide them -- respond them on the subpoenas, correct?

24 A Just pulling documents.

25 Q You cannot make a statement on the course of the

1 investigation, who was involved, who was not involved, and who
2 was accused, who was not accused, correct?

3 A Correct.

4 Q Thank you, Ms. Morrison.

5 MR. SCOTTON: Your Honor, no more questions.

6 THE COURT: Redirect?

7 MS. MITRANI: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. MITRANI:

10 Q Ms. Morrison, can you tell the members of the jury about
11 how DHL stores waybill information?

12 A Sure. Basically, the information from the waybills are
13 uploaded into our systems and we would keep the -- under the
14 tracking number, we would keep the name and address of the
15 person sending the package, the recipient, the associated
16 account number. The date is also kept as records, and it's all
17 kept electronically.

18 Q And does the electronic records maintain an exact copy of
19 the waybill as it looks like?

20 A Yes, it does.

21 Q And then does the archival copy contain the exact waybill
22 with the addition of the account number?

23 A Yes, it does.

24 Q And so if there's a waybill, the waybill that's on the
25 package and then there's the archival, it's the same

1 information, the same tracking number, the same sender, same
2 receiver, same everything except the account number that
3 goes -- excuse me, the waybill that goes on the package doesn't
4 have the account number publicized for the world to see,
5 correct?

6 A Correct.

7 Q In this instance, were you requested to pull specific
8 archival documents relating to specific -- strike that.

9 In this case, did we ask you to pull specific waybills as
10 identified by waybill number?

11 A Correct.

12 Q And these waybills that we just published a little while
13 ago, have they been changed or altered in any way?

14 A Absolutely not.

15 Q So is this the same exact waybill that were affixed to all
16 those packages that were sent to Brazil?

17 A Yes, they were.

18 Q And then the government also asked you to search your
19 business records for the accompanying DHL invoice associated
20 with the particular shipment?

21 A Correct.

22 Q And is that what you provided to the government?

23 A Correct.

24 Q Did the government ask you to provide certificate of
25 origins or any other documents?

1 A No.

2 Q Is a certificate of origin an independent document from
3 the waybill?

4 A Yes, it is.

5 Q A completely separate document, one is a certificate of
6 origin and one is a waybill, correct?

7 A Correct.

8 Q Does not having a certificate of origin affect the
9 integrity of the waybill?

10 A No, it does not.

11 Q When the defendant was asking you a line of questioning
12 whether these documents are complete, are the -- did you give
13 the -- are composite Exhibit 32, is it the complete waybill?

14 A It's the complete waybill, yes.

15 Q And when we asked you for the outbound invoice associated
16 with the particular shipment, is it the complete invoice?

17 A It is the complete invoice.

18 Q And did we also ask you to pull the accompanying
19 commercial invoice for the particular waybill at issue?

20 A Well, I don't know if it was specifically asked of me, but
21 based on the tracking number, all of that information
22 accompanied -- you know, all of the documents associated with
23 the tracking number automatically came up with the tracking
24 number.

25 Q And that's what you provided to the government?

1 A And that's what I provided.

2 Q When the defendant asked you about waybill numbers being
3 recycled, do you have any knowledge whatsoever how -- if that
4 happens and, if so, what the time period is?

5 A I do know that waybill numbers are recycled. I don't know
6 what the time period is, but we are able to use different
7 identifiers to make sure that, you know, the specific waybill
8 that we are looking for matches based on the address, the
9 account number, the sender, recipient. So there are other
10 variables. Although the tracking numbers are recycled, there
11 are other variables that we can use to identify.

12 Q And is the account number one them?

13 A The account number is one of them.

14 Q And is the -- is the tracking number to get linked to the
15 account number?

16 A Well, it would be, you know, the account number, the --
17 the date, the name of the sender and the recipient. So there
18 are multiple variables there.

19 Q Okay. And the specific shipments that we talked about in
20 composite 32, these were all identified by DHL as fraudulent
21 shipments on either the Apple Computer account or the Citrix
22 account, correct?

23 A Yes, they were.

24 MS. MITRANI: If I could have a moment, Your Honor.

25 THE COURT: All right.

1 MS. MITRANI: No further questions, Your Honor.

2 THE COURT: All right. Thank you. Ms. Morrison, you
3 are excuse. And the government may call its next witness.

4 MS. MITRANI: The government calls Justin McMahon.
5 Oh, but actually before we do that, Your Honor, we would like
6 to move in Government's Exhibits 10, 24, and 25 pursuant to
7 902.11 certifications.

8 THE COURT: Any objection?

9 MR. SCOTTON: A minute, Your Honor.

10 THE COURT: Sir, if you want to sit down while we are
11 waiting for Mr. Scotton, you may.

12 How are we doing over there, Mr. Scotton?

13 MR. SCOTTON: I'm searching for those paperworks that
14 it doesn't like I'm having here.

15 THE COURT: Ms. Mitrani, can you show him your copy
16 again, please.

17 All right. Are there any objections?

18 MR. SCOTTON: Yes, Your Honor.

19 THE COURT: What are the objections?

20 MR. SCOTTON: The documents there has been modified.

21 THE COURT: Government?

22 MS. MITRANI: Well, first, let's take it one by one.
23 I don't believe the defendant has an objection to Exhibit 10,
24 correct?

25 THE COURT: Is there any objection to Exhibit 10?

1 MR. SCOTTON: No, Your Honor.

2 THE COURT: All right. Exhibit 10 is admitted.

3 (Thereupon, Government's 10 received in evidence.)

4 MS. MITRANI: And I don't think there's any objection
5 to Exhibit 25.

6 MR. SCOTTON: No, Your Honor.

7 THE COURT: No, there's no objection?

8 MS. MITRANI: No to 25.

9 THE COURT: Okay.

10 (Thereupon, Government's 25 received in evidence.)

11 MS. MITRANI: On 24, what I handed the defendant was
12 the complete document that I received from the subpoenaed
13 entity, and he took out two pages in the middle. He objects to
14 two particular pages in the middle.

15 THE COURT: All right. Come sidebar with the
16 document, please.

17 (Thereupon, the following was heard sidebar.)

18 MS. MITRANI: That's 24. These are the two documents
19 you object to, I think. I think 11 and 12 is what's Bates
20 labeled.

21 THE COURT: Okay. What's the objection?

22 MR. SCOTTON: Your Honor, this has been modified
23 because if they have all my bank records, I never have in my
24 whole entire life here living in United States have account
25 that hold this kind of money. This is not true. There is no

1 bank record ever going to show that I have accounts that has
2 this kind of money sitting in it. Never have it happen.

3 THE COURT: Just one minute, please.

4 MR. SCOTTON: We can go to the list of the accounts.

5 THE COURT: Can you give me a second to look at it.

6 MR. SCOTTON: Yes.

7 THE COURT: Thank you. The problem with this is that
8 this is an objection. Let me just make sure that I remember
9 this correctly. My recollection of this is that these
10 documents, the government had moved to admit without respect to
11 relevance determinations to be made at this time, that is
12 during the trial, based on the 902.11 certifications and that
13 you received copies of these. And there was a hearing at which
14 time I asked if you had any objections on the basis of it being
15 a 902.11 certification, and you didn't. So I think what I said
16 was I admitted them, but maybe I'm remembering this wrong. Was
17 this one of the documents that was subject to that motion?

18 MR. SCOTTON: I don't think so, Your Honor.

19 MS. MITRANI: I think it was, Your Honor. If you
20 want --

21 THE COURT: Can you double-check for me, please?

22 MS. MITRANI: Yeah. In the interest of time, I'll
23 withdraw the admission of it today. I will look at it tonight
24 and we can address it tomorrow.

25 THE COURT: Okay. Very good. That's fine. Thank

1 you.

2 MR. SCOTTON: And what about the defendant also
3 provide --

4 THE COURT: She's not going to do this right now.

5 MR. SCOTTON: But she's going to try to do it
6 tomorrow.

7 THE COURT: Well, we will deal with it tomorrow, but
8 one of the issues here is whether I already ruled on it. If I
9 did, you had opportunity to object to the incompleteness of the
10 document and they could have brought in the records custodian.
11 My recollection is that you did not do that. And so if you
12 have an objection and your only objection is based on
13 completeness of the record, then that would be overruled
14 because I already did it.

15 But if this is not one of the documents that I already
16 ruled on, I apologize, but it was several months ago and I
17 don't remember specifically which ones were ruled on, we will
18 have to look it up. If it was not one of the ones I ruled on,
19 then it might be an appropriate objection and we can deal with
20 it. But I won't know that until tomorrow and she's not going
21 to deal with it right now. So there's no need to address it
22 further. Thanks.

23 MR. SCOTTON: Thanks.

24 (Thereupon, the following was heard in open court.)

25 MS. MITRANI: Your Honor, what we will do in the

1 interest of time is we will withdraw our offer of 24 and renew
2 it at another time.

3 THE COURT: All right then.

4 MS. MITRANI: Has he been sworn in?

5 THE COURT: You need to go ahead and swear him in.

6 THE COURTROOM DEPUTY: Please raise your rights hand.

7 JUSTIN McMAHON

8 Having been first duly sworn on oath, was examined and
9 testified as follows:

10 THE COURTROOM DEPUTY: Please be seated, state and
11 spell your first and last name for the record.

12 THE WITNESS: Justin McMahon. It's J-U-S-T-I-N, last
13 name is M-C-M-A-H-O-N.

14 DIRECT EXAMINATION

15 BY MS. MITRANI:

16 Q Good afternoon, how are you today?

17 A Very well.

18 Q Where do you live? Just give us a city and a state is
19 fine.

20 A Pembroke Pines, Florida.

21 Q And where did you grow up?

22 A In Pembroke Pines, Florida.

23 Q Where did you go to college?

24 A I went to college in Boston.

25 Q And did you obtain a degree?

1 A I did, a bachelor's degree.

2 Q In what and in what year?

3 A In 2001, I graduated from college.

4 Q Okay. By whom are you presently employed?

5 A DHL Express.

6 Q And how long have you been employed by DHL Express?

7 A Over 9 years.

8 Q Have you had different -- have you had different
9 responsibilities within the company, or no?

10 A I have had multiple titles, but the role was fairly the
11 same.

12 Q Okay. Can you tell the members of the jury, first, what
13 is your present title?

14 A Now I'm the senior manager for international sales for the
15 east coast of Florida.

16 Q And what do you do as the senior manager for sales? Well,
17 let me take that back. How long have you been the senior
18 manager for sales?

19 A About two months.

20 Q Okay. Well, congratulations.

21 A Thank you.

22 Q What were you doing before that?

23 A I was just the -- I was just a traditional manager for
24 international sales.

25 Q And before being the manager for international sales, what

1 were you?

2 A Then I was an account executive.

3 Q So have you been dealing with sales and accounts, then,
4 throughout your tenure with DHL?

5 A Right, exactly.

6 Q All right. So can you tell the members of the jury a
7 little bit about what it is you do, what does sales do and what
8 does Justin McMahon --

9 A Yeah. Sure.

10 Q What does he do?

11 A So my role, my primary role is to bring on new accounts to
12 DHL. So if a customer -- or if a prospective customer is
13 shipping 20 boxes a day to Columbia with FedEx, it's my
14 responsibility to bring that business to DHL. That's my sole
15 responsibility. That's my primary responsibility.

16 Q You try to open up new accounts?

17 A Right.

18 Q How do you go about doing that?

19 A Either I am provided leads or I cold call customers that I
20 show ship internationally and just try to get my foot in the
21 door, begin a conversation with someone who makes decisions,
22 learn about what they are doing, and then I present a solution
23 that hopefully is more attractive than their current situation
24 and ultimately bring that business to DHL.

25 Q And so when you are trying to -- well, let me ask you a

1 couple questions. When you say offer a solution to a
2 prospective customer, what is probably the most important thing
3 to your prospective customer?

4 A I'm sorry, can you ask that again? I don't understand.

5 Q Okay. I'll ask it a much simpler way.

6 A Sure.

7 Q How does shipping rates, what does DHL charge a customer,
8 how does that factor into everything?

9 A Yeah, that's always one of the topics of conversation.
10 The price is always a factor.

11 Q Does the price that DHL charge -- charges a customer, does
12 the amount of shipping that a customer might do, does that
13 affect DHL's charges to them?

14 A Yes, that's correct. Yeah, the discount is based on
15 volume.

16 Q And --

17 A If you ship more, you get a better discount, right.

18 Q Okay. And so let me ask you, what are the kinds of things
19 that you are looking for? When you are looking to open a new
20 account, what are some of the things that you are looking for?

21 A Yes. So revenue is a big -- revenue is a big piece of
22 that. How much is the customer currently spending with FedEx,
23 that's most important to me. The larger account, you know, the
24 more praise you get at work and, you know, that's how you get
25 paid. So that's the main thing.

1 The second most important item is, you know, where are
2 they shipping to. You know, we are based in South Florida, so
3 we have a pretty extensive network in South America. So, you
4 know, I try to focus on customers that ship either inbound from
5 Asia Pacific or outbound to Latin America based on our
6 geographical location.

7 Q And when you are trying to sign up a new client are there
8 certain documents that you require that the prospective client
9 submit to DHL?

10 A Yes.

11 Q Okay. Tell the members of the jury a little about that.

12 A Yeah, there's a couple things. One, we have a customer --
13 we have the prospective customer fill out a credit application,
14 which then I send to our credit team and they either approve or
15 deny X amount of credit monthly spend with DHL. We also have
16 the prospective customer sign a letter of agreement with DHL
17 which gives the prospective customer a monthly revenue number
18 which they need to hit in order to retain the discounts that's
19 given to them. Those are the two primary documents for most
20 customers.

21 Q Did there come a time when you were involved in opening an
22 account for ZAP Games?

23 A Yes.

24 Q So tell me and the members -- the members of the jury and
25 myself approximately how that came to be?

1 A Yeah. So I was given -- I was provided a lead from
2 internally at DHL. And then I -- so, yeah, so I was provided a
3 lead from internally DHL. I then reached out to the contact at
4 ZAP Games via phone and email. And then it was a bit of back
5 and forth, phone tag and email tag for a little while and then
6 we finally were able to make a connection. So at that point, I
7 tried to set up -- at that point, I did set up a time for us to
8 get together so that I could learn more about what ZAP Games
9 was doing and have that prospective customer fill out the
10 documents that I just mentioned, the credit application and
11 letter of agreement.

12 Q And did you come to meet the representative of ZAP Games?

13 A Yes.

14 Q And what was his name?

15 A Roger Scotton.

16 Q And did you have a face-to-face meeting with
17 Roger Scotton?

18 A Yes.

19 Q Can you tell us where it occurred?

20 A Yes. So when I was provided the lead from the internal
21 DHL source, I was given an address. So when I -- that was the
22 address that I wanted to meet Roger, at which I wanted to meet
23 Roger, right. So I had -- so when I spoke with Roger, he
24 agreed to meet with me at that address.

25 So when we got to that address, it was -- it was a

1 storefront, but there was not -- there was nothing inside. It
2 was more of a construction. Maybe he was redoing it, putting
3 floors down, but it wasn't in a -- it wasn't in store mode. So
4 then we agreed to instead of having the meeting standing up in
5 the storefront, we agreed to walk down the street and we sat at
6 a coffee shop type store at a table to chat.

7 Q Do you remember what city and state that was?

8 A Yeah, that was in Boca Raton, Florida.

9 Q And did you sit down with Roger Scotton?

10 A Yes.

11 Q And who else was present, if anybody?

12 A No. It was just Roger and myself.

13 Q And tell us about what happened at that initial encounter?

14 A So Roger -- I asked the general questions, you know, tell
15 me about ZAP Games, where are you shipping, how often are you
16 shipping, how much --

17 Q Let me slow you down.

18 A Yeah.

19 Q So why don't you tell us what you asked Roger Scotton and
20 what he responded to you?

21 A Okay. So I asked Roger about ZAP Games, where are you
22 shipping.

23 Q What did he say?

24 A He ships outbound to Brazil, from the United States to
25 Brazil. How much money are you spending per month on these

1 outbound shipments, to which he responded \$20,000 a month. I
2 asked him how many shipments are you shipping per day outbound
3 to Brazil, and I don't remember the number, but I do remember
4 it was a lot.

5 And I believe we had some other conversations about Roger
6 and some of the things he does in his like social time, just
7 more of like icebreakers. When I'm first meeting a customer, I
8 just kind of, you know, break the ice and just learn about who
9 they are as a person so I can connect for a sale.

10 Q And what did you find out from him?

11 A That he raced cars. I think he had like a motorcycle,
12 that he's from Brazil, that he goes back and forth to Brazil.

13 Q Do you see him in the courtroom here today?

14 A I do.

15 Q And can you identify him by what he's wearing?

16 A I'm sorry?

17 Q Can you identify him by what he is wearing?

18 A Yes. Yeah, he's right over here wearing a gray suit.

19 MS. MITRANI: Let the record reflect that Mr. McMahon
20 has identified the defendant.

21 THE COURT: The record will so reflect.

22 BY MS. MITRANI:

23 Q So what was your impressions about this potential new
24 account of ZAP Games?

25 A It's like -- well, I thought it was going to be a good

1 opportunity. What I liked about it was that what was -- when I
2 meet prospective customers, they are either -- they are doing
3 one of two things. They are either looking -- they either have
4 this idea that they want to ship, or they are shipping with
5 another carrier and I'm just going to switch it over. And the
6 latter is much easier because they are already shipping with
7 FedEx so all I have to do now is bring that business to DHL,
8 there is no learning curve.

9 So he tells me that he's already shipping outbound with
10 UPS or FedEx, I don't remember who the competitor was, but so
11 now all I had to do was just bring that business over to DHL.
12 That, plus he says he's shipping a lot of packages each day,
13 he's shipping \$20,000 per month. I mean, it's all -- this is
14 all leads -- or adds up to be a great account.

15 Q Does the revenue, the amount of money that the account
16 brings in, does it have an impact on your compensation?

17 A Yes.

18 Q So is it as simple as the more money you bring in, the
19 more money you get paid?

20 A The more I get paid, correct.

21 Q Okay.

22 A So \$20,000 would be a good size account.

23 Q Were you can excited about that potential account?

24 A Yes, very much so.

25 Q When you spoke with the defendant, did he mention some

1 other entities or businesses that he had in addition to
2 ZAP Games?

3 A Yes.

4 Q What do you remember with that, with respect to that?

5 A He had a -- like a Pak Mail type store. I don't remember
6 if it was actually entitled Pak Mail, but it was a storefront
7 which people could bring their packages to him, he would charge
8 them a fee and then he would ship them to wherever they wanted
9 to ship them to.

10 Q Was that the storefront that was being built out, or you
11 don't know?

12 A I don't know.

13 Q All right. You just met him at a table outside some
14 storefront that was being built out, right?

15 A Right, exactly.

16 Q Do you remember any other entities or businesses the
17 defendant mentioned to you during this initial meeting?

18 A At that meeting, I don't think that -- I think that's it,
19 just those two.

20 Q Okay. Did the issue of shipping to Brazil and Brazilian
21 customs come up?

22 A Yes.

23 Q Okay. Can you tell the members of the jury about that?

24 A Yes. So shipping to Brazil is not the easiest country --
25 shipping to Brazil is not the easiest country to ship to. The

1 customs situation in Brazil is difficult to navigate through.
2 So the duties and taxes that are assessed on a shipment's value
3 when it gets to a certain country is typically 10, 15 percent
4 of the value of the shipment. When you ship to Brazil, it
5 could be upwards of a hundred percent of the value of the
6 shipment. That, plus the extreme scrutiny that all shipments
7 go through when they arrive to the gateways in Brazil, which
8 are the cities in which the shipments enter the country.

9 So our shipments enter the country through Sao Paulo,
10 Brazil. And when a customer is shipping to Sao Paulo, Brazil,
11 with DHL, the duties and taxes have to be paid by the receiver.
12 A lot of times the receiver -- the receiver in Brazil. A lot
13 of times the receiver buys, let's say, a pair of jeans in the
14 United States for a hundred bucks, they ship it to Sao Paulo,
15 the receiver in Sao Paulo gets the package and upon receipt,
16 they owe a hundred bucks. They say, wait a minute, I just paid
17 a hundred dollars for the jeans, now I have to pay another
18 hundred? So the customer a lot of times won't pay that fee and
19 then you have a problem. Now I have to get involved and I have
20 to help clear it, it's a big mess.

21 Well, Roger told me that he was going to ship all of his
22 packages, the duties and taxes paid here in the states. And
23 that's a dream because the shipments can arrive in Brazil, it
24 doesn't matter what the duties and taxes are, they are going to
25 clear customs and the receiver is going to get the shipment,

1 the shipment will be delivered and Roger would pick up the tab
2 for duties and taxes here in the states. It's not a common way
3 to ship, but when a customer wants to do it, it's great for
4 sales because it's easy.

5 Q So how did you leave it after that initial meeting?

6 A I explained to him that I needed -- there's a couple
7 things that I need to do in order to get the account created.
8 One was to have credit approved and another was to have pricing
9 approved. So in order to get credit approved --

10 Q Well, let me ask you.

11 A Go ahead.

12 Q I'm sorry.

13 A Sure.

14 Q No, my fault. When you say having to get credit approved,
15 can you explain to the jury what you mean by that?

16 A Sure. So because everything --

17 MR. SCOTTON: Object, Your Honor.

18 THE COURT: What's the objection?

19 MR. SCOTTON: Leading.

20 THE COURT: Overruled.

21 THE WITNESS: So all the -- the service that DHL
22 provides is -- because the service we provide is completed
23 before the customer receives an invoice, right, we ship a
24 package from United States to Brazil, the customer receives a
25 package, the invoice is created a week later. So if the

1 customer doesn't pay, then DHL has to eat the cost to move it.
2 So because we are in that type of business, we or DHL's credit
3 department looks into the credit history of all of the
4 prospective customers to insure that they are linking
5 themselves to a credible company.

6 Q Okay. And I interrupted you. You said so that's part of
7 the process. And what else was going to be part of the process
8 to approve the defendant and ZAP Games?

9 A Right. So the other part of the process would be for me
10 to submit the shipping profile that Roger described to me at
11 the coffee shop to our pricing team, and our pricing team would
12 then, in turn, provide me with a suggested discount to offer
13 Roger on his outbound shipments to Brazil.

14 Q And did you request documents from the defendant in
15 connection with opening the ZAP Games account?

16 A Yes.

17 Q And did you also provide documents to the defendant in
18 connection with the Zap Games account?

19 A Yes.

20 MS. MITRANI: Your Honor, may I approach?

21 THE COURT: Yes.

22 MS. MITRANI: May I approach, Your Honor?

23 THE COURT: Yes.

24 BY MS. MITRANI:

25 Q So I'm going to show you what we call composite Exhibit A,

1 which consists of different documents. And what I want to do
2 is just maybe briefly go through them with you first here and
3 then we will ask more extensive questions later, okay?

4 A Okay.

5 Q I'm showing you Government's Exhibit 8A. Is that a
6 document that you received back from the defendant in
7 connection with the opening of the Zap Games account?

8 A Yes.

9 MS. MITRANI: Your Honor, the government would move 8A
10 into evidence.

11 THE COURT: Any objection?

12 MR. SCOTTON: No, Your Honor.

13 THE COURT: 8A is admitted.

14 (Thereupon, Government's 8A received in evidence.)

15 BY MS. MITRANI:

16 Q I'm showing you copy of Government's Exhibit 8B. Is this
17 the letter that you sent to Roger Scotton with respect to the
18 Zap Games opening of that account?

19 A Yes.

20 MS. MITRANI: Your Honor, 8B, we offer 8B.

21 THE COURT: Any objection?

22 MR. SCOTTON: No, Your Honor.

23 THE COURT: 8B is admitted.

24 (Thereupon, Government's 8B received in evidence.)

25

1 BY MS. MITRANI:

2 Q I'm showing you Government's Exhibit 8C. Is this a copy
3 of the letter that you received back?

4 A Yes.

5 MS. MITRANI: The government would offer 8C into
6 evidence.

7 THE COURT: Any objection?

8 MR. SCOTTON: No, Your Honor.

9 THE COURT: 8C is admitted.

10 (Thereupon, Government's 8C received in evidence.)

11 BY MS. MITRANI:

12 Q I'm showing you what's been marked as Government's
13 Exhibit 8D. Is this a copy of a purported bank statement that
14 you received from the defendant in connection with the opening
15 of the Zap Games account?

16 A Yes.

17 MS. MITRANI: The government would offer 8D into
18 evidence.

19 THE COURT: Any objection?

20 MR. SCOTTON: No, Your Honor.

21 THE COURT: 8D is admitted.

22 (Thereupon, Government's 8D received in evidence.)

23 BY MS. MITRANI:

24 Q Showing you Government's Exhibit 8E. Is this a First Data
25 merchant card processing statement that you received from the

1 defendant in opening the account?

2 A Yes.

3 MS. MITRANI: Your Honor, the government would offer
4 8E into evidence.

5 THE COURT: Any objection?

6 MR. SCOTTON: No, Your Honor.

7 THE COURT: 8E is admitted.

8 (Thereupon, Government's 8E received in evidence.)

9 BY MS. MITRANI:

10 Q I'm showing you 8F. Is this email communication that you
11 had in connection with the Zap Games account?

12 A Yes.

13 Q And did you forward this email communication to the FBI?

14 A Yes.

15 MS. MITRANI: The government would offer 8F into
16 evidence.

17 THE COURT: Any objection?

18 MR. SCOTTON: No, Your Honor.

19 THE COURT: 8F is admitted.

20 (Thereupon, Government's 8F received in evidence.)

21 BY MS. MITRANI:

22 Q I am showing you what's been marked as 8G. Is this also
23 email communication you had in connection with the opening of
24 the Zap Games account which you forwarded to me?

25 A Yes.

1 MS. MITRANI: The government would offer 8G into
2 evidence.

3 THE COURT: Any objection?

4 MR. SCOTTON: No, Your Honor.

5 THE COURT: 8G is admitted.

6 (Thereupon, Government's 8G received in evidence.)

7 BY MS. MITRANI:

8 Q And, lastly, I'm showing you government's 8H. Is this
9 also email communication that you had with the defendant
10 regarding the opening of the Zap Games account which you
11 forwarded to me?

12 A Yes.

13 MS. MITRANI: The government would offer 8H into
14 evidence.

15 THE COURT: Any objection?

16 MR. SCOTTON: No, Your Honor.

17 THE COURT: 8H is admitted.

18 (Thereupon, Government's 8H received in evidence.)

19 BY MS. MITRANI:

20 Q Now I'm going to ask you questions, but from back there.

21 A All right.

22 Q Let's start with Government's Exhibit 8A, and it's a
23 little bit hard to read so maybe we will do the first half.

24 What are we looking at here, Mr. McMahon?

25 A This is the credit application which I provide to

1 prospective customers to complete so that I could forward this
2 information to our credit team for credit approval.

3 Q Okay. And I think the top is cut off, but it does have
4 like the DHL logo on the top?

5 A Yes.

6 Q And is this the completed application that you received
7 back from the defendant?

8 A Yes.

9 Q And here it indicates the company name. The company's
10 name was Zap Games, Inc., correct?

11 A Yes.

12 Q And what address did it give?

13 A The 100 South Plaza Real, Boca Raton, Florida 33432.

14 Q Okay. And it provided a fax number of 561-361-4342,
15 correct?

16 A Right.

17 Q As well as an email address for Zap Games at live dot com,
18 correct?

19 A That's correct.

20 Q So let's go to the middle of the document. And is there a
21 section on the credit application that lists two individuals?

22 A Yes.

23 Q Can you read that to the members of the jury for me?

24 A Yes. So this section is called principles and officers of
25 company. And the names too?

1 Q Please. The names, everything.

2 A Yeah. So the first name is Alex Colon. The mailing
3 address is 398 Southeast Mizner Boulevard, 1912, Boca Raton,
4 Florida, and his title is president. The second name is
5 Paulo A -- last name is spelled A-R-A-U-J-O. The address is
6 444 Brickell Avenue, Miami, Florida, and his title is VP.

7 Q And then going a little bit below, it's bank reference,
8 correct?

9 A Correct.

10 Q And the bank reference is filled out saying the bank name
11 was Chase with an address in Boca Raton, Florida, correct?

12 A Correct.

13 Q And an account number is also filled in as well, correct?

14 A That's correct.

15 Q All right. And then on the very bottom of Government's
16 Exhibit 8A, which is the DHL Express credit application,
17 there's a signature with title and a date of 7/21/11, correct?

18 A Correct.

19 Q Let's go to Exhibit 8B. Now, I can give you back the full
20 document if you need to, but do you recognize -- 8B is a
21 three-page document. And for the record, it's DHL 917 through
22 DHL 919. And can you tell the members of the jury what this
23 document is?

24 A Yeah. This is the letter of agreement that I described
25 earlier. So this is -- this is the letter which I provide to

1 the prospective customer which shows their required monthly
2 spend with DHL in order to retain the discount that we offer,
3 and the customer and I both sign this document.

4 Q So let me -- let's go to the top half of the document. So
5 is this like a template document that you have or is this
6 something you do from scratch? Can you tell us a little about
7 the generation of this document?

8 A Yeah, sure. So when I open this document blank, the terms
9 in the left are there and then I fill in the right. So the
10 document would say date, and then it would have a blank space
11 and I would type in August 9, 2011. It would say attention, I
12 typed in Roger Scotton, and then it goes all the way down to
13 the bottom. The re special rate offer is -- that's already
14 populated, I don't do anything there. And then dear, I type in
15 Roger.

16 Q So in here the -- this letter you addressed to
17 Roger Scotton, Zap Games at 100 South Plaza Real, Suite F, in
18 Boca Raton, Florida, correct?

19 A Right.

20 Q And let's go to the body of the letter. Good news, I'm
21 not going to ask you to read the whole thing, but can you tell
22 the members of the jury which parts are like the template and
23 which parts you would fill in?

24 A Yes, sure. So the -- in the first paragraph, everything
25 is a template with the exception the date. So I would enter

1 8/9/2011. The second paragraph, everything is a template with
2 the exception of 10,000.

3 Q So what is that 10,000 figure, Mr. McMahon?

4 A The 10,000 would be the required monthly spend with DHL
5 that the customer is agreeing to. And as we mentioned before,
6 the discounts that we provide the customer are based on this
7 number here.

8 Q Okay. And then that -- is that it for the first page in
9 terms of what you would fill in, everything else is standard
10 language?

11 A Yes.

12 Q And go to the second page, which is DHL 918. So which
13 parts do you fill in and which parts are template?

14 A Yeah. So I only fill in the bold. So the name and
15 address is already -- that's already there. All I typed in on
16 this screen here would be Zap Games, 100 South Plaza Real,
17 Boca Raton, Florida 33432.

18 Q And then let's go to the third page of your letter, the
19 third and last page of your letter, which is DHL 919. Can you
20 tell the members of the jury what they are looking at here?

21 A Yes. So this is the third page of the letter of
22 authorization, the letter of agreement. So I signed on the
23 right, that's my signature, and then I type in my name below
24 it. And then I would provide this to the prospective client
25 and they would complete the five lines on the left.

1 Q And did you send -- and is that your signature?

2 A Yes.

3 Q And did you send this document to Roger Scotton following
4 your meeting with him to open up the account?

5 A Yes.

6 Q Now I want to show you what is in evidence now as
7 Government's Exhibit 8C. Is this the letter you received back?
8 Is this the back copy to you from Exhibit 8B?

9 A Yes.

10 Q All right. And it says Alex, it doesn't say
11 Roger Scotton. Do you see that?

12 A Right, that's correct.

13 Q Did you write in Alex?

14 A No, I did not write Alex.

15 Q And it also says Alex on the dear, correct?

16 A Correct.

17 Q And did you write that in?

18 A No, I did not.

19 Q And, in fact, let's put them side by side. So on the left
20 side of the screen is the letter that you sent out, correct,
21 all typewritten?

22 A Correct.

23 Q And on the right side of the screen, Government's
24 Exhibit 8C, is what you got back, correct?

25 A Yes, that's correct.

1 Q And if we go to the third page of Government's Exhibit 8C,
2 which is Bates labeled DHL 840, is this the signature page that
3 you received back?

4 A Yes.

5 Q And it has the name of Alex Colom, presidente, Zap Games,
6 Inc., 8/9/11, correct?

7 A That's correct.

8 Q Did you ever meet an Alex Colom?

9 A No, I did not.

10 Q Ever talk to one?

11 A No.

12 Q Is the defendant the only individual you spoke to on this
13 account?

14 A Over the phone and in person, yes.

15 Q Let's go to Exhibit 8D. Is -- what are the members of the
16 jury looking at, Mr. McMahon?

17 A This was a bank statement which was given to me from Roger
18 so that I can send it to our credit department. It showed --
19 it was meant to show financial stability. And this document --
20 well, I sent this to our credit department, they then in turn
21 sent me a credit approval.

22 Q And this document on the top half shows an ending balance
23 for the Zap Games, Inc., operating account -- well, of
24 \$65,547.22, correct?

25 A That's correct.

1 Q And that ending balance was for the period, you can see it
2 on the top, July 3rd, 2011, through July 30th, 2011, correct?

3 A Correct.

4 Q But if we scroll down, do you see that there's a section
5 that says daily ending balances?

6 A Yes.

7 Q And on the daily ending balances, the ending balance for
8 July 30, 2011, was listed as \$2. Do you see that?

9 A Yes, I do.

10 Q So on the bottom, it says \$2 as the ending balance, but
11 above, it says \$65,547.22. Do you see that?

12 A Yes, I do.

13 Q So did you catch that discrepancy when you received this
14 document from the defendant?

15 A No, I did not.

16 Q Okay. Showing you -- I guess the next one would be E, 8E.
17 And it's -- I guess E8 is just a one-page document for this
18 exhibit. Can you tell the members of the jury what they are
19 looking at here?

20 A This is another document that was provided to me from
21 Roger so that I could send it to our credit department to help
22 establish open credit with DHL.

23 Q I'm showing you Government's Exhibit 8G, which is a
24 two-page email string with an attachment, a commercial lease
25 attached to it. And I'm going to start with the second page of

1 the exhibit.

2 Okay. So this is the -- wait. This is the bottom part of
3 the second page of 8G, and who is that email from and who is it
4 addressed to?

5 A It's from Roger Scotton addressed to me, Justin McMahon.

6 Q Re -- and the subject is what?

7 A And the subject is ZAP invoice.

8 Q And the body of the email says, Justin, here is ZAP Games'
9 FedEx invoice, Roger. Correct?

10 A Correct.

11 Q And then on the bottom, it says -- there appears to be a
12 logo that says Sky Air, correct?

13 A Correct.

14 Q With a phone number and a fax number of 561-361-4342,
15 correct?

16 A Correct.

17 Q And the first page of the exhibit on the bottom, is that
18 an email dated Tuesday, July 19, 2011, from you,
19 Justin McMahon, to Roger Scotton re ZAP invoice?

20 A Yes.

21 Q And what are you requesting from the defendant in this --
22 through this email?

23 A So it says a few items. Two of the three ZAP Games'
24 invoices which you sent to me were for duties and taxes
25 charges, not for transportation charges. So I'm asking him if

1 he has additional invoices or should I do my pricing comparison
2 based on the one of the three invoices which shows me the
3 information I need.

4 The second point is me asking Roger if he has any FedEx
5 invoices from Sky Air Online. And the third point is my -- me
6 telling Roger that the credit application is attached to this
7 email and if you could print it out twice and fill in the
8 appropriate information for both of the companies and then send
9 back to me when completed.

10 Q Okay. And then actually on the top it even says, thank
11 you for meeting me today. So does that mean that's when you
12 met with the defendant, July 19, 2011, on or about that day?

13 A Yes, yes, yes.

14 Q And then does the defendant respond to you on the top --
15 the next section up from Government's Exhibit 8G, does he
16 respond to you and provide you the ZAP invoice?

17 A Yes.

18 Q And then also on the top, is there an indication that the
19 defendant sent you a lease agreement to prove that Sky Air
20 Online was based at the Mizner address?

21 A Yes.

22 Q And I have Government's Exhibit 8H, which is an email from
23 Roger Scotton, RS Scotton at Sky Air Online dot com, Thursday,
24 July 21st, 2011 to you re ZAP invoice, correct?

25 A Correct.

1 Q And it says, Justin, here is the application for ZAP,
2 Roger, with the Sky Air logo and information in it, correct?

3 A That's correct.

4 MS. MITRANI: Your Honor, would this be a good place?

5 THE COURT: Yes. All right. It being Wednesday, we
6 will end at 4:00 and we will see you all here tomorrow at 9:00.
7 Please remember my instructions, you know them by now. I will
8 see you at 9:00 in the morning. Have a great night and all
9 rise for the jury. Maybe next time I'll ask Ms. Brezniak to
10 announce it.

11 A JUROR: I will be more than happy to.

12 (Thereupon, the jury exited the courtroom at 3:59
13 p.m.)

14 THE COURT: All righty. Mr. McMahon, we are going to
15 need to have you back here tomorrow in time for us to begin
16 proceedings right at 9:00. We do start on time, so if you can
17 get here in time to be on the stand by 9:00, we will all
18 appreciate that.

19 THE WITNESS: Sounds good.

20 THE COURT: Have a terrific evening. Thank you.

21 THE WITNESS: Thank you.

22 THE COURT: All right. I need to review some things I
23 understand with Mr. Scotton. So if there's nothing further
24 today from the government, then I all excuse the government so
25 I can get to Mr. Scotton's issues.

1 MS. MITRANI: Should we just stay outside so we can
2 come back in and clear out our stuff, Your Honor.

3 THE COURT: Would you mind?

4 MS. MITRANI: Not at all.

5 THE COURT: Thank you so much.

6 MS. MITRANI: Thank you, Your Honor. I just want to
7 take one thing.

8 THE COURT: That's all right. That way I can let the
9 marshals get back to Mr. Scotton. Thank you.

10 (Thereupon, the government exited the courtroom.)

11 (Thereupon, a sealed hearing was held.)

12 * * * * *

13 C E R T I F I C A T E

14
15 I hereby certify that the foregoing is an
16 accurate transcription of the proceedings in the
17 above-entitled matter.

18
19
20 7/30/14

s/ Tammy Nestor
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,
Plaintiff(s),
vs.
ROGERIO CHAVES SCOTTON,
Defendant(s).

Fort Lauderdale, Florida
February 6, 2014

JURY TRIAL
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): Bertha Mitrani, Esquire
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FOR THE DEFENDANT(S): Rogerio Scotton, Pro Se

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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JUSTIN MCMAHON

BY MS. MITRANI	6		65	
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BY MR. SCOTTON		17		
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ROY VAN BRUNT

BY MS. MITRANI	71			
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1 Thereupon,
2 the following proceedings began at 8:57 a.m.:

3 THE COURT: Good morning. Are there any matters that
4 we need to address before we bring in the jury?

5 MS. MITRANI: Yes, Your Honor, two matters. With
6 respect to Government's Exhibit 24, I was looking over my
7 motors and I'm uncertain whether the Court's ruled on its
8 admissibility; therefore, in an abundance of caution, we would
9 offer it as a business record.

10 THE COURT: Just a moment. Let me double-check my
11 notes. No, you haven't offered it.

12 MS. MITRANI: No, this is the one I offered yesterday
13 and there was confusion.

14 THE COURT: Right. There was a question about -- I'm
15 sorry, you did offer it yesterday, but there was a question
16 about Mr. Scotton said there were some other papers in it or
17 something. I don't remember exactly what the objection was.
18 What is the objection if there is one?

19 Mr. Scotton, I need your attention, please.

20 MS. MITRANI: I need to be clear, Your Honor. The
21 Court asked me as to whether the Court's considered this before
22 in a 902.11 cert. I'm uncertain whether it did, so therefore,
23 for purposes of this colloquy, we will assume it has not
24 because I can't confirm it.

25 THE COURT: Is there any objection to 24?

1 MR. SCOTTON: I need to see which one it is, Your
2 Honor.

3 MS. MITRANI: This was the lease I showed you
4 yesterday and you wanted to pull out two documents in the
5 middle.

6 THE COURT: Is there any objection to 24?

7 MR. SCOTTON: Yes, Your Honor.

8 THE COURT: All right. You will have to bring in A
9 records custodian or authenticate it.

10 MS. MITRANI: The government reasonably anticipated
11 ending its case this week. In other words, we anticipated
12 calling the agent yesterday. Perhaps we will call a custodian,
13 perhaps we won't, but he is the last witness, or if we call a
14 custodian, it will be very brief.

15 The issue is the Court indicated we are going to be in
16 recess for a week, and I need to communicate with the agent.
17 So the way I see it or what I would like the Court to do is one
18 of two things. One, either let us defer the agent until after
19 the break and that way I can communicate with him freely, or if
20 the agent goes on today, would you allow us to communicate, not
21 about the substance of his testimony, but we still have
22 preparation to do for the defense case --

23 THE COURT: That's fine. I'll take the second
24 alternative because I don't want to lose the entire day here,
25 and I think the second alternative is fine. I have done it in

1 other cases. We have done it regularly, as long as you,
2 Ms. Mitrani, and you, Agent Van Brunt, understand that you
3 cannot testify about your testimony. That is, you can't --
4 sorry, not you can't testify, you cannot discuss the content of
5 your testimony on the stand. Do you understand, Agent
6 Van Brunt?

7 AGENT VAN BRUNT: Yes, Your Honor.

8 THE COURT: And Ms. Mitrani?

9 MS. MITRANI: Yes. We will not be talking about the
10 content of his testimony, but obviously we will be talking
11 about matters having to do with the case.

12 THE COURT: That's fine. Otherwise, we will have to
13 lose the entire day today. Anything further?

14 MR. SCOTTON: Yes, but can I have about one minute to
15 ask a question of the lawyer?

16 THE COURT: You can have about ten seconds because
17 it's 9:00.

18 Mr. Scotton, anything?

19 MR. SCOTTON: Your Honor, the prosecutor has brought a
20 witness yesterday and that witness not on her list. So she
21 have not told me about the last man from DHL yesterday. He was
22 not on the list.

23 THE COURT: I think it's late now. There was no
24 objection at the time and he's already testified.

25 MR. SCOTTON: I don't have a list, Your Honor, with

1 me.

2 THE COURT: I'm not going to address this right now.
3 The time for bringing this up would have been before the
4 witness testified.

5 MR. SCOTTON: This a violation. I'm going to move for
6 mistrial again.

7 THE COURT: I'm going to deny the motion. All rise.
8 Let's bring in the jury.

9 (Thereupon, the jury entered the courtroom at
10 9:03 a.m.)

11 THE COURT: Please be seated. Welcome back,
12 everybody. I hope everybody had a great evening last night.
13 And we will start as we always start. Is there anybody here
14 who's discussed the case with anyone, disbursed any information
15 about the case, or done any research into the case? If so,
16 please raise your hand for me now.

17 I see no hands. Thank you all very much for that. We
18 will pick up where we left off yesterday.

19 MS. MITRANI: Thank you, Your Honor.

20 THE COURT: Mr. McMahon, I will remind you that you
21 are still under oath. Do you understand?

22 THE WITNESS: Yes.

23 THE COURT: All right. Thank you.

24 DIRECT EXAMINATION

25

1 BY MS. MITRANI:

2 Q Good morning.

3 A Good morning.

4 Q I think we left off yesterday that you had communicated
5 with the defendant in July, the end of July, 2011, and that
6 there were documents that the defendant provided to you. My
7 question -- my first question is, do you recall the defendant
8 telling you anything when he gave you the credit application,
9 the bank statements, and things of that effect?

10 A Yes.

11 Q What did he tell you?

12 A He asked me who -- he asked me who gets to see these
13 documents and I explained to him that these documents,
14 specifically the bank statement and the first data form, will
15 be seen by our credit department. And I explained why the
16 credit department looks at these types of documents.

17 And then he asked me to insure that only the credit
18 department -- that these documents are only viewed by the
19 credit team for those purposes.

20 Q And what was your reaction to the defendant requesting
21 that the documents be limited only to the credit department?

22 A I thought it was a bit -- I haven't heard that in the past
23 so I just -- I thought it was a bit strange, but I didn't think
24 much of it. I just thought it was a bit odd.

25 Q Let me show you Government's Exhibit 6U which has already

1 been admitted into evidence. These are the corporate records
2 for Zap Games, Inc. Do you see that?

3 A Yes.

4 Q Okay. Turn to the third page of Government's Exhibit 6U.
5 Do you see that, Mr. McMahon?

6 A Yes.

7 Q And who is listed as the vice president of Zap Games?

8 A Roger Scotton, Roger C. Scotton.

9 Q At?

10 A At 934 North University Drive, Suite 329, Coral Springs,
11 Florida 33071.

12 Q Thank you. Was a Zap Games account for the defendant
13 opened?

14 A Yes.

15 Q And did there come a time when some problems arose?

16 A Yes.

17 Q Tell us about that.

18 A I received either an email or phone call, I can't remember
19 what the first way that Roger reached out to me, but he reached
20 out to me and explained to me that some of his shipments were
21 being held at the local sort station in Delray Beach which is
22 the sort station that handles his area for DHL.

23 Q Is that called BCT?

24 A That's BCT, right. So I called BCT. I called the station
25 manager Fred Kennicutt to ask him why these shipments were

1 being held in Delray Beach in the Delray Beach sort center BCT.

2 Q And did you communicate -- have further communications
3 with the defendant -- let me start over.

4 After the defendant told you there were problems with his
5 packages being held, then after you spoke with Mr. Kennicutt
6 about the packages actually being held, did you talk to the
7 defendant some more?

8 A Yes, I did.

9 Q And what did you tell him; what did he tell you?

10 A Yeah, so Fred explained to me that the shipments were
11 being held because they were shipped duties and taxes paid to
12 Brazil which is the -- I described this yesterday. That's not
13 a common way to ship to Brazil. And if I didn't alert the
14 source station about this type of shipment being shipped en
15 masse to Brazil for a new customer, it's an automatic red flag.
16 And for that reason, Fred and his team held the shipments at
17 BCT so they didn't leave the country. They wanted to make sure
18 that the account was legitimate. I explained that to Roger.

19 Q And was it a phone conversation, in person, how did you
20 communicate with him, if you recall?

21 A Yeah, I believe -- I definitely spoke to him on the phone
22 and email. Now, I don't remember which was first and which was
23 second. We went back and forth a few times over the phone and
24 email over this situation.

25 Q And what was the defendant's reaction at his packages

1 being held?

2 A He was very upset. He was very upset. He explained -- he
3 explained that this is crazy, that there's no reason for these
4 shipments to be held. Everything is legitimate. All the
5 paperwork is done properly. He's going to -- he's demanding
6 that the shipments be released and he explained that he was
7 going to get his attorney involved.

8 Q Did you also receive information from the billing
9 department regarding the Zap Games account?

10 A Yes.

11 Q Was there an issue with billing?

12 A Yes.

13 Q What was that issue?

14 A That the bills were not being paid.

15 Q The Zap Games?

16 A The Zap Games invoices for the shipments were not being
17 paid.

18 Q And after you communicated with the defendant both by
19 email and by phone, did you then have further communications
20 with other people in DHL, with either Mr. Kennicutt or other
21 people regarding the account?

22 A Yes. I spoke -- I again tried to clarify the situation
23 with Fred. At this time I had no reason to believe that the
24 account was not legitimate, so I tried to fight for Roger. I
25 tried to get the shipments cleared.

1 But Fred and BCT explained to me that this is bigger than
2 Fred and that he cannot let these shipments go and they are
3 going to have to look into this prior to me -- prior to
4 these -- before he can give me any more information, they are
5 going to have to look further into this. So a little -- I'm
6 not sure how much later after this scenario, I was in touch, I
7 got a phone call from Roy Van Brunt.

8 Q That was my next question.

9 A Okay.

10 Q So let me ask the question since it's question answer.

11 A Yes.

12 Q So after this sort of back and forth with the defendant
13 and this back and forth with Mr. Kennicutt regarding these
14 packages that were being held by DHL on the Zap Games account,
15 did you come in touch with Special Agent Roy Van Brunt?

16 A Yes.

17 Q And as a result of your conversation with Special Agent
18 Roy Van Brunt, did you communicate with the defendant regarding
19 a future meeting?

20 A Yes.

21 Q Tell us about that.

22 A Roger wanted to meet with me to go over the situation.
23 And Roy explained to me that he is -- he wanted me to tell
24 Roger that he will be the new point of contact moving forward
25 regarding this situation. Roy explained to me that I should

1 tell Roger that he, that Roy is my direct manager at DHL. So
2 at that time I was to tell Roger that Roy would be calling him
3 directly and setting up a meeting with him to go over the
4 situation.

5 Q So did you, in fact, follow through with that and contact
6 the defendant?

7 A Yes.

8 Q And did you tell him that Roy was your DHL manager and
9 would now be the point of contact on this issue?

10 A Yes, I did.

11 Q And did you set up the meeting, the face-to-face meeting
12 with Roy or did you just leave it at that with the defendant?

13 A No, I stepped back. I stepped back. I explained to Roger
14 that, you know, this -- I told Roger that this is out of my
15 hands, that I have done all I can do to help you, and that
16 management is going to have to be involved. Roy Van Brunt is
17 my direct manager. He's going to help you moving forward.
18 He's going to reach out to you directly and set up a time to
19 meet with you and resolve this situation.

20 Q After you had the contact with the defendant telling him
21 that Roy would be the point of contact from that day forward,
22 did you have any other contact with the defendant?

23 A No, no, I did not.

24 Q So that was -- was that -- so was that the end of your
25 relationship with the defendant regarding the Zap Games

1 account?

2 A Yes, that was it.

3 Q And this communication with the defendant advising him
4 that Roy was going to be the new DHL point of contact, did that
5 occur in August of 2011?

6 A Yes.

7 Q After August of 2011, did you have some further leads on
8 new accounts --

9 A Yes.

10 Q -- that were related to the defendant?

11 A Yes.

12 Q Tell us about that.

13 A So as I described yesterday, our sales team on occasion
14 receives a lead and the lead would come from a prospect calling
15 DHL asking for information on setting up a new account.

16 So I received a lead for a company called -- I believe it
17 was Scotton Racing. And I just -- I looked at the contact
18 name. The name looked similar. I believe the first name in
19 the contact was Alex. The last name was something I did not
20 recognize. But I just kind of put everything together with the
21 Scotton Racing, Alex, and the address was in Boca Raton. I got
22 an idea. I figured that this was the same situation.

23 Q And so did you follow up on that lead?

24 A No.

25 Q Are you the account manager for Citrix?

1 A Yes.

2 Q All right. When did you take over as account manager for
3 Citrix?

4 A 2009.

5 Q Okay. Sometime in 2009?

6 A Yeah, 2009, 2008, 2009, right around there.

7 Q Okay. Was this an existing client of DHL, this Citrix?

8 A Yes, it was.

9 Q So did you take over an existing account?

10 A Yes, I did.

11 Q Okay. How would you describe the Citrix account in terms
12 of its importance, its volume? Can you describe it for us?

13 A Yeah, sure. So Citrix is a marquis account for DHL. If
14 you are familiar with the Fort Lauderdale area, you have seen
15 the big glass building on Cypress and 95. They are a publicly
16 traded company that's also based in Fort Lauderdale.

17 And as you may know already, DHL's headquarters for the
18 Americas is in Broward County also. So it is a strong bond in
19 that regard. Their volume is quite high. The amount of
20 shipments they ship per day is fairly high. And the
21 relationship is strong.

22 Q So would you characterize it as an important account?

23 A Yeah, it's a very important account.

24 Q When you say the volume is high, how does that affect the
25 revenue or the money that DHL makes from the Citrix account?

1 A It's tremendous. It's -- that account could bill close to
2 a quarter million a year on a high year. On a slow year, maybe
3 \$150,000 a year. That's a very slow year.

4 Q Did there come a time that Citrix advised you or you
5 became aware of problems with the existing Citrix account?

6 A Yes.

7 Q Can you tell us about that, when you found out and what
8 the problem was.

9 A Yes. So DHL has a fraud department that red flags any
10 suspicious activity on our current book of business. So Citrix
11 typically does not ship to Brazil and they definitely don't
12 ship duties and taxes paid to Brazil or to any country for that
13 matter. So when there was a few shipments going to that --
14 going that trade lane and in that method, that was a red flag
15 for fraud. Fraud reached out to me and asked me to confirm
16 with Citrix if the following airway bills were, in fact, valid.
17 I reached out to Citrix. They said that they are not valid,
18 that they are fraudulent, and for that reason we had to shut
19 that account number down and create a new account number for
20 Citrix.

21 Q Did that happen once or did that happen on more than one
22 occasion that their genuine account was compromised by another
23 person and it had to be shut down and reopened?

24 A More than one occasion.

25 Q And then when their existing account number had to be shut

1 down and a new account number had to be assigned to them
2 because of the unauthorized shipments, did that affect DHL and
3 its revenue?

4 A It did. Citrix is a highly complex -- their shipping
5 department and shipping processes is highly complex. So when
6 we had to shut their original account number down and create a
7 new account number for them, it was not a simple plug and play.
8 We had to -- Citrix had to reconfigure their shipping software,
9 their shipping system. And because of that required time from
10 there IT team and our IT team and integration, we missed out on
11 the first fraudulent account number, we missed out on about two
12 to three weeks worth of volume.

13 Q Have there recently been any issues with the Citrix
14 account?

15 A No.

16 MS. MITRANI: Your Honor, may I have a moment?

17 THE COURT: Yes.

18 BY MS. MITRANI:

19 Q Just one clarification. When you testified that for three
20 weeks there was -- because of the account takeover, you lost
21 volume, is that what you just said?

22 A Yes.

23 Q What do you mean by lost volume?

24 A The shipments which were moving via DHL each day had to --
25 Citrix could not just shut down. They had to ship them another

1 way. So they shipped them via Fed-Ex or UPS. It wasn't DHL.
2 So DHL missed out on three weeks worth of revenue.

3 Q So there was no shipment during those three weeks' period
4 and no money coming into DHL?

5 A That's correct.

6 Q And did that affect you personally as well?

7 A Yes.

8 MS. MITRANI: No further questions, Your Honor.

9 THE COURT: Cross.

10 CROSS EXAMINATION

11 BY MR. SCOTTON:

12 Q Yes, sir. How are you doing?

13 A Very good.

14 Q That date that we met over there in Boca, do you recall
15 that day?

16 A Yes.

17 Q What is the name of the other person that was with you
18 that day, do you recall that name?

19 A There was nobody there with me.

20 Q So if I have someone to come up here and testify there was
21 someone else with you --

22 MS. MITRANI: Objection, Your Honor.

23 THE COURT: Sustained.

24 BY MR. SCOTTON:

25 Q How many times did you get with the prosecutor before this

1 hearing?

2 A Two times.

3 Q Two times, right. So you went over questions and things
4 how you going to proceed here in court today, right?

5 A Yes.

6 Q You think it's fair for you to go ahead now and say things
7 that is not true her to court to incriminate me?

8 A I don't believe I said anything that was untrue.

9 Q But you know that it was somebody else from DHL with you
10 during that meeting, correct?

11 MS. MITRANI: Objection, Your Honor.

12 THE COURT: Sustained.

13 THE WITNESS: I'm sorry?

14 MS. MITRANI: Objection.

15 THE COURT: I sustained the objection. Please ask a
16 different question.

17 BY MR. SCOTTON:

18 Q Is DHL has the opportunity to charge the dues and tax to a
19 third party shipping? They have the option, right?

20 A Yes.

21 Q Is there any problem with that?

22 A No.

23 Q So it being have knowledge of shipping to Brazil, right?

24 A I'm sorry?

25 Q Do you have a knowledge about the regulation and rules to

1 Brazil?

2 A Yes.

3 Q Did you know why most of the time clients has the
4 preference of tax and duties to be paid by the shipper? Can
5 you explain that to the court?

6 A I do know that they have a preference. They have the
7 choice, yes.

8 Q What is the preference for the clients to pay here by the
9 shipper?

10 A I don't understand the question. Are you asking why would
11 they choose to have the duties and taxes paid here?

12 Q Yes.

13 A To avoid customs holds and to avoid the consignee, the
14 receiver of the shipments, having to pay exorbitant duties and
15 taxes charges.

16 Q Why they pay too much tax if they pay over there in
17 Brazil?

18 A I do not know why Brazil charges so much for duties and
19 taxes.

20 Q You just made the statement that you have knowledge of
21 that, but you don't have knowledge of that, right?

22 MS. MITRANI: Objection, argumentive.

23 THE COURT: Sustained.

24 BY MR. SCOTTON:

25 Q Do you deny that the reason most clients has the

1 preference of have the duties and tax paid by the shipper is
2 because by the time the shipper get to Brazil, if they pay over
3 there, they are going to pay on the value of the merchandise
4 and the shipping cost, do you deny that?

5 A Can you please repeat that.

6 Q Do you deny that the reason they pay shipping in United
7 States, they pay for the tax and duties, is because if they
8 going to pay in Brazil, they are going to pay on the cost of
9 the merchandise and also on the cost of the shipper, the
10 shipping price?

11 A The amount of duties and taxes paid would be the same if
12 it's paid within the United States and if paid in Brazil. The
13 shipping and the value of the product being shipped is taken
14 into account in both scenarios.

15 Q Right. So then you deny that if the receiver pay the
16 shipping, the duties and taxes in Brazil, they are going to pay
17 the duties on top of the value of the merchandise and the
18 shipping costs, correct?

19 A They do have to pay the duties and taxes -- they will have
20 to pay duties and taxes based on both the value and the
21 shipping costs.

22 Q Right. But they -- if the duty tax is paid by the
23 shipper, is it not true that only pay the duties and tax on the
24 top of the merchandise only, not the shipper cost?

25 A That is not true.

1 Q It is not true?

2 A The duties and taxes and the shipping cost, it's the same.

3 Q That's your opinion, right?

4 A That is not an opinion.

5 Q If I go log in right now to Brazilian customer and print
6 out --

7 MS. MITRANI: Objection.

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q Is anything illegal by charge the duties and taxes to the
11 shipping account?

12 A No.

13 Q Because the DHL has the option also, right?

14 A Yes.

15 Q Did you deny that we talk about the Merry Mailman store
16 during our meeting?

17 A We did talk about the Merry Mailman store.

18 Q Do you deny that we talk also about having account for the
19 new store?

20 A The new store is -- what is the new store?

21 Q The Merry Mailman in Boca.

22 A Oh, yes.

23 Q Do you deny during that meeting we even call Carla Felini
24 to get her accounts to compare her account with the new account
25 from her store? Do you remember that?

1 A That we called somebody?

2 Q Yes.

3 A I don't recall either you or me calling anyone when we
4 met.

5 Q Do you remember that you tried to do research on the old
6 account for the old store, for Carla Felini store, you couldn't
7 find the account that it provides?

8 A Yes.

9 Q Later on what did you find out about the account?

10 A What I remember is that I found out that the account was
11 associated with our retail division which is the group that
12 handles the retail accounts. It's the group that handles
13 accounts such as Pak Mails and Ship Pluses and stores like
14 that.

15 Q And then it is not the true you advised me that you are
16 not going to be able to match that rates from the retail
17 account?

18 A I don't recall a rate discussion.

19 Q The government has showed the application they submit to
20 us. Is any crime that we change the name of application for
21 who is going to be responsible for that application?

22 A No.

23 Q By changing that name on application, has DHL denied to
24 open that account?

25 A No.

1 Q Do you deny that we have a partner named Marco and he's
2 spoke to you once over the phone, complain about the box being
3 hold?

4 A I'm sorry. Can you receipt that, please.

5 Q Do you deny Marco has called you in reference to three
6 packets that has been held by DHL?

7 A Mark?

8 Q Yes, my partner.

9 A No, I did not speak to a Mark.

10 Q Is any crime send someone email?

11 A To send from someone else's email?

12 Q Is it any crime to send email to someone?

13 A No.

14 Q You can say that when you talk, you spoke with Roger, you
15 meet Roger, right?

16 A That's right.

17 Q You didn't meet anybody else, right?

18 A That's right.

19 Q Do you deny the first time we met, Federal Express
20 authorized shipping center was in construction?

21 A The first time we met, there was a store under
22 construction. I don't know what it was for.

23 Q Mr. Justin, what is DHL RSA?

24 A DHL RSA, I believe RSA is a retail store division, but I'm
25 not a hundred percent certain.

1 Q And you work on the sales department, right?

2 A I work for DHL Express sales, yes.

3 Q Government has shown you some documents here about some
4 document from the Chase Bank account seems to be modified. Do
5 you recall that?

6 A Yes.

7 Q Did you modify the document?

8 A No.

9 Q Have the prosecutor modified the document?

10 A No.

11 Q DHL has different type of frames of invoices, templates of
12 invoices?

13 A I'm sorry, can you repeat that.

14 Q DHL has different type of invoices they send to clients?

15 A Different type of invoices?

16 Q Yes.

17 A We have -- we can send you a hard copy invoice through the
18 mail. We can send you an electronic invoice. We can send you
19 an invoice on a spreadsheet.

20 Q If I show you invoice right now, are you going to
21 recognize if it's DHL invoice?

22 A Yes.

23 MR. SCOTTON: Your Honor, may I approach the witness?

24 THE COURT: Yes.

25 MS. MITRANI: Your Honor, I need to see.

1 Here we go. Your Honor, can I approach sidebar,
2 please?

3 THE COURT: Yes.

4 (Thereupon, the following was heard sidebar.)

5 MS. MITRANI: Here we go again, Your Honor. He hands
6 a stack of documents. Here's DHL invoice, one of two.
7 Interspersed in it is non-DHL documents. This is absolutely
8 ridiculous. And then I'm going to take my time and go page by
9 page, and I want to let the Court know that because I'm not
10 going to let him slip anything to a witness. This is a
11 modified Word document, the third page.

12 THE COURT: Where did you get these documents,
13 Mr. Scotton?

14 MR. SCOTTON: Your Honor --

15 THE COURT: Can you answer my question?

16 MR. SCOTTON: Yes, Your Honor. This is from --

17 THE COURT: Let's not mix them up.

18 MR. SCOTTON: This one here, Your Honor, it is that
19 accounts that was provided to Osvaine Duarte that the Court has
20 already saw.

21 THE COURT: Where did you get these documents?

22 MR. SCOTTON: From the attorney Robert Abreu.

23 THE COURT: He cannot authenticate these documents.

24 MR. SCOTTON: This is from DHL, Your Honor. It has
25 been given to an individual. This is real bills from DHL.

1 MS. MITRANI: I just need to go page by page, Your
2 Honor. I don't know what he's -- I need to go page by page. I
3 will do it as quickly as I can.

4 THE COURT: Go ahead and do what you need to do. You
5 can't use this. There is no way to authenticate it from this
6 witness if you got it from Mr. Abreu.

7 MS. MITRANI: Thank you, Your Honor.

8 (Thereupon, the following was heard in open court.)

9 MS. MITRANI: Your Honor, we can authenticate one if
10 he wants to start. There's one two-page document. He can
11 start with that if he doesn't want to waste --

12 THE COURT: Mr. Scotton, can you start with that one?

13 MR. SCOTTON: I need all the documents, Your Honor.
14 Your Honor, may I approach the witness?

15 THE COURT: Yes.

16 BY MR. SCOTTON:

17 Q This is one of your biggest client's accounts right there,
18 right?

19 A It's one of my most important clients.

20 Q Right, it is. Do you recall the account?

21 A Do I recall this account?

22 Q Yes.

23 A Yes.

24 Q It is that that account is compromised?

25 A I don't know if this account number is the account -- I

1 don't remember the nine-digit account number, but this is
2 around the right time frame.

3 Q They also have an account that start with 8 as well,
4 right?

5 A Correct.

6 Q Can you explain to the jury what is the difference between
7 account that start with the number 9?

8 A So account numbers at DHL that begin with an 8 are for
9 shipments that originate in the United States and are shipped
10 outbound.

11 Account numbers that begin with a 96 are for shipments
12 that originate overseas and either come to the U.S. or go to a
13 third country without touching the United States.

14 This 9 account number beginning with 9 on this sheet is a
15 92 which is not an inbound. This is actually an obscure
16 outbound account number. This is for shipments that --
17 actually, it looks like -- so this are two account numbers on
18 here, one that begins with an 8 which is definitely shipments
19 originating in United States heading outbound and account here
20 begins with 92.

21 Typically, as I said, the 96 account numbers are for
22 inbound shipments, but I can tell from the invoice numbers here
23 on the account beginning with the 9 that this account was used
24 for both inbound and outbound. I can tell the difference
25 between inbound and outbound shipments by just looking at the

1 invoice number. And it looks like this account number was used
2 for both inbound and outbound shipping, which is not normal.

3 Q And you can see that it is not normal the user of that
4 account was using international?

5 A I'm sorry, can you repeat that.

6 Q Were those accounts being used international?

7 A Yes. DHL only ships internationally so all the shipments
8 associated with these account numbers would be shipped
9 internationally either inbound or outbound.

10 Q When did DHL stop doing domestic in United States?

11 A 2009, 2008, around there.

12 Q Do you have any billing over there, the other invoice that
13 is from that time?

14 A Are there any shipments on this invoice that are from that
15 time?

16 Q Right.

17 A No.

18 Q Do you see you got a charge there for like \$60, \$50?

19 A On this invoice here?

20 Q Yes, sir.

21 A There's no charge for -- there's one negative charge for
22 60 and change, but there's no \$50 charge on here.

23 Q You got a charge for \$73, correct?

24 A Yes.

25 Q What is the minimum charge to ship to Brazil, Mr. Justin?

1 A That depends on the customer's discount.

2 Q Can you get a box to Brazil for \$73 with the tax and
3 duties paid for?

4 A Yes.

5 Q How big is going to be that box?

6 A It depends on the discount that the customer receives and
7 it also depends on the value of the commodity being shipped.

8 Q I hand you stacks of invoices. Do you want to go through
9 quick to see the accounts, who the accounts belongs to.

10 A It looks like it's all Dell. Is this all one invoice?

11 Q There are several. Go ahead, review. You should be able
12 to find different companies over there.

13 A This looks like it's all from the same. It says that
14 there are 291 pages, and I can only find 291 pages.

15 MR. SCOTTON: Your Honor, may I ask sidebar?

16 THE COURT: All right.

17 (Thereupon, the following was heard sidebar.)

18 MR. SCOTTON: Mr. Justin has received --

19 THE COURT: You need to wait until the government
20 arrives.

21 Go ahead.

22 MR. SCOTTON: Mr. Justin has a few of the bills that
23 belongs to DHL and the ones that Citrix -- and I guess perhaps
24 Ms. Martinez did not provide the other one, got other
25 companies, Pfizer and Johnson. Everything has been provided to

1 the government probably like a week and a half ago, and I have
2 it on CD also. And I want to be able to show him.

3 MS. MITRANI: Your Honor, it's the same issue as the
4 other day. I don't want him to show anything electronically.
5 I don't know what's going to be interspersed in there.

6 THE COURT: Let me tell you the problem. The last
7 group of documents that you handed up, I told you you
8 couldn't -- it appeared to me that you tried to hide things you
9 know are not admissible inside documents that the government
10 has agreed to that are authenticated. That's never
11 appropriate.

12 It seems like you are trying to engage in underhanded
13 conduct here to try to sneak something by the government and by
14 the Court and put things you know can't be authenticated on the
15 viewer. I'm not going to allow that.

16 When you present these large stacks of documents with
17 other documents interspersed, it's not appropriate. The last
18 group -- for purposes of the record, I want to note the ones
19 that I did not allow are the ones that are clearly printed out
20 from a different group.

21 The ones that I allowed were all account documents
22 from DHL printed out by what appeared to be a laser computer.
23 The ones I did not allow were on different kind of paper that
24 were printed, it appeared to me, on a -- jet-type printer from
25 a home printer that were black and red as opposed to just being

1 printed black on the laser printer like the DHL ones.

2 There were also different types of records. And you
3 explained to me that you obtained them, you obtained them from
4 Mr. Abreu, one of your many prior lawyers, and he obtained them
5 from Mr. Osvaine Duarte. That's why those were not admissible.
6 They are not able to be authenticated.

7 As to the documents on here, I'm going to need to see
8 what it is that you want to show before you show it
9 electronically, because unfortunately, your record during this
10 trial has been that you have tried to sneak records in that you
11 know are not authenticated or otherwise admissible and I cannot
12 rely on your representations that all that's in there are the
13 authenticated documents that have been previously provided to
14 the government.

15 Is there some reason you don't have printouts of these
16 documents?

17 MR. SCOTTON: Yeah, we don't have the chance. Those
18 documents I'm trying to show, if the judge want to take a look
19 right now, she's going to see exactly what is on the tape.
20 It's not different. There is no one page going to be different
21 than what he's got on the table.

22 THE COURT: If he has them on the table, why do we
23 need to -- if they are printed out on the table, why do we
24 need --

25 MR. SCOTTON: Because they didn't --

1 THE COURT: Can you wait until I'm done because the
2 reporter can only take one person at a time, please. Why do we
3 need to do it on disc if they are already printed out?

4 MR. SCOTTON: This is Dell. We got Johnson. We got
5 other companies here, other invoices from other companies. So
6 that's not all their companies. We got different companies
7 here. He's got just two companies there.

8 MS. MITRANI: Your Honor, my objection, of course,
9 remains that I don't know page by page what's on that disc, so
10 that's first. It's not just a matter of pulling up the first
11 page because things can be interlaced, as the defendant tried
12 to do before.

13 MR. SCOTTON: Yeah.

14 THE COURT: Let me say for the record that that is not
15 the first time that happened. This has happened repeatedly
16 through this trial where you have stuck other documents inside
17 documents that you thought the government had authenticated.
18 That's why I have to look at everything that you want to admit.

19 MS. MITRANI: The issue of his representations, for
20 example, with the sex tape with didn't exist.

21 THE COURT: Right.

22 MS. MITRANI: That's obviously a major factor. Second
23 of all, Your Honor, I'm going to make relevancy objections.
24 This witness had personal interactions with the defendant
25 regarding the Zap Games account. And he talked about Citrix

1 because, one, he's the account manager, and two, Citrix is one
2 of the accounts in the indictment. The indictment doesn't
3 mention Dell. The indictment doesn't mention Pfizer. The
4 indictment doesn't mention the other companies.

5 THE COURT: Why are Dell, Pfizer, and the other
6 companies relevant to this case?

7 MR. SCOTTON: It's in the spreadsheet. I saw
8 companies that is in the spreadsheet.

9 THE COURT: Are they in the spreadsheet?

10 MS. MITRANI: So far on the DHL spreadsheets, as we
11 pare down what was provided in discovery, so far what is in
12 evidence on the DHL, those are not. I guess the simple answer
13 is Dell, Pfizer are not on the two DHL spreadsheets that have
14 been admitted into evidence so far.

15 THE COURT: Do you seek to admit anything regarding
16 those companies?

17 MS. MITRANI: Dell or Pfizer?

18 THE COURT: Right.

19 MS. MITRANI: No. Then we have a Fed-Ex spreadsheet
20 that has been admitted into evidence as broadly 130 has been
21 admitted already, and we have 130A that the agent will be
22 talking about with pared down accounts and Dell and Pfizer or
23 whatever else he may have or not on those spreadsheets and they
24 are not on the second superseding indictment.

25 THE COURT: Why are they relevant?

1 MR. SCOTTON: Part of my defense here.

2 THE COURT: You have to tell me why it's relevant.
3 It's not enough to say it's part of my defense, especially
4 since you have made so many misrepresentations during the
5 course of this trial that I don't even know what you are
6 saying. So you have to tell me specifically why it's relevant
7 before I waste this jury's time.

8 MR. SCOTTON: I'm going to object the comments. We
9 are not agreeing to such things. The Court accuse me of things
10 that are not true. But let's move on here because that's the
11 important thing here.

12 The bills here that has been provided by the person
13 that has been doing this not only going to show and prove to
14 the jury that employees from those companies involved. So I
15 been get all this allegation in my face here, and if the Court
16 is going to block me right now to show that their own employees
17 are involved in this --

18 THE COURT: You need to tell me why it's relevant to
19 the charges against you.

20 MR. SCOTTON: It's relevant because I got accused of
21 something I have not done and their employees have been doing
22 this, selling this information to other --

23 THE COURT: How does it prove or disprove the fact,
24 the allegations that you are charged with in this case?

25 MR. SCOTTON: Because I already --

1 THE COURT: You have to explain it to me.

2 MR. SCOTTON: I said many times that I used third
3 party shipping company and that company has hold of those
4 accounts and they have been used on those accounts. Now, it is
5 illegal for me to ship package to third party shipping company?
6 I say no, it is not. And everybody here keep saying it is not.
7 I have seen all the accusations here that I have been had
8 misrepresented. I try to present documentation. Like I say
9 from day one I'm not a lawyer.

10 THE COURT: Stop. You are not going to use that
11 excuse with me. Whether you are a lawyer or not, you know that
12 you shouldn't be putting things in that -- you shouldn't be
13 telling lies to the Court. You shouldn't be misrepresenting
14 facts to the Court. You shouldn't be misrepresenting facts to
15 me. You shouldn't be misrepresenting facts to the prosecution.
16 You shouldn't be misrepresenting facts to the jury by
17 pretending things exist when you know they don't exist. You
18 shouldn't be mixing in documents that you know are not
19 admissible when you know the government has agreed to certain
20 facts.

21 And we have talked about it repeatedly. And you are
22 not a dumb man, Mr. Scotton. You are clearly a very bright
23 man. You know exactly what you are doing. And your coming up
24 here and telling me you are not a lawyer to try to play both
25 sides of the fence to pretend you are too dumb to understand

1 this, you are not fooling anybody. I know exactly what you are
2 doing. I'm not going to tolerate it.

3 MR. SCOTTON: Your Honor, do you want to excuse the
4 jury and find me guilty then?

5 THE COURT: Mr. Scotton, I'm not having this argument
6 with you.

7 MR. SCOTTON: The thing is, Your Honor --

8 THE COURT: That's it, Mr. Scotton.

9 MR. SCOTTON: Why I cannot use? I want to defend
10 myself. The Court not going to allow me to defend myself.

11 THE COURT: Excuse me.

12 (Thereupon, the following was heard in open court.)

13 THE COURT: We are going to take a little break until
14 5 after 10:00 and we will see you back here at 5 after 10:00.

15 (Thereupon, the jury exited the courtroom at
16 9:53 a.m.)

17 THE COURT: Would you mind stepping out for a moment.
18 Thank you.

19 THE WITNESS: No problem.

20 (Thereupon, the witness exited the courtroom.)

21 THE COURT: All right. Let's see if we can get
22 through these records quickly. Government, take a look at the
23 records.

24 In the meantime, while the government is looking at
25 the records, Mr. Scotton, you need to tell me why these are

1 relevant because I still don't understand.

2 MS. MITRANI: I'm sorry, Your Honor, you want me to
3 look at it electronically?

4 THE COURT: Yes, please.

5 MS. MITRANI: I will do my best. I don't know if they
6 are all in one file, but we will do our best.

7 THE COURT: Thank you.

8 MS. MITRANI: Where are they, Mr. Scotton? You need
9 to provide the documents for the government to look at.

10 I want his version. I don't know if his is the same
11 as mine. I want the version he wants to put on the computer.

12 THE INVESTIGATOR: Your Honor, I can go to any
13 printing location close by and I'm going to print the documents
14 so I'm going to hand it to them on paper.

15 THE COURT: Mr. Creary, would you mind assisting
16 Ms. Martinez with that. Thank you.

17 MS. MITRANI: If they are going to print it out, we
18 don't need to look at it electronically.

19 THE COURT: Yes. Mr. Scotton, you need to tell me why
20 these documents are relevant. It's not obvious to me why they
21 are relevant. You need to explain that to me.

22 MR. SCOTTON: Your Honor, this is accounts that has
23 been used in the past. That document that the Court say that
24 it is not authenticated, well, okay, the reason of this
25 document here, and I had think is important, during the process

1 of Mr. Osvaine shipping my packages, those accounts has been
2 used, not only for me, from all other clients he has. That's
3 his story when he testified on that letter that you saw that he
4 confessed.

5 THE COURT: First of all, let me say this. You
6 provided me with a letter months ago sometime in August, I
7 believe. I asked the interpreter to interpret it for me. I
8 looked at it. I know what it purports to say, but I don't know
9 whether it's from Mr. Duarte or someone else. There's no
10 certification of it. For all I know, you could have written
11 it. And based on how I have seen things going in here, I can't
12 assume it came from Mr. Duarte. And even if it did come from
13 Mr. Duarte, there's absolutely no authentication of that.

14 MR. SCOTTON: The letter was authenticated. You saw
15 the authentication from the Brazilian government.

16 THE COURT: I have not seen authentication from the
17 Brazilian government. I'm not going to argue with you. You
18 need to explain how these documents that you are seeking to
19 question about right now are relevant to this case.

20 MR. SCOTTON: Employees from these companies have been
21 involved in this matter. They have been selling information to
22 outside. I need to prove to the jury that these companies has
23 a bunch of negligence here, and now they trying to throw me
24 under the bus because I report them.

25 THE COURT: How is this particular witness able to

1 testify about any of that?

2 MR. SCOTTON: They going to review the accounts. He's
3 the sales manager. Before the government here say that even
4 those bills is fake. He already testified that those bills was
5 real. So I don't understand that --

6 THE COURT: Well, actually, what he testified to was
7 that the bills seemed a little bit suspicious because there was
8 very unusual activity of packages being shipped both in and out
9 and that he does generally see that. He said it was unusual.
10 So he did not testify that the bills were real as far as I'm
11 concerned. That's not what I heard him say.

12 MR. SCOTTON: I'm going to ask him questions about
13 that too, Your Honor. How can you get this much invoices from
14 different companies if they don't come from those companies
15 themselves? Who is going to get ahold of such a thing.

16 THE COURT: Again, what is the relevance? Let me put
17 it this way, Mr. Scotton: I'm sure you could find literally
18 billions of pages of invoices from DHL. They do a lot of
19 business. Why are these particular documents relevant to your
20 case? Why do these particular documents make it more or less
21 likely that you did the fraud that you were alleged to have
22 done? I need for you to explain that to me.

23 MR. SCOTTON: I did not make those accounts like the
24 government said I make, Your Honor. I did not create those
25 accounts. Those accounts were real accounts from Citrix

1 company or other companies provided by their own employees. I
2 want to show that to the jury. They keep saying that accounts
3 has been fraudulently created. It is not. This is not true.
4 I'm getting frustrated with this whole thing. They get to come
5 here, have all this show off show here.

6 THE COURT: Mr. Scotton.

7 MR. SCOTTON: Your Honor, please, can I speak?

8 THE COURT: You may not.

9 MR. SCOTTON: I'm going to present myself --

10 THE COURT: Mr. Scotton, please stop. I don't know
11 why you insist on arguing with the Court. I'm asking you once
12 again, and this is your last chance, explain to me why it's
13 relevant. Don't go off on how unfair you think this is. We
14 already know you think it's unfair. Although I don't know how
15 you could because I have bent over backwards to make sure you
16 get a fair trial. I think you are trying to manipulate the
17 system and I think you are trying to make a mockery of the
18 entire process.

19 So if you want to go forward with this evidence, I'm
20 willing to let you do it if you can show me how it's relevant,
21 but you need to tell me how it's relevant. This is your last
22 opportunity. I'm not spending any more time. I have wasted
23 about ten minutes of the jury's time while they were sitting
24 here. Now I have sent them out for 15 minutes so that you
25 could tell me why they are relevant. And yet you haven't been

1 able to do so. Instead, you insist on arguing. Once again,
2 why are the documents relevant?

3 MR. SCOTTON: Because the corruption of this company.
4 I'm going to prove here the corruption here. I have nothing to
5 do this you guys accuse me here.

6 THE COURT: Why are these particular documents
7 relevant?

8 MR. SCOTTON: Because has been handled by those
9 companies, Your Honor. They selling that information.
10 Packages being shipped off those accounts. And they have
11 knowledge of that.

12 THE COURT: I don't understand. And I don't
13 understand how this witness is going to be able to testify to
14 any of the things that you are broadly suggesting. Please be
15 specific. How is this relevant and how does this witness have
16 knowledge of these matters that you are talking about?

17 MR. SCOTTON: They probably is going to testify, as
18 sale manager, he's going to testify that those bills coming up
19 are DHL, Your Honor.

20 THE COURT: He doesn't know how they came up out of
21 DHL.

22 MR. SCOTTON: Because someone from DHL has given to
23 someone else to use it.

24 THE COURT: I'm sorry, it's not relevant. It's not
25 coming in.

1 We will return, I think I said 5 after 10:00. We will
2 return at 5 after 10:00.

3 (Thereupon, a recess was taken at 10:00 a.m.)

4 MS. MITRANI: Your Honor, for the record, I want to
5 state that we are turning over -- I looked through my
6 transcript binder last night. We have an August 28, 2013
7 hearing I think before Your Honor where Agent Van Brunt
8 testified, and we are handing over a December 19, 2013 hearing
9 before Matthewman where the agent may have testified. We are
10 also handing the defendant what is going to be marked as
11 Government's Exhibit 130A which is a filtered Fed-Ex
12 spreadsheet.

13 THE COURT: Just so I understand, this is the Jencks
14 material?

15 MS. MITRANI: It's additional Jencks material. We
16 have already provided previous Jencks materials, previous
17 transcripts, grand jury testimony. This is additional items
18 that we have had since our production back in August.

19 THE COURT: Okay. So just to be clear on it, the two
20 transcripts you are handing over are transcripts from hearings
21 where the defendant was present?

22 MS. MITRANI: Yes, Your Honor.

23 THE COURT: All right.

24 MS. MITRANI: And these are the transcripts we have in
25 our possession. I'm not sure, to be honest, there have been so

1 many hearings, I don't know if Agent Van Brunt testified at
2 other hearings. He thinks there may have been one other, but
3 we don't have the transcript.

4 THE COURT: I don't recall.

5 MS. MITRANI: It would have been before Judge
6 Matthewman, Your Honor.

7 THE COURT: I don't know that. Was the defendant
8 present for that?

9 MS. MITRANI: The defendant's been present for all
10 hearings. It's not like he's not aware. He's made requests
11 for transcripts. I don't know what transcripts he has, but
12 these are the transcripts in our possession.

13 THE COURT: All right. I am a little troubled if
14 there is another transcript of Agent Van Brunt's testimony and
15 we don't know about it.

16 MS. MITRANI: Well, I don't think we are going to
17 finish Agent Van Brunt today, certainly not direct and cross.
18 Since there's a break, I can double-check my records and get a
19 expedited transcript.

20 THE COURT: Let's please do that.

21 MS. MITRANI: All right.

22 THE COURT: The rules say it has to be given before
23 cross-examination anyway. Although I certainly appreciate the
24 early turning over of Jencks and encourage it, particularly in
25 this case, I think that under the circumstances, where

1 Mr. Scotton was present for the hearings and is aware of what
2 happened -- and let me ask you, are the transcripts publicly
3 filed anyway? Are they filed on the record? Could he have
4 obtained copies himself?

5 MS. MITRANI: I believe so. I mean, they are
6 docketed. They are docket entries.

7 THE COURT: So under those circumstances, it is
8 certainly still in compliance with the rule as long as they are
9 provided before cross-examination. But I do want, if there's
10 another one, I want it turned over to Mr. Scotton as soon as
11 you find it and certainly before cross-examination.

12 MS. MITRANI: Right. Absolutely. Now, in the
13 unlikely event -- I think it's unlikely -- the unlikely event
14 we get to cross-examination this afternoon, since there is a
15 week break, I will get an expedited transcript and have it
16 delivered to him in the jail and he will have it before he
17 completes his cross-examination.

18 THE COURT: No, it has to be before cross-examination
19 begins.

20 MS. MITRANI: I don't have it in my -- in other words,
21 if it exists, and I think it might, but I'm not sure, we never
22 ordered it, so I would have to get it expedited.

23 THE COURT: Can you call someone at your office and
24 have them go through things to figure out whether there such is
25 a transcript?

1 MS. MITRANI: Yes. Should I do that right now?

2 THE COURT: Yes, please do it right now.

3 MS. MITRANI: I just need like two minutes then.

4 THE COURT: Thank you.

5 (Thereupon, a recess was taken at 10:08 a.m.)

6 MS. MITRANI: Your Honor --

7 THE COURT: All righty.

8 MS. MITRANI: I wasn't able to get in touch with my
9 assistant. I left her a message to come the courthouse as soon
10 as she got the message.

11 THE COURT: Okay. One of the agents might be able to
12 contact somebody to get assistance in the meantime.

13 MS. MITRANI: Yeah.

14 THE COURT: Let's go ahead and rise. We will bring in
15 the jury.

16 (Thereupon, the jury entered the courtroom at
17 10:13 a.m.)

18 THE COURT: Please be seated. Thank you all for the
19 patience. We all appreciate it. Mr. Scotton -- let's get
20 Mr. McMahon back first.

21 All right. Mr. McMahon, I just need to remind you you
22 are still under oath. Do you understand?

23 THE WITNESS: Yes, Your Honor, I do.

24 THE COURT: Thank you.

25 Mr. Scotton, you may proceed.

1 BY MR. SCOTTON:

2 Q Those invoices that are present to you is invoice that
3 come from DHL?

4 A These come from DHL. These are not official invoices.
5 These are simply a statement of account which show an aging of
6 what is due for a certain company, for a certain account.

7 Q And which departments that created those statements?

8 A Our billing department creates these statements.

9 Q And when they create those statements, to who do they send
10 those statements?

11 A There's no one in particular that they send them to each
12 time. They could send it to the sales rep if I request it.
13 They could send it to accounts payable in the customer site.
14 They could send it to a shipping guy. They could send it to
15 whoever requests it.

16 Q They can provide this to somebody else from outside too?

17 A I don't know that. I believe if you -- if you call DHL's
18 billing department, you are going to have to have a certain
19 amount of information to request this. For example, the
20 account number, the customer's address, the basic account
21 information.

22 Q Mr. Justin, have you had any situation during your company
23 of employees from your company selling records of your company
24 to individuals outside?

25 A I don't know anything about that.

1 Q If those statements been give to individuals outside, can
2 those individuals now compromise those accounts?

3 MS. MITRANI: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. SCOTTON:

6 Q Government asked questions or made a comment and you
7 respond is that I asked you who's going to be seeing the
8 documents that are provided you, correct?

9 A Are you asking me if the government asked me that
10 question?

11 Q Yes.

12 A I don't remember the government asking me that question.

13 Q Your testimony here earlier today, you are saying when I
14 provide to you the documents from Zap Games in bank statements,
15 I asked you who was going to be reviewing those documents. Did
16 I say that question to you?

17 A Yes.

18 Q And is any reason why that I have to ask that question?

19 A I don't know why you asked me that question.

20 Q Don't you think it's kind of -- I don't know the nice way
21 to put it -- stupid to ask that question?

22 MS. MITRANI: Objection, Your Honor.

23 THE COURT: Sustained.

24 BY MR. SCOTTON:

25 Q If the prosecutor has direct you to ask that question

1 here, to answer that way?

2 A The prosecutor has not directed me to answer any question
3 in any specific way.

4 Q But you went several times to the office of the
5 prosecutor, right?

6 A Yes.

7 Q Can you show this court here all the records, emails
8 communication that you have with me.

9 MS. MITRANI: Objection, Your Honor.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q Has DHL provided to the government records of phone calls
13 that I made to DHL or to you?

14 A I don't know the answer to that.

15 Q You don't have any records, do you?

16 A Can you rephrase that?

17 Q Do you have any records of communication with Zap Games?

18 A I have emails.

19 Q All them?

20 A I have a lot of emails. I don't know if I have every
21 single email.

22 Q Did you present all those emails to the court, to the
23 prosecutor?

24 A I provided multiple emails to the court, not all of them.

25 Q Is there any reason why you have not provided all of them?

1 A There were some that just were not pertinent.

2 Q So the account of Zap Games has been approved, correct?

3 A Yes.

4 Q Then several days later, packets has been shipped under
5 that account, correct?

6 A Yes.

7 Q Do you recall how many packets were shipped through that
8 account?

9 A No.

10 Q Isn't it true that there were only three packets shipped
11 through that account?

12 A Was there only three packages? I don't remember how many
13 packages were shipped.

14 Q So you the sales manager in charge of the account,
15 correct?

16 A Right.

17 Q Did you provide this government here with those air bills
18 the left on those packets?

19 A I did not provide them the air bill numbers.

20 Q Did anybody provide them those waybills of those three
21 packets?

22 A I'm not sure. I didn't speak with anybody else at DHL
23 regarding this.

24 Q Did you provide the invoice from Zap Games to the
25 prosecutor?

1 A I don't recall.

2 Q Is anybody has provided any documents from all those three
3 packages that have been shipped to the government?

4 A I can only speak for myself. I did not send the air bills
5 to the government.

6 Q So you come here, claim the account has been put on a
7 fraud, correct?

8 A Correct.

9 Q But what is the fraud, Mr. Justin, on the account? Three
10 packages was be shipped, and what is those three packages?

11 A I don't work for the fraud department. All I'm telling
12 the court is that the shipments that you shipped, the shipments
13 that were shipped under the Zap Games account were held at the
14 local sort station because of the reasons that I mentioned
15 earlier.

16 Q Then why can they -- why can you say the account has been
17 put to a fraud when it is not a fraud? It is a fraud on that
18 account? Did you met with the defendant?

19 A I am only -- I did not say the account was fraud. The
20 account was considered fraud by a party -- by our fraud
21 department. They do the research to determine if the account
22 is shipping fraudulently.

23 Q You opened the account, correct?

24 A I opened the account.

25 Q You verified the documents from Zap Games as a real

1 company registered with Tallahassee, correct?

2 A Correct.

3 Q You walked to a store, you understand that we are about to
4 open a second store, correct?

5 A Correct.

6 Q And you also has acknowledged that you review also the
7 retail account from Carla Felini's store as well, correct?

8 A From the My Merry Mailman?

9 Q Yes, sir.

10 A Yes.

11 Q And then three packets only was ship through the account,
12 only three, and those packages never left to Brazil, correct?

13 A Again, I don't remember the number of packages that were
14 shipped.

15 Q The package never left to Brazil, correct?

16 A There were shipments that were held. I don't remember if
17 any actually got to Brazil because there were multiple
18 shipments over a period of time.

19 Q But you guys cannot provide with the evidence to this
20 court the waybill that packets and invoice that shows that
21 balance is past due and it hasn't been paid. Can you show that
22 to the court?

23 A I can't show it right now. Perhaps I have this
24 information, but I don't have the documents today.

25 Q Have those packages get returned back to Zap Games?

1 A I do not know what the operations team did with those
2 packages.

3 Q Do you deny that Zap Games has suffered lost in here those
4 three packets?

5 A Again, I don't know what happened with those three
6 packages. Excuse me, I do not know what happened with the
7 packages. I don't know how many packages were shipped.

8 Q So you don't recall me calling you and complaining about
9 those three packets?

10 A I remember you calling me complaining about shipments
11 being held. Again, I don't remember how many packages were
12 being held.

13 Q Do you recall you just say that you have several emails
14 that I sent you complain about those packages?

15 A I'm sorry?

16 Q You have testified that I sent emails complaining about
17 those packages?

18 A Yes, that's correct.

19 Q So you then don't recall that I even sent the waybills
20 numbers to those packets for you to review?

21 A Yes.

22 Q So then you can recall now it's only three packets;
23 otherwise, it's going to have more airway bills on the emails,
24 correct?

25 A No. Again, I don't remember the number of packages. I do

1 remember you sending me an email asking me to assist you in
2 retrieving the shipments which are being held in a local
3 station. I do not remember the number of packages which were
4 held.

5 Q How can you be able to retrieve those packages if you
6 don't have how many packages that is and if you don't have the
7 waybills also to be communicated with your fraud department?

8 A I can find the email that was sent to me. I just don't --
9 I don't want -- I don't want to say in this court how many
10 shipments were held if I can't remember.

11 Q You come for a trial. This is a trial. You understand we
12 are in trial here today, right?

13 A Yes.

14 Q And you understand that I have been accused of some
15 serious --

16 MS. MITRANI: Objection to the form of the question.

17 THE COURT: Sustained.

18 BY MR. SCOTTON:

19 Q So did you not provide those information to the prosecutor
20 knowing that you going to come and testify?

21 MS. MITRANI: Objection to the form of the question.

22 THE COURT: Sustained. You need to be specific.

23 BY MR. SCOTTON:

24 Q So you have not provide that communication email of me
25 complaining of the packages to the government, have you?

1 A I don't recall if I sent that email.

2 Q Because on that email, it would have the track numbers
3 from those packages, right?

4 A It would.

5 Q And you claim some kind of application by Roger Racing.
6 When did you receive the application by Roger Racing?

7 A I don't recall the date, but it was after this situation.

8 Q And did you have the application also to provide to the
9 Court?

10 A This is not an application that I received. It was a lead
11 provided through our internal lead source.

12 Q Did you have any kind of report or anything from the lead
13 source department here that shows that someone is calling on
14 behalf of Roger Racing?

15 A No.

16 Q When did you have contact by the fraud department in
17 reference to Citrix account, do you recall the time?

18 A I don't recall the exact date. It was in 2011, the second
19 half of 2011.

20 Q Was before you met me or after you met me?

21 A When I spoke with the fraud department about --

22 Q Citrix.

23 A About Citrix? It was in 2011. It was right around the
24 time we met.

25 Q You previously said you don't remember the time, but you

1 remember somewhere around the time when we met?

2 A Yes, it was in 2011, right, which is when we met.

3 Q Did you provide the account number information to the
4 government as well?

5 A The Citrix account number?

6 Q Yes, sir.

7 A I do not recall.

8 Q How many accounts from Citrix was compromised?

9 A There was two.

10 Q Any of those accounts is the invoice that I provided to
11 you today?

12 A You provided me a statement of account, but I don't
13 remember the nine-digit account number that was closed.

14 Q Do you have any records here that shows and prove the
15 story that you just told the prosecutor here today, anything
16 that we can touch and see for ourselves?

17 A No.

18 Q It is not the truth that those three packages never has
19 been shipped?

20 A I'm sorry, can you rephrase that?

21 Q It is not the truth that these it packages shipped by Zap
22 Games never has been shipped?

23 A I don't remember how many shipments were shipped, but
24 there were shipments shipped on the Zap Games account.

25 Q And DHL claiming lost on those shipment?

1 A DHL has claimed that they lost them?

2 Q Have DHL claimed lost on those shipments?

3 A Did they claim a loss?

4 Q Yes.

5 A I don't understand what you are asking.

6 Q Have DHL claim a lost, the lost on that particular account
7 was a lost for them?

8 A Yes.

9 Q How is that?

10 A The invoices were not paid for shipments that were
11 shipped.

12 Q How they claim lost on something they have not even
13 shipped?

14 A The shipments were -- when a shipment is picked up and
15 scanned for pickup, it's moved to the local station for its
16 initial sort. The invoices are generated.

17 Q Right. And do you have those invoice?

18 A I don't have the invoices, no.

19 Q DHL claim lost because the driver went to my store, took
20 my merchandise to your location, but they never deliver it and
21 they never even returned the merchandise, but they still claim
22 lost?

23 A I don't know how DHL -- I don't know where the profit
24 margins are in pickup and delivery. All I know is that when a
25 shipment -- when a driver picks up a shipment at a local

1 facility, brings it to the sort station, an invoice is
2 generated.

3 Q Mr. Justin, we sit down and talk about Zap Games. Can you
4 tell the Court what Zap Games -- what kind of company it was.

5 A You were shipping, you were exporting to Brazil small
6 personal items, could be electronics, could be personal
7 effects, items used by -- items that are going to be used by
8 the receiver in Brazil.

9 Q This is not the truth, right? Do you remember we log into
10 the Zap Games website?

11 MS. MITRANI: Objection to the form of the question.

12 THE COURT: Overruled.

13 BY MR. SCOTTON:

14 Q Have you logged into the Zap Games website?

15 A I did not log into the Zap Games website.

16 Q What does Zap Games means you to? What do you think Zap
17 Games really bringing in?

18 A I don't know, maybe electronics. I'm not sure. I don't
19 recall.

20 Q You don't recall what games means?

21 MS. MITRANI: Objection, Your Honor.

22 THE COURT: Sustained.

23 BY MR. SCOTTON:

24 Q It is not the truth that Zap Games is a company that sells
25 video games?

1 A I don't recall that.

2 Q So you don't recall that those shipping packages was three
3 Play Station shipped to Brazil?

4 A This might have been the -- that might have been in the
5 packages, but I don't -- that might have been what was shipped
6 in those particular shipments, but I don't recall if that is
7 what Zap Games was shipping to Brazil on a regular basis. That
8 was the business model.

9 Q Knowing this problem, right, and you say DHL have a lost
10 of three packets, you never came back to my store, have you?

11 A After the shipments were held?

12 Q Yes, sir.

13 A No.

14 Q Besides Mr. Van Brunt pretend to be DHL salesperson,
15 nobody else come to store to talk to me about these three
16 shipments, right?

17 A Right.

18 Q And he pretend to be a nice friend, come to store, say I
19 will take care of the problem that you sent him to, right?

20 A I'm sorry, could you repeat that question.

21 Q Have you tried to contact me or email an invoice from Zap
22 Games?

23 A No.

24 Q Did you have any billing department emails that shows that
25 they tried to send me an invoice, charging me for the three

1 lost packets?

2 A I don't have that email, no.

3 Q What we have here is a bunch of false accusations,
4 correct?

5 MS. MITRANI: Objection, Your Honor.

6 THE COURT: Sustained.

7 BY MR. SCOTTON:

8 Q Have DHL billing department contact you in reference to
9 Zap Games account?

10 A Has the billing department contacted you about the Zap
11 Games account?

12 Q You, sir.

13 A Yes.

14 Q And did you get a copy of that bill?

15 A No.

16 Q You never got a copy of the bill?

17 A I received a -- I looked up a statement of account which
18 looks like this in our system to see what was outstanding. But
19 I was told by Roy not to reach out to you.

20 Q And how much was the bill, Mr. Justin?

21 A I don't recall.

22 Q And how many pages was the bill?

23 A I don't recall. I looked at it electronically.

24 Q But you never provided this government here with that bill
25 too?

1 A No.

2 Q And why not?

3 A They did not ask for that.

4 Q Don't you think that is a fraud and they be investigated,
5 they should have all the evidence in their hands?

6 MS. MITRANI: Objection to the form of the question.

7 THE COURT: Sustained.

8 BY MR. SCOTTON:

9 Q So if someone requests -- if the government requests the
10 invoice today, did you have the invoice to provide them today
11 with a copy of the waybills and commercial invoice of the three
12 particular packages that were shipped on that account?

13 A Today, no.

14 Q Why not?

15 MS. MITRANI: Objection, Your Honor.

16 THE COURT: Overruled.

17 THE WITNESS: By this time, the account was -- is long
18 closed, the balances have been written off, and this statement
19 is not readily available.

20 BY MR. SCOTTON:

21 Q Right. Yesterday we have someone from your legal
22 department claim that they have a system that hold all the
23 information.

24 A Uh-huh.

25 Q So now you say that that information is all long gone,

1 correct?

2 A No, I said it's not readily available.

3 Q Why it's not available when legal department and other
4 individuals here testified that they have a huge database that
5 holds all the information?

6 A I don't work for the legal department. I do not have
7 access to this vault system that they have. I can tell you
8 what I can do. And I was not -- I could not obtain this
9 document through my systems today.

10 Q If the government need to verify that account and the
11 testimony that you have given here is true, there no way to
12 verify that anymore, that's what you say, right?

13 A I'm saying that I cannot, through the programs that I have
14 access to, I cannot locate this. If that information was
15 needed, they would have to go through our legal department or
16 through another channel that would have access to something
17 like that.

18 Q How this information is not been given to the prosecutor?

19 A Again, I was not required to give this information to the
20 prosecutor.

21 Q But no one single invoice has been sent to my location,
22 has been?

23 A Billing would have sent the invoice in 2011 when the
24 shipments were shipped. They are not going to send this
25 invoice this year. The account's been closed since then.

1 Q They ever prove that billing has sent the invoice?

2 A I don't have -- I have not seen the envelope in which the
3 invoice was shipped.

4 Q Why they going to send invoice from shipping that has not
5 been even shipping?

6 A Again, the invoices are created once the driver picks up a
7 shipment and scans it for departure.

8 Q Right. If they lost and broke the merchandise, they still
9 billing the person?

10 A If the shipment is lost or broken, the customer would
11 still get an invoice. There's a process in place that the
12 customer can dispute the invoice because it was lost or broken,
13 but the invoice is still generated.

14 Q DHL give this option to Zap Games that you guys holding
15 some merchandise over there and never even ship that
16 merchandise?

17 A DHL does not proactively offer the customers in which to
18 file a claim for a loss or a damage. It's the customer's
19 responsibility to contact DHL and file this type of claim.

20 Q Right. And what happened? The client has contacted you,
21 right?

22 A The client contacted me to assist in getting the
23 shipment -- the client contacted me to help get the shipment
24 out of the local sort station and have it moved.

25 Q And have also during this contact information, that Zap

1 Games has informed you that if not going to ship the packets,
2 bring it back?

3 A Yes.

4 Q And did you guys bring the packets back?

5 A No.

6 Q How did you know then?

7 A Because the local operations team at BCT informed me that
8 the shipment was being held until the investigation on the
9 shipper and the shipments was complete.

10 Q But previously on the question I ask you, you say you have
11 no recollection if those packages has been return or not,
12 right?

13 A I don't know if they were ultimately returned. I know
14 that when -- that when you asked me to have them returned to
15 you, at that time the local station refused to return them
16 because they were looking into the shipments and the shipper.

17 Q So you have -- then you final question is there has been
18 returned or has not been returned?

19 A I was asked to remove myself from the situation before it
20 was completely resolved by Roy and the FBI. So when I was
21 removed, the shipment was currently at the BCT station held for
22 investigation.

23 Q During the time that you -- we have that meeting on the
24 coffee shop, you just a sales manager, correct, from the area?

25 A Yes.

1 Q And then the second gentleman, he's a manager as well?

2 A I don't know who you are referring to.

3 Q The second person also was another FBI guy undercover
4 sitting with us at the table?

5 A There was no one else. It was you and me having a
6 discussion.

7 Q Do you lie, Mr. Justin?

8 A I'm sorry?

9 Q Do you lie sometimes?

10 A No.

11 Q Did you know if the prosecutor asked you to come here to
12 lie to help the case?

13 A The prosecutor did not ask me to come here and lie to help
14 the case.

15 Q Do you think it is right for you to come here and perjure
16 yourself and say there is not somebody else at the meeting?

17 THE COURT: Sustained.

18 MR. SCOTTON: Your Honor, I'm done with the questions,
19 but I want to keep my option open to --

20 THE COURT: No. If you want to ask additional
21 questions, you should do it now.

22 MR. SCOTTON: No more questions, Your Honor.

23 THE COURT: Are you sure, Mr. Scotton, because I'm
24 giving you an opportunity to ask any questions that are
25 admissible questions and permissible questions at this time.

1 MR. SCOTTON: Your Honor, no more questions.

2 THE COURT: All right.

3 MR. SCOTTON: Your Honor, may I approach and get that
4 paperwork or should the marshals handle it?

5 THE COURT: There may be questions on redirect. So
6 let's leave it there for now. Thank you.

7 Any redirect?

8 MS. MITRANI: Yes, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. MITRANI:

11 Q Good morning.

12 A Good morning.

13 Q Did you open the Zap Games account?

14 A Yes.

15 Q Did you remove yourself from the situation after being
16 contacted by the FBI?

17 A Yes.

18 Q And I think you have already explained it, but what do you
19 mean by removing yourself from the situation?

20 A I had no further contact with Roger or any -- I had no
21 further contact with Roger regarding Zap Games or Sky Air
22 Online or Merry Mailman or for anything for that matter.

23 Q Did you have any further involvement with Zap Games?

24 A No, I do not.

25 Q The defendant asked you a question, something to the

1 effect that he was about to open a second store. Are you aware
2 of how many stores, if any, the defendant owned?

3 A I don't know how many he owned. I know -- I can tell you
4 how many we spoke about that he was representing. So there was
5 Zap Games, Sky Air Online, the Merry Mailman, and then there
6 was that storefront that we walked into which I'm not sure,
7 that could have been a fourth, but I don't remember what was
8 going on in that empty store front.

9 Q Okay. Did you ever set foot in that empty storefront?

10 A Yes.

11 Q And is that -- after you set foot in it, is that when you
12 left and went to find a table to sit down?

13 A Yes.

14 Q All right. Can you just tell us once and for all, how
15 many people were present at the meeting that you had with the
16 defendant regarding the opening of the Zap Games account?

17 A There were two, Roger and myself.

18 Q Anybody else?

19 A Nobody.

20 MS. MITRANI: Your Honor, may I approach?

21 THE COURT: Yes.

22 BY MS. MITRANI:

23 Q I'm showing you Exhibit 8F. Do you see that?

24 A Yes.

25 Q And does that refresh your recollection as to the

1 defendant's communications with you regarding the packages that
2 were being held?

3 A Yes.

4 Q And let's put it on the board. Is the bottom an email
5 from you to Zap Games Live?

6 A Yes.

7 Q It says, Alex, I'm aware of what happened with your two
8 shipments yesterday. I'm taking care of this and will be in
9 touch with you today to explain what happened and how we are
10 going to fix this. I apologize for this, Justin McMahon?

11 A Yes.

12 Q Have you ever met anybody by the name of Alex?

13 A No.

14 Q Was the defendant, Roger Scotton, the only person you ever
15 dealt with with respect to Zap Games?

16 A He's the only personal I have ever spoken with over the
17 phone or met in person.

18 Q Okay. Going up you have, do you even know -- strike that.

19 Then here it says, Justin, and it's dated August 17, 2011,
20 the two shipments is at OH and other two is with message return
21 to shipper. What is the problem. And then it has some
22 information underneath, correct?

23 A Correct.

24 Q And that was again an email. This time it says Marcio
25 Melo mailed to Zap Games Live to you at DHL, correct?

1 A Correct.

2 Q And let's go to the next one up on Exhibit 8F with an Alex
3 at the end.

4 MR. SCOTTON: Your Honor, I'm going to object to that
5 and I need to go sidebar.

6 THE COURT: All right.

7 (Thereupon, the following was heard sidebar.)

8 THE COURT: What is your objection?

9 MR. SCOTTON: I don't want to be difficult here.
10 First of all, I never got that email. And second, is that --

11 THE COURT: It's already in evidence.

12 MR. SCOTTON: I understand, but I'm trying to
13 understand here the rules here. I tried to submit some emails
14 like that also to prove. As a matter of fact, in my
15 cross-examination, I asked for three specific packages, only
16 the three packages was shipped through this account. The email
17 pretty much shows this.

18 THE COURT: This is talking about at least four. It's
19 already in evidence. It's in evidence already at this --

20 MS. MITRANI: For the record, can I clarify something?
21 He's saying it's already in evidence. This was produced to the
22 defendant in discovery. The exhibits were given and Bates
23 labeled DHL 841, DHL 842.

24 MR. SCOTTON: Try to understand here that I tried to
25 introduce emails also on the files I handed to her and she

1 object to my emails. Why the prosecutor get to submit those
2 emails here and I can't submit my emails?

3 THE COURT: First of all, you never tried to submit
4 the emails here during this trial as far as I know. You can
5 correct me if I'm wrong, but I don't remember that. Did you
6 try to admit those emails here?

7 MR. SCOTTON: Yes, Your Honor.

8 THE COURT: When?

9 MR. SCOTTON: I tried because everything is provided
10 on the CD, provided to the prosecutor.

11 THE COURT: You told me everything on the CD provided
12 that you wanted to admit were DHL records relating to the
13 account invoice billing account records -- excuse me -- to the
14 accounts of Dell and Pfizer. That's what you said. You said
15 nothing about emails.

16 MR. SCOTTON: This is for today. But during the
17 course of this trial here, I tried to introduce emails here and
18 the prosecutor objected.

19 THE COURT: I don't know what you are talking about.
20 And I'm sorry, but once again this is another example of when
21 you just tried to suggest that you did something that you did
22 not do. Okay. Overruled.

23 (Thereupon, the following was heard in open court.)

24 BY MS. MITRANI:

25 Q Let's go to the next one on the email chain. And this is

1 from you, Justin McMahon, at DHL dot com to Zap Games at live
2 dot com dated Thursday August 18, 2011, correct?

3 A Correct.

4 Q And can you read the body of the email, please?

5 A Sure. It says, Alex, I have been working on this all day.
6 Dell has closed the account due to fraud suspicion. I do not
7 know more at this time, but until I learn more, I would not
8 recommend shipping with DHL under Zap Games. I will keep you
9 posted.

10 Q The last one up on the email chain?

11 A It says, Justin --

12 Q And it's the same -- go ahead, to the body of the email.
13 Again, it's someone purporting to be Marcio Melo to Zap Games,
14 correct?

15 A Correct. Justin, I need this to be resolved asap. I have
16 several clients that is not very happy with us right now. This
17 is BS. No one has call me or ask anything. I will call my
18 attorney also first thing tomorrow. Alex.

19 Q The defendant was asking you about the Merry Mailman. Did
20 you open an account for the Merry Mailman for the defendant?

21 A No.

22 MS. MITRANI: Your Honor, if I could have a minute.

23 THE COURT: Yes.

24 MS. MITRANI: No further questions, Your Honor.

25 THE COURT: All righty. Thank you, Mr. McMahon. You

1 are excused. The government may call its next witness.

2 MS. MITRANI: The government calls Special Agent Van
3 Brunt.

4 THE COURTROOM DEPUTY: Please raise your right hand.

5 ROY VAN BRUNT

6 Having been first duly sworn on oath, was examined and
7 testified as follows:

8 THE COURTROOM DEPUTY: Please be seated. State and
9 spell your first and last name for the record.

10 THE WITNESS: My name is Roy Van Brunt, V-A-N
11 B-R-U-N-T.

12 MS. MITRANI: Your Honor, may I just approach to
13 remove those documents?

14 THE COURT: Yes. And if they are Mr. Scotton's, would
15 you please give them back to him.

16 MS. MITRANI: Yes.

17 THE COURT: Thank you.

18 Mr. Scotton, Ms. Mitrani has just provided you the
19 documents. Do you see that, Mr. Scotton?

20 MR. SCOTTON: Yes, Your Honor.

21 THE COURT: Thank you.

22 DIRECT EXAMINATION

23 BY MS. MITRANI:

24 Q Good morning, Special Agent Van Brunt.

25 A Good morning.

1 Q Is that seat as comfortable as that seat?

2 A Better.

3 Q Let's begin by telling the members of the jury a little
4 bit about who you are. Please tell us by whom you are
5 employed, in what capacity, for how long, and what do you do.

6 A I am a special agent with the Federal Bureau of
7 Investigation. I have been an FBI agent for almost 11 years.
8 Since 2003, I have been assigned to the Miami field office
9 where I have in almost all of my cases been assigned to white
10 collar crime matters ranging from investment fraud to include
11 ponzi schemes, stock market manipulation, and mail fraud.

12 Q What kind of training have you received from the FBI?

13 A Well, besides going to the FBI academy and graduating, I
14 am also a member of the FBI's corporate fraud response team
15 which is a team of agents that have been selected by our FBI
16 headquarters to be deployed or temporarily assigned to assist
17 field offices that are investigating either time sensitive or
18 high profile corporate fraud matters.

19 We have -- or I have received, in addition to what I would
20 describe as general corporate fraud, investigative training. I
21 have also attended training by the American Bar Association
22 regarding money laundering as well as some other training by
23 the FBI, some of which is specific to white collar crime and
24 other of which is specific to other duties of the Federal
25 Bureau of Investigation.

1 Q So let's go to the beginning of the investigation that
2 brings us here today. When did this investigation begin from
3 the FBI's perspective?

4 A The FBI began an investigation in August of 2008. And the
5 investigation was in large part generated from a phone call
6 from an FBI classmate of mine who was assigned to another field
7 office. He had been contacted by DHL, one of their corporate
8 security individuals, about some fraudulent activity
9 originating in south Florida. And my classmate contacted me
10 knowing that I was an agent assigned to Miami asking if I knew
11 anyone who was on either a white collar squad or someone who
12 might handle a mail fraud matter. And I told him I handle mail
13 fraud matters.

14 He put me in contact with DHL. I spoke with my supervisor
15 about it. Ultimately I met a DHL fraud investigator named
16 Nicole Nelson, and that was largely the origin of the FBI's
17 investigation.

18 Q And what was the nature of the fraud as you began this
19 investigation?

20 A It was the use and creation of fraudulent shipping
21 accounts, and that would also include the use of accounts that
22 were believed to have been originally legitimate but then had
23 become compromised.

24 Q And did you undertake a preliminary investigation?

25 A I did.

1 Q And what sort of steps to you take in your preliminary
2 investigation?

3 A Well, the first thing I did was review documents and
4 evidence and records that had been provided by Nicole Nelson.
5 I ran some other database checks. Ultimately I came in contact
6 with a secrete service agent and met with him about some
7 certain conduct that he was looking into regarding Fed-Ex and,
8 I believe, UPS.

9 We met once or twice, compared notes, and reviewed some
10 similarities between all three shipping companies and I
11 concluded that we were looking at the same criminal activity.
12 Based on that determination, I arranged for a meeting at the
13 FBI field office for investigators from DHL, Fed-Ex, and UPS.
14 And I met with all the investigators collectively to discuss
15 the similarities in the cases and investigative steps that the
16 FBI might try to pursue.

17 Q When did that meeting occur approximately?

18 A The meeting with the investigators from the shipping
19 occurred in December of 2008.

20 Q When you say investigator from the shipping companies,
21 which companies are you referring to?

22 A Sure. I specifically recall that Nicole Nelson from DHL
23 was at the meeting. Joe Santiago as well as another
24 investigator from UPS was at the meeting, and UPS had three
25 investigators, two of which were Samuel Cory and Christian

1 Driskill.

2 Q And following this meeting, did the FBI then undertake its
3 formal investigation of the activity that leads us here today?

4 A The case had technically already been opened, but
5 additional and the significant investigative activity took
6 place after this meeting had occurred.

7 Q And after this meeting occurred, just very generally
8 speaking, can you tell us some of the investigative steps that
9 you took in a general manner, and we will get to specifics
10 later.

11 A Sure. In most white collar cases, one of the more
12 important steps we take is the issuing of subpoena and they can
13 be issued to banks or other financial institutions. I also
14 issued subpoena to companies that are known as commercial mail
15 receiving agencies. For example, Pak Mails, Super Postal
16 Center.

17 Essentially, I make efforts to obtain information and
18 documents that could help narrow the scope of the investigation
19 as well as identify the people who are committing the crimes
20 and specifically to try to locate the money trail, if you will.

21 Q And did you receive documents in response to all of your
22 subpoenas and other requests for documents?

23 A To the extent that we issued subpoenas, yes, we did
24 receive documents. There are occasions where you might send a
25 subpoena to a bank, and a bank might say, we don't have any

1 accounts in that name had or we don't have any individuals who
2 have, you know, accounts with us. So there may have been one
3 or two instances where a subpoena was served and the response
4 was there are no records in compliance or as requested. But
5 yes, we did receive bank records and other business records
6 back.

7 Q Did you also conduct interviews as part of your
8 investigation?

9 A I did.

10 Q Did you obtain documents from all three shipping companies
11 throughout the course of your investigation?

12 A Yes.

13 Q Did you continue to work with the fraud investigators from
14 DHL, Fed-Ex, and UPS throughout the course of the FBI's
15 investigation?

16 A Yes.

17 Q Now, you said that this started in December -- excuse me
18 in the fall of 2008, correct?

19 A Correct.

20 Q So as your investigation went underway, were you able to
21 identify the entities affiliated with the fraud that you were
22 investigating?

23 A Yes.

24 Q And what entities did you identify?

25 A Initially we identified a company by the name of Brazil

1 Express. And quickly or a short time into the investigation, I
2 discovered that there were many variations on that name. In
3 some instances, Brazil would be spelled with the letter S. In
4 other instances, it would be spelled with the letter it Z. In
5 some instances, companies were identified as Brazil Express
6 Online. Other slight variations similar with the name Sky Air,
7 there was Sky Air, Sky Air Online, and other slight variations
8 in corporate names.

9 Q And from an investigative standpoint, did these variations
10 and names have any significance to you?

11 A They did.

12 Q And what was the significance to you?

13 A The significance is that if you create multiple companies
14 with similar names, it's unlikely that customers might
15 recognize an actual difference. And it's also of significance
16 because to the extent someone, for instance, tried to run a
17 search on the name of one company, if they run a search for
18 Brazil Express using the letter S, they might find one company,
19 but they would not find necessarily the company with the letter
20 Z because the database is going to search for the individual
21 letters or characteristics that you search. It might not
22 necessarily expand the scope of the search.

23 So while most people in the world might not think it makes
24 a difference to use the letters, Inc. after a business name,
25 the difference between a search using the letters, Inc. versus

1 LLC versus corp versus international literally result in
2 completely different search results.

3 Q And how about the defendant's name, did that pop up in
4 your investigation?

5 A Absolutely.

6 Q And did you see variations in the defendant's name Rogerio
7 Scotton?

8 A I did.

9 Q What were those variations?

10 A The variations ranged from his -- what I believe to be
11 complete name, Rogerio Chaves Scotton, to Roger Scotton, to
12 misspellings in his last name to include instances of only one
13 T being used to the end of his name ending in O-M to the end of
14 his name trending in E-N to the letter D being inserted into
15 his first name to his last name Chaves -- excuse me, his middle
16 name, Chaves, being listed as his last name.

17 So again, to the extent that someone might go by Rogerio
18 or Roger, I don't think that difference is necessarily with
19 evil intent. I do think if I find a pattern of someone
20 consistently spelling their name wrong and consistently using
21 different variations, it definitely becomes a pattern of what I
22 believe to be concealment and trying to hide who they really
23 are.

24 Q Were there addresses that you identified in connection
25 with this fraud?

1 A Yes.

2 Q And what were those addresses and how did you connect them
3 to the fraud?

4 A Sure. Some of the primary addresses that I first
5 identified were 7797 Golf, G-O-L-F, Circle Drive, Apartment 204
6 in Margate, Florida as well as 398 Southeast Mizner Boulevard,
7 Unit 1921, in Boca Raton, Florida. Both the those addresses
8 are residential properties. The Margate address is a an over
9 55 age community in Margate.

10 Q When you say the Margate address, is that the 7797 Golf
11 Circle Drive address?

12 A Correct.

13 Q And that's the over 55 residential community?

14 A Correct, meaning that in order to purchase a condo in that
15 complex or reside there, at least one of the residents must be
16 over the age of 55.

17 Q Were you able to identify who lived at that address?

18 A Yes?

19 Q And who lives at 7797 Golf Circle?

20 A Carlos and Marina Colon, C-O-L-O-N.

21 Q Why you able to identify who these individuals were in
22 relation to the defendant?

23 A Yes, they are the defendant's stepfather and his mother.

24 Q And with Carlos Colon being the defendant's stepfather,
25 correct?

1 A Correct.

2 Q And Marina Colon being the defendant's mother?

3 A Correct.

4 Q Okay.

5 A The 398 Southwest Mizner address in Boca Raton is a
6 townhouse located in a townhouse community that goes by the
7 name Mizner on the Green, so they are both residential
8 addresses.

9 Q Were you able to identify nonresidential addresses
10 affiliated with the fraud?

11 A Yes.

12 Q What were those?

13 A Some of the key addresses that we identified were a PO box
14 up in Boca Raton, another commercial mail receiving agency, a
15 Pak Mail located at 2234 North Federal Highway. There was
16 another private mailbox locate in Boca Raton, 160 West Camino
17 Real in Boca Raton, and another Pak Mail location in Coral
18 Springs, 934 North University Drive.

19 Q And how did these addresses relate to what you were
20 investigating?

21 A They related to what we were investigating because they
22 were being used to either send or receive packages by the
23 defendant and that to the extent that searches were run of
24 shipping records, they consistently turned up as a location
25 where, again, packages were either being dropped off or

1 received and there were also interviews that I conducted where
2 I was able to confirm that the defendant was using those
3 addresses again to send and receive packages to include his
4 parents, his mother and stepfather, either accepting and
5 signing for packages or offering packages for shipment.

6 Q Did you obtain records from the Florida Department of
7 State regarding various different entities?

8 A Yes, I did.

9 Q Let's go through them. Let's start with Government's
10 Exhibit 6A which is already in evidence. All of 6 is in
11 evidence. All right. So can you tell the members of the jury
12 what they are looking at. What is Exhibit 6A?

13 A What's on the screen right now is the first page of the
14 certification from the State of Florida Department of State
15 certifying that the corporate records for the company named
16 Brasil, B-R-A-S-I-L, Express, Inc. are attached. It's
17 essentially a certification of the business records as filed
18 with the State of Florida Department of State.

19 Q Okay. And so these are the business records of Brazil
20 Express, Inc. with Brasil being spelled with an S, correct?

21 A Correct.

22 Q Let's go to the second page of Exhibit 6A. Article 5
23 lists the registered agent of Brazil Express, Inc. as who?

24 A Rogerio middle initial C. Scotton.

25 Q What address?

1 A 7797 Golf Circle Drive, 204, Margate, Florida 30063.

2 Q And if we go to the third page of Exhibit 6A, is Rogerio
3 Scotton also listed as the president of this corporation?

4 A Yes. The title is the letter P which normally stands for
5 the title president.

6 Q And Samara Scotton, VP, which would stand for vice
7 president, correct?

8 A Correct.

9 Q Let's go to 6B. I'm showing you the first page of
10 Government's Exhibit 6B. What are we -- what corporate records
11 are we looking at here?

12 A Again, this is what I would describe as the certification
13 from the State of Florida Department of State. It indicates
14 that attached are the complete business records for a
15 corporation or entity known as Brasil, B-R-A-S-I-L, Express
16 USA, Inc.

17 Q If we go to the second page of Government's Exhibit 6B,
18 who is listed at the -- who is listed as the registered agent
19 for Brasil Express USA, Inc. and at what address?

20 A Rogerio Scotton located at 398 Southeast Mizner,
21 M-I-Z-N-E-R, Boulevard, 1921, Boca Raton, Florida 33432.

22 Q And if we go to the third page of Exhibit 6B, is
23 Mr. Scotton also listed as the president but with 7797 Golf
24 Circle Drive address?

25 A Correct.

1 Q Let's go to Exhibit 6C. What are we looking at here,
2 Special Agent Van Brunt?

3 A This is the certification from the Florida Department of
4 State for a corporation by the name of BrasilUSA, all one word
5 B-R-A-S-I-L-U-S-A Express, Inc.

6 Q And let's go to the second page of -- excuse me -- the
7 second page of 6C.

8 A The second page under article 5 lists the registered agent
9 as Roger middle initial S., Scottom, S-C-O-T-T-O-M, at an
10 address of 398 Southeast Mizner Boulevard, 1921, Boca Raton,
11 Florida 33432.

12 Q And if we go to article 3 -- article 2, does that also
13 list the mailing address for the corporation as PO Box 629 in
14 Boca Raton, Florida?

15 A Yes.

16 Q Let me ask you, is Exhibit 6B and 6C, I can show them to
17 you if you need to actually see them again, is this an example
18 of the variation in the defendant's name that you were talking
19 about before?

20 A Yes, under article 5 of the document that is currently on
21 the screen, the last name is spelled ending in O-M. If you
22 went to SunBiz and ran a search for Mr. Scotton and ran
23 S-C-O-T-T-O-N, there would be no indication from the database
24 that this corporation existed or that Mr. Scotton at that
25 address had any affiliation with it.

1 Q Is the two corporations listed at 6B and 6C with 6B being
2 Brasil Express, one work, USA, Inc. and 6C being Brasil Express
3 USA, Inc. is that the variations of names?

4 A Yes. I mean, it's a subtle variation that many people
5 might not understand the difference of. But from the
6 perspective of running database searches or if you are
7 filtering information through a computer, the likelihood of a
8 filter recognizing that these might be the same or similar or
9 even affiliated companies is probably pretty low.

10 Q Let's go to Exhibit 6D, the first page.

11 A This is the certification page for corporation Brasil with
12 an S Express Online, Inc.

13 Q If we turn to the second page of Exhibit 6D, article 2 has
14 that 398 Southeast Mizner Boulevard address and has the mailing
15 address as 629 Boca Raton, Florida; although, it says Boca Rato
16 without an N, correct?

17 A Correct.

18 Q And then let's go down to article 5. And who is listed as
19 the registered agent?

20 A Carlos middle initial M. as in Manuel, last name Colon,
21 C-O-L-O-N at 398 Southeast Mizner Boulevard, 1921 address.

22 Q Let's go to Exhibit 6E. And what are we seeing here at
23 Exhibit 6E, the first page?

24 A This is the Florida corporate records for a business
25 internet entity that's named Sky Air, two words, Express, Inc.

1 Q And if we go to the second page of 6E, what is the
2 principal place of business and mailing addressing for Sky Air
3 Express, Inc.?

4 A 2234 North Federal Highway, 327, Boca Raton, Florida
5 33432.

6 Q And if we go down to article 5?

7 A It shows that the registered agent is Paulo, P-A-U-L-O,
8 middle initial R. Moreira, M-O-R-E-I-R-A, at the same 3324
9 North Federal Highway address.

10 Q You said 3324. Did you mean 2234?

11 A My apologies, 2234 North Federal Highway.

12 Q If we go to the third page of Government's Exhibit 6E to
13 article 7, who is shown as the president of Sky Air?

14 A The president is listed as Paulo R. Moreira.

15 Q The same name we saw before?

16 A Correct.

17 Q And who is the other president?

18 A Is listed as Cerline, C-E-R-L-I-N-E, middle initial M.
19 Santos, S-A-M-T-O-S.

20 Q And is that a variation -- let me ask you, did the name
21 Cerline Santos, S-A-N-T-O-S, come up during your investigation?

22 A Yes.

23 Q And is this a variation of the name that you had seen
24 Cerline Santos?

25 A Yes.

1 Q And how did the name Cerline Santos come up during your
2 investigation?

3 A Well, my belief is that she's a former spouse of the
4 defendant.

5 MS. MITRANI: Your Honor, can I have a minute? I need
6 to ask somebody in the galley about the issue we had this
7 morning.

8 THE COURT: All right. If everybody wants to stretch
9 a little bit -- we are going to take a quick break. Let's
10 break until 11:25.

11 MS. MITRANI: Thank you so much, Your Honor.

12 (Thereupon, the jury exited the courtroom at
13 11:17 a.m.)

14 THE COURT: All right. You can go ahead and take care
15 of whatever you need to.

16 MS. MITRANI: Thank you, Your Honor.

17 (Thereupon, a recess was taken at 11:18 a.m.)

18 THE COURT: All righty. Can we check on the jury,
19 please.

20 (Thereupon, the jury entered the courtroom at
21 11:27 a.m.)

22 THE COURT: Please be seated. Welcome back,
23 everybody. Agent Van Brunt, I'll just remind you that you are
24 still under oath. Do you understand?

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: Thank you. Ms. Mitrani, you may proceed.

2 MS. MITRANI: Thank you, Your Honor.

3 BY MS. MITRANI:

4 Q I think we were on Exhibit 6E. In your investigation, how
5 did Cerline Samtos's name normally appear?

6 A With the last name spelled S-A-N-T-O-S.

7 Q Let's go to Exhibit 6F. And this is, of course, the first
8 page of Exhibit 6F. And which entity are we looking at here?

9 A These are the business records for an entity named Sky
10 Air, two words, Online Corp.

11 Q And if we go to the second page of Exhibit 6F, who is
12 listed as the registered agent and at what address?

13 A The registered agent is listed as Paulo middle initial R.
14 Moreira, M-O-R-E-I-R-A, at address of 934 North University
15 Drive, 329, Coral Springs, Florida 33071.

16 Q And is that the same address that's contained in article 2
17 as the principal place of business as well as the mailing
18 address?

19 A That's correct.

20 Q Are you familiar with this 934 North University Drive?

21 A Yes.

22 Q What is it?

23 A It's a Pak Mail location.

24 Q And if we go to the third page of 6F under the article 7,
25 the officers and directors, who is listed here?

1 A Paulo Moreira as well as -- well, the first name is
2 spelled C-E-R-L-I-N-I, which is a slight variation on the
3 previous first name we saw, middle initial N, last name Samtos
4 S-A-M-T-O-S.

5 Q So in this we see the Cerlini spelled with an I whereas in
6 16C, we saw Cerline spelled with an E, last letter of the first
7 name, correct?

8 A Correct.

9 Q And if we go to the -- if we go to the fifth page of
10 Exhibit 6F and the middle portion, it's the same address we
11 have been talking about, that Pak Mail, 934 North university
12 address, but is an email address also provided for the
13 corporation?

14 A Yes, the email address that's provided is info at Sky Air
15 Online dot com.

16 Q And if we go to the eighth page, the eighth page, I'm
17 told, is there a typed or printed name of the person signing
18 for the corporation?

19 A Yes, there's a signature line underneath the date of
20 June 10, 2010, and below the signature line is the typed or
21 printed name of the person signing. And that handwritten name
22 is Paulo Moreira, M-O-R-E-I-R-A, and underneath is the letter P
23 designating his title.

24 Q Okay. If we go to the tenth page of Exhibit 6F, does it
25 list the name VPM, the name Aylin R. Momollinedo?

1 A Yes, it lists the name of VPM, then the name, the last
2 name of which is spelled M-O-M-O-L-L-I-N-E-D-O with a 934 North
3 University Drive, 329, Coral Springs, Florida. And beneath
4 that typewritten information is handwritten the letters CF what
5 I believe to be an O. And the name Roger Scotten,
6 S-C-O-T-T-E-N, with the address 934 University Drive, 329,
7 Coral Spring, Florida 33071.

8 Q Is this one of the variations of the Scotton name that you
9 earlier testified about?

10 A Yes, this is handwritten Scotton spelled E-N.

11 Q As opposed to O-N which is the proper spelling, correct?

12 A As opposed to O-N or someone who was typing it and
13 mistakenly hit the wrong key.

14 Q Right because this was handwritten, correct?

15 A Correct.

16 Q Go to 6G. What are we looking at?

17 A This is the certification of corporate records for an
18 entity known as Sky Air, two words, global, Inc.

19 Q And if we go to the third page of 6G for Sky Air Global,
20 Inc., can you tell us the information that's provided for the
21 contact name, firm, address, et cetera?

22 A Sure. The name of the contact person is listed as Rodger,
23 R-O-D-G-E-R, middle initial C., last name Scottom,
24 S-C-O-T-T-O-M. The company is listed as Sky Air Global, Inc.,
25 an address of 7797 Golf Circle Drive, No. 204, Margate Florida

1 33063.

2 Q With an email address of?

3 A The email address listed is Flavio, F-L-A-V-I-O, Scotton,
4 S-C-O-T-T-O-N, at Gmail dot com.

5 Q And the name Flavio Scotton is also given as the name of
6 the contact person?

7 A I believe so, yes.

8 Q That's what's typed? Sorry, it's not on your screen.

9 A It is. If I remember correctly, this document may have
10 been filed within the last year or two.

11 Q If we go to Exhibit 6I?

12 A This is the certification of the corporate records for an
13 entity known as Scotton Racing, Inc.

14 Q And on the third page, what's the bottom part of the
15 document, it says from, and who is that from?

16 A It's from Roger Scotton at an address of 1300 Southwest
17 13th Drive in Boca Raton, Florida 33486.

18 Q 6J, what corporation are we looking at at Exhibit 6J?

19 A This relates to the company named Roger Racing Online
20 Corp.

21 Q And if we go to the third page of the document, who is
22 listed under article 7 as the officers and directors of the
23 corporation?

24 A The president is listed as Cirlene, C-I-R-L-E-N-E, middle
25 initial M. last name Santos, S-A-N-T-O-S. The vice president

1 is listed as Carlos, middle initial M., last name Colon.

2 Q Let's go to 6K. What entity are we looking at Exhibit 6K?

3 A This is for an entity named Roger Racing, Inc.

4 Q If we go to the third page of the document, and this is
5 a -- the third page of the document is a transmittal letter to
6 the department of state and there's a from section. And who is
7 this transmittal letter from?

8 A It's from Roger Chaves, C-H-A-V-E-S, Scotton.

9 Q At an address of?

10 A 1300 Southwest 13 Driver, D-R-I-V-E-R, Boca Ranton,
11 R-A-N-T-O-N, Florida 33486.

12 Q If we go to the fourth page, is there a name, signature,
13 at the bottom that appears to be Roger Scotton?

14 A Yes, there's two signatures, one for the registered agent,
15 the second signature for the person identified as the
16 incorporator.

17 Q Let's go to 6N. What are we looking at in Exhibit 6N?

18 A These are the business records regarding a company by the
19 name of Rio Motor Sports, three words, Inc.

20 Q And if we go to the forth page of 6N, who is listed as the
21 registered agent for Rio Motor Sports?

22 A Roger Scotton with an address of 1300 Southwest 13 Drive,
23 Suite 112, Hollywood, Florida 33020.

24 Q Let's go to 6P. What are we looking at in Exhibit 6P?

25 A These are corporate records for an entity named Matte,

1 M-A-T-T-E, Lion USA, Inc.

2 Q And if we go to the third page of 6P?

3 A This page indicates the document is from Roger Scotton at
4 PO Box 629, Boca Raton, Florida.

5 Q And if we go to the next page, the fourth page, there's a
6 name. Roger Scotton is handwritten under registered agent with
7 an address of 444 Boca Raton Road in Boca Raton, correct?

8 A Correct.

9 Q And under incorporator, it says PO Box 629, Boca Raton,
10 Florida also with a handwritten Roger Scotton, correct?

11 A Correct.

12 Q And at the bottom, there's a signature that appears to say
13 Rogerio Scotton or Roger Scotton?

14 A Correct.

15 Q If we go to 6Q, and of course we are at the first page of
16 6Q, which entity are we looking at here, Special Agent?

17 A This is the corporate records for an entity named Matte,
18 M-A-T-T-E, Leao, L-E-A-O, North America, LLC.

19 Q And if we go to the third page of Exhibit 6Q -- no, the
20 fourth page goes to article 3. Who is listed as the registered
21 agent, registered office and registered agent signature?

22 A Roger Scotton at 1332 Northwest 13 Court, Boca Raton,
23 Florida 33486 with a signature of Mr. Scotton above the
24 registered agent's signature.

25 Q Let's go to 6R. And what entity are we looking at at 6R?

1 A It's an entity named Matte, M-A-T-T-E, lion, L-I-O-N, LLC.

2 Q Of course, that was the first page of 6R. And if we go to
3 the third page of 6R which is the transmittal letter, what do
4 we see there?

5 A You see it's a document that is from Roger Scotton, Matte
6 Lion, LLC with the 1332 Northwest 13 Court address and Roger
7 Scotton listed at the bottom as the person to contact for
8 further information.

9 Q I think we have seen -- what are we at, 6R?

10 I withdraw the question. I think we are at 6R still.
11 Were we seeing like three variations of this Matte Lion, Matte
12 Leao name?

13 A Yes.

14 Q With the defendant's name?

15 A Correct.

16 Q And there's one more. Let's go to Exhibit 6S. Am I
17 right, is there one more?

18 A Is there North America?

19 Q And what are we looking at at 6S?

20 A A corporation named Matte Leao, L-E-A-O, USA, Inc.

21 Q And, of course, that is the first page of 6S. And if we
22 go to the third page of 6S?

23 A You see that this is a document from Rogerio Scotton, 1300
24 Southwest 13 Drive, Boca Raton, Florida.

25 Q This is from Matte Lion USA, Inc. And if we go to the

1 fifth page of Exhibit 6S, this is a letter that is addressed to
2 Scotton Racing, Inc., 1300 Southwest 13th Drive, Boca Raton,
3 Florida?

4 A Correct.

5 Q Subject, Matte Leao USA, Inc., correct?

6 A Correct.

7 Q The last one we will go through is 6U. And this is the
8 first page of 6U. What are we looking at here?

9 A These are the corporate records for an entity named Zap
10 Games, Inc.

11 Q And if we go to the third page, article 7, what
12 information is provided under article 7?

13 A It lists the president and two vice presidents. The first
14 vice president that it lists is Roger C. Scotton with an
15 address of 934 North University Drive, Suite 329, Coral
16 Springs, Florida.

17 Q And there are two other names on that article 7, correct?

18 A Yes. There is the president listed as Marco Arce,
19 A-R-C-E, with an address of 444 Brickell Ave, No. 51-459 in
20 Miami, Florida, and a second vice president listed as Paulo,
21 middle initial H., last name spelled A-R-A-U-J-O with an
22 address in Brazil.

23 Q I was looking for something I could put my hand on. We
24 will get to it later. Let's move on from corporate records.

25 Did you identify websites affiliated with the defendant?

1 A Yes, I did.

2 Q And what websites with did you identify?

3 A Brazil Express Online, Sky Air Online, and I believe the
4 third website was Roger Racing.

5 Q And did you access these websites?

6 A I did. I visited all three websites.

7 Q And were these websites captured electronically on a disc?

8 A Yes.

9 Q Let's go one by one.

10 MS. MITRANI: May I approach, Your Honor?

11 THE COURT: Yes.

12 MS. MITRANI: I'm already here.

13 THE COURT: But don't get too much closer.

14 BY MS. MITRANI:

15 Q Can you go one by one on these exhibits and identify them,
16 what they are, starting with 21.

17 A Yes. Exhibit 21 are printouts, what I would call screen
18 captures --

19 Q Don't show it yet.

20 A Sorry. -- of the Brazil Express website that were printed
21 out from the website itself. Exhibit 21A is a compact disc
22 which essentially contains the website having been downloaded.

23 Q So composite 21, and the screen shot, did you take a
24 screen shot of every single page of the defendant's website?

25 A No, I did not.

1 Q You just captured whatever you captured in 21?

2 A I think this might be four pages, perhaps five pages, just
3 give a basic overview of what someone who visited the website
4 would see.

5 Q And 21 is what was captured as the website, correct?

6 A Correct.

7 Q 21A.

8 MS. MITRANI: Your Honor, the government would offer
9 21 and 21A.

10 THE COURT: Any objection?

11 MR. SCOTTON: Yes, Your Honor.

12 THE COURT: What is the objection?

13 MR. SCOTTON: The files is complete. If they going to
14 present something to the jury, they need to present complete
15 everything complete to the jury.

16 THE COURT: Why don't you ask some additional
17 questions.

18 BY MS. MITRANI:

19 Q Well, which screen shots did you capture and download?

20 A The screen shots that we captured and downloaded were
21 essentially pictures of what a customer would see if they
22 clicked on certain parts of the website. For instance, there's
23 one page that talks about the terms and conditions. There's a
24 second screen shot that shows some of the products that are
25 available to be ordered from the website. There is a third

1 page which shows that if you are shopping at the Brazil Express
2 website, there is one portion where you can shop for auto parts
3 and a second portion where you could shop for electronics.
4 Then the last page of Exhibit 21 provides contact information
5 depending on what your question might relate to or where you
6 might want to direct your question to.

7 Q These screen shots that you printed out, have you changed
8 them in any way, modified them in any way, changed the content?

9 A I have not changed or modified them in any way. And if
10 you were to put Exhibit 21A into a computer and review the
11 files that are contained on the compact disc, you would
12 actually see the same and other similar screen captures and
13 pictures.

14 Q And does 21A capture the website as best as the FBI
15 technology allowed it to capture it?

16 A Yes.

17 Q So there's additional screen shots and links on 21A?

18 A Correct. 21A would be what I would describe as the most
19 complete version of the website, and 21A would -- excuse me, 21
20 would just be four or five pages that we printed out to allow a
21 simple view of the types of pictures on the file itself.

22 MS. MITRANI: The government would offer 21.

23 THE COURT: Any objection?

24 MR. SCOTTON: Yes, Your Honor.

25 THE COURT: What is the objection?

1 MR. SCOTTON: Your Honor, the jury has the right to
2 see the whole complete website.

3 THE COURT: Well, that's what 21A is. Is there any
4 objection?

5 MR. SCOTTON: Yes, Your Honor. It is not a complete
6 website.

7 THE COURT: You can cross-examine him about that.
8 Overruled. 21 and 21A are can admitted.

9 (Thereupon, Government's 21 and 21A received in
10 evidence.)

11 BY MS. MITRANI:

12 Q So tell us about what 22A is.

13 A 22A is a compact disc for the website Sky Air Online that
14 was digitally downloaded. It's similar to Exhibit 21A in that
15 it is the capture of the website, except in this instance, it
16 relates to the website Sky Air Online, not Brazil Express.

17 Q I am showing you 22 which has actually already been
18 admitted into evidence. Tell us what 22 is as it relates to
19 22A?

20 A 22 are scene captures of the pictures and/or files that
21 are contained on the disc identified as 22A, so I went in to
22 22A. I selected pictures that showed the types of products
23 that a customer would be able to purchase as well as
24 information on the terms and conditions to ship, advertisements
25 that are on the Sky Air website, all of the items listed in 22

1 were printed off of the disc that is 22A.

2 MS. MITRANI: Your Honor, the government would offer
3 22A now, 22 already having been admitted.

4 THE COURT: Any objections?

5 MR. SCOTTON: Yes, Your Honor. It's incomplete.

6 THE COURT: Overruled. You can cross-examine about
7 that.

8 (Thereupon, Government's 22A received in evidence.)

9 BY MS. MITRANI:

10 Q Now tell us about 23 and 23A.

11 A Sure. 23A are screen captures of the website Scotton
12 Racing, S-C-O-T-T-O-N, Racing dot com. And the screen shots
13 largely consistent of different pictures that have been placed
14 on the website itself. So the screen captures that are
15 provided in 23A provide little or any pictures or links to
16 shopping.

17 It mostly relates to Mr. Scotton and his racing activities
18 as well as pictures of him at race events and other pictures of
19 people in his family or life. And the screen captures that are
20 contained in Exhibit 23 were printed out from the disc that is
21 included in Exhibit 23A.

22 Q Get back to that. Let's start with 21. This is the first
23 page of Exhibit 21?

24 A Correct.

25 Q And what does it say on the top?

1 A Brazil Express import and export.

2 Q And on the bottom right in red, is there a telephone
3 number?

4 A Yes, there is a telephone number of 561-368-7348.

5 Q And is there an email address provided?

6 A There is.

7 Q What is that email address?

8 A The email address that's provided is info at Brazil
9 Express Online dot com.

10 Q And is the website, there are words in the middle, is that
11 English?

12 A The title is in English. I believe all of the rest of the
13 text on this website is in Portuguese other than some of the
14 tabs just below the logo it has Brazil Express, then there's
15 the word shopping dash online, and on the far right it says
16 contact us near the top header. But the bulk of the text is in
17 Portuguese.

18 Q With the English as you have just testified to, correct?

19 A Correct.

20 Q Go to the next page, page 2. And what are we seeing at
21 page 2?

22 A This is the second page of the exhibit. It's a file
23 that's been printed out from the website. It indicates that
24 there is options to select or shop for paint ball equipment, an
25 iPhone or iPad Touch.

1 Q Go to the next page. And again, at the top it says Brazil
2 Express import and export, correct?

3 A Correct.

4 Q And on the bottom, are there pictures of different items?

5 A Yes. There's pictures starting from the left and working
6 to the right of cameras. It looks like an older iPod,
7 televisions, some type of a cart or scooter, a car, laptops. I
8 believe that's a printer and a computer monitor on the far
9 right.

10 Q Go to the next page of Government's Exhibit 21 and does
11 that say in the middle shopping auto parts?

12 A Correct. This was the page I described where it
13 essentially would allow a customer to select whether they
14 wanted to shop for auto parts or for electronics.

15 Q And it says shopping electronics on the right part?

16 A Correct.

17 Q And the last page of Exhibit 21, is this another screen
18 shot of Brazil Express import and export?

19 A Correct. This is the page that I would describe as the
20 contact us. And, in fact, I think if you actually zoomed out
21 to the original document, the bottom left-hand corner --

22 Q Let's just stay with this page first.

23 A Yep.

24 Q Does it have some email addresses in red?

25 A It does.

1 Q And it says Rio de Janeiro, correct?

2 A Correct, with an email address of Alex at Brazil Express
3 Online dot com. Next to that is the city Brasilia with a
4 contact name of I-S-E-R-R-A-O at Brazil Express Online dot com,
5 and finally the city Sao Paulo with Sabrina at Brazil Express
6 Online dot com.

7 Q I want to go to Exhibit 22. And what are we looking at
8 here?

9 A This is a screen capture from the website Sky Air Online.

10 Q And this is the first page of Exhibit 22. And then it
11 says Sky Air express on the yellow sort of click portion under
12 Sky Air, correct?

13 A Correct. These would be -- I don't know if you want to
14 call them tabs or links, but if you go to the website and you
15 go to Sky Air Express, it would take you to one part of the
16 website. If you clicked on Sky Air shopping, it would take you
17 to a different portion of the web. If you clicked on links or
18 contact us, the website would direct you to a different portion
19 of the website.

20 Q If we go to the second page of Government's Exhibit 22,
21 same Sky Air logo with the airplane on the top, correct?

22 A Correct.

23 Q Is this the web -- we will talk about this in a few
24 minutes, but did you access this website with a native
25 Brazilian speaker?

1 A I did.

2 Q And did the native Brazilian speaker translate some of
3 this for you?

4 A Yeah. He -- yes. He and I essentially navigated through
5 the website together, I mean literally, I sat next to him in
6 his house and we clicked our way through and I would ask
7 questions and we would navigate our way through the website.
8 And he would explain to me what was being described or offered
9 and translate from Portuguese into English for my benefit.

10 Q See what the rest of the screen capture is. Let's go to
11 the third page. That's another screen capture. I guess on the
12 bottom it shows boxes and a Sky Air truck, correct?

13 A Correct.

14 Q And go to the next page. What are we seeing here, which
15 would be the fourth page of Government's Exhibit 22?

16 A Right. This is a page where a customer shopping at the
17 website would be able to filter down the types of products that
18 they might want to shop for, whether it was auto parts, items
19 related to scuba diving, home furnishings, fashion,
20 electronics.

21 Q There's another screen capture from the Sky Air site?

22 A Correct.

23 Q And I guess there's a flag on the bottom left. Is that
24 the Brazilian flag?

25 A On the bottom left is the Brazilian flag. In the middle

1 is a seal that says United States of America embassy, and next
2 to that is a picture of the American flag.

3 Q Next page?

4 A This is a page that the customer would see if they were to
5 click the link that says contact us located near the right-hand
6 corner. This page would appear and different email addresses
7 would be made available for them to be able to email questions.
8 And at the bottom there was a phone number listed for USA of
9 305-675-1765.

10 Q And on the contact, it has cities in Brazil, correct, Rio
11 de Janeiro and three other cities underneath Rio de Janeiro?

12 A Correct.

13 Q With email addresses next to it, correct?

14 A Correct.

15 Q Let's go to the next page. Are these products being
16 offered for sale by Sky Air?

17 A Correct. If you clicked one of the shopping links on the
18 website, this page would appear and it would essentially begin
19 the display of many different items that you could then click
20 the link on to gain further information on and ultimately order
21 if you desired.

22 Q Since we started talking about the Sky Air Express site,
23 let's talk about the circumstances under which you accessed it.

24 So as part of your investigation, did you purchase a
25 camera from the defendant's website Sky Air?

1 A Yes, the FBI purchased a Sony digital camera through his
2 website.

3 Q And what specifically -- maybe you just said it and I
4 didn't hear it, but what did you purchase?

5 A It was a Sony cybershot digital camera.

6 Q What were you trying to accomplish through this purchase?

7 A I was trying to confirm the results of the investigation
8 that we had thus far, that it was a website that was controlled
9 and operated by Mr. Scotton. I was trying to learn additional
10 information as to when or how purchases were being made, what
11 banks were being used to accept those purchases, the
12 communications that would come back and forth from Mr. Scotton
13 and his company to customers to see if a package would, in
14 fact, be delivered to Brazil to confirm if a fraudulent or
15 unauthorized account would be used to ship that package, and if
16 in fact, that package would arrive in Brazil.

17 Q All right. So can you describe to the members of the jury
18 how it is you went about conducting this purchase? And by the
19 way, do you refer to it as a controlled purchase?

20 A I do.

21 Q So as you describe that, also describe what you mean by
22 controlled purchase.

23 A Sure. A controlled purchase means that the FBI is the
24 entity that is actually facilitating the purchase. We are
25 using FBI funds to purchase it. And we conduct the controlled

1 purchase, the item that we purchase becomes evidence.

2 So I was able to identify and approach an individual
3 person who was at the time a Brazilian national. I was able to
4 request his assistance in light of the fact that the website
5 was primarily in Portuguese, that based on my investigation,
6 most of the email communications that were sent to or from the
7 company were in Portuguese, and that in order for me to fully
8 develop the investigative opportunities, I would require
9 someone who was fluent in Portuguese.

10 So I identified this individual and asked for his
11 assistance. He agreed to assist my investigation. And then at
12 my direction, we went through the steps of initiating contact,
13 shopping with the website.

14 Q How did you initiate contact, through email?

15 A Yes. First we went to the website. We shopped.
16 Ultimately we placed an order and the placement of that order
17 generated email communications between the source and the
18 defendant.

19 Q Were there a series of email communications?

20 A Yes, there were.

21 Q And what was the email address that your source used?

22 A The email address that my source used was Raposa,
23 R-A-P-O-S-A, 1975 at hotmail dot com. Raposa was the code name
24 that the source was assigned. We avoid using real names in
25 order to protect the identity of the sources.

1 So he and I, as we were meeting each other and as he was
2 agreeing to assist the investigation, we came up with a source
3 name that he and I both thought would be easy for us to
4 remember, that I could pronounce quite frankly, and we used of
5 that as part of the email address.

6 The email that we used was a hotmail account which I
7 actually opened up for him. And I was the person who actually
8 had the password which is for the purpose of allowing the FBI
9 to control communications that go back and forth.

10 So the email address that was used was not his real or
11 regular email address. It was, again, part of our effort by
12 the FBI to control the communications and the controlled
13 purchase.

14 MS. MITRANI: Your Honor, may I approach?

15 THE COURT: Yes.

16 BY MS. MITRANI:

17 Q So 9B has already been admitted into evidence. Remind us
18 what 9B is.

19 A Government's Exhibit 9B is the printout of the email
20 communications between my source and Sky Air Online.

21 Q Some of 9B has been crossed out has been redacted?

22 A Correct.

23 Q What has been redacted and why?

24 A The redactions relate to the true name of my source. And
25 again, in an effort to keep his or her identity secret, we make

1 all of our efforts to keep that confidential as best we can.
2 So the redactions, which are essentially a black magic marker
3 over the name of the source, would be hiding his
4 identification.

5 Q And showing you what's been marked for identification as
6 Government's Exhibit 9C, what is 9C?

7 A Government's Exhibit 9C is the verbatim translation from
8 the emails which are in Portuguese into English as prepared by
9 the Federal Bureau of Investigation.

10 Q And does the FBI have trained personnel to translate
11 Portuguese language into the English language?

12 A Yes. We have linguists from, you know, as many languages,
13 quite frankly, as we can find. Certain offices have certain
14 types of linguists who are predominantly Spanish linguists in
15 south Florida. We do have Portuguese linguists which means
16 they have been tested and certified by the FBI.

17 I submitted a translation request to our translation unit
18 in Miami. The emails were translated from Portuguese to
19 English. Those translations are sent to another field office
20 in the FBI, in this case the FBI office in Houston, where a
21 separate Portuguese translator reviews the original emails in
22 Portuguese, reviews the translation as provided by the FBI
23 employee in Miami, and confirms that the translations are
24 correct and then return them to Miami where they are then
25 identified as the verbatim translation.

1 MS. MITRANI: Your Honor, the government would offer
2 9C.

3 THE COURT: Any objection?

4 MR. SCOTTON: Yes, Your Honor.

5 THE COURT: What is the objection?

6 MR. SCOTTON: The defendant team was reviewing the
7 emails and seems to be there has been some modification over
8 there. And the names of the company on emails, it is not
9 correct.

10 THE COURT: You are saying the email itself that's
11 already in evidence?

12 MR. SCOTTON: I don't know if it is in evidence, but
13 the one, the English version, it is a lot of -- I don't know if
14 it is modification or misspelling, but definitely is not my
15 company name on it.

16 THE COURT: Okay. Well, you can go ahead and
17 cross-examine about that. And I will overrule the objection.

18 (Thereupon, Government's 9C received in evidence.)

19 THE COURT: I think I have previously -- in fact, I
20 know I have previously instructed the jury about translations.
21 Let me remind you once again.

22 Actually, I may not have advised you on transcripts,
23 so let me do it now. Members of the jury, Exhibit 9C and some
24 of the other exhibits that have come into -- that have been
25 discussed in this case and have been admitted into evidence are

1 identified as typewritten transcripts of various oral
2 conversations heard on recordings that are also received into
3 evidence. Sometimes the transcripts purport to identify the
4 speakers engaged in the conversation.

5 I am admitting the transcripts for the limited and
6 secondary purposes of allowing you to follow the content and
7 conversation as you listen to the tape recording, or in this
8 case as you review the email, to help you identify speakers
9 from this recording. But you are specifically instructed that
10 whether the transcript correctly reflect the content of the
11 conversation and the identity of the speakers is entirely for
12 you to decide based on your own evaluation of the testimony
13 after you have heard about the preparation of the transcript
14 and from your own examination of the transcript in relation to,
15 when there's a recording involved, hearing the tape recording
16 itself as the primary evidence of its own contents.

17 If you determine that the transcript is in any respect
18 incorrect or unreliable, you should disregard it to that
19 extent. In addition, as I previously explained, we have had
20 interpreters involved. And in this case, if any of you
21 understand the language of the document, then in that case,
22 unlike with the interpreter when the interpreter is -- let me
23 get back to you on that one. I have to do a little research on
24 that.

25 If there is a proposed alternative interpretation --

1 Mr. Scotton, are you listening?

2 MR. SCOTTON: Yes.

3 THE COURT: Mr. Scotton, if there is a proposed
4 alternative transcript interpretation of the email, you can
5 provide it. Do you understand?

6 MR. SCOTTON: And what would be the appropriate time
7 to provide that, Your Honor?

8 THE COURT: On cross-examination.

9 MR. SCOTTON: Okay.

10 THE COURT: All right.

11 MR. SCOTTON: Sure.

12 BY MS. MITRANI:

13 Q I'm showing you, and I don't think we -- I think we
14 neglected to redact your source's name. Where it says Rodrigo
15 Olivera, is that the name of your source?

16 A Yes.

17 Q My apologies. So as best as I can, because it was on two
18 pages, I'm looking at the top of page 5 of Government's 9C and
19 the bottom of page 4. And is that an email from Raposa 1975 at
20 hotmail dot com dated Thursday, March 17, 2011 to RMS at Sky
21 Air Online?

22 A Yes.

23 Q Can you just read the body of the email for us.

24 A Hi, Renata, which company will you sending it by, UPS,
25 comma, Fed-Ex, question mark. Thanks, Rodrigo.

1 Q So at this point, March 17, had the purchase been
2 effectuated yet or not yet or were you in the process?

3 A I believe we were in the process.

4 Q And this is, of course, the purchase of the camera?

5 A Correct.

6 Q I'm going to the top of the forth page of Exhibit 9C. Is
7 there a response from Renata Sky to your source in response to
8 your question?

9 A Yes, the response is, DHL, sorry.

10 Q And was the camera ultimately shipped by DHL?

11 A It was.

12 Q I apologize. I'm not necessarily going in chronological
13 order, but I am going in the order of how the documents appear
14 on 9C. All right. So I'm showing you the bottom of page 7 and
15 the top of page 8. And can you tell us about this email
16 communication?

17 A Sure. This is an email sent from my source on March 15,
18 2011 to an address of RMS at Sky Air Online. The email states,
19 good morning, Renata. Attached is the receipt of the deposit I
20 made on Saturday. It was \$219.99 for the Sony camera in blue
21 and \$125 for freight. Just to confirm, the equipment is to go
22 in care of my brother. And then it provides the name and
23 address in Brazil where package is to be shipped. And then as
24 soon as you have the shipping number, please let me know.
25 Thanks.

1 Q So tell us a little bit about that. So --

2 A Sure.

3 Q Did you select the camera and did the camera have a price?

4 A Correct, we selected a camera. The price was identified
5 to us by Sky Air Online as being \$219.99. There were some
6 email communications back and forth about whether the color was
7 going to be black or blue or whether the color was important to
8 the customer. I told my source the color didn't matter. I
9 believe he suggested the response was it was a gift for his
10 brother so blue was fine.

11 We provided the address in Brazil where we wanted the
12 camera to be sent. We were told that the cost to ship the
13 camera to Brazil was \$125. We asked in the course of the email
14 communications how payment arrangements could be made and were
15 given instructions on Sky Air Online that we could directly
16 deposit the money into one of two different bank accounts.

17 One of the bank accounts was at TD Bank. Another bank
18 account was as Bank of America. We asked for information on
19 the information on the name of the account at Bank of America
20 and we were told it was Sky Air Global.

21 I requested the funds actually be issued to me by the FBI.
22 They gave me the funds on a Saturday morning. I met my source
23 at a Bank of America in Pembroke Pines. We stood in line
24 together. We walked to the front counter together. I watched
25 him hand over the money to the teller with the deposit slip to

1 deposit \$344.99 into the Bank of America account that had been
2 provided by Sky Air Online. We received the deposit slip
3 confirming that the deposit had been made.

4 My source took the deposit slip, scanned it at his house,
5 sent an email to Sky Air Online stating, attached is the
6 receipt of my deposit I made on Saturday. The source sending
7 the bank deposit slip was the confirmation to Sky Air Online
8 that the money had been deposited.

9 THE COURT: Is this a good stopping point for lunch?

10 MS. MITRANI: Yes, Your Honor.

11 THE COURT: All right. We will go ahead and have our
12 lunch now. We will return back here at 1:30. Enjoy your
13 lunch. See you after lunch. Please remember my instructions.
14 All rise for the jury.

15 (Thereupon, the jury exited the courtroom at
16 12:32 p.m.)

17 THE COURT: Mr. Scotton, you will need to -- if you
18 wish to present your own translation, that's totally fine, but
19 you will need to give it to the government before you do that.
20 Do you understand?

21 MR. SCOTTON: Yes, Your Honor. It doesn't have to be
22 right now, right?

23 THE COURT: No, not right now.

24 MR. SCOTTON: And the government is going to present
25 the original emails that they received from Renata?

1 THE COURT: I don't know what the government is going
2 to do, but we will be in recess until 1:30.

3 (Thereupon, a recess was taken at 12:33 p.m.)

4 (Thereupon, the jury entered the courtroom at
5 1:32 p.m.)

6 THE COURT: Welcome back once again. Please be
7 seated, everyone. Is there anyone here who has discussed the
8 case with anyone, disbursed any information about the case, or
9 done any research into the case? If so, please raise your hand
10 for me now. Thank you all for that. It helps to keep our
11 trial fair and we all appreciate that.

12 All righty. When we left off, we were in the direct
13 examination of Agent Van Brunt. Agent Van Brunt, you
14 understand you are still under oath?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Very good. Thank you. Ms. Mitrani, you
17 may continue.

18 MS. MITRANI: Thank you, Your Honor.

19 BY MS. MITRANI:

20 Q I think when we left off, you described the process of how
21 the purchase came about and -- okay.

22 I think you testified right before our lunch break that
23 you were provided bank accounts where payment for the camera
24 itself and the shipment of the camera could be made. Is that
25 right?

1 A Correct.

2 Q So I'm showing you what's page 9 of Government's Exhibit
3 9C. Do you see that okay?

4 A I do.

5 Q What are we looking at here?

6 A This is an email from an address of RMS at Sky Online dot
7 com to my source listing a Bank of America account ending in
8 2582 and a TD Bank account ending in 5308 as two banks where
9 the counter deposit could be made to show proof of purchase.

10 Q And did you ultimately in the investigation obtain the
11 bank records for both of these accounts?

12 A Yes. Based on having received this information, we issued
13 additional subpoenas to both Bank of America and TD Bank
14 specifically requesting these bank accounts as well as other
15 bank accounts that might be related to Mr. Scotton.

16 Q And we will talk in more detail about the bank accounts
17 later in your testimony, but can you tell us a little bit about
18 these two accounts. Were they linked to the defendant?

19 A Yes, both of these accounts were directly linked to
20 Mr. Scotton.

21 Q Which bank account did you choose to deposit the funds
22 into?

23 A We deposited the funds into the Bank of America account
24 because Bank of America was the branch, the bank that's most
25 convenient to the source. He and I were meeting on a Saturday

1 morning. I was actually involved in another trial in Miami so
2 he and I agreed to meet in the Bank of America in the city
3 where he lives so that he could be there to make the deposit
4 and I could essentially continue on with the rest of my day of
5 my trial that I was involved with.

6 Q This email is found -- that I'm publishing now, bottom of
7 page 9, top of page 10, on Government's Exhibit 10C, is this an
8 email from your source to Sky Air Online clarifying that the
9 source lived in the United States and that the source's brother
10 for whom the camera was being purchased lived in Brazil?

11 A Correct. There were some communications back and forth
12 about whether the purchaser lived in United States or Brazil,
13 and this is my source clarifying that he's here in the United
14 States and the camera is to be shipped to Brazil.

15 Q And this email communication is found on page 24 of
16 Government's Exhibit 9C and is it a -- what email are we
17 looking at here?

18 A This is an email from Renata at RMS at Sky Online telling
19 the source that the merchandise which was the Sony digital
20 camera comes out to \$219.99 and the shipping cost is \$125.

21 MS. MITRANI: May I approach, Your Honor?

22 THE COURT: Yes.

23 BY MS. MITRANI:

24 Q I'm showing you what's been marked for identification as
25 Government's Exhibit 9E. Do you recognize that, sir?

1 A Yes, I do.

2 Q What is Government's Exhibit 9E?

3 A This is the deposit customer receipt from the Bank of
4 America where the \$344.99 were deposited into an account ending
5 in 2582 on March 14, 2011.

6 MS. MITRANI: Your Honor, the government offers 9E.

7 THE COURT: Any objection?

8 MR. SCOTTON: No, Your Honor.

9 THE COURT: 9E is admitted.

10 (Thereupon, Government's 9E received in evidence.)

11 BY MS. MITRANI:

12 Q We will publish it for the jury to see. Okay. So you
13 already told us what it is. It is a Bank of America customer
14 receipt dated 3/14/2011, 9:17 in the morning, deposit is a
15 check, 344.99, available now 344.99?

16 A Correct. It was a cash deposit. So once cash is
17 deposited into an account, it is immediately credited to an
18 account as opposed to a check which might require clearing
19 time.

20 Q Did the defendant's company Sky Air fulfill the order?

21 A They did.

22 MS. MITRANI: May I approach again, Your Honor?

23 THE COURT: Yes.

24 BY MS. MITRANI:

25 Q So now I'm showing you what's been marked for

1 identification as Government's Exhibit 9A. Can you tell us
2 what that is?

3 A This is the Sony Cybershot digital camera that was
4 purchased by the FBI and sent to Brazil by Sky Air Online.

5 Q Did it arrive in Brazil?

6 A Despite my efforts, yes.

7 Q What do you mean by that?

8 A I had intended to notify DHL of the package with the
9 waybill and request that they stop delivery of it in an effort
10 to facilitate additional communications with Mr. Scotton and in
11 an effort to either engage him in direct telephone
12 conversations or gain his appearance to try to recoup the
13 package.

14 Essentially, DHL was too good at their job and the package
15 was delivered to Brazil prior to Fred Kennicutt and DHL being
16 able to hold the shipment.

17 Q If it made it to Brazil and we have it here in the
18 courtroom, how did it get back?

19 A DHL made arrangements to have the camera returned to the
20 United States, and Fred Kennicutt turned over the camera to me
21 and I took custody of it as evidence.

22 MS. MITRANI: Your Honor, the government would offer
23 9A into evidence?

24 THE COURT: Any objection?

25 MR. SCOTTON: No, Your Honor.

1 THE COURT: All right. 9A is admitted.

2 (Thereupon, Government's 9A received in evidence.)

3 MS. MITRANI: Your Honor, may I publish this to the
4 jury by passing it to them?

5 THE COURT: Sure.

6 BY MS. MITRANI:

7 Q Before I do that, is this like the soft material DHL
8 package? Is this how it was sent to Brazil?

9 A There's actually one additional soft pack inside of that
10 envelope. And what you are holding in your hand right now is
11 the original packaging that was sent down to Brazil.

12 Q With the waybill that was sent to Brazil?

13 A Correct. Correct.

14 Q And this then, I guess the outer packaging where it says
15 9A, is this how you received it back?

16 A Correct. The box you could actually see it was addressed
17 to the Boca Raton BCT DHL station which is where Fred Kennicutt
18 took custody of it.

19 MS. MITRANI: May I publish it now, Your Honor?

20 THE COURT: Yes.

21 MS. MITRANI: And can we put up 32L, which is a copy
22 of that shipping label, please.

23 BY MS. MITRANI:

24 Q So the camera that the FBI purchased in conjunction or
25 with the assistance of the source, the return address on the

1 DHL shipping label is what?

2 A Citrix, Inc. M. Templeton at 851 West Cypress Creek Road,
3 Florida -- excuse me, Floor 3, Fort Lauderdale, Florida.

4 Q And it was shipped to -- you can give the initials of
5 individual in the country.

6 A A person with the first initial G. last initial O. in the
7 City of Belo Horizonte, H-O-R-I-Z-O-N-T-E, Brazil.

8 Q Just so I am clear, for the record, I'm showing
9 Exhibit 32L which is the archival copy of the waybill ending in
10 6503?

11 A Correct.

12 Q And Government's Exhibit 9A is the actual waybill ending
13 in 6503, is that right?

14 A Correct.

15 Q All right. And in the middle, what does the reference
16 code indicate?

17 A Camera.

18 Q Okay. So August 29, 2011, did you meet with the
19 defendant?

20 A I did.

21 Q Did you meet with the defendant as Special Agent -- FBI
22 Special Agent Roy Van Brunt?

23 A No, I did not.

24 Q Can you please tell the members of the jury how you came
25 to meet the defendant on that date.

1 A I met Mr. Scotton using my true name Roy Van Brunt but
2 posing as a representative of DHL who was there to discuss with
3 him problems that he was having with packages that had been
4 held or seized by the DHL fraud department.

5 Q And how did this meeting come to be?

6 A The meeting came to be because I was contacted by DHL who
7 advised me that one of their sales representatives names Justin
8 McMahon had opened up an account under the name of Zap Games
9 and that DHL fraud had seized packages related to that account,
10 and that DHL believed Roger Scotton was the individual who was
11 involved in that account. And I asked for their permission to
12 pose as a DHL representative.

13 They gave authorization for me to meet with Mr. Scotton as
14 a DHL representative. And I instructed Mr. McMahon to notify
15 Mr. Scotton that essentially I would be Mr. Scotton's point of
16 contact from that point forward, that the matter had been
17 elevated up the chain of command, if you will, and that from
18 that point forward, you know, Roy would be handling the
19 problem.

20 Q Roy from DHL?

21 A Roy from DHL.

22 Q And where did this meeting take place?

23 A The meeting took place in Boca Raton, Florida. Initially
24 I met Mr. Scotton at the address of 100 Plaza Real South, Suite
25 F, which is where I first met him. I introduced myself. We

1 spoke briefly for a few minutes in that store location and then
2 we moved to the end of the block where we sat down at an
3 outdoor cafe bakery type establishment.

4 Q And who was present for this meeting?

5 A Myself and Roger Scotton.

6 Q Anybody else?

7 A No.

8 Q Approximately how long did this meeting last?

9 A The meeting was about one hour and 40 minutes long of
10 interaction. The recording is longer than that.

11 Q My next question, did you record the meeting?

12 A I did.

13 Q So was this both a -- was this recording both a visual and
14 audio, audiovisual recording?

15 A Correct. The recording device I used captured both video
16 as well as audio recording so that I could have, not only the
17 voice of the person I was meeting with, but the picture of him
18 as we meet.

19 Q Without giving out FBI secrets, can you tell us a little
20 bit about the equipment and how this meeting was recorded?

21 A Sure. There are certain authorized recording devices that
22 the FBI allows to be used for undercover-type meetings.

23 Q And was this an undercover-type meeting?

24 A This was an undercover-type meeting in that Mr. Scotton
25 did not know he was meeting with the FBI.

1 I had -- I was able to use one of those recording devices
2 for the recording. In order to activate the recording device,
3 there's a switch on it. I moved the switch to start the
4 recording. There's an indication system that allows you to
5 confirm that at least the audio portion is being recorded. I
6 essentially whistled and made a few sounds. I may have snapped
7 my fingers to insure that it was picking up the audio
8 recording.

9 I secreted the recording device on or about my person. I
10 gave what I call a preamble which would be my name, the date,
11 and the time that this recording was beginning. Then, again, I
12 drove from my location which was a few blocks away from where I
13 planned to meet Mr. Scotton, and essentially the meeting
14 commenced.

15 Q And this recording device, does it have a name?

16 A It does. It's name is the Hawk, H-A-W-K.

17 Q Now, when did you turn the recording on?

18 A I turned the recording device on when I was in the parking
19 lot of a bank about a half mile south of where I was meeting
20 Mr. Scotton.

21 Q And when did you turn the recording off?

22 A At the completion of my meeting, I walked back to my car,
23 I drove back to the bank where I had started, and I then
24 deactivated the recording device. And the reason why we turn
25 the recording device on and off at a location away from where

1 the meeting place is is in the event of walking to your car and
2 pulling out a recording device, starting to turn it off, if the
3 person you are meeting with innocently had a question, they
4 might find it suspicious that there's some fancy little
5 recording device that you are now fumbling with.

6 As an operational measure, we drive away from the
7 location, make sure no one is following us, and then deactivate
8 the recording.

9 Q At any time from when you hit the on button before you met
10 the defendant until you hit the off button after the meeting,
11 did you turn it on or off during the course of the meeting?

12 A No, I did not turn the recording device on or off during
13 the course of the meeting. And in light of the recording
14 device being secluded and secreted, I would not have even had
15 physical access to the recording device.

16 Q Secreted is a fancy word for you hid it on or about your
17 person, right?

18 A Yes.

19 Q Now, can you tell the jury a little bit about how the Hawk
20 records, stores the recording?

21 A Sure. The recording device captures again both video and
22 audio recordings. And it captures that data and essentially
23 begins to generate a computer file. Once the file reaches a
24 certain size limit, it essentially rolls over into what's
25 called a session, a second session. So think of it as being

1 similar to a file cabinet. Once you put enough paper into the
2 file cabinet, it's full, you can start putting paper into the
3 second filing cabinet. It's one continuous recording, but it's
4 captured and listed as four separate files based on the volume
5 of data it's capturing.

6 Q So to the extent -- so to the extent there is -- I take
7 that back. When it goes from filing cabinet one to filing
8 cabinet two or in this instance from session one to session
9 two, does it immediately roll over or is there any lapse in
10 time?

11 A There's no lapse in time. It records continuously and you
12 can see by the file names that at the minute and second marker
13 where one session ends, the next session immediately begins at
14 the exact same time.

15 Q And so then when you play -- then when you play this
16 recording, is it one continuous recording or it broken down
17 into, in essence, four recordings, four sessions?

18 A It's broken down into four sessions. It's, to my
19 knowledge, not possible to play all four sessions consecutively
20 on the device. So you first would start, hit play for the
21 first session. That portion would run to completion. Then you
22 would have to play the second session until that's completion,
23 play the third session to that's completion, then the fourth
24 session until the end of the recording.

25 MS. MITRANI: May I approach, Your Honor?

1 THE COURT: Yes.

2 BY MS. MITRANI:

3 Q I'm showing you what's been marked for identification as
4 Government's Exhibit 7F as in Frank. Can you tell me what that
5 is?

6 A Yes, these are screen shots of the file that was contained
7 on the Hawk recording device for the date of my meeting with
8 Mr. Scotton.

9 Q And does this contain the information about the recording?

10 A Yes, it does.

11 MS. MITRANI: Your Honor, I would move 7F into
12 evidence.

13 THE COURT: Any objection?

14 MR. SCOTTON: No, Your Honor.

15 THE COURT: 7F is admitted.

16 (Thereupon, Government's 7F received in evidence.)

17 BY MS. MITRANI:

18 Q And for the record, 7F is a five-page document? And we
19 will go put it on the ELMO.

20 A Correct.

21 Q Okay. So this is a government's exhibit sticker. It says
22 7F, correct?

23 A Correct.

24 Q And then on the file, it says Hawk, correct?

25 A Correct.

1 Q And it's a date of 8/30/2011, August 30, 2011. Do you see
2 that?

3 A I do.

4 Q And what's that date?

5 A That's the date that the recording was downloaded from the
6 Hawk onto a DVD. The Hawk recording device itself has an
7 internal storage. So in order to maintain the recording and
8 allow the Hawk to be used in other operations, the video and
9 audio is downloaded. And that is the date it was downloaded,
10 the day after the meeting.

11 Q The day after the meeting?

12 A Correct, the morning after.

13 Q I'm going to go to the third page of Exhibit 7F.
14 Hopefully you and everybody else can see it okay. It's a
15 little bit challenging. But can you tell us what we are
16 looking at here?

17 A Sure. What you are looking at are the lists of the four
18 sessions that were recorded from my meeting with Mr. Scotton.
19 You can't actually see it on the left edge. If you just move
20 it over, there's three green flags and these three green flags
21 are described in the pop-up box that's on the right-hand side
22 of the screen capture.

23 Q Let me, you know, let me pop up to the pop-up box and we
24 will go back to the sessions. All right. Is there a -- the
25 third item down from the pop-up box, is that the green flag?

1 A Correct. The third item down is a green flag which is
2 described as recording was split due to size limit.

3 Q And is that what you were telling us about before, once
4 the storage fills in one session, it has to roll to the second?

5 A Correct. Correct.

6 Q Okay. So session one is on the first line with the green
7 flag recorder and it says start 6/3/2008. Do you see that?

8 A I do.

9 Q So that's June 3rd, 2008?

10 A That is that date there.

11 Q That is the date there, but is that the date of your
12 recording?

13 A No, it's not.

14 Q Tell us about that.

15 A The Hawk has an internal battery, if you will, and the
16 internal battery is what maintains the date and time stamp. If
17 the Hawk gets to the point where the battery is so low that the
18 internal battery drains, then the internal date and time stamp
19 defaults to some factory setting.

20 So when I took the Hawk, I charged it in anticipation of
21 the meeting. But what I did not do is charge it, plug it into
22 the appropriate software to confirm the date and time stamp was
23 correct, correct it if it was not, and then take it to the
24 meeting. I charged the Hawk recording device. I took it to
25 the meeting. I activated it. And it was only after the

1 meeting was over and after the video had been downloaded and I
2 actually started to review the video that I realized the date
3 and time were off by several years.

4 Q Were you able to go back to the video and modify the date?

5 A After uttering to myself some choice words by noticing the
6 dates were wrong, I went down and spoke with our technically
7 trained agents, the people who are the subject matter experts
8 in our office on recording devices. And what they essentially
9 explained to me is that I had dropped the ball by failing to
10 check the date and time stamp, that the Hawk recording device
11 was specifically made so that the audio and video could never
12 be eliminated, and they essentially told me that I should plan
13 on talking about it at trial.

14 Q Are you talking about it at trial?

15 A Unfortunately, yes.

16 Q So session one started at -- let me get a pen.

17 Session one started at 23:01:49, correct?

18 A Correct.

19 Q And ended 29 -- excuse, me it ended at 23:31:33, correct?

20 A Correct.

21 Q Then session two starts at that same exact section,
22 correct? 23:31:33 is the end of one, 23:31:33 is the start of
23 two, correct?

24 A Correct.

25 Q And then it ends, session two ends at 5:53?

1 A Correct.

2 Q Session 3 starts at 5:53?

3 A Correct.

4 Q So that's the same time when session two ends is exactly
5 when session three begins, correct?

6 A Correct.

7 Q Then session three ends at 41:01, is that correct?

8 A Correct.

9 Q And rolls right over to session four at 41:01?

10 A Correct.

11 Q And then you turned off the recording device before
12 session four was filled?

13 A Correct. Session four, the data had not filled up to the
14 point that a fifth session would have been required, so the
15 Hawk only indicates a total of four sessions.

16 Q I am showing you the last page of Government's Exhibit 7F
17 and it's a pop-up box on that page. Do you see that?

18 A I do.

19 Q And is that pop-up box telling us that the recording that
20 you downloaded was created on August 30, 2011?

21 A Correct, that would be the date the recording was
22 downloaded from the Hawk recording device.

23 Q I'm showing you what's been marked for identification as
24 Government's 7A, A1, and A2. Can you tell us what this is?
25 What's 7A?

1 A 7A is the original DVD to which the recording device was
2 downloaded onto. On it at the bottom of the disc is the FBI
3 assigned case number and my initials.

4 Q And 7A1?

5 A 7A1 is a copy of those videos in AVI format which is a
6 slightly different recording format. And 7A2 is the recording
7 with captions added by a third party, the meeting essentially
8 with the words that are being spoken at the bottom.

9 Q And other than there being a different format so it can
10 play on devices, is the recording exactly as it was the day the
11 meeting took place?

12 A Yes, it is.

13 Q Has the content, the audio or visual, been modified,
14 changed, altered in any way?

15 A No, it has not.

16 MS. MITRANI: Your Honor, the government would offer
17 composite 7A into evidence.

18 THE COURT: Any objection?

19 MR. SCOTTON: Yes, Your Honor.

20 THE COURT: What is the objection?

21 MR. SCOTTON: This is the first recorder or the second
22 recorder device?

23 THE COURT: It's 7A, which is the DVD of the
24 August 29, 2011 meeting.

25 MR. SCOTTON: This is not the second recording that

1 government has just given to me a couple days ago.

2 THE COURT: The one that they originally played for
3 you or told you about in August?

4 MR. SCOTTON: No, Your Honor. The conversation that
5 we had that they have two different devices on him.

6 THE COURT: Come sidebar, please.

7 (Thereupon, the following was heard sidebar.)

8 THE COURT: Mr. Scotton, once again, you are directly
9 trying to circumvent this Court's rulings by referring to
10 discovery matters that are not relevant and not to be spoken
11 about in front of this jury. Once again, I find myself feeling
12 as though you are trying to make a mockery of this process and
13 doing everything you can to avoid following the rules. You
14 know darn well which one this refers to. We had an entire
15 hearing about it in August.

16 MR. SCOTTON: This represent --

17 THE COURT: Excuse me. We had a hearing about it for
18 several hours in August. And then we discussed it again on the
19 record yesterday and the day before. So do you object or don't
20 you?

21 MR. SCOTTON: Yeah, I do because they present me
22 another DVD. They understand we know now that he have two
23 different devices on him. I want to know which DVD it is, from
24 the first device or the second device, because I never got a
25 chance to see the --

1 THE COURT: You know darn well it's from the first
2 device because it's the one that was played at the hearing that
3 you have had since at least August, probably before then. That
4 is the one that it is. Do you object to it?

5 MR. SCOTTON: No, Your Honor. If it is the first one,
6 no.

7 (Thereupon, the following was heard in open court.)

8 THE COURT: All right. In view of the fact that
9 there's no objection, 7A will be admitted.

10 (Thereupon, Government's 7A received in evidence.)

11 BY MS. MITRANI:

12 Q Special Agent Van Brunt, I'm showing you Government's
13 Exhibit 7C1, 7C2, 7C3, and 7C4. Do you recognize that?

14 A I do.

15 Q And what are these?

16 A These are four transcripts that I have read and reviewed
17 while watching the video and I found them to be a fair and
18 accurate representation of the video and in the recording.

19 Q 7C1 is session one, 7C2 is session two, 7C3 is session
20 three, 7C4 is session four?

21 A Correct.

22 MS. MITRANI: Your Honor, the government would offer
23 composite 7C.

24 THE COURT: Any objection?

25 MR. SCOTTON: No, Your Honor.

1 THE COURT: 7C composite is admitted.

2 (Thereupon, Government's 7C received in evidence.)

3 BY MS. MITRANI:

4 Q I'm showing you Government's Exhibit 7E, and can you tell
5 us what 7E is?

6 A Government's Exhibit 7E is four pages of a SunBiz
7 printout. SunBiz is the website that's maintained by the
8 Florida Department of State, Division of Corporations. They
9 are four pages of documents that I had with me when I met with
10 Mr. Scotton. They contain highlighting of certain names or
11 entities that I placed on the pages prior to my meeting with
12 Mr. Scotton. And they also contain writings and markings that
13 Mr. Scotton made in the course of my meeting with him.

14 Q The government would offer 7E into evidence.

15 THE COURT: 7E is admitted -- sorry. Is there any
16 objection?

17 MR. SCOTTON: No, Your Honor.

18 THE COURT: 7E is admitted.

19 (Thereupon, Government's 7E received in evidence.)

20 BY MS. MITRANI:

21 Q Before we get to the actual recording, let me ask you a
22 couple questions. You talked about 7E which I will publish in
23 just a second as a document that you had with you during the
24 meeting, correct?

25 A Correct.

1 Q Was this the only document you had with you?

2 A No, I had many documents with me that I intended to show,
3 discuss, and engage Mr. Scotton in conversation about.

4 Q And did you show him more than one document?

5 A Yes, I did.

6 Q So 7E is just one of the documents you showed him?

7 A It's four pages of many that I discussed with him or
8 showed him, yes.

9 Q So we are going to publish 7E. This is the first page of
10 7E. Can you tell the members of the jury what they are looking
11 at here?

12 A Sure. This is a printout of a list of officer registered
13 agents that I ran on the Florida Department of State, Division
14 of Corporations. I had gone through prior to the meeting and
15 highlighted the names of people who I believed to either be
16 Mr. Scotton or directly related to him, meaning related by
17 blood or marriage, and I wanted to highlight these names to ask
18 him whether these are people he did, in fact, know or were
19 related to.

20 I also wanted to ask him about the misspelling on his name
21 on the first three lines that were highlighted.

22 Q And did you ask him?

23 A I did.

24 Q What did he say?

25 A My recollection is he suggested the misspelling was just a

1 typo.

2 Q And let's go to the second page. And on the extreme
3 right -- no, extreme left of the page, it has officer slash RA
4 name, correct, and is that your highlighting of highlighting
5 entities?

6 A Correct. I essentially highlighted a box around
7 Mr. Scotton's name indicating that those were the items that I
8 planned to discuss with him. Those would be the name of the
9 officer or registered agent. And then in the center column
10 would be the name of the entity. The markings in blue ink are
11 Mr. Scotton's markings.

12 Q Now, when it says, for example, to make it easy, when it
13 says all the way on the bottom, Brazil Express no, what does
14 that mean?

15 A That's Mr. Scotton indicating that it's no longer a
16 business or entity that he's actively using as opposed to
17 Mr. Scotton denying that he was involved with that company or
18 that it was his company.

19 Q So that's the defendant's handwriting, no?

20 A Correct. It's the defendant's handwriting, no. And also
21 the -- he started to just go down the checkmarks. And then he
22 said no. And I clarified -- I asked him to clarify, you know,
23 when you say no, do you mean it's not your company or it's not
24 a company that you use. And that's when he explained that it's
25 not a company that he uses.

1 Q And did he indicate these were companies he used in the
2 past or is that your interpretation?

3 A He indicated they were his companies previously.

4 Q All right. Let's go to the next page. And this is just
5 the third page of the that same exhibit, right?

6 A It is, with the first line highlighted, a person by the
7 name of Samara Scotton and an entity of the name Brasil with an
8 S Express, Inc.

9 Q Okay.

10 MS. MITRANI: Your Honor, at this point we were going
11 to offer excerpts. My understanding the defendant objected and
12 wants the whole undercover played so we will play the whole
13 undercover.

14 THE COURT: Is that right, Mr. Scotton, do you want
15 the whole thing played?

16 MR. SCOTTON: The video?

17 THE COURT: Yes.

18 MR. SCOTTON: That's correct.

19 THE COURT: All right. Then let's play the whole
20 video.

21 MS. MITRANI: May I be seated?

22 THE COURT: You may.

23 MS. MITRANI: Actually, Your Honor, I'm sorry, may I
24 pass out transcripts to the jury first?

25 THE COURT: Yes.

1 MS. MITRANI: I think what I will do, Your Honor,
2 instead of passing out all four at once, can I do one at a
3 time, or do you want me to do it one at a time?

4 THE COURT: I think it's easier to do one at a time.

5 MS. MITRANI: Thank you.

6 MR. SCOTTON: Your Honor, Ms. Martinez wants to know
7 if it's going to be an hour, hour and a half video, is it?

8 THE COURT: I don't know how long the video is.
9 Sorry.

10 MR. SCOTTON: It's not request for popcorn or Coke or
11 anything, right?

12 THE COURT: I'm sorry? All right.

13 MS. MITRANI: Let's queue up to session one.

14 THE COURT: Just to be clear, whose request was that,
15 Mr. Scotton?

16 MR. SCOTTON: Never mind, Your Honor.

17 THE COURT: You said Ms. Martinez had a request.

18 MR. SCOTTON: No request, Your Honor.

19 THE COURT: All right.

20 MS. MITRANI: May I pass up a copy to the Court?

21 THE COURT: Yes.

22 MS. MITRANI: I hate to trouble the Court. Can we
23 maybe dim the lights a little bit?

24 THE COURT: Of course.
25

1 BY MS. MITRANI:

2 Q And the one that we are playing, this is the one that
3 we -- that was sent out. Does it match up the transcript to
4 the recording?

5 A Correct, the video that's being played will include the
6 captioning at the bottom.

7 THE COURT: Sorry, we are going to have a little disco
8 session here.

9 MS. MITRANI: So we will start with then session ONE.

10 (Thereupon, the videotape was played.)

11 THE COURT: Can you turn it down just a bit.

12 MS. MITRANI: Yes.

13 THE COURT: Thank you.

14 (Thereupon, the videotape was played.)

15 BY MS. MITRANI:

16 Q Is this when you are driving from your outside location to
17 the location of the defendant?

18 A Correct. I'm driving from a bank located just south of
19 the meeting location, park my car, and start the meeting.

20 Q Do you know how many minutes it took you to drive? Do you
21 remember or no?

22 A I believe I'm close to parking right now. I should have
23 turned on the radio.

24 THE COURT: And if we had the lights, you would have
25 the full effect.

1 (Thereupon, the videotape was played.)

2 BY MS. MITRANI:

3 Q I take it this is where you exited your vehicle and
4 started walking towards the location?

5 A Correct, I'm walking towards Suite F.

6 (Thereupon, the videotape was played.)

7 BY MS. MITRANI:

8 Q I guess this is a different view of the Mizner Park area.

9 (Thereupon, the videotape was played.)

10 BY MS. MITRANI:

11 Q So is here the defendant saying he had nothing to do with
12 Zap Games?

13 A Correct.

14 (Thereupon, the videotape was played.)

15 BY MS. MITRANI:

16 Q In this clip, is the defendant telling you that -- start
17 that over.

18 In this clip, is the defendant telling you that he's told
19 Justin to call some Alex character?

20 A Correct.

21 Q Have you identified any Alex character in connection with
22 this?

23 A No.

24 (Thereupon, the videotape was played.)

25

1 BY MS. MITRANI:

2 Q The defendant is mentioning this Lider Mundanca in this
3 clip, correct?

4 A Correct.

5 Q Did that name come up as part of your investigation?

6 A The name had come up for several years as an excuse
7 regarding problems with packages.

8 Q Did that name -- did the defendant provide that name to
9 DHL as early as 2008?

10 A I believe he had provided that name to DHL by the end of
11 2007 via some communications, but yes, at least by absolutely
12 2008.

13 Q Or possibly 2007, correct?

14 A Correct.

15 (Thereupon, the videotape was played.)

16 BY MS. MITRANI:

17 Q Is this the end of session one?

18 A Yes.

19 MS. MITRANI: Your Honor, do you want us to go to
20 session two or do you want to take a break?

21 THE COURT: Why don't we take a break until 3:00.
22 Let's all rise for the jury.

23 (Thereupon, the jury exited the courtroom at
24 2:49 p.m.)

25 THE COURT: All righty. We will see you back here at

1 3:00.

2 (Thereupon, a recess was taken at 2:49 p.m.)

3 THE COURT: We are back on the record. Before we
4 check on the jury, Mr. Scotton, I'll just ask, Ms. Martinez,
5 did you have a request previously?

6 MR. SCOTTON: Your Honor, I thought it was a request,
7 but it was not. It was a language thing going on.

8 THE COURT: what happened Ms. Martinez?

9 AGENT VAN BRUNT: He was telling me --

10 THE COURT: Can you turn on your microphone, please.

11 THE INVESTIGATOR: It was nothing pending. We were
12 talking about the video, and he come up with, oh, I have to
13 tell something to the Judge. So I didn't make any request.

14 THE COURT: So, Mr. Scotton, please refrain from
15 attributing things to Ms. Martinez that she did not say. All
16 right. Do you understand?

17 MR. SCOTTON: Yes, Your Honor.

18 THE COURT: All right. All rise for the jury.

19 (Thereupon, the jury entered the courtroom at
20 3:01 p.m.)

21 THE COURT: All righty. Please be seated, everyone.
22 And although you are not actually testifying at the moment, in
23 anticipation of the fact that you may be testifying again soon,
24 Agent Van Brunt, do you understand you are still under oath?

25 THE WITNESS: Yes.

1 THE COURT: All right. And the government may
2 continue.

3 MS. MITRANI: Your Honor, may I collect the
4 transcripts from session one and pass out the transcripts from
5 session two?

6 THE COURT: Yes.

7 MS. MITRANI: May I hand one to the Court?

8 THE COURT: Thank you.

9 (Thereupon, the videotape was played.)

10 BY MS. MITRANI:

11 Q You are, in this instance, you are going over a document
12 with the defendant, correct?

13 A Correct.

14 Q And do you remember what document you were going over?

15 A My recollection is it was the Florida Department of State
16 corporation documents for Zap Games identifying the officers,
17 directors, and primary place of business and address for
18 resident agent -- registered agent.

19 Q And so when, for example, you said down here it lists the
20 president and principals of Zap Games, you were just reading
21 from a document, correct?

22 A Correct.

23 (Thereupon, the videotape was played.)

24 BY MS. MITRANI:

25 Q Now, the defendant identifies an address of 444 Brickell

1 Avenue as a warehouse, correct?

2 A He does.

3 Q Did you go to 444 Brickell Avenue?

4 A I did, I went to 444 Brickell Avenue.

5 Q In Miami, Florida, correct?

6 A In Miami, Florida. And it is a business location. It's a
7 commercial building, an office building. In that building is a
8 CMRA, commercial mail receiving agency, by the name of Brickell
9 Mail located on one of the floors. And 444 Brickell Avenue in
10 Miami is also the address of the Capital Grille, a restaurant.

11 Q Capital Grille, the restaurant?

12 A Capital Grille.

13 Q So 444 Brickell Avenue is not a warehouse as the defendant
14 indicated in this interview, correct?

15 A It is not a warehouse.

16 Q And it's not his warehouse since there is no warehouse?

17 A Correct.

18 (Thereupon, the videotape was played.)

19 BY MS. MITRANI:

20 Q You are showing him another document, a DHL document with
21 Alex's name, correct?

22 A Correct. It's the document that was on DHL letterhead
23 with the handwritten name Alex on the dear line and it was sent
24 back to Mr. Justin McMahon signed by Alex.

25 Q Let me just switch over real quick.

1 I'm showing you Government's Exhibit 8C. And this was the
2 letter that Mr. McMahon got back where the Roger Scotton was
3 crossed out and the Alex was written in. Is this what you were
4 showing the defendant?

5 A Correct. This is the document that I showed Mr. Scotton
6 in the interview.

7 Q Okay.

8 (Thereupon, the videotape was played.)

9 BY MS. MITRANI:

10 Q So you just identified a minute ago as Alex, as Alex Colon
11 Moreira?

12 A That's correct as opposed to Alex Colom, C-O-L-O-M, as
13 indicated on other documents.

14 Q And the defendant's father was Carlos Colon?

15 A Yes, Carlos Colon with O-N at the end of the name.

16 (Thereupon, the videotape was played.)

17 BY MS. MITRANI:

18 Q Did the defendant just say he didn't know anything about
19 934 North University Drive in Coral Springs?

20 A He stated that was not.

21 MR. SCOTTON: Objection, Your Honor.

22 THE COURT: What's the objection?

23 What's the objection?

24 MR. SCOTTON: The video say one --

25 THE COURT: You need to speak into the microphone,

1 please, Mr. Scotton.

2 MR. SCOTTON: It is speculation the video say
3 something see now trying to ask a question different. If you
4 go back on the video, you are going to see I didn't say that.

5 THE COURT: Overruled as to that. The video says what
6 it says. So we will go with the video.

7 BY MS. MITRANI:

8 Q Here the defendant as 934 North University Drive, not even
9 mine, correct?

10 A Correct.

11 Q And is that the Pak Mail location?

12 A Yes, that's the address of the Pak Mail that is co-owned
13 by Scott Baker.

14 Q I'm not going to switch back because we are going to lose
15 our spot, but that is the CMRA, the application where the
16 defendant opened his box at 934 North University Drive as
17 Exhibit 2A, correct?

18 A Correct.

19 (Thereupon, the videotape was played.)

20 BY MS. MITRANI:

21 Q And there he just identified Carlos Colon as his friend,
22 correct?

23 A As not only a friend, he denied it was a family member.

24 (Thereupon, the videotape was played.)

25

1 BY MS. MITRANI:

2 Q Here the defendant is saying he has no relation to Claudia
3 or Flavio Scotton, correct?

4 A Correct.

5 Q In your investigation, did you discover who Flavio Scotton
6 is?

7 A Flavio Scotton is the brother of Roger Scotton and Claudia
8 is his wife which makes her the sister-in-law of Roger Scotton.
9 Both Flavio and Claudia live in the north Broward County area.

10 (Thereupon, the videotape was played.)

11 BY MS. MITRANI:

12 Q I think he also asked you about Alex Scotton, so it says,
13 okay, so Alex Scotton and Claudia and Flavio, their
14 relationship. We just talked about Claudia and Flavio. Did
15 your investigation reveal who Alex Scotton is?

16 A Alex Scotton is Roger Scotton's brother.

17 Q And he's denying any family relationship with these
18 individuals, correct?

19 A Correct.

20 MR. SCOTTON: Your Honor, can I approach sidebar? We
21 need to go sidebar.

22 THE COURT: All right.

23 MR. SCOTTON: Do you mind if I bring this computer
24 also with me?

25 THE COURT: If you need it.

1 (Thereupon, the following was heard sidebar.)

2 MR. SCOTTON: Ms. Martinez has brought to attention
3 here that is something that she say even the expert has
4 mentioned to her. They play a video. If they go back in the
5 beginning with their video, the video show Mr. Van Brunt
6 driving away. And as he drive away, you can see piece of the
7 street out of the car window. The video they provide to us
8 doesn't show that.

9 THE COURT: All right. There's no reason we need to
10 talk about it now. It looks like it does.

11 MR. SCOTTON: No, this is one --

12 THE COURT: I'm not going to do this right now. I
13 can't run them side by side. I certainly can't do it at a
14 sidebar. You've had months upon months upon months to review
15 the videos. We have already played an hour and a half of it, I
16 think, and there's no reason this is brought up sidebar.

17 MS. MITRANI: I want to say something for the record.
18 First of all, there's only one video. A second recording is a
19 backup recording that's audio only that we discussed last week
20 on a key, but that was provided. That's first of all.

21 Second of all, Your Honor, we got an expert report, I
22 think it was earlier this week, that said there was no
23 tampering and no alteration of the video.

24 So I don't know what Mr. Scotton is talking about. If
25 the Court wants, I can provide a copy of that draft report

1 indicating there's no --

2 THE COURT: There's no need.

3 MS. MITRANI: I want to not that the government has
4 that, for the record, and there's only one video, and the
5 backup was just audio.

6 THE COURT: Okay. Thank you.

7 MR. SCOTTON: Okay.

8 (Thereupon, the following was heard in open court.)

9 THE COURT: All right. Ms. Mitrani, you may continue.

10 MS. MITRANI: Thank you, Your Honor. Let's continue
11 with session two of the meeting between Agent Van Brunt and the
12 defendant.

13 (Thereupon, the videotape was played.)

14 BY MS. MITRANI:

15 Q Agent Van Brunt, is this the part where you are showing
16 the defendant that Exhibit -- I think it's 7E, where he was
17 marking up the companies that belong to him?

18 A Correct. I had shown him the document that I had
19 highlighted prior to the meeting, and when I showed him the
20 document, he either asked for or took my blue pen and then
21 started to make markings on the document itself either
22 indicating that had no relation to Alex Flavio or Claudia
23 Scotton and/or whether the businesses were related to him and
24 whether or not they were still active or not.

25 Q I'm not going to put it up because we put it up right

1 before the video, but is this the document we put up on the
2 ELMO with the defendant's markings?

3 A Correct.

4 (Thereupon, the videotape was played.)

5 BY MS. MITRANI:

6 Q Do you start -- is this the part of your recording, of
7 your interview with the defendant where you discuss the
8 undercover purchase of the -- excuse me, the source purchase of
9 the Citrix -- let me start this over again.

10 Is this the portion of the tape where you discuss the
11 purchase of the camera that was sent to Brazil on the Citrix
12 account?

13 A Yes. This is the portion of my meeting with Mr. Scotton
14 where I begin to confront him with the controlled purchase that
15 was made and ask for an explanation for how the purchase could
16 have been made and the shipment delivered to Brazil.

17 Q We are going to play this right now. Did his explanation
18 make any sense to you?

19 A Completely illogical.

20 (Thereupon, the videotape was played.)

21 BY MS. MITRANI:

22 Q So the defendant is saying that -- trying to tell you that
23 he shipped this camera within the United States and not to
24 Brazil, correct?

25 A Correct, that essentially the customer went on to his

1 website, purchased the digital camera, provided a billing
2 address in Pembroke Pines, the customer provided Sky Air Online
3 a shipping address in Brazil, paid \$125 to ship the package,
4 and then, according to Mr. Scotton, the customer was just
5 arranging to have the camera shipped to him in Pembroke Pines.

6 Q For \$125?

7 A Correct, from Boca Raton.

8 Q But, of course, we know, we have the emails, this is the
9 subject of the source purchase that we just talked about a
10 little while ago?

11 A Correct. And you saw the actual package in the video that
12 was shown earlier.

13 (Thereupon, the videotape was played.)

14 BY MS. MITRANI:

15 Q The defendant just said people drop things off at his
16 store. Was his store operational when you came to visit?

17 A No, the store was not operational. In fact, we discussed
18 the frustrations he was having with the build-out and the fact
19 that he was waiting to have counters delivered so he could open
20 the store.

21 Q And that's what we saw in the beginning of the session?

22 A Correct, when the video was sideways.

23 (Thereupon, the videotape was played.)

24 BY MS. MITRANI:

25 Q Is that the end of session two?

1 A It is.

2 MS. MITRANI: Your Honor, may I collect the
3 transcripts from session two and pass the transcripts --

4 THE COURT: Yes.

5 MS. MITRANI: Thanks. Okay. Let's go to session
6 three.

7 (Thereupon, the videotape was played.)

8 BY MS. MITRANI:

9 Q What are you showing the defendant here?

10 A I'm showing the defendant a series of screen shots that
11 were taken from the video that Mr. David Bonilla, a former DHL
12 employee, had discussed previously in the proceedings. And it
13 was the screen captures of packages being dropped off at the
14 BCT DHL station regarding accounts for Wal-Mart and Targeting.
15 And it also included -- it was two visits where packages were
16 dropped off and then a third visit where Mr. Scotton came back
17 to complain about the packages being held.

18 Q Okay. So Government's Exhibit 13 is the DVD of the three
19 clips of the defendant going into the station. Are you showing
20 him, like you said, screen shots from Government's Exhibit 13?

21 A I am.

22 Q And that's what was played when witness David Bonilla was
23 here?

24 A Yes. The video Mr. Bonilla showed the jury was the full
25 video, and there are screen captures of that video and prepared

1 in a report style, and I was showing him the paper report.

2 MS. MITRANI: Okay. Thank you.

3 (Thereupon, the videotape was played.)

4 BY MS. MITRANI:

5 Q When you talk about Anthony Young, who is Anthony Young?

6 A He was a DHL employee who sort of worked within the fraud
7 department.

8 Q Here you talk about the fraudulent DHL, Wal-Mart, and
9 Target account, correct?

10 A Correct.

11 Q Did you have a DHL account opening for Wal-Mart and
12 Target?

13 A No, I had intended to play clips from the Fed-Ex
14 recordings in an attempt to confront Mr. Scotton with his voice
15 on the recordings.

16 Q Okay.

17 (Thereupon, the videotape was played.)

18 BY MS. MITRANI:

19 Q Were you able to identify any Alex Colon Moreira?

20 A No.

21 Q You talked about Alex. The defendant's brother's name is
22 Alexander, correct?

23 A I believe the defendant's brother's name is Alexandre. It
24 ends with an E.

25 Q Colon is the last name of the defendant's stepfather,

1 correct?

2 A Correct.

3 Q And is Moreira another name you've come up with in the
4 investigation related to the defendant?

5 A Yes.

6 Q Tell us about that.

7 A I believe they are one of his previous wives. That was
8 one of her names.

9 Q Samara?

10 A Correct.

11 Q So Moreira was one of Samara's names, correct?

12 A Correct.

13 (Thereupon, the videotape was played.)

14 BY MS. MITRANI:

15 Q So you keep on talking to the defendant about Alex, if
16 Alex wasn't doing this stuff. Why do you keep on doing that?

17 A He keeps -- the defendant keeps on flopping whether they
18 are his packages, whether it's his business, whether he sends
19 them. It's Alex's fault. He keeps trying to shift the
20 responsibility for the packages. He talks about I needed to
21 get my packages back. One time you guys brought two vans of
22 stuff with my packages, but it's Alex that opened a PO box.
23 I'm trying basically to paint him into a corner so he has to
24 definitively say who Alex is, who is responsible for what.
25 Earlier on he talks about how he has nothing to do with Zap

1 Games, but he talks about the warehouse and he's the vice
2 president and how we have his packages. I'm trying to paint
3 him into a corner and trying to give him as much rope as I can.

4 THE COURT: Before we start up again, I think maybe
5 this might be a good time to stop for the day unless it's going
6 to finish in the next five minutes.

7 MS. MITRANI: I don't think so. Judging from the bar,
8 I don't think it's going to finish in the next five minutes.

9 THE COURT: We are going to conclude for today. And
10 we are not in session tomorrow. We have next week off. And
11 government can correct me if I'm wrong, but it's my
12 understanding the government anticipates finishing the first
13 day we return. Is that right?

14 MS. MITRANI: The government anticipates --

15 THE COURT: Finishing its case.

16 MS. MITRANI: Subject to cross-examination. We
17 anticipate Agent Van Brunt is the last witness.

18 THE COURT: Was there one other witness as well or no?

19 MS. MITRANI: Highly doubtful. If so, it would be
20 very brief. Agent Van Brunt will be the last witness.

21 THE COURT: So just a reminder. We are off next week.
22 The week following, although we would usually go from Monday
23 through Thursday, Monday is a federal holiday, so we will be
24 off Monday as well. We will return on Tuesday, and that date
25 is the 18th, I believe. So Tuesday, February 18th at 9:00, we

1 will see you in the morning bright and early. And please do
2 remember my instructions. It's an extended break in the
3 proceedings, but it's very important that, of course, you all
4 continue not to discuss the case with anyone, not to disburse
5 any information at all about the case, and not to do any
6 research of your own into the case. We will see you on
7 Tuesday, February 18 at 9:00 in the morning. Enjoy your week
8 off. All rise for the jury.

9 (Thereupon, the jury exited the courtroom at
10 4:27 p.m.)

11 THE COURT: All right. Is there anything that we need
12 to address?

13 MS. MITRANI: Nothing from the government.

14 THE COURT: All right. Let me excuse the government
15 then.

16 MS. MITRANI: So same thing, Your Honor, should we
17 just step out and come back to clean up our stuff?

18 THE COURT: How long will it take?

19 MS. MITRANI: It may take a little while.

20 THE COURT: Do you mind then?

21 MS. MITRANI: Of course not, Your Honor.

22 THE COURT: Thank you very much.

23 (Thereupon, the government exited the courtroom.)

24 (Thereupon, a sealed hearing was held.)

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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

7/30/14

s/ Tammy Nestor
Tammy Nestor, RMR
Official Court Reporter
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,

Fort Lauderdale, Florida

Plaintiff(s),

February 18, 2014

vs.

ROGERIO CHAVES SCOTTON,

Defendant(s).

JURY TRIAL
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): Bertha Mitrani, Esquire
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FOR THE DEFENDANT(S): Rogerio Scotton, Pro Se

STANDY COUNSEL: Jason Kreiss, Esquire
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I-N-D-E-X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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ROY VAN BRUNT

BY MS. MITRANI	4			
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BY MR. SCOTTON		125		
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1 Thereupon,
2 the following proceedings began at 8:59 a.m.:

3 THE COURT: Let's all rise and see how we are doing
4 with the jury.

5 THE COURTROOM DEPUTY: They are all here.

6 THE COURT: Then we will bring them in.

7 (Thereupon, the jury entered the courtroom at
8 9:00 a.m.)

9 THE COURT: Welcome back. Everybody please be seated.
10 I hope you all had a terrific week or so off. We all missed
11 you, but we are so glad you're back.

12 I do need to, of course, start like we start every day
13 by asking if there is anybody here who discussed the case with
14 anyone, dispersed any information about the case, or did any
15 research into the case, if so, please go ahead and raise your
16 hand for me now. I see no hands. Thank you all for that.

17 And we are just going to pick up where we left off.
18 And I think Agent Van Brunt was on the stand.

19 And, agent, I will just remind you, you are still
20 under oath. Do you understand?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: All right. Very good. Ms. Mitrani, you
23 may continue.

24 MS. MITRANI: Thank you, Your Honor.

25 DIRECT EXAMINATION (resumed)

1 BY MS. MITRANI:

2 Q Good morning.

3 A Good morning.

4 Q So when we last left off about a week and a half ago, we
5 were playing the undercover tapes which we will continue to do
6 so in just a moment.

7 Let me ask you, I think I neglected to ask you before we
8 started playing, what was the purpose of this undercover, what
9 was your goal?

10 A My goal was to collect evidence, to meet Mr. Scotton
11 myself, to pose questions to him that would further the
12 investigation, including questions that were readily proveable
13 to either be correct answers or lies from Mr. Scotton. Also,
14 to confront him with the digital camera that had been
15 purchased, the FBI controlled purchase, to confront him with
16 that actual package to see what his explanation would be, as
17 well as in general gather information in furtherance of the
18 investigation.

19 Q And you were doing this under the guise of being a DHL
20 employee?

21 A Correct.

22 Q Okay. Well, I think then ended -- we were at session 3,
23 and we will just pick up where we left off.

24 MS. MITRANI: Mr. Frank, if you would do us the
25 honors.

1 (Thereupon, the audiotape was played.)

2 BY MS. MITRANI:

3 Q Is Mr. Scotton looking at his cell phone now?

4 A Yes, he's essentially scrolling through his cell phone.

5 (Thereupon, the audiotape was played.)

6 BY MS. MITRANI:

7 Q Was that the end of session 3?

8 A Yes, that's the end of session 3.

9 Q And the defendant still is trying to put the blame on
10 Zap Games and this supposed Alex person?

11 A Correct. He says that DHL should just be dealing with
12 Alex regarding his arrangement with Justin, but then he also
13 talks about how the packages are his and he shouldn't be, you
14 know, left with money out of pocket.

15 Q Okay. So let's go to the last sessions -- number four,
16 the last session.

17 MS. MITRANI: Oh, wait. Actually, hold on a second.
18 Your Honor, can I pass out the transcripts?

19 THE COURT: Yes.

20 (Thereupon, the audiotape was played.)

21 BY MS. MITRANI:

22 Q And it's off?

23 A Yes.

24 Q You mentioned another recording device in your post amble?

25 A Correct.

1 Q Did you have another recording device on you?

2 A I did.

3 Q Was it just audio, the other one?

4 A Correct. The second recording device was an audio only
5 recording device, and I brought the second recording device as
6 a backup in case either the first recording device stopped to
7 work during the meeting or if there were parts of the
8 conversation that were inaudible, sometimes the second
9 recording device is able to pick up and would -- and articulate
10 what the speakers are saying.

11 Q Okay. Did the defendant ever provide you with Alex's
12 number? I noticed that you asked for that.

13 A No, I don't recall ever being contacted by Mr. Scotton
14 following our face-to-face meeting.

15 Q Okay. Did you arrest the defendant pursuant to an arrest
16 warrant issued in connection with the second superseding
17 indictment or, actually, with the original indictment in this
18 case?

19 A Yes, I did.

20 Q And when did you arrest the defendant?

21 A He was arrested on March the 15th of 2012.

22 Q So tell us, at what location did you start your day on
23 March 15th, 2012?

24 A I started the day essentially at the 398 Southeast Mizner
25 Boulevard, unit 1921 address. I was there with several other

1 FBI agents. We also had a uniformed officer from the city of
2 Boca Raton police department. We went to the townhouse,
3 knocked on the door, announced who we were and waited to see if
4 Mr. Scotton or anyone else would come to the door.

5 Q And approximately what time was this?

6 A That was at 6:30 in the morning approximately.

7 Q Was Mr. Scotton home?

8 A There was no one home. No one noticed any lights turned
9 on. No one noticed any curtains moving. After some period of
10 time, we concluded that we didn't believe anyone was actually
11 at the residence.

12 Q So did you then take steps to try to locate Mr. Scotton,
13 the defendant, in order to arrest him?

14 A Yes, we had a contingency plan that if Mr. Scotton was not
15 at his townhouse at 6:30 when we went to arrest him that we
16 were going to set up surveillance both on his townhouse as well
17 as his business address, which was the Merry Mailman located at
18 100 Plaza Real south. Those two locations are literal across
19 the street from each other. So I would say they were less than
20 eight or 900 yards apart. We had FBI agents in a vehicle
21 parked on both the north side of his business address. I was
22 actually parked in my vehicle on the south side of his business
23 address. And then we had a third vehicle parked near the
24 entranceway to the Mizner Park townhouse where there's only one
25 way to enter and exit with the vehicle. So they had what we

1 call the eyeball on that entry point.

2 Q Did you eyeball a car that you believed the defendant was
3 in?

4 A Yes.

5 Q Either you or somebody in the surveillance team?

6 A Correct, after waiting the normal business hours of the
7 Merry Mailman, you know, it didn't open I don't think until
8 9:00, around that time, one of the other agents on the north
9 side called out over the radio that he saw a vehicle matching
10 the description of Mr. Scotton's SUV driving towards the
11 business location. As that vehicle approached, he confirmed
12 that the license plate was registered to Mr. Carlos Colon and
13 we knew to be driven by Mr. Scotton.

14 At that point, Mr. Scotton's vehicle drove southward
15 behind his business address. There's the storefront, and then
16 in the back of the building is sort of the entryway, if you
17 will, for like the owners. I mean, there's a metal door there
18 with heavy locks on it and stuff. He drove on the south side
19 of the building and actually was driving directly towards where
20 I was parked. As Mr. Scotton's vehicle approached, I observed
21 him driving, confirmed it was the make and model and license
22 plate of the car that we knew him to drive. I then called out
23 over the radio to essentially initiate the rest of the FBI team
24 to begin surveilling him mobilely as he left the location.

25 Q So he didn't stop -- he didn't stop his car at the

1 Merry Mailman location?

2 A He did not stop his car at the Merry Mailman location, but
3 we had not attempted to stop him. So we just observed him
4 driving. He was on the phone at the time. As he drove south
5 past his building, he exited the shopping plaza and that's
6 where I began my surveillance and called out to other FBI units
7 to essentially catch up to me and gave them the direction and
8 the road we were traveling on.

9 Q Did you and your accompanying surveillance vehicles follow
10 the defendant's car?

11 A We did.

12 Q Did there come a time when you effectuated a stop of that
13 car?

14 A We did.

15 Q Tell us about that.

16 A He traveled southbound from Boca Raton down into
17 Broward County and Pompano Beach. He made a couple turns
18 through a neighborhood in Pompano Beach and it looked more like
19 he was lost, he wasn't sure where he was going. Again, at this
20 point, no one had activated any lights, there were no sirens.
21 There was nothing that we had done to indicate to Mr. Scotton
22 that we were trying to stop him.

23 There came a point where he actually sort of pulled over
24 to the side of the road and started to do a U-turn or a K-turn.
25 And as he began to turn back and drive towards myself and the

1 rest of the team, I made the decision that we were going to
2 execute the arrest. So I called it out over the radio, and
3 myself and the other units activated our lights and sirens and
4 arrested Mr. Scotton without any incident or problems.

5 Q So then the defendant's car came to a stop, then, after
6 you put on the lights and stuff?

7 A Correct. We activated our lights. At the time I was
8 actually driving a minivan, which is not frequently thought of
9 as a law enforcement vehicle, but I do have lights and sirens.
10 I activated those lights and sirens. There are other vehicles
11 there from the FBI, they also activated their lights and
12 sirens.

13 Essentially, as Mr. Scotton approached us, he came to a
14 stop, stopped his car. Myself, I got out of my driver's side
15 door. Another agent with me got out of his passenger side
16 door. We began to give instructions to Mr. Scotton as far as,
17 you know, turn off the car, exit the vehicle. He did all of
18 that immediately, was fully compliant. And at that point, we
19 placed him under arrest and put handcuffs on him.

20 Q Did you identify yourself to the defendant?

21 A We did. At the time, myself and the other agents were
22 wearing our bulletproof vests which have FBI across the front.
23 And at the time that we arrested him and placed handcuffs on
24 him, I introduced myself to Mr. Scotton and told him that I was
25 a special agent with the Federal Bureau of Investigation and

1 that I had a warrant for his arrest.

2 Q Did you tell him anything about the nature of what he was
3 being arrested for at that moment?

4 A No, not at that moment.

5 Q Where did you take the defendant following his physical
6 arrest in Pompano?

7 A Immediately after he was arrested, I talked to him about
8 whether he would give us permission to move his car off of the
9 roadway onto a side street. He said that would be okay.
10 Mr. Scotton went in the back of my minivan with another agent.
11 I pulled over onto the side streets where there would be little
12 or no through-traffic. Another agent moved his car over to the
13 same area. The rest of the arrest team then moved on to the
14 side street.

15 Following that sort of interaction, ultimately, we ended
16 up at the FBI office in North Miami Beach where he was going to
17 be photographed and processed and interviewed.

18 Q Okay. And did you make -- did you discuss with the
19 defendant before getting to the FBI office when you are still
20 in the street in Pompano, arrangements for the car?

21 A Yes. I spoke with Mr. Scotton about the options that he
22 had in light of the fact that he had been arrested, that he was
23 in his vehicle. My preference was not to leave the vehicle
24 just parked on the side of the street. I wasn't sure if it was
25 private property. They didn't seem to have an awful lot of

1 street parking. I told him essentially the two options would
2 be normally either, one, the FBI could have the vehicle towed
3 back to our office at North Miami Beach close to the
4 Golden Glades interchange and arrangements can be made for
5 either Mr. Scotton or a family member or friend to drive down
6 there and take custody of it. I also offered him the
7 opportunity to call either a family member or friend who might
8 live closer to the Pompano Beach or Margate area and give them
9 the opportunity to come to the location to sign the property
10 receipt and then take custody of the vehicle from the FBI
11 essentially that morning.

12 Q And what did the defendant opt for?

13 A He requested that we contact family or friends and try to
14 make arrangements for the vehicle to be returned. Ultimately,
15 I called and spoke with Carlos Colon, who is Mr. Scotton's
16 stepfather. Mr. Colon worked in Sunrise, Florida, which was
17 not very far from where we are.

18 Mr. Colon asked if he could have a little bit of time to
19 find a friend who could drive him to the location so that he
20 could take the car. I asked him how long he thought he would
21 be. Mr. Colon said he thought it would be maybe 20 minutes or
22 a half hour. I told him that was not a problem, that agents
23 would be waiting with the vehicle, but that myself and
24 Mr. Scotton and other parts of the arrest team would no longer
25 be there.

1 Mr. Scotton said that was fine and he appreciated
2 Mr. Colon being allowed to come to pick up the vehicle in
3 Pompano as opposed to Golden Glades. And, essentially, that
4 was the end of the discussion about where the SUV would be
5 taken and who would it be returned to.

6 Q Did you talk to the defendant about searching his vehicle?

7 A I did. I told Mr. Scotton that in order for us to release
8 the vehicle, we would conduct what we call an inventory search,
9 which would essentially allow the FBI to document with some
10 degree of specificity what exactly was being turned over to
11 Mr. Colon. I told Mr. Scotton that in order for us to do that,
12 we would need his consent to search the vehicle to, again,
13 conduct the inventory. He said that was not a problem.

14 I told Mr. Scotton that when we got to the FBI office,
15 there was a consent form that I would go over with him to
16 document in writing that he had consented to the search, but
17 that for right now, his verbal consent was permissible to allow
18 the search to occur and allow Mr. Colon to come and take
19 possession of the car. Mr. Scotton gave his consent and other
20 members of the search team began their inventory search.

21 Q And the items that were inventoried in the car, did some
22 of them -- were some of them returned to the defendant's
23 stepfather and others retained by the FBI as evidence?

24 A Some of them were returned to Mr. Colon when he took
25 possession of the vehicle. Other items were kept by the FBI

1 for evidentiary purposes.

2 Q All right. So let's talk about, then, what happened at
3 the FBI. Is it correct to call it headquarters in North Miami
4 Beach?

5 A Sure.

6 Q So let's talk about what happened at FBI headquarters.
7 The defendant and you arrived to the headquarters, what's the
8 first thing that you do?

9 A Mr. Scotton, myself, and the other agent who transported
10 Mr. Scotton arrived to the FBI office. Essentially, we walk
11 into the building where there's an area that we call the
12 booking area.

13 Q And what's booking?

14 A The booking area is essentially where the camera, the
15 fingerprint machine, the standard forms that we're required to
16 fill out either from the FBI, the Bureau of Prisons, or perhaps
17 the Marshal Service would be completed. It's a secured area.
18 It's an area where people who have been arrested are frequently
19 unhandcuffed so that they can be fingerprinted. Before agents
20 go into the booking area, there is actually a lockbox where we
21 secure our firearms as a safety measure. So myself and the
22 other agents secured our firearms and we went into the booking
23 area with Mr. Scotton and we closed the door behind us, and
24 essentially offered had him the chance to use the restroom if
25 he liked, then began the preliminary steps of the booking

1 process.

2 Q And is the booking process basically a series of
3 biographical informational questions to fill out these forms
4 you told us about?

5 A Correct. It's names, dates of birth, contact information
6 for family members, next of kin. We request information on any
7 medical conditions that the person might have. We request any
8 information on any medical or prescriptions that they might be
9 taking. If they are taking prescriptions, we ask them how
10 often they take it, if they took it this morning. It's just a
11 series of standardized forms and information that we request.

12 Q Did you -- and did you ask the defendant who his next of
13 kin was?

14 A I did.

15 Q And what was his response?

16 A He provided his next of kin as his mother and stepfather,
17 Marina Colon and Carlos Colon.

18 Q About how long did this booking process take,
19 approximately?

20 A The booking process -- the filling out of forms, it's a
21 lot of the same information over and over and over again. The
22 other part of the booking process is actually fingerprinting
23 and having a picture taken. I had requested one of our support
24 employees from the FBI to assist with that. I think in its
25 entirety, the booking process maybe took 40 minutes as far as

1 filling out the forms, turning on the fingerprinting machine,
2 letting the computer boot up, printing out all of those types
3 of documents and stuff. So maybe 40 minutes.

4 Q All right. And following the booking process, did you
5 take the defendant to an interview room?

6 A I did.

7 Q And who was present in this interview room?

8 A It was myself, Mr. Scotton, and another agent on my squad.

9 Q And did you have your gun with you?

10 A No. Both myself and the other agent's weapons were locked
11 up in the lockbox outside the booking room area.

12 Q And what were you wearing?

13 A I believe I was wearing either a blue T-shirt that said
14 FBI and a pair of cargo pants, or I may have had sort of a
15 short-sleeved button-down shirt on top of my blue shirt that
16 said FBI.

17 Q So you took off your bulletproof vest at this point?

18 A Yes.

19 Q And did you advise the defendant of his rights against
20 self-incrimination?

21 A I did.

22 MS. MITRANI: Your Honor, may I approach?

23 THE COURT: Yes.

24 BY MS. MITRANI:

25 Q I'm showing you what's been marked for identification as

1 the Government's Exhibit 33. Do you recognize this document?

2 A I do.

3 Q And what is it?

4 A This is the original FD395.31, which is the FBI standard
5 advice of rights form except this form is actually written in
6 Portuguese.

7 Q And is it signed at the bottom by the defendant?

8 A It is.

9 MS. MITRANI: Your Honor, we would offer Exhibit 33
10 into evidence.

11 THE COURT: Any objection?

12 MR. SCOTTON: No, Your Honor.

13 THE COURT: All right. Government's 33 is admitted.

14 (Thereupon, Government's 33 received in evidence.)

15 BY MS. MITRANI:

16 Q Okay. So obviously on the top, is that your handwriting,
17 Special Agent Van Brunt, where it says Miami Beach, Florida,
18 3/15/2012, 11:35 a.m.?

19 A Correct, that is my handwriting in blue ink.

20 Q And these are what we call Miranda rights or the
21 defendant's rights against self-incrimination?

22 A Correct.

23 Q Is this a direct translation from the English Miranda?

24 A I believe it is, yes.

25 Q Can you tell the jury, then, in English what the defendant

1 was advised regarding his rights against self-incrimination.

2 A Sure. Essentially, Mr. Scotton was shown this form and
3 told that before I was allowed to ask him questions and before
4 he was essentially allowed to answer any questions, there were
5 certain rights that I was required to go over with him and
6 confirm that he knew and understood.

7 I knew from my face-to-face meeting with Mr. Scotton that
8 he was quite conversant in English, but knowing that his
9 anxieties would probably be high and he might be unsure of
10 exactly what his rights were, I decided to use this form, which
11 is created by the FBI in Portuguese.

12 I gave Mr. Scotton the, told him in English essentially
13 what the form was. And then I actually asked him to read each
14 sentence in this form in English so that I could ask him if he
15 understood that. And my thought was that by giving him the
16 form in Portuguese, he would see it in his native language, he
17 would then have to tell me in English what it was and I could
18 ask him if he understood that right.

19 Q And did the defendant go line by line with you --

20 A Correct.

21 Q -- translating it into English?

22 A Correct. And so these rights are, you know, you have the
23 right to remain silent. Anything you say can and will be used
24 against you in a court of law. You have the right to an
25 attorney. If you cannot afford an attorney, one can be

1 provided to you. If you want to stop questioning once we
2 start, you are permitted to stop.

3 And, again, as we went line by line, I asked him if he
4 understood those rights and if he had any questions.

5 Q And when you asked him whether he understood his right to
6 remain silent, did he understand that?

7 A Yes.

8 Q And everything else when you asked him that anything he
9 said could be used against him --

10 A Correct.

11 Q -- did he understand that? Line by line, everything he
12 understood?

13 A Right. We went line by line and I specifically reminded
14 him that if there was a question or a topic that he chose not
15 to answer, it was okay for him to say, I prefer not to answer
16 it, there were other questions or topics that we could move on
17 to. So I didn't want him to feel that just because he had
18 started to answer questions, he was precluded from stopping or
19 declining to answer a particular question.

20 Q And did the defendant understand that at any time, he
21 could stop talking to you or could decline to answer any
22 questions from you?

23 A I believe he did, yes.

24 Q Okay. And did he sign it in front of you?

25 A Correct. On the right-hand side near the bottom third of

1 the piece of paper is a signature in blue ink and that was
2 Mr. Scotton's signature. And then on the bottom left-hand
3 corner, there are two lines for witnesses. My signature is the
4 top line. Beneath that is the signature of the agent who was
5 with me during transport and the interview. And then at the
6 bottom was the time which the three of us signed the document.

7 Q Okay. Did you offer the defendant water, a chance to use
8 the restroom?

9 A Yes. When we initially arrested him in Pompano, right
10 around the time that we moved his SUV off of the main road to
11 the side street, he indicated that he was starting to feel a
12 little nauseas. We actually opened up the minivan, gave him a
13 little bit of fresh air, gave him a fresh cold bottle of water
14 that I poured for him. When we arrived at the FBI office in
15 Miami and entered the booking room, there is actually a
16 restroom in the booking room area at the end of the hallway. I
17 offered him the chance to use the restroom. I believe he
18 declined. I also offered him a fresh bottle of water, which we
19 brought into the interview room. I don't recall if he actually
20 used it or not, but it was in there for him.

21 Q Did you allow the defendant to have a cell phone in the
22 interview room?

23 A I did.

24 Q Isn't that unusual?

25 A It is.

1 Q Can you explain to us why you did that?

2 A Normally, and I think most agents don't allow individuals
3 that they have arrested to bring cell phones or any kind of,
4 you know, electronic devices with them, but I have found over
5 my ten years that very few people actually remember the phone
6 numbers of people that they need to get ahold of and that it's
7 a little challenging and, quite frankly, unproductive to ask
8 someone for contact information on friends or family or
9 family's work numbers. I mean, whether we arrest them early in
10 the morning or whether it's closer to midmorning, most people
11 tend to just scroll down in their phone and hit the button to
12 call someone. And I have found that it just makes their life
13 easier and, quite frankly, my life easier if they have access
14 to that information of how to reach a family member or contact
15 someone.

16 I was also trying to be cognizant of the fact that
17 Mr. Scotton was not born here, that his mother and stepfather
18 lived here, that I wasn't sure how much anxiety they would be
19 experiencing from the fact that Mr. Scotton had been arrested
20 by the FBI. I figured there was a chance that either they
21 might call him or I might, if Mr. Scotton was compliant, offer
22 to contact his family members as a courtesy just to advise them
23 of the process going forward, meaning that Mr. Scotton was
24 going to be, you know, brought to either the courthouse or a
25 holding facility, and let them know where exactly that court

1 proceeding would be.

2 Q And did you, in fact, communicate with the defendant's
3 family member, his stepfather, during the interview process?

4 A Yes. Not only did I call Mr. Colon, there actually came a
5 point in time where Mr. Scotton's mother called his cell phone
6 and I gave him permission to answer the phone and speak with
7 his mother in part to try to help alleviate her anxiety as well
8 as what I perceived to be his anxiety for how she was feeling.

9 Q Okay. So did you know from the investigation, the
10 identity of his mother and stepfather?

11 A Yes, I did. I knew that his mother's name was Marina, his
12 stepfather was Carlos Colon. I knew that they lived at
13 7797 Golf Circle Drive. I knew that his mother had some health
14 issues.

15 Q And during the interview and the booking process, did the
16 defendant confirm that his mother was Marina, and Carlos Colon,
17 who lived at 7797 Golf Circle Drive in Margate, Florida?

18 A Yes, he did.

19 Q And by the way, that 7797 address, is that a community for
20 55 and older?

21 A Yes. It's a condominium complex where it has listed on
22 the sign, you know, saying Oriole Park, 55 and older community.

23 Q All right. Now, did you ask the defendant whether his
24 mother and/or stepfather were involved with his business?

25 A I did.

1 Q What was his response?

2 A He adamantly denied that either of them were involved in
3 his businesses.

4 Q Did you then discuss with the defendant the fact that
5 there were checks payable to Carlos Colon or that you had some
6 kind of evidence indicating Mr. Colon's involvement?

7 A I did. I told Mr. Scotton that I not only had seen
8 checks, I had copies of checks with me in the interview room
9 showing that Mr. Colon had been paid from his companies and
10 that sometimes on the memo line, it had the word web or website
11 written down. And at that point, Mr. Scotton admitted that
12 Mr. Colon had actually had some involvement with his companies
13 regarding the updating of the websites to specifically include
14 uploading pictures onto the website.

15 Q And did he also acknowledge that Colon was listed as a
16 director of some of Scotton's companies or the defendant's
17 companies?

18 A Yes, he did.

19 Q Did the defendant indicate where he resided?

20 A Yes.

21 Q And what was it?

22 A He told me that he resided at 398 Southeast Mizner
23 Boulevard, unit 1921.

24 Q And did he indicate or did you ask how long he had been at
25 that Mizner street address?

1 A He told me that he had been there several years and
2 thought he had moved in, in 2007, or perhaps 2008 with his
3 then-wife whose name was Samara Scotton.

4 Q And did he identify Samaria as his ex-wife?

5 A Yes, he did.

6 Q And what else did he say about Samaria?

7 A That they were divorced and she had moved back to Brazil.

8 Q And is Moreira, M-O-R-E-I-R-A, Samaria's maiden name?

9 A Yes.

10 Q Did you ask him about a Cerline Maria Dos Santos?

11 A I did.

12 Q And what did the defendant say about Cerline Maria Dos
13 Santos.

14 A Initially, he stated that it was his wife. And I asked
15 him how long he had been married to her, and then he
16 immediately backtracked and said it was actually just an
17 ex-girlfriend.

18 Q Did you ask him about Carla Felini?

19 A I did.

20 Q And what did the defendant say about Carla Felini?

21 A He told me Carla Felini was just some girl that he had
22 dated. And I specifically asked him if he was ever engaged or
23 if he had ever proposed to Ms. Felini and he denied that he had
24 ever proposed or been engaged to her, that she was ever his
25 fiancée.

1 Q Was this consistent with what the defendant told you
2 during the DHL undercover interview?

3 A No, it was not.

4 Q What did he say during the undercover interview?

5 A He told me that his fiancée's name was Carla Felini. I
6 actually spelled it for him, and he confirmed that I had
7 spelled her last name correctly.

8 Q Did the name of Aylin Reyes or Aylin Reyes Mollinedo come
9 up?

10 A During my interview of Mr. Scotton in the FBI office, yes,
11 it did.

12 Q And tell us about that, what did he say?

13 A He told me that that was his wife. And I asked him if
14 that was his wife, why he didn't provide her name or phone
15 number as his next of kin or contact information, and he told
16 me that they were in a fight and that she had recently moved
17 back to live with her family in Hialeah. And he asked that I
18 not contact her because he wanted to tell her about his FBI
19 arrest.

20 Q Did he say that he and she had lived together at the 7797
21 Golf Circle drive address?

22 A He said they lived there briefly, but that they were now
23 living at the 398 Southeast Mizner. I asked him about their
24 living at 7797 and specifically about their interview with U.S.
25 Citizenship and Immigration Services, and he claimed that they

1 didn't update or tell the correct address based on the --

2 Q All right. But he did say?

3 A Yes.

4 Q Okay. Did he identify his siblings, did the defendant
5 identify his siblings?

6 A He did.

7 Q And tell us who he identified and what their relation was
8 to him?

9 A He identified one of his brothers named Flavio,
10 F-L-A-V-I-O, and Flavio's wife whose name is Claudia. He told
11 me that both of Claudia and Flavio lived in Broward County, but
12 that he essentially had no relationship with either one of
13 them. He also told me that he had a brother named Alex Scotton
14 who lives in Brazil that he was in contact with. And he told
15 me that the only family members that he cares about were Carlos
16 and Marina.

17 Q And is Alex's full name Alexandre?

18 A Yes.

19 Q All right. So did you ask the defendant about his
20 business?

21 A I did.

22 Q And what did he say?

23 A He acknowledged that he ran several companies that were in
24 the online sale of consumer electronic goods and auto parts,
25 and that most of these products were sold to customers in

1 Brazil. And he also admitted that his company did provide what
2 I would describe as a freight forwarding service. We
3 specifically went over the names of several of the companies to
4 include Sky Air Online, Brasil Express, Brasil Express Online,
5 and other variations. And he acknowledged that these were his
6 companies.

7 Q Did you ask him about addresses?

8 A I did.

9 Q So let's talk one by one. Did you ask him about
10 2234 North Federal Highway, the Pak Mail in Boca Raton?

11 A I did.

12 Q What did he say?

13 A He told me that that was an address he used to use, but he
14 no longer used that address.

15 Q Did you ask him about 934 North University Drive in
16 Coral Springs, Florida, was this a Pak Mail or the
17 Super Postal? This was another Pak Mail?

18 A This is the Pak Mail, correct. I asked him about that
19 address. He confirmed that it was a Pak Mail location that he
20 used for his business and to ship packages.

21 Q And did you ask him about 160 West Camino Real in
22 Boca Raton, this was the Super Postal Center?

23 A Correct. He confirmed that this was a CMRA by the name of
24 Super Postal Center and that he had also used that location.

25 Q I am trying to find Government's Exhibit 100. I got it.

1 You did too good a job of packing this up. Let me ask you
2 questions first and I will come back to it.

3 Actually, so did you ask him about -- I guess it's
4 Government's Exhibit composite 100, which are all the Triunfo
5 packages, including this one which is the Epson printer?

6 A Yes. In preparation of the arrest, then what I hoped to
7 be an interview of Mr. Scotton, I had copies of the shipping
8 labels as well as other documents with me in the interview
9 room. And my plan was essentially to show them to Mr. Scotton
10 and try to go over them on a package-by-package basis to see
11 what his explanations would be. I did not actually have the
12 physical packages in the room with us. But, for instance, the
13 Epson printer that Ms. Mitrani just held up, I had --

14 Q Which is 100A for the record.

15 A I had a photocopy of the side of the Epson printer where
16 it showed it had been mailed to Roger Scotton at 398 Southeast
17 Mizner Boulevard, 1921. Then I also had a copy of the UPS
18 shipping label which was shipped on the Triunfo account.

19 Q I'm not doing this for fun.

20 With the 100A, did you ask him about the return address,
21 which was Thomas at 398 Southeast Mizner Boulevard,
22 Boca Raton, Florida?

23 A I did.

24 Q What did he say?

25 A He had no explanation for why the return address or the

1 name would being Thomas. He acknowledged that the package was
2 shipped to him as indicated by the shipping label on the side,
3 but had no explanation for why the return address would either
4 says Thomas or why it will be billed to a food specialty
5 company in Broward County, Deerfield, no explanation at all.

6 Q And, likewise, some of the others exhibits of composite
7 Exhibit 100 list the 7797 Golf Circle Drive as the return
8 address, did he have any explanation why that address would be
9 on these?

10 A He had no explanation for why his stepfather and mother's
11 address would be listed as the return address. He had no
12 explanation for why the name on the return address would be --
13 would appear to be a misspelling of the name John.

14 Q J-H-O-N?

15 A Correct. He did admit that he frequently received
16 packages or sent packages from his mother and stepfather's
17 condo, but he had no explanation for why his mom's address
18 would show up on the shipping label return address.

19 Q Likewise, did Government's Exhibit 101A and 101B, which
20 are the FedEx packages sent on the Impulse Energy account, did
21 you have either of these packages or the labels with you, what
22 did you have with you?

23 A I had copies of the outer label as well as a copy of the
24 DHL label that was contained on the inside of that FedEx
25 envelope, as well as a copy of the promotional pamphlet or

1 brochure that was contained in there.

2 Q All right. So I'm pulling it out from 101A. So you had a
3 copy of the FedEx label?

4 A Correct.

5 Q You had a copy of the DHL label that was on the inside?

6 A Correct.

7 Q And you had a copy of -- again, I'm pulling this out for
8 101A and holding it up. You had a copy of this Brasil Express
9 promotional material with you during the interview, correct?

10 A Correct.

11 Q All right. And what did he say about this? Did he
12 acknowledge -- what did he say about the flyers, the
13 Brasil Express flyers?

14 A He acknowledged that the flyers and brochures were from
15 his business. He had no recollection of who the named
16 recipients on the FedEx label were and he had no explanation
17 for why a package would go out on FedEx with a DHL label on the
18 inside that had a return address associated with Mr. Scotton.
19 He had no explanation.

20 Q So now I have in my hands Government's Exhibits 102A, B,
21 and C, which I'm just holding up. And do you recall these are
22 the ones that have the videotape, the Retrospecta de Amor on
23 the inside, did you have either of those packages, what did you
24 have with respect to these?

25 A I had, again, a photocopy of the outer FedEx label. Then

1 I had photocopies of the DVD case, as well as photocopies of
2 the actual discs that are inside the DVD case. And we went
3 over them with -- I went over them with Mr. Scotton.

4 Q What did he say?

5 A I asked him to identify the people on there. He
6 identified himself as being the person in the tuxedo, and he
7 identified the woman on the DVD case as being
8 Cerline Dos Santos.

9 Q Cerline Dos Santos. Okay. And did -- I'm sorry, I was
10 going to ask you, did you ask him about why these were shipped
11 on a BHPV FedEx account?

12 A I did. He said he had never heard of a company named BHPV
13 and, again, had no explanation for why BHPV would appear on the
14 return address. He did acknowledge that he knew the people
15 that those packages were sent to and he also identified, again,
16 all the people on the DVDs. And some of the other packages,
17 there were family members of Cerline that he identified for me.

18 Q Okay. So BHPV is listed on the return. He had no
19 explanation for that, correct?

20 A He had no explanation for that and told me he had never
21 heard of that company. And even though I told him it was
22 located in New York City, he said he still had no idea of that
23 company.

24 Q But he did, the recipients Rosanna Duarte in Sao Paulo,
25 which is Exhibit 102A; Duarte in Atlanta, Georgia, which is

1 102B; and Chaboudt, C-H-A-B-O-U-D-T in Georgia, he did know
2 those people?

3 A Correct. He indicated that he knew all three of those
4 people.

5 THE COURT: We are going to take a little break.
6 Let's come back at 25 after 10:00. All rise for the jury.

7 (Thereupon, the jury exited the courtroom at
8 10:14 a.m.)

9 THE COURT: All righty. We will see you all back here
10 at 25 after 10:00.

11 (Thereupon, a recess was taken at 10:14 a.m.)

12 THE COURT: Let's rise and bring in the jury if they
13 are ready.

14 (Thereupon, the jury entered the courtroom at
15 10:26 a.m.)

16 THE COURT: Welcome back and please be seated.

17 Agent Van Brunt, I'll remind your once again, you are
18 still under oath. Do you understand?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: All right. Thank you.

21 Ms. Mitrani, you may continue.

22 MS. MITRANI: Thank you, Your Honor.

23 BY MS. MITRANI:

24 Q Did you show him what we call Exhibits 13B, C, E, and F,
25 which are the DHL labels from November 2nd and 28th that we saw

1 the video of? And right now we have 13B, which had Walmart and
2 the other ones had Targeting, did you ask him about those
3 labels?

4 A Yes, I did.

5 Q And did you show him still shots from that DHL
6 surveillance?

7 A Yes, I did. I showed him screen captures from the video
8 that Mr. Bonilla had spoken about earlier in trial.

9 Q And what we like to call Exhibit 13A?

10 A Correct.

11 Q And did the defendant acknowledge that he was the one
12 bringing in the Targeting, I say that in quotes, boxes and the
13 Walmart boxes in that DHL surveillance video?

14 A Yes. He acknowledged that he was the individual in the
15 pictures and that he had, in fact, brought in those packages on
16 those days with these shipping labels on them.

17 Q Okay. And I won't put them all on, but you talked about
18 both the Targeting wounds and the Walmart ones?

19 A Yes, I showed him both the Targeting and the Walmart ones.
20 And Mr. Scotton told me that the DHL guy that he had met had
21 actually shown him the same ones.

22 Q What DHL guy that he met?

23 A Me.

24 Q Did he remember that you were the DHL guy that he met?

25 A He didn't recognize me.

1 Q So you had showed him those labels as well?

2 A Yes. When I had met him back in August of 2011, I had
3 essentially showed him the same documents and the same scene
4 captures and the same waybills.

5 Q All right. Did the defendant try to blame others for
6 these fraudulent shipping labels?

7 A Yes.

8 Q What did he say?

9 A He basically said that he was not the person who was
10 responsible for creating the labels. He blamed primarily two
11 different people, one of who was named Rubens, R-U-B-E-N-S,
12 Amaral, A-M-A-R-A-L, and another individual by the name of
13 Osvaine Duarte, D-U-A-R-T-E. Mr. Scotton told me that he was
14 provided with the labels from these people and that even though
15 he knew there were problems with the labels, he still used them
16 anyway and that essentially, you know, he was kind of the guy
17 who was getting screwed. And that, again, he knew that there
18 were problems with the labels, but he said, and please
19 apologize my profanity, he just said fuck it as his
20 justification for using them.

21 Q He said F it as a justification for using it in the
22 context of when he's telling you that he knew --

23 A Correct.

24 Q -- there was something wrong with them?

25 A That he knew there were problems with the labels and that

1 there were problems with the labels that he claimed to have
2 gotten from Amaral and Duarte. But even with that knowledge,
3 essentially, F it, I'm going to use them to send my packages
4 anyway.

5 Q Did he also say that, if anything, and I put that in
6 quotes, he was wrong to turn a blind eye?

7 A Correct.

8 Q And did you press him on the fact that given the volume of
9 his mailings that he kept on doing that, did you bring that
10 point up in your discussions?

11 A I did. When he suggested that, you know, if he was guilty
12 of anything it was turning a blind eye, I point blank asked him
13 how he could describe his actions as turning a blind eye when
14 there are thousands of packages that are being sent from
15 South Florida to Brazil and that all these problems with these
16 packages, you know, he's the person who's filing claims, he's
17 the person who's going to DHL, he's the person demanding that
18 please packages be returned, he's the person who is dealing
19 with, you know, the DHL fraud people, how is it that he could
20 just say, you know, I turned a blind eye and, essentially,
21 that's when he stated that he just said, F it.

22 Q And did it anyway?

23 A Pardon me?

24 Q And continued -- and did it anyway?

25 MR. SCOTTON: Object, Your Honor.

1 BY MS. MITRANI:

2 Q For the shipping.

3 THE COURT: What is the objection?

4 MR. SCOTTON: Leading.

5 THE COURT: Sustained.

6 BY MS. MITRANI:

7 Q Let me ask you this: Did you ask for -- did you ask the
8 defendant who had a cell phone for Amaral and Duarte's contact
9 information?

10 A I did, I asked him point blank. I said, well, if these
11 are the people who gave you the labels, give me their -- give
12 me their contact information. He looked down at the phone and
13 then said, I don't have it.

14 Q Did he mention a person by the name of Renaldo during your
15 interview?

16 A Yes.

17 Q So tell the members of the jury the context of how that
18 name came up and what the defendant said?

19 A The defendant said that there was a gentleman by the name
20 of Renaldo, whose last name he didn't know, who had come in to
21 the Merry Mailman store in Boca Raton that he ran and that
22 Renaldo had allegedly offered Mr. Scotton some FedEx labels to
23 use to send packages. Mr. Scotton told me that his response to
24 Renaldo was, I don't want the Merry Mailman to have anything to
25 do with that stuff.

1 Q And did you ask him what he meant by that stuff?

2 A He meant shipping labels that were going to be
3 problematic.

4 MS. MITRANI: May I approach, Your Honor?

5 THE COURT: Yes.

6 BY MS. MITRANI:

7 Q I'm showing you Government's Exhibit 104. Do you
8 recognize this exhibit, this item?

9 A I do.

10 Q What is it?

11 A This is the Brazilian passport for Mr. Scotton that was
12 taken into possession of the FBI on the day he was arrested.

13 MS. MITRANI: Your Honor, the government would offer
14 Exhibit 104.

15 THE COURT: Any objection?

16 MR. SCOTTON: No, Your Honor.

17 THE COURT: 104 is admitted.

18 (Thereupon, Government's 104 received in evidence.)

19 MS. MITRANI: Your Honor, may I publish this to the
20 jury by handing it to them?

21 THE COURT: You may.

22 BY MS. MITRANI:

23 Q You said it came into the FBI's possession and your
24 possession at the time of the defendant's arrest --

25 A Correct.

1 Q -- in March 2012?

2 A Correct.

3 Q And did you look through this passport?

4 A I did.

5 Q Is there any visa on this passport?

6 A There is no visa, nor are there any entry or stamps from
7 having cleared customs aside from the pages where it provides
8 Mr. Scotton's photo and basic information that are contained in
9 the passport. I don't believe there's a single marking or visa
10 in the entire 27 pages of the passport.

11 Q Or any stamp from immigration showing inspection upon
12 entry, correct?

13 A Correct, there is no stamp showing inspection upon entry.

14 MS. MITRANI: Your Honor, I'm approaching, may I?

15 THE COURT: You may.

16 MS. MITRANI: I'm already here, so thankfully you said
17 yes.

18 THE COURT: That's fine. Go ahead.

19 MS. MITRANI: Thank you.

20 BY MS. MITRANI:

21 Q I'm showing you Government's Exhibit 103. Do you
22 recognize this item?

23 A I do.

24 Q And what is this item?

25 A This is the police badge that was also taken into custody

1 by the FBI on the date that Mr. Scotton was arrested. It was
2 also in his vehicle along with his passport.

3 MS. MITRANI: Your Honor, the government would offer
4 103.

5 THE COURT: Any objection?

6 MR. SCOTTON: No, Your Honor.

7 THE COURT: 103 is admitted.

8 (Thereupon, Government's 103 received in evidence.)

9 MS. MITRANI: And may I publish it by handing it to
10 the jury?

11 THE COURT: You may.

12 BY MS. MITRANI:

13 Q Now how did this -- you may have said it and I may have
14 not heard, how did this 103 come into your possession?

15 A Both the Brazilian police badge and the passport were in
16 Mr. Scotton's car and were taken as -- during the inventory
17 search.

18 Q We are going to talk bank records now. I'm going to start
19 with Exhibit 16, Bank of America. So Exhibit 16 is a
20 composite. Does it consist of different Bank of America
21 accounts?

22 A Yes, composite 16 does.

23 Q With different accounts?

24 A Yes, from Bank of America.

25 Q One bank, different accounts?

1 A Yes.

2 Q All right. We are going to start with 16A, and it's up on
3 the screen. What we are going to do for simplicity is I am
4 going to identify all the bank accounts by their last four
5 digits, but is the entire account listed on the bank opening
6 cards on the corporate signature cards?

7 A Yes, the entire bank number is there.

8 Q All right. So we don't go crazy, let's try to stick to
9 the last four. So I am looking at Exhibit 16A, which is 2582.
10 And to whom does this account belong?

11 A The name of the corporation is Sky Air Global, Inc.

12 Q And if we go down, who is the name and title on this
13 account?

14 A The name is Rogerio Scotton with the title of vice
15 president.

16 Q And go a little bit further down, and this was signed on
17 the 26th of -- is that a January or June, do you know, one or
18 the other?

19 A I believe it's January.

20 Q Of 2010, correct?

21 A Correct.

22 Q And then does it have some handwriting, Brazil passport as
23 identification?

24 A Correct. Underneath the signature of Mr. Scotton is a
25 reference to a Brazilian passport and also a U.S. employment

1 authorization card.

2 Q Is this the account that the -- where you deposited the
3 funds to pay for the undercover purchase of the camera?

4 A I believe it is.

5 Q So from the same Exhibit 16A -- so this is 16A1, and it
6 says Sky Air Global, Inc., operating account, 160 West Camino
7 Real, Suite 152, in Boca Raton, correct?

8 A Correct.

9 Q And that is Bates labeled at BOA555. And on the next page
10 of Government's Exhibit 16A1, which is BOA556, on March 14th,
11 there's a \$344.99 counter credit?

12 A Correct.

13 Q And is that the money that you deposited for the Sony
14 Cyber-Shot.

15 A Correct. That's the FBI controlled purchase of the Sony
16 digital camera.

17 Q Okay. Let's go to Exhibit 16B, which is a -- starts at
18 Bank of America 531. And is this the corporate signature card
19 for the account number ending in 4944?

20 A Yes, it is.

21 Q And what is the account title?

22 A The name of the corporation is Brasil Express Online, Inc.

23 Q And going down, who are listed as the president and
24 authorized signature on Brasil Express Online, Inc.?

25 A The president is listed as Cerline Maria Dos Santos, and

1 the authorized signer is listed as Rogerio Chavez Scotton.

2 Q And if we go below, there's a signature and some
3 identifying information for Cerline Santos and for
4 Rogerio Scotton, correct?

5 A Correct.

6 Q If we go to Exhibit 16C, which is Bank of America 528, and
7 this is a Bank of America account and business interest
8 maximizer in 9331, what is the account title on this account?

9 A The name of the corporation is Brasil, with an S, Express
10 USA, Inc.

11 Q And if we go down, who is president?

12 A The president is listed as Rogerio Scotton.

13 Q And then there is a signature next to the president and
14 also -- a signature next to the president and also a signature
15 next to the date of 7th day of February, correct?

16 A Correct.

17 Q If we go to the next account, 16D, it's a Bank of America
18 business economy checking ending in 4931, Bates labeled Bank of
19 America 529, who is the account title here?

20 A The name of the corporation is Brasil, with an S, Express
21 Online, Inc.

22 Q And who are listed as the president and authorized signer?

23 A The president is listed as Cerline Maria Dos Santos and
24 the authorized signer is Rogerio Chavez Scotton.

25 Q And there's a date of the 26th of September, 2008, there,

1 correct?

2 A Correct.

3 Q And likewise on the bottom, they are identifying
4 information for both Cerline Maria Dos Santos and
5 Rogerio Scotton, correct?

6 A Correct. Under Mr. Scotton's name it has a reference to a
7 Florida DL number as well as a Citibank MC, which I believe
8 stands for MasterCard, and address and a date of birth.

9 Q If you go to Exhibit 16E, which is Bank of America 524
10 Bates labeled, and this is a business economy checking account
11 with the account number of 2595.

12 A Correct.

13 Q What's the account title there?

14 A The account title is Sky Air Online, Inc.

15 Q Sky Air Global, Inc.

16 A I'm sorry, Sky Air Global, Inc.

17 Q And who is listed as the vice president for Sky Air
18 Global, Inc.?

19 A Rogerio Scotton.

20 Q And there's a signature next to the VP, correct?

21 A There is.

22 Q And then there is a signature next to the date of the 26th
23 of January, 2011?

24 A Correct.

25 Q If we go to 16F, which is Bates labeled Bank of America or

1 BOA525, and this is a business interest maximizer account
2 ending in 0808?

3 A Correct.

4 Q And what's the account title there?

5 A Brasil, with an S, Express Online, Inc.

6 Q And this is a savings account, correct?

7 A Correct.

8 Q And in the middle, it lists who is the president?

9 A Cerline Maria Dos Santos.

10 Q If we go to 16G, which is BOA526 Bates labeled, and this
11 is a business economy checking ending in 1646, correct?

12 A Correct.

13 Q And what's the account title here?

14 A The account title is Brasil, with an S, Express USA, Inc.,
15 merchant account.

16 Q And who is listed as the president in the middle?

17 A Rogerio Scotton.

18 Q With a signature next to president and a date of, also,
19 7th of February, Rogerio Scotton, correct?

20 A Correct.

21 Q If we go to 16H, this is a business economy checking
22 account number 1824?

23 A Correct.

24 Q And what is the account holder here?

25 A Brasil, with an S, Express USA, Inc., operating account.

1 Q And the president is Rogerio Scotton with a signature?

2 A Correct.

3 Q 16I, which is BOA23, and this is a My Access checking
4 account ending in 9039, correct?

5 A Correct.

6 Q And what is the account title?

7 A Rogerio C. Scotton and Samara M. Scotton.

8 Q Go to 16J. And here we have -- which is BOA21. Here we
9 have a regular checking ending in 4116, correct?

10 A Correct.

11 Q And the account title is Rogerio C. Scotton, correct?

12 A Correct.

13 Q 16K is Bank of America 20. It's another -- it's a regular
14 savings ending in 3139, correct?

15 A Correct.

16 Q And the account title is Rogerio C. Scotton, correct?

17 A Correct.

18 Q Go to 16M. And this is account opening docs for -- the
19 name of the corporation is Brasil, with an S, Express, Inc.?

20 A Correct.

21 Q And this is BOA2312. And if we go to the next page, 2313,
22 there's a signature, correct?

23 A Correct.

24 Q And if we go to the fourth page of 16M, which is Bank of
25 America 2315, it lists the name of the corporation as

1 Brasil Express, Inc., and Rogerio Scotton's name at the 7797
2 Golf Circle Drive address, correct?

3 A Correct. Rogerio C. Scotton is listed as the registered
4 agent of the corporation.

5 Q Let's go to 16Q. And this is account number 9694, a
6 regular savings account, correct?

7 A I believe the account number is 9644.

8 Q Okay. Pardon me. Thank you. 9644. And who are the
9 holders of this account?

10 A Rogerio C. Scotton and Samara M. Scotton.

11 Q 16R, which is BOA2301. This is an account number -- this
12 is a business interest maximizer ending in 2732?

13 A Correct.

14 Q And what's the name of the corporation?

15 A Brasil, with an S, Express, Inc.

16 Q And in the middle, who is listed as the president and vice
17 president?

18 A The president is listed as Rogerio Scotton and the vice
19 president as Samara Scotton.

20 Q 16T, which is BOA2302. And this is a business economy
21 checking for account number 4736?

22 A Correct.

23 Q And are Rogerio Scotton and Samara Scotton again listed as
24 the president and vice president of this entity?

25 A Yes.

1 Q Let's go to 16X. And these are -- this is for account
2 4407?

3 A Correct.

4 Q And what's the name of the corporation?

5 A Roger Racing Online Corp.

6 Q If we go to the third page of Exhibit 16X, which is
7 BOA2308, what's listed as the principal place of business
8 address for Roger Racing Online Corp.?

9 A The principal place of business address is 444 Boca Raton
10 Road, Boca Raton, F.

11 Q And the F --

12 A With the mailing address of the corporation being P.O. Box
13 629, Boca Raton, Florida.

14 Q And on the next page of exhibit -- which is the fourth
15 page of Exhibit 16X at BOA2309 -- oh, actually, before I go, go
16 to the next one. Is Cerline M. Santos listed as the president
17 of this corporation?

18 A Yes.

19 Q And Carlos M. Colon listed as the vice president?

20 A Correct.

21 Q And the last Bank of America account we have is 16Y, and
22 is this a business economy checking, 44 something, 4410?

23 A Yes, 4410.

24 Q Okay. And what is the account title?

25 A Roger Racing Online Corp. secondary account.

1 Q And in the middle, who is listed at the president and the
2 manager?

3 A The president is listed as Cerline Maria Dos Santos and
4 the manager is listed as Roger Scotton.

5 Q Okay. We are going to go to exhibits -- composite
6 Exhibit 17, which are the TD, different accounts from TD Bank?

7 A Correct.

8 Q So we will start with 17A, and what are we looking at
9 here?

10 A This is the account opening documents for a TD Bank
11 account ending in 4443 for a company by the name of Sky Air
12 Global, Inc., located at 160 West Camino Real, 152,
13 Boca Raton, Florida.

14 Q And is Rogerio Chavez Scotton, is his signature there
15 above his name?

16 A Correct. His name is typewritten and then his signature
17 appears above it.

18 Q We will go to 17B, which is TD Bank 370, and what are we
19 looking at here?

20 A This is another document for account openings for account
21 ending in 5308. The name of the corporation is Ski, S-K-I, Air
22 Online Corp. with address of 934 North University Drive,
23 Coral Springs, Florida. Manager one is listed as Cerline Maria
24 Dos Santos, manager two is listed as Alexandre,
25 A-L-E-X-A-N-D-R-E, Scotton.

1 Q And then if we go to the fifth page of Exhibit 17B, which
2 is TD Bank 374, which are articles of incorporation submitted
3 in connection with the opening of this account, who is listed
4 as the officers and directors?

5 A The president is listed as Paulo, P-A-U-L-O, middle
6 initial R, Moreira, M-O-R-E-I-R-A, with an address of 934 North
7 University Drive, 329, Coral Springs, Florida. The manager is
8 listed as the person with the first name spelled,
9 C-E-R-L-I-N-I, middle initial N, last name Santos, S-A, M as in
10 Michael, T-O-S.

11 Q At the same 934 University Drive?

12 A Correct.

13 Q And that's the defendant's Pak Mail store where he had a
14 box at the Pak Mail store?

15 A Yes. Well, the street address underneath Article 5 is
16 943, the correct address is 934.

17 Q Okay. But, in fact, if you go to the previous page, 373,
18 Article 5 correctly lists as 934 North University Drive, 329,
19 correct?

20 A Correct.

21 Q We will go to government's exhibit, composite Exhibit 18,
22 which are Citibank accounts?

23 A Yes.

24 Q And let's start with the 18A, and what are we looking at
25 here?

1 A This is documents regarding a Citibank account for a
2 company named Brasil, with an S, Express USA, Inc. The name
3 listed and identified as the president is Rogerio Scotton.

4 Q And if we go to the next page of Exhibit 18A, which is
5 CITI-3, what address is given for Brasil Express USA, Inc.?

6 A The address provided is 398 Southeast Mizner Boulevard,
7 Suite 1921, Boca Raton, Florida.

8 Q If we go to 18B. 18B -- oh, 18C? We are going to skip to
9 18D. I don't think we have an account opening for 18D so we
10 will come back to 18D, which is a Citibank ending in 6881.

11 Let's go to 19, which are Chase Bank records. So 19A,
12 which is Bates label JPMC0142, what were we looking at here?

13 A This is the signature card for an account number ending in
14 0009 for Rogerio Scotton with a personal address of 160 West
15 Camino Real, Suite 152, in Boca Raton.

16 Q And let's go to 19B, which is JPMC0135, what are we
17 looking at here?

18 A This is the personal signature card for Chase account
19 ending in 2978 for Rogerio Scotton with an address of 444 East
20 Boca Raton Road, Boca Raton, Florida.

21 Q And 19C, which is JPMC0107?

22 A This is a Chase business signature card for an account
23 that ends in 3440. The name of the account is Brasil, with an
24 S, Express, Inc. The business address provided is 7797 Golf
25 Circle Drive, Apartment 204, Margate, Florida.

1 Q And who is listed as the president?

2 A Rogerio Scotton.

3 Q And let's go to 19D, which is JPMC0123?

4 A This is a Chase business signature card for an account
5 ending in 8634. The account title is Brasil, with an S,
6 Express, Inc., business address of 7797 Golf Circle Drive,
7 Apartment 204, Margate.

8 Q And who is listed as the president?

9 A Rogerio Scotton.

10 Q Let's go to 19E, which is JPMC0007.

11 A This is the Chase business signature card for an account
12 ending in 9838. The account name is Zap Games, Inc., operating
13 account. The business address is listed as 934 North
14 University Drive, Suite 329, Coral Springs, Florida.

15 Q And who is listed at the vice president for Zap Games?

16 A Rogerio Scotton.

17 Q All right. So we're looking at the Chase Zap Games
18 accounts. And I just want to show you -- okay. I think
19 hopefully people can see it okay. I'll just zoom it up a
20 little bit more.

21 So what we are looking at here -- and for the record, this
22 is JPMC009. Is this the statement covering the period of
23 July 3rd, 2010, through July 30th, 2010?

24 A Correct. This is one of the documents that was produced
25 by Chase Bank in response to a federal grand jury subpoena. It

1 documents the account for those dates with the account number
2 ending in 9838 for Zap Games, Inc., operating account.

3 Q At the same 934 North University Drive address, correct?

4 A Correct.

5 Q And if we look at the beginning balance of that account,
6 it's listed as zero, correct?

7 A Correct.

8 Q Deposits and additions are listed at \$300, correct?

9 A Correct.

10 Q Fees and other withdrawals, a negative 2?

11 A Correct.

12 Q For an ending balancing for that statement of \$298,
13 correct?

14 A Correct.

15 Q If we go to Exhibit 8D, which was the purported Chase Bank
16 statement for July 3rd through July 30th, 2011, that was given
17 to Justin McMahon, correct?

18 A Correct.

19 Q Here the beginning balance instead of being zero is listed
20 as \$38,989.22, correct?

21 A Correct.

22 Q And the deposits and additions instead of being \$300 are
23 listed as \$26,560?

24 A Correct.

25 Q The fee and other withdrawals, the same on both accounts

1 as \$2?

2 A Well, I think there's no negative sign on this document.

3 The other document, I think, had a minus 2, but --

4 Q I think you're right. Right, the other one had a minus 2
5 and this one just has 2?

6 A Correct.

7 Q And instead of the minus, there's a dollar sign?

8 A Correct.

9 Q For the ending balance of \$65,547.22?

10 A Correct.

11 Q Next I'm going to show you Exhibit 30, which is our
12 subpoenaed documents from SunTrust Bank, correct?

13 A Correct.

14 Q And the second page of SunTrust, which is SunTrust 013, is
15 that a withdrawal ticket?

16 A Correct. It's a withdrawal ticket for an account number
17 ending in 9853 for \$1,000. The name on the account is
18 Brasil Express and the signature is Roger Scotton.

19 Q Same account 9853, which we can see down there, correct?

20 A Correct.

21 Q I'm pointing. And what are we looking at here?

22 A This is a check for the Brazil, with a Z, Express, Inc.,
23 account.

24 Q And what's the address?

25 A The address on the check is 1832 Wood Hollow Court, it

1 appears to be either 5E or SE, in Marietta, Georgia.

2 Q There are other checks, correct, in Government's
3 Exhibit 15? For example, here's a SunTrust 015, the checks all
4 say Brazil, with a Z, Express, Inc., with that address of
5 Marietta, Georgia, correct?

6 A Correct.

7 Q And with the defendant signature signing the check?

8 A Correct.

9 Q Okay. We are going to go to Government's Exhibit 120.

10 MS. MITRANI: May I approach, Your Honor?

11 THE COURT: You may.

12 MS. MITRANI: May I approach, Your Honor?

13 THE COURT: Yes.

14 BY MS. MITRANI:

15 Q Okay. I am showing you composite Exhibit 120, which is
16 120A through and including, I think, F. Yes, 120F. Do you
17 recognize this -- these documents?

18 A I do.

19 Q And can you tell us what they are?

20 A Sure. Composite Exhibit 120 are a spreadsheet that was
21 prepared by me and under my supervision, and behind the
22 spreadsheet would be copies of checks that were produced by the
23 different financial institutions for accounts that were
24 subpoenaed.

25 Q And are these spreadsheets -- each spreadsheet pertains to

1 a particular bank account, correct?

2 A Correct. On the top left-hand corner of each spreadsheet
3 would be the name of the account, the bank where the financial
4 institution that it was deposited into, and the account number.

5 Q And these spreadsheets are summaries of DHL, FedEx, and
6 UPS checks deposited into the particular account, correct?

7 A Correct.

8 MS. MITRANI: Your Honor, the government would offer
9 composite 120.

10 THE COURT: Any objection?

11 MR. SCOTTON: No, Your Honor.

12 THE COURT: I'm sorry?

13 MR. SCOTTON: No, Your Honor.

14 THE COURT: All right. Composite 120 is admitted.

15 (Thereupon, Government's 120 received in evidence.)

16 BY MS. MITRANI:

17 Q We are going to start with 120A.

18 MR. SCOTTON: Your Honor?

19 THE COURT: Yes.

20 MR. SCOTTON: May we have a sidebar, please.

21 (Thereupon, the following was heard sidebar.)

22 MR. SCOTTON: My recollection is that those paper they
23 are going to present have some claim checks. If they are going
24 to present claim checks, why the claim checks and not the claim
25 forms and all the other information altogether?

1 THE COURT: I don't know. But you just agreed to the
2 admission of these documents. They are admitted, but you can
3 cross-examine.

4 MS. MITRANI: So the record is clear, these are the
5 checks that are contained in the bank records that are
6 summarized by the spreadsheet.

7 THE COURT: All right. Thank you.

8 (Thereupon, the following was heard in open court.)

9 THE COURT: We are going to take a short break until
10 11:30. All rise for the jury.

11 (Thereupon, the jury exited the courtroom at
12 11:19 a.m.)

13 THE COURT: All righty. See you back here at 11:30.

14 (Thereupon, a recess was taken at 11:20 a.m.)

15 THE COURT: Was there something we needed to address,
16 Ms. Mitrani?

17 MS. MITRANI: Yes, Your Honor. So I had asked a few
18 weeks ago now that we are approaching the end of the
19 government's case, I understand the defendant has subpoenaed, I
20 don't know how many people. Can we get a witness list or can
21 we an order of who is coming when?

22 THE COURT: Yes. The defense shall provide a witness
23 list to the government by the end -- well, by tomorrow morning,
24 so that we can facilitate the efficient flow of trial.

25 MS. MITRANI: Thank you.

1 THE COURT: Do you understand, Mr. Scotton?

2 MR. SCOTTON: Your Honor, we're probably going to have
3 to -- at the end of the day today if we have time, we need to
4 go over with the Court about the subpoena situation.

5 THE COURT: I don't think so. I think I have spent
6 hours upon hours doing that. And unless you give me a very
7 good reason why I should do it again, I would be disinclined to
8 do so again. I mean, we just had a hearing about this on
9 Friday, and I don't understand why it would be that you
10 couldn't have had things ready at that time.

11 MR. SCOTTON: It seems to be some confusion here names
12 that has been approved and a name has not.

13 THE COURT: It's all in the order. It's all in the
14 orders that have been issued.

15 All right. Let's see if the jury is ready. We will
16 bring the jury in.

17 (Thereupon, the jury entered the courtroom at
18 11:31 a.m.)

19 THE COURT: Welcome back. Please be seated.
20 Agent, you are still under oath, do you understand?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: All right. Very good. Thank you.

23 Ms. Mitrani, you may continue.

24 MS. MITRANI: Thank you so much, Your Honor.

25

1 BY MS. MITRANI:

2 Q Agent Van Brunt, let me ask you a question before we get
3 to Exhibit 120A. So we've spent a long time before the break
4 going through accounts from Bank of America, Citibank, Chase,
5 TD Bank, and SunTrust. How did you obtain those documents?

6 A We had a grand jury subpoena issued to those financial
7 institutions. And then based on the grand jury subpoena being
8 issued, they were required to produce documents that met the
9 parameters of the grand jury subpoena. They produced the bank
10 records.

11 Q And then what is contained in all the exhibits,
12 composite 16, 17, 18, 19, 20, records you received from the
13 banking institutions?

14 A Correct. The records that we showed earlier today were
15 what I would call the account opening documents, but there
16 would also be backup documents. So the monthly statements, the
17 copies of deposits, copies of checks were also produced.

18 Q Those were also produced. And those are part of 16, 17,
19 18, 19, and I think 30?

20 A And 30, correct.

21 Q So we just -- so far all we have done is highlight the
22 account openings, but if you want to look at statements or
23 checks, you can go to those exhibits and find them?

24 A Correct.

25 Q All right. So now then let's talk about these

1 spreadsheets that you prepared and let's start with 120A. And
2 120A pertains to which bank account?

3 A It's the Bank of America account for the corporation --
4 for the account named Roger Racing Online Corp., account ending
5 in 4410.

6 Q And what information is captured by this spreadsheet and
7 the ensuing spreadsheets that we will review as we come to it?

8 A Sure. This spreadsheet as well as the other spreadsheets
9 are essentially summaries of checks that were payable from a
10 shipping company, specifically, DHL, FedEx, or UPS, that were
11 then deposited into bank accounts that we linked to
12 Mr. Scotton.

13 Q All right. So -- and then the spreadsheets have columns,
14 let's just run through them. Starting on the left, it's check
15 date?

16 A Correct.

17 Q Then post date?

18 A Correct.

19 Q And then check number?

20 A Correct.

21 Q Payor?

22 A Correct.

23 Q Payor means the person paying?

24 A Correct, the payor, P-A-Y-O-R, is the name of the person
25 who is giving away the money and the payee would be the person

1 who is receiving the funds.

2 Q As listed on the check?

3 A As listed on the face of the check, correct.

4 Q And then deposit is the amount of the check?

5 A Correct.

6 Q And description?

7 A To the extent that the bank statement or the face of the
8 deposited check contained information as to location of where
9 the check may have been deposited, we included that
10 information.

11 Q Then we have the payor's bank?

12 A Correct. The payor bank in this case would be Citibank,
13 meaning that DHL account that paid this was held at Citibank.

14 Q And the payor's bank number, the payor's address, the
15 city, state, and zip code, correct?

16 A Correct.

17 Q And then behind the spreadsheet, which is the first page
18 of 120A, is a copy of the actual check that was deposited into
19 that particular account, correct?

20 A Correct. So on this spreadsheet, there was one deposit
21 made into the account from a shipping company check. This is a
22 copy of that DHL check. It's in the amount of \$299.99, and it
23 was paid to the order of domestic, attention Paulo Roberto,
24 1801 Harbour, H-A-R-B-O-U-R, Pointe, Pointe, Parkway, in
25 Atlanta.

1 Q And this check they you just read for us is BOA2174, the
2 Bates label, and it was deposited into the Roger Racing Online
3 Corp. account, correct?

4 A Correct.

5 Q All right. Go to 120B.

6 A This is the spreadsheet for a corporation named Sky Air
7 Global, Inc., with the Bank of America account ending in 2582.
8 And it documents that there were two separate checks deposited
9 into this account, one came from DHL that was deposited on or
10 about January 31st, 2011, and --

11 Q Actually, I'm going to stop you because this is
12 summarizing it, but we have the actual checks underneath it,
13 correct?

14 A Correct.

15 Q Let me just go to the actual check and you can read it
16 from there. So the second page of 128 is Bank of America 742,
17 and this check was deposited into the Sky Air Global, Inc.,
18 account, correct?

19 A Correct.

20 Q And it's payable to whom?

21 A HP Company, attention B. Luu, L-U-U, at 6511 Nova Drive,
22 Davie, Florida.

23 Q In the amount of?

24 A \$1,100.

25 Q And the date?

1 A The check -- the date of the check was December 17th,
2 2010.

3 Q And it's from DHL Express, correct?

4 A Correct.

5 Q And the second check that was deposited into the Sky Air
6 Global, Inc., account ending in 2582 is BOA836, and this check
7 is from UPS, correct?

8 A Correct. It's from the UPS claims settlement. It's pay
9 to the order of Matte Lion, LLC, with an address of 100 Plaza
10 Real S, then it looks like room F101, Boca Raton, Florida.

11 Q In what amount?

12 A I believe the amount was \$378.

13 Q And the date?

14 A The date of the check was September the 30th, 2011.

15 Q We are going to go to Exhibit 120C, and 120C summarizes
16 which account?

17 A The account named Brasil Express, Inc., at Bank of
18 America, account ending in 4723.

19 Q Now, there are approximately 24 checks in this
20 spreadsheet. Do you want to see your spreadsheet?

21 A I believe there are about 24.

22 Q And let's zoom through them. So the first one is Bank of
23 America 1695?

24 A Correct. The Bates number on that document is 1695. It's
25 a check from DHL made payable to the order of Scotom,

1 S-C-O-T-O-M, Racing, LLC, attention Roger Scotom, Suite G,
2 1260 Powers Ferry Road Southeast, Marietta, Georgia. The check
3 date is April the 16th, 2007, in the amount of \$100.

4 Q Next check, Bank of America 1491, and is this another DHL
5 check payable to Scotom Racing, LLC?

6 A Correct.

7 Q So it's a different address here which address is listed
8 here?

9 A The address on the check here is P.O. Box 629,
10 Boca Raton, Florida. The date of the check is June 13th, 2007,
11 in the amount of \$532.49.

12 Q And the attention is Roger Scotom with an M, correct?

13 A Correct.

14 Q All right. The next check, which is Bank of America 1799,
15 this is another DHL check, correct?

16 A Correct. The DHL check paid to the order of Esmeralda,
17 E-S-M-E-R-A-L-D-A, Corporation, attention Roberto Silva,
18 apartment 1921, 398 Southeast Mizner Boulevard,
19 Boca Raton, Florida. The check is dated July the 11th, 2007,
20 in the amount of \$749.99. And on the back of the check, the
21 lower part of the screen, there is a stamped endorsement that
22 reads pay to the order of Bank of America for deposits only,
23 Brasil Express, Inc., general account.

24 Q Right. And all the checks here were deposited into the
25 Brasil Express, Inc., account, correct?

1 A Correct.

2 Q Okay. Next check, Bank of America 1501. And what are we
3 looking at here?

4 A This is another DHL check payable to the order of
5 Esmeralda Corporation, attention Robert Silva at 398 Southeast
6 Mizner Boulevard, apartment 19, Boca Raton, Florida. The check
7 is dated July the 11th, 2007, in the amount of \$350.

8 Q Next is Bank of America 1813?

9 A This is a DHL check pay to the order of Roberto Silva,
10 attention Roberto Silva, P.O. Box 629, Boca Raton, Florida.
11 The date is July the 17th, 2007, in the amount of \$130.

12 Q The next check is Bank of America 1516?

13 A This is a check from DHL pay to the order of
14 Esmeralda Corporation, attention Roberto Silva, P.O. Box 629.
15 The date on the check is September the 4th, 2007, in the amount
16 of \$1,267.

17 Q We will go to the next check, which is 1530.

18 A This is another check from DHL pay to the order of
19 Electronika, E-L-E-C-T-R-O-N-I-K-A, attention Hugo Sanchez,
20 P.O. Box 629, Boca Raton, Florida. The check date is
21 September the 21st, 2007, in the amount of \$476.50.

22 Q And this one also has that stamp pay to the order of
23 Brasil Express, correct?

24 A Yes, it does.

25 Q Let's go to the next check, Bank of America 1532.

1 A This is a check from DHL pay to the order of Electronika,
2 attention Hugo Sanchez, 398 Southeast Mizner Boulevard, 1921,
3 Boca Raton. The date of the check is September the 24th, 2007,
4 in the amount of \$408.

5 Q We will go to the next check, Bank of America 1543.

6 A This is a check from DHL pay to the order of Scotom,
7 S-C-O-T-O-M, Racing, LLC, attention Roger Scotom, Suite G, 1260
8 Powers Ferry Road Southeast, Marietta, Georgia. The date of
9 the check is May the 11th, 2007, in the amount of \$532.49.

10 Q I think that's Marietta, Georgia, correct?

11 A Oh, yes, it is. My apologies.

12 Q That's all right. Next check, Bank of America 1545?

13 A A DHL check payable to the order of Electronika, attention
14 Hugo Sanchez, P.O. Box 629, Boca Raton, Florida. The check
15 date is October the 17th, 2007, in the amount of \$700.

16 Q Next check, Bank of America 1547?

17 A This is a DHL check pay to the order of Electronika,
18 attention Hugo Sanchez, P.O. Box 629, Boca Raton, Florida. The
19 date of the check is November the 13th, 2007, in the amount of
20 \$749.

21 Q Next check, Bank of America 1551?

22 A This is a DHL check pay to the order of Electronika,
23 attention Hugo Sanchez, P.O. Box 629, Boca Raton, Florida. The
24 date of the check is November the 13th, 2007, in the amount of
25 \$535.

1 Q The next one is Bank of America 1549?

2 A Yes. It's a DHL check payable to Electronika, the
3 attention line is blank, mailed to P.O. Box 629,
4 Boca Raton, Florida. The date of the check is November the
5 15th of 2007 in the amount of \$780.

6 Q The next check we will look at is Bank of America 1557.

7 A This is a DHL check pay to the order of Rio Motorsport,
8 attention Daniel Valente, V-A-L-E-N-T-E, P.O. Box 629,
9 Boca Raton, Florida. The date of the check is November
10 the 20th, 2007 in the amount of \$599.98.

11 Q The next check we will go to is Bank of America 1559?

12 A This is a DHL check pay to the order Rio Motor, attention
13 D. Valente, P.O. Box 629, Boca Raton, Florida. The date of the
14 check is November the 23rd, 2007, in the amount of \$599.98.

15 Q The next check is Bank of America 1560?

16 A This is a DHL check pay to the order of Rio Motor,
17 attention D. Valente, P.O. Box 629, Boca Raton, Florida. The
18 date of the check is November the 23rd, 2007, in the amount of
19 \$600.

20 Q And the next check we will go to is Bank of America 1564?

21 A Is a DHL check pay to the order of Rio Motor, attention
22 D. Valente, P.O. Box 629, Boca Raton, Florida. The date of the
23 check is December the 3rd, 2007, in the amount of \$399.98.

24 Q The next check is Bank of America 1565?

25 A Yes. It's a DHL check pay to the order of Rio Motor,

1 attention D. Valente, P.O. Box 629, Boca Raton, Florida. The
2 date of the check is December the 3rd, 2007. The amount of
3 \$399.98.

4 Q The next check is Bank of America 1566?

5 A This is a DHL check pay to the order of Rio Motor,
6 attention D. Valente, P.O. Box 629, Boca Raton, Florida. The
7 date of the check is December 3rd, 2007. The amount is
8 \$399.98.

9 Q The next check is Bank of America 1567?

10 A This is a DHL check pay to the order of Electronika,
11 attention Hugo Sanchez, P.O. Box 629, Boca Raton, Florida. The
12 date of the check is December the 3rd, 2007, in the amount of
13 \$109.99.

14 Q The next check is 1568?

15 A This is a DHL check pay to the order of Rio Motor Sport,
16 LLC, attention D. Valente, C2, an address of 1300 Southwest 13
17 Drive, Boca Raton, Florida. A date of December 3rd, 2007, in
18 the amount of \$109.99.

19 Q The next check is Bank of America 1570?

20 A This is a DHL check pay to the order of D. Valente,
21 attention D. Valente, P.O. Box 629, Boca Raton, Florida. The
22 date of the check is December the 6th, 2007, in the amount of
23 \$100.

24 Q The next check is 1571?

25 A This is a DHL check pay to the order of Rio Motor,

1 attention D. Valente, P.O. Box 629, Boca Raton, Florida. The
2 date of the check is December the 6th, 2007. The amount is
3 \$399.98.

4 Q And the last check in Exhibit 120C is Bank of America
5 1575?

6 A Correct. It's from UPS. It's pay to the order of
7 USABRAS Import, P.O. Box 629, Boca Raton, Florida, in the
8 amount of \$100. The date of the check is December the 13th,
9 2007.

10 Q And at the top, it says UPS claims settlement?

11 A Correct.

12 Q Go to Exhibit 120D. 120D covers Brasil Express USA, Inc.,
13 Citibank checking account number 7230?

14 A It does, but I'm not sure what's in Sanction is the exact
15 same as what's in the exhibit in that the name of the bank is
16 not on Sanction, but it is on the actual exhibit.

17 Q You say Sanction, you're talking the computer where we
18 have been presenting the checks?

19 A Yes, the courtroom presentation software.

20 Q Right. Now we will just go to the ELMO and we'll put the
21 actual exhibit.

22 A As we were preparing for the trial, I realized that some
23 of the spreadsheets in the top left-hand corner did not have
24 the name of the financial institution. They had already been
25 scanned into the program so when I updated the spreadsheet, I

1 put them in the same identical format, which would be the name
2 of the account, then the financial institution followed by the
3 dates of the deposits.

4 Q Okay. And so 120D is Brasil Express USA, Citibank
5 checking, the Citibank checking account ending in 7230,
6 correct?

7 A That's correct.

8 Q And this, there were three checks from FedEx deposited
9 into this account, correct?

10 A That's correct.

11 Q So the first check deposited into the Brasil Express,
12 Inc., Citibank account is from whom to whom?

13 A It's from FedEx. It's pay to the order of Pittiman,
14 P-I-T-T-I-M-A-N, Corporation, attention John Pittiman/Brasil
15 Express D, with a mailing address of P.O. Box 2629,
16 Brasil Express department, Boca Raton, Florida. The check is
17 dated June the 10th, 2008, in the amount of \$826.

18 Q And I don't know if I said that, that's Citi 891. The
19 next check is Citi 921.

20 A This is also a FedEx check made payable to the order of
21 Excel Group, Inc., attention Roger Scott, a mailing address of
22 398 Southeast Mizner Boulevard, Suite 1921 in
23 Boca Raton, Florida. The date of the check is August the 4th,
24 2008, in the amount of \$1,200.

25 Q And the third check of 120D is Citi 833. And what are we

1 looking at?

2 A This is a check from FedEx pay to the order of Cargo Air,
3 attention Manuel Ramos, R-A-M-O-S, P.O. Box 629,
4 Boca Raton, Florida. The date of the check is August the 27th,
5 2008, in the amount of \$399.

6 Q I am showing the spreadsheet for 120E. Which account are
7 we looking at here?

8 A This is the Brasil Express USA, Inc., checking account at
9 Bank of America. The account number ends in 1646.

10 Q And there were four checks deposited into the
11 Brasil Express USA, Bank of America account 1646?

12 A Correct.

13 Q And the first check is Bank of America 780, and what are
14 we looking at?

15 A This a check from DHL pay to the order of Sun and Moon
16 Corp., attention D. Matthews, P.O. Box 629,
17 Boca Raton, Florida. The date of the check is February
18 the 4th, 2008, in the amount of \$798.70.

19 Q And the next check is Bank of America 782?

20 A This is a DHL check pay to the order of Sunshine Express,
21 the attention line is blank, P.O. Box 629, Boca Raton, Florida.
22 The date of the check is February the 19th, 2008, in the amount
23 of \$349.99.

24 Q The next check, 120E is Bank of America 783?

25 A Correct. It's a DHL check pay to the order of Helio,

1 H-E-L-I-O, Nestor, N-E-S-T-O-R, attention Helio Nestor,
2 P.O. Box 629, Boca Raton, Florida. The date of the check is
3 January the 29th, 2008, in the amount of \$199.

4 Q And the last check in 120E is Bank of America 785?

5 A Correct. This is a DHL check pay to the order of
6 Apple Inc., attention J. Bramante, B-R-A-M-A-N-T-E, P.O.
7 Box 629, Boca Raton, Florida. The date of the check is
8 May 1st, 2008, in the amount of \$1,250.

9 Q 120F covers Brasil Express Online, the operating account,
10 Bank of America ending 4931, correct?

11 A Correct.

12 Q And it has a whole bunch of checks that were deposited
13 into this Bank of America 4931 account, correct?

14 A Correct.

15 Q Let's go through them. The first check, 120F, is Bank of
16 America 788?

17 A This is a DHL check pay to the order of Cargo Air. The
18 attention line is blank, P.O. Box 629, Boca Raton, Florida.
19 The date of the check is October the 17th, 2008, in the amount
20 of \$397.20.

21 Q The next one is Bank of America 786?

22 A This is a check from FedEx, pay to the order of
23 Citrix Online, attention David Friedman -- I'm sorry,
24 Freidmain, F-R-E-I-D-M-A-I-N, an address of 851 West Cypress
25 Creek Road, Fort Lauderdale. The check is dated October

1 the 31st, 2008, in the amount of \$1,720.

2 Q The next check is Bank of America 777?

3 A This a check from FedEx pay to the order of Online R,
4 attention Rodge, R-O-D-G-E, at an address of 2234 North Federal
5 Highway, Boca Raton, Florida. The check date is November
6 the 4th, 2008, in the amount of \$989.

7 Q The next check is Bank of America 775?

8 A This is a check from FedEx pay to the order of Global
9 Express Online, attention Paul, last name spelled S-T-T-E-M-N.
10 An address of 398 Southeast Mizner Boulevard, Suite 1921, in
11 Boca Raton, Florida. The check is dated November the 20th,
12 2008, in the amount of \$992.

13 Q The next check is Bank of America 771?

14 A This is a FedEx check made payable to the order of
15 Targeting Express Online, Inc., attention Douglas. A mailing
16 address of 2234 North Federal Highway, 327,
17 Boca Raton, Florida. The check is dated November the 25th,
18 2008, in the amount of \$874.

19 Q The next check is Bank of America 769?

20 A This is a FedEx check pay to the order of Targeting
21 Express Online, Inc., attention Douglas Scovanner
22 S-C-O-V-A-N-N-E-R, 2234 North Federal Highway, 327,
23 Boca Raton, Florida. The check is dated December the 5th,
24 2008, in the amount of \$874.

25 Q The next check is Bank of America 746?

1 A This is from UPS pay to the order of Angimoto -- I'm
2 sorry, Ajinomoto, A-J-I-N-O-M-O-T-O, with an address of
3 2234 North Federal Highway, Boca Raton. The check is dated
4 January the 2nd, 2009, in the amount of \$914.34.

5 Q The next check is Bank of America 764?

6 A This is a check from FedEx pay to the order of Brasil,
7 with an S, Express, attention Emerson, E-M-E-R-S-O-N, Scotton
8 with an address of 7797 Golf Circle Drive, Suite 204,
9 Pompano Beach. The check is dated January the 9th, 2009, in
10 the amount of \$876.

11 Q The next check is Bank of America 762?

12 A This is a FedEx check payable to Brasil Express, attention
13 Samara Scotton at 7797 Golf Circle Drive, Suite 204, in
14 Pompano Beach, Florida. The check is dated January the 13th,
15 2009, in the amount of \$799.

16 Q The next check is Bank of America 760?

17 A This is a FedEx check pay to the order of Paulo, attention
18 Steve Brian, P.O. Box 629, Boca Raton, Florida. The check is
19 dated January the 23rd, 2009, in the amount of \$784.

20 Q The next check is Bank of America 757?

21 A This is a FedEx check payable to Brasil Express, 7797 Golf
22 Circle Drive, Suite 204, Pompano Beach. The check is dated
23 February the 3rd, 2009, in the amount of \$500.

24 Q The next one is Bank of America 758?

25 A This is a FedEx check pay to the order of Brasil Express,

1 7797 Golf Circle Drive, apartment 204, in Margate. The check
2 is dated February the 2nd, 2009, in the amount of \$79.47.

3 Q The next check is Bank of America 754?

4 A This is a FedEx check payable to Brasil Express, attention
5 Emerson Scotton, 7797 Golf Circle Drive, Suite 204, Margate.
6 The check is dated February the 5th, 2009, in the amount of
7 \$309.

8 Q The next check is Bank of America 755?

9 A This is a FedEx check pay to the order of Brasil Express,
10 attention Samara Scotton, 7797 Golf Circle Drive, Suite 20, in
11 Margaret, Florida. The check is dated February the 4th, 2009,
12 in the amount of \$734.

13 Q The next check is Bank of America 752?

14 A This is a FedEx check pay to the order of Brasil Express,
15 7797 Golf Circle Drive, 204, in Pompano Beach. The check is
16 dated February the 12th, 2009, in the amount of \$788.

17 Q Next I'm going to show you Bank of America 773?

18 A This is a FedEx check pay to the order of Impulse Energy
19 Drink, attention Steve Brian with an address of 2234 North
20 Federal Highway, 327, Boca Rotan, R-O-T-A-N, Florida, a date of
21 February the 11th, 2009, in the amount of \$687.

22 Q The next check is Bank of America 730?

23 A This is a DHL check pay to the order of Brian Santos. The
24 attention line is blank. The address is 1801 Harbour Pointe
25 Parkway, Atlanta, Georgia. The check date is March the 23rd,

1 2009, in the amount of \$382.50.

2 Q The next check is Bank of America 731?

3 A This is a DHL check pay to the order of Brian Santos. The
4 attention line is blank, 1801 Harbour Pointe Parkway, Atlanta,
5 Georgia. The date of the check is March 23rd, 2009, in the
6 amount of \$496.

7 Q And the last check of Government's Exhibit 120F is Bank of
8 America 720?

9 A This is a DHL check pay to the order of Junio Silva,
10 attention to Junio Silva, 511 Second Street, Everett, Mass.
11 The date of the check is April the 10th, 2009. The amount of
12 the check is \$814.51.

13 MS. MITRANI: May I approach, Your Honor?

14 THE COURT: Yes.

15 BY MS. MITRANI:

16 Q I am showing you what's been marked as Government's
17 Exhibit 121. Do you recognize this document?

18 A I do.

19 Q What is it?

20 A This is a spreadsheet that I generated which identifies
21 the different bank names, the bank account numbers, the name on
22 the bank account, who the signator was on the account as well
23 as the open date that the account began, the dates of the
24 transactions, if the account was closed, the date that it was
25 closed, and then total deposits and total withdrawals. And the

1 last column contains the address that was linked to the
2 account.

3 MS. MITRANI: Your Honor, the government would offer
4 Exhibit 121.

5 THE COURT: Any objection?

6 MR. SCOTTON: Yes, Your Honor. May I have a sidebar,
7 please?

8 (Thereupon, the following was heard sidebar.)

9 MR. SCOTTON: We have been over this before, and I
10 would say again a bunch has been copied added, they put credit
11 card here. The chart is four times here added. So this
12 spreadsheet keep coming to the Court with the double things
13 here.

14 THE COURT: Why don't you lay a foundation for summary
15 under 1006. And if it's satisfied, I will it admit it. And if
16 it's not, I won't. If I admit it, you can cross-examine about
17 what you think are the deficiencies in it.

18 MR. SCOTTON: Thank you, Your Honor.

19 (Thereupon, the following was heard in open court.)

20 BY MS. MITRANI:

21 Q Does this spreadsheet line by line pertain to a different
22 bank -- a different bank account that you received records from
23 that we talked about before?

24 A Correct. The line items listed on grand jury Exhibit 121
25 would document the different bank accounts that records were

1 produced by the financial institutions pursuant to the grand
2 jury subpoena or other subpoena that were issued.

3 Q And what does Government's Exhibit 121, what is it
4 supposed to summarize?

5 A It essentially summarizes the basic information of the
6 account, the name of the financial institution, the actual
7 account number that was assigned by the financial institution,
8 the name of the business and/or person on that bank account,
9 who was identified as having signator authority on that bank
10 account, the date that the account was opened, the date range
11 that transactions occurred on those accounts or that we had
12 records occurring. If the account was closed, we noted the
13 date the account was closed. And then we summarized the total
14 deposits that were made in to that account. We summarized the
15 total withdrawals that came out of that account. And then we
16 listed the address that had been provided to the financial
17 institution for that specific bank account.

18 Q Now, what was the purpose in creating 121?

19 A To essentially allow me and the Court to have a single
20 place where you could identify the different bank accounts that
21 relate to the records that were introduced, as well as keep
22 track of the names because there are a lot of names that have
23 similarities and, also, easily be able to identify who the
24 signator was on the different accounts at the multiple
25 financial institutions.

1 Q Now, were there -- there are a lot of accounts here. Were
2 there transfers in between accounts?

3 A Yes. There were instances where money would be
4 transferred from either one Bank of America account to another
5 Bank of America account, and there may have even been instances
6 where money was transferred from a Bank of America account to a
7 TD Bank account or vice versa. So there were instances where
8 moneys were transferred among accounts or among financial
9 institutions.

10 Q Were the transfers subtracted from these total amounts?

11 A No. The column identified as total deposits simply
12 summarizes the total amount of money that was deposited into
13 that specific account in the range that's indicated, just like
14 the total withdrawal column only indicates the amount of money
15 that was taken out of that account in that specific period for
16 that specific account.

17 Q So does this provide like a snapshot of the moneys coming
18 in and out of each of the accounts?

19 A Yes.

20 Q But it doesn't represent -- excuse me. But because
21 there's double counting, you can't just add up all the numbers
22 and say this is the total amount that was in and this is the
23 total amount that was out, correct?

24 MR. SCOTTON: Object, Your Honor.

25 THE COURT: What is the objection?

1 MR. SCOTTON: Leading.

2 THE COURT: Sustained.

3 BY MS. MITRANI:

4 Q Can you describe the amounts as it relates to transfers?

5 A Sure. The --

6 MR. SCOTTON: Object, Your Honor.

7 THE COURT: What is the objection?

8 MR. SCOTTON: Improper character of evidence.

9 THE COURT: Overruled.

10 THE WITNESS: The total deposits that's listed on this
11 spreadsheet does not take into account transfers back and
12 forth. So the total is listed for the total deposits and the
13 total withdrawals. However, because there was not a
14 reconciliation or an auditing of money moving from one account
15 to another account controlled by Mr. Scotton, those numbers do
16 not -- they just don't account for that reconciliation.

17 Q But as to each account, does it accurately reflect the
18 amount of money coming in and the amount of money coming out --

19 A Yes.

20 Q -- as to each individual account?

21 A As to each individual account, yes.

22 Q And on the bottom, does it reference a credit card?

23 A Yes. On the bottom of the spreadsheet, it references a
24 Citi Advantage World MasterCard, and that information
25 essentially summarizes the amount of charges that were

1 ultimately put on the credit card. They are -- there are four
2 different line items listed. My recollection is that the
3 balances may have been transferred from one credit card to
4 another either because the card was lost or reported missing or
5 there were other concerns with the account.

6 So it shows if you look at the backup documents that a
7 balance was transferred from one credit card number to another
8 credit card number. So in order to just simply identify the
9 fact that there were different credit cards with different
10 numbers, we indicated what the total withdrawals were on the
11 first and the last.

12 Q And were the numbers that you have here, for example, Bank
13 of America is composite 16. If you added up all the 16s for
14 each account, would you then come up with the numbers that are
15 located on the spreadsheet?

16 A Correct. If you --

17 MR. SCOTTON: Object.

18 THE COURT: What is the objection?

19 MR. SCOTTON: Speculation.

20 THE COURT: Overruled.

21 THE WITNESS: Correct, if you took Government's
22 Exhibit 16 and if you went through each one of those bank
23 statements and each one of the monthly statements and/or all of
24 the backup documents and you added all of the totals, the
25 amount that you came up with would be equal to what the total

1 for Bank of America on here was.

2 Similarly if you did that for all of the financial
3 institutions, Bank of America, Chase, TD Bank, and Citibank, if
4 you took the time to actually go back and look at every
5 supporting document, and catalog and schedule out every
6 transaction, your total deposits and your total withdrawals
7 would be the same number that's listed on this spreadsheet.

8 MS. MITRANI: Your Honor, we would reoffer 121.

9 THE COURT: Any objection?

10 MR. SCOTTON: Yes, Your Honor.

11 THE COURT: Is it the same as previously?

12 MR. SCOTTON: Yes, it is.

13 THE COURT: Overruled. And government's 121 is
14 admitted.

15 (Thereupon, Government's 121 received in evidence.)

16 BY MS. MITRANI:

17 Q Let's go over the columns on the top, can you identify
18 that?

19 A Sure. The columns on the top of the spreadsheet, the
20 first column is identifying bank, which would be the financial
21 institution that produced the records. The next column would
22 be bank account number, which identifies specifically the bank
23 account number that was assigned to that account. The next
24 column is the bank account name, which would be either the
25 business entity or the individual who was associated with that

1 account name based on the account opening documents.

2 The next column is the signator, which again would be the
3 name of the person or persons who had signed on the account
4 opening documents. The next line -- excuse me, the next column
5 is titled open date, which would be the date that the specific
6 account was opened and created at that financial institution.

7 The next column is called trans date, which stands for
8 transaction dates. And that essentially identifies when the
9 first transaction occurred and, according to our records, when
10 the last transaction occurred. So it identifies the time
11 period that those bank records relate to.

12 Q Hold on a second. Okay. I'm sorry. You may continue.

13 A The next column is called close date, which essentially
14 was our -- my effort to identify either the last statement that
15 we had or if the account was formally closed, document when the
16 account was closed.

17 The next column is called total deposits, which again
18 would be the amount that would be totaled if you went through
19 all of the bank records for that account, the total amount of
20 money that was deposited. And then the total withdrawals would
21 be the total amount of money that was withdrawn from that
22 account. The last column is called addresses, which would be
23 the address that was provided for that account on the bank
24 opening statements.

25 Q I'm going to show the Bank of America, Brasil Express,

1 Inc., general account ending in 4723 all the way on the bottom.

2 Do you see that?

3 A I do. It's line 17 on the summary spreadsheet.

4 Q Line 17, that's right. And on line 17 for that

5 Brasil Express, we see -- what are the total deposits and the
6 total withdrawals?

7 A The total deposits are \$592,750.53 with the same amount of
8 withdrawals.

9 Q I'm not going to go through every account one by one. But
10 line 12 is Roger Scotton, Samara Scotton, Bank of America
11 account 9039?

12 A I can't see line 12.

13 Q It might be easier if I hand it to you with my apologies
14 to the jury. What is line 7?

15 A Line 7 on the summary spreadsheet is for Bank of America
16 account ending in 4931. The name on the account is
17 Brasil Express Online USA, Inc., operating account. The
18 signators on the account are Cerline Maria Dos Santos as the
19 president and Rogerio Chavez Scotton as the authorized signer.
20 The total amount of deposits is \$127,571.36 and with the same
21 amount of money withdrawn.

22 Q And is it an account that has about \$301,000 coming in and
23 out, do you see that?

24 A I do.

25 Q And can you tell us which account that is?

1 A That relates to a Bank of America account ending 2582.
2 That is on line 22 of the summary exhibit. The bank account
3 name is Sky Air Global, Inc., operating account. The signator
4 on that account is Rogerio Scotton. And it indicates that the
5 total deposits are a little over \$300,000 with total
6 withdrawals of also approximately \$300,000.

7 Q I'm going to go to Exhibit 16J1, which is a Bank of
8 America account.

9 Okay. I'm going to show you Exhibit 16J1, and the first
10 page is Bank of America 1180. And the -- this is addressed to
11 Rogerio C. Scotton at 398 Southeast Mizner Boulevard, apartment
12 1921 in Boca Raton, correct?

13 A Correct.

14 Q And this is account ending 4116, correct?

15 A Correct.

16 Q And it's the statement period February 6th, 2008, through
17 March 6th, 2008, correct?

18 A Correct.

19 Q I don't know if I said it, but this is BOA180?

20 A Correct.

21 Q And if we go to the third page, which is BOA182, there are
22 three columns. I'm putting up two and then I'll move it over.
23 So is -- and something is highlighted, do you see a check card
24 purchase --

25 A I do.

1 Q -- on February 19th?

2 A I do. The first column is titled ATM and debit card
3 subtractions, the second column is titled date posted. There
4 is highlighted a check card entry for Tam, T-A-M, Airlines on
5 February the 19th.

6 Q And the amount of that was \$1,299, correct?

7 A Yes.

8 Q Then if we go to the next page, Bank of America 183,
9 there's another Tam Airlines purchase on February 25th,
10 correct --

11 A That's correct.

12 Q -- of 2008?

13 A In Miami, Florida, correct.

14 Q And that one is for \$400, correct?

15 A Correct.

16 Q And then there are other purchases below the Tam Airlines
17 purchase on BOA183, correct?

18 A Correct.

19 Q And after the Miami purchase, there is a Deerfield Beach
20 purchase?

21 A On the same date, correct.

22 Q And I should be more accurate, it's either a ATM or a
23 debit card subtraction. And then following that
24 Deerfield Beach either ATM or debit card transaction, are there
25 more transactions?

1 A Yes. Beginning on February the 26th and continuing
2 through most of the rest of the statement are transactions that
3 occur in Rio de Janeiro.

4 Q What country is Rio de Janeiro in?

5 A That's in Brazil.

6 Q And throughout the statement, we see more Rio de Janeiro
7 transactions, correct? This is BOA184, are there additional
8 Rio de Janeiro transactions?

9 A Yes. Yes, there are.

10 Q Now, before -- I'm sorry, I'm a little confused here.
11 That second Tam Airlines was on February 25th, correct?

12 A Correct.

13 Q But before that, before February 25th, 2008, are there two
14 cash withdrawals that are highlighted on Bank of America 185?

15 A Yes. There's two separate cash withdrawals from the
16 checking account that ends in 4116. The first withdrawal
17 that's highlighted was on February the 13th in the amount of
18 \$14,000 and then on the 14th, there was another withdrawal in
19 the amount of \$1,000.

20 Q I'm going to show you a Citibank record, and this is the
21 first page of the statement is Citi 425. See it right there.
22 And this covers the period of May 1st to June 1st, 2008 --

23 A Correct.

24 Q -- for Rogerio Scotton's Citi Gold account?

25 A Correct.

1 Q And on the next page, which is Citi 427, is there a
2 \$11,000 cash withdrawal?

3 A Yes, there is.

4 Q And on the next page, Citi 433, more cash withdrawals, a
5 thousand dollars, \$200, \$600, \$400, et cetera?

6 A Correct.

7 Q And I'm still on that same Citibank statement and this
8 page is Citi 442. And is there a cash withdrawal of \$300 on
9 7/24/08?

10 A There is. There's a cash withdrawal on 7/24/2008 from a
11 Royal Bank of Canada ATM located in the Bahamas.

12 Q And it says Bahamas there, correct?

13 A Correct.

14 Q And there's some other Bahamas transactions below,
15 correct?

16 A Correct. Specifically on the same date, there's a charge
17 for the Pub at Port Lucaya, L-U-C-A-Y-A, Freeport, as well as
18 another \$50 cash withdrawal from a ATM for Royal Bank of
19 Canada, also identified as being in the Bahamas.

20 Q And then on 7/31/08, we have debit pin purchases in
21 Pompano Beach, Florida?

22 A Correct.

23 THE COURT: All right. Is this a good stopping point
24 for lunch?

25 MS. MITRANI: Yes, Your Honor.

1 THE COURT: All right. We will take an hour for lunch
2 and we will return at 1:30. Enjoy your lunch. Please remember
3 my instructions. We will see you at 1:30. All rise for the
4 jury.

5 (Thereupon, the jury exited the courtroom at
6 12:30 p.m.)

7 THE COURT: All righty. We will see you at 1:30.
8 Have a good lunch.

9 MS. MITRANI: Thank you, Your Honor.

10 (Thereupon, a luncheon recess was taken at 12:31 p.m.)

11 (Thereupon, the jury entered the courtroom at
12 1:31 p.m.)

13 THE COURT: All right. Please be seated. Thank you.
14 And you know the drill, Agent Van Brunt. You are
15 still under oath, do you understand?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: All right. Very good.

18 Ms. Mitrani, you may continue.

19 BY MS. MITRANI:

20 Q Before the lunch break, we were going through some bank
21 records, and I want to keep on going through some bank records
22 with you before we go to our next topic.

23 Now I'm showing you from the Citibank records, and this is
24 Citi 096 -- don't worry, I'm going to zoom it up. You don't
25 have to --

1 A 0964.

2 Q You already know that. I don't want you to squint too
3 much.

4 All right. So this is -- right, Citibank. It's Bates
5 labeled 0964. And it's the defendant's address, correct, at
6 398 Mizner?

7 A Correct.

8 Q And this was an application -- I'm going to the left part
9 of the document -- and approved apps it says on the front?

10 A Correct. This was his application for the Citibank credit
11 card.

12 Q And in his application, what does he list as his income
13 amount?

14 A Sure. In the area marked identified as the section
15 income, source one, the second line down is income amount and
16 the amount listed is \$350,000 a year.

17 Q And he indicated that he was five years at his job?

18 A Correct.

19 Q And there's a date on the top. What's that date above the
20 defendant's name?

21 A The date is February the 22nd, 2008.

22 Q I'm going to go back to Exhibit 16, the Bank of America
23 records. And here we have Bates labeled BOA185 and it's the
24 account ending in 4116, correct?

25 A Correct.

1 Q For the period 2/6/08 through 3/6/08, correct?

2 A Correct.

3 Q And is there a cash withdrawal on 2/13?

4 A Yes. There's a cash withdrawal from the account ending in
5 4116. The date posted was February the 13th, the amount was
6 \$14,000.

7 Q I'm going to a different Bank of America account all
8 within Exhibit 16, composite Exhibit 16, and it's the Sky Air
9 Global, Inc., operating account, correct?

10 A Correct.

11 Q And the period is 6/01/11, so June 1st, 2011, through
12 June 30th, 2011?

13 A That's correct.

14 Q And on June 6th, 2011, is there a purchase from J.R. Dunn
15 Jewels?

16 A Yes. On June the 6th, there is a \$1,437.25 purchase from
17 J.R. Dunn Jewelers.

18 Q And then why don't you read the next three below that?

19 A Sure. On June 10th, there is a \$715.12 charge to the
20 Naples Princess. On the June 13th, there's a \$1,348.32 charge
21 to Hugo Boss in Boca Raton. Then on June 14th, there's a
22 \$1,716.40 charge to the Hilton Naples Grand.

23 Q And when did Carla Felini say she got engaged?

24 A June the 11th.

25 Q Of what year?

1 A 2011, in Naples.

2 Q And the next page of the same statement, and this one is
3 Bank of America 1419, is there a \$1,054.70 charge on August
4 15th to Michael Kors?

5 A Yes, there is.

6 Q I'm sorry, this is not the same statement. This is a
7 statement from August of 2011 but still part of composite
8 Exhibit 16, and it is the Sky Air Global, Inc., operating
9 account, correct?

10 A Correct.

11 Q And there the period is 8/1/11 through 8/31/11, correct?

12 A Correct.

13 Q And here is a -- this is Bank of America 2231. Is this a
14 check from Sky Air Global, Inc., payable to cash in the amount
15 of \$4,000?

16 A Correct.

17 Q Is this -- this is a Bank of America 2240. Is this
18 another check from Sky Air Global, Inc., check No. 1040 dated
19 9/21/11 payable to cash in the amount of \$5,000?

20 A Yes.

21 Q And another check payable to \$2,000 on 9/22/11?

22 A Correct.

23 Q And here's another check payable to cash for \$6,000 on the
24 Sky Air Global account dated 11/15/11?

25 A Correct.

1 Q And this is Bank of America 2247?

2 A Yes.

3 Q This is Bank of America 2248. Is this another check from
4 Sky Air Global, Inc., payable to cash in the amount of \$3,000
5 dated 11/21/11?

6 A Yes.

7 Q And this is Bank of America 2250. This is another check,
8 11/25/11 -- dated 11/25/11?

9 A Correct.

10 Q On the Sky Air Global, Inc., account payable to cash in
11 the amount of \$5,000?

12 A Yes.

13 Q Now I'm showing you the TD Bank, and this is Bates labeled
14 TD Bank 166. And this is the S-K-I, Ski Air Online Corp.
15 statement?

16 A Correct, for the account ending in 5308.

17 Q For the period of when?

18 A June 1st, 2010, through June 30th, 2010.

19 Q And if we go to TD Bank 169, which is three pages after
20 the one we just saw, on 7/6/2010, is there a \$564 purchase from
21 Sunglass Hut in Boca Raton?

22 A Yes.

23 Q And the next page, which is TD Bank 171, can you tell us
24 what those first three purchases are?

25 A Sure. The first three charges were all posted on July

1 the 6th. The first charge is for \$403.60 from Hugo Boss in
2 Boca Raton, the second charge is \$339.95 from Macy's in
3 Boca Raton, and the next charge is for \$258.80 also from Macy's
4 in Boca Raton.

5 Q If we go two pages later to TD Bank 173, can you tell us
6 about the purchases that are highlighted?

7 A Sure. On the posted date of July 26th, there's a \$423.86
8 charge to Tommy Hilfiger in Sunrise, Florida. On that same
9 date, there is a \$323.30 charge to Armani Exchange, also in
10 Sunrise.

11 Q I'm showing you another statement for Ski Air Online or
12 Sky Air Online Corp., depending how you want to pronounce that
13 word. And the statement period there is September 1st, 2010,
14 to September 30th, 2010?

15 A Correct.

16 Q And I have two highlighted purchases. Can you tell us
17 about those?

18 A Sure. The first item highlighted had a posted date of
19 September the 20th. It's for Hugo Boss at Mall of Millen,
20 which I believe is abbreviation for Millennium, Orlando,
21 Florida, in the amount of \$978.79. The next item that's
22 highlighted is a posted date of September the 24th in the
23 amount of \$1,206.03 charged to Hilton Hotels, Disney, Lake
24 Buena Vista, Florida.

25 Q I think it's 1,216, not 6.

1 A Yes, 1,216.

2 Q And the next page, TD Bank 185, I have highlighted a few
3 purchases there.

4 A Sure.

5 Q What are those?

6 A The first charge is for Hilton Hotels Disney in Lake Buena
7 Vista. The amount is \$782.81. The next charge is also a
8 charge to Hilton Hotels Disney, Lake Buena Vista, \$15.20. The
9 third item that's highlighted is a posted date of
10 September 27th. It's for Florida Panthers tickets ops. The
11 amount is \$5,000.

12 Q I'm pulling out an account statement for Ski Air Online.
13 This is TD Bank 198. And the statement period here is
14 January 1st, 2011, through January 31st, 2011?

15 A Correct.

16 Q And is there a \$1,043.72 charge on January 3rd to
17 Hugo Boss in Boca Raton?

18 A Yes.

19 Q And other -- we are not -- just so the record is clear, we
20 are not reading every single purchase --

21 A No.

22 Q -- on these statements?

23 A Definitely not reading every line item.

24 Q And here is TD Bank 199. It's the same period,
25 January 1st, 2011, to January 31st, 2011. And on January 20th,

1 is there a \$842.48 payment for Infiniti Finance bill pay?

2 A Yes, there is.

3 Q And is that lease payment something recurring that you saw
4 in the bank records?

5 A Yes. That's what I would describe as a recurring payment,
6 meaning it essentially was billed on or about that date every
7 month for that amount.

8 Q And I'm jumping to a -- now Bank of America Exhibit 16,
9 Sky Air Global, Inc., operating account. And this one is
10 December 11th -- excuse me, December 1st, 2011, through
11 December 31st, 2011, correct?

12 A Correct.

13 Q And this is Bank of America 1444, and are there several
14 cash withdrawals during that month, December 2011?

15 A Yes. There are several cash withdrawals highlighted. The
16 first cash withdrawal is on December 2nd in the amount of
17 \$5,000. The next cash withdrawal that's highlighted is
18 December the 9th in the amount of \$4,500. And then on
19 December the 16th, there's another cash withdrawal highlighted
20 in the amount of \$2,500.

21 Q Thank you. Have we identified all the expenditures from
22 the bank statements?

23 A No.

24 Q Are these just a choice select few?

25 A A very select few.

1 Q Okay. Special Agent Van Brunt, does the second
2 superseding indictment charge specific counts of specific
3 mailings as part of the mail fraud charges?

4 A Yes, it does.

5 Q And these specific counts are Counts 1 through 27 of the
6 second superseding indictment, correct?

7 A Correct.

8 Q And each of those counts is a specific mailing, correct?

9 A Correct.

10 Q I want to start with Count 1, which is a DHL Sun and Moon
11 mailing. And I want to start by looking at line 88 of
12 Exhibit 132B. Just pulling it up.

13 Okay. I'm showing you line 88 from Government's
14 Exhibit 132B, and does that show -- this is the spreadsheet
15 that was introduced through Nicole Nelson. And does that show
16 that a waybill ending in 8684 was mailed on or about
17 December 3rd, 2007, with a return address of Sun and Moon
18 Corp., P.O. Box 629, Boca Raton, Florida?

19 A Yes, it does.

20 Q Shipped to a JP in Brazil?

21 A Correct. Shipped to an individual whose first initial was
22 J, last initial was P.

23 Q And the account number on the spreadsheet was listed as
24 account number ending in 2374?

25 A Correct. Column A would be the column that contained the

1 account number, column B would be the account name, and
2 column C would be the waybill number.

3 Q And then column D would be date of the mailing, correct?

4 A Correct. It would be the date which would be the first
5 four characters of the year, the next two characters are the
6 month, and the final two characters are the date of the month.

7 Q Exhibit 12B, which were -- is in evidence as the DHL
8 claims from the Sun and Moon, and this is DHL 72 from
9 Exhibit 13 -- excuse me, from Exhibit 12B, 12B. It shows that
10 on December 11, 2011 -- excuse me, let me start that the again.
11 On December 11, 2007, there was a fax coming in from Express
12 with a fax number of 561-368-7347?

13 A Correct.

14 Q And there is a claim on the Sun and Moon account, correct?

15 A Correct.

16 Q With the claimant's address as P.O. Box 629 in Boca Raton,
17 Florida, with the zip code, correct?

18 A Correct.

19 Q And remind us to whom does P.O. Box 629 belong to at that
20 time?

21 A Rogerio Scotton.

22 Q I'm going -- I was going to use this later, but lest there
23 be any doubt as to who that 561-368-7347 fax number belongs to,
24 I'm showing you Government's Exhibit 1B, and that is the -- and
25 that is Bates labeled as PAK, P-A-K, BR-6. And this is part of

1 the Pak Mail application for Rogerio Scotton, correct?

2 A Correct. This is part of the Pak Mail application from
3 the Boca Raton Pak Mail, and it shows the same phone number as
4 the residence phone number.

5 Q Handwritten in as 561-368-7347?

6 A Correct.

7 Q Then also from Government's Exhibit 120E, which we just
8 went through this morning so I'm not going to belabor the
9 point, but 120E which was the checks deposited into
10 Brasil Express USA, Inc., there is a check payable to Sun and
11 Moon, attention D. Matthews, P.O. Box 629?

12 A Correct.

13 Q Bear with me a minute. This is what happens when I go out
14 of order, now I don't know where I am. So now we will go to
15 Count 2. If we go to Count 2, if we go to Exhibit 14L. So
16 this is Exhibit 14L, this shows there was a FedEx shipment with
17 a return address of David Friedmain, Citrix Online at 851 West
18 Cypress Creek Road in Fort Lauderdale, Florida?

19 A Correct.

20 Q So an individual whose initials are I-S in Brazil,
21 correct?

22 A Correct.

23 Q Does the indictment identify the recipients by initials?

24 A Correct. The indictment only identifies the names of the
25 people receiving the package by their initials, not complete

1 names.

2 Q The indictment also, of course, identifies the mailings by
3 waybill number, correct?

4 A Waybill and tracking number, correct.

5 Q Well, those are the same thing, aren't they, depending on
6 whether it's DHL or FedEx?

7 A Correct.

8 Q All right. So the tracking number for Government's
9 Exhibit 14L, which is Count 2 of the indictment, ends in 9000,
10 correct?

11 A Correct.

12 Q Now we go to Exhibit 14I3, which is Bates labeled
13 FedEx 590. So these were the FedEx claims on the Citrix
14 account, correct?

15 A Correct. These were -- this comes from the documents
16 regarding claims that were filed through the Citrix Online
17 account.

18 Q And a claim was filed on that same waybill number ending
19 in 9000, correct?

20 A Correct.

21 Q And, again, we saw this check this morning, but the check
22 that was cut to pay for waybill 9000 is Bank of America 786,
23 also FedEx 581, which was deposited into the defendant's
24 account, correct?

25 A Correct.

1 Q And this is the same account that we have on -- here we
2 go -- on Government's Exhibit 14K, the FedEx that identified as
3 a fraudulent Citrix account?

4 A Correct.

5 Q All right. And the specific account number is listed on
6 Exhibit 14K, correct?

7 A Correct.

8 Q Now, Counts 3 through 9 of the indictment, do those
9 correspond to the Triunfo packages which are government's
10 composite Exhibit 100A through 100G?

11 A Yes. They consist of the packages that are physically in
12 the courtroom, including the one at your foot.

13 Q Can't get away from this printer no matter how much I try.

14 This is 100A, but those Counts 3 through 9 pertain to all
15 those Triunfo boxes that we went through with Mr. Santiago?

16 A Correct.

17 Q And as -- I will try to pick a small one. I have 100G.

18 The account number for those Triunfo packages start at

19 716R91 -- R9Y04, correct?

20 A Correct.

21 Q I think it ends at 9Y, but --

22 A And then the tracking number would end with 2444.

23 Q And the second superseding indictment has the tracking
24 number or the waybill number, depending on which company, to
25 identify the particular mailing, correct?

1 A Correct. It's included in the substantive count chart
2 that appears in the indictment.

3 Q And Exhibit 15C is where -- is the UPS spreadsheet listing
4 that Triunfo account as not having been paid and closed for
5 fraud, correct?

6 A That's correct.

7 Q All right. These are 9. Count 10 identifies a FedEx
8 shipment August 11, 2008, with a tracking number ending in 6720
9 with a return address of DF 398 Southeast Mizner Boulevard,
10 1921, Boca Raton, Florida, shipped to a VS in Brazil, correct?

11 A Correct.

12 Q Now I'm showing you from the FedEx claims, which I think
13 was 14J. I will have to double-check my notes. But this is
14 Bates labeled FedEx 475 at the bottom. Do you see that?

15 A I do.

16 Q And this is the FedEx invoice number, invoice date of it
17 August 19th, 2008, with the account number of 43821104-7,
18 correct?

19 A Correct.

20 Q The billing address as Citrix Online, LLC, 851 West
21 Cypress Creek Road, Fort Lauderdale, Florida 33309?

22 A Correct.

23 Q Then on the fourth page of that -- or fifth page of that
24 exhibit, which is FedEx 479, correct?

25 A Correct.

1 Q Does that invoice, invoice the exact shipment that's
2 contained in Count 10, waybill No. 6720?

3 A Yes, it does. It -- the invoice identifies specifically
4 the package with the tracking number ending in 6720 sent from a
5 DF at 398 Southeast Mizner Boulevard, 1921,
6 Boca Raton, Florida, sent to a recipient with the initials VS
7 in Brazil.

8 Q And, likewise, this is the same Citrix account that we
9 talked about in Count 2 identified in 14K, closed for fraud?

10 A Correct.

11 Q Counts 11 and 12 pertain to FedEx shipments on the Impulse
12 Energy Drink account, correct?

13 A Yes.

14 Q And specifically Counts 11 and 12 identify two FedEx
15 shipments which are Government's Exhibits 101A and 101B,
16 correct?

17 A Yes.

18 Q And so the tracking information and what have you that are
19 in 101A and 101B, that's what's identified in those counts,
20 correct?

21 A Correct, it is, yes.

22 Q And we saw this, this morning with the Brasil Express
23 brochures?

24 A Correct.

25 Q Plus, these were sent on an account ending in 2266,

1 correct?

2 A Yes.

3 Q And what's been admitted into evidence as the FedEx
4 recording opening the Impulse Energy Drink, is that contained
5 on 14A?

6 A It is.

7 Q And is that the account number that's given there?

8 A Yes.

9 Q Account number ending in 2266?

10 A Yes. At the end of the call, the FedEx customer service
11 representative provides the account number. That account
12 number was the one that was billed for those packages to be
13 shipped.

14 Q On 101A and B?

15 A Correct.

16 Q And on 14K, Mr. Seligstein's spreadsheet, that was also
17 identified as a fraudulent account, right?

18 A Yes, it was.

19 Q Counts 13 through 15 concern the -- are the subject of
20 Government's Exhibit 102A, B, and C, correct?

21 A Correct.

22 Q The tracking number that's on these three exhibits, 102A,
23 B, and C, and the return address on these two, that's the
24 information that's contained in the mailing in those three
25 accounts, correct.

1 A Correct. In the indictment, the substantive counts
2 identify each one of those pictures by the tracking number, the
3 date it was shipped on or about, the name of the account that
4 was fraudulently billed, and the fraudulent account number.

5 Q And in this instance, this was billed to the BH&P --
6 B&H Photo account ending in 3027, correct?

7 A Correct.

8 Q And that's on Mr. Seligstein's spreadsheet, 14K, as
9 fraudulent shipments?

10 A Yes, it's one of the accounts listed.

11 Q And these are the ones that have the video that we have
12 shown many times throughout the course of this trial?

13 A The DVD cases have been shown many times.

14 Q I'm sorry, the DVD cases.

15 A Yes.

16 Q I'm using video in a generic sense, like Kleenex.

17 Government's Exhibits 102D and E have the return address
18 also as BHPV, correct?

19 A Correct.

20 Q And the account number is actually written out on those?

21 A Correct. On those two packages, it's a handwritten
22 waybill as opposed to a computer generated. So on the
23 handwritten waybill, the actual account number is included in
24 the shipping label.

25 Q And all of composite 102 was shipped out on the same BHV

1 account ending in 3027, correct?

2 A Correct.

3 Q All right. Counts 16 through 26, Government's Exhibit 3,
4 composite 3. Let's remind us, what's composite exhibit?

5 A Sure. Government's composite Exhibit 3 are copies of
6 waybills that were made by Scott Baker at the Pak Mail
7 Coral Springs. They are from packages that Mr. Scotton brought
8 in to the store for delivery and they essentially contained,
9 you know, the information on who the package was coming from
10 and where it was being sent to.

11 Q And Exhibits 3A through 3K, the waybills that you see from
12 Mr. Baker, those form the basis of the counts 16 through 26,
13 correct?

14 A They do, as well as exhibit --

15 Q I'm getting there.

16 A Okay. Yes.

17 Q As well as Exhibit 32?

18 A Yes, because 32 contains the actual account number where
19 the package was billed to.

20 Q I know, you read my mind. So just like we have 3A through
21 K, we have 32A through K. And these are the waybills, the
22 archival copies that were provided by Ms. Morrison from DHL,
23 correct?

24 A Correct.

25 Q And these have the account number which was purported to

1 be an Apple Computer or an Apple account number, correct?

2 A Correct. The account number for the billing purposes was
3 9527.

4 Q And Ms. Morrison's exhibit also had the outbound invoices
5 showing the shipment of the packages contained in Counts 16
6 through 26 of the second superseding indictment, correct?

7 A Correct.

8 Q And for the record, what I'm showing now is 32A, the
9 fourth or fifth page of it?

10 A I believe so, yes.

11 Q Last but not least on the specific counts, at least with
12 respect to the mail fraud counts and there are two other counts
13 which we haven't spoken about yet, is Count 27. And does that
14 pertain to the March 15th, 2011 shipment of the undercover
15 purchase of the camera, the shipment from defendant's company
16 Sky Air to Brazil?

17 A Correct. That relates to the FBI controlled purchase of
18 the Sony digital camera which was shipped via DHL to Brazil.

19 Q And Exhibit 9 is the -- has the waybill and the camera
20 that constitutes the shipment that constitutes Exhibit 27?

21 A Correct.

22 Q And Ms. Morrison's Exhibit 32L identified it as a Citrix
23 email on a Citrix account, right?

24 A Yes.

25 Q And here is Exhibit 32L showing the archival copy of the

1 waybill that's on 9A, together with the account number in the
2 middle, correct?

3 A Correct.

4 Q And the third page of that exhibit showing it being billed
5 to a Citrix systems account?

6 A Correct.

7 Q Did you review Exhibit 130, which is the spreadsheet of
8 FedEx accounts introduced through Mr. Seligstein?

9 A Yes, I did.

10 Q And did you take that spreadsheet of those fraudulent
11 accounts and filter it down to a smaller number of accounts?

12 A Yes, essentially filtered it down and narrowed it down.

13 Q And those accounts, did you create a new disc as
14 exhibit -- which we are marking for identification as
15 Exhibit 130A?

16 A Yes.

17 Q And those accounts in 130A are a subset of the accounts
18 counseled in Exhibit 130, correct?

19 A Correct, the smaller set, yes.

20 Q And were you able to link each of these accounts to the
21 defendant in one way or the other?

22 A Yes.

23 MS. MITRANI: Your Honor, the government would offer
24 130A into evidence.

25 THE COURT: Any objection?

1 MR. SCOTTON: No, Your Honor.

2 THE COURT: Government's 130A is admitted.

3 (Thereupon, Government's 130A received in evidence.)

4 BY MS. MITRANI:

5 Q All right. I just want to go through that a little bit
6 with you. Does Exhibit 130A contain the following accounts,
7 I'm going to read the names and you will say yes or no.

8 A Okay.

9 Q All right. Citrix Online, LLC?

10 A Yes.

11 Q Triunfo Specialty Foods Corp.?

12 A Yes.

13 Q Copilot Express?

14 A Yes.

15 Q Brasil Express Online, Inc.?

16 A Yes.

17 Q Sun Moon Online?

18 A Yes.

19 Q B&H Photo?

20 A Yes.

21 Q Cargo Air?

22 A Yes.

23 Q Matte Lion?

24 A Yes.

25 Q Pittiman Corporation?

1 A Yes.

2 Q Walmart?

3 A Yes.

4 Q Rio Motor?

5 A Yes.

6 Q Speed Action Motorsports?

7 A Yes.

8 Q Paganini Construction?

9 A Yes.

10 Q Electronika USA?

11 A Yes.

12 Q Target?

13 A Yes.

14 Q And three others, Gaspar Zeho Import Export?

15 A Yes.

16 Q Spike Express?

17 A Yes.

18 Q And Sam Ash Music/Karen Canty?

19 A Yes.

20 Q Now, you testified that you were able to link these to the
21 defendant. Can you tell the members of the jury some of the
22 links that you attempted, and then maybe we will go through
23 some of the accounts?

24 A Sure. Some of the links that we would have been looking
25 for and would have observed were common addresses as either the

1 billing address or the shipping address or the recipient
2 address, the bill to name, Mr. Scotton or his family members
3 being listed as the recipients. Things generally of that
4 nature.

5 Q All right. So let's go through some of these accounts.
6 Let's do the Citrix Online, LLC. Were the shipper's name used
7 on this account, did you see an Alex Scotton, an
8 Alexandre Scotton, and a Luiz Heleno Scotton?

9 A Yes, I did observe those names.

10 Q Let's see if we can pull it up. And in the meantime since
11 it's already up, did you also observe the 398 Southeast Mezner,
12 spelled with an E instead of an I, as listed on the account?

13 A Yes, I did.

14 Q I just pulled up one, Online 431. Does that say as a
15 shipper address, Rodger, R-O-D-G-E-R, Scottem, S-C-O-T-T-E-M?

16 A Yes, it does.

17 Q And that one actually had 398 Southeast Mizner Boulevard,
18 Mizner spelled correctly?

19 A Correct.

20 Q And line 522, there's another Rodger Scottem?

21 A Correct.

22 Q And now on 545, Roger Scoten, S-C-O-T-E-N --

23 A Yes.

24 Q -- as the shipper?

25 And then you go to 548, you see a Luiz Heleno Scotton as

1 the shipper?

2 A Correct. And beneath that, Alexandre Scotton.

3 Q And on lines 533 and 554, do you see Alex Scotton and
4 Alexandre Scotton also as the shippers?

5 A Yes, on those three lines, variations of that name.

6 Q Let's -- I'm not going to go through ever account because
7 there are lots, but let's go through a few more. Let's do
8 Copilot Express. And on Copilot Express, did you see the
9 name -- did you see, excuse me, the address of 398 Southeast
10 Mizner Boulevard being used?

11 A I did find that address associated with certain packages.

12 Q On the Copilot Express account?

13 A Correct.

14 Q Let's see if we can pull it up. Oh, the very first line
15 has a 398 address, correct?

16 A Correct.

17 Q And there are many other lines there too. For example,
18 line 569 and 570 also have that address?

19 A Correct.

20 Q Also on that Copilot account, did you see the shipper name
21 as Roger Chavez on at least two packages?

22 A Correct. On line -- I can't tell if it's 584 or 684, the
23 ship address is Roger Chavez with a shipping address of 398
24 Southeast Mizner Boulevard, 1921.

25 Q Let's look at B&H Photo. Did you see the address as

1 934 North University Drive?

2 A Yes, I did observe that address when sorting through the
3 spreadsheet.

4 Q Let me see if we can pull it up readily.

5 A I think you are going to need to go to column T.

6 Q It would be easier if you were here doing the spreadsheet.

7 And lo and behold, we see 934M University. We see 943N
8 University, we see 943, and so on, correct?

9 A Correct.

10 Q And we see name Sky also as the name associated on some of
11 these 934 shipments, correct?

12 A Correct.

13 Q Let's do maybe one more. Let's do a Brasil Express
14 Online, Inc. And on the Brasil Express Online as well as the
15 Brasil Express, do we see the address of 7797 Golf Circle
16 Drive?

17 A Correct, that address appears frequently for both of these
18 accounts.

19 Q And do we also see the 398 address on this Brasil Express
20 Online and Brasil Express account?

21 A Yes.

22 Q And what -- for the accounts that I read off a few minutes
23 ago, what's the total loss to FedEx for the shipments on these
24 accounts? And we will pull it up for you since it's not a
25 memory game.

1 A \$477,849.51 from these specific accounts.

2 Q Okay. Just one second.

3 All right. Now, during the course of your
4 investigation -- earlier today you testified about the
5 defendant's post arrest statement where he mentioned
6 Ruebens Amaral and Osvaine Duarte as being responsible for
7 this?

8 A Correct.

9 Q And during the course of your investigation, did you
10 identify others entities that the defendant attempted to blame
11 for the fraudulent shipping labels?

12 A Yes.

13 Q What other entity has the defendant attempted to pin the
14 blame on?

15 A Primarily a company by the name of Lider Mundanca, as well
16 as a company named Brabox that he spoke about in my
17 face-to-face meeting with him.

18 Q In fact, he mentioned Lider on numerous occasions during
19 his face-to-face with you back in August of 2001, correct?

20 A Correct.

21 Q Let me ask you, in these bank records, Exhibit 16, 17, 18,
22 19, 30, did you see any checks to Osvaine Duarte -- to
23 Osvaine Duarte?

24 A I saw no checks payable to Osvaine Duarte.

25 Q Did you see any checks to Ruebens Amaral?

1 A I did not see any checks to Ruebens Amaral.

2 Q Did you see any checks to Lider Mundanca?

3 A I did not see any checks to Lider Mundanca.

4 Q Did you -- okay. From any of these accounts, correct?

5 A Correct.

6 Q Did you see checks from Osvaine Duarte to the defendant?

7 A Yes.

8 Q And were these in the Citibank account?

9 A Yes.

10 Q Okay. So I'm going to run some of the checks that you
11 identified as payable from Mr. Duarte to the defendant. So the
12 first one we are looking at is Citi 329. I forget which
13 exhibit Citi is so let me figure that out.

14 Okay. So Citi is composite Exhibit 18. And so from
15 composite Exhibit 18, we are looking at Citi 329 --

16 A Correct.

17 Q -- Bates labeled on the bottom?

18 Okay. So what are we looking at here?

19 A This is a check that was from Osvaine Duarte, which is a
20 Bank of America account.

21 Q It's Mr. Duarte's Bank of America account?

22 A Correct. It's a bank account in the name of
23 Osvaine Duarte and another individual whose names appear at the
24 top left-hand corner of the check. It has their address and
25 then it's paid to the order of Brazil Express. The check is

1 dated July the 22nd of 2008. It's payable in the amount of
2 \$138, and on the memo line it references shipping.

3 Q And deposited into the defendant's Brazil Express Citibank
4 account?

5 A Correct.

6 Q Next we have Citi 334. Is this another check, check
7 No. 620, dated 7/30/08 payable to Brazil Express in the amount
8 of \$180 from Mr. Duarte and his other person's Bank of America
9 checking account?

10 A Yes. With, again, a reference to shipping.

11 Q Yes, that was going to be my next question. The reference
12 to shipping is on the memo line, correct?

13 A Yep.

14 Q And there's the defendant's signature on the back of the
15 check, correct?

16 A Correct.

17 Q Next we have Citi 349. This is another check from
18 Mr. Duarte to Brasil Express dated 8/12/08 in the amount of
19 \$428?

20 A It is.

21 Q And what's it for?

22 A Shipping.

23 Q Is the defendant's signature on the back of the check?

24 A Yes.

25 Q And this is Citi 364, again from the Citibank records.

1 What is this, Special Agent Van Brunt?

2 A This is a check also from Duarte. The check is dated
3 August the 20th, 2008, pay to the order of Brazil Express in
4 the amount of \$270 with a memo line referencing shipping.

5 Q With the defendant's signature on the back, correct?

6 A Correct.

7 Q Next, this is Citi 367. What are we looking at here?

8 A This is another check from Mr. Duarte dated August the
9 21st, 2008, pay to the order of Brazil Express in the amount of
10 \$347 referencing shipping.

11 Q With the defendant's signature on the back?

12 A Correct.

13 Q Next is Citi 369. What are we looking at here?

14 A This is a check from Duarte payable to Brazil Express
15 dated August the 25th, 2008, in the amount of \$120 with the
16 memo line referencing shipping.

17 Q With the defendant's signature on the back?

18 A Correct?

19 Q Here is Citi 379?

20 A Correct.

21 Q What are we looking at?

22 A A check from Duarte dated September the 2nd, 2008, payable
23 to Brazil Express in the amount of \$338 with the memo line
24 referencing shipping.

25 Q And here we have Citi 386?

1 A Another check from Duarte dated September the 4th, 2008,
2 pay to the order Brazil Express in the amount of \$427, memo
3 line referencing shipping.

4 Q Here is Citi 390?

5 A Another check from Duarte dated September the 8th, 2008,
6 pay to the order of Brazil Express in the amount of \$445, the
7 memo line referencing shipping.

8 Q And lastly, Citi 396?

9 A This is another check from Duarte dated September the
10 10th, 2008, pay to the order of Brazil Express in the amount of
11 \$495, the memo line referencing shipping.

12 Q So that's Mr. Duarte. Let me talk to you about
13 Lider Mundanca. Based on your investigation, approximately
14 when was the first time that the defendant tried to blame this
15 entity for the fraudulent shipping labels?

16 A Based on the investigation, it looks like he has been
17 blaming Lider since at least the fall or early winter of 2007.

18 Q And did he try to blame Lider Mundanca again on May 15th,
19 2009?

20 A Yes. In the recorded phone call with Fred Kennicutt,
21 Mr. Scotton tried to blame Ruebens Amaral and a company named
22 Lider Mundanca for having sent the packages that had been
23 seized.

24 Q And did he try to blame Lider Mundanca again during your
25 undercover interview with him in August of 2011?

1 A Yes, he did.

2 MS. MITRANI: Your Honor, can I have a minute? I have
3 to ask Mr. Frank something.

4 THE COURT: Yes.

5 BY MS. MITRANI:

6 Q Okay. Government's Exhibit 13A and 13E, I have to check
7 and make sure I have it right. There are a lot of exhibits, I
8 don't want to get this wrong.

9 Yes, 13A and 13E are the FedEx calls -- 14A? 14A and 14E,
10 so I had it right on my outline. 14A and 14E are the FedEx
11 calls that were admitted into evidence. We have heard them a
12 couple times throughout the course of this trial, correct?

13 A Correct.

14 Q And have you listened to those FedEx recordings, to the
15 whole thing?

16 A Yes. I have listened to the recordings many times
17 including during the investigation as we were preparing to move
18 the case forward and preparing for trial, as well as during the
19 trial.

20 Q And I'm going to play you a very small clip of them, very
21 small because we have heard them, in just a minute. But
22 approximately how long did your undercover meeting with the
23 defendant last back in August 2011?

24 A I believe the total time of the recording was almost two
25 hours. But there was --

1 Q Well, let me rephrase that. Yeah, I'm sorry, that was a
2 poor question. Approximately how long did you spend speaking
3 to the defendant, because we know there was a little bit of
4 walking time --

5 A Right.

6 Q -- before and after?

7 A I want to say my meeting with him was probably around an
8 hour and a half or so.

9 Q And how about when you arrested the defendant, how much
10 time did you spend speaking to him throughout the day, both at
11 the time in the streets in Pompano, as well as booking, as well
12 as the interview?

13 A Sure. We arrested Mr. Scotton around 9:30 in the morning
14 and I was essentially with him the entire time until we dropped
15 him off at the holding facility, and I believe we dropped him
16 off around 2:00. So basically from 9:30 in the morning until
17 2:00, I was literally with him the entire morning and speaking
18 to him both about what the process was, explaining to him that
19 he would be in court, that there would be an initial
20 appearance, that we were going to go to the FBI. We spoke
21 about arranging for his car to be picked up.

22 Q Right, the stuff that you testified to this morning?

23 A Right. All those things that we discussed back and forth.

24 Q Okay. And do you feel like you got a good sense of the
25 defendant's voice throughout those interactions?

1 A Absolutely.

2 Q Okay. So let me play -- let me just play very small
3 snippets from 14A and E. And we will start with 13A -- 14A,
4 14A, 1-4-A, Impulse Energy Drink.

5 (Thereupon, the audiotape was played.)

6 BY MS. MITRANI:

7 Q And do you recognize the voice there?

8 A Yes.

9 Q Who is it?

10 A Roger Scotton.

11 Q Next will be Global Money Remittance, 14A.

12 (Thereupon, the audiotape was played.)

13 BY MS. MITRANI:

14 Q All right. And, again, we are playing very small
15 snippets, but have you listened to this in its entirety?

16 A I have.

17 Q And who is the person purporting to Mr. Robert Santos?

18 A The defendant Roger Scotton.

19 Q Next will be Walmart.

20 (Thereupon, the audiotape was played.)

21 BY MS. MITRANI:

22 Q And did you recognize the person purporting to be
23 Steven Duke on this phone call?

24 A Yes.

25 Q Who is that?

1 A The defendant Roger Scotton.

2 Q I think we have one more, which is Target.

3 (Thereupon, the audiotape was played.)

4 BY MS. MITRANI:

5 Q And do you recognize the person purporting to be
6 Mr. Scovanner?

7 A Yes.

8 Q Who is that?

9 A Defendant Roger Scotton.

10 Q Okay. I want to go through some fax links with you. So I
11 jumped the gun before, but I'll just show it again. This is
12 Exhibit 1B showing the defendant, his phone number is
13 561-368-7347, correct?

14 A Correct.

15 Q Now we are going to go to -- from the DHL claims file, and
16 this is DHL 77. And is this Sun and Moon loss/damage claim
17 form, was it faxed to DHL on January 21st, 2008, from fax
18 number 561-368-7347?

19 A Correct.

20 Q I'm showing you DHL 115. And was this a loss and damage
21 DHL claim form for Sunshine Express faxed to DHL on
22 February 6th, '08, from that same -- I'll just use the last
23 numbers, 7347 fax number?

24 A Correct.

25 Q And it actually says Amazon as well?

1 A Correct.

2 Q DHL 99 was faxed into DHL on January 21st, 2008, with the
3 7347 number on the Sunshine Express account?

4 A Correct.

5 Q DHL 229 was faxed into DHL on -- here, let me zoom it up a
6 little bit -- in '07. It says Brasil Express and it has the
7 fax number 7347, correct?

8 A Correct.

9 Q And it says Rio Motor in handwriting there, correct?

10 A Rio Motorsport, yes.

11 Q DHL 438, and this was a fax to DHL, April 29th, 2008?

12 A Correct.

13 Q It says Amazon again on the 7347 number?

14 A Correct.

15 Q And the body of the letter -- it's a letter, correct?

16 A It is.

17 Q Addressed, it says attention Roger Scottom, P.O. Box 629,
18 Boca Raton, Florida, correct?

19 A Correct.

20 Q And DHL 439 is faxed in April 29th, 2008, on the 7347
21 number, correct?

22 A Correct.

23 Q It says Amazon?

24 A Correct.

25 Q And it's a copy of the Scotom Racing check?

1 A Correct.

2 Q And I am going to go to the FedEx claims exhibit, and this
3 is FedEx 915. And is this a fax, May 23rd, 2008, it says
4 Brasil Express on the 7347 number?

5 A Correct.

6 Q And it lists the sender's information as John Pittiman,
7 Pittiman Corporation, with an address in Coconut Creek?

8 A That's with the typewritten address, correct.

9 Q And then in handwriting, it says mail to P.O. Box 629 in
10 Boca Raton, Florida, correct?

11 A Correct.

12 Q I'm showing you FedEx 926. Is that an August 21st, 2008,
13 faxed into FedEx. It says Brasil Express USA on the top with
14 the 7347 number?

15 A Correct.

16 Q And on the sender's information, typed in it says
17 Cargo Air?

18 A Correct.

19 Q And then there's handwriting where it says Roger Scott,
20 Brazil, at 398 Southeast Mizner Boulevard?

21 A Correct.

22 Q And then some handwriting in the middle says, please send
23 any mail to P.O. Box 629?

24 A Correct.

25 Q This is a FedEx 912, and does it say the date,

1 November 3rd, 2008, from RRO at the 7347 number?

2 A Correct.

3 Q I'll make it a little easier to read. And the sender,
4 does it appear to be Scotton?

5 A Yes. The sender, the first typewritten part is Rodge,
6 R-O-D-G-E, and then handwritten is Scoten, S-C-O-T-E-N.

7 Q And then the company typewritten is Online R, correct?

8 A Correct.

9 Q At the 2234 North Federal Highway address?

10 A Correct.

11 Q And this is FedEx 930, another fax claim form. It's
12 January 15th, 2009, BE at the 7347 number?

13 A Correct.

14 Q And the contact and the company are listed as what?

15 A The contact is Paulo, the company is Paulo, the address is
16 P.O. Box 629 in Boca Raton.

17 Q And the last one I will put up, is this a fax into FedEx,
18 January 27th, 2009, saying BE with a 7347 number?

19 A Correct.

20 Q And what's the contact and company?

21 A Contact name is Paulo, company Paulo. Address, 2234 North
22 Federal Highway, 327, Boca Raton, Florida.

23 Q So it's Paulo like the one before, but the one before had
24 P.O. Box 629?

25 A Correct.

1 MS. MITRANI: Your Honor, can I have a few minutes, I
2 need to speak with Mr. Frank for a minute?

3 THE COURT: Sure. You can have a minute.

4 MS. MITRANI: No further questions.

5 THE COURT: All right. We are going to take our
6 afternoon break until 3:00 and when we return, we will have
7 cross-examination. All rise for the jury.

8 (Thereupon, the jury exited the courtroom at
9 2:53 p.m.)

10 (Thereupon, a recess was taken at 2:54 p.m.)

11 THE COURT: All righty. All rise for the jury,
12 please.

13 (Thereupon, the jury entered the courtroom at
14 3:03 p.m.)

15 THE COURT: Please be seated. Once again, Agent
16 Van Brunt, you are still under oath. Do you understand?

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: All right. Very good. Thank you.

19 Mr. Scotton, you may proceed.

20 MR. SCOTTON: Hello everyone.

21 CROSS EXAMINATION

22 BY MR. SCOTTON:

23 Q Mr. Van Brunt, you told this Court early, you have been
24 with the force, with the FBI for 11 years?

25 A Ten and a half years, 11 years in June.

1 Q Before being with the FBI have you been with another law
2 enforcement?

3 A No.

4 Q What is your background education?

5 A My education?

6 Q Yes, sir.

7 A I have a bachelor's degree in science, which I earned in
8 criminal justice. Following that I attended the University of
9 Baltimore School of Law where I graduated with my juris doctor
10 degree, took the bar exam, passed it the first time. After
11 that, I worked for a state judge in Maryland followed by a
12 federal judge in D.C. While I was working for a federal judge
13 in D.C., I attended Georgetown University Law Center where I
14 earned a master's of law degree in securities and financial
15 regulation.

16 Q During your years in work for FBI, how many cases do you
17 think you were involved in?

18 A How many cases have I been involved in as the case agent,
19 or just involved in period?

20 Q As the case one.

21 A As the case agent, 20, 25.

22 Q When did you begin to investigate this case?

23 A 2008, summer of 2008.

24 Q Summer of 2008?

25 A Summer of 2008.

1 Q Summer. Have you received a formal complaint from
2 Federal Express?

3 A Did I? No.

4 Q Did you ever receive a formal complaint from DHL?

5 A Yes. I was initially contacted by someone from DHL who
6 filed a complaint.

7 Q You have the formal complaint with you?

8 A No.

9 Q You don't have any formal complaint to show to this Court
10 that DHL called you and say, we got someone doing fraud against
11 the company?

12 A No.

13 Q What about UPS, have UPS contacted you as well?

14 A I contacted UPS.

15 Q You are the leader on this investigation?

16 A I'm sorry?

17 Q You are the leader agent on this investigation?

18 A Yes, I was the case agent assigned to the investigation.

19 Q Is there another agency involved with you?

20 A There is no other FBI agents involved in the
21 investigation, no.

22 Q During the investigation, Mr. Van Brunt, how many --
23 during the years you have been with the FBI, how many case
24 reports have you done?

25 A How many interviews?

1 Q Case reports.

2 A Case reports? I don't know what you mean by case reports,
3 sir.

4 Q The FBI run reports when doing investigation, right?

5 A I don't know what you mean by the FBI runs reports. I do
6 interviews, I write interview reports.

7 Q Did you -- after the investigation, did you have to type a
8 report?

9 A I do reports based on investigative actions. I don't
10 generate summary reports.

11 Q How many of those reports have you done in your lifetime
12 as FBI agent?

13 A If you are talking about like reports of interviews where
14 I have interviewed someone or conducted surveillance and done a
15 FD302, I would estimate that I have probably written close to a
16 thousand interview reports.

17 Q What is the form FB302 stand for?

18 A It's the form that we use to document interviews that are
19 done.

20 Q That's the one you are talking about, right?

21 A Correct.

22 Q With relationship of your reports, your FD302, did you get
23 overseen by a supervise?

24 A Yes, my squad is supervised by a supervisory special
25 agent.

1 Q Does anyone need to review those reports besides you?

2 A I'm not sure what you mean by review.

3 Q Do you have to -- is obligation to show it to a supervise
4 when you conclude it?

5 A Before the FD302 is put into the case file, it's submitted
6 to the supervisor and following the review, it would be
7 formally entered into the case file. If there was another
8 agent that participated in the interview, the other agent would
9 review the document. Once that agent and however many other
10 agents are listed on the bottom of the FD302 have reviewed it,
11 then the document would be forwarded to the supervisory special
12 agent who again would review it and it would then be placed in
13 the case file.

14 Q It is your reports accurate?

15 A Yes.

16 Q Can you explain why then so many errors on it?

17 A There could be typos if it -- depending on what time of
18 the year it is, if it's in January or February, I may have
19 subconsciously typed the number of the year previously before.
20 Are those the errors you are talking about?

21 Q So when you show those reports to your supervise, he don't
22 correct the errors, right?

23 A You would have to ask my supervisor.

24 Q Have you illegally searched my phone, Mr. Van Brunt?

25 A Have I -- I have never searched your phone, so I'm sure

1 there is no way I have done an illegal search since I have
2 never searched your phone, sir.

3 Q Have you interviewed Brazilian girl named Paloma before?

4 A I don't believe I have ever met a Brazilian woman with the
5 name of Pamola or Pamela.

6 Q Have you shown a photograph of Paloma to Carla Felini
7 before?

8 A I don't know. I have showed some photographs to
9 Ms. Felini, but I don't recall asking her if she recognized
10 someone by the name of Pamola. It's not a name I'm familiar
11 with from the investigation.

12 Q When you took the photograph from my phone from Paloma,
13 Mr. Van Brunt?

14 A I'm sorry, what was the question?

15 Q When you took the picture from Paloma out of my phone to
16 show Carla?

17 A I never took a photograph out of your phone, sir. I have
18 never even accessed your phone. The closest I got to your
19 phone is when I interviewed you and allowed you to bring your
20 phone with you into the interview room.

21 Q It's not the task of the FBI?

22 A Pardon me?

23 Q It's not the task of the FBI to convince the wife or the
24 woman that they have been cheated, been cheated on and they get
25 mad to testify against them?

1 A You are asking me if it's the task of the FBI to convince
2 someone's wife to testify against them?

3 Q Yes, sir.

4 A No, that's not the task. The task of the FBI is to
5 conduct investigations, gather evidence, and assist in any
6 ultimate prosecution that the U.S. Attorney's Office may decide
7 to bring.

8 Q And did you convince Carla Felini of such a thing by
9 showing her some pictures of me with another woman?

10 A I didn't convince Ms. Felini to do anything. I approached
11 her, identified myself, gave her the basis of why I was
12 approaching her, gave her a short summary of what had happened
13 as far as the investigation had gone and what information was
14 otherwise available from the public record, and asked if she
15 would be willing to cooperate.

16 Q Have you investigated Ms. Felini as well?

17 A No, I have not investigated Ms. Felini. I have had
18 interactions with her in the course of my investigation, but I
19 have not investigated her.

20 Q Why not? She's close to me, we open a company together.

21 A Because in the course of my investigation, there was no
22 information that led me to believe that she was involved in any
23 criminal conduct, unlike yourself.

24 Q Have you destroyed any evidence from this case before,
25 Mr. Van Brunt?

1 A No, I have not destroyed any evidence from this case.

2 Q Did you destroy Mrs. Osvaine confession letter before?

3 A I have never seen what is --

4 MS. MITRANI: Objection, Your Honor.

5 THE COURT: What's the objection?

6 MS. MITRANI: To the form of the question and the
7 basis of the question.

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q How long you know Mr. Rodrigo Olivera, Mr. Van Brunt?

11 A I met him in the course of the investigation probably a
12 few months before we did the FBI controlled purchase.

13 Q And how did you meet him?

14 A I went to his house, knocked on the door and introduced
15 myself.

16 Q It's not true he's a friend of your wife Andrea from
17 Brazil as well?

18 A I don't believe he's a friend of my wife at all.

19 Q Do you deny your wife been involved in this case?

20 MS. MITRANI: Whoa. Objection, Your Honor.

21 THE COURT: Come sidebar.

22 (Thereupon, the following was heard sidebar.)

23 THE COURT: What's the objection?

24 MS. MITRANI: He can cross-examine this agent all he
25 wants. He's not going to bring -- I think it's improper to

1 bring his wife into this case.

2 THE COURT: State your basis for asking the question
3 about his wife.

4 MR. SCOTTON: Your Honor, I'm going to have some
5 documents present here and there's a lot of people. That is
6 one of the reason I want to bring the --

7 THE COURT: Okay. State your basis for asking
8 questions about the wife.

9 MR. SCOTTON: Some of the people involved in this case
10 has this Rodrigo and his friend, his wife is involved somehow
11 with the friendship with these people. So it's conflict of
12 interest and I want to prove this conflict of interest from
13 that know his wife. There's a lot of situation here that she
14 used to date my brother before and people say this to Robert
15 Abreu.

16 THE COURT: He's saying that his brother used to date
17 Agent Van Brunt's wife. He's allowed to inquire into that area
18 if there is a reasonable basis for believing that that would be
19 an area that he could inquire into. And Agent Van Brunt can
20 testify accordingly.

21 MS. MITRANI: I understand, Your Honor. I guess we
22 will have to see the questions. You know, there is -- you
23 know, we will have to take this other matter up. There is --
24 he is treading on very sensitive areas that may lead to things
25 that perhaps he doesn't want this jury to know. We have had a

1 hearing in front of --

2 THE COURT: He can do -- if he wishes to open that
3 door --

4 MS. MITRANI: Okay.

5 THE COURT: -- then that's the chance he takes. Maybe
6 you should say it for the record what it is so he can say for
7 the record whether he wants to do that.

8 MS. MITRANI: As was put on the public record in front
9 of -- on a hearing before Judge Matthewman in December, there
10 is a separate investigation into the defendant in activities
11 concerning the agent and his wife. And, you know, if he wants
12 to inquire of this defendant -- excuse me, of this agent,
13 whether his brother ever slept with his wife, I guess we will
14 hear the questions. But I'm just fearful what path this is
15 going to go on. I also have privacy objections into what
16 extent he's going to try to go down that path.

17 THE COURT: I understand. I would have to hear the
18 questions. I can't say that it's not relevant --

19 MS. MITRANI: Okay.

20 THE COURT: -- from an impeachment standpoint.

21 MR. SCOTTON: If the government is concerned about the
22 second investigation, I'm going to bring that up too.

23 MS. MITRANI: Great.

24 THE COURT: Okay.

25 (Thereupon, the following was heard in open court.)

1 MR. SCOTTON: Your Honor, the last question then, I
2 don't -- the prosecutor has object and I don't know.

3 THE COURT: I already ruled on it, Mr. Scotton. Feel
4 free to ask your question.

5 BY MR. SCOTTON:

6 Q Have you interviewed my brother Flavio?

7 A I have never had the opportunity to interview Flavio. I
8 have only seen him at one or two pretrial hearings, but I have
9 never had the opportunity to meet him in person.

10 Q So you went, interviewed his wife, knocked at my mother's
11 house several times but you never interviewed him?

12 A Flavio was married to Claudia Scotton and I served
13 subpoenas for Claudia Scotton and for businesses that were
14 affiliated with her at her apartment. And separate from that,
15 I have served subpoenas at many places, including the 7797 Golf
16 Circle Drive, apartment 204 apartment that your mother resides
17 in.

18 Q So you never went and interviewed my brother, but you
19 mentioned that my brother has shipping some packages for
20 Mr. Rodrigo Olivera, correct?

21 A Mr. Olivera told me that he has sent a package and that
22 his recollection was that it was shipped through Flavio working
23 for a company named Brazil Express and that he had been
24 instructed to make the check payable to Claudia Scotton, P.A.
25 That was information that had been provided to DHL. And as I

1 was conducting the investigation and trying to identify a
2 Brazilian national or someone who was fluent in Portuguese to
3 assist me, I went through the records produced by DHL and
4 identified Mr. Olivera as someone who might be worth
5 approaching, so I did.

6 Q So you approached Mr. Olivera, asked him questions about
7 shipping packets. He confront with you shipping packets to my
8 brother, but you don't go to my brother and interview my
9 brother during four years investigation?

10 A Quite frankly, I have never been able to find out where
11 your brother lives. He's failed to update his driver's
12 license, the house that he lists on his driver's license was
13 foreclosed on. I went to the apartment of Ms. Claudia Scotton,
14 she said that he wasn't living there. And the times that I
15 went to your mother's house to serve subpoenas or otherwise
16 interact with someone at that residence, he never made himself
17 known to be there. So I have never had the opportunity to
18 interview him or talk to him or introduce myself.

19 Q Is there any reason why you have not talked to my brother?

20 A I can't find him.

21 Q You can't find him?

22 A Correct.

23 Q It's not a matter of fact that you went to the house and
24 he opened the door when you tried to subpoena Carlos?

25 A I have never seen your brother at the house. The only

1 times I have seen him are during some pretrial hearing motions
2 that we have had during the course of the litigation.

3 Q Is there any reason why you want to interview my brother
4 because he used to date my wife back in the days?

5 A I would like to answer that. My wife was born in Brazil
6 and lived there until she was 10 or 11. After that, she, her
7 single mom, and brother moved to the United States.
8 Ultimately, they lived in Deerfield Beach, Pompano area. She
9 lived there for many years. I started this case in 2008. In
10 2009, I was fortunate enough to meet her. We began to start
11 dating. Several years later, you were indicted and arrested.
12 At the time you were arrested, I specifically asked her if she
13 had ever met anyone named Roger Scotton or ever had any
14 interactions with any kind of company named Brazil Express or
15 Sky Air Online. She indicated that she had never heard of the
16 company and, quite frankly, she never heard of you.

17 At some point during the litigation process, I
18 specifically asked her if she had ever heard of anyone named
19 Flavio Scotton and I showed her a picture. She said she never
20 heard of that gentleman and when I showed her the picture, she
21 said she'd never seen him.

22 Q So if you have not talked to my brother, this case is
23 completely personal against me?

24 A I'm sorry, you are suggesting this case is personal
25 against you because your brother dated my wife?

1 Q No. I mean, if you haven't asked him, he's working for
2 me, right, as Rodrigo say so then this case is a personal?

3 A This case is not personal.

4 Q Did you meet Rodrigo before your marriage or after your
5 marriage?

6 A I believe I met Mr. Olivera after I started to -- after I
7 met my wife, but I think prior to my marriage beginning.

8 Q The day that you sent Mr. Rodrigo to my house, did you put
9 a recording device on him?

10 A The day I sent Mr. Olivera to your house?

11 Q Yes.

12 A I have never asked him or what we in the FBI would call
13 task him with having gone to your house.

14 Q But you know that he went to my house, right?

15 A I'm not aware of him going to your house.

16 Q You don't fill out any reports saying that he went to my
17 house?

18 A I recall there being some document that spoke about
19 whether someone name Rodrigo went to the 398 Southeast Mizner.
20 I don't recall specifically what that document was. But if you
21 showed it to me, I could refresh my recollection.

22 Q Is it not the same Rodrigo Olivera that went to my website
23 to buy the camera?

24 A I know that the Rodrigo Olivera that assisted me in my
25 investigation went to the website. But, again, if you can't

1 show me the document, I can't recall right now if he did or did
2 not go or whether that's an allegation that you have made. I'm
3 not sure.

4 Q You don't deny that you tried to trap me in this case here
5 of all this time, do you?

6 A Are you asking if I tried to entrap you?

7 Q Yes, sir.

8 A No, I did not try to entrap you. In fact, I have tried to
9 give you many opportunities to explain truthfully what
10 happened. You have declined to be honest or truthful in most
11 of those instances.

12 Q You deny putting recording device on Mr. Rodrigo, right?

13 A I did not put a recording device on Mr. Rodrigo and task
14 him to go to your house.

15 Q If there is a record device, there should be evidence too,
16 right?

17 A If there was -- I don't know how to answer that because I
18 have never tasked him to go to your 398 Southeast Mizner
19 townhouse.

20 Q So you are not legally permitted to tamper any evidence in
21 this case, are you?

22 A I'm not permitted to tamper with any evidence in any case.
23 The evidence is what the evidence is.

24 Q During this investigation, it came to your attention that
25 I was a race car driver, right?

1 A I became aware that you were involved in the car racing
2 profession, yes.

3 Q That I was not violent man, right? I'm not a terrorist in
4 any kind of way, right?

5 A There was no indication that you were involved in any
6 terrorist activity, that's correct.

7 Q It's to help the community and kids, all the good stuff,
8 right, as the record show, correct?

9 A Well, you submitted a lot of information to your U.S.
10 Citizenship and Immigration Services applications over the
11 years. But having reviewed them closely and having seen the
12 way that they were styled, it looked to me like essentially
13 they were dual purpose. Perhaps one of the purposes was to do
14 good, help the community, but it appeared to me that you were
15 using them as both an opportunity to inflate your ego and also
16 as an opportunity to justify your statute as a race car driver
17 which you felt was going to help your application for
18 immigration purposes.

19 Q Did you check with the Miami Children's Hospital to see if
20 I tried to pretend over there, spent hours and hours?

21 A I never checked. I saw photos. You were -- there's no
22 doubt you were there.

23 Q Did you check with the police, Aventura police department
24 and Miami police department if I was just pretend to be in the
25 mall all day, raise money for them?

1 A I have never contacted the Aventura police department
2 regarding you.

3 Q Was it necessary for the day they arrest me, several
4 police, FBI officers point guns on my face?

5 A At the time that you were arrested, there may have very
6 well been people who had weapons drawn. What I can tell you is
7 that you were in a car, you were in a car facing the direction
8 of myself and other agents, we wanted to make sure that you
9 knew you needed to comply and not, quite frankly, floor it and
10 run us over. So there may have very well been agents who had
11 their weapons drawn. I don't recall anyone pointing a gun in
12 your face. Quite frankly, I remember you being incredibly
13 compliant and polite. And based on that, you were handcuffed
14 rather quickly and everyone's weapons to the extent they were
15 out were holstered quickly.

16 Q So you never draw your weapon on me?

17 A Are you asking me if I had my weapon drawn on you?

18 Q Yes, sir.

19 A I may have. When I activated my lights, you were pointing
20 towards me. I exited my car door, I was directly in front of
21 you. And depending on whether you chose to press the gas pedal
22 or not, you could have run me over. So I may have very well
23 drawn my weapon at the time I exited my vehicle.

24 Q Have you tried to call me and come -- you know, to ask me
25 to come to your office for interrogation to talk to you about

1 anything at all?

2 A I've never contacted you as a special agent of the FBI,
3 no.

4 Q Do you deny that you searched my car without
5 authorization?

6 A I do deny that.

7 Q After my arrest, we went to your office. Do you have any
8 voice recorder or any video record of the interview?

9 A No, I don't.

10 Q Do you deny that after being seated for hours in your
11 office, then you give me some forms to sign?

12 A Yes, I deny that. You were not sitting for hours when we
13 went over forms and reviewed them and I asked you to sign them.

14 Q So four years' investigation that you been -- tried to
15 come after me and the day you arrest me, you don't have a video
16 or a recorder on the table to record the interview, correct?

17 A Correct. In my ten years, I have never conducted a post
18 arrest interview where I have recorded it or videotaped it,
19 correct.

20 Q It is not a normal procedure for law enforcement to record
21 interviews of suspect that has been arrested especial when
22 suspect has not counsel present?

23 A In the Federal Bureau of Investigation in Miami, in order
24 to record an interview with a subject, the approval of the
25 special agent in charge, the gentleman or woman who is

1 literally in charge of every FBI agent from north of
2 Fort Pierce down to Key West would need to be advised and they
3 would need to give their specific approval. And, again, in my
4 ten years it has never been the standard practice of neither
5 the FBI in Miami to my awareness or certainly myself to ever
6 record an interview with the subject following their arrest.

7 Q So is any time, like anything I speak in that -- on the
8 interview, that could be used against me, correct?

9 A Anything that you say in the interview can be used against
10 you, correct.

11 Q As a law enforcement, did you did not protect the rights
12 of all parties?

13 A I'm sorry, can you say that again?

14 Q Did you as a law enforcement, did you did not protect the
15 rights of all parties?

16 A Did I lie to protect the rights?

17 Q Did you protect as a law enforcement, my rights?

18 A I try to protect the rights of every person that I become
19 involved with whether they are what we would call a main
20 subject or defendant like you, or a witness or someone who
21 could possibly have criminal exposure.

22 Q It is not the truth, the injustice here that you tried
23 prosecuting me?

24 A There's no injustice here, sir. We are in trial.

25 Q This prosecution here is not because my brother used to go

1 out with Andrea, right?

2 A Again, I have asked my wife if she's ever heard of your
3 brother. I have even asked my wife if she dated you or your
4 brother. She's said she's never heard of either one of you.
5 And if you are suggesting that somehow this is personally
6 motivated based on an alleged relationship between my wife and
7 your brother would just beg the question of why you are
8 standing there and not your brother.

9 Q So you arrest me around 9:30 in the morning, correct?

10 A Yes, sir.

11 Q And you drop me off in the Broward jail at 3:00 p.m.,
12 correct?

13 A It was probably close to that, it may have been 2:45 or
14 2:30, but it was sometime midafternoon I believe.

15 Q You don't deny that you have me -- you have violated my
16 rights --

17 A I did not.

18 Q You don't deny that you have violated my rights to have a
19 lawyer present, do you?

20 A I do deny that. Your rights were not violated. I advised
21 you in Portuguese that you were allowed to have a lawyer
22 present if you decided you wanted one. You declined that
23 invitation.

24 Q You have me in your custody all day without lawyer
25 present, correct?

1 A You were in my custody from the time that we placed you
2 under arrest until the time that we turned over you to the
3 authorities at the Broward County jail where you were being
4 held until your next court appearance.

5 Q Do you have me on your custody all day without a lawyer
6 present, correct?

7 A Correct.

8 Q You don't deny that I was feeling sick during that day, do
9 you?

10 A You told me when you were first arrested that you were
11 starting to feel a little nauseas. So we opened up the minivan
12 door to give you some fresh air and I personally poured some
13 water into your mouth and asked you if you were starting to
14 feel better. You said you were. As we continued throughout
15 the day in the booking and the interview, I asked you a few
16 different times if you were doing okay, if you needed to use
17 the restroom, if you wanted something to drink. You never told
18 me once that you needed anything or required medical attention.

19 Q You don't deny that I was on medication for pain, do you?

20 A I don't recall you advising me that you were under any
21 kind of pain medication as I was completing the booking forms.

22 Q So have you immediately medicated or evaluated me after my
23 arrest?

24 A I'm sorry, I didn't understand that.

25 Q Have you immediately medicated me, evaluated my medical

1 conditions --

2 A I did not --

3 Q -- after you arrest me?

4 A I did not provide you any kind of medicine or anything
5 like that. I also did not conduct any kind of a medical
6 examination of you other than asking you if there's any
7 medications that you were prescribed that I would need to
8 advise either the U.S. marshals or the county jail about.

9 Q Do you deny that before you arrest, I was going to
10 Renata's house?

11 A You were in the neighborhood of Renata, your employee,
12 yes.

13 Q Do you deny that the reason I was going over there because
14 she was supposed to take me to my doctor?

15 A That would be contrary to what she told me.

16 Q How many times in your car sitting in the van with the
17 handcuffs behind my back, I told you that I was in pain?

18 A Zero.

19 Q Have I moved my arms back in my -- in the front of my
20 chest as I asked you to?

21 A You may have requested to have the handcuffs placed in
22 front of you. However, our safety policy and procedures
23 require that subjects be handcuffed behind them for safety
24 reasons of the agents in the car.

25 Q Have you threat my wife deportation to Cuba before?

1 A I have never -- are you talking about Ms. Reyes Mollinedo?

2 Q Yes.

3 A I have never threatened her with deportation, and my
4 understanding is that as a Cuban national, essentially she's
5 not deportable anyway.

6 Q But you don't deny the prosecutor has given her immunity,
7 right?

8 A I'm not aware of any immunity that was provided to Aylin.

9 Q Have my wife have been charged also with a sham marriage?

10 A Not to my knowledge.

11 Q Have Renata got immunity as well?

12 A I'm not aware of any immunity being offered to or extended
13 to Renata.

14 Q Have Renata been charged with any crime also, sham
15 marriage?

16 A Not that I'm aware of.

17 Q On March 15 of 2012, during the -- my arrest, we get to
18 your office and we start the book process, correct?

19 A Correct.

20 Q Followed DNA, fingerprints, all this stuff, right?

21 A Correct.

22 Q Then you put me inside a room with one table and three
23 chairs, correct?

24 A I don't recall if there were three chairs or four chairs.
25 But, yes, it was an interview room with a table and chairs.

1 Q Have I shown sign of violence?

2 A No, you had been completely compliant throughout the
3 process.

4 Q So I complied everything you asked me for, correct?

5 A At the time that you were arrested, at the time that you
6 were transported, at the time that you were booked to include
7 your photographs and fingerprinting, you were compliant and
8 polite.

9 Q You don't deny that during that process you showed me
10 several checks made out to Renata, to Aylin, or my stepfather,
11 do you?

12 A Correct, I did.

13 Q You don't deny, also, you asked me what I was doing on
14 that location when you guys stopped me, do you?

15 A I may have asked you what you were doing in that area,
16 yes.

17 Q And I told you that I was going to Renata's house,
18 correct?

19 A You told me you were looking for Renata's house.

20 Q Then we get -- then you start asking me questions,
21 correct?

22 A I'm not sure what you mean, I mean --

23 Q You asked me questions, correct?

24 A Well, we started by doing the booking forms, went over the
25 booking forms, got those taken care of.

1 Q Right.

2 A After that --

3 Q The DNA, the pictures, and everything else?

4 A Well, the DNA happened at the end of the interview.

5 Q You mentioned before that we did the photo, DNA,
6 fingerprints, but now you change your answer to later on DNA?

7 A No, I didn't change my answer. What I said earlier was
8 that the booking process includes fingerprinting, photographs,
9 and DNA collections. The DNA collections, if I remember
10 correctly, happened near the end of this interview. But in the
11 course of the booking, I also advised you of what we call the
12 consular notification which is certain countries depending on
13 treatise with the United States have either mandatory or
14 elective notification procedures.

15 I checked prior to your arrest, Brazil is a country that
16 has what's called permissive notifications, which means the
17 individual who is arrested if they would like can have their --
18 the Brazilian consulate or embassy contacted. The FBI and
19 Department of Justice would provide the consulate with your
20 name and the basic information on what you were charged with,
21 as well as you're physically being retained. And I explained
22 to you that the benefit of that is that the Consular Affairs
23 Office might be able to coordinate or advise your family
24 outside the country and they might also be able to assist with
25 either obtaining legal representation or possibly even visiting

1 you to the extent that you were being detained that night or
2 pending your next court appearance. I asked you if you would
3 like for me to make the consular notification and you told me
4 that you would not like for me to contact the consular's
5 office. So I did not.

6 Q You deny that I have my left hand, arm -- my left arm
7 handcuffed to the wall on a bar on the wall?

8 A Correct. Your left hand remained handcuffed during the
9 interview. One handcuff was on your left wrist, the other
10 handcuff was attached to a safety bar on the wall.

11 Q At the Broward County jail, do you recall that I asked to
12 leave all my property over there?

13 A Well, when I dropped you off, the only property that you
14 maintained was the clothes that you were wearing. When I
15 picked you up the next morning, my recollection is you had a
16 small brown paper bag which contained I believe a belt and a
17 pair of shoes that the Broward County jail officials had given
18 you and/or required me to take as I was the federal agent who
19 was taking them out of their custody and transporting you to
20 the courthouse for your initial appearance.

21 Q Do you remember I asked to leave all my personal
22 belongings and property in the Broward County jail, do you
23 remember that?

24 A No, you did not.

25 Q You don't deny you told me things get lost, that you

1 better go ahead and take with you?

2 A I believe what I told you when things get lost was when I
3 was dropping you off the day you were arrested, I told you and
4 you knew that I had been in contact with Carlos Colon, who I
5 had brought up to the speed on the nature of the proceedings
6 and the timetable of what we were looking at and the fact that
7 because you arrest happened midmorning, the cutoff that's
8 required to drop of a defendant in order to make their initial
9 appearance had already passed. Therefore, there was not going
10 to be any court proceedings that you would be able to attend
11 that afternoon. I called Carlos and I told him that because,
12 quite frankly, I didn't want him to have to take off from work,
13 drive all the way down to the courthouse for you not to even be
14 on the docket.

15 When I went to drop you off, I told you if you wanted, I
16 could take the property that you still had and if you wanted, I
17 would drive all the way up to Margate to return it to Mr. Colon
18 to save him the trip of having to drive all the way down to
19 North Miami Beach to get it from the FBI office. You told me
20 that if I could do that, you would appreciate it. I took the
21 specific items that you still had with you. And at the end of
22 my day, I drove all the way up to Margate and gave all of your
23 property back to Mr. Colon and he signed the property receipt.

24 Q So despite my wish, you never left my personal property on
25 the Broward County jail, correct?

1 A You never asked me to leave it with the Broward County
2 jail, you asked me to return it to Carlos Colon.

3 Q Back in the interview room, was there any camera in the
4 interview room?

5 A There's no cameras in the interview room.

6 Q What language was the interview?

7 A English.

8 Q Did you give my rights in English?

9 A No.

10 Q If the interview is English, why you give my rights in
11 Portuguese?

12 A I wanted to make sure that you were a hundred percent
13 clear on what your rights were, so I provided you with the
14 advice of rights forms in Portuguese. I had you read each one
15 out loud in English so that I could confirm that you were
16 appropriately stating the rights that you were being afforded,
17 and then I specifically asked if you were willing to proceed
18 with the interview after each question. After each question,
19 you indicated that you did understand the right that you had
20 and you did, in fact, wish to proceed with the interview.

21 Q So you have this investigation for four years,
22 Mr. Van Brunt?

23 A Correct.

24 Q You spent a lot of time, videotapes, but during the
25 interview, you don't have a 99 cents recorder to record the

1 interview, correct?

2 A We don't record our interviews in the FBI in Miami.

3 Q So you don't deny that you have told me to sign two forms,
4 correct?

5 A There were two forms that we reviewed prior to your
6 interview beginning. The first form was the advice of rights
7 forms, which I have already spoken about twice now. The other
8 form that we went over and that you signed was the consent to
9 search of your vehicle. You had previously given me verbal
10 consent at the location where you were arrested. And at the
11 time that you gave the verbal consent, I told you when we went
12 back to the office and began the booking process, I was going
13 to provide you with a written consent and go over it with you.

14 I provided you with a written consent, identified what it
15 was that we had searched, asked if you still agreed that you
16 had given me your consent. You indicated that you had. You
17 then signed it, and myself and the other agent who was in the
18 room then witnessed it.

19 Q It's not the truth you give me two forms, one in English
20 and in Portuguese --

21 A Correct.

22 Q -- saying that my car has been returned to my step dad?

23 A No, the form --

24 Q And the other Portuguese says -- was my rights?

25 A The form that was in Portuguese were what we refer to as

1 your Miranda rights. The second form that you were given was
2 called the consent to search form. That form was in English,
3 and that simply documented that you had given consent to have
4 your vehicle searched. It did not document that your car or
5 any property had been returned to Carlos Colon.

6 Q Do you deny that when you went, you see Claudia Scotton,
7 do you deny that you told her that one way or one another, you
8 are going to find me guilty and get me deported out of this
9 country?

10 A I deny that.

11 Q Have you investigated Osvaine Duarte?

12 A I have investigated this case and reviewed the bank
13 records and other documents, and to the extent that his name
14 has come up, it seems clear to me that he's a customer of
15 yours.

16 Q Have you called him?

17 A I can't find a phone number for him. I asked you for his
18 phone number and you said you didn't have it.

19 Q Mr. Van Brunt, you are the FBI, you can find things, don't
20 you think so?

21 A There's a limit on what we can do to find people,
22 especially if they have left the United States. Our
23 jurisdiction only extends to where the United States government
24 has jurisdiction. To the extent that any individual is in
25 another country, it would actually be illegal for me to conduct

1 any investigative activity there.

2 Q You investigation of this case since 2008, correct?

3 A The case was opened in 2008, correct.

4 Q You show checks here of Osvaine Duarte here in 2008, 2009,
5 2010, so he's not out of the country, correct?

6 A Well, the first time I ever heard you try to blame
7 Mr. Duarte was on the day that you were arrested. Prior to
8 that, his name had never come up in the investigation.

9 Q Mr. Van Brunt, before blame anybody for anything here, it
10 is not your thing to do investigation if you see checks come to
11 account for Mr. Duarte and a lot of packages got picked up at
12 his address, you should have gone ahead and investigated him
13 too, right?

14 A Well, what I saw were checks from Mr. Duarte that were
15 deposited into accounts that either you owned and/or
16 controlled. Many of the checks that we just saw reference the
17 fact that they were for shipping. I would also point out that
18 there are many, many other checks from Mr. Duarte that do not
19 reference the word shipping in the Citibank accounts. And,
20 quite frankly, there are thousands of checks that were
21 deposited into accounts linked to you, most of which appear to
22 be from customers either paying for products or shipping
23 services.

24 Q You saw many packages from Osvaine Duarte location, you
25 never investigated him, correct?

1 A I investigated where the investigation went. The
2 investigation consistently returned to you and your companies.

3 Q My question is that with all the packages that left his
4 address, you never investigated Duarte, correct?

5 A You are asking me --

6 MR. SCOTTON: Your Honor, can you please direct the
7 agent to yes or no. It's a yes or no question.

8 THE COURT: No, sorry, he's answering the question
9 that you asked.

10 THE WITNESS: So, again, I conducted the
11 investigation. The evidence takes the investigation where the
12 evidence goes. Prior to the day that you were arrested and
13 blamed Mr. Duarte for your problems, all I knew about Duarte
14 was that he was one of many, many different customers who had
15 paid you and/or your companies for packages or freight
16 services. I did not investigate Mr. Duarte just like I did not
17 investigate all the other customers of yours who purchased
18 goods or services through your company.

19 Q So you don't investigate Duarte because he don't have a
20 brother that dates somebody else's wife, right?

21 A I'm sorry, I didn't understand that question at all.

22 Q You get to the office, you get to the whole interview, you
23 go to the fingerprints, you give me some forms to sign. Why
24 give me one form in Portuguese and one in English, what is the
25 reason for that?

1 MS. MITRANI: Objection, asked and answered.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q If the interview is English, did you make sure I
5 understand English?

6 A I was confident that you understood English because I had
7 previously met and spoken with you for an hour, hour and a half
8 in the course of my interactions as the DHL employee. And I
9 was also confident that you understood English in the course of
10 the conversations we had leading up from the time you were
11 arrested to our arrival at the FBI office in North Miami Beach.

12 Q You don't deny that you violated my Miranda rights, do
13 you?

14 A At do deny that. I did not violate your Miranda rights.
15 You were advised of your rights in writing in your native
16 Portuguese, you were required to state those rights to me in
17 English, and then I gave you the opportunity to ask any
18 follow-up questions you had. After each question that you
19 repeated to me in English as one of your rights, I asked you if
20 you understood that and were willing to continue. You said
21 yes. Based on your responses, I continued the interview.

22 Q Mr. Van Brunt, have you lied to this Court, to this Judge
23 in anything about this case?

24 A No.

25 Q So sitting in your office and after several questions,

1 several hours, my cell phone ring, correct?

2 A Your cell phone rang several times, yes.

3 Q And it was the law firm that was calling to say they
4 represented me now, correct?

5 A Well, the first time it rang it was your mother calling.

6 Q Do you have the phone record to show to the Court, my mom
7 called that day?

8 A No, but I have a clear recollection that your phone rang,
9 the caller ID indicated that it was your mother. You asked me
10 if it would be okay to take the phone call. I told you it
11 would be okay to take the phone call and that if you wanted to,
12 you could even talk in Portuguese because I figured that was
13 your most natural language in speaking with your mother. You
14 picked up the phone. You both had -- there was a conversation
15 that happened. After three or five minutes, you ended the
16 phone call and we continued the interview.

17 Q From that point the lawyer has called, the interview has
18 been stopped, correct?

19 A Later on in the interview, maybe 1:15, 1:30, a phone call
20 came in again from a phone number that I don't believe had any
21 kind of a caller ID on it or came up as one of your contacts.
22 You asked if you were going to be allowed to take the call or
23 could take the call. I told you it was okay to take the call,
24 but I requested you put it on speaker phone. You put it on
25 speaker phone, and my recollection is that a secretary from a

1 law firm or a secretary from the law offices of an attorney
2 named John Howe, H-O-W-E, was on the phone. And I notified her
3 who I was and that the phone was on speaker and that I was
4 there with you. And she told me that her employer, attorney
5 John Howe, had been contacted by the family in an effort to
6 gain his representation of you.

7 I told her that at that point, that was no problem, we
8 would be concluding the interview and that we would essentially
9 be finishing up the interview, taking the DNA collection, then
10 transporting you. And I told her to have Mr. Howe contact me
11 if he had follow-up questions.

12 At that point, the interview essentially ended and we
13 began the DNA collection which would consist of swabs of your
14 saliva from your mouth, as well as fingerprints being placed on
15 those DNA swabs for identification purposes. After that, you
16 were offered the opportunity to use the restroom and ultimately
17 you were transported to the Broward County jail.

18 Q So the interview has been stopped, then you give me the
19 forms to sign, correct?

20 A Wrong.

21 Q Correct?

22 A Incorrect.

23 Q So explain to me how did I sign the forms then?

24 MS. MITRANI: Objection, Your Honor, asked and
25 answered.

1 THE COURT: Sustained.

2 BY MR. SCOTTON:

3 Q When did I sign those forms, Mr. Van Brunt?

4 A My recollection is you signed the advice of rights form at
5 11:05 a.m.

6 Q Was it not the true after the phone call and now I have a
7 legal representative, you make me sign those forms?

8 A That is not true.

9 Q No? How did I sign the form when I have my left hand --
10 arm handcuffed to the wall?

11 A Because I was trying to be polite and courteous to you, I
12 had actually gotten a second set of handcuffs and handcuffed
13 those to the security bar. So instead of just having one
14 linked to your left hand you had two links because I knew that
15 in part you were left handed. I also knew that you needed to
16 sign the advice of rights form. Also, by allowing the second
17 handcuff to be there, you could actually rest your hand on the
18 table instead of having it stuck dangling from the wall. So
19 that's how you were able to sign the form after I gave you a
20 blue pen to sign.

21 Q You don't have any interview on video or any record that
22 can prove all that, right?

23 MS. MITRANI: Objection, asked and answered.

24 THE COURT: Sustained.

25

1 BY MR. SCOTTON:

2 Q Do you have like any video you can provide to the Court
3 and prove what --

4 MS. MITRANI: Objection, asked and answered.

5 THE COURT: Sustained.

6 BY MR. SCOTTON:

7 Q Do you have a video or recorder --

8 MS. MITRANI: Objection, answered and answered.

9 THE COURT: Sustained.

10 BY MR. SCOTTON:

11 Q -- from the interview?

12 THE COURT: Mr. Scotton, can you please move on to a
13 new subject. This has been asked several times.

14 BY MR. SCOTTON:

15 Q So you don't need any video when you recording because
16 you're the FBI, right?

17 MS. MITRANI: Objection, asked and answered.

18 THE COURT: Sustained.

19 BY MR. SCOTTON:

20 Q Let me get this straight here, Mr. Van Brunt. The
21 government here spend the money here and translator for two
22 people that speak fluent English, but you cannot have a type of
23 recorder there?

24 MS. MITRANI: Objection, asked and answered.

25 THE COURT: All right. Mr. Scotton, if you have other

1 questions, we will be happy to hear them now. Otherwise, you
2 will need to sit down.

3 BY MR. SCOTTON:

4 Q You deny such interview was important to be recorded?

5 A I'm sorry, I don't understand the question. Could you
6 restate it?

7 Q Do you deny that such interview should have been recorded?

8 A I do deny that the interview should have been recorded
9 because it's not our standard program, nor did I have the
10 approval of the special agent in charge which would have
11 authorized me to do it, along with our legal counsel of the
12 FBI. So in light of the fact that I didn't have the approvals
13 of the authorities to do it, to actually record it would have
14 been a violation of our rules and policies.

15 Q Your report say that after this, after the interview, the
16 report say that we took DNA, then you begin to take me back to
17 the jail, correct?

18 MS. MITRANI: Objection, asked and answered. We have
19 covered this territory.

20 THE COURT: Sustained.

21 BY MR. SCOTTON:

22 Q So after interview, what is next?

23 MS. MITRANI: Asked and answered.

24 THE COURT: Sustained.

25

1 BY MR. SCOTTON:

2 Q Did you lie in your report, Mr. Van Brunt?

3 A Did I lie in my report regarding the interview of you?

4 Q Did you lie in your report, Mr. Van Brunt.

5 A I have never lied in any of the interview reports, but the
6 fact that you refuse to specify which one you are suggesting,
7 confuses me.

8 Q How many times you took my DNA, Mr. Van Brunt?

9 A The DNA collection process requires that your mouth be
10 swabbed twice. And then each DNA swab has, I believe, your
11 index finger, fingerprinted to it. It's secured in an
12 envelope, both of those envelopes are placed into a collection
13 envelope which is then sent to some predetermined address that
14 the FBI has preaddressed on the envelope.

15 Q Have you give my rights on not giving you a DNA?

16 MS. MITRANI: Objection, Your Honor, asked and
17 answered.

18 THE COURT: Sustained.

19 BY MR. SCOTTON:

20 Q Do I receive my rights?

21 MS. MITRANI: Objection, asked and answered.

22 THE COURT: Sustained.

23 MR. SCOTTON: Am I going to be able to ask as many
24 questions or not, Your Honor?

25 THE COURT: Mr. Scotton, you can ask questions that

1 you haven't already asked.

2 BY MR. SCOTTON:

3 Q On August 30, 2011 -- August 31st, 2011, do you deny you
4 told me you were sitting in the next room watching my
5 interview?

6 A On August the 31st of 2011 when you were interviewed at
7 the U.S. Citizenship and Immigration Services in Oakland Park,
8 I was not in the building, never mind the next room.

9 Q So you deny never told me that you were next -- sitting in
10 the next room during the interview, correct?

11 A I deny that I ever told you that. I may have told you
12 that I've seen the videotape, but I was not -- I have never
13 told you that I was in the room next door.

14 Q You deny interviewing my case from 2008 until now?

15 A I don't understand that question.

16 Q Do you deny interviewing my immigration cases from 2008
17 until now?

18 A I don't understand what you mean by interviewing your
19 immigration case.

20 Q Interview, get involved in all my immigration cases.

21 A I was aware that you were applying for an adjustment of
22 your status.

23 Q Did you deny that in 2010, you called Immigration, told
24 them to put my work authorization on hold?

25 A I do deny that.

1 Q Do you recall the name of the immigration judge that has
2 approved my authorization on November 2010?

3 A I don't recall the name of any immigration judge that's
4 ever ruled on any matters relating to your immigration.

5 Q The day you arrest me, you went to my mother's house on
6 the nighttime, correct?

7 A Yes. On the day that you were arrested, I travel up to
8 7797 Golf Circle Drive in Margate and made arrangements to meet
9 Carlos Colon in the parking lot.

10 Q Why you went over there for?

11 A As a courtesy to return your property and save Mr. Colon
12 from having to drive all the way down to North Miami Beach to
13 retrieve the property that was being returned.

14 Q You deny you told Mr. Colon that it would be easier for
15 the whole family if I pled guilty?

16 A I do deny that. What I told Mr. Colon is that trials are
17 a stressful experience for everyone involved, including the
18 family of the defendant.

19 Q Any particular reason why you went to my house to bring
20 all my stuff, Mr. Van Brunt?

21 A I was trying to be nice.

22 Q Is that your way to intimidate a witness?

23 A I don't try to intimidate witnesses and I don't know if
24 being nice would be a successful way to intimidate someone.

25 Q So every single person who get arrest, Mr. Van Brunt, and

1 the family come there to pick it up, their stuff, but I'm
2 special, I get the FBI deliver, that's correct?

3 A I don't make those accommodations for everyone. To the
4 extent that I can, I do. There have been other people that I
5 have gone out of my way to return property to or make
6 arrangements to return property to their lawyers at their
7 client's request. Sometimes the logistics of it prevent it
8 from happening. I can also tell you that in most instances, if
9 we retain property and it's not returned essentially within
10 24 hours, we would then have to actually log it in as evidence,
11 then it would be stored somewhere. Then, essentially, myself
12 or another agent would need to be contacted and an appointment
13 time arranged for that evidence to be retrieved. The evidence
14 would need to be retrieved during normal business hours.

15 I was aware from both my investigation and my personal
16 conversations with Carlos Colon, both prior to his picking up
17 the car as well as the update call that I gave him during your
18 interview that he worked a regular job, meaning typically
19 Monday to Friday, 9:00 to 5:00, and that I knew would most
20 likely require him to take time off from work in order to come
21 retrieve your property.

22 Q On a hearing March 29, 2012, during the cross-examination,
23 do you recall that hearing?

24 A I recall a hearing, yes.

25 Q Do you recall you told Mr. Friedmain that you talked to my

1 wife and she said that we are separate?

2 A Prior to the hearing, I had gone down and knocked on the
3 door of Ms. Aylin Reyes Mollinedo and in the course of speaking
4 with her through her landlord, who essentially acted as an
5 impromptu interpreter, she told me that you guys were no longer
6 living together, that she no longer loves you, and that if she
7 had the money she would divorce you.

8 THE COURT: All right. We are going to break for
9 today and we will return tomorrow at 9:00 in the morning. I
10 hope you all have a wonderful evening. Please remember my
11 instructions, don't discuss the case with anyone, don't
12 disperse any information about the case, and don't do any
13 independent investigation into the case. We will see you all
14 tomorrow at 9:00 in the morning. All rise for the jury.

15 (Thereupon, the jury exited the courtroom at
16 4:01 p.m.)

17 THE COURT: All righty. Mr. Scotton, please be ready
18 to present your witnesses tomorrow when the government
19 concludes its case. Is there anything else we need to address
20 before we end for the day?

21 MS. MITRANI: Your Honor, I have provided the Court
22 and the defendant with a redline version of the indictment,
23 second superseding indictment. I would like to know if that's
24 acceptable.

25 THE COURT: Is there any objection?

1 MR. SCOTTON: I don't get that, Your Honor.

2 MS. MITRANI: I handed it to him this morning. I'll
3 give him another copy.

4 MR. SCOTTON: No, I said I don't understand all of
5 what she's talking. I got the indictment here, I just was
6 trying to understand here because I was not concentrating on
7 what she was saying.

8 THE COURT: Mr. Scotton, the government provided you
9 with a copy of the second superseding indictment in which it
10 changed the spelling of --

11 MS. MITRANI: Trufino to Triunfo.

12 THE COURT: Right. So do you have any objections?

13 MR. SCOTTON: Too late in the game, right, Your Honor,
14 for that?

15 THE COURT: Do you have any objections?

16 MR. SCOTTON: Yes, Your Honor, I have.

17 THE COURT: What are your objections?

18 MR. SCOTTON: Well, then we got a problem here. They
19 keep changing the case here right in the middle of the trial.

20 THE COURT: All right. The objections are overruled.
21 I previously did rule on this and Mr. Scotton did not object at
22 that time to amending the indictment to correct it for a
23 scrivener's error. The proposed version of the government does
24 nothing more than what the government said that it would do
25 when Mr. Scotton did not object, so the objection is overruled.

1 Anything else we need to address tonight?

2 MS. MITRANI: Nothing from the government.

3 THE COURT: All right. Thank you.

4 MR. SCOTTON: Your Honor, can I have two minutes?

5 THE COURT: For what?

6 MR. SCOTTON: As we addressed the subpoena thing on
7 Friday, we agree with some things -- some change of the names
8 and I guess there's some kind of confusion. I wanted to go
9 over it with the Court.

10 THE COURT: I'm sorry, but I have already addressed
11 everything I am going to address on the subpoenas. I have had
12 numerous hearings about the subpoenas. I have authorized
13 numerous subpoenas to be issued. There's nothing new that
14 arose today that should have required you to have thought of
15 any new witnesses. And, no, I'm not going to address it.

16 MR. SCOTTON: It's not --

17 THE COURT: Anything further that we need to --

18 MR. SCOTTON: Your Honor, it's not a new witness. We
19 agree on some things, change of names, Your Honor.

20 THE COURT: I'm sorry, Mr. Scotton, I'm not going to
21 address it. Anything further? All right. Thank you. We will
22 be in recess.

23 MS. MITRANI: Thank you, Your Honor.

24 (Thereupon, the trial adjourned at 4:03 p.m.)

25 - - -

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

7/22/14

s/ Tammy Nestor
Tammy Nestor, RMR
Official Court Reporter
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,
Plaintiff(s),
vs.
ROGERIO CHAVES SCOTTON,
Defendant(s).

Fort Lauderdale, Florida
February 19, 2014

JURY TRIAL
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): Bertha Mitrani, Esquire
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FOR THE DEFENDANT(S): Rogerio Scotton, Pro Se

STANDY COUNSEL: Jason Kreiss, Esquire
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1 Thereupon,
2 the following proceedings began at 8:59 a.m.:

3 THE COURT: Just so you all know, one of the jurors
4 called in and her car broke down or something. She hopes to be
5 here by 9:30. I'm going to do a little bit of work and we will
6 start up when she gets here.

7 (Thereupon, a recess was taken at 9:00 a.m.)

8 THE COURT: I understand there's an issue.

9 MS. MITRANI: Yes, Your Honor, the Court ordered the
10 defendant to produce a witness list at 9:00 this morning. I've
11 asked and I haven't gotten anything and I'm not sure what the
12 status of that is.

13 THE COURT: Mr. Scotton?

14 MR. SCOTTON: Your Honor, good morning.

15 THE COURT: Good morning.

16 MR. SCOTTON: As I understand from Nina, she tried to
17 put everything together. She said some subpoenas need to be
18 served still and they have not confirmation there so...

19 THE COURT: You still need to put together a list of
20 witnesses. If a subpoena was authorized, whether or not it's
21 been served, if you think it might be served, put the person on
22 the list and turn it over to the government. You have some
23 time now so let's go ahead and do that. And before we start
24 up, I will expect you to turn it over. Do you understand?

25 MR. SCOTTON: Yes, Your Honor. I am waiting for Jason

1 and Martinez to come back because they are the one who has
2 list. I don't have anything.

3 THE COURT: Mr. Scotton, the Court as a courtesy
4 provided you with the services of an investigator and a standby
5 attorney. I will not allow you to use them as an excuse and to
6 blame them for things that you are required to do. It is your
7 responsibility to prepare the list and I expect it to be turned
8 over before we start. We will be in recess until we start.

9 MS. MITRANI: Thank you, Your Honor.

10 (Thereupon, a recess was taken at 9:06 a.m.)

11 THE COURT: All righty. I understand that our juror
12 is here so we are going to go ahead and get started. All rise
13 for the jury, please.

14 (Thereupon, the jury entered the courtroom at
15 9:25 a.m.)

16 THE COURT: Good morning, everybody. Please be
17 seated. It glad to see everybody was able to make it here.
18 I'm sorry, I heard one of you had car trouble. I'm glad to
19 hear it was able to be resolved. All righty. Let me just ask,
20 is there anybody here who has discussed case with anyone,
21 disbursed any information about the case, or done any research
22 into the case? If so, please raise your hand for me now.

23 I see no hands. That's fantastic. And we are going
24 to pick up where we left off. Agent, you are still under oath.
25 Do you understand?

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: Very good. Mr. Scotton, whenever you are
3 ready, you may continue.

4 MR. SCOTTON: Good morning, everybody.

5 CROSS EXAMINATION (resumed)

6 BY MR. SCOTTON:

7 Q Yesterday I asked several questions. I'm going to go with
8 you here quick that I can kind of put myself together.

9 You say that you met Rodrigo Olivera because he sent
10 packages through DHL, correct?

11 A Correct.

12 Q You say yesterday also that you have never investigated
13 Carla Felini, correct?

14 A Correct.

15 Q If you have not investigated Carla Felini, have you
16 intimidated Carla Felini?

17 A I don't believe I have ever intimidated Carla Felini, no.

18 Q Yesterday I asked you if you ever call Osvaine. You say,
19 no, I never call Osvaine because I don't have his number,
20 correct?

21 A That's correct.

22 Q But you don't deny that some of the checks that you
23 presented here yesterday has Mr. Osvaine address and phone
24 number, correct?

25 A That's correct. The checks that were presented yesterday

1 in court did have the name of Mr. Duarte as well as an address
2 in Georgia and a phone number.

3 Q And you started investigating this case in summer of 2008,
4 correct?

5 A Correct.

6 Q And you couldn't call Osvaine at that time, correct?

7 A I was not familiar with the name of Mr. Duarte until the
8 time that you told me in your post arrest interview that he was
9 the person who was responsible. Before that time, it was not a
10 name that I was particularly familiar with. So I had no reason
11 to call it during the investigation.

12 Q So the FBI investigate this case and you see his name and
13 his number popping up everywhere in every single paper and you
14 never investigate him, correct?

15 A I reviewed your banks records and there are names of
16 hundreds if not thousands of check that have the names of
17 people who are you customers. And those customers indicated
18 that they provided you with money for shipping or for boxes to
19 be sent to Brazil. So in light of the fact that I considered
20 them to be your customers, I didn't contact all those people.

21 Q As part of the investigation, right?

22 A I did not contact your customers as part of the
23 investigation.

24 Q You say Osvaine was my customer?

25 A That's my understanding and belief, yes.

1 Q You have never spoken to him?

2 A I have never spoken to Mr. Duarte, no.

3 Q How can you say he's my client when you never spoke to
4 him?

5 A I have seen checks that were paid to you and your
6 companies that indicate shipping which is consistent with many
7 other checks that I have seen from literally hundreds of people
8 who wrote checks to you or your companies, many of which
9 reference specifically shipping, DHL, Fed-Ex, boxes to Brazil.
10 So in light of that, I considered him to be another one of your
11 customers, correct.

12 Q Did you present another checks besides Osvaine Duarte to
13 this jury?

14 A I don't believe there have been any, but if you wanted to
15 show SunTrust check 373867, that might show other customers who
16 paid you for services of boxes to Brazil.

17 Q Don't you think Osvaine has paid me back some of the lost
18 merchandise he lost?

19 A I'm not aware of any lost merchandise from Mr. Duarte.

20 Q You are talking about my merchandise was lost?

21 A So you sent packages to Brazil, it was lost, and
22 Mr. Duarte is paying you?

23 Q Yeah. Don't you think that's why he give me those checks?

24 A I have no reason to believe that.

25 Q So you approach Mr. Rodrigo Olivera, right, to help you

1 with your case, correct?

2 A I approached him and asked him if he would be willing to
3 cooperate with us in our investigation, yes.

4 Q He's the only client you approached to try to cooperate
5 with?

6 A I believe he is the only customer that I have contacted
7 and asked to assist with the investigation, correct.

8 Q Is it the reason that you approach him, because he know my
9 brother or because he know your wife?

10 A The reason I approached him is because he, Mr. Olivera,
11 and his wife have provided documents to DHL including a copy of
12 a check and their own driver's license contact information to
13 document that they paid a company named Brazil Express to ship
14 packages to Brazil. Those packages were detained by DHL based
15 on it being a fraudulent account.

16 And based on the fact that they had provided their actual
17 documentation unlike many other instances of people contacting
18 DHL, I made an assessment that I thought they were not related
19 to you and would likely cooperate with me while maintaining the
20 confidentiality of the investigation.

21 Q Did you get a -- did you present the check here that he
22 paid Brazil Express, that he had done any business with Brazil
23 Express?

24 A I don't believe any check has been presented at this
25 point.

1 Q And also has confirmed yesterday that DHL has filed a
2 complaint with the FBI agent, right?

3 A Correct, DHL contacted the FBI regarding your activities.

4 Q But you don't have the complaint, the names, the formal
5 complaint, the documents that showed that they filed this
6 complaint, do you?

7 A I don't have those documents with me on the witness stand,
8 no.

9 Q So you don't have the complaint, but the complaint has
10 never been offered to me either?

11 A Based on my meeting with DHL, I generated FD302 based on
12 my conversations with Nicole Nelson. Those were the documents
13 that supported the opening of the investigation. So that FD302
14 from Nicole Nelson was, I believe, provided to you in discovery
15 along with the rest of my interview reports.

16 Q What that document says?

17 A That DHL had what it considered to be a significant
18 fraudulent shipping account, most of which originated in south
19 Florida, most of which came back to addresses of PO Box 629,
20 2234 North Federal Highway, and that someone who they believed
21 to be Rogerio Scotton was consistently sending packages down to
22 Brazil on fraudulently created and used accounts.

23 Q And they say that to you on summer of 2008?

24 A That was the gist of what they told me. As I talked with
25 them in the summer of 2008 and into 2009, that was essentially

1 their assessment of their investigation.

2 Q Right.

3 A And then they provided documents and other information to
4 the FBI which we then used to build our own investigation.

5 Q And you claim that the document you have present to me,
6 the formal complaint from DHL?

7 A What do you mean by formal complaint?

8 Q If they made a complaint, should have some kind of
9 writing, a report, say they contact FBI and say they presented
10 formal report?

11 A Right, that was documented in an FD302 from Nicole Nelson.

12 Q Can you provide to this court right now because I don't
13 see this document before in my life.

14 A Well, I don't know what to tell you. It was produced to
15 you in discovery and my recollection is the Bates number most
16 likely had my initials of RVB which included all of my FBI 302s
17 from the date of the investigation. And if I remember
18 correctly, the Bates prefix of RVB, which are my initials,
19 would have been used for all the reports that were generated
20 and placed in the case file.

21 Q So they made complaint in the 2008, but then 2011, they go
22 ahead and give me license to represent them, correct?

23 A I don't know what you mean by they gave you a license to
24 represent them.

25 Q Open my own store, authorized shipping center for Fed-Ex

1 and DHL. Don't you think I have an license now to represent
2 them?

3 A I think they may have allowed you to open a business and
4 provide DHL services to customers. But I also suspect that the
5 person who may have opened up that account for you, for
6 instance Justin McMahon, did not know that the fraud
7 investigation was ongoing. He said he didn't know the FBI was
8 investigating you until after you had contacted him.

9 Q Do you recall Mr. McMahon say that he opened account for
10 Zap Games?

11 A Right, Zap Games the company that you were vice president
12 for and opened up a bank account for, Zap Games? Yes.

13 Q Did you know that account was a private account; it was
14 not like a resale account?

15 A I'm not sure what you mean by private account versus
16 resale.

17 Q I open a store in Boca Raton and it become authorized
18 shipping center for DHL as reseller. There's a process that
19 they have to go through. Did you investigate that?

20 A No, I was aware that you opened what I would call a CMRA
21 in Boca Raton, that it was the name of Merry Mailman, that when
22 I met you, you were still in the process of the buildout, and
23 at some point later, you opened in a traditional sense your
24 doors for business and operated out of that location up until
25 the time you were arrested.

1 Q I asked yesterday if your reports were accurate and why
2 there have so much mistakes on it. Do you remember that?

3 A I remember you asking you that, yes.

4 Q And also you say that most of the time your supervisor
5 review all those reports as well. Do you remember that?

6 A I do recall.

7 Q But no correction has been made out of those reports,
8 right?

9 A I don't know what you mean by correction.

10 Q Those mistakes, those errors.

11 A Maybe you can show me the mistakes you are speaking of.

12 I do recall there was one FD302 that referenced you were
13 driving a Lexus when, in fact, you had an Infinity that you
14 drove that was leased in your father's name.

15 I recall another FD302 where I referenced the date that
16 you had proposed to Carla Felini as being in 2012 when that
17 date was 2011. And I'm confident the mistake regarding Carla
18 Felini was simply a typo because the date of the interview and
19 the date that I met Ms. Felini would have been several months
20 before the, quote, proposed date referenced in the 302. So my
21 belief is that it was a simple typo and/or mistake that I made,
22 but I'm not aware of any other mistakes you might be
23 referencing.

24 Q Also you make a statement yesterday the fact that I used
25 to help the community is to benefit immigration?

1 A Yes. That was my opinion and that's what I answered
2 yesterday, yes.

3 Q So but this is not the accusations from me getting married
4 with Aylin and now accusations with me racing cars and getting
5 involved with the community, correct?

6 A My recollection is you asked me if I was aware that you
7 had been involved in the community and that you had gone to
8 specific events and that you had visited children in hospitals
9 and done other activities that I would generally describe as
10 community service oriented.

11 And my recollection is that my response is that I thought
12 you may have had many different motives for doing that, one of
13 which may have been to actually help the people and do some
14 community service.

15 But having reviewed the documents in the case and
16 including your immigration files, it seems like all of those
17 appearances that you made were touted and highlighted with
18 specificity to justify one of the grounds why you might be
19 admitted in the United States or allowed to stay.

20 Q It is your idea or the prosecutor idea here assassinate my
21 character to this jury?

22 A I don't believe I'm assassinating your character at all.
23 I believe I am answering your questions as well as
24 Ms. Mitrani's questions as accurately and completely as
25 possible.

1 Q I even asked also yesterday something about my wife
2 getting immunity and you say no. Do you recollect that?

3 A Are you talking about --

4 Q Aylin.

5 A -- Aylin? I do recall you asking me that, correct.

6 Q And you say no, right?

7 A Right, I'm not aware of Aylin being given any immunity or
8 anything of that nature.

9 Q Do you remember your visitation jail presented me with a
10 paper came from the prosecutor?

11 A I did provide you with documents.

12 Q Do you remember that paper pretty much says that Aylin got
13 immunity from the prosecutor sign by the prosecutor?

14 A I don't believe that's what it said. Perhaps if you
15 showed me the document, perhaps it would refresh my
16 recollection.

17 MR. SCOTTON: Your Honor, may I have a minute?

18 THE COURT: Yes.

19 BY MR. SCOTTON:

20 Q We are going to find the letter so we can continue, don't
21 waste the time of the court?

22 A Okay.

23 Q So when we went over the whole scenario of being in your
24 office, the interrogation room, handcuff me to the wall,
25 questions was dropped, Roy office called, you answer my cell

1 phone, the meeting has been stopped, took the handcuffs off,
2 correct? Remember when I asked those questions?

3 A I remember us talking about it. I don't remember the
4 exact line of questioning and I don't remember there being any
5 question about the handcuffs being removed.

6 Q Your recollection that you don't have any video about
7 interview, correct?

8 A Correct. The interview was neither audio or video
9 recorded.

10 Q Because it's FBI and they don't need that, right?

11 A It's not our standard practice in the FBI in Miami, which
12 is the office I have been in for ten, ten and a half years, to
13 record or videotape interviews with subjects during a post
14 Miranda interview.

15 Q Yesterday the prosecutor present a spreadsheet here with
16 some bank statement. Do you recall that?

17 A I do.

18 Q The spreadsheet is not accurate, correct?

19 A I believe the spreadsheet is accurate.

20 Q Let me ask a question, Mr. Van Brunt. Why investigated
21 this case for four years and you cannot give to this jury the
22 physical evidence in this case?

23 A My belief is that we have given the substantive evidence,
24 much of it is sitting here in on the floor in front of them.
25 It's also the evidence in the videotape that we played for the

1 jury. It's also the evidence of the Fed-Ex calls that we
2 played for the jury. It's also the evidence of the witness
3 testimony that has previously gone on.

4 Q Why have you not shown to this jury all the bank
5 statements and show that I was paying most of those companies
6 most of the time?

7 A All the bank records admitted in evidence are in the box
8 marked admitted in evidence in front of you, I believe, with
9 the exception of SunTrust bank account which is Government's
10 Exhibit 30. The Government's Exhibit 16, 17, 18, and 19 relate
11 to bank accounts of Bank of America, TD Bank, Citibank, and JP
12 Morgan Chase. So in addition to the account opening
13 statements, actually in evidence are the substantive bank
14 records that would support the account opening documents and
15 the rest of the spreadsheets.

16 Q As FBI agent, you travel a lot, correct?

17 A I travel occasionally depending on the needs of the case
18 that I am assigned and also, quite frankly, depending on the
19 budget situation.

20 Q So you have traveled international before, correct?

21 A I have never traveled internationally on a case, no.

22 Q Or vacation perhaps?

23 MS. MITRANI: Objection, relevance.

24 THE COURT: Sustained.

25

1 BY MR. SCOTTON:

2 Q Do you know the bank's policy when you travel? Do you
3 understand the bank's policy what is a requirement when you
4 travel outside the state or outside the country?

5 A I don't know what you mean by the bank policy if you
6 travel international. I'm not aware of banks' --

7 Q Is it not true that the bank will require for you to give
8 a call 24 hours before, let them know in case you are going to
9 try to use your cards?

10 A I don't know if that's a policy. I know a lot of people
11 contact their financial institutions if they are going to be
12 traveling internationally or even to another part of the
13 country to advise the bank that I will be traveling, that if
14 you see charges occurring in X location, that you should know
15 that it's me there on vacation or visiting friends as opposed
16 to fraudulent activity that might cause the card to be shut
17 down.

18 Q You don't deny that most of the time if that happen, they
19 send a new card, correct?

20 A I don't know if they would send a new card if you advise
21 them before you go that you are traveling and that they should
22 expect authorizations, but I do think that banks as a
23 precaution if they suspect fraud would reasonably be inclined
24 to cancel a credit card number and reissue a new card. I think
25 that is not unusual or inappropriate.

1 Q So during this four years investigation, you couldn't get
2 information from Citibank about those credit cards?

3 A We subpoenaed Citibank requesting the account opening
4 information as well as the backup documents. The records that
5 they provided to us are the records that were admitted into
6 evidence.

7 Q Have they provided you with the cards as well? Do you
8 have any correction about the cards?

9 A They have never provided me with an image of the card if
10 that's what you are asking about. They provided the bank
11 statements which would contain the card numbers or account
12 numbers on them.

13 Q I got in my hand here the spreadsheet from the bank.
14 Would you like to see the spreadsheet again?

15 A Sure.

16 MR. SCOTTON: Your Honor, may I approach the witness?

17 THE COURT: Yes.

18 MR. SCOTTON: Your Honor, can I use this machine? Do
19 you mind?

20 BY MR. SCOTTON:

21 Q Before we go to the spreadsheet, let me go ahead and show
22 the letter of immunity.

23 A Okay.

24 Q So she received immunity, correct?

25 A What the letter said is that, pursuant to Giglio versus

1 United States, which I would describe as a discovery or sharing
2 of information, it's a case that deals with the requirement the
3 government provide information to a defendant, we wish to
4 advise you that Ms. Reyes has been advised that her truthful
5 testimony will not result in criminal exposure, which means
6 what it means, that if she tells the truth, she won't have
7 criminal exposure that much like every other witness who comes
8 and swears under oath to tell the truth, they would not have
9 criminal exposure.

10 Q So she got immunity?

11 A I am not aware of any written immunity letter that was
12 provided to her. She was basically told the same thing that
13 all witnesses are told, that it's important to be truthful, and
14 if you not truthful, you could be charged with giving false
15 statements to the government, and if you're not truthful in
16 court, you could be charged with perjury.

17 Q Did you say previous that you got a law degree as well?

18 A I believe I told you I had two law degrees.

19 Q Right. And then you denied what this letter say, that she
20 have immunity to come here and testify against her husband,
21 right?

22 A I'm sorry, I'll read from the letter verbatim again and
23 maybe you can show me where the word immunity appears.

24 Pursuant to Giglio versus United States, 405 US 150 (1972), we
25 wish to advise you that Ms. Reyes has been advised that her

1 truthful testimony will not result in criminal exposure.

2 Q And this is the letter that you brought in, you know, with
3 the plea agreement for me to sign a plea agreement with the
4 government?

5 A My recollection is that what that letter references is the
6 fact that I provided documents to you on the Saturday. I
7 believe that letter dated Monday or Tuesday. And I had
8 provided you documents over the weekend. And that was a cover
9 letter from a different set of documents that were provided to
10 you by the U.S. attorney's office and Ms. Mitrani.

11 Q And the normal and the right procedure was not for you to
12 mail the documents or drop off on the property?

13 A I believe the date of that letter, I think it was
14 August 23 or 24, and we had had a prior trial date set for late
15 August. And my recollection is that I was delivering you the
16 documents on a Saturday because we wanted to make sure you had
17 them prior to trial beginning. And then ultimately the trial
18 date was continued. So normally we might try to mail you
19 something, but in light of our concern about whether we put it
20 in the mail on Saturday, whether you would get it Monday or
21 even Tuesday, we made the decision to come by and hand-deliver
22 them to you.

23 Q So understand that you are not supposed to come near to me
24 without my lawyer present or my standby lawyer, so you still
25 pursued to come over there to intimidate me over there in jail?

1 A Well, you don't have a lawyer, so it's not necessary for
2 me to meet with you when your lawyer is present because you are
3 pro se, sir.

4 Q I still got my rights, right?

5 A Absolutely.

6 Q So, Mr. Van Brunt, we look over there your spreadsheet
7 that you say is accurate, right?

8 A Yes.

9 Q And we have on bottom over there what you guys tried to
10 presume it was four credit cards?

11 A Right.

12 Q Of course, one you don't have even the account number?

13 A Right. The lines marked on Government's Exhibit 121,
14 specifically lines 51, 52, 53, 54, reference what I believe to
15 be four different credit cards and/or four different credit
16 card numbers.

17 Although, as I testified yesterday, I do believe they may
18 be associated with the same account because when I reviewed the
19 underlying monthly statements, there were references to
20 balances being transferred from other cards.

21 So again, while we may have listed them as separate line
22 items, they may very well be associated with one account, if
23 you will, and just the issuance of multiple card numbers.

24 Q So we missing one here in the top, correct?

25 A Correct, the line item 51 does not contain a bank account

1 number.

2 Q Right, so the spreadsheet already, we can see it is not
3 correct, right?

4 A Unfortunately we can only provided the information
5 produced to us pursuant to our subpoenas. If the information
6 is not produced, it's not possible for us to determine what
7 that information is. So where we don't have that information,
8 we left it blank because we are not going to make it up.

9 Q All right. So if the information is not correct, then the
10 bank has not provided, so why you guys want to show something
11 to the jury that is not real?

12 A It is real.

13 Q That number is there, Mr. Van Brunt?

14 A Well, if you want to pull out the Citibank credit card
15 statements, I can review them, and if you would like, you can
16 show the jury the fact that this is a credit card, that it was
17 issued to you, that it was mailed to your addresses, and that
18 there are charges that I believe relate to you.

19 MR. SCOTTON: Your Honor, I would like to introduce
20 the credit cards into evidence.

21 THE COURT: Any objection?

22 MS. MITRANI: Yes, Your Honor. I don't know what they
23 are.

24 THE COURT: Show it to the government, please.

25 MS. MITRANI: Your Honor, I object to two of them

1 because they are duplicates. The other two I don't object to.

2 THE COURT: Are they the same thing?

3 MS. MITRANI: Same exact credit card number, same
4 exact issue date.

5 THE COURT: I'm going to overrule the objection. I
6 will allow it. We will call this Defendant's Exhibit 4.

7 (Thereupon, Defendant's 4 received in evidence.)

8 THE COURT: Mr. Scotton, I need to make sure you label
9 it so we can keep track.

10 MR. SCOTTON: Yeah, I will, Your Honor.

11 BY MR. SCOTTON:

12 Q Mr. Van Brunt, We got one card over there missing. Let's
13 go to the first card over there, 2730. Do you see that card
14 over there, 2730?

15 A I do. On line 52, there is a Citibank credit card with
16 number ending 2730.

17 Q The real card, the fact that it's 2734, correct?

18 A The credit card that's on the screen right now is not a
19 credit card that -- I have never seen any of those credit cards
20 but --

21 Q Would you like to see?

22 A I have never seen any of those credit cards.

23 Q Would you like to see them?

24 A I have never seen any of those credit cards, but I will
25 say that the number of the credit card that's on the screen

1 that ends in 2734 is not one of the numbers that is reflected
2 on the spreadsheet.

3 Q All right. Is this in the spreadsheet?

4 A Yes. What's on the screen now is a credit card that ends
5 in 5307, and that credit card is listed on line 54 of the
6 spreadsheet.

7 Q You don't agree with me that the card, the first card you
8 put as 2730, it is an error you guys put on the spreadsheet and
9 the real card is 2734, as the one you guys put here as 2730?

10 A Well, what's on the screen looks to be the actual card,
11 2734, which if I remember correctly, was the same as the copy
12 that you just showed a few minutes ago --

13 Q Right.

14 A -- also ending in 2734.

15 Q Right. But then we can see here your spreadsheet has
16 mistake, right, 2730, when the card is 2734?

17 A What I can tell you is that the spreadsheet says 2730.
18 Your card says 2734. I would need to look at the underlying
19 bank documents to see if it was a typo or whether or not it was
20 the same card.

21 Q That's the circumstantial evidence right on the table.
22 That's the cards that the defendant has as credit card is 2734?

23 A Perhaps if you pulled the Citibank records from the
24 exhibits and showed them to me, you could refresh my
25 recollection.

1 Q You are the one who have those information with you,
2 right?

3 A The exhibits that have been admitted into evidence are on
4 the table two feet to your left.

5 Q You show yesterday here some application from the credit
6 card with Citibank?

7 A Correct.

8 Q Have you seen also the application for those to open those
9 checking business accounts?

10 A I have also reviewed the account opening documents for the
11 financial institutions.

12 Q The financial institution most of the time run some
13 promotions when you open a checking account?

14 A I believe a lot of financial institutions do run
15 promotions, and candidly, I believe that when a prospective
16 customer walks into a bank, one of the goals of the customer
17 service representative is to get them to, not only open one
18 account, but preferably more accounts, and that if you are a
19 business, they would likely sell you or promote the opportunity
20 to open up a merchant account or have some other kind of what I
21 would describe as a sweep account. My understanding is that
22 the financial services industry, there is a lot of
23 encouragement given to the employees to open up and generate
24 new accounts for the bank.

25 Q It came across to you the application when I opened the

1 check account at Citibank how much money was deposited to that
2 account on the first of the opening?

3 A Could you tell me which Citibank account you are speaking
4 of specifically?

5 Q The one that was linked to those credit cards.

6 A You are talking about the bank -- the account opening
7 document that indicated you had an annual salary of \$350,000 a
8 year?

9 Q On the application it shows 35,000, right?

10 A I believe it was 350,000.

11 Q So it is that application has been modified?

12 A Modified by who?

13 Q Maybe you.

14 A Perhaps if you showed me the exhibit, I could review it
15 again and refresh my recollection. It's in evidence.

16 Q Did you have the original check statement when I opened
17 account and when I first deposit in that account?

18 A When you say the original, you mean to the extent that you
19 filled out a handwritten application?

20 Q Authentication from the bank that when I opened that
21 account, Mr. Van Brunt.

22 A The documents that the banks provided to us were pursuant
23 to the subpoena. Whether they produced a xerox copy and
24 forwarded it to us as their production or actually pulled the
25 originals, it would be hard for me to say. I don't recall

1 seeing a handwritten application for you and the Citibank
2 credit cards.

3 Q So you don't have the document here that shows that those
4 credit cards was linked to the account and the reason those
5 credit cards is there on the table in front of you, it is
6 special that the bank run on that day and it automatically
7 approved that card?

8 A No, the bank records that you are speaking of and the
9 backup documents to include the monthly statements which
10 reference balance transfers, I believe are in evidence and I
11 believe they are on the table this front of you. And if you
12 wanted to show them to me, I would be happy to refresh my
13 recollection to try to better answer your questions.

14 Q Do you know that those cards are all the same, linked to
15 the same account?

16 A They could be.

17 Q They could be. You did four years investigation. You
18 don't know if they are all the same account, correct?

19 A Meaning you are the person who opened them up and they are
20 different account numbers? I can tell you from my personal
21 experience I have had credit cards that I have lost or have
22 been compromised and that my bank has issued me a new credit
23 card. I didn't apply again or anew for a credit card or for a
24 debit card. I would consider that to be the same account
25 because I'm the same person authorized to use that card.

1 I think that is very possibly what happened here. And as
2 I indicated, I believe, yesterday and certainly this morning,
3 if you look on the monthly statements themselves, they
4 reference that there were balances transferred from what
5 appeared to be a different Citibank card. So there could very
6 well be what I would describe as one account with different
7 card numbers.

8 Q But the spreadsheets kind of try to show to the jury is
9 probably four different credit cards, correct?

10 A No. I think I have actually explained it to the jury
11 three times now that there could be one account with multiple
12 card numbers issued for a variety of reasons.

13 Let me be clear. There could very easily be only one
14 account that Mr. Scotton had with Citibank regarding a credit
15 card, and it is very possible that there were multiple physical
16 cards issued with different card numbers that all link to the
17 original opening of that account. I apologize if there was
18 some confusion.

19 Q And then also your spreadsheet shows over there that two
20 of the cards does have a balance, and then you say the last
21 card has some activity of 2012, correct?

22 A My recollection is that the line item listed on line 54
23 which shows a total withdrawal of approximately \$36,000 was the
24 date that Citibank closed the account and the amount owed was
25 \$36,000 because no payment had been made on that card for a

1 significant amount of time and they wrote it off as essentially
2 a loss.

3 Q And they closed the account in 2008, correct?

4 A No, I believe they actually didn't close the account until
5 2012.

6 Q Did you have a paper here to prove that, that account was
7 closed in 2012?

8 A I believe if you gave me the Citibank credit card
9 statements, I can review the last statement and there is a
10 notation on there that it was closed and written off, so yes.

11 Q What would be the statement, Mr. Van Brunt? Because I
12 don't have it. I didn't subpoena the bank.

13 A May I go to the exhibit boxes and pull the documents?

14 Q Yes.

15 A Mind if I, Your Honor? I am looking at Exhibit 18D1 which
16 are the records that were produced by Citibank, City Advantage
17 World Master Card. I'm specifically looking at a document
18 identified as City 1073. This was a document produced, I
19 believe, in late 2012.

20 It indicates that the balance on the card that's owed is
21 \$36,624. It indicates that there was a revolving credit limit
22 of \$17,000.

23 And having reviewed these, it looks like there had been no
24 payment made on that card for several years. So my
25 recollection is that this statement, Grand Jury Exhibit 121,

1 the spreadsheet, specifically line 54 would indicate the same
2 balance of \$36,624.76 as still being owed to your Citibank
3 card.

4 MR. SCOTTON: May I approach the witness to get the
5 papers, Your Honor?

6 THE COURT: Yes.

7 BY MR. SCOTTON:

8 Q So you say this paper over there is the last statement
9 from Citibank?

10 A What I'm saying is the document that's on the ELMO right
11 now is for an account that ends in 5307. And what I'm telling
12 you is that is the last statement that was produced to us based
13 on when we issued the subpoena to the financial institution or
14 credit card company.

15 Q My question to you is that that account was closed in
16 2008, correct?

17 A I don't believe the account was closed in 2008 because
18 this document that's on the screen right now indicates that
19 there is a payment due date of December 9, 2012 which actually
20 is the same date that's listed in column one on the
21 spreadsheet, specifically line 54.

22 Q And can you tell to the jury why this document over there
23 that is supposed to be the invoice from the card company
24 doesn't have authentication, the logo from Citibank, and the
25 other ones has?

1 A Well, perhaps if you zoom out. The reason why I suspect
2 that there's no Citibank logo is because the Citibank changed
3 their internal document operating procedures or retention
4 policy and that some of these documents were generated based
5 from one of their databases, and at some point, they may have
6 moved to an electronic. These were the records that were
7 produced. It has the account number on it.

8 Q That's the statement that I receive in my mail, right?

9 A That's the beginning of the account. If you look at the
10 top left-hand corner, it has the date of April 7, 2008. So you
11 are talking about a period of the rest of 2008, all of 2009,
12 all of 2010, all of 2011, and almost all of 2012. So the fact
13 that a financial institution produces records that may look
14 physically different on paper is not unusual based on my
15 experience in white collar cases because we are requesting
16 documents over a many year period and they produce the
17 documents they produce and sometimes they have changed the
18 appearance or the font.

19 I know other banks have changed their monthly statements
20 in order to conserve the amount of paper that's generated
21 shortening the amount of spacing that exists on statements and
22 stuff like that. It's not unusual on white color cases.

23 Q Citibank never gave you any statement or any report saying
24 the account has been shut down in 2008, correct?

25 A We asked for all the documents regarding that account.

1 And what they gave us was what they gave us. The last
2 statement indicated that you still owed them \$36,000.

3 Q It's not about the balance I'm asking the question,
4 Mr. Van Brunt. I'm asking the question, if the account was
5 closed back in 2008 with this bill.

6 A The account was not closed. If it was, I don't believe
7 that they would be sending you credit card statements and
8 requesting payment on the balance you owed them.

9 Q So you say that they mailed that statement to me?

10 A Well, it looks like you never updated your address. You
11 were still using PO Box 629. So you may or may not have ever
12 received these statements depending whether you left a
13 forwarding address. But if you don't contact your financial
14 institutional, your credit card company and let them know that
15 you have moved, it's quite possible they wouldn't know your new
16 address.

17 Q Before I was arrested, Mr. Van Brunt, how many accounts
18 did I have open?

19 A I'm sorry, before you were arrested?

20 Q Yes, sir.

21 A I would say 20 to 30 bank accounts that are linked to
22 either you or your companies.

23 Q So 20 accounts was open at the same time?

24 A At the same time?

25 Q Yeah.

1 A No, I don't believe that all of these accounts were
2 necessarily opened on the same day. I don't believe that all
3 these accounts were necessarily used on the same day. That's
4 part of the reason why the spreadsheet references the open
5 date, the date of transactions, and the closed dates because
6 there were times when certain accounts were used, then they no
7 longer were used, then other accounts were used, they were not
8 used, and so on and so forth.

9 Q My question to you is, how many accounts did I have
10 active, open, before my arrest?

11 A I don't know the exact number, but it was certainly more
12 than one.

13 Q Do you remember account open with Bank of America under
14 the name of Sky Air Global?

15 A I believe you did have an account open in that name, yes.

16 Q Do you remember the account number with TD in the name of
17 Sky Air Global?

18 A That's the account that ends in 4443?

19 Q Sky Air Global, the TD Bank?

20 A Sky Air Global, Inc., the spreadsheet on line 35
21 references a TD Bank account ending in No. 4443 of which you
22 are the signator on.

23 Q Do you remember the account also opened at TD Bank,
24 personal account opened together with me and my wife Aylin,
25 correct?

1 A There was an account that was opened at TD Bank in your
2 name. If I remember correctly, there may have even been two
3 accounts opened with both of your names at TD Bank.

4 Q Is there any reason this government avoid to show the real
5 statements to this bank and just bring up a spreadsheet?

6 A Well, I know specifically one of those TD Bank accounts
7 was opened in the name of Roger Scotton, ITF, for Aylin Reyes
8 Mollinedo. ITF means in trust for which means Ms. Mollinedo
9 may or may not even have access to that. If I remember
10 reviewing the bank records correctly, I think that account was
11 open for a total of four days. I don't remember there being
12 much, if any, activity in that account. I do believe there may
13 have been a second TD Bank account that was opened with both
14 your name and Aylin's name, but it was not included on here.

15 Q Why not?

16 A Because we wanted to show the accounts that were linked to
17 your fraudulent activities, not necessarily the accounts where
18 you are charging gas and buying groceries and things like that.
19 I don't recall there being much activity regarding deposits
20 from your customers into that account that was in your name and
21 Aylin's name.

22 Q So the account for Merry Mailman is not in the spreadsheet
23 either, right?

24 A There is no account here for Merry Mailman, correct.

25 Q Why not?

1 A Well, because as best I can tell, the actual packages that
2 you shipped from the Merry Mailman were not fraudulently
3 shipped or shipped with fraudulent account names or numbers.
4 So in light of the fact that those accounts didn't link to your
5 criminal conduct, a discussion was made not to include them
6 because they don't seem relevant and could potentially seem
7 confusing.

8 Q Is there any reason why you tried to add accounts to this
9 spreadsheet that is not even mine?

10 A I don't believe any of the accounts on here are not easily
11 and clearly linked to you.

12 THE WITNESS: I'm sorry, this is something that is not
13 in evidence, I don't believe.

14 BY MR. SCOTTON:

15 Q This is a spreadsheet that the government present to me
16 with those accounts and you add this Brazil Express USA --

17 THE COURT: All right. Mr. Scotton, bring it sidebar,
18 please.

19 (Thereupon, the following was heard sidebar.)

20 THE COURT: All right. What do you have, Mr. Scotton?
21 You know the rules by now. I have told you if it is --

22 MR. SCOTTON: This is something the government present
23 to me.

24 THE COURT: If it is not in evidence, it doesn't go on
25 the screen. I have told you this many times. I expect you to

1 follow the rule.

2 All right. Is this an objection to the use of this
3 document?

4 MS. MITRANI: Yes, Your Honor.

5 THE COURT: Okay. Why is that?

6 MS. MITRANI: Well, I mean, this was a draft
7 spreadsheet that was given to him. We determined that this
8 account wasn't linked to him, so we took it off, and
9 Government's Exhibit 121 that's in evidence doesn't reflect
10 that. So there's no reason to be publishing that. If he wants
11 to question the agent, he can. But there's no reason to
12 publish that. It's not in evidence.

13 THE COURT: Well, I agree it's not in evidence right
14 now. You can't publish it.

15 MR. SCOTTON: Okay, Your Honor.

16 THE COURT: You can ask him questions if you want, but
17 you can't publish it.

18 (Thereupon, the following was heard in open court.)

19 BY MR. SCOTTON:

20 Q Did you investigate this company in Georgia, Brazil
21 Express LLC?

22 A I don't specifically recall investigating that company,
23 but normally when we would send a subpoena, especially to a
24 financial institution, we would include a list of names of
25 different entities that we would like records from. And given

1 your propensity for having slight variations in different names
2 that were incredibly similar, we essentially cast a wide net
3 and asked the banks to produce records for companies with the
4 names of the following, Brazil, Brazil Express, Brazil Express
5 Online, Brasil with an S, Brazil with a Z, Brazil Express
6 Imports, Brazil Express Exports.

7 At that point the banks would do, you know, what they
8 considered to be a diligent search and produce records that
9 they believe were responsive to the subpoena that they had been
10 served.

11 Q So who is this Mr. Rafael Boragina?

12 A Do you mean Ralf Alex Boragina.

13 Q Boragina, yes, sir.

14 A I believe he is the person who had an account at one of
15 the financial institutions that we subpoenaed and that the name
16 of the business that he ran was some variation of Brazil
17 Express Import or Brazil USA Express, some variation. And
18 based on the wide net that we had cast in our subpoena, the
19 bank produced those records pursuant to the subpoena.

20 Q Is the bank also produce to you the history of his
21 license, his immigration case, his passport? I mean, the bank
22 produce all that to you also?

23 A I certainly don't recall the bank producing any
24 immigration records for that individual. I don't even know if
25 that person --

1 Q Do you recollect your mind with all the record you provide
2 me?

3 A What I was saying was I don't recall the bank producing
4 those records including immigration records or the driver's
5 license. To the extent that the bank produced the account
6 opening documents and there may have been a reference to
7 identifications that were used to open that account, they would
8 have been contained in the bank account opening documents that
9 were produced.

10 Q So his immigration case files and everything, it is
11 required by the bank to open an account?

12 A I don't understand what you mean by his immigration files
13 are required by the bank.

14 Q You have Mr. Ralf whole entire life present to me. Are
15 you trying to link him to me? That is what the plan is from
16 before?

17 A I don't know the document that you are referring to.
18 Perhaps if you showed it to me, it could refresh my
19 recollection.

20 Sure. The documents that you showed me are actually a
21 combination of records based on different subpoenas and
22 different sources of information. Some of them relate to
23 TD Bank. Some of them relate to the gentleman who you spoke of
24 Ralf, R-A-L-F, Alex Boragina, B-O-R-A-G-I-N-A. Also included
25 in here are documents that I refer to as David, meaning Florida

1 drivers's license and automobile records.

2 My recollection is that when I received these records from
3 the financial institution, I tried to determine who Ralf Alex
4 was and if he was involved and/or associated with the
5 investigation. And my recollection is that, having reviewed
6 these documents and the lack of any commonalty of either
7 deposits, transfers, or the mailing addresses that he had, that
8 I concluded that he was not in business with you or doing
9 business with you and that the bank had essentially produced
10 the records based on the similarity of his account name and
11 that was the reason why we had bank records from him.

12 Q You got bank a record, immigration record, driver's
13 license record, you pretty much investigated this man as well,
14 right?

15 A No, I have not investigated him.

16 Q So --

17 A I looked into him to try to determine if he was involved
18 in the case or involved in the investigation to again determine
19 if there were any commonalty with mailing addresses or things
20 like that. I came to the conclusion that notwithstanding the
21 fact that according to the TD Bank Bates number one,
22 notwithstanding the fact that he had a business checking
23 account in the name of Brazil Express USA, LLC, he was not
24 necessarily involved with you or your business activities.

25 Q That a bank also provide you with his whole immigration

1 file and his driver's license records, address, copy of
2 everything?

3 MS. MITRANI: Objection, asked and answered.

4 THE COURT: Sustained.

5 BY MR. SCOTTON:

6 Q Did you obtain all those documents or did the bank provide
7 to you?

8 MS. MITRANI: Objection, asked and answered.

9 THE COURT: Sustained.

10 BY MR. SCOTTON:

11 Q How did you obtain the rest of the documents,
12 Mr. Van Brunt?

13 MS. MITRANI: Objection, asked and answered.

14 THE COURT: Sustained. Let's move to another area,
15 Mr. Scotton.

16 BY MR. SCOTTON:

17 Q Isn't it true that you tried to link this man's account to
18 the spreadsheet?

19 MS. MITRANI: Objection, asked and answered.

20 THE COURT: Sustained.

21 BY MR. SCOTTON:

22 Q Have you add this man account to the spreadsheet?

23 MS. MITRANI: Objection.

24 THE COURT: Sustained.

25

1 BY MR. SCOTTON:

2 Q Do you having fun, Mr. Van Brunt?

3 MS. MITRANI: Objection.

4 THE COURT: Sustained.

5 Mr. Scotton, please ask substantive questions in areas
6 that we haven't already heard about.

7 BY MR. SCOTTON:

8 Q Why did you show the spreadsheet to the jury that is not
9 accurate, Mr. Van Brunt?

10 MS. MITRANI: Objection.

11 THE COURT: Overruled.

12 THE WITNESS: Ms. Mitrani showed me the spreadsheet.
13 She asked me to describe what it was. She asked me to
14 essentially lay the foundation of how it was created. I
15 described for the Court including the jury how it was created,
16 the basis of what we went through when we made it. I explained
17 what the different columns meant, how it was intended to be a
18 summary document to assist both ourselves and the jury in
19 understanding some of the financial transactions that occurred,
20 and then it was moved into evidence.

21 Can I have one of those copies back, please? Thank
22 you.

23 BY MR. SCOTTON:

24 Q So if the spreadsheet is so accurate, why do you guys
25 mention accounts twice? Why you guys keep repeating accounts

1 over there on the spreadsheet?

2 A I believe you are referring to the TD Bank accounts, some
3 of which appear at lines 33 -- excuse me, 34, 35 and also lines
4 33 and 36. And my recollection is that the reason why these
5 are listed in multiple line entries is because if you actually
6 moved over to the far right, you see that there were changes in
7 the address that were linked to them, whether it was changed
8 from 934 North University Drive, Suite 329 or 398 Southeast
9 Mizner Boulevard, Apartment 1921. So to the extent that there
10 may have been a change in the billing address, we included it
11 as a separate line item to document again in the far right-hand
12 column, column S as in Sam, that there was a change in the
13 account information.

14 Q Also you can see it as double over there on line 4 and 5
15 and line 23, 24. Is the same account you guys keep adding it,
16 right?

17 A Well, on line 4 which is a Bank of America account that
18 ends in 4944, line 5 is a Bank of America account that also
19 ends in account No. 4944. But if you actually move the
20 spreadsheet over to column K, as to line 4, there's a notation
21 that you were added to the account. So again, because you were
22 added either to the account as a signor or some other
23 authorized person, we decided to list it as a separate line
24 item so that we could document that you were added to the
25 account.

1 Q Right, but you didn't mention that to the jury, right?
2 You just added looked like I got some 20-something accounts
3 over there, right, on the spreadsheet?

4 A I don't know. The document speaks for itself. I think I
5 have explained. So there again, there are instances on this
6 spreadsheet where the same account number, meaning it ends in
7 the same four digits, is listed as separate line items. To the
8 extents that they are listed as separate line items, that's
9 because there was some change in the information on the
10 account, whether it was the name of the people who were
11 authorized signators or perhaps mailing address.

12 Q But that doesn't change accounts. The account is the
13 same. Why you guys want to add against the accounts?

14 A It could be we wanted to keep track of how much money went
15 in or out of the account once you changed mailing address.
16 Also, if we were to consider it one line item, it would be more
17 difficult to keep track of when you changed the date and when
18 the different transactions occurred based on the mailing
19 address you had linked to the account.

20 Q Did you show also to the jury the accounts that has been
21 opened linked to those accounts, saving accounts, that never
22 have been used, has a zero balance before, and eventually was
23 closed?

24 A The bank records that are summarized on this spreadsheet
25 have been admitted into evidence. I don't believe we have

1 showed every page of every bank record that's been admitted.
2 So I think -- so no, I guess, would be the answer to that
3 question.

4 Q So the jury get to see spreadsheet, but they don't get to
5 see the real evidence, right?

6 A Well, my understanding is when and if the jury given an
7 opportunity to deliberate on this case, all the evidence would
8 be brought back to their deliberation room and they would be
9 free to review any and all documents that were admitted as
10 evidence as part of the deliberation process if the case
11 reaches that point.

12 Q Do you recall Osvaine Duarte open a DHL account?

13 A I don't recall Mr. Duarte opening up a DHL account.

14 Q Do you want me to refresh your mind?

15 A If you have a document, it might.

16 MS. MITRANI: Can I see it, please?

17 THE WITNESS: Yes, you have handed me a document
18 that's been identified as DHL Bates label 65 and DHL Bates
19 label 66. My recollection is that these documents were part of
20 a claims file that was prepared by DHL and provided to us. And
21 on the second page of this document, specifically DHL page 66,
22 there is a reference to a credit card number ending in 0655
23 with an expiration date of 3rd March 2009. And the name on the
24 card is Osvaine, O-A-V-A-I-N-E, middle name Alves, A-L-V-E-S,
25 last name Duarte, D-U-A-R-T-E. And my understanding is that

1 this information was used to authorize the opening of this
2 account.

3 Q What is the name of the account that he opened under the
4 name he opened this account?

5 A The name underneath the online billing is Sun and Moon
6 Corp.

7 Q So do you recall the spreadsheet here from DHL thousands,
8 thousands of packages going out Sun and Moon Corporation?

9 A I do recall both the Sun and Moon Corporation on the
10 spreadsheet and also the claims that were submitted on behalf
11 of this account number which, if I remember correctly, ends in
12 2374 was the billing account number.

13 Q And DHL, have DHL billed Mr. Osvaine's credit card?

14 A My recollection is that if they tried to bill the credit
15 card, it was declined or they may have found out that it was
16 not a good credit card number. I also note that they reference
17 that the address validation failed so I don't know if this
18 account -- I don't know what DHL did as far as due diligence
19 regarding this account other than it was open and packages were
20 shipped.

21 Q So DHL, Osvaine went to DHL website and he open account
22 and he say that DHL did confirm that his credit card is
23 legitimate, that is what you trying to say?

24 A I don't know that Mr. Duarte went to the DHL website.
25 It's completely possible that Mr. Duarte ordered something from

1 your website or through you provided you with his credit card
2 information, and you went to the DHL website and opened the
3 account in his name with his credit card information. I don't
4 know who went to DHL and opened that account.

5 Q Have Mr. Osvaine report his credit card stolen to the
6 police department?

7 A I have no idea if Mr. Duarte has reported anything to the
8 police department regarding that credit card.

9 Q It is the address here, did you see the address here on
10 this opening account to DHL?

11 A I did see the address there.

12 Q Did it confirm is it 1801 Harbor Point in Georgia?

13 A That's what the address says on the document, yes.

14 Q And the account was opened in the name of Sun Moon Corp,
15 right?

16 A That's what the document says, correct.

17 Q Did you recall that I asked if you ever call Osvaine about
18 anything related to fraud and you said no?

19 A Correct. I never had a phone conversation or spoke with
20 Mr. Duarte.

21 Q And you say you don't have his phone, correct?

22 A My understanding is that he's in Brazil now so I don't
23 have a U.S. phone number where I could reach him.

24 Q During your investigation, Mr. Van Brunt, eight years of
25 investigation, you have checks deposited Mr. Osvaine's account,

1 check come with his address. Do you recall those checks?

2 MS. MITRANI: Objection. This has been asked and
3 answered.

4 THE COURT: Sustained.

5 BY MR. SCOTTON:

6 Q Do you recall Federal Express track number 791987010148?

7 A There have been a lot of tracking numbers. If you showed
8 me the label, it might help refresh my recollection.

9 THE COURT: We are going to take a break. We will
10 come back at 10 of 11:00. So all rise for the jury.

11 (Thereupon, the jury exited the courtroom at
12 10:38 a.m.)

13 THE COURT: All right. See you back here at 10 of
14 11:00.

15 (Thereupon, a recess was taken at 10:49 a.m.)

16 THE COURT: Whenever the jury is ready.

17 (Thereupon, a juror entered the courtroom at
18 10:51 a.m.)

19 THE COURT: Welcome back. Please be seated. Thank
20 you.

21 And, Agent, you are still under oath. Do you
22 understand?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Very good. Mr. Scotton, you may continue.

25 MR. SCOTTON: Thank you, Your Honor.

1 BY MR. SCOTTON:

2 Q Can you confirm to me the track number on this paper from
3 Federal Express?

4 A Well, there's no Bates number on the bottom of it, so I
5 don't know if it's something that we received from Federal
6 Express. But the document that you handed me has a tracking
7 number that ends in 0148.

8 Q And what is the name of the company?

9 MS. MITRANI: Your Honor, I object. He's publishing
10 the document. It's not in evidence. If he wants to ask him
11 questions...

12 THE COURT: Sustained.

13 BY MR. SCOTTON:

14 Q It is a phone number on that paper?

15 MS. MITRANI: Same objection.

16 THE COURT: Well, he hasn't asked the question yet.

17 BY MR. SCOTTON:

18 Q There's a phone number over there on that paper,
19 Mr. Van Brunt. Do you recollect the number?

20 A There is a ten-digit number that you have underlined and
21 written stars next to that may be a phone number. The number
22 ends in 6481.

23 Q During your investigation, have you checked that address?

24 A No.

25 Q So during your four years' investigation, you never saw

1 the address before?

2 A I have seen the address before, but I have never checked
3 it. I have never asked an agent from our FBI office in Atlanta
4 or the Georgia area to go to that address or knock on the door,
5 but I'm familiar with that address. I believe it's also one of
6 the addresses where you sent your DVDs regarding your wedding
7 with Cerline and your vacation with her, her mom, and her
8 brother.

9 Q Do you recall some of the checks you show here in court
10 deposited to my account?

11 A I recall that there were checks that we showed to the
12 court from Mr. Duarte. I believe that the address that was on
13 the face of the check is the same address that's listed on
14 document that you handed me.

15 Q It is the same phone also on the check?

16 A It could be.

17 Q Do you want me to refresh your mind?

18 A Sure, if you want to show me one of the Duarte checks.

19 The document that you handed me that's identified as Citi
20 Bates No. 288 is -- actually, it's not a check that we showed
21 to the jury yesterday because my recollection is that all the
22 checks that we showed to the jury yesterday had on the
23 reference line the word shipping. And this actually is one of
24 many different checks that Mr. Duarte paid you where there's
25 just no reference to what the check is for.

1 But the phone number that appears on the top of the check
2 which is identified as check No. 614 is a phone number that
3 ends in 6481 and that is the same last four digits of a number
4 that you have underlined and put an asterisk next to on this
5 non-Bates number document that you handed me.

6 Q When did you receive some of those checks, Mr. Van Brunt,
7 from Duarte?

8 A I didn't receive any checks from Duarte. What I received
9 were a response to the subpoena that we send to Citibank.

10 Q And then when you received the subpoena?

11 A I don't recall when we subpoenaed your Citibank account.

12 Q You don't recall the year after four years investigation?

13 A Unfortunately, you are not the only case that I have been
14 able or required to work on over the last four or five years.
15 I've probably sent over 150 or 200 subpoenas in the last three
16 to four years, so I don't actually recall with specificity the
17 exact date of when I sent a subpoena regarding this particular
18 financial institution. But we sent subpoenas both during the
19 course of the investigation and leading up to the trial.

20 Q So you don't recall when did you get the images of
21 Osvaine's checks before?

22 A No, I don't recall when I received the production from
23 Citibank.

24 Q You don't recall seeing those checks before and seeing
25 that number before on these checks?

1 A I certainly recall reviewing the checks, seeing that they
2 were made payable to you, that they appeared to be consistent
3 with many of the other checks that were in many of your
4 accounts documenting shipping services or boxes being sent to
5 Brazil via DHL, Fed-Ex, or UPS.

6 Q So you say many checks, did you present any other checks
7 besides Osvaine checks?

8 A I think if you looked at the documents identified as
9 SunTrust 37, 38, 64, some other documents, if you would like, I
10 could pull them and show them if you were inclined.

11 Q Do you recall you say that the reason you didn't call
12 Osvaine is because you never have his number?

13 MS. MITRANI: Objection, Your Honor, asked and
14 answered.

15 THE COURT: Sustained.

16 BY MR. SCOTTON:

17 Q You never called Mr. Osvaine Duarte, correct?

18 MS. MITRANI: Objection, asked and answered.

19 THE COURT: Sustained.

20 BY MR. SCOTTON:

21 Q Have you called Mr. Osvaine?

22 MS. MITRANI: Objection, asked and answered.

23 THE COURT: Sustained.

24 BY MR. SCOTTON:

25 Q Fed-Ex document that I handed to you, it is the same

1 number over there out of the check?

2 A The phone number --

3 MS. MITRANI: Objection, asked and answered.

4 THE COURT: Overruled.

5 THE WITNESS: The phone number that's listed on the
6 face of the check is a number that ends in 6481. That is the
7 same number that is on the document, the non-Bates numbered
8 document you gave me which is underlined and has an asterisk in
9 ink which also ends 6481. It is also a ten-digit number.
10 There's nothing on the document you handed me that states it's
11 a phone number. It appears to be under the address, the city,
12 the country, United States, and then again there is a ten-digit
13 number. It may very well be a phone number. But the document
14 you handed me doesn't identify each line with specificity. But
15 it is the same number, yes.

16 Q So you say that the check has the same address as the
17 track number system and also has the same phone number that
18 matches on the track system, correct?

19 A Well, the check that you handed me states an address of
20 1801 Harbor Point Parkway. The Fed-Ex document that you handed
21 me, that again is not Bates numbered so I don't know where it
22 came from, lists an address of 1801 Harbor Point Parkway 3.

23 They both indicate that the city is Atlanta, the country
24 (sic) is Georgia, and the zip code is 30350. So with the
25 exception of the Fed-Ex document having the character number 3

1 following parkway, the address is the same as the check
2 identified as Citi 288.

3 Q What about the phone number, is it the same?

4 MS. MITRANI: Objection, asked and answered.

5 THE COURT: Sustained.

6 BY MR. SCOTTON:

7 Q Have you at any time contact Officer Bailey from Sandy
8 Springs Police Department?

9 A I have never had any interaction with a police officer
10 from the Sandy Spring Police Department.

11 Q You denied that my investigator has provided you with a
12 police report from Sandy Spring Police Department?

13 MS. MITRANI: Objection, Your Honor.

14 THE COURT: Sustained.

15 BY MR. SCOTTON:

16 Q Have you seen any police report from Sandy Spring before?

17 A Yes, I have seen a police report from Sandy Spring,
18 Georgia.

19 Q And has this police report provided by --

20 MS. MITRANI: Objection.

21 THE COURT: I'm sorry, I didn't hear the question.

22 MR. SCOTTON: I'm asking, Your Honor, who has provided
23 the police report to him.

24 THE COURT: Overruled. Overruled.

25 THE WITNESS: The police report was initially provided

1 by you in your discovery production.

2 BY MR. SCOTTON:

3 Q Did you recall what the police report said?

4 A In general terms, yes.

5 Q Did you recall the names that was in the police report?

6 A I do recall several of the names that were listed in the
7 police report, yes.

8 Q Do you want me to refresh your mind with the police
9 report?

10 A Well, I recall the names and the general substance of it.

11 Q Can you tell me the names involved in the police report?

12 MS. MITRANI: Objection, Your Honor.

13 THE COURT: Sustained.

14 BY MR. SCOTTON:

15 Q It is in that police report, that address?

16 THE COURT: Sustained. Police reports, as we have
17 previously discussed, are not admissible evidence. They are
18 hearsay.

19 MR. SCOTTON: You said I could ask question about that
20 also, Your Honor, as you told me before.

21 THE COURT: You can ask questions, but you can't go
22 into the details of what's in the police report.

23 MR. SCOTTON: May I have a sidebar, Your Honor?

24 THE COURT: Nope.
25

1 BY MR. SCOTTON:

2 Q Do you remember company called Pro Audio Star?

3 A It's a company name that I have recently learned of.

4 Q Do you recall the company Pro Audio Star as individual use
5 they Fed-Ex account?

6 ^1234678: Objection, Your Honor.

7 THE COURT: Overruled.

8 THE WITNESS: I'm sorry, your question is regarding
9 Pro Audio Store what?

10 BY MR. SCOTTON:

11 Q Has report using Fed-Ex account?

12 MS. MITRANI: Objection, hearsay.

13 THE COURT: I'm going to have to ask you to ask it one
14 more time. I didn't hear what you were saying.

15 BY MR. SCOTTON:

16 Q My question, Your Honor is that I ask if they know that
17 Pro Audio Star has report individual used they Fed-Ex account?

18 THE COURT: Sustained.

19 BY MR. SCOTTON:

20 Q During review of this discovery, did you get familiar with
21 the company Pro Audio Star?

22 A The name of the company name Pro Audio Store or Pro Audio
23 Star is not a company name that I came across in the course of
24 my investigation. And as best I can tell, has no involvement
25 in the charges that we filed or the overall investigation.

1 Q But you denied that Pro Audio Star has also filed a
2 complaint in reference --

3 MS. MITRANI: Objection.

4 THE COURT: Sustained. Mr. Scotton.

5 MR. SCOTTON: Yes, Your Honor.

6 THE COURT: Sustained.

7 BY MR. SCOTTON:

8 Q Your recollection, did you remember Osvaine Duarte's name
9 being on that paper?

10 MS. MITRANI: Objection.

11 THE COURT: Sustained.

12 BY MR. SCOTTON:

13 Q Have you tried to contact Mr. Wolf on this matter?

14 A Yes.

15 Q Did you spoke to him?

16 A No.

17 Q Did you spoke to his attorney?

18 A No.

19 Q Did you know why Mrs. Wolf has contacted Sandy Springs
20 Police Department?

21 MS. MITRANI: Objection.

22 THE COURT: Sustained.

23 MS. MITRANI: Your Honor, can we have a sidebar?

24 THE COURT: I don't think we need one right now.

25 MS. MITRANI: Okay.

1 BY MR. SCOTTON:

2 Q During your review of this document, did you see the phone
3 number that was on the document?

4 MS. MITRANI: Objection.

5 THE COURT: Mr. Scotton, please refrain from asking
6 questions by reading what's in the report. I have already told
7 you several times reports are inadmissible hearsay.

8 BY MR. SCOTTON:

9 Q Do you deny that I have been prosecuted here because I
10 blow the whistle on those companies in 2006?

11 A I do deny that?

12 Q Is any reason why, Mr. Van Brunt, you pursue me from 2006
13 when your investigation was 2008?

14 A I don't believe I had ever heard your name prior to the
15 FBI opening up the case. You are not someone that I had ever
16 heard of before. And I did not engage in any investigative
17 activities in 2006.

18 Q Don't remember searching my name in 2006?

19 A I don't believe I ran a search for your name prior to your
20 case being opened.

21 Q Did you remember the label FBI 451?

22 A I do.

23 Q You don't remember that you been search my name on the
24 internet?

25 A That was not a search that I conducted. That was a search

1 that someone else conducted. In the course of the
2 investigation, they were kind enough to turn over documents and
3 included in those documents were, I believe, some general
4 internet search that they provided me.

5 So while they may have done a search of you regarding
6 separate civil litigation that you may have been involved with,
7 it was not a search I conducted. I merely accepted the
8 documents from them several years later.

9 Q So you are saying you received the documents seven years
10 later?

11 A Several, S-E-V-E-R-A-L.

12 Q Did you call this Excel Capital Company?

13 A No, I have never contacted a company by the name of Excel
14 or Excel Capital.

15 Q Do you know what a black pool city is?

16 A I'm sorry, do --

17 Q Black pool city or state?

18 A I have never heard of the word you said. I'm not sure if
19 I'm just not understanding you. My apologies.

20 Q Do you have recollection if I left the country to go to
21 Greece?

22 A I don't have any recollection or remember coming across
23 anything in my investigation that indicated you were in Greece.

24 Q Any recollection that I was working in some restaurant in
25 Hilton Hotel in 1992 in London?

1 A I have no idea what you were doing in 1992, sir.

2 Q Perhaps this Roger Scotton paper here might be somebody
3 else?

4 A You are the person we charged. You are the person who
5 committed the crimes.

6 Q So --

7 A You are referring to the fact that there might be some
8 other person in the world who shares your name? That is
9 possible.

10 Q We can see those papers are not accurate, right?

11 A The papers are accurate to the extent that you are talking
12 about the documents identified as FBI Bates No. 440s through
13 maybe 460s. I don't recall the specific number that you
14 mentioned. There was separate civil litigation that you were
15 involved with and the attorney who was involved in the
16 litigation against you contacted me after your arrest and
17 offered to provide me documents. I met him, spoke with him
18 briefly, he provided me documents, and then I incorporated them
19 into our case file and they were turned over to you pursuant to
20 our discovery obligations.

21 Q Is it not true, in 1984, as this document say, I was
22 14-years-old?

23 A I know you were born in 1970, so, you know, you were
24 however old you are when you are that age.

25 Q 14, correct?

1 A If you were born in 1970, in 1984 you were 14, correct.

2 Q I couldn't have been working in the hotel, do you think
3 so, at age 14?

4 MS. MITRANI: I'm going to object on relevance.

5 THE COURT: Sustained.

6 BY MR. SCOTTON:

7 Q Do you recall saying that you and your team has make
8 inventory of all the things was in my car?

9 A Yes, this was an inventory that was done of your car on
10 the day of your arrest prior to it being returned to Carlos
11 Colon.

12 Q And you say everything was given to Carlos Colon, correct?

13 A Not everything was given to Mr. Colon because I kept your
14 police badge, I kept your passport, I kept at least one of your
15 cell phones, and, of course, the clothes that you were wearing
16 came with us. So the items that were returned to Mr. Colon
17 were documented in the inventory search.

18 Q Then you give the phone for to me to sign, correct?

19 A You were provided with the written consent to search form
20 once we arrived at the FBI office in North Miami Beach.

21 Q Did you remember the form FD26?

22 A I do remember the form.

23 Q Can you tell this jury what exactly the writing in this
24 form?

25 A Sure. The FD26 form is the FBI standard consent to search

1 form. It's largely a form that's pretyped. Then there's a
2 large blank space in the middle of the form where the agent is
3 allowed to write in with specificity exactly what it was that
4 the consent was being authorized to search.

5 On the form that you are talking about, I wrote in myself
6 the, I believe, year, make, model of the car, and I believe I
7 also referenced the license plate number. And if I remember
8 correctly, initially I started to write the numbers 200 and
9 then realized it was actually a 2011. So I crossed off the
10 first three characters and correctly wrote 2011 to document the
11 year of the car. Then we discussed it. You signed the bottom
12 of it. And then I signed the bottom of it.

13 Q So when you present this form to me, do you recall what
14 you told me, that just returned the car to your stepdad and did
15 inventory and everything that was in the car has been delivered
16 to your stepdad? Do you recall telling me that?

17 A What I recall telling you is that, as we had discussed, we
18 had done the inventory search which largely occurred while you
19 were being transported down to the FBI office in North Miami
20 Beach, that the agents had inventoried what was in the car and
21 documented on a property receipt what was being returned to
22 Mr. Colon including the actual vehicle itself, and that my
23 recollection is by the time we had that discussion, Mr. Colon
24 may have either been at the location of the vehicle or may have
25 just left. I don't recall.

1 Q You never put all my properties on this form, do you?

2 A It's not a property receipt. It is a consent to search.

3 Q Right. But that's what you told me, that this is a
4 receipt you signed that we returning your property and car to
5 your stepdad, correct?

6 A No. The receipt of property was signed by Carlos Colon
7 and he signed it with the other agents that remained at the
8 site where the car was based on your arrest. So Mr. Colon
9 would sign that property receipt documenting that he had
10 received the property, and then it would also be signed by one
11 of the FBI agents documenting that the property had been
12 released to Mr. Colon.

13 Q During the interview, that's what you told me inside the
14 interview room, right, this is the form that I need you to sign
15 that I have to return your car and all your property to
16 Mr. Colon?

17 A No, that's not true. What I told you was this was the
18 consent to search form which memorialized in writing your
19 verbal consent that you had provided to us at the time you were
20 in the back of my vehicle. If I remember correctly, there was
21 a separate property receipt form that you did sign which
22 documented that the FBI was keeping your Brazilian passport and
23 the alleged Brazilian police badge.

24 Q Once again, don't have any video to prove that, right?

25 MS. MITRANI: Objection, asked and answered.

1 THE COURT: Sustained.

2 BY MR. SCOTTON:

3 Q You deny before my arrest I was seeing a doctor during a
4 car accident?

5 A I have no idea what medical treatment you may have been
6 receiving either on a ongoing basis or just, you know, a
7 specific incident. I have no idea what medical treatment you
8 were under.

9 Q Do you deny that after have having several guns draw in my
10 face I was terrified by you guys?

11 A I don't know if you were terrified or not, but Mr. Scotton
12 was fully compliant, he was very polite, he was, quite frankly,
13 quite professional. You know, we try to be as polite and
14 professional as we can be. The level of our professionalism or
15 politeness is dictated solely by the cooperation that we
16 receive from the people that we are interacting with.

17 The reality is Mr. Scotton was very polite, very compliant
18 with what we were doing which was a large part of the reason
19 why I made the accommodations that I did of allowing him to
20 accept a phone call from his mother. I allowed him to call
21 Renata, one of his employees, so that he could request Renata
22 check on his mother. I allowed him to call his mother a
23 separate time from the time he received a phone call from her.
24 I called Mr. Colon and provided him with an update.

25 And then when the unknown phone number came in, I allowed

1 you to accept it notwithstanding the fact that I knew there was
2 a strong possibility it could be from an attorney. But given
3 how polite and professional and courteous Mr. Scotton was, I
4 wanted to afford him as much courtesy as I could.

5 Q It is not the truth that I told you I was under
6 medication, that I was feeling sick, I was in pain during at
7 that time?

8 A I remember you telling me that you were starting to feel
9 nauseas while we were still at the location where you were
10 arrested. I remember that we opened up the door to allow you
11 some fresh air. I remember that we provided you with water
12 both at the arrest site. I remember that we provided you with
13 at least two water bottles while you were at the FBI office in
14 Miami. I remember that we offered you the opportunity to use
15 the restroom several times, only one of which you took us up
16 on.

17 I remember that you complained about being uncomfortable
18 in the handcuffs specifically when we were being transported.
19 I remember explaining to you that unfortunately the FBI rules
20 and safety protocols require that subjects be handcuffed behind
21 them. I suggested to you that if you were able to turn
22 slightly in the seat, it might alleviate the pressure on your
23 wrists and you could actually sit with more pressure on your
24 hips which might alleviate any of the tension or
25 uncomfortableness that you received on your wrists.

1 Unfortunately being handcuffed and specifically being
2 placed in a vehicle for transport is unfortunately an
3 uncomfortable experience.

4 Q So, Mr. Van Brunt, you remember details of the arrest and
5 details about my handcuffs and everything else, but when I ask
6 specific question about subpoena of city, you don't recall
7 because too much time went by, right?

8 A Prior to trial and prior to my testimony, I reviewed my
9 FD302 which was an eight-page typewritten report which
10 documented your arrest. So because I was able to review that
11 document multiple times prior to my testimony, I was able to be
12 better recollection of the events.

13 Q Do you remember a couple IDs that I have on me that you
14 returned to Carlos Colon that day?

15 A I remember there were -- that your wallet, which included,
16 quite frankly, the normal type of stuff that a wallet would
17 include, was returned to Mr. Colon. I believe there was, in
18 addition to your driver's license, some credit cards, and/or
19 bank cards.

20 I also believe there may have been some documentation from
21 immigration and naturalization services. And if I remember
22 correctly, we returned approximately \$1,300 in cash to
23 Mr. Colon that you had on you at the time of your arrest.

24 Q Do you remember two Brazilian IDs that was inside the
25 black wallet returned to Carlos Colon that day too?

1 A My only recollection of a Brazilian ID was the Brazilian
2 police ID that the FBI retained as evidence. There may have
3 been another identification in your wallet, I don't recall.
4 And I don't recall specifically being the agent who looked at
5 your wallet or went through it. I recall being back at the
6 vehicle pouring water in your mouth and seeing if you were
7 doing okay and trying to determine whether you needed more
8 immediate medical attention.

9 Q But you return everything to my parents, so when you
10 return everything to my parents, you don't recollect all of
11 these IDs?

12 A I didn't return everything to your parents. What I said,
13 Mr. Colon went to the site where the arrest was, and in
14 addition to taking custody of your SUV, he was also provided
15 with the contents that were in the SUV.

16 Separately and totally apart from that, later on that
17 evening, I drove up to Margate, Florida to return other items
18 of property to Mr. Colon. All of those properties that were
19 returned were documented in property receipts signed by
20 Mr. Colon.

21 Q What did you give to him over there that night?

22 A What time?

23 Q What documents did you give to him that night?

24 A My recollection of the documents that I gave to Mr. Colon
25 that evening in Margate, Florida were a cell phone, a cell

1 phone battery, sort of an external hard drive, like a flash
2 drive, not a thumb drive, but a flash drive and a few other
3 items.

4 Q You don't remember the two IDs? If I refresh your mind,
5 would you remember the IDs?

6 A If you show me the property receipt, the property receipt
7 would help refresh my recollection of the property that I
8 returned to Carlos Colon and that he signed acknowledging he
9 had received. So if you have the property receipt, that would
10 refresh my recollection.

11 Q I don't have that, Mr. Van Brunt. There's a copy of my
12 IDs I would like to recollect your mind that were returned to
13 Mr. Colon.

14 A I'm sorry, you would have to look through the discovery
15 yourself.

16 Q Is it not true you took those two IDs out of the yellow
17 badge wallet?

18 A I don't recall taking those identifications out of the
19 yellow badge.

20 Q Do you recollect the picture RIS18?

21 A I recall that there were 49 pictures that we had placed
22 Bates labels on which were RS followed by a handwritten number.
23 The Bates label was created by me and the handwritten number at
24 the bottom is my handwriting.

25 Q So who this individual in the picture right there?

1 A You are the individual on the left, and to the right is
2 Aylin.

3 Q And I have -- I am wearing a cap, right?

4 A Yes, you are.

5 Q What does the cap say?

6 A It says FBI.

7 Q Is it a crime to use a souvenir?

8 A No, caps and hats like that are sold at all kinds of
9 stores including kiosks and malls. Frankly, if you ever go to
10 Washington, D.C., there are literally hundreds, if not
11 thousands of places that sell FBI hats, CIA hats, Secret
12 Service hats. It's not necessarily a crime to wear something
13 that says FBI on it.

14 Q So is it not the true the other police departments sell
15 souvenirs as well?

16 MS. MITRANI: Objection, relevance.

17 THE COURT: Sustained.

18 MR. SCOTTON: Your Honor, I have a point of that
19 reference the wallet.

20 THE COURT: Go ahead and make the point.

21 BY MR. SCOTTON:

22 Q Do you know that wallet present to the grand jury here
23 that you say that I was pretend to be a cop but is a souvenir
24 from Brazil?

25 A I don't believe it's a souvenir from Brazil. And my

1 belief is based largely on the fact that DHL identified you as
2 a person who came into their store in Delray, flashed the badge
3 to them, essentially tried to bully them into releasing the
4 packages. You threatened them with being some kind of
5 Brazilian law enforcement officer and ultimately left without
6 your packages. So the fact that you knew prior to the date of
7 your arrest that you had identified yourself to other people as
8 allegedly being a Brazilian police officer was relevant to me.

9 I also know, having reviewed your immigration application,
10 that one of the questions they specifically asked you is
11 whether you have ever been a member of a police department or
12 anything else like that. You indicated that you had never
13 been.

14 So I would it be curious as to why you would have a police
15 identification card as well as a badge, because the reality is
16 most people who are shown a badge and identification card could
17 very easily believe that you were a policeman.

18 In fact, when I show someone my identifications from the
19 FBI, my expectation is that they will understand that they are
20 real and that I am the person I purport to be.

21 Q Who is the person that told you that I present besides
22 DHL?

23 A DHL, Chris Turner.

24 Q You just say someone else I show IDs, presents myself as
25 the police?

1 A Yeah, DHL.

2 Q You say other people, right?

3 A The other people at DHL who observed or heard the meeting
4 that you had up in Delray when you came back, the third video
5 clip that was shown to the jury, you came back.

6 MR. SCOTTON: Your Honor, can I play the individual
7 clip to the jury, the part that I have the wallet with me?

8 THE COURT: All right. That brief part, but let's not
9 go through the entire video.

10 MR. SCOTTON: No, just that.

11 MS. MITRANI: Would you like us to get it for you?

12 MR. SCOTTON: Yes.

13 (Thereupon, the videotape was played.)

14 BY MR. SCOTTON:

15 Q I walk over there to DHL and I have something in my hand,
16 some papers, and I put my wallet on the --

17 A There's a black item on the counter next to the papers you
18 brought in.

19 (Thereupon, the videotape was played.)

20 THE WITNESS: That's Mr. Turner handing you a piece of
21 paper with the number for DHL fraud. That's you showing him
22 right there.

23 BY MR. SCOTTON:

24 Q Of course, we have no audio on the video either, right?

25 A Correct, there's no audio on this.

1 (Thereupon, the audiotape was played.)

2 MS. MITRANI: Stop? Do you want more?

3 MR. SCOTTON: No.

4 Your Honor?

5 THE COURT: Yes.

6 MR. SCOTTON: I have provided this piece of evidence
7 to the government, some printouts from the government, Brazil
8 police department.

9 THE COURT: Did you show it to the government?

10 MR. SCOTTON: Yes, Your Honor.

11 MS. MITRANI: He did show it. I said I don't know
12 what he intends to do with it, but I do object to it's
13 admissibility.

14 THE COURT: You can show it to the agent if you want
15 to.

16 BY MR. SCOTTON:

17 Q I'm going to go ahead and give you those wallets.

18 A I don't believe I have ever seen these wallets before.

19 MS. MITRANI: I'm sorry, is there a question pending?
20 Because if there is, I didn't hear it.

21 THE COURT: There is no question pending.

22 MS. MITRANI: The government requests there be a
23 question.

24 BY MR. SCOTTON:

25 Q So this is a wallet that have credit card, money, right?

1 A These are wallets. There's a billfold for money to be
2 placed in. Although I don't believe this is the same wallet
3 that your police badge was in.

4 Q But they have the same badge as well on the one you
5 presented here today?

6 A Can you show me the police badge? I believe it's No. 103
7 or 104.

8 Sure. Mr. Scotton has just handed me what's been marked
9 for identification as Government's Exhibit 103. While there
10 are some similarities with the badge, the difference between
11 your wallet and that next to the badge, there is an
12 identification card that says policia on it. It has your name
13 and it has your picture.

14 One of the wallets that you handed me actually
15 reference -- they are, I believe, Portuguese. One of the
16 wallets contains a brass plate on the bottom that says militar,
17 M-I-L-I-T-A-R, and the other one on the bottom has a different
18 name plate which has a different word. I don't know if that's
19 the name of a city, a state, or some other Portuguese word.

20 But I would point out that neither of the wallets that you
21 have provided me and shown me for the first time today, none of
22 them include what your wallet included which is basically a
23 clearly identified identification with your picture on it, the
24 words largely printed in red font P-O-L-I-C-A, which includes
25 your name above it and a description of what I believe is your

1 title of inspector, I-N-S-P-E-C-T-O-R, de policia.

2 So my position would be that this identification that you
3 showed to Chris Turner by quickly standing up, flashing it to
4 him, and closing it gave him the impression that you were, in
5 fact, a police officers because there was shown to him a badge
6 as well as an identification card that had your name and
7 picture on it, sir.

8 Q They might not look similar, but they are different
9 prototype of wallets, correct, with the same badge, policia
10 militar, both of them?

11 A They are not the same badge because the two wallets that
12 you showed me today have mother name plate on the bottom of
13 them. So they are not the same. And again, both of these are
14 missing the identification card that is so prominently
15 displayed in the item I took from you on the day of your
16 arrest.

17 Q Did you see in the video I'm flashing, I'm pretending to
18 be a police officer over there? Did you saw that or did you
19 saw me put my wallet on the counter? I don't see me in the
20 video flashing the wallet.

21 A I did. It was in your left hand. You very quickly went
22 like this (indicating).

23 Q Very quick?

24 A In your left hand, absolutely, just long enough for you
25 them to see a badge and ID card followed by you closing it to

1 prevent someone from scrutinizing it closely. It's a common
2 technique for people who are impersonating law enforcement
3 officers.

4 Q It is?

5 A Yes.

6 Q So that's what the video show?

7 A Absolutely.

8 Q So that video is clear, it shows that I pulled put the
9 wallet on the counter, is that not correct, and my keys and
10 other paper to be able to talk to him?

11 A At the beginning of the video, your items are placed on
12 the counter. And then when he comes out, shortly after he
13 hands you the piece of paper that has the phone number for the
14 DHL fraud unit, you actually take the item, you hold it in your
15 left hand, you quickly show it to him, and you keep it in front
16 of you for some point after that before ultimately getting
17 upset and ultimately leaving.

18 Q So there's no audio in the video to show that kind of
19 activity there, right?

20 A There's no audio because my understanding from DHL is that
21 these camera systems are largely set up for both safety
22 measures and security measures. The safety measures primarily
23 relate to making sure that the employees who work there are
24 operating in a safe manner.

25 One of the larger concerns of all the shipping companies

1 in there transit points and hub stations is employee safety.
2 Probably from just a general concern standpoint, but also from
3 liability purposes, they want to make sure that their employees
4 are acting safely and doing everything from using forklifts
5 appropriately to proper lifting techniques. So the videos are
6 largely meant to track and monitor the physical activities of
7 people, not to record conversations or things of that nature.

8 Q So it is not the true that there is no audio on that video
9 there to impede the jury to hear exactly what's going on that
10 day?

11 A My understanding is that none of the video cameras that
12 DHL has at that location have audio components. I also believe
13 there might be some privacy concerns that the companies have
14 for employees to feel like their conversations were being
15 monitored all the time.

16 In light of those privacy concerns, the shipping companies
17 as a matter of regular program have video primarily for safety
18 and security purposes.

19 Q Is it not the true that that particular wallet that you
20 took from my car has the two Brazilian IDs that I tried to
21 describe to you and you handed to Carlos Colon the day you went
22 to the house?

23 A I don't recall there being any Brazilian IDs in here other
24 than, again, the item that's marked with your name Rogerio
25 Chaves Scotton which purports to be from the Rio de Janeiro

1 Police Department listing you as some type of inspector
2 including any other documents. It may have. Again, I don't
3 recall there being anything else in there.

4 I did return items to Mr. Colon. There may have been some
5 other Brazilian identification or general identification that
6 was in your possession at the time that I returned them to
7 Carlos.

8 Q You don't recall my military ID being inside that wallet?

9 MS. MITRANI: Objection, asked and answered.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q Do you want me to refresh your mind with the --

13 MS. MITRANI: Asked and answered.

14 Also, there's a picture on. If he's going to inquire,
15 fine. If not, we want to take it down.

16 THE COURT: Mr. Scotton, if you are going to ask a
17 question about it, fine. If not --

18 BY MR. SCOTTON:

19 Q Once again, we can see Aylin in that picture over there
20 right?

21 A I see a picture of Aylin sitting down with her, what I
22 believe is her cell phone in her right hand and is her left
23 hand minus any wedding ring or wedding band near her face.

24 Q Do you remember the location that she's sitting at?

25 A I believe that that is a French bakery or cafe located

1 around the corner from your Merry Mailman store located at 100
2 Plaza Real South, Suite F.

3 Q That was across the street from our house, correct?

4 A Yes, it is in the shopping plaza directly across the
5 street from the Mizner on the Green townhouse where you lived.

6 Q Does she look terrified or afraid of me?

7 A She is smiling for the camera. I have no idea if you are
8 the person who took the picture or not. She does not look
9 afraid in that photo identified as RS pic 32.

10 Q Do you recall the place is across the street from our
11 house, correct?

12 MS. MITRANI: Objection, asked and answered.

13 THE COURT: Sustained.

14 BY MR. SCOTTON:

15 Q Is there a coffee shop that we see over there next to the
16 Federal Express store?

17 MS. MITRANI: Objection, relevance.

18 THE COURT: Sustained.

19 BY MR. SCOTTON:

20 Q Do you remember during the video on August 29, you
21 presented me with two papers?

22 A I showed you many documents during our meeting in August
23 of 2011.

24 Q Do you want me to refresh your mind with a copy of the
25 papers you presented me?

1 A Yes, please, because again, I showed you more than just
2 two pages of documents.

3 Yes, I do recall these documents that are identified by
4 Bates number Scotton 14 and Scotton 13. Although there is
5 some, I think, additional handwriting on here that was not on
6 the documents that you and I looked at and reviewed that day,
7 just some lines next to names, nothing that I would consider
8 substantiate changes.

9 Q And do you remember that day that I was mark on that paper
10 companies that is not operating companies anymore?

11 A Correct. Specifically on the document identified as
12 Scotton 13, it is a list of businesses printed out from the
13 Sunbiz?

14 Q Is any reason why on the document has some companies that
15 has been mentioned that paper twice, the same company?

16 A Sure, because when you run a search on Sunbiz, when you
17 run the search name to the extent of that multiple documents
18 have been identified, specifically by entity number, meaning
19 there may have been a change in who the officer or director
20 was, there may have been a change in the resident agent, there
21 may have been some other changes, a new filing in the Sunbiz
22 public database search can sometimes result in multiple entries
23 for the same company.

24 On the far right-hand column of this document, there is a
25 column identified by entity number. And normally that

1 identifying number starts with a letter followed by a series of
2 numbers. The first two numbers normally relate to the year
3 that that document was filed. And then the following numbers
4 are sort of specific identifiers for that document.

5 So looking at this, there was a filing for a company named
6 the Merry Mailman, LLC. It appears that it was filed sometime
7 in 2011. And the entity number that was assigned for that
8 specific filing by the Florida Department of State, Division of
9 Corporations is a number 84418.

10 Q During your four years investigation, did you get to know
11 who is Mr. Davis Scotton?

12 A Mr. Davis Scotton?

13 Q Yes, sir.

14 A I'm not familiar with that name during my investigation or
15 leading up to trial, no.

16 Q It's right on the paper you are holding, Mr. Van Brunt.
17 You got a Mr. Davis Scotton, Michael Scotton --

18 A Sure, on the second page of the documents you gave me
19 identified as Scotton 14 is a separate search that I ran based
20 on the officer registered agent name search. So the first
21 document was a search based on the name of the business entity.
22 The second document would have been a search by individuals'
23 names related to different entities.

24 This document was created -- was printed out from the
25 Sunbiz website when I had run a search for people with the last

1 name that were officer registered agents for S-C-O-T-T-O. And
2 the reason why I feel confident that was the search string that
3 I ran is because if you look at the upper left-column, the
4 first name that appears is S-C-O-T-T-O. The reason why I ran
5 that search and didn't include the last few characters of your
6 name is because you regularly use variations and slight
7 misspellings on your name and I wanted to do everything I could
8 to capture any entities or businesses that you were associated
9 with.

10 I ran the search. The first name that's listed here is a
11 gentleman whose first name is Michael. His last name is
12 Scotto, S-C-O-T-T-O. There is then a reference to a Michelle
13 Scotto. The fourth line down contains an entry for a person
14 named Roger, R-O-D-G-E-R, last name Scottom, S-C-O-T-T-O-M.
15 There is then several entries for the last name Scotton which
16 included Alex and Claudia as well as a gentleman whose first
17 name was David, but again with the last name Scotton.

18 The information continues with other people including
19 people whose last name is Scotto, S-C-O-T-T-O, and then there's
20 three entries at the bottom for Flavio Scotton.

21 Q It is Mr. David or Ms. Michelle has any knowledge about me
22 or has any relation to me?

23 A I am not aware of Mr. David Scotton or Michelle Scotto or
24 Michael Scotto having any involvement in the case or the
25 investigation. There are other people whose again names were

1 returned based on the search that was run.

2 Q So you say you don't know if those people was involved,
3 but you do know that you have been investigating this case for
4 four years, right?

5 MS. MITRANI: Objection, Your Honor.

6 THE COURT: What is the objection?

7 MS. MITRANI: Asked and answered and argumentive.

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q During this cross-examination from the prosecutor, you
11 mentioned that I have several different companies, correct?

12 A Correct.

13 Q This is not the truth, correct?

14 A The truth is that you do have many different companies and
15 you have incorporated many, many different companies in the
16 State of Florida.

17 Q Is any crime incorporating companies in the State of
18 Florida, Mr. Van Brunt?

19 A It depends on what the intent is when you open that
20 company. If you are opening that company with intent to use it
21 in furtherance of a fraud, then yes, it is fraudulent and would
22 be one of the steps of the crime. If you opened up that
23 corporation as a way to conceal who you are, if you open up
24 that corporation with a slight variation of the name and that
25 corporation is opened up with the intent to mislead and/or

1 conceal your true activities or your true identity, then yes,
2 it absolutely is a crime.

3 Q Do you deny that Brazil Express was discontinued, and then
4 after that Sky Air was created?

5 A I do not dispute that at some point you stopped using
6 Brazil Express and some variations on that name and started to
7 use a company by the name of Sky Air and other variations on
8 that. Although I have my suspicions on why you made that
9 change.

10 Q It was not the true that both sides Sky Air and Brazil
11 Express was complete operated different occasions?

12 A I believe they were operated at different times, but I
13 believe they were operated in the same manner and means and
14 methodology.

15 Q It is not the true that you say here that I used to have
16 several websites that operated?

17 A You did have more than one website that operated, yes.

18 Q When you say that, like you have more than one website
19 operated, it seems I have ten websites operating at the same
20 time, don't you think so?

21 A No. My recollection of what I testified to is that there
22 is a website Sky Air Online, another website Brazil Express
23 Online, and there's a third website named Roger Racing which if
24 I recall correctly had a link to some shopping options. I
25 don't remember telling the jury that there was a multitude of

1 websites that you operated. I just remember specifically
2 talking about those three.

3 Q A Brazil Express and Sky Air never has been operating at
4 the same time, correct?

5 A I don't know if there was a brief period of time where
6 there may have been some overlap, but my recollection is that
7 once you stopped using Brazil Express, you predominantly were
8 using the Sky Air Online and the different variations of that
9 name and the different bank accounts which were different
10 variations on those businesses' names which --

11 Q There is no question, Mr. Van Brunt.

12 A I was giving a complete answer when you were asking about
13 the different names that you had and explaining why you may
14 have had variations on them, that being namely that in order to
15 open up a business --

16 Q Wait for a question, sir, please.

17 A That being in order to open up a bank account, business
18 bank account, normally financial institutions require that a
19 business be formally generated and created in that state. So
20 the fact that you opened up variations of company names allowed
21 you the opportunity to open up additional bank accounts.

22 Q It is not the true that Roger Racing was a racing website?

23 A It was a racing website primarily, but my recollection is
24 that there was a link on there which had the option of a
25 shopping feature that you could link to through it, but it was

1 predominantly regarding your racing activities and had pictures
2 of you at different car events as well as, I believe, some
3 other background information on yourself and maybe some
4 pictures of you and friends or family members.

5 Q Is it not the true that what it mention about shopping
6 online over there, that Roger Racing is a link that take you to
7 Sky Air website?

8 A I don't think it took you to Sky Air. It may have taken
9 you to Brazil Express Online? I don't recall. My recollection
10 is that is your Roger Racing website was a little bit older.
11 Then there was Brazil Express website, and then Sky Air Online
12 was the most recent website that you were using at the time of
13 your arrest.

14 Q You also mentioned prosecutor some gentleman name Reynaldo
15 went to my store in Boca Raton and offered me some kind of
16 shipping labels, correct?

17 A Well, you told me about a gentleman named Reynaldo who you
18 told me came to your store, the Merry Mailman, and offered you
19 some Fed-Ex labels. You told him you didn't want anything to
20 do with those labels. I asked you what did that mean and why
21 you didn't want anything to do with them and you told me that
22 you believed that they were fraudulent shipping labels and you
23 didn't want those fraudulent shipping labels to have anything
24 to do with the Merry Mailman.

25 Q Why do you think individual going to come to authorized

1 shipping center, Federal Express, with the labels to provide
2 me?

3 A Because he knows that you send packages with fraudulent
4 labels so he knows you are someone who might be interested in
5 using them or paying for them or buying them, or maybe you are
6 someone who even provided them to. All I know is what you told
7 me.

8 Q Did you have the video recording audio that show our
9 conversation?

10 MS. MITRANI: Objection, asked and answered.

11 THE COURT: Sustained.

12 BY MR. SCOTTON:

13 Q You don't have any proof that I say that to you, do you?

14 A I do. I have my recollections that you told me that.

15 Q That's all you have, correct?

16 A Absolutely. I have my recollections and I have my report
17 that I generated based on our interview. If you wanted to show
18 me my FD302, I could confirm it again and confirm what my
19 recollections are. I have a very clear recollection of you
20 telling me that. I have a very clear recollection of our
21 interview because you continued to lie about a multitude of
22 things many of which were easily provable, and I essentially
23 became confident at that point that we would be at trial
24 eventually.

25 Q So you present to this jury here your recollection, but

1 you don't present the physical evidence to this jury, right?

2 A When you say the physical evidence, are you talking about
3 the packages that are on the floor that have been admitted as
4 evidence, or are you talking about the calls that have been
5 admitted in evidence where the witnesses have identified you as
6 the caller? Are you talking about the video where you and I
7 met in Boca Raton in August of 2011 where you identified for me
8 and confirmed after I spelled the name of your fiancée as
9 Felini, that she was the person that you were engaged to, that
10 you had not yet set a date, that you were only opening the
11 store for her, that you did live at 398 South Southeast Mizner
12 Boulevard, that you denied being related to someone by the name
13 of Flavio Scotton, that you denied being related to the person
14 by the name of Claudia Scotton, that you advised me that an
15 individual by the name of Carlos Colon was only a friend and
16 not a family member. Are you talking about that evidence, sir?

17 Q No, sir. I'm talking about what evidence here with
18 Reynaldo.

19 A I had never heard the name Reynaldo prior to you telling
20 it to me in the investigation. My recollection of the only
21 other person who I have come across with any kind of the first
22 name Reynaldo was actually Claudia Scotton's previous husband
23 who, again, as far as I could tell, has no involvement in this.

24 I also don't think that Reynaldo is a terribly uncommon
25 name in South America so I don't know if that's a real person

1 or not. I just know that that was a name that you told me
2 someone who allegedly came into the Merry Mailman store,
3 offered to sell you shipping labels that you knew were
4 fraudulent, you told them you did not want anything to do with
5 those because the Merry Mailman was not going to have anything
6 to do with that kind of stuff.

7 Q Right, that's what you say, correct?

8 A No, that's what you said, sir.

9 Q It is not he was looking over there in my store for Paulo
10 Roberto that day?

11 A Pardon me?

12 Q It's not that he went to the store looking Mr. Paulo
13 Roberto that date?

14 A You never told me he was looking for Paulo Roberto, and my
15 understanding is that you are Paulo Roberto.

16 Q I mentioned to him that Paulo Roberto did not work over
17 there and it's not his store, this is my store. Paulo Roberto
18 does not work from here.

19 A I am not aware of anyone named Paulo Roberto who worked
20 for you. I am only aware of phone calls being received at your
21 business and your employee Renata telling you that the person
22 calling was asking for Paulo and that then the phone was handed
23 to you and you spoke to the person as if you were Paulo
24 Roberto.

25 Q Did you send Reynaldo to my store?

1 A No, I didn't approach Renata until --

2 Q Reynaldo, the gentlemen we are talking, did you send him
3 to my store?

4 A No, I don't know anyone by that name, sir. I have never
5 met anyone named Reynaldo.

6 Q Is it not true that you took my passport without my
7 authorization out of my car?

8 A I took your passport. It was not without your
9 authorization. You gave the consent and it is not outside
10 normal procedures for the FBI to take the passport of a foreign
11 national at the time they are arrested.

12 Q And the passport that you showed to the jury here was a
13 valid passport, correct?

14 A It was a passport that was issued, I believe, by the
15 Brazilian consulate in Miami in 2008. I believe there are no
16 visas in there. I believe there are no date of entry or
17 inspections in there.

18 And if I remember correctly, it was issued in 2008 which
19 was several years before you had your interview with U.S.
20 Citizenship and Immigration Services, so I'm not sure why you
21 didn't provide that passport to them during your adjustment
22 status here.

23 Q But don't have also the other passports also that has the
24 visas and the stamps, right? Didn't present that to the jury,
25 right?

1 A You don't have a visa, sir. That was discussed by the
2 Department of State witness.

3 Q Did you show here a passport with this jury, prosecutor
4 show one that has a visa and some stamps of entry into this
5 country?

6 A What I believe was shown to the jury were the documents
7 that you provided in the course of your adjustment to status
8 wherein you purported to have last lawfully entered and been
9 inspected in the United States back in 1992 or 1993.

10 Those were the documents that you provided to U.S.
11 Citizenship and Immigration Services as part of your
12 application knowing that in order to adjust your status based
13 on your alleged marriage to Aylin, you needed to be lawfully
14 inspected when you entered the country. But the documents you
15 provided are contrary to the facts.

16 Q So you don't remember the prosecutor show picture of my
17 passport with the visas here and entries for the jury?

18 A I do recall those documents being shown. I also recall
19 that there was a stamp from 1992 or 1993, and my recollection
20 is that there were two visa applications that were shown to the
21 jury which document that you were in Brazil in 2008 and applied
22 for two separate visas. Both of those visas were denied.

23 And I also recall that in a separate application you had,
24 you admitted that you had raced in Brazil in 2006 and 2007 or
25 perhaps 2007 and 2008, so it seems quite clear to me that you

1 obviously had left the United States after 1992 and returned
2 prior to your immigration adjustment hearing.

3 Q Did you have all the other passport with the entering
4 Bahamas and in Cuba, did you show that to the jury too?

5 A No. The only passport that you had on you at the time of
6 your arrest lacks any stamps, any entry dates for any country.

7 Q So during your four-year investigation, you saw that I was
8 in Brazil but never saw that I went to Cuba to meet with
9 Aylin's family?

10 A I actually reviewed bank records and there is purchases of
11 a ticket from Brazil to Havana. So I don't know if that's
12 where you met Aylin or her family or not. But it again shows
13 that you departed Brazil in, I believe, 2008 and appeared in
14 Cuba.

15 Then a short time after that, according to the bank
16 statement, you began to charge more items in the Bahamas. Then
17 shortly after that, the charges appeared in south Florida and
18 Boca Raton, all of which is contrary to the answer you gave
19 when asked when you last entered the United States which was
20 the false statement that you are charged with in this case.

21 Q Is any problem opening a checking account?

22 A There can be, yes, if you open up the bank account with an
23 intent to commit a fraud or you open up a business account
24 where normally banks, as a courtesy and to promote business,
25 clients will give you immediate credit for any deposits that

1 are made notwithstanding the fact that checks in particular
2 normally require a waiting period for the checks to be
3 processed. So if you open up a bank account knowing that you
4 are going to get immediate access to cash based upon deposits
5 made and you intend to submit checks to those banks, checks
6 which are not good, checks which link back to accounts that are
7 closed, you deposit those checks, you are immediately given the
8 credit by your own institution, you withdraw the cash, and by
9 the time the check is processed, the check bounces and the bank
10 left with a loss. So depending what your intentions are when
11 you open up the bank account, you may or may not be committing
12 a crime.

13 Q Do you remember presenting to the jury here a check from a
14 claim of DHL and it has Paulo Roberto name on it?

15 A I recall many checks, several of which had the name Paulo
16 Roberto.

17 Q And do you remember also the check has the address of 1801
18 Harbor Point Parkway?

19 A I do recall there was at least one check that had that
20 address. I don't recall if it was made payable to Paulo
21 Roberto, but there was a check from one of the shipping
22 companies with that address, correct.

23 Q You don't remember that the check was sent to that address
24 as the address indicated on the check, correct?

25 A I don't know if the check was sent to that address. That

1 would be the normal course of business. I know in other
2 instances you contacted the shipping companies and requested
3 the check be sent to a PO box, specifically, PO Box 629.

4 And I believe your justification for asking the shipping
5 companies to send to your PO box instead of the address listed
6 on the check was that people were either stealing your mail or
7 there was a problem with the mail carrier. But I do recall
8 there being checks addressed to the Harbor Point Parkway
9 address, yes.

10 Q During your four years investigation, you never really
11 checked that address, correct?

12 A I didn't check that address just like I never checked the
13 address of all the other customers you had.

14 Q So during the four years investigation with those
15 companies, you get the understanding that those companies
16 either lost or damaged packages most of the time?

17 A No. My understanding and expectation is that most of the
18 time they deliver the packages as they had been contracted to
19 do. The fact that there may have been a package that was lost
20 and/or damaged is, I think, an unfortunate part of the
21 international shipping business.

22 Q It is not part of the contract when the lost or damaged
23 package to pay on a claim?

24 A I haven't read the small print on the terms and
25 conditions, but I do know that for each shipping company, there

1 is a claims process that a customer can go through if they
2 believe that their package was either lost or damaged.

3 Q Have any company, any of those companies complain about
4 any claim checks that I deposit into my account?

5 A Yes. The course of the investigation, they complained
6 about the fact that, as we got further into the investigation,
7 they realized that, not only were you stealing shipping
8 services from them, but you were actually submitting fraudulent
9 claims for packages which may or may not have actually been
10 damaged and/or lost. Frequently the companies, as a way to
11 keep customers happy, will go through the claims process, and
12 absent some indicia of fraud, will essentially process the
13 claim up to the limits of the insurance coverage that might
14 exist. They might even go over the insurance coverage if they
15 are making efforts to satisfy a customer.

16 THE COURT: We are going to take our lunch break now.
17 It's going to be a little bit longer lunch break than usual.
18 And we will return at 1:30. Have a great lunch break. Please
19 remember my instructions. Don't discuss the case with anyone.
20 Don't disburse any information about the case, and don't do any
21 research into the case. We will see you at 1:30.

22 (Thereupon, the jury exited the courtroom at
23 12:01 p.m.)

24 THE COURT: All righty. Welcome back. Mr. Scotton,
25 we have jurors who obviously need to get back to their jobs. I

1 want you to have a full and fair opportunity to present your
2 case, but I'm not going to continue to allow you to keep asking
3 the same questions over and over again. It is not fair to the
4 jury to waste their time. So I'm going to put you on notice
5 that if you continue it do that, I will not have a choice but
6 to end your cross-examination. So, please, I'm going to ask
7 you again, please ask questions in areas -- or ask questions
8 that you have not previously asked. Okay? Do you understand?

9 MR. SCOTTON: Yes, Your Honor.

10 THE COURT: Okay. Thank you.

11 MR. KREISS: Your Honor, what time were we working
12 until today?

13 THE COURT: Today is Wednesday and I think that means
14 that the juror has a 4:30 end time today.

15 MR. KREISS: We are just trying to coordinate. We
16 have a lot of unhappy people that we are trying to deal with
17 and we want to make sure that we have witnesses available.

18 THE COURT: I certainly appreciate that. We want to
19 minimize the inconvenience to them while still being able to
20 not have spaces of dead time.

21 Mr. Scotton, you should really be the best judge of
22 how long your cross-examination is going to be which is what is
23 driving the scheduling of when you will be calling these
24 witnesses. So just to be clear, I do expect that you will have
25 sufficient witnesses to call for today, but I also expect that

1 you will not needlessly make throngs of people wait outside
2 when you are the one who is driving the schedule. Do you
3 understand?

4 MR. SCOTTON: Your Honor, I'm trying my best. I
5 already got all my questions in writing and everything else,
6 so...

7 THE COURT: Okay.

8 (Thereupon, the jury entered the courtroom at
9 1:32 p.m.)

10 THE COURT: All righty. Please be seated, everyone.
11 I hope everybody enjoyed lunch. You guys are probably getting
12 to know the area pretty well at this point. Let me just ask,
13 is there anybody here who discussed the case with anyone,
14 disbursed any information about the case, or did any research
15 into the case? If so, please raise your hand for me now.

16 I see no hands. Thank you all for that.

17 Agent Van Brunt, what am I going to tell you?

18 THE WITNESS: You are going to ask me if I know I'm
19 still under oath, and I do.

20 THE COURT: Okay. Excellent.

21 Mr. Scotton, whenever you are ready, you may proceed.

22 MR. SCOTTON: Your Honor, before I proceed, I would
23 like to introduce as evidence those wallets Mr. Van Brunt waved
24 to the jury.

25 THE COURT: Any objection?

1 MS. MITRANI: Objection, relevance grounds.

2 THE COURT: All right. I will allow it. Let's call
3 that -- do you want me to introduce them both under the same
4 number?

5 MR. SCOTTON: Yes, Your Honor, please.

6 THE COURT: That will be Defendant's Exhibit 5.

7 (Thereupon, Defendant's 5 received in evidence.)

8 BY MR. SCOTTON:

9 Q When we finished here, Mr. Van Brunt, we were talking
10 about those claim checks. Do you recall that?

11 A I do recall.

12 Q Do you have any recollection of those checks being cashed
13 by a cash check store besides being deposited to my account?

14 A No. During the course of the investigation, we did not
15 subpoena any check cashing stores or other money services
16 businesses. The checks that we received and which were
17 introduced earlier as exhibits were checks that were returned
18 from the specific banks and the financial institutions where
19 your accounts were held.

20 Q And during that time, did you have any recollection of any
21 check being deposited, those claims being deposited into in my
22 account from other states?

23 A Yes, there were other checks that were deposited into your
24 accounts which seemed to indicate back on the backside of the
25 check, the endorsement, that they were deposited at branches

1 outside the State of Florida.

2 Q And talking about the claims checks, right?

3 A Oh, no, I'm sorry. The claims checks?

4 Q Yes.

5 A I don't believe that there was information on the back of
6 what branch or where they had been deposited.

7 Q But deposit those checks in my accounts, it is clear
8 evidence of that I deposited those checks, correct?

9 A I don't understand your question. The checks were
10 deposited into accounts that were associated with you.

11 Q Right, so I was not hiding the fact that I was getting
12 claim checks deposited into my account, correct?

13 A The checks on their face are made out to different people.
14 I don't recall there being many, if any, checks made out to
15 Roger Scotton so they were made out to other people --

16 Q The question is --

17 A -- they were made out --

18 Q Please start answering my question, please.

19 A I am, sir. I am continuing my answer from the previous
20 question.

21 Q The question is, have I denied that I deposited those
22 checks this my account? Did I deposit checks in my account,
23 Mr. Van Brunt?

24 A The checks were deposited in your accounts. I don't
25 recall any of the claim checks that were made payable from the

1 shipping companies being made payable to Rogerio Scotton. The
2 checks were made payable to other people and/or entities --

3 MR. SCOTTON: Your Honor, please direct the agent to a
4 yes or no question, Your Honor, please.

5 THE COURT: Well, I'm not going to limit him to a yes
6 or no when the question may call for more than a yes or no.

7 But, Agent Van Brunt, please limit your answers to what fairly
8 responds to the question. All right?

9 THE WITNESS: Yes, Your Honor.

10 BY MR. SCOTTON:

11 Q Have Federal Express, DHL, and UPS put a stop payment on
12 those checks that went to my account?

13 A I don't believe so.

14 Q During the prosecutor cross-examined, you point out
15 airline tickets that was bought with my ATM card out of my bank
16 account, correct?

17 A Yes, there was a purchase for Tam Airlines on one of your
18 bank accounts.

19 Q Did you verify with Tam where was the ticket from?

20 A No, we did not subpoena the Tam Airlines.

21 Q Also, prosecutor has point out to you money being drawn
22 out of my account, correct?

23 A Correct, there were withdrawals from your account.

24 Q Out of the \$14,000 the prosecutor has shown you, did you
25 have any recollection what the \$14,000 was for?

1 A There was a withdrawal of \$14,000 in cash. I'm not aware
2 of what your purpose was for withdrawing that money.

3 Q \$11,000 that you show here was draw out of the account.
4 Do you have any recollection what the money was for?

5 A Again, I don't know what the purpose of your cash
6 withdrawal of \$11,000 was.

7 Q During the course of this investigation, this arrest,
8 Mr. Van Brunt, have FBI froze any of my accounts?

9 A No. We have not filed as the Department of Justice or
10 anyone any seizure on your accounts or frozen any of your bank
11 accounts.

12 Q Have any money been take out of my accounts by the FBI?

13 A No, the FBI has not seized or taken any money from your
14 accounts.

15 THE COURT: How are we doing, Mr. Scotton?

16 MR. SCOTTON: Almost there, Your Honor.

17 BY MR. SCOTTON:

18 Q Mr. Van Brunt, during the cross-examination, several
19 statement was point by the prosecutor and some charge, you see
20 some withdrawal charges from Bahamas?

21 A Yes, I do.

22 Q Did you also see the charge also for the marina on the
23 account?

24 A Yes. On July 29, there's a charge for, I believe, \$387.21
25 for a marina.

1 Q Was also a charge for mechanic auto parts for the marina?

2 A There is another -- are you talking about the charge on
3 July 30 a few lines down for \$42.43 for the same marina?

4 Q I'm not going to go ahead and present all the papers.
5 During your investigation, did you see the charge was \$637 for
6 mechanic in a marina? You could see it was a boat being fixed
7 in a marina?

8 A I recall there being charges for a marina. I don't
9 necessarily recall there being reference to a mechanic or
10 repair, but I do recall there being charges to the marina.

11 Q And Citi 172, couple withdraw money out of the account,
12 did you recall those prosecutor was showing to you?

13 A I recall that we discussed certain withdrawals, yes.

14 Q Did you see a lot of the charge in that account, did they
15 come from Circuit City, Brandsmart, Wal-Mart?

16 A Yes, there were a significant number of charges to the
17 different accounts that you had that came from what I would
18 call retail locations. Whether it was Best Buy, Circuit City,
19 Amazon, Brandsmart, there were a significant number of charges
20 to those retailers and stores.

21 Q And you see that during the course of investigation over
22 and over again out of my accounts, correct?

23 A Yes, there was significant volume of charges at these
24 retail locations, yes.

25 Q And you remember that I never have a stock in my store or

1 any -- I don't produce merchandise. I don't just sell the
2 merchandise, correct?

3 A Correct. My understanding of your business model was that
4 you did not keep an inventory is how I would describe it, that
5 to the extent an item was being purchased through your company,
6 you would then obtain the item from a retailer.

7 Q During the course of download website Sky Air, did you
8 recollect to see part of the site that was selling clothing
9 line, sunglasses?

10 A Yes, there were different portions included in, I think
11 was described as maybe the accessories, things like sunglasses
12 clothing, other apparel.

13 Q So yesterday when the prosecutor was showing one of the
14 bank statements from TD Bank, you guys point to Armani stores,
15 Hugo Boss, and all kind of different stores, do you recall
16 that?

17 A I do.

18 Q And during your investigation, did you realize that a lot
19 of those charges in the account and all the clothing was
20 merchandise buying to the clients in Brazil?

21 A I don't know if they were purchased for clients of yours
22 in Brazil, but I do believe that your websites offered the
23 abilities to buy apparel from clothing lines including Hugo
24 boss, Armani Exchange, and some other, you know, what I would
25 consider high end clothing, clothing lines.

1 Q And during the whole process of going through the bank
2 statements, you probably be able to see charges or so for
3 insurance companies, life insurance, bills, telephone, that
4 kind of stuff, right?

5 A Right. There are what I would describe as recurring
6 charges, one of which was for a life insurance policy. I also
7 recall seeing recurring charges for things like either phone or
8 internet services, things of that nature, yes, sir.

9 Q And do you familiar with the life insurance policy?

10 A I am familiar with a life insurance policy that you had
11 wherein you named Aylin as the beneficiary.

12 Q Did you recall how much was the life insurance policy?

13 A My recollection is that the life insurance payout to the
14 beneficiary was about \$800,000 and that the policy was in
15 effect meaning that the premiums were paid on it for about 8-
16 to maybe 12-month period. But my recollection is that you were
17 the name of the insured individual and that the named
18 beneficiary was Aylin.

19 Q And also prosecutor has point out on different, not all of
20 them, but a lot of cash withdrawal out of the account, 600,
21 400, 2,000, 5,000?

22 A Correct.

23 Q And any recollection in your investigation why those
24 moneys was withdrawn from the account?

25 A No. When someone withdraws cash, unless you are literally

1 conducting surveillance on them, it's almost impossible to
2 identify what that cash is spent on, whether it's just kept for
3 safekeeping because it's hurricane season and people are
4 concerned about not having access to ATMs or whether it's for
5 some other purpose. Again, unless you are literally
6 surveilling someone from the time you take the cash until the
7 time you confirm they spend it, it's almost impossible to trace
8 what the cash is spent on.

9 Q Is it not true that the cash was being used to pay for the
10 shipping cost to Mr. Osvaine Brazil USA Import?

11 A That doesn't seem possible since Mr. Duarte lived in
12 Georgia and you were in south Florida. I'm not sure how or why
13 you would need cash to pay Mr. Duarte in Georgia.

14 Q If I have his account number, can I deposit money in his
15 checking account?

16 A Yes. If you had the account number of any person, anyone
17 could essentially go to the bank, present themself, make the
18 deposit into the bank account.

19 Q Also during this bank statements investigation, you
20 probably saw several times or so pack and ship store charges
21 out of the check accounts, correct?

22 A I do recall seeing charges. Specifically I recall there
23 were some charges from the Pak Mail in Coral Springs. I don't
24 recall them being what I would describe as a recurring cost
25 meaning that they were billed to your account on or about the

1 same day. But I do remember there being several charges from
2 the Coral Springs Pak Mail location to one of your accounts. I
3 believe it was a Sky Air account.

4 Q Did I commit anything wrong by withdrawing money out of my
5 account, Mr. Van Brunt?

6 A It depends on whether you with withdrew the money knowing
7 that there were sufficient funds or not.

8 Q You deny that those money draw either pay for shipping or
9 pay for merchandise of my clients that I buy out of those
10 stores, Best Buy, Brandsmart?

11 A I don't know what the purpose of that cash was or how it
12 was spent, sir, no, sir.

13 Q But during the arrest or during all this investigation, no
14 money has been seized, no money has been collected from the
15 defendant, correct?

16 A No. Correct. On the date that you were arrested, you had
17 approximately \$1,300 in cash and that money was turned over to
18 Carlos Colon.

19 Q During your investigation, did you see that most of the
20 time I take some of the money out of the Sky Air bank account
21 and deposit on the personal account that I have with Aylin?

22 A There were instances where money was moved from one of
23 your business accounts into the account that was either your
24 personal account to include the account that both you and Aylin
25 was listed on, yes.

1 Q And during the -- I don't know if you recollect see a lot
2 of charges of overdraw protection in my account?

3 A There was a significant number of overdraft charges to
4 your account, yes.

5 Q Because it's not enough fund in the account, correct?

6 A Correct.

7 Q You point out yesterday here charge here in Orlando for
8 hotel in Orlando. Do you recall that charge?

9 A For a hotel in London?

10 Q Orlando.

11 A Orlando.

12 Q Yes.

13 A Yes, there were charges to, I believe it was a Hilton at
14 Walleet Disney World in Lake Buena Vista.

15 Q Do you have any investigation when I went over there, any
16 video, any record show me in that hotel?

17 A Yes.

18 Q Do you have a video?

19 A In the packages that were mailed from you up to Kelly
20 Chaboudt and Duarte, in those DVDs, if you open them up,
21 there's a video of you and Cerline. Included in the video is
22 you taking her to dinner at what I would describe the castle.
23 I have gone there with family members. I don't know if they
24 call it the Cinderella experience or what, but there's a video
25 of the two of you eating dinner and vacationing up there.

1 Q And that day of the video --

2 (Thereupon, there was an interruption by the court
3 reporter.)

4 BY MR. SCOTTON:

5 Q Is that day match the day of the video or is that the only
6 time I went to Orlando, Florida?

7 A I don't know if it's the only time you went to Orlando or
8 not. I'm not sure if the charges that are on the bank
9 statement that you are speaking about were from the same visit,
10 but --

11 Q So you went to that place several times yourself, correct?

12 A I have been to Walt Disney World, yes.

13 Q Do you recall right next outside was a racetrack?

14 A I don't recall there being a racetrack, but I believe
15 there is a racetrack in the Orlando area.

16 Q During your four years investigation, how many times that
17 you videotape me going to that racetrack to do test drives?

18 A I have never videotaped you going to any racetrack.

19 Q If I go to the racetrack in Orlando, am I allowed to stay
20 in a hotel?

21 A Yeah, if you book a room there and there's a reservation
22 and you stay there and you pay for your lodging, yes.

23 Q So by staying at a hotel in Orlando, is there anything
24 wrong with that also?

25 A Not inherently wrong, no.

1 Q And I paid the hotel, correct?

2 A I believe in that instance, yes, you did pay for the
3 lodging charges.

4 Q Did you contact hotel to get information of my staying
5 over there?

6 A No.

7 MS. MITRANI: Objection, relevance.

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q Yesterday before the judge has ended the day, I have ask
11 about the hearing on March 29, 2012 when you made a statement
12 to the lawyer in court that my wife doesn't love me anymore, if
13 she have the money, she would divorce me?

14 A I recall that.

15 Q Do you recall in your report, you mentioned that -- well,
16 that report has -- you went to see her March 28, 2009, correct?

17 A Correct, I went, I believe, the day before the hearing was
18 scheduled.

19 Q Did she say that she don't love me anymore, right? So at
20 one point was love, right?

21 A I asked her if she still loved you, and she said no. A
22 significant part of the reason why I went to approach her was,
23 one, to gain information regarding your relationship, but also
24 to lay the groundwork for hopefully a second or third
25 opportunity to speak with her at more length. I did ask her if

1 she loved you. She said she no longer loved you. She did say
2 she would divorce you.

3 Q So if the love gone, no more love, so that's make the
4 marriage sham?

5 A Well, the reason why I believe your marriage to her was
6 not legitimate and was entered into for purpose of immigration
7 is because I sat down with you in Boca Raton three days before
8 your interview with immigration services and asked you to
9 identify who your fiancée was. You confirmed to me when I
10 spelled Carla Felini's last name that she was your fiancée. In
11 light of the fact that to two or three days later, you appeared
12 at immigration services with a different woman claiming to be
13 happily married caused me to believe that it was not legitimate
14 marriage.

15 Q Do you remember in that video when you asked me asking
16 about something about when the store be open or something about
17 Carla Felini, I say I don't know at this point because we kind
18 of broke off somehow? You don't recall that?

19 A I recall talking about Carla Felini and I remember you
20 telling me that she was contemplating closing her store in
21 Pompano because it was not doing well. I remember speaking to
22 you about when you thought you might finish the buildout and be
23 able to open for business. There was no conversation between
24 us and no statements from you that you and Ms. Felini had
25 broken up.

1 Q It is a problem falling in love? It's not a problem
2 falling in love, is it?

3 MS. MITRANI: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. SCOTTON:

6 Q You don't deny that if you are having problem in your
7 marriage, it's because you, you know, having problem in your
8 marriage, it doesn't --

9 MS. MITRANI: Objection, Your Honor.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q During your investigation, did you use any of your pull
13 with the FBI to corrupt my immigration cases?

14 A No.

15 Q During a hearing in cross-examination you mentioned that
16 you have received from the A file a letter from Mr. Fred
17 Brooks, correct?

18 A My recollection of the facts as well as my testimony in
19 the hearing you are talking about is that I stated I had
20 received the A file from U.S. immigration -- U.S. Citizenship
21 and Immigration Services and contained in that A file was a
22 draft denial written by Fred Brooks.

23 Q And you mentioned that you received the A file during the
24 course of the investigation, correct?

25 A Correct.

1 Q And do you recall that day or the year?

2 A I do not recall the day or year that I received the A
3 file.

4 Q It was before my interview with Fred Brooks or after Fred
5 Brooks interview?

6 A I believe it was after your interview with Mr. Brooks.

7 Q So after my interview with Fred Brooks, prosecutor, or
8 yourself, you required immigration to give my entire
9 immigration file, correct?

10 MS. MITRANI: Objection, Your Honor, relevance, asked
11 and answered.

12 THE COURT: Sustained.

13 BY MR. SCOTTON:

14 Q You don't deny you say in court as well that you received
15 the letter before you arrest me, correct?

16 MS. MITRANI: Objection, Your Honor, relevance.

17 THE COURT: Sustained.

18 BY MR. SCOTTON:

19 Q Mr. Van Brunt, I was arrested March 15, 2012. It is this
20 file came to your hand somewhere around February or January or
21 December?

22 MS. MITRANI: Objection, Your Honor, relevance and
23 asked and answered.

24 THE COURT: Sustained.

25 Mr. Scotton, let's move on to another subject, please.

1 BY MR. SCOTTON:

2 Q Did you ask Mr. Fred Brooks why he hasn't sent this letter
3 before the case was even denied?

4 MS. MITRANI: Objection, Your Honor.

5 THE COURT: Sustained. Mr. Scotton, I'm not going to
6 tell you again. Please move on to a different subject.

7 MR. SCOTTON: Your Honor, I'm trying to get on the
8 bottom of the whole immigration case --

9 THE COURT: Mr. Scotton, please move on to a different
10 subject.

11 BY MR. SCOTTON:

12 Q Have you give to the government A file on March 29, 2012?

13 MS. MITRANI: Objection, Your Honor.

14 THE COURT: Mr. Scotton, are you done --

15 MR. SCOTTON: No, Your Honor, I'm not.

16 THE COURT: -- with your questioning? Then you need
17 to move on to another subject.

18 MR. SCOTTON: Your Honor, can I have a sidebar?

19 THE COURT: Nope.

20 MR. SCOTTON: I'm trying to go ahead and go through
21 the questions I have here, everything about immigration cases.

22 THE COURT: Thank you, Mr. Scotton. Please sit down.

23 Mr. Scotton, please be seated.

24 THE COURT: Any redirect?

25 MS. MITRANI: Yes, Your Honor, very brief.

1 REDIRECT EXAMINATION

2 BY MS. MITRANI:

3 Q Agent Van Brunt, do you remember the first time that you
4 visited Mrs. Reyes? Do you remember her reaction to being
5 visited by an FBI agent?6 A Yes, she was visibly shaken by the fact that the FBI had
7 appeared at her door. Her landlord, who was the one who
8 actually helped me find her door -- she lives in sort of a
9 subapartment of a house there -- essentially translated for me.
10 When I showed her my credentials showing the FBI, she
11 immediately became anxious. And as I began to ask questions
12 about Mr. Scotton, she became increasingly emotional.13 Q Okay. And then about how much time elapsed between your
14 first encounter with her until your second encounter
15 approximately?

16 A Many months, if I remember correctly.

17 Q It could have been actually well over a year?

18 A It could have been, yes.

19 Q Yes. Okay. And do you remember her reaction the second
20 time you approached her?21 A Yes. The second time I approached her was with another
22 FBI employee who was fluent in Spanish. And I went down to her
23 house and we spoke to her. And in the course of the
24 investigation, she again became very upset and emotional and at
25 several different instances broke down crying. And we tried to

1 move slowly and be mindful of how much stress she felt she was
2 under and the topic that we were discussing.

3 Q And then after your second encounter with her, your third
4 encounter with her was at the U.S. attorney's office, correct?

5 A Correct.

6 Q And do you remember her sort of emotional state then?

7 A Yes.

8 Q Was it the same?

9 A It was extremely similar to the previous times that I had
10 met with her, especially when we began to discuss the topic.
11 She became very upset, broke down crying. If I recall
12 correctly, we had to take at least one if not two five-minute
13 breaks to try to give her a chance to compose herself and calm
14 down.

15 Q Do you remember that during our meetings over the summer,
16 the meeting over the summer, we told her if she told the truth,
17 that nothing bad would happen to her?

18 A Correct, those were the exact words that we used.

19 Q And those are the exact words that we used with Ms. Reyes?

20 A Correct.

21 Q And then after we told her that if she told the truth,
22 nothing bad would happen to her, I sent a letter to the
23 defendant which you delivered telling him that basically if she
24 told the truth, nothing bad would happen including no criminal
25 charges would be brought against her, correct?

1 A Correct.

2 Q And I believe Mr. Scotton referred to that as immunity.
3 You may have said it wasn't immunity. But we agree that she
4 was told that nothing bad with her, that no criminal charges
5 would be brought against her if she told the truth?

6 A Correct.

7 Q Now, you have talked a lot about the bank records you
8 subpoenaed including branch records that were subpoenaed or
9 caused to be subpoenaed to Citibank, correct?

10 A Yes.

11 Q And those CitiBank records are contained in Composite
12 Exhibit 18, correct?

13 A Correct.

14 Q And then you tried to summarize it as best you could in
15 the spreadsheet which is Exhibit 121, correct?

16 A Correct.

17 Q I think we talked yesterday about 121 was just meant to be
18 sort of a snapshot of the accounts, correct?

19 A Correct.

20 Q Now, I'm showing you Exhibit 18D which is Citi 964, and is
21 this the account opening document that Citibank responded to in
22 response to the subpoena with regard to the account opening
23 document for credit cards?

24 A Correct. This is the account opening documentation that
25 Citibank provided to us regarding the credit cards that are

1 listed on Government's Exhibit 121.

2 Q And then that's 18D which we call account opening. Then
3 is 18D1 the statements and what I think you called backups that
4 Citibank provided?

5 A That's correct.

6 Q And if we look at the first page of 18D, 18D1 which is
7 Citi 965, it has Rogerio Scottom with the PO Box 629 address,
8 correct?

9 A Correct.

10 Q And has account number ending it 6881?

11 A Correct.

12 Q And those backups go to from Citi 965 all the way to Citi
13 1074, is that right?

14 A I believe so, yes.

15 Q I believe you testified that the Citibank credit card
16 account may have been one credit card, but different numbers
17 may have been open for whatever reasons, correct?

18 A Correct.

19 Q And then I guess this account number, which is Bates
20 number 976, ends in 2734?

21 A Correct.

22 Q So is it a typo on Exhibit 121? When you put 2730, it
23 really should be 2734?

24 A Most likely, yes.

25 Q Is Exhibit 21 when it talks about the Citibank records, is

1 Government's Exhibit 18D1 the basis of it?

2 A Correct, the information on here was culled from the
3 information contained in that exhibit.

4 Q Okay. The defendant, and you went back and forth a little
5 bit about his supposed charitable works and what have you, I
6 don't want to belabor the point so I'm going to ask you two
7 questions. Do you know if the defendant made more than one
8 trip to the Miami Children's Hospital?

9 A I don't know for sure, but he very well could have, but I
10 don't know.

11 Q Do you know how many trips?

12 A I do not know.

13 Q It could have been one, it could have been more than one,
14 you don't know?

15 A Correct.

16 MR. SCOTTON: Objection, Your Honor.

17 THE COURT: What is the objection?

18 MR. SCOTTON: Relevance.

19 THE COURT: Overruled.

20 BY MS. MITRANI:

21 Q Likewise, do you know -- well, let me ask it broadly. Do
22 you know how many fund raisers the defendant allegedly held for
23 the police department or in conjunction with the police
24 department to raise money for them or for any other charitable
25 cause?

1 A No, I don't know the specific number.

2 Q So it could be one?

3 A Correct.

4 Q It could be more?

5 A Correct.

6 Q You don't know?

7 A Correct.

8 Q Yesterday the defendant questioned you a lot about his
9 Miranda warnings and a lawyer. Let me ask you, was the
10 defendant advised that he had the right to retain a lawyer?

11 A Yes.

12 Q Was that on the Miranda card in Portuguese?

13 A Yes.

14 Q Did the defendant read that out loud to you in English
15 saying I have a right to a lawyer if I so desire?

16 A Yes.

17 Q And at any point during your interview with the defendant,
18 did he request a lawyer?

19 A No.

20 Q Did he request to stop speaking to you because he wanted a
21 lawyer?

22 A No.

23 Q Did he request to stop speaking to you because he wasn't
24 feeling well?

25 A No.

1 Q When you allowed the defendant to take a phone call from
2 the lawyer's office, did you end your interrogation, that is,
3 did you stop questioning the defendant at that point in time?

4 A Yes. In the phone call with the secretary or paralegal
5 who called from the law office, I advised her that in light of
6 the phone contact we had received, we would be completing the
7 interview and that we would essentially be beginning to
8 transport Mr. Scotton to the holding facility pending his jail
9 trial, and that was the end of the substantive interview.

10 Q I'm listening. I am listening. I'm just trying to be a
11 little efficient. I also think you testified about that on
12 direct examination. Do you recall the defendant asked you
13 questions about a DHL account called Sun and Moon Corporation?

14 A Yes.

15 Q And that is Government's Exhibit 12B, correct?

16 A Yes.

17 Q I can show you.

18 A No, I recall it's in the series of claims that were filed
19 by DHL.

20 Q And within Government's Exhibit 18 -- excuse me, 12B on
21 the Sun and Moon Corporation are many documents including this
22 one which is DHL 72 showing that Sun and Moon made a claim, a
23 claim to DHL on or about December 11, 2007, correct?

24 A Correct.

25 Q And what was the claimant's company name, the claimant's

1 address?

2 A The company's claimant name was Sun and Moon, and the
3 address was PO Box 629, Boca Raton, Florida.

4 Q And you see the fax number slash phone number on the top?

5 A I do. The fax header indicates the name of the company as
6 Express and a phone number that ends in 7347.

7 Q And who is the subscriber on the phone number that ends in
8 7347?

9 A Mr. Scotton.

10 Q Also within Government's Exhibit 120, do you remember
11 that? Those were the summary sheets of the claims check
12 deposited into the defendant's accounts?

13 A Correct.

14 Q Was there also a check payable to D Matthews, Sun and
15 Moon, PO Box 629, Boca Raton, Florida deposited into the
16 defendant's account?

17 A Yes.

18 Q And that was a DHL claim check on the Sun and Moon
19 account?

20 A Yes he.

21 MS. MITRANI: Your Honor, can I have a moment?

22 THE COURT: Yes.

23 BY MS. MITRANI:

24 Q One more thing. One last question. It's going to involve
25 the DHL video surveillance video that we saw during

1 cross-examination. We will just play it very briefly.

2 (Thereupon, the videotape was played.)

3 BY MS. MITRANI:

4 Q So we are showing you from Exhibit 13A, this is
5 December 2, 2008 surveillance from the Delray DHL facility?

6 A Correct, the lobby.

7 (Thereupon, the videotape was played.)

8 BY MS. MITRANI:

9 Q And do you see a black wallet-type thing on the counter?

10 A I do.

11 Q And my question is going to be, as soon as we finish
12 seeing this portion of the clip, is this portion of the clip
13 the basis of your testimony the defendant took out his
14 Brazilian -- what purported to be a Brazilian police badge and
15 flashed it at the DHL employee?

16 A Correct.

17 Q And then defendant looks like he's leaving, but he's
18 coming back and engaging in further discussion with this
19 employee, correct?

20 A Correct.

21 MS. MITRANI: Your Honor, no further questions.

22 THE COURT: All right. I need to have a sidebar.

23 (Thereupon, the following was heard sidebar.)

24 THE COURT: During the agent's testimony, he stated
25 that the promise that was made to Ms. Reyes was the same as the

1 promise that is made to every witness. And if that's the case,
2 then that needs to be turned over to the defense. If that was
3 a misstatement, then that needs to be corrected on the record.

4 MS. MITRANI: Right, it was a misstatement.

5 THE COURT: All right.

6 MR. SCOTTON: Your Honor --

7 MS. MITRANI: I will have him correct it then.

8 THE COURT: All right.

9 MR. SCOTTON: I have prepare here for this hearing and
10 I have a stack of questions with the papers and evidence to
11 present and ask this man questions. Why the Court not going to
12 allow me to do that, Your Honor?

13 THE COURT: Because, Mr. Scotton, you continued to ask
14 questions after I had sustained the objection, I think by my
15 count sic or seven times asking questions that were irrelevant,
16 the same questions over and over again. I warned you before
17 you started. I have warned you several times throughout this
18 trial. And I warned you after this sixth or seventh objection.
19 You continued to do it. Then I warned you again, and you --
20 then you tried to argue with me.

21 So I'm sorry, you have had several hours to do your
22 cross-examination and you have spent at least half of that time
23 repeating questions that you have already asked.

24 So I'm sorry, but I think you are done now. If the
25 government wants to --

1 MS. MITRANI: I do. Thank you.

2 THE COURT: All right. You need to do it then.

3 (Thereupon, the following was heard in open court.)

4 BY MS. MITRANI:

5 Q A couple more questions. Getting back to Ms. Mollinedo,
6 we told her if she told the truth, nothing bad would happen to
7 her, correct?

8 A Correct.

9 Q Then we sent out a letter under my signature saying,
10 pursuant to Giglio, we make the disclosure that Ms. Reyes has
11 been advised that her truthful testimony would not result in
12 criminal exposure?

13 A Correct.

14 Q Giglio is a case that deals with immunity or promises made
15 to witnesses, is that your understanding?

16 A Yes.

17 Q I understand you are not a lawyer and it was under my
18 signature, but is that your general understanding what Giglio
19 is?

20 A Yes. I think I may have confused it with the Jencks case
21 that deals with discovery, but yes, now that you say that, it
22 is a case that deals with immunity.

23 Q The U.S. attorney office did give Ms. Reyes immunity,
24 correct?

25 A Yes.

1 Q I think in cross-examination you indicated that we told
2 all our witnesses that their truthful testimony will not result
3 in criminal exposure. Did we give immunity to any other
4 witness?

5 A No. But in the course of my meeting with the witnesses
6 and talking to them about meeting with us, agreeing to meet
7 with us, going to court, I explained to them the importance of
8 being truthful and the importance of giving false statements to
9 the government during the investigation or providing false or
10 inaccurate testimony at trial could result with criminal
11 charges. So as long as people were truthful, there would be no
12 criminal exposure or problems.

13 Q So we always tell all our witnesses to be truthful,
14 correct?

15 A Yes.

16 Q But nobody other than Ms. Reyes was given immunity from
17 criminal prosecution in this case?

18 A Correct.

19 Q There was no other witness that we called that was
20 similarly situated to Ms. Reyes, correct?

21 A Correct.

22 Q So I guess when you said during cross-examination it's
23 something we told all of our witnesses, you misspoke?

24 A Yes.

25 Q And just to be clear, Ms. Reyes, Ms. Mollinedo, was in a

1 category unto herself because of the statements she had made to
2 citizenship and immigration services during the interview,
3 correct?

4 A Correct, during the interviews with Fred Brooks, yes.

5 Q She was uniquely situated?

6 A Yes.

7 Q That was not the case with any other government witnesses?

8 A Correct.

9 Q To be clear, no other government witness was offered
10 immunity, correct?

11 A Correct.

12 MS. MITRANI: No other questions.

13 THE COURT: Mr. Scotton, if you want to cross-examine
14 on that limited area, I will allow you to do so.

15 RE-CROSS EXAMINATION

16 BY MR. SCOTTON:

17 Q Mr. Van Brunt, before when I asked the question about
18 immunity, you said that she never received any immunity,
19 correct?

20 A That was my answer, correct.

21 Q The prosecutor just asked you questions, because you not a
22 lawyer, you don't understand all that, but you told me earlier
23 you have two degrees as a lawyer, right?

24 A I did tell you that, yes.

25 Q Is it not true also during my cross-examination of

1 Ms. Aylin I specifically asked my wife if she receive immunity,
2 the prosecutor object, and then she said nothing has been
3 offered to Ms. Aylin?

4 A I recall it being discussed. I don't recall what
5 Ms. Aylin's response was or if the objection was made or
6 sustained.

7 Q We went sidebar. Do you remember that?

8 A There have been a lot of sidebars. I'm not privy to
9 what's discussed at the sidebars.

10 Q But you don't recall the prosecutor object me saying she
11 never received -- no immunity has been given to Aylin, correct?

12 MS. MITRANI: Objection, Your Honor.

13 THE COURT: Sustained.

14 BY MR. SCOTTON:

15 Q The bottom line is that she made a false statement here,
16 but now you guys agree that Aylin has received immunity,
17 correct?

18 MS. MITRANI: Objection.

19 THE COURT: Sustained.

20 MR. SCOTTON: No more questions, Your Honor.

21 THE COURT: All right. You may step down, Agent.

22 Thank you.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Government may call its next witness.

25 MS. MITRANI: Your Honor, the government is happy to

1 announce that we rest our case.

2 MR. SCOTTON: Your Honor, may I move to sidebar?

3 THE COURT: I think the jury may be happy to hear it.

4 Let's all come sidebar for a brief moment. Actually,
5 I'll tell you what. Why don't we take our afternoon break.
6 Let's come back at 2:40. All rise for the jury.

7 (Thereupon, the jury exited the courtroom at
8 2:23 p.m.)

9 MR. SCOTTON: Your Honor.

10 THE COURT: Just one moment, please.

11 I'm sorry, Mr. Scotton. I was waiting for the jury
12 door to close so that you would not prejudice yourself.

13 MR. SCOTTON: Sorry.

14 THE COURT: All right.

15 MR. SCOTTON: Ms. Martinez informed me that one of my
16 witnesses want to speak to me before she start testifying, so
17 because I never have a chance as the prosecutor have a chance
18 to talk to their the witness, is there any way I can talk to my
19 witness in court?

20 THE COURT: I don't know. We will address that in a
21 moment.

22 Did you have any motions that you wish to make at this
23 time, Mr. Scotton?

24 MR. SCOTTON: Yes, Your Honor, I have a motion here
25 that was on the table here, but I'm trying to see what the

1 motion is. There's a motion for directed verdict under Rule 29
2 if I'm not mistaken.

3 THE COURT: Okay. Did you want to give the basis for
4 it or did you want me simply to rule on it?

5 MR. SCOTTON: Your Honor, it get to the point that,
6 you know, it's a lot of things that need to come up to this
7 case here that got to prepare for the cross-examination, but
8 the judge decide to stop me cross-examining the agent and --

9 THE COURT: Okay. It's not gripe time, but I will be
10 happy to hear your motion for acquittal.

11 MR. SCOTTON: Your Honor, the government has not
12 proved the case here. They have been showed here some box that
13 has been either lost or seized by those companies. They be see
14 a bunch of spreadsheets here that on my cross-examination. Now
15 that I'm going to put on my defense, you are doing see that
16 everything is not accurate. They have not really prove their
17 case here. They have come here and tried to assassinate my
18 character. I'm the monster of this country, even now all the
19 things I have done for this community here is just benefit
20 immigration after living here 25 years. This is how low they
21 can go. Every inmate over there trying to jump on my case.

22 I have a list of things they have done already here to
23 get this case here, to force me to plead guilty, and prosecutor
24 even lie that day that she have given immunity to my wife, and
25 now she just have to fix with the jury that she had given

1 immunity to my wife.

2 THE COURT: She corrected it with Ms. Reyes on the
3 stand. But in any case, all right. Thank you.

4 MS. MITRANI: Well, and also we entered into a
5 stipulation afterwards that immunity was given, after Ms. Reyes
6 got off the stand.

7 THE COURT: That's correct. I recall.

8 MR. SCOTTON: Your Honor, I just found the motion if I
9 can give to the Court.

10 THE COURT: I have heard the motion, thank you. And I
11 am respectfully going to deny the motion. On such a motion,
12 the government needs to put forth sufficient evidence that if
13 believed by a jury would establish each of the elements of each
14 of the crimes that they have charged in the indictment, in this
15 case, it's the second superseding indictment. I believe that
16 they have done so.

17 It may well be that you are right and the jury chooses
18 not to believe that evidence, but that is not a decision for me
19 to make as the judge. All I decide at this point is whether
20 the government has put on sufficient evidence that if the jury
21 chose to believe it could find that each of the elements are
22 satisfied. And I so find that they have. So I will
23 respectfully deny the motion for directed verdict.

24 MR. SCOTTON: Your Honor, also I want to move to the
25 Court here for reconsideration that even the judge want to go

1 over the question that I have to the agent here. You know, I'm
2 not a lawyer, Your Honor. I'm trying to do my best here. And
3 I have questions here that need to be asked to the agent about
4 this investigation. I want the judge to reconsider that.

5 THE COURT: Mr. Scotton, I'm sorry. I'm not going to
6 reopen the case for you to do more cross-examination. I
7 explained and I have explained throughout this case and
8 throughout this trial as you have repeatedly continued to ask
9 questions over and over and over and over again, the same
10 questions even after I have repeatedly sustained objections as
11 having previously been asked and answered.

12 I also cautioned you before we began today, during the
13 lunch break, I cautioned you that if you persisted in that
14 behavior, I would have no choice but to end your questioning.

15 It's just not fair to this jury to make them sit here.
16 We are already, you know, in the fourth week of trial here.
17 These jurors are missing their jobs. Some of them are not
18 getting paid to be here. And it's their civic responsibility
19 to be here and I have no problem with their being here. But
20 I'm not going to subject them to sitting here day after day for
21 you to continue to ask the exact same question over and over
22 and over again.

23 I warned you that if you did that, I would have no
24 choice but to stop the questioning. You did it. You did it
25 again. You did it again. You did it again. I warned you at

1 that time that it was the same question over and over again. I
2 asked you to move on to a new area. You continued to do it. I
3 asked you to move on to a new area. And then you started to
4 argue with me in front of the jury, which I have also cautioned
5 you not to do.

6 So for all of those reasons and because you had a
7 number of hours of cross-examination, at least half of which I
8 think you spent asking the same questions over and over again,
9 I'm sorry, but your cross-examination of this agent is done.

10 All right. Anything else we need to address before I
11 allow the court reporter to take a quick break?

12 MS. MITRANI: No, Your Honor.

13 THE COURT: All right. Thank you. We said 2:40,
14 right? See you at 2:40.

15 (Thereupon, a recess was taken at 2:29 p.m.)

16 MR. SCOTTON: Your Honor, can I ask you a quick
17 question?

18 THE COURT: We don't have the government here.
19 There's some water there, Mr. Scotton, if you want to help
20 yourself, right there.

21 MR. SCOTTON: Okay. Your Honor, can I have two
22 minutes as a sealed that I can explain something to you? I
23 even asked Mr. --

24 THE COURT: All right.

25 MR. SCOTTON: I was trying to explain to him, and I

1 understand --

2 THE COURT: Your microphone may not be on.

3 MR. SCOTTON: I was explaining to him, you know, try
4 to talk to Jason, see what the options is here, Your Honor. I
5 don't know if we can go ahead and subpoena Mr. Van Brunt as a
6 defense witness or I can proffer this and just lay down all my
7 questions to the Court and the Court can verify my questions.

8 THE COURT: I'm not going it do look through your
9 questions. It's not appropriate and there's no reason to. I
10 gave you literally -- let me see how many hours of that. So
11 you started cross yesterday at 3:00 and we went until 4:00 so
12 you had an hour yesterday. We started this morning at 9:27 and
13 we took about an hour and a half, an hour and about 40 minutes
14 between lunch and breaks this morning. You went from 9:30
15 until 2:00 today, minus an hour and a half. That's another
16 three hours.

17 So you had four hours of cross-examination. And in
18 that time, I observed that you repeated the substance of the
19 questions, of many of the questions multiple times. And I'm
20 sorry, but I told you beforehand that we could not waste this
21 jury's time.

22 And during the questioning, the government objected.
23 You asked the same question again after I sustained the
24 objection for repetitive and asked and answered and irrelevant,
25 then you asked it again. I sustained it again on the very same

1 basis. Then you asked it again. I sustained it again on the
2 very same basis. Then you asked it again. I sustained it
3 again on the very same basis and asked you to move on to a
4 different area. Then you asked it again. And the government,
5 of course, objected again.

6 At that time, I asked you whether you were done
7 questioning, and you said no, you had other questions. So I
8 asked you to please move on to a new area, and then you
9 proceeded to argue with me.

10 So I'm sorry, but I had previously warned you what was
11 going to happen and there's only so much I can do. I am trying
12 very hard to give you the time that you need, but I'm not going
13 to allow you to take advantage of the system and to hold these
14 jurors hostage while you waste their time asking the exact same
15 question over and over again no matter how many times I sustain
16 the objection. All right. With that, we need to bring the
17 jury back in.

18 MR. SCOTTON: Let me just brought up one last thing
19 here. As you asked me to go to the next question, I mean all
20 my pads here for my questions that I prepared for this
21 cross-examination is here. So as you say go to the next, I'm
22 going down to the next, Your Honor. It's a similar question.
23 I'm not a lawyer, Your Honor.

24 THE COURT: Mr. Scotton, that doesn't work with me
25 anymore. You are clearly a very smart man. You have

1 demonstrated that time and time again throughout these
2 proceedings. You understand what it means to ask a different
3 question. I'm sorry. You kept asking the same question. I
4 instructed you numerous times. That's it. We need to bring
5 the jury back in. Let's get the government in and we will
6 bring the jury in.

7 MR. SCOTTON: Will I be able to subpoena him if I need
8 to, Your Honor?

9 THE COURT: He's here. You don't need to subpoena
10 him.

11 MR. SCOTTON: I can call him then as a defense
12 witness.

13 THE COURT: You can, but if you start asking the same
14 questions again, then I'm going to -- I'm not going to allow
15 it.

16 MR. SCOTTON: All right, Your Honor. Thank you.

17 (Thereupon, the jury entered the courtroom at
18 2:44 p.m.)

19 THE COURT: All righty. Welcome back once again.
20 Please be seated. The government has rested its case. As I
21 explained at the beginning of this trial, the defense has
22 absolutely no burden whatsoever and does not have to present
23 any evidence. The burden is always on the government to prove
24 the case. But if the defense wishes to do so, the defense may
25 present a defense. So let me turn now to Mr. Scotton and find

1 out.

2 Mr. Scotton, do you wish to present a defense?

3 MR. SCOTTON: Yes, Your Honor.

4 THE COURT: All right. Please call your first
5 witness.

6 MR. SCOTTON: First witness is Officer Mulet.

7 THE COURTROOM DEPUTY: Please remain standing.

8 CHERYL MULET

9 Having been first duly sworn on oath, was examined and
10 testified as follows:

11 THE COURTROOM DEPUTY: Please be seated. State and
12 spell your first and last name for the record.

13 THE WITNESS: My first name is Cheryl, C-H-E-R-Y-L,
14 last name Mulet, M-U-L-E-T.

15 DIRECT EXAMINATION

16 BY MR. SCOTTON:

17 Q Officer Mulet, do you prefer to be called first name or
18 last name?

19 A First is fine.

20 Q Can you repeat the first name for me again, please.

21 A Cheryl.

22 Q Can you tell the jury what you do for a living?

23 A I'm a police officer for the City of Miami Springs in Dade
24 County.

25 Q How long have you been a police officer?

1 A It will be five years in May.

2 Q And what is the area that you work as a police officer?

3 A Miami Springs.

4 Q Where is your duty lie? What is the kind of work you do
5 with the police, the Miami Springs?

6 A I'm in the routine patrol division.

7 Q How long you work as a police officers there, Ms. Cheryl?

8 A It will be five years in May.

9 Q Have you work for another department before?

10 A Yes, I have.

11 Q Which one would it be, which department you worked before?

12 A I worked for that same department as a civilian.

13 Q Do you live in Miami as well?

14 A Yes.

15 Q Ms. Mulet, I have a traffic citation. I'm presume the
16 investigator Nina has contact you in reference to this
17 citation. Did you recall that citation?

18 A No, not independently.

19 Q If I showed you the citation, it might refresh your mind?

20 A She's already shown it to me. I have no independent
21 recollection of it.

22 Q Do you have recollection if Ms. Aylin Mollinedo was
23 involved in a car accident?

24 A Not independently, no.

25 Q You don't recall anything about that accident at that time

1 that she asked you to call the husband?

2 A No, I do not.

3 Q Before you come to testify today, Ms. Mulet, did you get
4 contacted by anybody else besides my investigator?

5 A No, I did not.

6 Q Never told her that you recollect -- you never told her
7 you remember the accident when Aylin asked you to call the
8 husband and she was nervous, that's not your statement to the
9 investigator?

10 A That I did not -- I had no independent recollection that
11 was my statement to her.

12 Q So Ms. Martinez here has contact you in reference this
13 ticket. And when she showed this ticket to you?

14 A This morning when I got here.

15 Q She never sent you this ticket by email?

16 A No.

17 Q And she never has spoke to you in reference a car accident
18 with individuals that was involved in an accident, correct?

19 A Yesterday she sent me a text message reference the traffic
20 crash case number.

21 Q You don't remember my wife or anything at all?

22 A I don't remember anything about that.

23 MR. SCOTTON: Your Honor, I have no question. She
24 can't remember.

25 THE COURT: Cross-examination.

1 MS. MITRANI: No questions.

2 THE COURT: Thank you, Officer. You are excused.

3 Defense may call its next witness.

4 MR. SCOTTON: I call Ms. Vidal.

5 THE COURT: I'm sorry, who?

6 MR. SCOTTON: Last name, Your Honor, Vidal.

7 THE COURT: Okay.

8 THE COURTROOM DEPUTY: Please remain standing, raise
9 your right hand.

10 ROBERT ST. GEORGE

11 Having been first duly sworn on oath, was examined and
12 testified as follows:

13 THE COURTROOM DEPUTY: Please be seated and state and
14 spell your first and last name for the record.

15 THE WITNESS: My name is Robert St. George.

16 R-O-B-E-R-T S-T G-E-O-R-G-E.

17 THE COURT: I'm sorry, Mr. Scotton, was this the
18 witness that you were referring to?

19 MR. SCOTTON: No, Your Honor. Martinez went outside
20 and Ms. Vidal not outside so they called Mr. Robert.

21 THE COURT: All right. No problem. I just wanted to
22 make sure.

23 DIRECT EXAMINATION

24 BY MR. SCOTTON:

25 Q Mr. Robert, how are you doing today?

1 A Good. How are you?

2 Q Good. I'm not going to take too much of your time. I
3 know you have been waiting all day long. I appreciate that.
4 Can you tell the jury who you are working for?

5 A DHL Express.

6 Q How long have you been working for DHL?

7 A 28 years.

8 Q And which location do you work for?

9 A Miami hub.

10 Q And the whole time you work for DHL, you work at the
11 location?

12 A No, last ten years.

13 Q Can you tell the jury what is your position with DHL?

14 A I'm a senior supervisor.

15 Q As a senior supervisor, Mr. Robert, what is your duty line
16 over there with DHL?

17 A Excuse me?

18 Q What is your line duty there with DHL?

19 A I work in the operations. I supervise operation
20 employees.

21 Q Do you familiar with the international shipments,
22 Mr. Robert?

23 A Yes, that's what we do, yes.

24 Q Because you don't do domestic anymore?

25 A No. That's been a few years, actually.

1 Q Did you guys have a lot of shipping that goes to Brazil?

2 A Yes, we do.

3 Q Do you have any recollection somewhere around 2010, 2011
4 packages getting hold up in Miami going to Brazil with some
5 billing issues on the accounts?

6 A Somewhat.

7 Q Some packages getting hold up over there with the billing
8 problems, accounts problem?

9 A No. We have had several problems with shipments on a
10 daily basis, so something like that may be a stop credit, but I
11 wouldn't deal with that.

12 Q Who is going to be dealing with that out of Miami?

13 A Tracing department.

14 Q Did you recollect Mr. Carlos that worked for security down
15 in Miami?

16 A Mr. Carlos?

17 Q Yes.

18 A Is that his first or last name?

19 Q First name.

20 A I don't recall a Carlos. I'm sorry. Martinez?

21 Q Yes.

22 A We have an employee, but he's not a security guard.

23 Q Is Ms. Rosa Galdamez work for you there?

24 A Yes, she does.

25 Q Do you know what kind of work she does now?

1 A She works in the p.m. in the operation.

2 Q Can you explain to the jury what the line of duties does?

3 A I believe actually she's a lead now, but mostly she
4 processes shipments, scans them, we have a scanning bar code
5 scanner, scans them into a container or a bag for shipping.

6 Q According to a point that you have some conspiracy
7 Ms. Rosa Galdamez about some packages going to Brazil?

8 A Excuse me?

9 Q It is some kind of problem that you engage with
10 Mr. Galdamez about some shipments going to Brazil?

11 A I don't recall any problem in particular, no.

12 Q Have you had any problems with Ms. Rosa Galdamez during
13 the time she work for DHL?

14 A I had a problem, no. She had a problem with me, yes.

15 Q Mr. Robert, if I understand here of Ms. Rosa Galdamez, do
16 you have associated with individual named Osvaine Duarte?

17 A Repeat the name, please.

18 Q Osvaine Duarte, a Brazilian person, the name Osvaine
19 Duarte?

20 A I don't recognize the name.

21 Q Did you recollect a person come to the Miami location to
22 drop off packets or retrieve packets?

23 A We don't usually accept packages. That's at the service
24 center level. If he came to the gateway to retrieve a package,
25 it must have been like a hold for pickup or something or some

1 other problem.

2 Q Did you have any contact individual named Paulo Roberto
3 Arujo Moreira, a Brazilian person?

4 A A customer?

5 Q Yes, sir.

6 A I don't recall.

7 Q During this problem that you have with Ms. Rosa Galdamez
8 about some packages going to Brazil, do you recall anybody say
9 any complaints about illegal --

10 A I don't recall any particular problems with a package with
11 Rosa about Brazil and nothing about any -- you said drugs or
12 something?

13 Q Some syringes, some opium going to packages that mixed
14 with some electronics going over there?

15 A I don't recall, but I don't know how she would be in
16 contact with it. She isn't permitted to open any packages.

17 Q The problem that Mrs. Rosa Galdamez end up have with you
18 end up in a lawsuit as well?

19 A Yes, it had to do with a workmen's comp issue.

20 Q She didn't lost that job over that, right?

21 A No.

22 Q And she's still working for DHL right now?

23 A Yes, she is.

24 Q And she still work the same department under you?

25 A No. She worked for me years ago, 2010 or 2011. She

1 hasn't worked for me for a while. I was on the p.m. until like
2 a year ago.

3 Q Mr. Robert, have you provided any information to this man
4 about Brazilian person, any kind of invoice or accounts or DHL
5 accounts?

6 A I don't deal with accounts. That's customer service.

7 Q During your process working gateway over there in Miami,
8 have you seized any packets going to Brazil with any illegal
9 contents?

10 A I wouldn't seize anything. That would be U.S. customs'
11 responsibility.

12 Q It would be whose responsibility?

13 A U.S. customs.

14 Q So if in any packet had has significant illegal, DHL
15 doesn't even touch?

16 A We wouldn't know. We don't open outbound packages.

17 Q Do you guys have some kind of x-ray machines?

18 A Yes, we do.

19 Q And all the packages got scanned through the airport?

20 A What do you mean, which way, inbound or outbound?

21 Q If a package is going to go international as go through a
22 scan, did you guys submit it to the X machine?

23 A In certain circumstances, yes, there are packages that
24 through the x-ray machine.

25 Q So it is not every single one of them, so it's some kind

1 of selection of packages?

2 A Yeah, it's a TSA program that, actually, I am responsible
3 for. So I don't know how involved I want to get involved in
4 that.

5 Q Can you explain to the jury what TSA stands for?

6 A Transportation Security Administration, I believe it is.

7 Q Do you deny Ms. Galdamez say that you used to provide
8 Mr. Duarte with --

9 MS. MITRANI: Object.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q Mr. Robert, during this process that you been working with
13 DHL, somewhere around 2009, 2011, did you provide an individual
14 free information of shipping packages to Brazil?

15 A Who?

16 Q Did you provide to any individual any way to ship packages
17 to Brazil not paying?

18 A To provide what? I don't understand the question.

19 Q Accounts they can ship on.

20 A I don't deal with accounts. We are a transit point. We
21 don't deal with the customers usually.

22 Q The problem that you have with Mrs. Galdamez, in reference
23 some packages that was going to Brazil, that was in 2012?

24 MS. MITRANI: Objection. Hold on. Excuse me.

25 Objection, relevancy.

1 THE COURT: Overruled.

2 BY MR. SCOTTON:

3 Q Go ahead.

4 A The lawsuit has nothing to do with the package. It has to
5 do with workman's compensation.

6 Q Did she mention over there that you --

7 MS. MITRANI: Objection, hearsay.

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q So as a manager of the main gate in Miami, every single
11 package that goes international goes straight from Miami or
12 comes from other places?

13 A No, they come from the local service centers and from our
14 Cincinnati hub.

15 Q Any package that leave United States to go in this case in
16 here we talking about Brazil?

17 A That leave the United States, yes, that comes to the Miami
18 hub.

19 Q If they come from any other state or United States, has to
20 go through Miami before they leave the country?

21 A Yes, it does.

22 Q And through Miami goes to the final destination or they
23 make another stop as well?

24 A No, it's direct.

25 Q So any flights that goes from United States to Brazil goes

1 from United States straight to Brazil, correct?

2 A Correct.

3 Q Did you guys never stop in Panama?

4 A Only material that's considered unknown. Again, that's
5 back to the TSA security program. So any shipment that is
6 unknown shipper cannot go the way we send Brazil.

7 Q During this time you work in Miami, has any knowledge the
8 company called Brazil Express Sky Air or any kind of problem
9 with packages of those companies?

10 A No.

11 Q The company has been mentioned to you during your time
12 working there?

13 A Only today when I talked to an investigator.

14 Q No security person out of the station has brought up to
15 your attention about some illegal packets being shipped to
16 Brazil?

17 A No, they wouldn't bring it to my attention. I'm not
18 responsible for that kind of security.

19 Q But if the security people is doing investigation, they
20 inform the managers over there to get everybody familiar and
21 alert with any illegal activity?

22 A The only circumstances, if they get some kind of
23 information, they will ask us to track it or stop it, but
24 that's usually on import side, not the export side.

25 Q And as a manager at that location, do you perhaps have

1 security come to you and mention the name Rogerio Scotton?

2 A Not that I recall, no.

3 Q Do you have any recollection recent if there is any kind
4 of problem with any package recently being sent to Brazil?

5 A As far as what?

6 Q For anything illegally accounts be using?

7 A The only thing we had, we have had some pellet guns which
8 Brazil prohibits.

9 Q You said pellet guns?

10 A Yes.

11 Q Is that paint ball guns?

12 A No, pellet guns. I guess they are little pellets.

13 Q It's some kind of toy?

14 A Yeah, I guess it's like a toy.

15 Q But nothing illegal as drugs or nothing illegal as --

16 A No. We are not mandated to look for drugs. That's
17 customs responsibility, and our people are untrained to look
18 for that kind of thing.

19 MR. SCOTTON: No more questions, Your Honor.

20 THE COURT: Cross-examination.

21 MS. MITRANI: No questions.

22 THE COURT: Thank you. You may step down. You are
23 excused.

24 THE WITNESS: Thank you.

25 THE COURT: Mr. Scotton, you may call your next

1 witness.

2 MR. SCOTTON: Your Honor, the defense calls Vidal,
3 Ms. Vidal.

4 THE COURT: All righty.

5 GIZANE VIDAL

6 after being duly sworn on oath was examined and testified as
7 follows:

8 THE COURTROOM DEPUTY: Please be seated and state and
9 spell your first and last name for the record.

10 THE WITNESS: Gizane Vidal, G-I-Z-A-N-E V-I-D-A-L.

11 DIRECT EXAMINATION

12 BY MR. SCOTTON:

13 Q Ms. Vidal, how are you doing today?

14 A How are you?

15 Q Appreciate your coming here today.

16 A Okay.

17 Q Ms. Vidal, can you tell the jury where you are from
18 original?

19 A I'm Brazilian, from Brazil originally.

20 Q Can you tell the jury how long you live in the United
21 States?

22 A I have been living here for, 2001, 14 years.

23 Q Can you tell the jury what your background is?

24 A My background, I'm working as a banker for the last --
25 2005 for the last eight years, I have been working as a banker,

1 at Wells Fargo Bank.

2 Q And which location you work as an employee of Wells Fargo?

3 A 3885 North Federal Highway, Pompano Beach, Florida.

4 Q And how long you work for that location?

5 A I have been at that location for five years.

6 Q Before work for Wells Fargo, did you work for another
7 bank?

8 A I worked for Wachovia. Wells Fargo bought Wachovia, so I
9 started with Wachovia in 2005.

10 Q Was Wachovia -- was the same location before you used to
11 be --

12 A No I used to work in Surf Side, Florida, Miami.

13 Q Ms. Vidal, did you recall back in 2011, I walked to your
14 branch?

15 A Yes, I do.

16 Q And someone in the bank introduced me to you, walked me to
17 your desk. Do you recall that day?

18 A Someone what?

19 Q Someone from the bank has introduced me to you as I was
20 attempting to open an account.

21 A Yes.

22 Q Do you recall that day I open a business check account
23 with you?

24 A The exactly date?

25 Q No. Did you recall that I opened a checking account?

1 A I recall you coming into the branch to ask to open a
2 business account, yes.

3 Q Can you remember how many accounts that we opened that
4 day?

5 A I do not remember how many accounts.

6 Q And as a requirement to open accounts during the meeting,
7 did I present two IDs to open that account?

8 A Yes, you did.

9 Q Did I present you some piece of paperwork from
10 Tallahassee?

11 A I believe so. If you didn't, I would have to go look it
12 up.

13 Q Can you explain to the jury, tell what is the process, the
14 procedure, to open a business account with Wells Fargo.

15 A With Wells Fargo Bank the key officers have to be
16 authorized to open the account.

17 Q After you introduced me to several different type of
18 business accounts that Wachovia offers, we begin to start the
19 paperwork, correct?

20 A Yes.

21 Q You don't recollect how much money that I opened the
22 account?

23 A No, I don't recall.

24 Q Is there any requirements to open account, checking
25 account?

1 A A business checking account, we have to open with fifty
2 dollars or a hundred dollars. Now it's fifty. Before it was a
3 hundred.

4 Q Do you recall how many accounts was opened that day?

5 A No, I do not recall.

6 Q Do you recall who is the signer on that account?

7 A I remember when you came in, there was more than one
8 executive, so I had to get the second executive authorization
9 to open the account.

10 Q Have you met Ms. Carla Felini?

11 A Yes, I did.

12 Q How far is your branch from Ms. Felini's store?

13 A I can see from my probably where I'm sitting. It's one
14 block. We are like really close.

15 Q Across the street?

16 A Across the street. I can walk to there.

17 Q Have you met Ms. Felini face to face?

18 A Yes, I did.

19 Q Where did you met Mrs. Felini face to face?

20 A I went to her office.

21 Q What is the meeting all about, Ms. Vidal?

22 A I went there to get authorization that she would be okay
23 opening the business account.

24 Q And what she told you during that meeting?

25 A She told me yes.

1 Q Did she make any comment about the store there, the second
2 store that we are opening?

3 A No.

4 Q Has Mrs. Felini signed the forms in front of you?

5 A Yes, I had to get her IDs, documents, driver's license,
6 Social Security, and I had to go back and give her the
7 signature because she couldn't leave her office, so she
8 mentioned.

9 Q Have she make any comment to you while we are open this
10 new account?

11 A Any comments why we are opening the accounts? No, I went
12 there. She said, yes, I open the account.

13 Q It was Ms. Felini's full knowledge that account was being
14 opened under her name, correct?

15 A Yes, and I went back and got her signature.

16 Q Ms. Vidal, are you familiar with the Wachovia statements,
17 bank statements?

18 A Yes.

19 Q Do you have a recollection the Merry Mailman statement and
20 location address out of the statement?

21 A I know where the Merry Mailman is because it's across from
22 my branch.

23 Q If I show the statement, you would be able to recollect
24 your mind about the --

25 A The address? Yes, I will be able to see the address.

1 MR. SCOTTON: Your Honor, may I approach the witness?

2 MS. MITRANI: Excuse me.

3 THE COURT: First let's show it to Ms. Mitrani.

4 MS. MITRANI: Thank you.

5 THE WITNESS: Okay.

6 BY MR. SCOTTON:

7 Q Do you see the address on this statement?

8 A It's Boca.

9 Q It's a different store, correct?

10 A Yes.

11 Q And you can see this is a statement from the account you
12 opened, correct?

13 A I don't know if that's the account I opened.

14 Q Did we open more than one account with --

15 A I don't know. If we opened more than one account? I do
16 not remember.

17 Q Do you remember a couple days later, perhaps like three,
18 four weeks, I went back to your location and I closed that
19 account and opened a new one?

20 A We talking about 2012. That's what the statements are
21 here. I do not remember. I cannot tell you in details what
22 happened in 2012. I mean, I see at least 20 customers every
23 day.

24 Q Someone also around 2012, Ms. Felini walked to the branch
25 to return the machine?

1 A Yes.

2 Q Which machine did she return to you?

3 A I don't know if it was 2012, but she did walk back to the
4 branch. I don't know the dates exactly. She came back to the
5 branch and she told me she needed to close her merchant
6 services machine.

7 Q And she has full knowledge merchant services is in her
8 name and she need to close that?

9 A What she stated to me was they came in, police came in, or
10 whoever came in, and were investigating her, and she wanted to
11 close the merchant services. That's all she told me.

12 Q Have she told you why she's giving that machine back to
13 you?

14 A She told me some things were open without my
15 authorization. That's what she told me. And she did want
16 nothing to do with that merchant services service with Wells
17 Fargo, so I put her on the phone and she canceled the merchant
18 machine.

19 Q But she did not deny to you that when you went to her
20 location, she opened the account, the knowledge the account was
21 under me --

22 A No.

23 Q -- right?

24 A I don't know. I don't recollect. No, she didn't say
25 that.

1 Q Have she canceled any other service that day with you?

2 A Not that I remember, no.

3 Q And the return of machine that is in your branch face to
4 face not in her store, correct?

5 A No, I did put her on the phone and she called the merchant
6 service and she mailed the machine herself, I believe, because
7 we do not keep machines in our branch.

8 Q And have she mentioned to you from where she took the
9 machine to able to return to you?

10 MS. MITRANI: Object, hearsay.

11 THE COURT: Sustained.

12 BY MR. SCOTTON:

13 Q Ms. Vidal, when you opened merchant service with the bank,
14 if you close merchant service, it is required that you need to
15 return the machine, correct?

16 A We do the services. I believe the equipment, it's through
17 a third party. I think right now it's First Data. So, yes, if
18 you are going to finish a lease, if you are not going to keep
19 the equipment, you have an option of keeping the equipment if
20 you like. If not, you can return the equipment. It all
21 depends whatever is on the lease.

22 Q That particular account, when we opened, did you recall
23 for your recollection ATM cards has been issued?

24 A I cannot tell you yes because I'm not -- no, I'm not a
25 hundred percent sure.

1 Q So you don't know if Ms. Felini has received a debit card,
2 right?

3 A No.

4 Q But it's something that the bank keep record that anybody
5 can check?

6 A Yes, uh-huh.

7 Q The statement bank that you have in front of you, have you
8 seen that kind of statement before, this kind of statement
9 before?

10 A Yes, uh-huh.

11 Q Did you see a lot of charges on there and transactions on
12 that statement?

13 A Uh-huh.

14 Q Where are those charges comes from, Ms. Vidal?

15 A You say come from. Credits or debits?

16 Q Debits.

17 A The debits, most of them, it's with a debit card that ends
18 in 2981.

19 Q Who is charging the account?

20 A Debit card 2981.

21 Q Is there any company mentioned?

22 A Oh, a company? Fed-Ex, most of them, and USPS, all of
23 them actually.

24 Q This last question, Ms. Vidal. Is any time when you would
25 walk across Ms. Felini store that she feels that she's been

1 pressured to open account?

2 A No.

3 Q And she's happy to hand you the license and whatever did
4 that you required --

5 A I remember when I went to her store that she could not
6 leave her store alone. I went into her store. I explained to
7 her I needed authorization to open the account. She gave me --
8 I told her what documents I needed to open the account. She
9 gave it to me. I explained to her I was going to bring the
10 documents back to her for her to sign. She say yes. I opened
11 the account. I went back to her office, got her signature, and
12 came back to my branch.

13 Q And now somewhere around 2012 she went to the bank saying
14 that she didn't authorize people to use her name, correct?

15 A What she say was they came in, they were questioning me
16 about you, and there was things that were open. That's exactly
17 what she say. And I need to cancel this merchant services.
18 That's all she mentioned.

19 Q Did she mention with the police officer that she has
20 authorized to open checking account?

21 MS. MITRANI: Objection, hearsay.

22 THE COURT: Sustained.

23 MR. SCOTTON: No more questions, Your Honor.

24 THE COURT: Cross-examination.

25 MS. MITRANI: Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MS. MITRANI:

3 Q Good afternoon.

4 A Hello.

5 Q Do you remember when you opened the account, the date?

6 A The date? No, I do not remember.

7 Q So I think the defendant showed you some statement from
8 2012, but that's not necessarily the first statement on the
9 account, correct?

10 A Correct.

11 Q All right. Were you aware of the relationship between the
12 defendant and Ms. Felini?

13 A I believe they were boyfriend and girlfriend.

14 Q Okay. And were you aware that they were actually engaged
15 to be married fiances at one point in time?

16 A I think one of them mentioned to me they were fiances.

17 Q And did you know that that engagement was called off
18 eventually?

19 A No.

20 Q You didn't know that?

21 A No.

22 Q Okay. And were you aware that of any facts -- let me
23 start over again.24 You said initially when you open the account, Ms. Felini
25 sign some documents, correct?

1 A Yes.

2 Q Whenever that initial date may have been?

3 A Uh-huh.

4 Q Were you aware that after that point in time, Ms. Felini
5 wanted nothing to do with the Merry Mailman, LLC?

6 A She came back and she was very upset, that's my perception
7 of her, and that she didn't want nothing to do with that
8 particular account.

9 Q The account that she had with the defendant?

10 A Yes. She did not go into personal details with me.

11 Q I'm sorry, I didn't mean to cut you off.

12 A She didn't go into personal --

13 Q You did become aware at some point, things changed and she
14 became very upset and wanted nothing to do with that account
15 and the defendant, correct?

16 A Yes, that's my perception.

17 Q The defendant talked to you about merchant accounts are
18 different from --

19 A From checking accounts.

20 Q -- checking accounts. They are completely different
21 animals?

22 A Correct.

23 Q The account you believe you opened for the defendant is a
24 business account?

25 A A business checking account.

1 Q Not a merchant account?

2 A No, ma'am. I do not open merchant.

3 Q So the account that you opened with the defendant with

4 Ms. Felini was a --

5 A Checking.

6 Q -- business checking, not a merchant?

7 A Correct.

8 Q Okay. Do you open merchant accounts?

9 A No, I said I don't open merchant accounts.

10 MS. MITRANI: No further questions, Your Honor.

11 THE COURT: Any redirect?

12 REDIRECT EXAMINATION

13 BY MR. SCOTTON:

14 Q Ms. Vidal, during the day I went over to your store -- to
15 the bank to open an account, do you recall I explained to you
16 the type of business that we are open?

17 A Mail services business.

18 Q And do you recall that I even asked you that we going to
19 needed a merchant service?

20 A No.

21 Q You don't recall instruct me to call some ladies that
22 handle the merchant service?

23 MS. MITRANI: Objection, leading and asked and
24 answered.

25 THE COURT: Sustained.

1 BY MR. SCOTTON:

2 Q So when I opened the account, you know, I provide you with
3 all the information?

4 MS. MITRANI: Objection, leading.

5 BY MR. SCOTTON:

6 Q Do you recall me asking you questions about the services
7 that you guys can offer my business?

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q Ms. Vidal, when is the last time you spoke to
11 Ms. Martinez, the investigator?

12 A Right now.

13 Q Just before that, did you spoke to her before?

14 A I spoke with her beginning of February when I received the
15 subpoena.

16 Q And besides Ms. Martinez, did you spoke to anybody else in
17 reference to this case?

18 A Yes, Wells Fargo legal department, I have to let them
19 know.

20 Q Anybody else that has tried to contact you?

21 A No, nobody has contacted me.

22 Q So basically you handle -- you are a personal banker,
23 correct?

24 A Correct.

25 Q If I walk to you and say I need to get a merchant account,

1 what would be your answer?

2 A I would refer you to a merchant specialist with Wells
3 Fargo.

4 Q And then we deal direct?

5 A With the merchant.

6 Q And she's work also with Wells Fargo?

7 A Wells Fargo has their own merchant services. Yes, it
8 would be a Wells Fargo employee.

9 Q And when she opened, if I contact the merchant service
10 department, she will verify anything with you in reference to
11 the account?

12 A Not all the time. She might ask you to confirm the
13 account number, but that's it because she has access to our
14 system so there's no need to verify.

15 Q So she will be able --

16 A She will be able to check the system. She will be able to
17 check our Wells Fargo system so she will be able to confirm
18 anything that she needs to with no reason to call me.

19 Q The prosecutor asked you questions about Mrs. Felini very
20 upset about that day?

21 A Uh-huh.

22 Q And you say that she was very upset that day?

23 A That's my, uh-huh, perception.

24 Q And the first time that you met her, she was very happy
25 that day, right?

1 A She was normal, yes, uh-huh.

2 MR. SCOTTON: Ms. Gizane, thank so much.

3 Nothing further, Your Honor.

4 THE COURT: Thank you very much. You are excused.

5 Defense may call its next witness.

6 MR. SCOTTON: Your Honor, I call Mr. Roy Van Brunt.

7 THE COURT: All right.

8 MS. MITRANI: Your Honor, I object. Mr. Van Brunt has
9 already been called in the government's case. He's already
10 been cross-examined.

11 THE COURT: He can be called in the defense case.
12 But, Mr. Scotton, please ask questions that have not previously
13 been asked.

14 MR. SCOTTON: Yes, Your Honor.

15 THE COURT: Mr. Van Brunt, I'll just remind you you
16 are still under oath. Okay?

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: Thank you.

19 MR. SCOTTON: Your Honor, can we have like a quick
20 sidebar, please?

21 THE COURT: All right.

22 (Thereupon, the following was heard sidebar.)

23 THE COURT: Yes.

24 MR. SCOTTON: All right. I don't want to upset the
25 Court once again, nobody else here. The judge doesn't want me

1 to -- I have some questions in reference to immigration
2 charges. I want to know how far I can do. I have some letters
3 that were sent to Senator Bill Nelson. I want to know if the
4 judge doesn't want me to go into that anymore, I will skip all
5 that. I want to --

6 THE COURT: I don't know what the questions are so
7 it's hard to say. I don't want you to ask the same questions
8 you have already asked. And I don't want you to ask irrelevant
9 questions. But if you have relevant questions about the
10 immigration charges, then of course, you can ask them.

11 Without knowing what the questions are, that would be
12 impossible for me to say, and I don't want to waste the jury's
13 time by having a full preview of every question.

14 MR. SCOTTON: All right. I'm going to skip that for
15 now then, Your Honor, because I know I am walking here or
16 eggshells.

17 THE COURT: As I said, you can ask any relevant
18 questions about immigration that you have not previously asked.
19 Okay?

20 MR. SCOTTON: I'm going to try to bring it up to the
21 point that, you know, I was try to comply with the law and I'm
22 seeking the law here and that kind of thing. That's what I'm
23 going to try to go to that role.

24 THE COURT: Again, it has to be something that he can
25 answer. You can't be testifying when you are supposed to be

1 asking questions. If you have questions that he can answer
2 that he has a knowledge basis for, that's one thing and that's
3 fine. But you can't effectively try to testify in the guise of
4 asking him questions that you know he has no basis for
5 responding to.

6 MR. SCOTTON: Yes, Your Honor.

7 THE COURT: All right.

8 (Thereupon, the following was heard in open court.)

9 ROY VAN BRUNT

10 Having been previously duly sworn on oath was further examined
11 and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SCOTTON:

14 Q Mr. Van Brunt, do you have any recollection of during my
15 immigration process of Senator Bill Nelson getting involved in
16 this case?

17 A My recollection is that contained in your A file were
18 correspondence that you either sent to Senator Nelson's office
19 and copied immigration services on or that he may have sent at
20 your request to immigration services and copied you on.

21 Q And also on A file, you saw, you would be able to see
22 those letters that were sent to communication between me and
23 Senator Bill Nelson?

24 A Correct. I believe there were correspondence back and
25 forth, yes, sir.

1 Q During this investigation, you remember that work
2 authorization was approved on November 1st of 2010?

3 A I recall that you did have a work authorization. I don't
4 recall if those were the dates, but you did have a work
5 authorization, yes, sir.

6 Q And your recollection, you remember that was renewed after
7 a year?

8 A I believe it was renewed at least once, yes, sir.

9 Q Also in January 2012, do you have recollection of what
10 they call I130 permission to travel approve?

11 A I don't recall. I don't recall if that was approved or
12 was not.

13 Q During the process of this case, prosecutor has present
14 several different documents and different type of visa that I
15 have applied for. Do you recall the application I140?

16 A I do recall that you had applied via the form I140. I
17 don't recall if that was based on a family relationship or what
18 I would describe as an occupational basis.

19 Q Do you deny the application still approved by now?

20 A To my knowledge, no visas and no application has been
21 approved as of today's date or is currently approved.

22 Q Have you got -- after you receive the A file from
23 immigration, have immigration continue provide FBI with
24 information about my cases?

25 A Yes, we have had additional communications with U.S.

1 Citizenship and Immigration Services. And they have provided
2 us documents following the date of your arrest, yes, sir.

3 Q Have they provided with a letter from the embassy in
4 Brazil to have the date as July 3, 2012?

5 A I don't believe we received any letters sent to or from
6 the embassy in Brazil from the U.S. Citizenship and Immigration
7 Services. There may have been a letter produced by the
8 Department of State, but I don't believe it was -- if it's the
9 letter I am thinking of, I don't believe it was produced by
10 immigration services.

11 Q If I showed you the letter, it might recollect your mind?

12 A Yes, sir.

13 I don't believe this letter was produced to us by the
14 state department or citizenship or immigration services. I
15 think you may have produced it to us in your defense production
16 of documents.

17 Q Did you see what this letter coming from?

18 A I can read what it typed at the top of this otherwise
19 plain document without any seals or stamps on it. I can read
20 the text of what's on this. But again, I don't believe this is
21 a document that was provided to me by the department of state
22 or by the U.S. Citizenship and Immigration Services.

23 Q Is this letter coming from the embassy, the United States
24 embassy in Rio?

25 MS. MITRANI: Objection, Your Honor, relevance and

1 asked and answered.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q By look at the A file for immigration, Mr. Van Brunt, did
5 you have any recollection how much money was spent during all
6 those applications?

7 MS. MITRANI: Objection, relevance.

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q During this process, Mr. Van Brunt, have you contacted any
11 of those companies that was applying for me in the race teams?

12 A No, I have not contacted any of the sponsor companies or
13 petitioners who may have petitioned on your behalf based on
14 your racing ability.

15 Q During Mrs. Katherine here testimony, I asked her about
16 one particular, one particular form here, and I asked her if
17 the form was modified and she looked very shocked.

18 MS. MITRANI: Objection, Your Honor.

19 THE COURT: Sustained.

20 BY MR. SCOTTON:

21 Q Mr. Van Brunt, during the investigation with the FBI, has
22 any of my phones been tapped?

23 A I have not requested or to my knowledge have any of your
24 phones been tapped. We have not requested authority to record
25 any of your phone lines to my knowledge.

1 Q Cell phones or even landline has not been tapped, correct?

2 A Correct. None of my investigation included a request to
3 place a wiretap on any of your phones or communication means.

4 Q Do you have a recollection here about Mr. Greg Williams
5 going to my mother's house?

6 A I have no recollection of Mr. Greg Williams going to your
7 mother's house; although, I do know who that gentleman is.

8 Q Do you have a recollection that I have a dispute over the
9 phone with him?

10 MS. MITRANI: Objection, leading.

11 THE COURT: Overruled.

12 THE WITNESS: I do not recall ever learning or being
13 told that you had spoken with Greg Williams.

14 BY MR. SCOTTON:

15 Q During the course of the investigation, some of the
16 location of these company that you went, you mentioned that
17 Mr. Greg Williams was present with you?

18 A Greg Williams is or was a United States secret service
19 agent who in the early stages of the investigation was also
20 investigating the matter. There was a time period where Agent
21 Williams and myself went to the shipping companies and showed
22 photo lineups to different shipping company employees. That
23 largely is the most significant recollection of what I had as
24 far as what joint investigative activities took place.

25 Q How did Mr. Greg Williams has get involved in the case?

1 A My recollection is that he had been independently
2 contacted by one of the shipping companies. I think it may
3 have been Fed-Ex. And through some database checks that I ran
4 and he ran, we came to learn that we were possibly
5 investigating you both. And we met to talk about it and
6 compared some basic information and came to the conclusion that
7 we believed we both had that you as our subject in the
8 investigation and we decided for a period time to investigate
9 the case jointly. Not too long after that decision was made,
10 Agent Williams was transferred out of the Miami office, and at
11 that point the secret service participation, the investigation,
12 ended and it became strictly an FBI investigation.

13 Q Is Mr. Greg still work as an agent?

14 A I have no idea.

15 Q And during the course of this four-year investigation, how
16 long was he -- to the end of the investigation, he was not
17 involved anymore?

18 A I think his participation in the investigation ended the
19 spring of 2009, so within the first year of the FBI case being
20 opened, my recollection is that he transferred out of the area
21 and his involvement ended and that he has had no involvement in
22 the case since.

23 Q That he mentioned to you no Joe Santiago from UPS?

24 MS. MITRANI: Objection, hearsay.

25 THE COURT: Sustained.

1 BY MR. SCOTTON:

2 Q When Mr. Greg William approach you in reference to this
3 case, Mr. Van Brunt, I don't want to use the wrong language
4 here, but did he say to you that I told him over the phone F
5 yourself?

6 A I have no recollection of Agent Williams telling me that
7 he had ever spoken to you on the phone and I have no
8 recollection of him suggesting that you had told him to F off
9 over a phone. I don't remember him ever indicating that he had
10 spoken with you.

11 THE COURT: All right. Let's have a sidebar for a
12 moment, please.

13 (Thereupon, the following was heard sidebar.)

14 MR. SCOTTON: Yes, Your Honor.

15 THE COURT: I just received an email from Mr. Kreiss
16 indicating that Mr. Pavan is here and he had sat three hours
17 this morning. I don't want him to have to be called back here.
18 How much longer do you anticipate having Mr. Van Brunt on the
19 stand?

20 MR. SCOTTON: Can we do Mr. Van Brunt tomorrow then?

21 THE COURT: We can, but how much longer do you
22 anticipate having him on the stand?

23 MR. SCOTTON: You saw the blocks that I have, the
24 question. As you suggest, I cut off a lot of questions. I
25 don't know, maybe tomorrow half the day I will be done with

1 him.

2 THE COURT: All right. Let's interrupt his testimony
3 go to Mr. Pavan.

4 (Thereupon, the following was heard in open court.)

5 THE COURT: All righty. I am aware that a defense
6 witness, another defense witness, is present. And so in order
7 to avoid inconveniencing that defense witness and making that
8 defense witness return another day, we are going to interrupt
9 Agent Van Brunt's testimony. So I will again have the
10 opportunity to remind him that he's under oath when he returns.
11 And Mr. Scotton will continue with his questioning of Agent
12 Van Brunt at a later time.

13 THE COURT: Mr. Scotton, if you would, please call
14 your next witness.

15 MR. SCOTTON: Yes, his name is Arilton Pavan

16 ARILTON PAVAN

17 Having been first duly sworn on oath, was examined and
18 testified as follows:

19 THE COURTROOM DEPUTY: Please be seated, state and
20 spell your first and last name for the record.

21 THE WITNESS: Arilton Pavan. First name
22 A-R-I-L-T-O-N. Last name P-A-V-A-N.

23 THE COURT: Thank you, Mr. Pavan.

24 You may proceed Mr. Scotton.

25 DIRECT EXAMINATION

1 BY MR. SCOTTON:

2 Q How are you, Mr. Pavan?

3 A Hey, how are you?

4 Q Good. Long time, no see. Good to see you.

5 A Good to see you too.

6 Q Can you tell this incredible jury how long you live in the
7 United States? Can you tell the jury how long you live in the
8 United States?

9 A 26 years.

10 Q And can you tell this jury where you are originally from?

11 A Originally from Brazil.

12 Q Are you a citizen of this country, Mr. Pavan?

13 A Yes.

14 Q Can you tell the jury what city you live in here in the
15 United States?

16 A Deerfield Beach.

17 Q Do you have family members here too?

18 A Yeah, I have my wife and three kids.

19 Q Mr. Pavan, can you tell the jury what you do for a living.

20 A I'm a business owner. I have a small dive store located
21 in Deerfield Beach.

22 Q Prior to the location in Deerfield Beach, you used to have
23 different location, correct, I mean the same city but different
24 location?

25 A I had in the Cove shopping plaza 14 years, and then we

1 move to Federal.

2 Q How long you have a store now, Mr. Pavan?

3 A 16 years.

4 Q Mr. Pavan, do you own your own diving boat?

5 A Yes, I do.

6 Q How big is that big boat of yours, can you tell the jury?

7 A 48 footer.

8 Q Mr. Pavan, do you have a recollection when we met?

9 A In details, no, but I met you in the store and you came
10 looking for information about diving.

11 Q Mr. Pavan, I want to show some pictures and I want to see
12 if you recollect the person being in the picture?

13 A Yes.

14 MR. SCOTTON: Your Honor, do you mind if I approach
15 the witness?

16 THE COURT: Okay.

17 THE WITNESS: It's just -- I guess it's a picture of
18 you and your wife. That's right.

19 BY MR. SCOTTON:

20 Q So you recall my wife?

21 A Yeah, I think her name is Lynn.

22 Q Aylin?

23 A Aylin, okay, got it.

24 Q How did you end up meeting my wife, Mr. Pavan?

25 A In the dive store.

1 Q Have Ms. Aylin also taken advanced diving course?

2 A Yes, I think both of you took a class with us.

3 Q And can you explain to the jury how many days tops we have
4 to go through the class to be able to get a license to diving?

5 A Yeah. It's a combination of two classroom, about three
6 hours, two pool session that are also three hours, and then you
7 go on the boat and spend four hours in the boat, one session
8 where they do two dives, and the other day four hours again
9 where we do two more dives. That's the complete program for
10 certification.

11 Q And after we complete our classes, do we bought equipment
12 from you?

13 A Yes, yes, you did.

14 Q Did I bought equipment for my wife as well?

15 A I think you did bought for your wife, and I think you
16 bought something for your father-in-law something.

17 Q Mr. Carlos Colon?

18 A Yes.

19 Q That he took the class as well?

20 A I don't recall his taking class. I don't remember. I
21 just don't remember.

22 Q But unfortunately he couldn't dive with us no longer,
23 correct?

24 A Yes, yes. I think he was certified already.

25 Q But because he's out condition?

1 A Yes, yes, he being out, he did a refresher. I was not the
2 instructor, but one of my employees was working with him.

3 Q Was in the ocean, right?

4 A Yes.

5 Q Do you recall that I told you back in the days, Mr. Pavan,
6 that I used to have a shop on line that I sell electronics to
7 Brazil?

8 A Yes, I remember.

9 MS. MITRANI: Objection to the form of the question.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q Do you recall at any point I asked authorization if I can
13 just link on your site to my site?

14 A Yeah. A lot of people ask for that and I don't see a
15 problem. Like Facebook, like anything else, the more I promote
16 my business, the better, yes.

17 Q Did you have any recollection I told you that we talking
18 about potential clients in Brazil might want to buy some scuba
19 diving equipment?

20 A Yes.

21 Q And do you recall when I told you that I shipping all
22 those items to a third party company?

23 MS. MITRANI: Objection.

24 THE COURT: Sustained.

25 THE WITNESS: You say --

1 THE COURT: Sustained.

2 MS. MITRANI: Excuse me, sir. If it's sustained, you
3 can't answer.

4 THE COURT: Mr. Scotton, if you wish to testify, you
5 need to do it from the stand.

6 MR. SCOTTON: Yes, Your Honor. I'm sorry.

7 THE COURT: That's all right.

8 BY MR. SCOTTON:

9 Q Mr. Pavan, during the class that I took my wife, did you
10 see us as a couple, you know, happy people?

11 A Yeah, I didn't have any problem. I don't recall any
12 problem.

13 Q Can you tell the jury most of the time when you saw me in
14 the store my behave, what kind of type of person I am?

15 A Like I say, you are my customer in the store, came, did a
16 class, and I didn't have any problem at all. You paid for the
17 class. You paid for equipment. And you went in the boat. You
18 behave properly. I didn't have any incident or any problem.

19 Q And we have most of the time a good group of people that
20 come to the store to dive together, correct?

21 A Yes. I think you going -- you use a lot your boat after
22 you get certified and you come rent equipment or fuel tanks and
23 stuff like that.

24 Q Do you recall when the accidents that I have at one point
25 with Mr. Wilson?

1 MS. MITRANI: Objection, relevancy.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q Mr. Pavan, besides having the class with you, me, and my
5 wife, do we have a class with different employees from you,
6 from your store?

7 A Can you --

8 Q Did we have a class with somebody else besides you from
9 the store?

10 A When you did the class, you work with different
11 instructors. I'm the owner of the store and I believe you went
12 did the training with different instructors that we have in
13 staff. I don't recall, I got to look at my files, of who
14 worked specifically with you, but --

15 Q Do you recall any employees made a comment if --

16 MS. MITRANI: Objection, hearsay.

17 THE COURT: Sustained.

18 BY MR. SCOTTON:

19 Q Mr. Pavan, do you believe that I am a violent man?

20 A I never seen any signs. As a customer, no.

21 Q Did I came to your store most of the time with a bunch of
22 other people, friends perhaps, to fill up tanks?

23 A Yes, I saw you many times come to the store with other
24 friends and get air fills and so on and go diving.

25 Q And some the people still come to the store at this day?

1 A Oh, yeah, some customers are still coming to the store,
2 yes.

3 Q Mr. Pavan, when did you get acknowledge that I was charged
4 with a crime?

5 A Say again.

6 Q When did you get familiar with that I was charged with a
7 crime?

8 MS. MITRANI: Objection, relevancy.

9 THE COURT: Sustained.

10 BY MR. SCOTTON:

11 Q At one point in 2012, has my brother come to your store?

12 MS. MITRANI: Objection, relevancy.

13 THE COURT: Overruled.

14 THE WITNESS: Your brother came over and that's why I
15 end up, something was wrong. It's just that he want to sell
16 the equipment. He offered your equipment to sell it back to
17 me. And I asked him what's going on. And he say some problem.
18 He didn't give me the details, but I didn't ask much too.

19 BY MR. SCOTTON:

20 Q And they has returned all three equipments back you to,
21 correct?

22 A I bought some of the equipment back, yes.

23 Q Did my brother also leave my wife's equipment that day
24 with you?

25 Has my brother leave Aylin's equipment as well that day?

1 A I remember buying tanks and the equipment. It's been a
2 while. I don't know. It's been what, two years.

3 Q Yes, sir.

4 A Okay. I don't recall all the details, but I recall buying
5 used equipment and we already sold it.

6 Q Mr. Pavan, have I told you anything about if my marriage
7 was a sham or not?

8 A If what?

9 Q Have I mentioned to you if my marriage was a sham?

10 MS. MITRANI: Objection.

11 THE COURT: Sustained.

12 BY MR. SCOTTON:

13 Q Mr. Pavan, every single time that I went to the store, did
14 I pay my bill?

15 A Yes.

16 Q Do you deny that I was good to my wife?

17 MS. MITRANI: Objection, Your Honor.

18 THE WITNESS: I do not know.

19 THE COURT: What is the objection?

20 MS. MITRANI: Foundation for that question, the form
21 of the question.

22 THE COURT: Sustained.

23 BY MR. SCOTTON:

24 Q When I bought the equipment for Mrs. Aylin, do you recall
25 that I asked you that I need something?

1 MS. MITRANI: Objection to the form of the question.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q Do you recall the type of equipment that I bought for her?

5 A What do you mean? You bought scuba gear for her. You
6 bought the complete set for her, BCD, mask, snorkel, fins.

7 Q Was a good quality?

8 A Oh, yeah, excellent quality.

9 MS. MITRANI: Objection, relevance.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q Do you recall me come to your store, introduce you a
13 person named Paulo Roberto? Do you recall when I come to the
14 store, introduce this gentleman named Paulo Roberto also from
15 Brazil?

16 A I don't remember. It's been a while. I mean I'm dive
17 store that people walk there all the time. It's hard to
18 remember. You might, but I don't recall. It's a lot of
19 Robertos out there. I'm sorry.

20 Q Have any time anybody come to your store, Mr. Pavan, to
21 complain about me?

22 A No.

23 Q Have you heard that I done anything wrong before in your
24 life?

25 MS. MITRANI: Objection, Your Honor.

1 THE COURT: Overruled.

2 THE WITNESS: No. I mean, you are a good customer. I
3 don't know all the detail, but I never heard anything bad or
4 complain or stuff in the store and so on.

5 BY MR. SCOTTON:

6 Q Is Mrs. Aylin happy to be able to dive? Do you recall if
7 Ms. Aylin was happy to get her license and be able to dive?

8 A Yes, yes.

9 MR. SCOTTON: Mr. Pavan, thanks so much.

10 No more questions, Your Honor.

11 THE COURT: All right. Cross-examination.

12 MS. MITRANI: Yes, Your Honor. Thank you so much.

13 CROSS EXAMINATION

14 BY MS. MITRANI:

15 Q Good afternoon.

16 A Good afternoon.

17 Q Give me just one second. I got to get something.

18 How are you?

19 A Doing great.

20 Q So do you remember when it was that the defendant came
21 with the person who he claims is his wife? Do you remember
22 when that date was?

23 A No.

24 Q No idea?

25 A No idea.

1 Q Okay. Do you even know the year?

2 A It's been a while, no. I don't remember exactly the year,
3 but after I met, then they came in many times. So I don't -- I
4 don't remember exactly the year.

5 Q What year, okay. And, sir, did you ever go to 7797 Golf
6 Circle Drive?

7 A No.

8 Q Have you ever been to 398 Southeast Mizner Boulevard?

9 A No. What is that?

10 Q Okay. So you can't tell the jury whether the defendant
11 was living with this person or not, correct? You have no idea?

12 A No, no.

13 Q Is it fair to say that your knowledge of the defendant
14 comes from your interactions in the dive store and your
15 business transactions? Is that fair to say?

16 A Yes, that's fair because I never -- I never invite him to
17 go in my house and I never went to his house, no.

18 Q So you didn't have a personal relationship with the
19 defendant; you had a business relationship, correct?

20 A Business, yes, in the store. I think all my customers,
21 the nature of my business is have a good relationship because
22 it's fun, it's a -- but I don't think like just customer, but I
23 try to have good relationship with --

24 Q Sure. It's human nature and it's good for business.

25 A It's nature of business.

1 Q Like you said, you didn't go to his house. He didn't go
2 to your house. You can't talk about anything about the
3 defendant's personal life?

4 A No.

5 Q Do you know a lady by the name of Carla Felini?

6 A Carla, no.

7 Q Let me show you a picture see if this person looks
8 familiar you to.

9 A Sure.

10 MS. MITRANI: May I approach, Your Honor?

11 THE COURT: Yes.

12 THE WITNESS: I might see, but I don't remember. I
13 don't remember, no. No, I don't think.

14 BY MS. MITRANI:

15 Q Okay. Did you know that Carla Felini was the defendant's
16 fiancée?

17 A What is it?

18 Q Did you know that Ms. Felini was the defendant's fiancée,
19 that they were engaged to be married? Did you know that?

20 MR. SCOTTON: Object, Your Honor.

21 THE COURT: Sustained.

22 BY MS. MITRANI:

23 Q Did you know anything about the relationship between the
24 defendant and Ms. Felini?

25 MR. SCOTTON: Object, Your Honor.

1 THE COURT: Sustained

2 THE WITNESS: This lady?

3 BY MS. MITRANI:

4 Q No, this lady, Ms. Felini.

5 A No, I do not.

6 MS. MITRANI: May I approach?

7 THE COURT: Yes.

8 BY MS. MITRANI:

9 Q I'm showing you Government's Exhibit 28B. Do you
10 recognize the man in that picture?

11 A It's not his --

12 Q I don't know. Do you recognize it, yes or no?

13 A I don't know. It's been a while. That's look like
14 Spanish Latino looking, but the only thing that I can think
15 related to him is his father-in-law or something.

16 Q Does that picture ring a bell or no?

17 A No, it does not, like clear, not -- no.

18 Q But you saw the name, you read the name there which says
19 Carlos Colon, correct?

20 A Right.

21 Q But if I didn't have that, the picture doesn't mean
22 anything to you, correct?

23 A No, because I never see nice, clean shaven like that, no,
24 I don't recall that.

25 Q I think you testified that you knew that the defendant had

1 some kind of business, correct?

2 A Yes.

3 Q But you didn't know the details of the defendant's
4 business, correct?

5 A No.

6 Q You didn't know how he kept his books, for example?

7 A I know more -- the only thing I knew that was I knew more
8 is he's a car racer. That's -- I thought that was his major
9 business was being a car racer because he gave me a picture of
10 him and he signed because he's running the racer, car racer.
11 So that's, I think, was the major business for him.

12 Q For the defendant. Okay.

13 A Yes.

14 Q You never purchased anything from him, correct, never had
15 anything shipped through him?

16 A No, no.

17 MS. MITRANI: No further questions.

18 THE COURT: Any redirect?

19 MR. SCOTTON: Yes, Your Honor.

20 Your Honor, can I have a minute?

21 THE COURT: Okay.

22 REDIRECT EXAMINATION

23 BY MR. SCOTTON:

24 Q Mr. Pavan, most like people that is originally from
25 Brazil, we walk to the store, we talk in the main language,

1 correct?

2 A Yes.

3 Q And because most of the time when you meet someone that is
4 from your own country --

5 MS. MITRANI: Objection, leading.

6 THE COURT: Sustained.

7 BY MR. SCOTTON:

8 Q Do you enjoy have Brazilian community come to your store?

9 MS. MITRANI: Objection, relevance.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q By the driver's license picture that the prosecutor has
13 shown from my stepdad, you can't recognize Carlos because it's
14 completely different picture, right?

15 A Yes. I say yes. I never seen him clean shaven, so I'm
16 assuming that's the guy.

17 Q But you remember him from the store when we took the
18 license?

19 A Yeah, I'm assuming that is the guy. I never seen him that
20 way, clean shave.

21 Q And as your client, most of the time we spend couple, you
22 know, sometime half an hour, 45 minutes --

23 MS. MITRANI: Objecting, leading.

24 MR. SCOTTON: -- in the store?

25 THE COURT: Sustained.

1 BY MR. SCOTTON:

2 Q Do you recall how many times that I went out with your
3 captain and my wife on the boat?

4 A Yeah.

5 Q How many times do you think we might end up going on the
6 boat?

7 A I think you guys did like eight, ten trips.

8 Q And most of the time those trips is any different location
9 that your captain used to take us?

10 A Yes. Usually it's different location, depends the day of
11 the week and so on.

12 Q Those times that we went out, how many hours did we go out
13 for?

14 A Four hours, usually it's four hours out.

15 Q Ms. Mitrani tried to show another picture of another
16 female that was with me. Did you recollect that female?

17 A No.

18 MR. SCOTTON: Mr. Pavan, thank you. No more
19 questions. Thank you, Your Honor.

20 THE COURT: Thank you very much, Mr. Pavan. You may
21 step down. You are excused.

22 THE WITNESS: Okay. Thank you.

23 THE COURT: Let's bring back Agent Van Brunt.

24 So I think we need to end at 4:15 today, is that
25 right? So we will see if we can sneak in another seven

1 minutes, okay?

2 All right. Agent Van Brunt, you are still under oath.

3 Okay?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Thank you.

6 ROY VAN BRUNT

7 Having been previously duly sworn on oath, was further examined
8 and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SCOTTON:

11 Q Before we have to make this excuse me here, we talking
12 about Mr. Greg Williams. You recall that, right?

13 A Yes, sir.

14 Q So Mr. Greg Williams never have report to you that the
15 reason even my wife Samara has left the country is because of
16 him?

17 A No.

18 Q Do you think the reason that I have this problem with
19 Mr. Greg Williams before this end up going to this personal
20 attacks on me?

21 A No.

22 Q During this case, Mr. Van Brunt, has those companies lived
23 the apartment tried to pursue me?

24 A I'm sorry, what companies?

25 Q Federal Express, UPS, DHL.

1 A Have they tried to pursue you?

2 Q With some kind of legal lawsuit.

3 A To my knowledge, they have not filed any litigation
4 against you. They just cooperated with our ongoing criminal
5 investigation.

6 Q Based this case here is about money, correct?

7 A No, it's about crimes that you committed.

8 Q It's about money losing to those companies, correct?

9 A It's about crimes that were committed that resulted in the
10 shipping companies suffering financial losses, yes.

11 Q If it is a money loss here, why those company didn't come
12 after me with the money with the lawsuit?

13 A My understanding is that they were happy and excited that
14 there was an ongoing criminal investigation and they felt that
15 the best way to protect their interests would be to assist in
16 the criminal investigation and not necessarily spend their time
17 or resources on civil litigation.

18 Q Did you say they were happy with the investigation?

19 A I believe they were happy that the Federal Bureau of
20 Investigation had an ongoing criminal investigation into your
21 activities, yes. I believe that it was something they were
22 hopeful would develop and that as the investigation did
23 continue and as it became more and more complete which
24 ultimately led to your charges, I believe they appreciate the
25 fact that an investigation had occurred and charges had been

1 filed.

2 Q Mr. Van Brunt, why during this investigation have to --
3 you have sit down with several different people from fraud
4 department of those companies. Have anybody advise you for
5 reason why nobody has tried to locate me or talk to me knowing
6 me from 2008?

7 A Well, my understanding from the investigation is that they
8 have attempted to contact you. In the video that we saw
9 earlier, Chris Turner at the DHL BCT station handed you a piece
10 of paper which had the phone number for the DHL fraud unit.

11 Based on other notes that were contained, for instance, in
12 the claims files, they did request that the fraud contact be,
13 the fraud departments be contacted.

14 If you had follow-up questions, then, of course, there was
15 my face-to-face meeting with you in Boca where I was posing as
16 a DHL employee again to talk about packages that were
17 fraudulently shipped.

18 Q But during Nicole cross-examination, she deny me contact
19 at any time the fraud department, correct?

20 A I think what she said, to her knowledge, you never
21 contacted the fraud department which is different than your
22 question to me about whether the companies ever asked or
23 attempted to contact you. And then Fred Kennicutt also called
24 you from DHL.

25 Q And when did the call come in?

1 A I don't recall the date. I believe it was in 2010. He
2 called you. He left a voice mail on your cell phone. The
3 outgoing message was referencing Sky Air Online. And you
4 answered the phone and claimed that your name was Pablo
5 Servente.

6 Q You are a voice expert, Mr. Van Brunt?

7 A No, I'm not a voice expert.

8 Q Did you take the voice to the FBI labs to do criminal
9 analysis, compare?

10 A No.

11 Q But you don't deny that Fed-Ex, DHL, and the post office
12 have approved me to open stores, do you?

13 A I don't know if they approved you to open the store. I
14 think to be approved to open the store, you are required to get
15 some kind of a license or permit from the City of Boca Raton.

16 The question of whether they may have allowed you to ship
17 packages through their companies as the Merry Mailman, I
18 believe yes, they did. But I don't know if that's necessarily
19 the same as them authorizing you to open a store.

20 Q Do you recall statement to Mr. Fred Brooks about that I
21 recently has contact you USA regarding adjustment status?

22 MS. MITRANI: Objection, Your Honor.

23 THE COURT: What's the objection?

24 MS. MITRANI: He's talking about what Fred Brooks told
25 the defendant.

1 THE COURT: Sustained.

2 BY MR. SCOTTON:

3 Q Have you mentioned to Mr. Fred Brooks that I recent
4 engaged to marry United States citizen?

5 A Did I tell that to Fred Brooks?

6 Q Yes.

7 A No. My recollection is that he contacted us, being the
8 FBI, and advised us that you had filed an adjustment of status
9 and that was based on U.S. Citizen and Immigration Services
10 running a standard database, check one of which included
11 contacting the FBI, and because of the results of that database
12 check, he contacted me.

13 Q Do you remember that on February 24, 2001, you have a
14 conversation with him over the phone?

15 A I do recall that I had a phone conversation with him. I
16 believe I returned a phone call to him.

17 Q And the same question, I have ask him and he said he never
18 give you that information that I recent tried to change status
19 by marrying a United States citizen, do you recall that?

20 A I don't specifically recall what his testimony was on that
21 point, but my recollection is that there was a phone call
22 between Fred Brooks and myself wherein we discussed the fact
23 that you had recently applied for an adjustment of your status
24 based on your purported marriage to Aylin and I believe it was
25 in February of the year that you mentioned.

1 Q Do you want me to recollect your mind showing you F302?

2 A If you would like to.

3 THE COURT: I think we are actually going to need to
4 stop for the day because we have hit 4:15. So we will see you
5 all here tomorrow at 9:00 in the morning. Please do remember
6 my instructions. Don't discuss the case with anyone. Don't
7 disburse any information about the case, and don't do any
8 independent research into the case. You all have a terrific
9 evening and we will see you at 9:00 in the morning. All rise
10 for the jury.

11 (Thereupon, the jury exited the courtroom at
12 4:16 p.m.)

13 THE COURT: All righty. Thank you. And, Agent, you
14 may step down and we will see you all back here.

15 MS. MITRANI: Can I make an inquiry?

16 THE COURT: Sure.

17 MS. MITRANI: Two things. One, does the defendant
18 intend to have a full slate of witnesses tomorrow?

19 THE COURT: Mr. Scotton, you will need to make sure
20 that you have enough witnesses to fill the day tomorrow. All
21 right?

22 MR. SCOTTON: All right, Your Honor.

23 MS. MITRANI: I don't know if and when it's an
24 appropriate time to inquire, but I don't know if the defendant
25 is going to elect to testify. If he does elect to testify, how

1 is the Court going to handle that?

2 THE COURT: If Mr. Scotton wishes to testify, and as I
3 have previously instructed Mr. Scotton, Mr. Scotton, you have a
4 right not to testify and if you do not testify, that cannot be
5 held against you. On the other hand, if you want to testify,
6 it's your absolute right to do so.

7 If Mr. Scotton testifies, he will take the stand under
8 oath and he will do so in narrative fashion and then the
9 government will have an opportunity to cross-examine.

10 MS. MITRANI: I guess my last request would be when
11 the defendant knows what he's nearing the end of his case, if
12 we could be given some lead time so we know when closing might
13 be.

14 THE COURT: All right. Mr. Scotton, if you can please
15 give us two days' notice when you think you are going to be
16 done. All right.

17 MR. SCOTTON: I will do my best, Your Honor. Your
18 Honor, I also want to -- I guess something I need to brought up
19 to the Court, but I guess it has to be on the seal. It's
20 something to the defendant team. I guess if the Court has two
21 minutes for me to direct this issue.

22 THE COURT: All right. Is there anything else we need
23 to address with the government?

24 MR. SCOTTON: No, Your Honor.

25 MS. MITRANI: No, Your Honor.

1 MR. SCOTTON: Thank you, Your Honor.

2 THE COURT: Thank you. Have a great night.

3 MS. MITRANI: You too.

4 (Thereupon, the government exited the courtroom.)

5 (Thereupon, a sealed hearing was held.)

6 * * * * *

7 C E R T I F I C A T E

8
9 I hereby certify that the foregoing is an
10 accurate transcription of the proceedings in the
11 above-entitled matter.

12
13
14 7/30/14

s/ Tammy Nestor
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Official Court Reporter
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,
Plaintiff(s),
vs.
ROGERIO CHAVES SCOTTON,
Defendant(s).

Fort Lauderdale, Florida
February 20, 2014

JURY TRIAL
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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I-N-D-E-X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
DAVID CONKLIN				
BY MR. SCOTTON	7			
BY MS. MITRANI		15		
ELANE COSTA				
BY MR. SCOTTON	17		57	
BY MS. MITRANI		40		
ROY VAN BRUNT				
BY MR. SCOTTON	60		170	
BY MS. MITRANI		158		
RIHAB T. HAMADE				
BY MR. SCOTTON	184		203	
BY MS. MITRANI		198		
GENILDE GUERRA				
BY MR. SCOTTON	208			
DEFENDANT'S EXHIBITS				PAGE
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1 Thereupon,
2 the following proceedings began at 8:59 a.m.:

3 THE COURT: Is there anything we needed to address
4 before we bring in the jury?

5 MS. MITRANI: Yes, Your Honor. So last night, the
6 government had an opportunity to look over the defendant's
7 witness list and we noticed the defendant is attempting to
8 recall witnesses that were already in the government's case.
9 And in particular, Your Honor, and I know the jury is waiting
10 and we can maybe talk about this more later if the Court wants,
11 but I will note that the defendant wants to recall Carla
12 Felini, who he's had a chance to extensively cross-examine.

13 I think he wants to recall Ms. Reyes, who he's
14 extensively cross-examined. Fred Brooks, who he's extensively
15 cross-examined. I think the record will reflect that the
16 government made no objections beyond the scope of direct. The
17 only time the government made objections is when he was on his
18 third and fourth go round of the same topic.

19 And particularly, Your Honor, I think it's outrageous
20 regarding Ms. Felini and Ms. Reyes. They are victims in this
21 case and the only reason would be to further intimidate them
22 and to further harass them. So unless there's something new
23 that has arisen, I would move to quash the subpoenas if they
24 have been served and to bar their testimony. He wants a
25 sixteenth bite at the apple with respect to these witnesses.

1 THE COURT: All right. I'm not going to rule on this
2 now. I will -- as I have previously discussed with Mr. Scotton
3 before these witnesses are called, whether there is anything
4 new that he will be addressing with them. And if there's
5 something new that he's going to address with them, then I'm
6 going to allow it. And if there -- that's relevant. And if
7 there isn't, then I will not as I have previously explained to
8 Mr. Scotton.

9 MS. MITRANI: Very well, thank you.

10 THE COURT: All right.

11 MS. MITRANI: Your Honor, I would also note, I believe
12 the defendant is calling individuals who are not on his list.
13 I think there's an individual out there who is not on his
14 list -- well, I take that back. Sorry.

15 THE COURT: Mr. Scotton, are we starting with
16 Mr. Van Brunt today, or do you have other people waiting
17 outside that we should get in and have Mr. Van Brunt sort of
18 fill in the holes.

19 MR. SCOTTON: Yes, Your Honor, we can start maybe
20 with -- it's David Conklin is outside and I don't want to hold
21 him too long.

22 MS. MITRANI: Your Honor, I don't want to be
23 difficult. But, I mean, I understand there's considerations
24 like yesterday, someone is going to be the whole day. But is
25 this going to be the whole thing, Mr. Van Brunt is going to

1 keep on bouncing in and out? I mean, it does create a hardship
2 both for the agent and for the government in terms of our
3 ability to communicate. We have been trying to limit our
4 communications because he is on the stand.

5 THE COURT: All right. Well, how many people are
6 outside waiting?

7 THE INVESTIGATOR: Only one.

8 THE COURT: All right. Let's take that one so we can
9 get that witness on his way and then we can continue with
10 Agent Van Brunt. I understand, and I would like to try to make
11 it less inconvenient for all concerned. But at the same time,
12 I also have to be concerned not only about the schedules of
13 these people, but from a strictly financial standpoint of the
14 government having to pay for these people to sit here and not
15 be heard and then have to come back and pay for their
16 transportation expenses. So I will do what I can to get Agent
17 Van Brunt through, but if there are witnesses out there, I'm
18 going to try to get them in, in order to minimize the cost to
19 the Court.

20 MS. MITRANI: You know, I understand and I appreciate
21 that and I respect the Court's ruling. It just seems to have
22 him -- I don't know how many times he's going to go up and down
23 and up and down. I don't know how long the defense's case is
24 going to take. So this maybe could go on through next week.
25 It just seems unfair. But I understand and respect the Court's

1 ruling and I guess we will just take things as they come. I
2 just wanted to make the Court aware of my concerns.

3 THE COURT: Fair enough. Thank you.

4 (Thereupon, the jury entered the courtroom at
5 9:08 a.m.)

6 THE COURT: Good morning everybody. Please be seated.

7 All righty. Is there anybody here who has discussed
8 the case with anyone, dispersed any information about the case,
9 or done any research into the case, if so, please raise your
10 hand for me now. I see no hands. Thank you all for that.

11 I think we are going to continue to have Agent
12 Van Brunt's testimony interrupted this morning because we have
13 another witness present that we are going to try to get on his
14 way. So, Mr. Scotton, would you please call your next witness.

15 MR. SCOTTON: Yes, Your Honor, David Conklin.

16 THE COURT: Can you please make sure your microphone
17 is on.

18 MR. SCOTTON: Next witness is David Conklin.

19 DAVID CONKLIN

20 Having been first duly sworn on oath, was examined and
21 testified as follows:

22 THE COURTROOM DEPUTY: Please be seated, state and
23 spell your first and last name for the record.

24 THE WITNESS: David Conklin, C-O-N-K-L-I-N.

25 DIRECT EXAMINATION

1 BY MR. SCOTTON:

2 Q Good morning, Mr. David.

3 A Good morning.

4 Q Long time. Thanks for coming.

5 A You're welcome.

6 Q Mr. David, just I don't want to take too much time of your
7 life and the jury. Can you kind of tell the jury what you do
8 for a living and how long you doing?

9 A I am currently employed with the Palm Beach County
10 sheriff's office. I am a sergeant in the violent crimes
11 division, which is homicide. I have been employed with them
12 for 20 1/2 years. Prior to that, I worked for the Village of
13 Palm Springs police department as a law enforcement officer and
14 I was there for six years.

15 Q Try to go back as far as I can remember here. Somewhere
16 around 1999 or 2000, we have met, correct?

17 A Yes.

18 Q And from that point we become friends, correct?

19 A Yeah, we were friends.

20 Q Have there been a time that you live with me before, do
21 you recall that time we lived together?

22 A I recall somewhere probably in around 2002 or 2003 that I
23 stayed at your residence for approximately two and a half,
24 three weeks.

25 Q And can you describe your experience living with me under

1 the same roof?

2 MS. MITRANI: Objection, relevance.

3 THE COURT: Come sidebar for just a minute, please.

4 (Thereupon, the following was heard sidebar.)

5 THE COURT: Why is this relevant?

6 MR. SCOTTON: It go to my character witness as well,
7 Your Honor.

8 THE COURT: You can ask him about your character, but
9 asking him about describing what it was like to live with you
10 goes to -- that's not really your character, that's
11 describing -- I mean, some people have great character are hard
12 to live with and some people of horrible character are easy to
13 live with. If you want to ask him about your character, you
14 can do so. But let's stick to the relevant issues, okay?

15 MR. SCOTTON: Yes, Your Honor.

16 THE COURT: All right.

17 (Thereupon, the following was heard in open court.)

18 BY MR. SCOTTON:

19 Q Mr. David, during the time that we met, what I used to do
20 for a living at that time?

21 A I know -- if I can recall, you were still trying to get
22 back into racing and I don't recall what else you were doing
23 for money at that time.

24 Q And during the time that we seen each other, has been a
25 time that we done, you help me -- as a matter of fact, you help

1 me do some events together? Do you recall the time that we
2 done some fundraising or some community work together?

3 A I recall one time we went to a hospital and you were in
4 your race car driver outfit and donated some money to some of
5 the children at a hospital in the either south Broward or
6 Dade County.

7 Q It is a -- do you recall if it was a children hospital?

8 A I'm not sure 100 percent if it was just a children's
9 hospital, but I know that we were at a hospital that there were
10 children that you provided gifts and stuff to.

11 Q And during that event as well, do you recall somebody else
12 that has helped us with the event?

13 A I don't know what you are referring to.

14 Q There was anybody else involved with us during that day
15 that has help us financially even with toys?

16 A I know that my brother donated some money to that event.
17 I don't recall the amount, but I know that he provided a
18 donation, monetarily.

19 Q And it seems to be that everybody was happy that day to
20 see us at the hospital and going floor to floor seeing the
21 kids?

22 A Everybody was very happy.

23 Q Can you -- from your recollection, can you describe to the
24 jury my character or the kind of guy I am?

25 A Well, to the best of my recollection is you were outgoing

1 and giving and charitable at that time that we were socializing
2 and hanging out.

3 Q Do you believe that I done things like, you know, go see
4 sick children, sick children in the hospital because I was
5 looking to have some kind of immigration benefits?

6 MS. MITRANI: Objection to leading and to the form of
7 the question.

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q Mr. David, did you -- did you recall what is the
11 motivation for me to go see kids in the hospital that were
12 sick?

13 MS. MITRANI: Objection, calls for speculation.

14 THE COURT: If he knows, he can answer.

15 THE WITNESS: I don't recall the motivation. I know
16 that you be wanted to go help donate some gifts and sign some
17 things and take some photographs in your race car outfit.

18 BY MR. SCOTTON:

19 Q And during the time that we spent together have you seen
20 me engage in doing anything illegally?

21 A No.

22 Q Did you met anybody from my family during that time,
23 Mr. David?

24 A Not that I recall.

25 Q Did you recall -- I'm assuming it would be somewhere

1 around 2005, you already live in Delray if I'm not mistake, I
2 came to your house. Do you recall that time?

3 A I do.

4 Q Do you recall that I told you that I was involved in
5 some --

6 MS. MITRANI: Objection, leading.

7 THE COURT: Sustained.

8 BY MR. SCOTTON:

9 Q Do you remember that I talked to you about business?

10 MS. MITRANI: Objection, leading.

11 THE COURT: I will allow that.

12 THE WITNESS: I don't recall the conversation. I'm
13 not sure if it was 2004 o4 2005. I do recall that you had
14 asked me to borrow some money and I didn't have it at the time
15 and was unable to provide that to you.

16 Q And at that time, I was kind of financially, you know,
17 struggling, correct?

18 A I don't know. I just know that you had asked to borrow
19 money.

20 Q During that event at the hospital, was someone taking
21 pictures during that event, every single kid that I saw took
22 some pictures of us?

23 A I believe there was someone. I know that there were
24 photographs. I do recall someone taking pictures, I don't know
25 who it was though.

1 Q Was your brother happy with -- get involved in that event
2 as well, his company?

3 A Yeah, he was fine to have provided money there, yes.

4 Q Can you tell the jury what your brother's company that was
5 involved, what is the duty of your brother's company?

6 A It was a home healthcare agency.

7 Q And your brother is still doing that kind of work?

8 A He has since sold the business.

9 Q When did you come accord that I was charged with those
10 allegations, Mr. David Conklin?

11 A Excuse me?

12 Q When did you understand that I was charged with this
13 crime?

14 A I don't exactly when. I know that I saw an article in the
15 paper, and I don't even know if it had a photograph initially.
16 I read an article whether it was in the paper or on my cell
17 phone, and I wasn't even sure it was you until an additional
18 article came out and then I saw your picture. So that's how
19 I --

20 Q And what did you feel about it when you saw that?

21 MS. MITRANI: Objection, relevance.

22 THE COURT: Sustained.

23 BY MR. SCOTTON:

24 Q And after that, did you get a contact by anybody -- after
25 seeing the newspaper article, did you get a contact by anybody?

1 A I got a contact from -- or I got a subpoena.

2 Q And have anybody else contacted you besides the marshals?

3 A I believe that one -- somebody from the jail had said
4 something about you with some kind of request, and that was it.
5 A detective within the Palm Beach County sheriff's office
6 correction facility.

7 Q So he passed a message that I was trying to get ahold of
8 you, correct?

9 MS. MITRANI: Objection, Your Honor.

10 THE COURT: What's the objection?

11 MS. MITRANI: I will withdraw it.

12 THE COURT: All right.

13 THE WITNESS: I believe that that's what it was. It
14 was some kind of request.

15 BY MR. SCOTTON:

16 Q In the next couple of days, have anybody from the
17 prosecutor team contact you as well?

18 A No.

19 Q And so during the time that we were together, we did a lot
20 of things together. We used to go to the gym working out, look
21 out for each other, correct?

22 A Yes.

23 Q And, of course, you know everybody likes to go different
24 ways so we kind of lost contact with each other, correct?

25 A That's correct.

1 Q On your recollection, Mr. David, those couple years that
2 we been together, can you please just tell this jury what you
3 can tell about me as far as my character was?

4 A Back then, we were friends. We had shared some lunches,
5 went to some dinners, worked out on a regular basis because we,
6 you know, were members of the same gym. We got along. I mean,
7 you know, I didn't see any issues or problems. And that was
8 it. And you were into your racing and talking about trying to
9 get back into racing, and that's about the recollection that I
10 have.

11 Q Did you -- back in the time, did you ever see me try to
12 engage with kind of marriage to anyone to benefits from
13 immigration?

14 A No, and I don't even recall if you were dating anybody
15 back then. I don't recall that.

16 Q Did you recall events that I used to help police
17 department down in Miami?

18 A I don't recall that. I know that I was shown a few
19 photographs and that in those photographs, you were standing
20 with some police officers that looked like maybe they were from
21 Dade County. But I don't recall that event at all.

22 Q In your recollection, I was the kind of guy that want to
23 do the good things for the community?

24 A As best I can recall, yes.

25 Q So on your recollection, then you can say to this jury

1 that if I was a person, the best interest of the community?

2 A I mean, based on what I saw, you were doing community
3 events.

4 Q And you could see that I was trying to provide for others?

5 A You were talking charitable things like at the children's
6 hospital or the hospital we went to, whichever one it was?

7 Q Yes.

8 A Yes, you did do that.

9 MR. SCOTTON: No more questions, Your Honor.

10 THE COURT: Any cross?

11 MS. MITRANI: Yes, Your Honor, very brief.

12 CROSS EXAMINATION

13

14 BY MS. MITRANI:

15 Q Good morning?

16 A Good morning.

17 Q When was last time you had any dealings with the
18 defendant?

19 A Somewhere in 2004, 2005 when he stopped over to my house
20 in Delray.

21 Q Okay. So 2005 was the last time you had contact with the
22 defendant?

23 A I would say somewhere in 2005 or '4.

24 Q Okay. And so from 2005 forward, you have no knowledge
25 about the defendant's activities, correct?

1 A No, I do not.

2 Q All right. And the defendant mentioned charitable
3 activities. You attended one charitable event with him for
4 kids at a hospital?

5 A Yes.

6 Q Was that the only event that you attended with him in a
7 children's hospital?

8 A That I can recall as charitable, yes. I know that we had
9 gone to a few other events that had race cars or car shows, but
10 I think we were just there as spectators to the best of my
11 recollection.

12 Q For cars shows. But in terms of charitable events, you
13 attended --

14 A It was just one that I recall.

15 Q Okay. Just one that you recall?

16 A That's correct.

17 Q And you have no knowledge if there were any others?

18 A No.

19 Q No direct knowledge?

20 A No direct knowledge.

21 MS. MITRANI: Okay. Thank you so much.

22 THE COURT: Any redirect?

23 MR. SCOTTON: No, Your Honor.

24 THE COURT: All right. Thank you very much, Officer,
25 you are excused.

1 THE WITNESS: Thank you.

2 THE COURT: All right. Let's bring back Agent
3 Van Brunt.

4 MR. SCOTTON: Your Honor, we got another witness
5 outside waiting if we can.

6 THE COURT: How long is the other witness?

7 MR. SCOTTON: Maybe like half an hour, 20 minutes,
8 half an hour.

9 THE COURT: All right. We will do that witness then.

10 MR. SCOTTON: Thank you, Your Honor. The next witness
11 is Elane Costa.

12 THE COURTROOM DEPUTY: Please raise your right hand.

13 ELANE COSTA

14 Having been first duly sworn on oath, was examined and
15 testified as follows:

16 THE COURTROOM DEPUTY: Please be seated. State and
17 spell your first and last name for the record.

18 THE WITNESS: Elane Costa.

19 THE COURTROOM DEPUTY: And spell it for us, ma'am.

20 THE WITNESS: E-L-A-N-E, C-O-S-T-A.

21 DIRECT EXAMINATION

22 BY MR. SCOTTON:

23 Q Good morning, Elane.

24 A Good morning.

25 Q How are you doing today?

1 A Good. Nice to see you.

2 Q Nice to see you too. Ms. Elane, let me start asking you
3 questions about -- a little bit, the jury can get familiar with
4 you a little bit. Do you live here in South Florida?

5 A Excuse me?

6 Q Do you live here in South Florida?

7 A Yes, I do.

8 Q Where do you live in South Florida?

9 A Coconut Creek.

10 Q How long have you lived there, Ms. Elane?

11 A For about 11 years now.

12 Q Can you tell the jury what you do for a living?

13 A I'm a real estate broker.

14 Q And how long have you been -- work as a real estate
15 broker?

16 A For about 16 years.

17 Q Ms. Elane, are you a citizen of this country?

18 A Yes, I am.

19 Q And can you tell the jury originally where you are from?

20 A I'm from Brazil. I'm Brazilian.

21 Q Do you know, if you can remember, how far can you remember
22 that we know each other?

23 A I believe for about five years or so. It might be around
24 that amount of time, five, six years maybe.

25 Q During the time that we met and during these years, how

1 can you describe your relationship with me?

2 A Well, you were a great friend. You are someone that I
3 always knew to help other people, you know, kids that, you
4 know, cause of kids, you know, how I am big with that. And
5 your employees that work with you, I have seen you do a lot for
6 them. And even for myself when I did went through a difficult
7 time, and I will never forget that, yeah, it's...

8 Q Ms. Elane, I like to show a picture. I want to see if you
9 can remember who the person in this picture is?

10 A Okay. Your wife -- ex-wife, Ally. And your mother.

11 Q Can you tell who that is in the picture?

12 A This is your ex-wife and your mother.

13 Q And how long did you know my wife?

14 A Since you start dating her. Years, I don't recall
15 exactly, but I remember you were very excited about it.

16 Q Have you met my mother face to face before?

17 A Oh, yeah. And she has been sick a lot, through a lot too.

18 Q Elane, do you speak Spanish too?

19 A Yes.

20 Q Most of the time when you talked to my wife, what kind of
21 language did you guys used to talk to?

22 A She used to talk a lot of Spanish.

23 Q Have you went out with my wife before?

24 A Not exactly together. We have been when I was with my
25 husband and you were with her going out or, you know, for

1 shopping or that kind of thing, yes. And at your house as
2 well.

3 Q Do you recall, if you can, how many times you think we do
4 things together?

5 A It's hard to tell, but we have a very -- a few times that
6 you have done. I really can't exactly say how many times.

7 Q Have you went to the gym with Ms. Mollinedo,
8 Aylin Mollinedo before?

9 A No. But I invite her since you know how I like fitness.
10 She wanted to do it, but she end up not doing anything like
11 that. So we did not end up doing -- going together.

12 Q Elane, when did you become a citizen of the United States?

13 A Uh-huh.

14 Q When did you become, do you recall the time?

15 MS. MITRANI: Objection, relevance.

16 THE COURT: Sustained.

17 THE WITNESS: It was around --

18 THE COURT: I'm sorry, Miss Costa, thank you.

19 Sometimes one of the lawyers might make an objection. And if
20 that happens, I will rule on it. If I sustain the objection,
21 you don't need to answer the question, okay?

22 THE WITNESS: Okay. Thank you.

23 BY MR. SCOTTON:

24 Q Do you recall the day, March 31st of 2011?

25 A It's -- I don't remember what happened that day, no, I

1 don't.

2 Q Do you recall see me inside the immigration building
3 before?

4 A Yes, I did.

5 Q I was by myself that day?

6 A No, you were with your wife. You had -- at that day, I
7 was having interview for my citizenship when you were there
8 with your wife.

9 Q And do you recall if my lawyer was present as well?

10 A No, I don't remember.

11 Q That day, did you spoke to Aylin?

12 A Yes. I sit next to you guys when I finished.

13 Q Does she feels upset at any point?

14 A No, not at all.

15 Q Can you describe the conversation you have with her during
16 that time?

17 A You were having --

18 MS. MITRANI: Objection to the extent it -- I'm sorry,
19 ma'am.

20 Objection to the extent it's calling for hearsay.

21 THE COURT: Sustained.

22 BY MR. SCOTTON:

23 Q On your recollection, do you remember if she felt threat
24 that day?

25 A Not at all, no.

1 Q Did you think Aylin was feeling fear?

2 MS. MITRANI: Objection, calls for speculation.

3 THE COURT: Sustained as it is asked.

4 BY MR. SCOTTON:

5 Q During the time that we were together, going to get lunch,
6 going out together, have you seen me threat my wife in any way?

7 A No, you treat her very well.

8 Q Have you seen inappropriate behavior towards Aylin?

9 A Never.

10 Q I believe, Ms. Elane, somewhere in 2011, you shut down
11 your business, correct?

12 A That's correct.

13 Q And during the time, we met in your office once?

14 A That's correct.

15 Q Do you recall I went to the location of your office down
16 in Fort Lauderdale?

17 A Yes, more than once actually.

18 Q Is there any reason why I went over there one time when
19 you closed?

20 A Well, you were actually help me. I had to close down my
21 business, it was a very difficult time. And you were actually
22 help me. You were buying a lot of stuff from my office and
23 help me also move things out of my office.

24 Q Did you recall the Federal Express store that I opened in
25 Boca Raton?

1 A Yes, I do remember.

2 Q How many times, Ms. Elane, you have been in my office
3 location in Boca Raton?

4 A Several times.

5 Q Is any time have you see Aylin inside that store?

6 A Just -- I guess just once.

7 Q Did you recall seeing Aylin at my house?

8 A Yes.

9 Q Do you remember where I lived, used to live before?

10 A Yes. In Boca Raton in a townhouse with the garage on the
11 bottom. Yes, I do remember.

12 Q Have you come across a person named Renata?

13 A Yes, your employee.

14 Q Can you tell the jury how did you come across Renata?

15 A Well, Renata used to work for you and, you know, I met
16 through you. She was working there. And I also remember that
17 she -- you know, she get the baby and you were helping her with
18 a lot of other things with the baby and everything else. And
19 that's -- I know Renata through you. So that's the way I met
20 her.

21 Q Was Renata happy to work over there in the office?

22 A Excuse me?

23 Q Was Renata happy to work in the office?

24 A Oh, yeah. Definitely, yes.

25 Q Do you recall seeing Renata in the house as well?

1 A I don't recall that. I recall seeing her in the office
2 though. Oh, yes, no, yes, I'm sorry, I remember. I remember.
3 Actually when you were doing some work out of the house, she
4 used to be there working and help you also. No, I just before
5 the location, I remember. It's too many details.

6 MR. SCOTTON: Can I approach the witness, show her a
7 picture?

8 THE COURT: Did you show it to the government first?

9 MR. SCOTTON: Yes, Your Honor.

10 THE COURT: All right.

11 BY MR. SCOTTON:

12 Q That picture you got in front you, Ms. Elane, who is the
13 girl in the middle?

14 A Renata.

15 Q And the guy next to her?

16 A It seems to be Osvaine.

17 Q No, the guy next to Renata in the blue.

18 A Oh, this is her -- honestly, I don't remember. Is that
19 her husband? I know it's her. Him, is that her husband? No.
20 I don't remember.

21 Q So before I ask you if you recognize those two women, you
22 confirm it was Aylin and my mother, correct?

23 A Yes, that is correct. And this is Renata for sure. This
24 guy, I don't. So many people.

25 Q And that's the picture that you see was Renata?

1 A Yeah. Renata is in the middle. The other, I don't
2 remember.

3 Q Do you deny seeing the kids in my store as well?

4 A If what?

5 Q Do you deny seeing Renata's kids in my store?

6 A No, I don't.

7 MS. MITRANI: Objection, asked and answered.

8 THE COURT: It's already answered.

9 BY MR. SCOTTON:

10 Q Have Renata explain to you or give you some reason why she
11 bring the kids to the store?

12 MS. MITRANI: Objection, calls for hearsay.

13 THE COURT: Sustained.

14 BY MR. SCOTTON:

15 Q Ms. Elane, do I like kids?

16 A Yeah.

17 Q Did I used to enjoy have the kids in the store?

18 A You actually, you want to have kids now. You like kids,
19 but you like to have the kids around, you know, but you know
20 kids sometimes give problems around the business. But even
21 though you allow her to bring a lot of times.

22 Q So you can say that I'm pretty much good to Renata family?

23 A Yeah. You tried to help her as much as you could, that
24 is -- that point was the case.

25 Q Is any time you can recollect you being approached by

1 Renata and she complain about any kind of behavior?

2 MS. MITRANI: Objection, calls for hearsay.

3 THE COURT: Sustained.

4 BY MR. SCOTTON:

5 Q Have any of my employees told you anything wrong about me
6 before?

7 A No.

8 Q During our relationship as friends and couples going out
9 in the nighttime, we get to talk about all kind of things,
10 correct?

11 A That's correct.

12 Q And sometimes conversations get a little personal,
13 correct?

14 A That's correct.

15 Q Have you had any kind of personal conversation with my
16 wife?

17 A Not exactly, but I remember you are the one that more
18 outspoken. But, yeah, she used to say -- she was very happy,
19 that's what I can say. And she would say like things that she
20 was --

21 MS. MITRANI: Objection to the extent it's hearsay.

22 THE COURT: Sustained.

23 BY MR. SCOTTON:

24 Q Ever come across to you during the time you used to come
25 to the store or the house, did you get to met a gentleman named

1 Osvaine Duarte?

2 A Yeah.

3 Q Have you talked to Mr. Duarte before?

4 A Yes, uh-huh.

5 Q He used to be annoying sometimes, correct?

6 A Yes. He used to stay at your house.

7 Q Do you deny that Mr. Osvaine has a company called Brazil
8 USA Import?

9 A I know he has something. I don't know the name though.
10 I'm not sure about that.

11 Q Have you speak to Mr. Osvaine over the phone before?

12 A Yeah. When I tried to talk to you, not with him.

13 Q And what you guys talk about over the phone?

14 MS. MITRANI: Objection, calls for hearsay.

15 THE COURT: Sustained.

16 BY MR. SCOTTON:

17 Q Ms. Elane, is this Osvaine in front of you?

18 A Yes, it is.

19 Q On your recollection, do you deny Mr. Osvaine used to be
20 the man in charge of handling my business?

21 MS. MITRANI: Objection. Objection, leading, calls
22 for speculation.

23 THE COURT: Sustained.

24 BY MR. SCOTTON:

25 Q Do you recall when Osvaine told you that he wanted to move

1 out of --

2 MS. MITRANI: Objection, calls for hearsay.

3 THE COURT: Sustained.

4 BY MR. SCOTTON:

5 Q Ms. Elane, have you tried to -- as a realtor, have you
6 tried to search houses for Mr. Osvaine?

7 A Yes.

8 Q Did you recall once calling my store and getting upset
9 with him?

10 MS. MITRANI: Objection, Your Honor, leading.

11 THE COURT: Sustained.

12 BY MR. SCOTTON:

13 Q Have you called my store before and for some reason got
14 mad over the phone?

15 MS. MITRANI: Same objection.

16 THE WITNESS: Once.

17 BY MR. SCOTTON:

18 Q Can you explain to the jury why were you mad when you
19 called my office?

20 MS. MITRANI: Objection, relevance and calls for
21 hearsay.

22 THE COURT: You can talk about what you said, but you
23 can't talk about what other people said other than Mr. Scotton.
24 Do you understand?

25 THE WITNESS: Uh-huh.

1 THE COURT: Because, otherwise, that would be hearsay
2 and that's not allowed. So if you can answer the question
3 without saying what other people said, then you may do so.

4 THE WITNESS: Oh, okay.

5 MR. SCOTTON: Should I ask the question again,
6 Your Honor?

7 THE COURT: If the witness needs to have it asked
8 again.

9 THE WITNESS: Yeah, I guess. You are going to have to
10 ask because she's interrupted, I didn't understand the
11 question.

12 BY MR. SCOTTON:

13 Q When you called that day, do you remember the time in the
14 office, who answered the phone that day?

15 A Osvaine.

16 Q And why did he answer the phone?

17 A Because he always did.

18 MS. MITRANI: Objection, calls for speculation.
19 Your Honor, I don't mean to be rude and I'm not trying to be
20 rude to the witness, but it calls for speculation.

21 THE COURT: Sustained.

22 MR. SCOTTON: Your Honor, I would like to play the
23 government phone call, someone calling to open account with
24 FedEx.

25 THE COURT: Okay.

1 MR. SCOTTON: Can you give me some assistance on that,
2 please?

3 THE COURTROOM DEPUTY: Well, you are going to have to
4 hook your computer up to that one or you can play it on the
5 government's.

6 MS. MITRANI: Have him play the one that's in
7 evidence.

8 THE AGENT: This is Target.

9 BY MR. SCOTTON:

10 Q So you answer the question, so you recognize this man,
11 correct?

12 A Yes.

13 Q Who is this man?

14 A Osvaine.

15 (Thereupon, the audiotape was played.)

16 BY MR. SCOTTON:

17 Q Ms. Elane, did you recognize the voice that was playing in
18 court?

19 A It seems to be Osvaine talking.

20 Q And how can you understand it was Osvaine over the phone?

21 A Because he used to do that all the time. And you guys
22 have a distinct, a very comparable voice, but there is a
23 difference when he talks.

24 Q And you say different times, you call him?

25 A No, call you and he will answer the phone saying, this is

1 Roger. And at the beginning, I fell for it, but then I learned
2 that that is not him -- was not you.

3 Q And that's the time you end up getting upset with him?

4 A That's correct.

5 Q Ms. Elane, have you sent any packets to Brazil to Osvaine?

6 A If I had what?

7 Q Have you sent anything to Osvaine? Have you used his
8 service before?

9 A Oh, no, uh-uh.

10 Q Have you also met Paulo Roberto at the store before?

11 A Yeah, I have seen him once or twice maybe. Pablo, right?

12 Q Yes.

13 A Uh-huh.

14 Q Do you deny that Paulo Roberto worked with Osvaine?

15 MS. MITRANI: Objection, Your Honor, leading.

16 THE COURT: Sustained.

17 BY MR. SCOTTON:

18 Q Ms. Elane, do you know Carla Felini?

19 A Yeah, I do.

20 Q How?

21 A Carla, right?

22 Q How do you know Carla Felini?

23 A She used to be a client of mine. She was a former client.

24 Q Did you recall see Carla in the store as well?

25 A Yeah, I remember she was there. I guess once I saw her

1 there, maybe twice. No, just once.

2 Q Do you remember as I'm engaged in relationship with
3 Ms. Felini, once I got a call from you and you say you need to
4 have a serious conversation?

5 MS. MITRANI: Objection to the form.

6 THE COURT: Sustained.

7 MS. MITRANI: Objection to the form of the question.

8 THE COURT: Sustained.

9 Mr. Scotton, please come sidebar.

10 (Thereupon, the following was heard sidebar.)

11 THE COURT: We have previously discussed this on
12 numerous occasions. You are not going into Ms. Felini's
13 family's background. It is totally irrelevant.

14 MR. SCOTTON: I'm not supposed to go to the fact to
15 ask a question during cross-examination, she lie on fact of
16 those questions about the real estate fraud and that's the
17 motivation to come in here to lie to this court.

18 THE COURT: No, you asked her if her family was
19 involved in real estate fraud. I sustained those objections.
20 You were not going to go into what her family may or may not
21 have done. I'm sorry, no.

22 MR. SCOTTON: I am not going to ask questions about
23 the motive of Carla Felini, right?

24 THE COURT: You cannot ask questions about whether
25 Carla Felini's family may or may not have been involved in

1 fraud. Carla Felini was the witness, not her family. It's not
2 relevant. You can't go into it. We have discussed this on
3 several occasions and I told you specifically that you could
4 not go into it on several occasions. And you are clearly
5 violating my plain rulings on several occasions. If you do it,
6 I'm cutting off this questioning.

7 (Thereupon, the following was heard in open court.)

8 BY MR. SCOTTON:

9 Q Ms. Elane, during my relationship with Carla Felini, in
10 your recollection, have I asked Ms. Felini to help with
11 anything?

12 A If she has helped with what? I'm sorry.

13 Q Have I asked her to help me with anything?

14 A Help in terms of what?

15 Q Opening store or --

16 A Oh, she was your --

17 Q -- or do anything for me?

18 A She was with you in -- buy store in Boca, right? She was
19 the partner there. And I remember when you have the credit
20 card installed and that kind of thing, she was the one that, I
21 guess, did everything because the store was together, right, as
22 far as I can remember.

23 Q Ms. Elane, what can you tell this jury about me?

24 A About you?

25 MS. MITRANI: Objection, vague. I'm sorry. I'm

1 really not trying to be rude, but there are rules here.

2 THE WITNESS: Oh, no, it's okay.

3 MS. MITRANI: Objection, vague.

4 THE COURT: Sustained.

5 BY MR. SCOTTON:

6 Q Ms. Elane, can you describe the way I used to treat
7 Ms. Felini?

8 A Like you always do. You spoil everyone too much, that's
9 my opinion. And I used to tell you that, that you were
10 spoiling the wrong person.

11 Q You used to play my mother sometime, do you?

12 A Yeah, that's correct. I'm a woman and I can see things.

13 Q And do you -- can you tell me the way I used to treat my
14 wife, as well, Aylin?

15 A Always -- you were a great man when you have a woman.
16 That's what I can say.

17 Q Not that I want to have any woman on the jury fall in love
18 with me, but --

19 MS. MITRANI: Objection, Your Honor.

20 THE COURT: Sustained. Please ask a question.

21 BY MR. SCOTTON:

22 Q I was good to every single woman that I was with, right?

23 A Yes, you were definitely a good man for them, yes.

24 Q Renata has full knowledge of Mr. Osvaine?

25 MS. MITRANI: Objection. Objection, calls for

1 speculation.

2 THE WITNESS: Renata used to --

3 THE COURT: Sustained.

4 I'm sorry. Sometimes I have to think about it so I
5 don't respond right away.

6 THE WITNESS: Okay.

7 THE COURT: And I know it's probably new for you, but
8 if there's an objection, if you could just wait.

9 THE WITNESS: It's totally new. I have never been
10 here before, so --

11 THE COURT: That's okay. I understand.

12 MR. SCOTTON: I will try to make this question in a
13 way that she can say, Your Honor, if it's okay with the Court
14 to continue?

15 THE COURT: I can't tell you whether the question is
16 going to be okay, but if you ask it and there is an objection,
17 I will rule on the objection.

18 MR. SCOTTON: Okay, Your Honor.

19 BY MR. SCOTTON:

20 Q During the time you came to the store, the individual
21 Osvaine was present, correct?

22 A Yes, that's correct.

23 Q Was Ms. Renata present as well?

24 A Yes. They used to be together a lot of times.

25 Q Ms. Elane, I would like to show some pictures. I'm going

1 to flip some pictures on the screen and I'm going to take one
2 by one. Then during the picture, I might ask you a question,
3 but just see if you can, you know, phrase the pictures and
4 things might remind you.

5 MS. MITRANI: Your Honor, I object to him just
6 flashing pictures. If he has questions, he has questions.

7 THE COURT: I agree. If you can ask specific
8 questions, but we don't do this in the form of stream of
9 conscience.

10 MR. SCOTTON: Okay, Your Honor. I'm going to approach
11 the witness, Your Honor.

12 THE COURT: Okay.

13 MS. MITRANI: May I see that first, please? Thank
14 you.

15 BY MR. SCOTTON:

16 Q On that picture, Ms. Elane, can you describe the three
17 people on this picture?

18 A The middle, it's you. And the two officers, which I don't
19 know who the officers are.

20 Q And can you tell what I'm holding in my hand?

21 A Money.

22 Q And do you think those police officers tried to arrest me
23 because of that money?

24 A No. Actually, you used to contribute a lot to their
25 causes of, you know, police officers, children, and a lot of

1 other things.

2 MS. MITRANI: Your Honor, I think the defendant is
3 trying to publish pictures through this witness. These are not
4 pictures she's involved with so I'm going to object.

5 THE COURT: All right. You have to lay a foundation
6 for why this witness would have knowledge of this. And then if
7 you can, then she can testify about it.

8 BY MR. SCOTTON:

9 Q Ms. Elane, during my race career, did you recall
10 participate some of my events?

11 A Not there. But, yeah, I remember when you came up -- come
12 back or doing, you know, everything that you are doing,
13 including with talking with your mother and the pictures that
14 you show at that time. So I remember those pictures, actually.

15 Q Can you describe to the jury who the girls is?

16 A Carla. Is that Carla? Yeah, it looks like Carla. And I
17 think it's her sister.

18 Q Do you deny that I have done great things for this
19 community?

20 MS. MITRANI: Objection to the form of the question.

21 THE COURT: Sustained.

22 BY MR. SCOTTON:

23 Q Ms. Elane, you met my mother and Carlos before?

24 A Yes.

25 Q And during this whole process that I'm going through, did

1 you help them?

2 A Yes. They have gone through a lot, so...

3 Q Do you believe that my mom and dad is capable to hurt
4 anybody?

5 MS. MITRANI: Objection, Your Honor.

6 THE WITNESS: Oh, no.

7 THE COURT: Sustained.

8 MS. MITRANI: Objection, relevance.

9 THE COURT: Sustained.

10 BY MR. SCOTTON:

11 Q Ms. Elane, have -- well, rephrase this.

12 Did you recall when I approach you with a marriage
13 problem?

14 A Yes.

15 Q And do you recall what all I was complain of?

16 MS. MITRANI: Objection.

17 THE COURT: Sustained.

18 BY MR. SCOTTON:

19 Q Did you recall when my marriage with Aylin fall apart?

20 A Yes, I remember you talking about that. You were very
21 upset, actually. You were trying to work things out.

22 Q Have anybody told you that I engage --

23 MS. MITRANI: Objection, Your Honor.

24 THE COURT: Sustained.

25

1 BY MR. SCOTTON:

2 Q Do you acknowledge my marriage was real?

3 MS. MITRANI: Objection, Your Honor.

4 THE COURT: Sustained.

5 BY MR. SCOTTON:

6 Q Ms. Elane, do you understand the allegations the
7 government has against me at this day?

8 MS. MITRANI: Objection, Your Honor.

9 THE COURT: Sustained.

10 BY MR. SCOTTON:

11 Q During the time that you know me, did you acknowledge any
12 illegal activity that I was doing?

13 MS. MITRANI: Objection, Your Honor.

14 THE WITNESS: Not at all.

15 MS. MITRANI: Sorry.

16 THE COURT: All right. Ms. Costa, I need to just ask
17 that you wait until I rule on the objection, all right?

18 THE WITNESS: Oh, okay.

19 THE COURT: I'm overruling that.

20 MR. SCOTTON: Your Honor, it was overruled?

21 THE COURT: Yes.

22 THE WITNESS: Oh, can I answer?

23 THE COURT: She answered it anyway, so...

24 MR. SCOTTON: Your Honor, can I have a moment, please.

25 THE COURT: All right.

1 MR. SCOTTON: Your Honor, no more questions.

2 THE COURT: Any cross?

3 MS. MITRANI: Yes, Your Honor.

4 CROSS EXAMINATION

5 BY MS. MITRANI:

6 Q Good morning, Ms. Costa.

7 A Good morning.

8 Q And I apologize if I have offended you in any way by
9 objecting.

10 A Oh, no, you didn't. I'm just not used to be here, this is
11 the first time. I don't know how it works.

12 Q Right. And, in fact, you and I have never met before,
13 correct? We have never spoken?

14 A Oh, yeah, no.

15 Q Again, I hope I haven't offended you. Please don't hold
16 it against me.

17 A No, not at all.

18 Q All right. So like we said, we have never met before, but
19 you are pretty good friends with the defendant?

20 A Yeah.

21 Q When did you first meet him?

22 A Well, I believe about five, maybe six years ago. I cannot
23 recall exactly, but for a few years.

24 Q And you have known him since?

25 A Yes, I know him since.

1 Q And have you had an opportunity to speak with the
2 defendant or his investigator provider to your testimony here
3 today?

4 A Never talked with the defendant. I spoke with the
5 investigator over the phone because she call me to see if I
6 could testify for him, but that was about it.

7 Q Okay.

8 A So I didn't ever much contact with anyone, not even with
9 his standby attorney, I guess.

10 Q No, I'm just asking. So my question was --

11 A Yeah, no.

12 Q -- did you speak to the investigator?

13 A Not in -- just that I had to be here and I was subpoenaed.
14 That's all.

15 Q And you care very deeply about the defendant. I think you
16 said he was very good to you, he helped you out when you
17 were --

18 A Yes, and he has help a lot of people, not just me. So
19 yes.

20 Q So see him as a very good man?

21 A Yes.

22 Q In fact, you said he treated Carla Felini really, really
23 well, he spoiled her?

24 A Both of them, yes.

25 Q And he got Ms. Felini a pretty nice engagement ring,

1 correct?

2 MR. SCOTTON: Objection, Your Honor.

3 THE WITNESS: That's correct.

4 THE COURT: What's the objection?

5 MR. SCOTTON: Irrelevant.

6 THE COURT: Overruled.

7 BY MS. MITRANI:

8 Q He got Ms. Felini a pretty nice engagement ring, right?

9 A When he did engage, yes.

10 Q Excuse me?

11 A Yes, when he did engage.

12 Q When he was engaged with Ms. Felini, he got her a very
13 nice -- and he was dating her before he was engaged to her,
14 right?

15 A It was a very short time. I don't remember.

16 Q Okay. And they would go on trips together and what have
17 you, correct?

18 A When they were, yeah, engaged, yes.

19 Q And then, of course, you knew he was engaged to Ms. Felini
20 when he was supposedly married to Ms. Aylin. Did you know
21 that?

22 A They are not -- they are not together anymore at that
23 time.

24 Q Oh. So when Ms. -- when -- who wasn't together?

25 A Ms. Carla was married as well, so --

1 Q Now, let me -- you know, let me -- this is vague. Let me
2 direct your time period. You know that the defendant got
3 engaged to Ms. Felini in June of 2011, correct?

4 A I don't remember the date, honestly, yeah.

5 Q And let me see, did you ever live with the defendant?

6 A No.

7 Q Okay. Did you ever spend -- and, I'm sorry, I didn't mean
8 anything personal.

9 A I have my house.

10 Q That's not what I was getting at.

11 A No.

12 Q So let me -- I'm not saying if you lived with him in an
13 intimate manner, but did you live on his couch or --

14 A No, I have my family, I have my husband, no.

15 Q So he lived in his place and you lived in --

16 A Different cities, yes.

17 Q So you don't know who -- okay. So you were never with him
18 in his apartment in Mizner, for example, overnight for any
19 period of time?

20 A Not overnight, but at night I have been there with my
21 husband.

22 Q But not overnight?

23 A No, no, I didn't sleep there.

24 Q Not for like a week or a month at a time?

25 THE COURT: Wait. Okay. One at a time.

1 MS. MITRANI: Sorry, Your Honor.

2 THE COURT: Otherwise, we are going to have a messed
3 up transcript.

4 MS. MITRANI: You are absolutely right. My apologies
5 to the Court.

6 THE COURT: That's okay.

7 MS. MITRANI: To the court reporter, to the witness,
8 to the jury, to the defendant, everybody.

9 BY MS. MITRANI:

10 Q I'm sorry. Just wait until I finish --

11 A Okay.

12 Q -- asking my question. You might think you know where I'm
13 going, I'm just trying to keep them pretty direct.

14 A Uh-huh.

15 Q You didn't spend any extended time with him at the Mizner
16 street address, correct?

17 A Overnight, no.

18 Q And you never lived --

19 A Extended hours, yes.

20 Q Okay. But you --

21 A Because overnight when you sleep there. Extended hours
22 when we have a gathering together and you spend the hours to
23 certain -- late.

24 Q Right. And you socialized with the defendant from time to
25 time?

1 A That's correct, yes.

2 Q And you never lived at 7797 Golf Circle Drive, correct?

3 A No.

4 Q And you had nothing to do with the defendant's business,
5 correct?

6 A Uh-uh, no.

7 Q That's a no. So you didn't know anything about how
8 he operated -- you weren't -- let me rephrase this. Let me try
9 to be a little better at this. You were not employed by the
10 defendant, correct?

11 A No. No.

12 Q You didn't stay at his store every day?

13 A No.

14 Q You would visit the store from time to time?

15 A Time, that's correct.

16 Q Like at the apartment to the extent he was running his
17 business in the apartment, you weren't involved with that,
18 correct?

19 A No.

20 Q You would stay and visit the apartment at Mizner --

21 A As a person.

22 Q -- from time to time?

23 A Uh-huh.

24 Q Is that yes?

25 A Yeah, I would visit him, yeah.

1 Q And Renata was the defendant's employee, correct?

2 A That's correct, yes.

3 Q And she worked for him full time, correct?

4 A Full time, yes.

5 Q Now, you mentioned that Ms. Aylin is the defendant's
6 ex-wife. Do you know when they got divorced?

7 A No, I don't know. I don't remember, no.

8 Q Okay. You don't, it's okay. You know or you don't know.

9 A I don't know, no.

10 Q That's fine.

11 A I'm horrible with dates by the way, so --

12 Q Now, you mentioned -- aren't we all. You mentioned that
13 in your presence, the defendant seemed to treat Ms. Aylin very
14 well, correct?

15 A Yeah, uh-huh.

16 Q Needless to say, this is an obvious question, needless to
17 say, you don't know what went on between them when you weren't
18 there, correct?

19 A Nobody knows, but --

20 Q Well, no, no, that's --

21 A -- she was always happy --

22 Q In your presence?

23 A -- when she was there. And a lot of times you notice if
24 the person is unhappy, you see things. But I never saw it.

25 Q But you never -- behind closed doors, nobody knows what

1 happens?

2 A Nobody knows.

3 Q Except the two people that --

4 THE COURT: I'm so sorry to interrupt. We are going
5 to have to take a bathroom break. All rise for the jury and we
6 will return at -- let's say 10:25.

7 (Thereupon, the jury exited the courtroom at
8 10:13 a.m.)

9 THE COURT: All right. I just want to remind you, I'm
10 sorry, but we have -- we do have a couple of -- or at least one
11 juror who's pregnant. So whenever there's a request for the
12 bathroom, I break immediately.

13 MS. MITRANI: Absolutely, I was just joking.

14 THE COURT: I just want to be respectful to the jury.
15 Okay. We'll see you back here at 10:25.

16 MS. MITRANI: Thank you, Your Honor.

17 (Thereupon, a recess was taken at 10:14 a.m.)

18 THE COURT: Let's see if the jury is ready.

19 All rise for the jury, please.

20 (Thereupon, the jury entered the courtroom at
21 10:28 a.m.)

22 THE COURT: Please be seated. And, Ms. Costa, I just
23 need to remind you as I remind all witnesses after we come back
24 from the break, you are still under oath. Do you understand?

25 THE WITNESS: Yes, I do.

1 THE COURT: All right. Thank you. And, Ms. Mitrani,
2 whenever you are ready, you may proceed.

3 MS. MITRANI: Thank you, Your Honor.

4 BY MS. MITRANI:

5 Q Hello again.

6 A Hi.

7 Q So I think when we left for the break, I think you and I
8 agree that what happens behind closed doors between a man and a
9 woman, only that man and that woman know, correct?

10 A That's correct.

11 Q Let me ask you -- just waiting for this. There we go.

12 You testified trying to answer my question that you are
13 not very good with dates. Do you remember that?

14 A That what? I'm sorry.

15 Q I was asking you about when Ms. Felini and the defendant
16 became engaged, and you said you are not very good with dates.

17 A Uh-huh, no.

18 Q All right. I'm going to show you what's in evidence as
19 Government's Exhibit -- Bank of America, so it's Exhibit 16.

20 A Uh-huh.

21 Q And this is BOA1406. You see this is a statement. Do you
22 see the period at 6/1/11 through 6/30/11?

23 A Yes, I see.

24 Q I'm showing you the third page, which is Bank of America
25 1408. And do you see that on June 6th, 2011, there's a \$1,400

1 purchase from J.R. Dunn Jewelers?

2 A Yes, I see that.

3 Q And do you see on June 14th, 2011, there is a \$1,700
4 Hilton charge?

5 A Yes, I see that.

6 Q And you knew that the defendant proposed to Ms. Felini at
7 a Hilton, right?

8 A I don't know if it was at that date, though. 2/6/14,
9 yeah, I have no idea if it was that --

10 Q So this doesn't refresh --

11 A I see the charge, but I don't know this is in reference to
12 what was that. It could be to Aylin so I don't know because
13 they had me all over too. So it's hard to tell.

14 Q All right. So you just don't know the dates?

15 A No, I do not know.

16 Q But you know that J.R. Dunn jeweler is a jeweler, correct?

17 A Yeah, because I have bought from them so I know. I love
18 jewelry as you can see. Yeah, I know. But \$1,400 is not --

19 Q That's okay.

20 A -- that expensive of a thing. So I don't know.

21 Q I guess that's in the eyes of the beholder. But in any
22 event, if you could maybe just try to answer my questions.

23 A Okay.

24 Q I would appreciate it.

25 Now, you testified before that you spoke with the

1 investigator prior to your testimony here?

2 A If I what?

3 Q You spoke with Ms. Nina?

4 A Just to -- she called me asked if I could testify for --
5 it was a very short conversation. I was working.

6 Q About how long was the conversation?

7 A It's hard to say, but it was a very short conversation.

8 Q And did she mention some of the topics or some of the
9 questions --

10 A No, no.

11 Q -- that you would be being asked?

12 A I did not have time even to talk. I was at my job at that
13 time.

14 Q Did you call her back?

15 A I was calling her at that time.

16 Q And you called her back?

17 A Yeah, I called her and I talked to her. I said, we have
18 to be brief, what this all about. To testify. And I said I
19 had no problem with that. That was my answer.

20 Q And when you --

21 A She say you receive a subpoena, I was contact by a marshal
22 officer. And he went to my house and served me a subpoena on
23 Friday. I'm not sure if it was last Friday or the Friday
24 before. Valentine's Day.

25 Q And did you discuss with Ms. Martinez some of the topics

1 that were going to be asked of you or some of the questions
2 that maybe were going to be asked?

3 MR. SCOTTON: Object, Your Honor.

4 THE WITNESS: No.

5 THE COURT: What's the objection?

6 MR. SCOTTON: Well, she already answered, Your Honor.
7 It's asked and answered.

8 THE COURT: Overruled.

9 BY MS. MITRANI:

10 Q Okay. So we are clear, at no point in time did you and
11 Ms. Martinez discuss any topics?

12 A No, I have no idea.

13 Q And you never met in person with her either?

14 A With Mrs. -- no.

15 Q Or since?

16 A I saw her here, yeah.

17 Q Okay.

18 A Yeah.

19 Q So a portion of a tape was played for you. So before
20 today, you never heard this tape, correct?

21 A That's correct.

22 Q And so you've never listened to this recording in its
23 entirety? In other words, you haven't listened to the whole
24 thing?

25 A No, I heard -- no, no. There is no reason for that, no.

1 Q All right. So we are clear, I'm just trying to make sure
2 we all --

3 A I understand the question.

4 Q -- understand the same thing. The only part of the
5 recording that you heard was what was played here today,
6 correct?

7 A No, I didn't hear audio at all. I didn't hear anything.
8 That is the first time I ever hear audio from whoever, if
9 that's what you want to know.

10 Q I mean, if you don't understand my question, I apologize,
11 tell me. I'm trying to --

12 A Yeah.

13 Q What you heard in the courtroom today --

14 A For the first time.

15 Q And it's the only thing --

16 A Never have heard before.

17 (Thereupon, there was an interruption by the court
18 reporter.)

19 BY MS. MITRANI:

20 Q And you testified during direct in response to defendant's
21 questions that the defendant's voice sounds like Mr. Duarte's,
22 correct?

23 A Yeah, it sounds like him.

24 Q All right. Now, 7797 Golf Circle Drive, are you familiar
25 with that address?

1 A 7797 Golf Circle. His mother lives in that address. I'm
2 not sure, but it seems to be her mother's address. I don't
3 know.

4 Q And do you know when the defendant --

5 A I have been there.

6 Q All right. But you believe it's -- I'm sorry. I'm just
7 not sure when you end your answer. So I'm not trying to
8 interrupt.

9 A I'm just trying to remember because addresses, dates is
10 not my thing. I know how to get there, that's basically what
11 it is.

12 Q Can you tell us when the defendant lived there with Aylin?

13 A When what?

14 Q When did the defendant, when did Roger live at 7797 Golf
15 Circle Drive?

16 A There was a time he was there, but it was temporarily as
17 far as I know.

18 Q Now --

19 A His mother, yeah, where his mother was, yeah, in the room.
20 Yeah, seems to be...

21 Q So as far as you know, the defendant didn't live there
22 with Aylin, right?

23 A Temporarily only because he went to live in Boca.

24 Q Now, you called the defendant's store a FedEx store, but
25 the defendant's store is actually called the Merry Mailman,

1 correct?

2 A Yes, that's correct. I think that was the name.

3 Q You're not sure?

4 A No, I'm not sure. I don't remember the name.

5 Q You don't know the name of the defendant's store?

6 A The name exactly, no. I know the store have been there,
7 but not the name.

8 Q You met Mr. Duarte through the defendant, correct?

9 A If I met -- yes, that's correct, Osvaine.

10 Q And you talked about charitable events that the
11 defendant -- can you tell me how many events did you attend --

12 A No, I didn't.

13 Q -- with -- I'm so sorry.

14 A I'm sorry.

15 Q I'm trying so hard. Just let me finish the question.

16 A All right.

17 Q All right. Did you attend any charitable events with the
18 defendant?

19 A I did not attend the event myself.

20 Q So you heard about it, is that fair to say?

21 A It's when he comes back, a lot of the pictures -- and I
22 saw those because we used to hang out together and we saw the
23 pictures. That was about it. I never went there though.

24 Q And I think the defendant showed you some pictures of
25 Aylin, correct?

1 A (Nodding head up and down.)

2 Q Yes?

3 A Yeah.

4 Q And I believe his mother?

5 A Yeah.

6 Q But you are not good with dates, so you don't know when
7 they were taken, correct?

8 A Oh, no.

9 Q In fact, you weren't even there when they were taken?

10 A This one? No, I don't think I was there. I don't know.
11 No, I don't think so, uh-uh.

12 Q Do you work full time?

13 A Yes.

14 Q I'm sorry. You're a relater?

15 A I am a real estate broker, yeah, that's correct. That's
16 what I do.

17 Q So you probably work 7 days a week, no, or 6 days a week?

18 A It depends. It depends on my schedule.

19 MR. SCOTTON: Objection, Your Honor.

20 THE COURT: What is the relevance?

21 MR. SCOTTON: Relevance.

22 THE COURT: Overruled.

23 THE WITNESS: Some days I'm off in the middle of the
24 week, you know, I don't have appointments. Like today, I'm
25 here. If I had a punch-out and punch-in job, I would have to

1 request my boss. Since I work for myself, I'm a real estate
2 broker, I can manage my time a little better.

3 BY MS. MITRANI:

4 Q And so we are clear, you didn't work for the defendant,
5 correct?

6 A Never, no. I do real estate for 16, 17 years.

7 Q And in your opinion, the defendant is a good man, right?

8 A Definitely he is.

9 Q And you --

10 A What I have seen him doing. Not only that, every time
11 when we were with his ex-wife, even Carla afterwards, they
12 would always say -- Aylin always used to say he's my angel. So
13 that's --

14 Q I know. I don't want to --

15 A That's --

16 Q You know, ma'am.

17 A I don't know. Oh, I'm sorry.

18 Q It's just that there are rules, you know, and you are not
19 really supposed to say what other people say.

20 A Okay. I'm sorry.

21 Q But let me try to make this simple.

22 A Yeah, I'm sorry.

23 Q Listen, it's okay. I just want you to understand I'm not
24 trying to be rude.

25 The defendant was good to you and cared about -- cares

1 about you, correct?

2 A Yeah, yes.

3 Q And you care very much about the defendant?

4 A Sure, I do.

5 Q And you don't want to see anything bad happen to him?

6 A No, but I'm --

7 Q Okay. We can agree --

8 A I cannot -- yeah, definitely, I don't.

9 Q Nobody would want to see something bad happen to somebody
10 they care about?

11 A No. Especially because I don't believe he -- I believe in
12 justice and that's why I'm here today.

13 Q You believe in justice. I do too.

14 MS. MITRANI: Can I have a second, Your Honor?

15 THE COURT: Yes.

16 MS. MITRANI: No further questions.

17 THE COURT: Any redirect?

18 REDIRECT EXAMINATION

19 BY MR. SCOTTON:

20 Q As much you just mentioned to the prosecutor that you
21 can't recollect dates and --

22 A I'm horrible about that, you know.

23 Q Exactly. Well --

24 A I really am.

25 Q A lot of time has been passed, you know, as we get old,

1 things get lose and you forget things. But you mentioned to
2 the prosecutor that one time -- I can't quite remember myself,
3 that I was living with my wife inside my mother's apartment,
4 correct?

5 A That's it.

6 Q And the prosecutor tried to engage in questions with you,
7 if you have get together with Martinez here. Have Ms. Martinez
8 tried to in any way coach you of answer questions?

9 A No. I was contacted last week to be here. So it was very
10 short notice.

11 Q Have Martinez asked you in any way to do things --

12 MS. MITRANI: Objection, leading and asked and
13 answered.

14 THE COURT: Overruled.

15 BY MR. SCOTTON:

16 Q You may answer the question.

17 A Oh, not at all. And you know me, I would not be here to
18 say something that is not true. I would not. And that's about
19 it.

20 Q The prosecutor have asked questions about couples being
21 closed door. Do you recall that question?

22 A Yes, I remember.

23 Q Have Aylin say anything to you about closed doors?

24 MS. MITRANI: Objection, hearsay.

25 THE COURT: Sustained.

1 BY MR. SCOTTON:

2 Q During your relationship with Aylin, at any time have
3 Aylin say anything bad about me?

4 MS. MITRANI: Objection, hearsay.

5 THE COURT: Sustained.

6 BY MR. SCOTTON:

7 Q Miss Elane, is any time during our relationship, did I do
8 respect you?

9 A You always respect me.

10 Q Did you feel fear?

11 A No.

12 Q Besides --

13 A You are big, but you are -- that's about it.

14 Q Besides have me inside the car, did you feel fear for your
15 life?

16 A No, not at all.

17 Q And the government has asked you in reference when I
18 mentioned you went to my FedEx store.

19 A Uh-huh.

20 Q But do you recall that -- what the store was all about?

21 A Packaging, mailing.

22 Q Did you recall see signs on the windows, advertisements?

23 A Yeah.

24 Q And do you recall any company's name, signs on the door?

25 A FedEx. I don't remember much but, you know, I see them.

1 Q I know, bad memory.

2 A My memory is off, yeah.

3 Q To your knowledge, you never heard any complaint about
4 either Aylin or Carla?

5 MS. MITRANI: Objection, hearsay.

6 THE COURT: Sustained.

7 MR. SCOTTON: No more questions, Your Honor.

8 THE COURT: All right. Thank you, Ms. Costa. You are
9 excused.

10 THE WITNESS: Okay. Thank you.

11 THE COURT: Let's bring Agent Van Brunt back up here.
12 All righty. Agent, you know you are still under oath, correct?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: All right. Mr. Scotton, you may proceed.

15 ROY VAN BRUNT

16 Having been previously duly sworn on oath was further examined
17 and testified as follows:

18 DIRECT EXAMINATION (resumed)

19 BY MR. SCOTTON:

20 Q When we stopped yesterday, Mr. Van Brunt, I was about to
21 hand you for your recollection one of your reports. Do you
22 remember that?

23 A Yes, I recall we were discussing some interactions and
24 communications I had with Mr. Fred Brooks from the U.S.
25 Citizenship and Immigration Services.

1 MR. SCOTTON: Your Honor, may I approach the witness?

2 THE COURT: Yes.

3 MR. SCOTTON: Your Honor, may I show him to refresh
4 his mind what the report I am talking about?

5 THE COURT: Only if he asks for -- only if he asks to
6 have his recollection refreshed.

7 BY MR. SCOTTON:

8 Q You pretty much recall everything that is in report,
9 correct?

10 A Well, I recall that Officer Brooks and I had a
11 conversation. I recall that we discussed that you had recently
12 applied for an adjustment of your status based on your
13 purported marriage to a woman with the first name of Aylin.

14 Q And any mention that Mr. Fred Brooks has mentioned to you
15 that I'm married a United States citizen, right? Correct?

16 MS. MITRANI: I'm going to object because we have
17 covered this ground already with Agent Van Brunt.

18 THE COURT: Sustained.

19 BY MR. SCOTTON:

20 Q Mr. Van Brunt, the day that Ms. Felini went to the bank,
21 Wells Fargo, to return the merchandise machine, did you went
22 with her to the bank?

23 A No.

24 Q Yesterday I asked you questions. One of the questions
25 that I asked you and your answer say the UPS people is kind of

1 happy that investigation is going on. Do you recall that?

2 A My recollection is that I indicated that the shipping
3 companies took it as a positive sign that the criminal
4 authorities were instituting an investigation and making
5 efforts to identify the person who was defrauding them and they
6 were hopeful that eventually we would prove a case sufficient
7 enough to charge you with certain crimes.

8 Q And they happy because I blow the whistle on a drug scam?

9 A No, you've never blown any whistle on a drug scam,
10 including the lengthy post-Miranda interview that --

11 Q Answer the question.

12 A I am. You've never blown a whistle on a drug scam
13 including in the post-Miranda interview that you and I had on
14 the date of your arrest, nor did you mention anything regarding
15 an alleged drug scam in the face-to-face interview that I had
16 with you in Boca Raton when I was posing as a DHL employee. So
17 you have never reported anything to my knowledge.

18 Q Right. So during your investigation, did you also went to
19 the other police departments and collect all the times and days
20 and the police officer that I spoke to them about the drug
21 scam?

22 A No, I have never -- I did not in the course of my
23 investigation contact other police departments. I was
24 conducting my own investigation into your criminal activities
25 and that was more than time consuming enough for me.

1 Q Also during the cross-examination, I will make reference
2 to you about the last time Immigration has approved the I131,
3 and you say that you can recollect if I showed the paper. It
4 might refresh your mind?

5 MS. MITRANI: Your Honor, we have covered this
6 territory.

7 THE COURT: Sustained. Let's do something we haven't
8 done previously with Agent Van Brunt, all right?

9 MR. SCOTTON: Okay, Your Honor.

10 BY MR. SCOTTON:

11 Q During the cross-examination here with the last witness,
12 Mr. Van Brunt, the prosecutor has asked her a question, perhaps
13 if she has engaged in conversations with Martinez. Do you
14 recall that?

15 MS. MITRANI: Objection. Object to the form of the
16 question.

17 THE COURT: Overruled.

18 THE WITNESS: Yes, I do recall Ms. Mitrani asking
19 questions along those lines.

20 BY MR. SCOTTON:

21 Q Based on those conversation, the question, any way also
22 have you or the prosecutor engage in some coaching to
23 Mrs. Felini and Renata for this case?

24 A Absolutely not.

25 Q On the beginning of this case here, I believe it's

1 Mr. William, cross-examine has answered about the spreadsheet,
2 FedEx, and bunch of accounts that was opened. Do you recall
3 that?

4 A I'm sorry. What was the name of the witness that you
5 mentioned?

6 Q Williams.

7 A Oh, Mr. William Seligstein from FedEx?

8 Q It might be him. Do you recall?

9 A Yes. It was the first or maybe second day of trial, there
10 was a FedEx witness who answered questions regarding
11 spreadsheets and accounts being opened and claims being filed.

12 Q Is there any reason why Federal Express couldn't present
13 every single waybill, sort of get original of customs of every
14 single shipment that went to those accounts?

15 A Well, it's the Department of Justice and the prosecuting
16 attorney who decides what evidence is going to be offered or
17 entered into court. So the witnesses and specifically the
18 shipping companies essentially provided the records or
19 documents that they were requested by either me during our
20 investigation or Ms. Mitrani and ourselves during our
21 preparations for trial. And those were the records that they
22 produced and those are the records that have ultimately been
23 introduced as evidence.

24 Q On the spreadsheet, accounts, dates, and I'm assuming at
25 the end was a couple of thousand of shipment has been sent,

1 correct?

2 A Yes, I believe there have been thousands of packages that
3 have been sent by you and your companies on behalf of your
4 customers to Brazil without being paid for, yes.

5 Q And are you saying here that during your investigation
6 your request from those companies, the evidence that can lead
7 to me, not the whole spreadsheet?

8 A What I requested was for the shipping companies to go back
9 and check their business records and prepare a spreadsheet,
10 preferably in Excel format, that would document the basic
11 information regarding the packages that you had sent on behalf
12 of either yourself or your customers. Based on our request,
13 they went back and pulled their business records, prepared the
14 spreadsheets, and then provided them to us.

15 Q During this whole process in court, many times prosecutor
16 object and say he say. So can we say that spreadsheet is just
17 hearsay when you don't bring here the real true evidence here
18 to show to the jury?

19 A No, because I think what you are talking about is hearsay.
20 And my understanding is that the spreadsheets are considered
21 business records which are kept in the normal course of
22 business activity. And because they are kept in the normal
23 course of business activity and because they are relied on by
24 the company that keeps them and they rely on their authenticity
25 and their accuracy so that they can appropriately run their

1 business, the records are themselves inherently considered to
2 be credible.

3 Based on that information, we had those records, we
4 provided them to you. We brought in a witness who testified to
5 their authenticity, the way that they are maintained, the way
6 that they were pulled, the way that they are prepared, the way
7 that they were provided to the government. That ultimately led
8 to the government requesting that they be moved into evidence
9 and ultimately they were. So I don't believe the spreadsheets
10 are hearsay.

11 Q But those accounts in the spreadsheet, it's thousand
12 shipments went out and Mr. William say that they do not have
13 records. Do you recall when he say that, no, we do not have
14 the waybills, we do not have the certificate of origins, we do
15 not have that information anymore?

16 A My recollection is that you asked him if he had them with
17 him in the courtroom and my recollection is that he said he did
18 not have them in the courtroom. And I think he also indicated
19 that he had not necessarily been requested by us to try to
20 obtain them.

21 Q Is there any particular reason why this government did not
22 show here besides those calls, show here any other calls
23 someone engage in claim lost packets?

24 MS. MITRANI: Object to the form of the question.

25 THE COURT: Sustained.

1 BY MR. SCOTTON:

2 Q During your four years of investigation, did you have any
3 records of any recording -- I'll rephrase this.

4 During your four years of investigation, that FBI has any
5 phone calls, conversation of me engaging with clients?

6 A No, I'm not aware of the FBI having any recordings, either
7 audio or video, of you having conversations with clients.

8 Q You mentioned also here in court something about my name
9 get a misspelling times to time or different ways being
10 writing. Do you recall that?

11 A Right, the way that you would modify your last name to
12 allow you not to be detected in database searches and things of
13 that nature.

14 Q So when you receive my F-file from Immigration, have you
15 see times that Immigration has misspelled my name?

16 A I think you are talking about your A-file. I'm not
17 familiar with an F-file.

18 Q Yeah, A-file.

19 A And I don't specifically recall your name being misspelled
20 in there.

21 Q Do you want me to show and recollect your mind?

22 A If you want to show me a document with a Bates number on
23 it from the A-file, that might help refresh my recollection.

24 MR. SCOTTON: Your Honor, can I just have a minute.

25 THE COURT: All right.

1 BY MR. SCOTTON:

2 Q Let's go to the next question. Ms. Martinez will get back
3 to that when she find the paper.

4 A Yes, sir.

5 Q During this investigation, all the spreadsheets that has
6 been shown here in court to DHL and Federal Express, did you
7 get to collect all the evidence from the companies?

8 MS. MITRANI: Objection, asked and answered many
9 times.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q Mr. Van Brunt, has anybody can go to some business and
13 print out a company certify document?

14 MS. MITRANI: Objection, relevance and speculation and
15 vague.

16 THE COURT: Sustained.

17 BY MR. SCOTTON:

18 Q Is it anyone can open a company with Florida, with
19 Tallahassee?

20 A Yes. Essentially, especially in the last couple of years,
21 the ability to open up a business in the state of Florida
22 really requires not much more than completing a couple forms
23 and submitting the appropriate fee, then a business entity
24 would be opened up in the name of the entity so long as that
25 business or corporation name was not already taken.

1 Q And during your investigation, the name Marco Arce has
2 come to your investigation?

3 A Yes, Marco Arce is the name of the person who opened up
4 the CMA -- the CRMA P.O. Box down at 444 Brickell Avenue,
5 Suite 51. I also believe he was listed as one of the offices
6 or directors of Zap Games. And I also believe that he had some
7 involvement in a beverage company and wrote letters on your
8 behalf regarding some of your immigration proceedings. And I
9 believe he was also identified in one of the pictures that you
10 showed Renata during her testimony where you and Aylin were at
11 a mall, I believe the Dolphin Mall, with each other and
12 Mr. Arce and some family of his was there also.

13 Q Did you recall Ms. Renata say that the person in the
14 picture was Marco Arce?

15 A Yes, that's my recollection. Oh, I apologize, I think
16 that may have been Aylin who testified that she was at the mall
17 and that the person was Marco Arce, not Renata. My apologies.

18 Q In one of the cross-examination from prosecutor in some of
19 the paperwork from Brazil Express, the prosecutor tried to
20 point somewhere in the paper, P stand by a president, correct?
21 There's a letter P over the -- next to the name and you
22 mentioned it stand by president?

23 A Correct. If you are referring to the Florida -- the State
24 of Florida Division of Corporations' paperwork, as well as some
25 of the bank opening documents, when a title is requested and

1 the letter P is listed, that's normally considered to stand for
2 the term president.

3 Q Could a P means principal in a company?

4 A It could possibly. Principal of the company to me would
5 mean that the person had some ownership interest in the
6 company; whereas, a president could just be an employee.

7 Q So just by having P over there, so we assume things here,
8 right?

9 A I'm telling you that based on my experience that the term
10 P, especially on corporate records, normally means president,
11 especially if the record lists officers and directors and the
12 term P is listed there. An officer or director would not
13 necessarily be considered a principal. That normally refers to
14 someone's ownership interest in a company.

15 Q So you mention that someone goes to the Tallahassee --
16 Tallahassee do not require too much information to open a
17 company. So it is -- then it's true that we can say that if I
18 want to open an account, if I want to open a company on Sunbiz,
19 I can pretty much open a company in your name, correct?

20 A There's very little due diligence or scrutiny that's given
21 by the Florida Department of State when it comes to opening up
22 a business, correct.

23 Q They don't require any ID to be shipped back to them or
24 any information that could verify that the individual open a
25 company, it is the one they claim to open the account, correct?

1 A Correct. To my knowledge there is no identification
2 required by the Florida state Department of Corporations to
3 open up an account.

4 Q Is there any way we can control in those days if someone
5 use our names?

6 A Sure. You can have your credit checked periodically, you
7 can sign up for companies like Life Lock, you can periodically
8 review public source databases. You can open up your own mail
9 and see if people are sending bills or invoices for business
10 activities that you have no knowledge of. So there are certain
11 steps that people can take to protect themselves, their credit
12 worthiness.

13 Q During your four years investigation, did you come across
14 to your company, Brasil Express Online in California?

15 A I don't recall a name of a company like that from
16 California.

17 Q You never search with Go Daddy records and company show up
18 as Brasil Express Online?

19 A We did send a subpoena to Go Daddy, which is a domain
20 company. We served a subpoena on them. I don't recall exactly
21 everything that was in their response.

22 Q So during the investigation, discovery provided by the
23 government, you don't remember, recall you provide paperwork
24 from a company in California, Brasil Express, correct?

25 A Well, perhaps if you show me the document, it would

1 refresh my recollection, sir. And if I remember correctly,
2 domains -- or Go Daddy is located on the west coast so it's
3 possible that the domain that is being hosted by them would
4 show up as having a California address. Although, obviously,
5 with a website or a domain name, it can be accessed or
6 essentially updated, modified, or used by the person who has
7 access to it from anywhere in the world.

8 Q And then you do not recollect the name Luciana as the
9 owner of the company?

10 A I don't recall that name, sir, no.

11 Q Do you deny that during your investigation did you find in
12 United States and different locations, companies with the
13 similar name Brazil Express U.S.A?

14 A Yes. There's -- bless you.

15 THE COURT: Thank you. Sorry.

16 THE WITNESS: Yes, there are many companies in the
17 United States that include the words Brazil, U.S.A, express,
18 slight variations on those name whether it's Brazil with a Z or
19 Brasil with and S. So, yes, there are companies similarly
20 named.

21 BY MR. SCOTTON:

22 Q Some of the corporate papers offer here from the
23 government in reference to those business records, do you
24 recall several different companies was open related to race
25 names?

1 A Yes, I believe there were companies named Roger Racing,
2 Scotton Motorsports, Rio Motorsports are the first ones that
3 come to my mind.

4 Q And during your four years investigation, did you come
5 across every season, racing season is over, companies got to
6 shut down, lose their sponsor and shut down the companies, did
7 you come across that in your investigation?

8 A I don't know if the company shut down because the racing
9 season was over. I don't know if the company shut down because
10 they lost their sponsorships. I do believe there came a point
11 in time when the companies no longer were considered active.
12 In the state of Florida in order for a business to stay active,
13 you are required to pay an annual fee. Normally, if the fee is
14 not paid in a timely manner, there's a form letter that's
15 generated by the Division of Corporations. They will send it
16 out to the address on file with an opportunity to pay the fee.
17 There may be a late fee required to pay if you are late.

18 At some point if the annual registration fee is not paid,
19 they will administratively deactivate the account -- I'm sorry,
20 deactivate the corporation, which means it's no longer
21 considered a formal active corporation and probably should not
22 be doing business if it's no longer duly registered.

23 Q Do you deny that during your investigation, you come
24 across that I used to have a company with soft drinks?

25 A During the investigation, I came across companies and

1 entities that included the name beverages or Matte Lion, which
2 you explained to me during our face-to-face meeting was like a
3 herbal tea that was popular in Brazil.

4 Q And did you investigate the main factory down in Brazil?

5 A I did not do any --

6 MS. MITRANI: Objection to relevance.

7 THE COURT: Sustained.

8 BY MR. SCOTTON:

9 Q Also, on those business records that has been offered to
10 this court, I can see at least three or four times company
11 Matte Lion has different names. Do you recall that?

12 A I believe there were slight variations in the names,
13 either in the spelling of the word lion or Leon. I believe
14 there may have also been a corporation with those words along
15 with the reference to North America, perhaps a reference to
16 U.S.A., and there may have been a company that was incorporated
17 versus a company that was an LLC. I do remember there being
18 some variations on those names, yes, sir.

19 Q And they came across, I saw a paperwork and when you
20 searched those documents, there was a letter also sent to
21 Tallahassee, there was some kind of conflict between
22 Merry Mailman and Merry Mailman, Inc., and Merry Mailman, LLC.
23 Do you recall the letter?

24 A Correct. My recollection is that there was correspondence
25 either from the Division of Corporations or perhaps to the

1 Division of Corporations discussing the fact that the name
2 Merry Mailman, Inc., was already a business that had been
3 incorporated and, therefore, that name would not be available
4 to be incorporated. And if I remember correctly, the
5 corporation was then created with the Merry Mailman, LLC. So
6 although it sounds very similar, it is technically a different
7 business name and, therefore, could be opened up as a separate
8 business name.

9 Q So you don't disagree with me that sometime names get some
10 kind of conflict of interest and need to be changed, correct?

11 A Well, I don't know about a conflict of interest. If a
12 business name already exists, another person is not allowed to
13 create the same business with the same name. If you own a
14 business and you want to expand because you really are the same
15 store, you don't need to have a separate business. You know,
16 you can just open up a separate store and get a separate
17 license from the city or town that you are in to operate the
18 business.

19 My recollection and understanding is that the
20 Merry Mailman, LLC, was open and created because that was your
21 store and it was separate from Ms. Felini's.

22 Q During your investigation, do you recall investigating
23 Mr. -- I guess we spoke to yesterday, Mr. Ralph with
24 Brazil Express in Georgia?

25 A I remember discussing him yesterday, correct.

1 Q But he's got no relation on this case, right?

2 A Correct. Based on my investigation, I don't believe he
3 had any involvement in your criminal activity.

4 Q Government has asked you and during cross-examination you
5 mentioned someone has help you with the translation of my
6 website, Sky Air?

7 A Correct.

8 Q Do you have that translation?

9 A No. What I testified to is that with the assistance of
10 the individual that I had opened up as a source, a cooperator,
11 that as he and I sat at his computer, I would ask questions
12 about the different text in the website and what the different
13 links said and what the paragraphs spoke about. And he would
14 essentially guide me through what different information was
15 contained in your website.

16 Q So, basically, it's just someone next to you telling you,
17 so there's nothing official about the translation, no reports,
18 official for the translation, correct?

19 A We did not have your website translated, if that's your
20 question, no.

21 Q On the email between Renata's -- the email that was
22 between Renata and Rodrigo, did you believe those emails has
23 been modified?

24 A No.

25 Q Do you believe during the course of those emails, the logo

1 of my company has been modified?

2 A No. Are you talking about the logo at the bottom of the
3 email that said Sky, followed by several lines of boilerplate
4 legal text, is that the logo you are talking about?

5 Q The original email has been modified.

6 A No, I don't believe the email has been modified.

7 Q When you guys conduct a -- were translated this email,
8 does anybody else has modified or even changed from the
9 original, what the original was?

10 A I think when the original translation was done, the
11 translator because of the way your logo was designed and the
12 color scheme and, I believe, the fact that it was provided to
13 them in a black-and-white form as opposed to a color thought
14 the three letters in your logo were SKT or maybe S -- I think
15 they may have had one of the characters wrong. And when they
16 returned the translation, I asked them to review the original
17 and confirm what the logo was because, ironically, your logo
18 and the boilerplate language was the few parties of the emails
19 that were in English. I asked them to just review the
20 original. And they did and then correctly identified what the
21 logo said.

22 Q Beside the logo, Mr. Van Brunt, on email, the subject of
23 the email, the information is email address, I mean, anything
24 has been modified?

25 A Nothing has been modified. There may have been a portion

1 of the email address that was redacted, meaning a black marker
2 may have gone through it. I'm not sure which version you're
3 looking at or referring to, but none of the text or substantive
4 information has been modified at all.

5 MR. SCOTTON: Your Honor, can I approach the witness?

6 THE COURT: Yes.

7 BY MR. SCOTTON:

8 Q Is that the email, the translation from the FBI to
9 English?

10 A It looks like it is. Although without seeing the rest of
11 the document, it's just a one page, but it does appear to be
12 it. It has the file number of the case that was assigned.
13 But, again, without seeing the original, it would be hard for
14 me to say.

15 Q So if nothing in the email has been modified, that's not
16 the website of the company, correct?

17 A Correct. I believe the name of your company website was
18 Sky Air Online, I believe was the domain.

19 Q And what the email's saying over there?

20 A What you circled says Sky Online dot com.

21 Q Did you recall when you mentioned to the government the
22 day you went to the bank with Mr. Rodrigo Olivera to do the
23 deposit?

24 A Correct.

25 Q And you recollect exact that day because you try in court

1 and you went and make the deposit that day?

2 A Correct. The deposit was made on Saturday and then posted
3 to your account on Monday, which I believe was the 14th.

4 Q Is the courthouse open Saturday?

5 A When you are in trial, you are pretty much working 7 days
6 a week. So, for instance, in January of this year, if you
7 didn't include New Year's Day, I had four days off the whole
8 month. So when you are in trial, essentially you work pretty
9 much 7 days a week. And if your day is less than 12 hours, I
10 usually considered it a short day.

11 Q But you mentioned that day you exact remember because in
12 court that day and you left, you went to do the deposit?

13 A No, what I said was I was in trial and I was meeting with
14 the prosecutors in Miami and I was the middle of a nine-week
15 trial regarding a hedge fund out of New York that had
16 manipulated their stock portfolio. And in the course of the
17 nine-week trial, I was the only agent assigned to the case. We
18 had two prosecutors assigned to the case. I believe we had
19 about 36 witnesses who came in to testify and put in about
20 600 exhibits. And so I was pretty much working 7 days a week.

21 I made arrangements to meet my source on the Saturday
22 morning, met him at the bank, gave him the cash, stood next to
23 him when he deposited it. And then went down to Miami and met
24 with the prosecutors for the rest of the day.

25 Q So Mr. Rodrigo Olivera engaged to go to the website and

1 buy a camera. There's nothing illegal with that, right?

2 A No, there's nothing illegal with him agreeing to cooperate
3 with the FBI and purchasing a digital camera online through
4 your website.

5 Q And during this buy a camera setup, do you have the phone
6 records of you -- of Mr. Rodrigo and Renata talking over the
7 phone?

8 A I don't believe that Renata ever spoke to Rodrigo on the
9 phone.

10 Q Did you mention in your report giving him a cell phone?

11 A I did.

12 Q And he called the company and spoke to Renata?

13 A I don't believe he spoke to Renata.

14 Q During your investigation, you acknowledge I know
15 Mr. Marco Arce, a P.O. Box address in Miami, correct?

16 A Correct.

17 Q Did you also during the investigation saw that he has a
18 warehouse close to the airport?

19 A You told me that he had a warehouse and that it was
20 located at 444 Brickell Avenue in the course of our
21 face-to-face conversation that we had in Boca Raton in August
22 of 2011. I actually knew that was a lie because the address
23 444 Brickell Avenue is an address I'm familiar with. It's
24 location of the Capital Grille in downtown Miami and I had
25 lunch there before so I knew it wasn't a warehouse. It's a

1 mixed business address, office building, not a warehouse. You
2 said it was a warehouse.

3 Q Maybe I told you that was the address because I don't know
4 the address for the house, but my question to you is that did
5 you investigate and see that he has a warehouse in Miami?

6 A No. What you had told me is that you had been to the
7 warehouse and it was located at 444 Brickell Avenue. I'm not
8 aware of him having a warehouse. Just aware of what you told
9 me he allegedly had.

10 Q Have his information is part of this investigation?

11 A I would not necessarily say that Mr. Arce's information is
12 part of the investigation. His name came up because he was
13 listed on a business that you were also listed on and I believe
14 he had some involvement with Zap Games, as well as one or two
15 other companies. And I knew that he had written letters on
16 your behalf in support of your immigration application.

17 Q Do you remember during the cross-examination here, you
18 mentioned to the Court that you served Rodrigo Olivera?

19 MS. MITRANI: Asked and answered.

20 THE COURT: Sustained.

21 BY MR. SCOTTON:

22 Q Do you recollect here you answer questions, say
23 Rodrigo Olivera not speak fluent English?

24 MS. MITRANI: Objection, asked and answered.

25 THE COURT: Sustained.

1 BY MR. SCOTTON:

2 Q Mr. Rodrigo Olivera speak English?

3 A Yes.

4 Q And he speak fluent English?

5 A I would say he's about as fluent as you are, yes, sir.

6 Q Do you recall when you say that he's not really fluent in
7 English?

8 A I don't recall saying that he wasn't fluent. I remember
9 saying that he was born and raised in Brazil and Portuguese was
10 his first language.

11 Q During the video in Boca Raton, you mentioned that I
12 mention store for like people come to the store and drop of
13 packages, correct?

14 A You did say that.

15 Q And prosecutor has asked you questions at the time the
16 store number 2 is not fully operating yet, correct?

17 A Correct. At the time that you and I met in Boca Raton,
18 Florida, the build-out of your store had not been completed and
19 I do not believe that you were open for business. And having
20 actually started the meeting in the store location, I don't
21 believe that any of the counters had been installed yet. I do
22 believe that you had the actual mailboxes installed, but I
23 don't believe there was any counter or any other business
24 products or furniture in the storeroom area that would have
25 allowed it to operate.

1 Q But you know you have the first store in Pompano Beach and
2 people can drop off because the store is fully operating,
3 right?

4 A Well, I knew that Carla Felini had a store in
5 Pompano Beach that was fully operational for many years and
6 that it existed several years before she took ownership of it.

7 Q You mentioned something about the last name Moreira during
8 conversation, the cross-examination with the government. Do
9 you recall that?

10 A Moreira?

11 Q Moreira.

12 A If it's the name I think you are saying, yes, I remember
13 that being discussed.

14 Q And then you mention also in court that Moreira used to be
15 Samara, my ex-wife?

16 A Correct.

17 Q But also you know that Ms. Renata has Moreira in her name
18 too?

19 A I believe she might.

20 Q So we can say to this Court that no longer my ex-wife has
21 Moreira in her last name, correct.

22 A Correct, I believe it's not an uncommon name.

23 Q Do you remember during the conversation meeting, I
24 mentioned two DHL vans coming up and drop off a bunch of
25 packets to my home in Boca?

1 A My recollection is that you said there was a DHL truck or
2 a van that had dropped off packages or returned packages to
3 your townhouse.

4 Q Have Ms. Nicole given you information about that she
5 dispatched those packets back to my house?

6 MS. MITRANI: Objection, hearsay.

7 THE COURT: Sustained.

8 BY MR. SCOTTON:

9 Q Do you remember that Ms. Nicole deny in the
10 cross-examination any contact with me?

11 MS. MITRANI: Objection to the form of the question.

12 THE COURT: Sustained.

13 BY MR. SCOTTON:

14 Q Do you recall during the August 28th, you have given
15 testimony about the device you using, the device record?

16 A Are you talking about a hearing that we had prior to trial
17 beginning?

18 Q Yes, August 28 of 2013.

19 A I do recall a hearing, yes.

20 Q And then also you mentioned, say you have a second device
21 during the meeting as well?

22 A Correct. When I met you in Boca Raton, I had a second
23 recording device on or about my person.

24 Q Do you recall during the cross-examination you mentioned
25 that in order to watch the video, hear the audio, you have to

1 hook the device to a computer, correct?

2 A Right. That's -- what I believe what I testified to is
3 that the FBI authorized digital recording equipment has an
4 internal memory feature and that in order to review the audio
5 and video, it's downloaded onto a CD or a DVD. And at that
6 point, you can review the video.

7 Q And then you say the need to be download exact with DVD
8 and CD, correct?

9 MS. MITRANI: Your Honor, I object to the form of the
10 question. I think he's --

11 THE COURT: Sustained. Since this is direct, you
12 can't ask leading questions.

13 MR. SCOTTON: Say that again, Your Honor?

14 THE COURT: Since this is direct examination you may
15 not ask leading questions.

16 MR. SCOTTON: Okay, Your Honor.

17 BY MR. SCOTTON:

18 Q So my understand on your testimony is that it is not
19 possible --

20 MS. MITRANI: I object to the form of the question.
21 It's leading and it also seems to be an improper impeachment
22 technique.

23 THE COURT: Sustained.

24 You can ask a question if you want, but let's avoid
25 the commentary, okay?

1 BY MR. SCOTTON:

2 Q Those recorded supposed to be downloaded onto a computer
3 or not, or they have to be a DVD?

4 A My understanding is that it's downloaded onto a DVD or a
5 CD. But in this case, it was a DVD.

6 Q And during that transfer, did you guys use the same
7 software for the device?

8 A I'm not sure what you mean by the same software.

9 Q Every single machine has a software, exact -- I mean,
10 correct?

11 A Most computers do have software on there, yes.

12 Q When you buy a camera, for example, the one you guys
13 provide here as evidence, 27, come with a CD and software,
14 correct?

15 MS. MITRANI: Objection, relevance.

16 THE COURT: Sustained.

17 BY MR. SCOTTON:

18 Q When you download this device, when download this video,
19 did you use your camera software?

20 MS. MITRANI: Objection, relevance.

21 THE COURT: Sustained.

22 BY MR. SCOTTON:

23 Q Are you familiar with the software Roxy?

24 MS. MITRANI: Objection, relevance.

25 THE COURT: Sustained.

1 BY MR. SCOTTON:

2 Q You mentioned also during the hearing that you have a
3 different department that is in charge of maintain the
4 equipment?

5 A There's a squad that we refer to as the tech squad, so
6 there are agents that don't work cases in a traditional sense.
7 Like I work cases where I essentially am the lead investigator.
8 They are more responsible for supporting cases from a technical
9 standpoint, whether it's issuing out recording equipment or
10 providing other sensitive investigative assistance to our
11 cases.

12 THE COURT: Let's come sidebar for just a moment,
13 please.

14 (Thereupon, the following was heard sidebar.)

15 THE COURT: You can cross-examine him -- I am guessing
16 you are getting into the issue of whether this was tampered
17 with or not and you can cross-examine on that. But let's get
18 to that issue and not drag it out. We have already had, you
19 know, a very lengthy hearing about this. Plus you had an
20 expert who was paid for by the Court review it and find that
21 there was no tampering. I don't have a problem if you go into
22 the issue a little bit, but let's get to the point. The jury
23 has been sitting here a long time and I don't want this to drag
24 out any more than it has to, okay?

25 MR. SCOTTON: All right, Your Honor, I will then jump

1 to another thing.

2 THE COURT: As I said, you can ask questions on this
3 subject, but we are not going to rehash that entire hearing
4 that we had in August. So if you want to point out, you know,
5 if there's some reason you believe this was tampered with and
6 there are questions you want to ask that go to that issue,
7 that's fine. But let's get to those questions. Let's not go
8 through the whole process.

9 MR. SCOTTON: All right, Your Honor.

10 (Thereupon, the following was heard in open court.)

11 THE COURT: We are going to take a bathroom break
12 until 11:45. All rise for the jury.

13 (Thereupon, the jury exited the courtroom at
14 11:37 a.m.)

15 THE COURT: Let me ask Agent Van Brunt to step out for
16 just a moment. There's something I need to address.

17 (Thereupon, the witness exited the courtroom.)

18 All right. Agent Van Brunt mentioned during his
19 testimony that certain records were admitted because they were
20 considered credible because they were business records. I
21 think he was talking about some summary evidence, which in fact
22 the summaries I don't think were business records. Maybe they
23 were and I'm remembering wrong. But regardless of whether they
24 were or not -- let me just say, if they were not, that needs to
25 be corrected. Regardless of whether they were or were not, it

1 is really -- it's not for the witness to pass on whether things
2 are credible.

3 So I'm going to instruct the jury that it is their
4 duty as jurors to evaluate the credibility or not of the
5 evidence, including all of the documents admitted into
6 evidence. And I just wanted to let the parties know that and
7 give them an opportunity to be heard on that before I do that.

8 MR. SCOTTON: Thank you, Your Honor.

9 MS. MITRANI: They are admitted as summary records. I
10 don't know why the agent answered the way he did.

11 THE COURT: I understand. And I just -- I feel that I
12 need to make it clear to the jury.

13 MS. MITRANI: I understand. No, no objection.

14 THE COURT: All right. Thank you.

15 MS. MITRANI: Thank you, Your Honor.

16 THE COURT: All right. So we will be back here at
17 11:45, which is about five minutes from now.

18 (Thereupon, a recess was taken at 11:39 a.m.)

19 MS. MITRANI: Your Honor, can I bring something up
20 real quick?

21 THE COURT: Okay. Let's try to do it quickly because
22 we only have about a minute before.

23 MS. MITRANI: Along the lines of what you said, I
24 guess could you make -- could maybe the Court instruct the
25 witness to, you know, maybe keep his answers shorter or be more

1 direct in response to the defendant's questions.

2 THE COURT: Sure. Where is the witness?

3 MS. MITRANI: Well, he stepped outside because I
4 didn't want to say it in front of him.

5 THE COURT: All right. Let's bring him in and I will
6 do that.

7 MS. MITRANI: Thanks.

8 (Thereupon, the witness enters courtroom.)

9 THE COURT: Agent, I just want to ask you if you could
10 in the interest of trying to speed these jurors on their way to
11 give the briefest possible fair answer that you can give. I
12 don't want to tell you, you can't give a complete answer
13 because you can. But if you could please try to make your
14 complete answer as brief as possible, that would make it a lot
15 easier for the jury.

16 THE WITNESS: I will avoid expanding on my answer,
17 Your Honor.

18 THE COURT: Thank you.

19 All right. We are going to bring in the jurors.

20 (Thereupon, the jury entered the courtroom at
21 11:47 a.m.)

22 THE COURT: All righty. Please be seated.

23 Mr. Scotton, you may continue.

24 MR. SCOTTON: Your Honor, may I approach the witness?

25 THE COURT: Yes.

1 BY MR. SCOTTON:

2 Q This is just a previous question about the misspelling.

3 A Yes, sir. Thank you.

4 Q On the first page, Mr. Van Brunt, can you tell the jury
5 where my name is spelled?

6 A Yes, sir. On the document identified as USCIS940, your
7 last name is listed as being spelled S-C-O-T-T-E, as in echo,
8 N.

9 Q So this is not my real name, correct?

10 A Correct, that's not the correct spelling of your name,
11 sir.

12 Q And you have a document also with a couple of dates and
13 some application was approved?

14 A The second page is a document identified as USCIS Bates
15 No. 948. On this document in the data field listing first
16 name, it has listed as your first name Rogerio Chavez, all
17 pushed together as one word.

18 On the third page of the document that you gave me, which
19 appears to have a Bates number of USCIS684, in the category
20 where it lists identification, it again lists your last name as
21 S-C-O-T-T-E-N. Then on the last page of the document you gave
22 me, USCIS 706, it's a document titled, Case Query Results. It
23 lists your last name correctly, your first name correctly. In
24 three of the instances, it appears that the letter S has been
25 left off your last name.

1 Q On the last document, did you -- it refers to the name
2 spelled correct?

3 A On the last page of the document that you gave me, I
4 believe your last name is spelled -- I thought it was spelled
5 correctly, but that your middle name was missing the last
6 letter.

7 Q So we can say then as the question previous, people
8 sometimes make mistake and spell -- even Immigration has made
9 mistake on those official documents, correct?

10 A Yes.

11 Q During the video meeting in Boca, you mention -- do you
12 deny that you mentioned that after the meeting, you met another
13 agent?

14 MS. MITRANI: Objection, leading.

15 THE COURT: Sustained.

16 MR. SCOTTON: Did you met another -- sorry,
17 Your Honor.

18 THE COURT: That's okay. I sustained the objection.
19 Go ahead.

20 BY MR. SCOTTON:

21 Q Did you recall that you met another agent after the
22 meeting?

23 A Yes.

24 Q And you mentioned that he was subpoenaed the meeting?

25 A Correct.

1 Q Was several blocks away?

2 A I met him several blocks away, but where he was situated
3 during the meeting was essentially on the street parked in his
4 car observing you and I having our meeting. The location where
5 I met him following my and your face-to-face was several blocks
6 away.

7 Q And you have the other agent also recording this meeting?

8 A No, he was not. He did not have or use any recording
9 equipment, no.

10 Q If it is a surveillance, don't -- why he's not recording
11 the meeting.

12 A Well, he's there for safety purposes so that in case
13 something bad started to happen, another FBI agent would be
14 close enough by to interject.

15 Q Mr. Van Brunt, can you explain to me how can an agent
16 surveillance this meeting several blocks away?

17 MS. MITRANI: Objection, relevance.

18 THE COURT: Overruled.

19 THE WITNESS: Well, he was not several blocks away.
20 When the meeting started, he was parked in his vehicle on the
21 Plaza Real south street, probably two or three storefronts down
22 from Suite F where your business was located. After watching
23 you and I leave your store and walk around the corner to the
24 bakery or cafe, he drove his car further down the block and
25 parked in the location where he could visibly keep a sight line

1 of our meeting and stayed there for the duration of the
2 meeting.

3 Q During the same hearing, prosecutor has asked you a
4 question --

5 MS. MITRANI: Objection, improper question.

6 THE COURT: Sustained.

7 BY MR. SCOTTON:

8 Q Do you deny that you mentioned on cross-examination that
9 the video indicated it was modified on August 3, '11, 8:58 a.m.
10 Do you remember that?

11 MS. MITRANI: Objection, leading.

12 THE COURT: Sustained. Well, actually, since the
13 agent is the case agent and therefore an opposing party,
14 leading questions are permitted. So I'll overrule on that
15 ground.

16 THE WITNESS: I believe my testimony was not that the
17 recording had been modified, but that was the date and time
18 that the recording had been downloaded which I considered to be
19 different -- a significant difference than modified.

20 BY MR. SCOTTON:

21 Q During this investigation, Mr. Van Brunt, you have
22 obtained by DHL some videos, and that's all the videos they
23 have provided to you?

24 A Correct. There was essentially three separate videos
25 provided to me on the same disc. They are from the BCT station

1 and were provided by David Bonilla.

2 Q And those videos back in the days of 2008?

3 A Correct. My recollection is those videos were recorded at
4 the November and December of 2008.

5 Q They never provide with the video of 2009, 2010, or 2011,
6 correct?

7 A Correct. They have never provided me any video from other
8 years.

9 Q And have any of those employees make any comment
10 themselves coming to the store in 2011, 2010?

11 A I'm sorry. I don't understand your question.

12 Q Have those employees from DHL during investigation or the
13 interview you have with them make any comments about me coming
14 to the stores in other years?

15 MS. MITRANI: Hearsay.

16 THE COURT: Sustained.

17 BY MR. SCOTTON:

18 Q Do you recall a video of DHL that was me with this woman
19 coming in?

20 A I recall in the DHL video that there were two screen
21 shots, one was of the lobby and then there was a second video
22 camera pointed down near the front door like at the edge of the
23 parking lot. Is that what you are talking about?

24 Q It was a video that I'm standing next to a female who came
25 to the store. Do you recall that video?

1 A I don't recall you standing next to a female in the lobby
2 of the store. I do recall that there was video of a woman
3 standing outside in the parking lot while you were inside the
4 lobby, and I think that was included in the screen captures
5 that you and I reviewed both on the day of your arrest and also
6 when I met you as a DHL representative.

7 Q Can you tell the jury what a screen caption was?

8 A Sure. I describe a screen capture to be an image on your
9 computer screen, whether it's a video or a picture of a list of
10 files. And, essentially, if you have PowerPoint, you can copy
11 the screen and post it in a PowerPoint presentation and print
12 it out and it essentially captures the information that's on
13 the computer screen. That's what I mean by screen capture.

14 Q Is there any reason why it would show just a picture of
15 the video and not the video itself?

16 A What are you talking about?

17 Q The one with the female with me outside the DHL store.

18 A Are you talking about here in court, sir?

19 Q Yes, sir.

20 A The prosecutor gets to decide what evidence is put
21 forward.

22 Q You deny that this video audio was brought to prevent to
23 show that I had never have tried to pretend to be a police
24 officer?

25 A Correct, I deny that.

1 Q Have DHL provided with a time frame they -- when this time
2 stamp has been collect?

3 A I believe the video itself contains the time stamp with
4 the year, the date, and the month as well as the time.

5 Q During this cross-examination here, as I ask a question to
6 different employees from FedEx, DHL, and UPS, do you remember
7 that testimony?

8 A I recall that you cross-examined many of the witnesses
9 extensively, yes, sir.

10 Q Do you recall that no one seems to remember anything about
11 this case?

12 MS. MITRANI: Objection, form of the question.

13 THE COURT: Sustained.

14 MS. MITRANI: Mischaracterizes the evidence.

15 BY MR. SCOTTON:

16 Q Do you recall I asked of the witness if they have ever
17 filed any reports?

18 MS. MITRANI: Objection to the form of the question.

19 THE COURT: Sustained.

20 Mr. Scotton, let's not ask questions about what other
21 witnesses testified to or did not testify to, all right?

22 MR. SCOTTON: Yes, Your Honor.

23 BY MR. SCOTTON:

24 Q Have any time during this case the prosecutor engage in
25 asking anybody to destroy the evidence?

1 A Absolutely not.

2 Q And during the process of the I-485 getting denied, do you
3 recall that my immigration lawyer has filed an appeal?

4 MS. MITRANI: Objection, asked and answered and beyond
5 this witness's competency, and relevancy.

6 THE COURT: Sustained.

7 BY MR. SCOTTON:

8 Q Have the government interview my immigration case,
9 Mr. Van Brunt?

10 MS. MITRANI: Objection to the form of the question.

11 THE COURT: Sustained.

12 BY MR. SCOTTON:

13 Q Mr. Van Brunt, did you recall that you went to my mother's
14 house back in 2013, somewhere around back in 2013?

15 A I do recall.

16 Q Did you recall that you went looking at the storage in the
17 condominium they have?

18 A I did not look in their storage unit, no.

19 Q You don't recall that you have mention, went to the
20 laundry mat?

21 A I have been to the condo. I have been in the common area
22 where the common laundry machines are located. In a room off
23 of the laundry area are the assigned storage units with the
24 numbers that appear to match up to the apartment units. So I
25 have been there. I am aware that there is storage units there,

1 correct.

2 Q So then you remember that you went to the storage that
3 they have over there by their place?

4 A Well, I went to the room where the laundry machines are
5 and I stood in the hallway where the storage rooms are located,
6 all of which had doors on them with a different array of
7 padlocks on them. So if you consider standing in the hallway
8 outside of the storage units to have gone there, then yes, sir,
9 I did.

10 Q Mr. Van Brunt, do you know what Clonazepam is?

11 THE COURT: Clonazepam, is that what you are saying?

12 MR. SCOTTON: My accent, Your Honor, you know. I can
13 spell it if you want it. It's C-L-O-N-A-Z-E-P-A-M.

14 THE COURT: Clonazepam.

15 MR. SCOTTON: I'm sorry, Your Honor, my accent got in
16 the middle sometime.

17 THE COURT: No, I think you said it right.

18 THE WITNESS: No, sir, I'm not familiar with that
19 word.

20 BY MR. SCOTTON:

21 Q Do you deny, took from the storage box with the medication
22 sign?

23 A I didn't take anything from the storage unit. In fact, I
24 didn't even enter the storage unit. I went to the storage unit
25 because I was trying to advocate to the U.S. Attorney's Office

1 to allow me to submit a search warrant affidavit. One of the
2 components of submitting an affidavit is the affiant, which
3 would be myself, would be required to state with specificity
4 the exact location to be searched as well as the probable cause
5 of why it would need to be searched. So in order to specify
6 with the requisite degree, it's common for the agents to go to
7 the location discreetly to personally view the location and be
8 able to describe under penalty of perjury what exactly the
9 storage unit went to.

10 So I went there, I described where it was, I described
11 where it was located. I believe I described the approximate
12 size of the door, the color of the door, the fact that there
13 were three numbers written on it, and that it was padlocked
14 along with several other doors in the hallway. And that draft
15 affidavit was provided to the U.S. Attorney's Office.
16 Ultimately, the affidavit was never presented to any judicial
17 officer and, therefore, there was never a search that occurred.

18 Q As the Judge here has help me here correct my English, so
19 you do not understand what circumstance that I just mentioned
20 here in court, the name it is for a panic disorder. So you
21 don't have any recollection of that, correct?

22 A I'm not aware if that's the name of a medicine or whether
23 a pharmaceutical name or the name of a medicine, no, sir.

24 Q And also you deny have anything to do with go inside and
25 take that box out of the storage, correct?

1 MS. MITRANI: Objection, asked and answered.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q As a FBI agent, do you deny that Federal Express is under
5 investigation right now?

6 A I'm not aware of any investigation of Federal Express.

7 Q If I perhaps show you a paper, it might refresh your mind?

8 MS. MITRANI: Objection to relevance.

9 THE COURT: Sustained.

10 BY MR. SCOTTON:

11 Q And as an agent, do you deny also that UPS pay over
12 \$ million for the drug scam?

13 MS. MITRANI: Objection to relevance.

14 THE COURT: I can't tell, so I'm going to overrule.

15 THE WITNESS: I have no knowledge of any litigation or
16 case against UPS regarding some drugs or whatever you said.

17 BY MR. SCOTTON:

18 Q Have you spoke to the investigator of a Public Defender's
19 Office before I have a Public Defender's Office and
20 investigator named Sally?

21 MS. MITRANI: Objection, Your Honor, improper
22 question.

23 THE COURT: Sustained.

24 BY MR. SCOTTON:

25 Q Do you deny the involvement of Mr. Samuel on this illegal

1 drug operation?

2 A Are you referring to Samuel Cory, sir?

3 Q Yes, sir.

4 A I have no knowledge or reason to believe that Sam Cory is
5 in any way involved in any ongoing drug activities.

6 Q Do you deny that he lie in court during his testimony?

7 A I have no reason to believe --

8 MS. MITRANI: Object to the form of the question.

9 THE COURT: Sustained.

10 Mr. Scotton, please don't ask questions about other --
11 what other witnesses testified to or did not testify to. You
12 can ask this witness about what he might know.

13 MR. SCOTTON: Okay, Your Honor.

14 THE COURT: Do you understand?

15 MR. SCOTTON: Honor. Yes, Your Honor.

16 THE COURT: Thank you.

17 BY MR. SCOTTON:

18 Q During your investigation, Mr. Van Brunt, have it come
19 across to you that some pharmaceutical company used to drop off
20 packages to my store?

21 A I have no -- I know many different companies ship many
22 different packages to you. I don't recall with any specificity
23 whether any of them were from pharmaceutical companies, no,
24 sir.

25 Q Do you deny there is Internet pharmaceutical companies pay

1 Federal Express shipping costs and the pharmacy bills the
2 Internet companies weekly?

3 MS. MITRANI: Objection, relevance.

4 THE COURT: Sustained.

5 BY MR. SCOTTON:

6 Q On this Federal Express spreadsheet, how many of the
7 waybills under the spreadsheet of FedEx has provided the
8 government?

9 MS. MITRANI: Objection, asked and answered.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q During your investigation, have you collected any waybill
13 from Mr. Edgar Cruz?

14 A I'm sorry, from Mr.?

15 Q Edgar Cruz.

16 A Erica Cruz?

17 Q Edgar.

18 A I'm sorry, could you spell that name?

19 Q E-D-G-A-R, last name C-R-U-Z.

20 A That's not a name that I am familiar with, no, sir.

21 Q Have you recollect any waybill, TH Wholesale, Inc.?

22 A That's not a name that I recognize right now.

23 Q Do you have on the spreadsheet any label with the company
24 Life -- Life Nile Pharmaceutical?

25 A That's not a name I recall being on any of the

1 spreadsheets, no, sir.

2 Q On December 3rd of 2009, Mr. Chris, Christian has given
3 you four packets, correct?

4 A A FedEx employee Christian Driskill did provide evidence
5 to me in my investigation, yes, sir.

6 Q And is any reason why it took them one year to give those
7 packets to you?

8 MS. MITRANI: Objection to the form of the question.

9 THE COURT: Sustained.

10 BY MR. SCOTTON:

11 Q Do you recall the dates on those packages, Mr. Van Brunt?

12 A No, I don't. The dates, is that what you are talking
13 about, the dates, or that I received the packages?

14 Q The date on those packages.

15 A I don't recall the date that I accepted custody of those,
16 no.

17 Q Do you want me to refresh your mind with your RVB 026?

18 MS. MITRANI: Objection to relevancy.

19 THE COURT: Sustained.

20 BY MR. SCOTTON:

21 Q Did you recall that Mr. Christian has provided you with a
22 package -- well, the information that he was saying, and you
23 mentioned that you not sure if the package has the right
24 waybill number?

25 MS. MITRANI: Objection to the form of the question,

1 asked and answered, beyond this witness's competency.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q Have you provided any wrong track numbers during this
5 case?

6 A Have I provided?

7 Q Yes, sir.

8 A The tracking numbers were provided by the shipping
9 companies to us, and to my knowledge all the tracking numbers
10 are accurate and true.

11 Q You don't recollect when you mentioned a track number that
12 you say you are not sure if that's the correct number?

13 A I don't recall what you are speaking about.

14 Q If the Court allow me, I would like to show you a report,
15 you can refresh your mind.

16 A Is this an FD302?

17 Q Yes, sir. 26, as a matter of fact, the number.

18 A I'm sorry, the date of the --

19 Q Was the number on the bottom, RVB 026?

20 A Yes, sir, that's the Bates number. But normally near the
21 top of my FD302 reports, I would put the date near the first
22 line of the document.

23 Q December 3rd, 2009, Mr. Van Brunt?

24 A It might refresh my recollection.

25 MR. SCOTTON: Your Honor, may I approach the witness?

1 THE COURT: Yes.

2 THE WITNESS: Thank you. May I please see the whole
3 report, sir, this is just the first page. Thank you.

4 Yes, sir, I'm reviewing my FD302 from investigation on
5 December the 3rd, 2009, and there is a reference to the fact
6 that a tracking number that ends -- a FedEx package with the
7 tracking number that ends in 4534 may or may not have been
8 related to that specific package, yes, sir.

9 Q So then you can say, then, it is a package that you guys
10 has no clue if it is true or not, correct?

11 A No, I would not say that, sir. I think that FedEx seized
12 that package because it had come to a conclusion that it was
13 linked to you and that they provided it to us, and my
14 recollection is that that package actually has not been entered
15 into evidence.

16 Q FedEx could not give the waybill, a commercial invoice
17 from that package?

18 A I believe they did provide the commercial invoice and the
19 shipping label with it, but for some reason, they were not a
20 hundred percent sure that that was the tracking number
21 associated with that package. So although they gave it to me,
22 my understanding is that we chose not to use it.

23 Q So you can you say FedEx right now is guessing information
24 to FBI?

25 A No, I think there's a difference between guessing and not

1 being a hundred percent sure. I think that compared to the
2 amount of certainty that they had with other packages that they
3 had provided me in the course of the investigation, for
4 whichever reason, they were less than a hundred percent sure
5 and were candid enough to tell me they were less than a hundred
6 percent sure, but I don't think that's the same as guessing,
7 sir.

8 Q My question is in this particular package here,
9 Mr. Van Brunt.

10 A Correct. In this particular package, I do not believe
11 they were guessing.

12 Q But they have no information on that package?

13 A They do because they provided a commercial invoice and the
14 shipping label for what they believe was associate with that
15 package.

16 Q Do you know that commercial invoice also has the tracking
17 number on it?

18 A I know that normally there is a field for the tracking
19 number to be entered, yes, sir.

20 Q And then they provide with the commercial invoice, but
21 they couldn't give the information -- they not sure about the
22 tracking number, they couldn't see the tracking number on the
23 commercial invoice?

24 MS. MITRANI: Objection, asked and answered and
25 relevance.

1 THE COURT: Sustained.

2 BY MR. SCOTTON:

3 Q Or have this package that has given to you has been also
4 fabricated?

5 MS. MITRANI: Objection, Your Honor.

6 THE COURT: What's the objection?

7 MS. MITRANI: The package -- to the form of the
8 question.

9 THE COURT: Sustained.

10 BY MR. SCOTTON:

11 Q Do you recall the same day was a package with four
12 PlayStations inside?

13 A I remember taking multiple packages from FedEx on that day
14 and I do recall that in at least one or some of the packages,
15 there was either an Xbox or a PlayStation.

16 Q And this particular report that you just review, you
17 mentioned there was a box with a four PlayStation, correct?

18 MS. MITRANI: Objection, relevance.

19 THE COURT: Sustained.

20 BY MR. SCOTTON:

21 Q Has the package with the four PlayStations been presented
22 to this Court?

23 MS. MITRANI: Objection, relevance.

24 THE COURT: Overruled.

25 THE WITNESS: No, I believe it's upstairs in the work

1 room that we have in the courthouse.

2 BY MR. SCOTTON:

3 Q Is there any reason why it has not been presented to this
4 jury?

5 A Apparently the U.S. attorney has decided not to introduce
6 it as an exhibit. And the courtroom was beginning to get full.

7 Q Mr. Chris has also informed you and has given you
8 information four other packages on that day. Do you recall
9 that?

10 MS. MITRANI: Objection, relevance and asked and
11 answered.

12 THE COURT: Sustained.

13 BY MR. SCOTTON:

14 Q December 3 of 2009, do you have any recollection of
15 getting four packages from FedEx?

16 MS. MITRANI: Objection, Your Honor.

17 THE COURT: Mr. Scotton, I think we have already
18 covered this. Let's go to another subject, all right?

19 BY MR. SCOTTON:

20 Q Do you recall the date, July 19, 2011?

21 A Can you be more specific, sir?

22 Q Do you recall that you have a -- conduct a surveillance at
23 8:40 p.m. at my mother's house?

24 MS. MITRANI: Objection, asked and answered. We just
25 talked about this.

1 THE COURT: I'm sorry. I don't -- I'm going to
2 overrule it for now. I don't know if it was the July 19th
3 surveillance.

4 MS. MITRANI: All right. Sorry, Your Honor.

5 THE WITNESS: Yes, I do recall having driven by the
6 7797 Golf Circle Drive, apartment 204 complex. I don't recall
7 if that was the specific date, but I do -- I have been there on
8 a few occasions, yes, sir.

9 BY MR. SCOTTON:

10 Q Do you have any video recording from the surveillance?

11 A No, sir.

12 Q You did that surveillance, expect Federal Express maybe
13 come by and drop off anything to the house?

14 A No. My recollection of why I would normally go by your
15 parents' house were to determine if Mr. Colon's vehicle was
16 there and also to determine if there was any activity at that
17 location. And what was the date of that year, sir, the
18 surveillance?

19 Q July 19, 2001 -- 2011.

20 A So I probably -- July of 2011, that was also shortly
21 before your immigration hearing, so I was likely driving by
22 there to see if your vehicle was parked in front since you had
23 purported to live there. If I remember correctly, the results
24 were that your vehicle was not there and either there was no
25 activity or perhaps Mr. Colon's car was parked in the parking

1 spot directly in front of the building.

2 Q So out of 40 cars in the parking lot, you run Mr. Colon's
3 tags?

4 A Well, it's July and the parking lot was largely empty.
5 It's an age-restricted community and there's normally not that
6 many cars parked in there, quite frankly. And if I remember
7 correctly, Mr. Colon has a vehicle with personalized plates.
8 And by that, meaning I believe there's a reference to the fact
9 that he was a veteran of the United States Air Force, which
10 made it a little easier to identify. And I also knew from
11 subpoenas that we had sent that he drove a Nissan small SUV.
12 So it was fairly easy to identify whether it was or was not
13 there.

14 Q On the same day around 9:20 p.m. until 9:40 p.m., you have
15 conduct surveillance at the location of Boca Raton, correct?

16 MS. MITRANI: Objection to relevance, Your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: Correct. After I left the Margate
19 address of your mother and stepfather, I drove to your
20 townhouse at 398 Southeast Mizner Boulevard, tried to find a
21 place to park discretely to determine whether you were at your
22 townhouse or coming from or going to your townhouse. My
23 recollection is that there was no activity observed at your
24 townhouse and I neither saw your vehicle arrive or depart. The
25 townhouse has a garage located on the bottom floor, but I

1 didn't see you or anyone else enter the garage or the front
2 door of your townhouse that night, sir.

3 Q So the surveillance, nothing related to FedEx or my
4 brother that you went to the house?

5 A Correct. The surveillance had nothing to do with there
6 being a FedEx delivery or your brother Flavio.

7 Q 10:00 in the nighttime, Mr. Van Brunt, something that you
8 are looking for at my house?

9 A Looking to see if you are there, sir.

10 Q Do you know there is a garage also in the townhouse?

11 A Yes, sir, there is on the ground floor.

12 Q And through the door garage, can you identify if there is
13 a car inside or not?

14 MS. MITRANI: Objection, relevance, Your Honor.

15 THE COURT: Overruled.

16 THE WITNESS: My recollection is that the garage door
17 is completely solid. I don't know if it's wood or fiberglass.
18 But my recollection is the garage door does not have any
19 windows on it or would otherwise allow you to see into the
20 garage, sir.

21 BY MR. SCOTTON:

22 Q During this operation is there anyone with you?

23 A I don't believe so, sir, no.

24 Q May 28 of 2010, do you recall meeting with Mr. Darren from
25 Investment Limit?

1 A I recall meeting with a gentleman whose first name was
2 Darren from a company named Investments Limited, and my
3 recollection is that that is the owner or property management
4 company that leased you suite F for you to run your
5 Merry Mailman store, sir, yes.

6 Q Have the FBI conduct any legal search to my house or
7 business?

8 A No, sir, we have never conducted any search of your house
9 or your business and the only search that was conducted was the
10 inventory search that was conducted pursuant to your consent.

11 Q Do you have a recollection of the lease of the
12 Merry Mailman?

13 A I do have a general recollection of it. I believe it was
14 just a one or two-page document. I believe the lease may have
15 actually been in the name of Sky Air, not Merry Mailman. And
16 my other recollection is that the spacing on the office lease
17 was slightly different at the top and the bottom, meaning that
18 it may have been double spaced on the top half of the first
19 page, single spaced in the rest of the document.

20 I actually showed the document to Darren and asked him if
21 he could confirm that that was, in fact, their office lease.
22 And he took a look at it and told me that he believed it was
23 the actual office lease that they had entered into with you on
24 behalf of Sky Air Online or Merry Mailman.

25 Q And also on the same day, you passed by the store,

1 correct?

2 A Yes, sir, I did. The -- yes.

3 Q And there was a sign on the window of the store, correct?

4 A Yes, sir.

5 Q And you took a copy, a photo of the sign on the door,
6 correct?

7 A I believe I took out a notepad and wrote down what the
8 sign said on the storefront, sir.

9 Q Is there any problem have the sign on the door?

10 A No. It was a one-page typewritten sign that -- it was a
11 typewritten one-page sign.

12 Q On this indictment here on the wall, 27 counts of mail
13 fraud, it is 27 packages presented to this jury here?

14 A No sir, this are not 27 packages that have been presented
15 to the jury.

16 THE COURT: All right. I think we are going to stop
17 here for lunch and we will reconvene at 1:30. Everybody rise
18 for the jury. And I will ask that the jury, of course,
19 remember my instructions. We will see you back here at 1:30.
20 Have a great lunch.

21 (Thereupon, the jury exited the courtroom at
22 12:30 p.m.)

23 THE COURT: All right. We will see you back here at
24 1:30. And just another reminder, Agent Van Brunt, if you
25 would, I recognize that you have to give complete answers and I

1 expect you to do so, but when you can shorten them, that would
2 be terrific.

3 THE WITNESS: I'm trying, Your Honor.

4 THE COURT: Thank you.

5 All right. We will be in recess until 1:30.

6 (Thereupon, a luncheon recess was taken at 12:31 p.m.)

7 MS. MITRANI: Can I bring something up real quick?

8 THE COURT: All right.

9 MS. MITRANI: Your Honor, I don't want to be
10 difficult, you know, and I understand the defendant has a right
11 to, you know, fully cross-examine the agent. But there just
12 seems to be these like enormous pauses in between questions.
13 And while that's normal for people to do that in some
14 instances, it seems like every question is followed by an
15 enormous pause which is really extending this.

16 THE COURT: Well, Mr. Scotton, if you -- I have
17 noticed that as well. I think the reason is because you are
18 trying to follow my instruction not to ask questions you have
19 previously written out when I have sustained objections and I
20 appreciate that. But if there is any way you could sort of
21 speed up that process, I think that would be helpful because
22 the jury as we all know has been sitting here for quite some
23 time and Agent Van Brunt has now been on the stand between the
24 government's case where he was examined by both sides and the
25 defendant's case so far literally for hours upon hours. So if

1 there is anything you can do to speed that up, I would
2 appreciate that.

3 MR. SCOTTON: I will try my best, Your Honor. Like
4 you say, as you mentioned, I am trying to follow the rules that
5 you told me.

6 THE COURT: I appreciate that.

7 MR. SCOTTON: And I'm trying to skip a lot of
8 questions also that make sure I'm not repeating the same
9 subject again and again.

10 THE COURT: Okay. But perhaps when we are on a break,
11 maybe you could see if you could organize your thoughts a
12 little bit and cluster the kinds of questions together so if
13 you get to an area that you have already mentioned and you need
14 to skip it, you can quickly find where the next area is, all
15 right?

16 MR. SCOTTON: All right.

17 THE COURT: Thank you. Let's see if the jury is
18 ready.

19 (Thereupon, the jury entered the courtroom at
20 1:32 p.m.)

21 THE COURT: Welcome back. Please be seated everyone.
22 Let's get right back into it. Agent Van Brunt, you are still
23 under oath. Do you understand?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Very good. Thank you.

1 Mr. Scotton, whenever you're ready.

2 MR. SCOTTON: Your Honor, Ms. Martinez just informed
3 me there is another witness is outside.

4 THE COURT: We are going to follow through. I want to
5 see if we can finish with Agent Van Brunt. Thank you though.

6 BY MR. SCOTTON:

7 Q Mr. Van Brunt, during this four years investigation, did
8 you has any time during your surveillance ever take any picture
9 of me inside any stores?

10 A There was a surveillance that was conducted at the
11 Coral Springs Pak Mail wherein I observed you walk into the
12 store. I then entered the store myself with the recording
13 equipment and filmed you for a few brief seconds before you
14 left. Aside from that, no, there's no audio or video
15 surveillance, sir.

16 Q Have you passed by the Boca Raton store and any -- you or
17 any agent contacting, you know, any contact to me?

18 A No contact at your Merry Mailman store, sir, no.

19 Q Do you recall here during this course, prosecutor has
20 showed a couple pictures of different locations of a packing
21 shipping store?

22 A Yes.

23 Q Do you show picture of the store, but you couldn't provide
24 a picture of me inside those stores?

25 MS. MITRANI: Objection, argumentative and to the

1 form.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q Mr. Van Brunt, during this whole process, I mean, the
5 investigation still going on this case?

6 A No, sir, there's no investigation ongoing.

7 Q And when did you stop investigating this case?

8 A I stopped gathering evidence probably shortly before the
9 trial began.

10 Q So during this whole process was the government ideas or
11 your ideas to get another inmate jumping on my case?

12 MS. MITRANI: Objection, Your Honor.

13 THE COURT: Sustained.

14 BY MR. SCOTTON:

15 Q Have you dispatched agents to my house, to my family's
16 house?

17 A I'm sorry, I couldn't hear the question because the
18 microphone was hit.

19 Q Have you dispatched any -- a couple agents to my mother's
20 house at any time on 2013?

21 A I have not requested any agents go to your house. The
22 only time I have gone to your mother's house was to serve a
23 subpoena or to review the storage room laundry area.

24 Q And during the investigation, do you have any recollection
25 of other agents come to the house?

1 MS. MITRANI: Objection, relevancy.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q Is Mr. Colon charged with a crime?

5 MS. MITRANI: Objection, relevancy.

6 THE COURT: Sustained.

7 BY MR. SCOTTON:

8 Q Am I charged with another crime besides this mail fraud
9 and this immigration fraud?

10 A The only charges that I'm aware are the mail fraud and
11 false statements charges contained in the second superseding
12 indictment.

13 Q And do you have any recollection who's come up with idea
14 that I'm try to kill you, hire someone to kill you?

15 A Could you rephrase that question, please, or repeat it
16 rather?

17 Q Did you have then -- on your recollection, who came up
18 with that idea that I was trying to retain someone to kill you?

19 A I don't know what you mean by who came up with the idea.

20 Q It's just because like you guys have no case and you have
21 to convict me at all cost?

22 MS. MITRANI: Objection, Your Honor.

23 THE COURT: Sustained.

24 BY MR. SCOTTON:

25 Q Is any reason why FBI has sent agents to my house and

1 accused my family of trying to --

2 MS. MITRANI: Objection, relevancy.

3 THE COURT: Sustained.

4 MR. SCOTTON: Your Honor, can we have a sidebar for a
5 moment.

6 THE COURT: All right.

7 (Thereupon, the following was heard sidebar.)

8 MR. SCOTTON: Because I'm going very carefully,
9 Your Honor, question make sure I'm not going to get the Court
10 upset and waste people's time here. Yesterday as going through
11 some procedures here and something mention something about the
12 agent's wife, and she say that if I start mentioning things
13 about the wife, this other thing that they try to come up me
14 and my family tried to hire someone to kill the agent might
15 come up.

16 THE COURT: You stopped asking the questions so I
17 don't know why it would come up except you just brought it up.

18 MR. SCOTTON: And is going to be any, I mean, is any
19 violation of me asking question about that?

20 THE COURT: It depends on the way you ask the
21 questions and what you are asking. I mean, it doesn't sound
22 like it's relevant in that the government --

23 MR. SCOTTON: The motive.

24 THE COURT: Excuse me.

25 MR. SCOTTON: Sorry.

1 THE COURT: The government hasn't brought it out and
2 I'm not sure why it would be relevant, but if you want to
3 explain it, I will consider it.

4 MR. SCOTTON: The fact that it's another motive, you
5 know, motive the government here because it's outrageous, I
6 have two old people trying to conspire to hire someone.

7 THE COURT: What is the motive?

8 MR. SCOTTON: They have no case, Your Honor. They
9 need to get a conviction at all costs.

10 THE COURT: I'm sorry, that they came up with a story?
11 They haven't even presented any evidence that you tried to hire
12 someone to kill the agent so why is that even relevant? I
13 mean, it doesn't make any sense.

14 MR. SCOTTON: During a hearing in front of
15 Judge Matthewman.

16 THE COURT: But it's not in front of the jury. The
17 only reason the jury knows about this is because you just said
18 it. So it seems irrelevant to me.

19 MR. SCOTTON: So the Court doesn't want me to ask
20 questions about it?

21 THE COURT: Is the government planning on going into
22 this at all?

23 MS. MITRANI: Absolutely not, and the government plans
24 to continue to object on relevancy.

25 THE COURT: Unless you can explain why it's relevant,

1 I'm not going to allow you to go into it.

2 MR. SCOTTON: Okay, Your Honor.

3 THE COURT: All right.

4 (Thereupon, the following was heard in open court.)

5 BY MR. SCOTTON:

6 Q On March 20 of 2012, you went to Mrs. Felini's store in
7 Pompano Beach to interview her, correct?

8 A I believe so, yes.

9 Q Did you recall that interview day?

10 A I recall that I went to the store. I have gone to the
11 store on different occasions. I don't recall if that was the
12 specific date, but I do recall going there a few weeks after
13 your arrest.

14 Q Did you record that interview?

15 A Yes.

16 Q You have a video recording from that interview?

17 A No.

18 Q Did you recall Mrs. Felini mentioning anything about --

19 MS. MITRANI: Objection, hearsay.

20 THE COURT: Sustained.

21 BY MR. SCOTTON:

22 Q During your investigation, perhaps like on the video, have
23 I hide my relationship with Mrs. Felini?

24 A Yes. In your interview with Fred Brooks, you did conceal
25 your relationship with Carla Felini.

1 Q In your report, you deny that I even have a -- confirm to
2 you. Why?

3 MS. MITRANI: Object to the form of the question.

4 THE COURT: Sustained.

5 BY MR. SCOTTON:

6 Q Why did you deny in the report that I have been even
7 involved with Carla Felini?

8 A I don't understand that question, sir.

9 Q During the interview, you asking me questions and you
10 mentioned that I deny having any kind of relationship with
11 Mrs. Felini.

12 A On the date that you were arrested, I asked you about
13 Carla Felini and whether you were engaged to her. And you
14 denied that you were ever engaged to her or that she was ever
15 your fiancée or vice versa. And you told me that she was
16 nothing more than an ex-girlfriend.

17 Q And once again, we don't have a video on that interview,
18 right?

19 A Correct.

20 Q Mr. Van Brunt, do you recollect you ever mentioned that
21 DNA was being taken at your location by 1:26 p.m.

22 MS. MITRANI: Objection, Your Honor, asked and
23 answered.

24 THE COURT: Sustained.

25

1 BY MR. SCOTTON:

2 Q The charge that I have been charged here, the crime that I
3 have been charged here, Mr. Van Brunt, has anything related to
4 sex charge?

5 MS. MITRANI: Objection, Your Honor, the charges speak
6 for themselves.

7 THE COURT: Sustained.

8 BY MR. SCOTTON:

9 Q Is there any reason why for DNA?

10 A Yes. My understanding is that Congress passed a law
11 requiring that all people arrested by federal law enforcement
12 officers have DNA collections taken. So pursuant to either the
13 statute or perhaps a Department of Justice rule or regulation,
14 we are required to obtain DNA swabs from all the individuals
15 that we place under arrest.

16 Q Also, they start say that we have the right to deny also?

17 A No, sir, I don't believe that the process of having a DNA
18 swab is elective by the person who is arrested. My
19 understanding and what I have been told is that it's required
20 to be collected by the agents who are conducting the arrest.

21 Q I understand that, but let me rephrase this question in a
22 way that makes sense.

23 My understanding by looking at the procedures and speaking
24 to some lawyers, all defendant has the rights to refuse to have
25 their lawyers present, am I wrong?

1 MS. MITRANI: Objection, Your Honor, asked and
2 answered and relevance.

3 THE COURT: Sustained.

4 BY MR. SCOTTON:

5 Q Is any time during the arrest proceeding here and you drop
6 me off at the jail, did you try to avoid, perhaps give the time
7 of the drop-off?

8 A No, I didn't try to avoid it, although I'm not sure in my
9 report I noted the exact time that you were dropped off. I may
10 have only noted the mileage on the vehicle.

11 Q It is not the truth that during the whole process you
12 acknowledged the times, you wrote the times pick up, get to
13 your store, DNA, but when you dropped me off, you just
14 mentioned mileage of the car, correct?

15 A Correct.

16 Q Is this to avoid that I was with you in custody the whole
17 day without a lawyer present?

18 A No.

19 Q During the interview there was a lot of questions being
20 asked, but you never made a notation in your reports on those
21 questions, correct?

22 MS. MITRANI: Objection. We have talked before the
23 post arrest statement many times already.

24 THE COURT: Sustained.

25

1 BY MR. SCOTTON:

2 Q Do you recollect during the transportation, you have
3 another agent inside the car?

4 A Correct.

5 Q Do you recall the agent's name?

6 A Yes.

7 Q Do you mind saying to the Court his name?

8 A Brett, B-R-E-T-T, Chabot, C-H-A-B-O-T.

9 Q Is there any reason why Mr. Brett was concerned that I
10 used Hugo Boss?

11 A I don't know what you mean by he was concerned that you
12 were using Hugo Boss. I don't understand that question, sir.

13 Q Do you recall Mr. Brett interview me and ask me questions
14 about brand of cologne that I use?

15 MS. MITRANI: Objection, Your Honor, relevance and
16 goes beyond this witness's --

17 THE COURT: Sustained.

18 BY MR. SCOTTON:

19 Q You ever mention that on September of 2010, your wife's
20 friends, Rodrigo Olivera has shipped some packages to my
21 brother. Do you recall that?

22 MS. MITRANI: Objection, Your Honor. We have spoken
23 about Mr. Olivera many times already.

24 THE COURT: Sustained.

25

1 BY MR. SCOTTON:

2 Q Do you remember the individual that has shipping packages
3 to my brother?

4 A I remember Mr. Rodrigo Olivera mentioning that he shipped
5 packages through a company name Brazil Express and a person
6 named Flavio Scotton.

7 Q Did he told you how many packages that he shipped?

8 MS. MITRANI: Objection, Your Honor, hearsay and also
9 he's going back to Mr. Olivera who we have discussed.

10 THE COURT: Sustained.

11 MR. SCOTTON: Your Honor, am I not allow to ask the
12 question about the package, the information about the case and
13 the packages that were shipped?

14 THE COURT: You can't ask him what other people said.

15 MR. SCOTTON: I'm going through what he said,
16 Your Honor.

17 THE COURT: Let's not have an extended discussion
18 about it. You can't ask him what other people said. You just
19 asked him what Mr. Olivera told you. You can't do that. And
20 we have also discussed Mr. Olivera several times now. So
21 unless it's a new area, you will need to -- a new area with
22 respect to Mr. Olivera, you will need to move on.

23 BY MR. SCOTTON:

24 Q Any witnesses has approached you with waybills and
25 commercial invoice from packages that has been shipped through

1 me or through my brother?

2 A Through you, yes.

3 Q What about through my brother?

4 A No, not that I know of other than Mr. Olivera.

5 Q So witness approach you and say they shipping packages
6 through my brother, but they don't present any proof to that,
7 right?

8 MS. MITRANI: Objection, misstates the witness's
9 testimony.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q You said it is normal for a person to wait two years to
13 report a crime?

14 MS. MITRANI: Objection, relevancy, vague and
15 overbroad.

16 THE COURT: Sustained.

17 BY MR. SCOTTON:

18 Q Has your witness has provide to you my brother's cell
19 phone?

20 MS. MITRANI: Objection, relevancy.

21 THE COURT: Sustained.

22 BY MR. SCOTTON:

23 Q So you never interview my brother, correct?

24 A Correct.

25 Q And my brother never got arrest for shipping packages

1 either, correct?

2 MS. MITRANI: Objection, Your Honor, relevancy.

3 THE COURT: Sustained.

4 MR. SCOTTON: Your Honor, I have a check here in my
5 hand that I would like to present to Mr. Van Brunt and submit
6 it as evidence.

7 THE COURT: Well, let's see if you can authenticate
8 it. And if he can and it's otherwise admissible, then you may
9 do so.

10 BY MR. SCOTTON:

11 Q Do you recognize this check, Mr. Van Brunt?

12 A Yes.

13 MR. SCOTTON: Your Honor, may I submit this check as
14 evidence?

15 THE COURT: Well, you need to -- well, is there any
16 objection?

17 MS. MITRANI: Let me see the check, please.

18 No, Your Honor.

19 THE COURT: All right. So we will mark it as
20 defense 6, and that will be admitted.

21 (Thereupon, Defendant's 6 received in evidence.)

22 BY MR. SCOTTON:

23 Q This is someone that has hold a check to you, a copy of
24 this check to you?

25 A This check was provided to me by DHL.

1 Q Is it not true that it has been provided by Miss Nicole?

2 A It was provided by DHL. It could have very well been
3 Ms. Nelson who provided me this, yes.

4 Q Is it not true that you claim the -- you inform her ship
5 packages and pay me with the check?

6 A Correct. This check shows that the company Brazil Express
7 was to deliver packages. It was pay to the order of
8 Claudia Scotton.

9 Q It is not the truth this check was deposited on
10 Mrs. Claudia Scotton's personal account?

11 A It was deposited into account in the name of
12 Claudia Scotton, P.A., which is, I believe, a business entity,
13 but it was an account associated to Claudia Scotton, not you.

14 Q Then how can you say this person has shipping packages
15 from me when he pay somebody else and deposit check in somebody
16 else's account?

17 A Because the company he was dealing with was Brazil Express
18 and he completed the payment as instructed by them, and the
19 people who received the payment are the ones who determine what
20 account it would be deposited into, not the customer.

21 Q And who is the person that receives the check,
22 Mr. Van Brunt?

23 A I don't know if it was received by Claudia Scotton,
24 Flavio Scotton, or you.

25 Q But you acknowledge the check was deposited in

1 Ms. Claudia Scotton's account, correct?

2 A Correct. It was deposited in Claudia Scotton, P.A., bank
3 account.

4 Q Your recollection in your video and also previous
5 interviews that we have together that I have no relationship
6 with my sister-in-law at all?

7 A I'm not sure of what the nature or extent of your
8 relationship is with Claudia Scotton. I know that on the day
9 that I interviewed you, you denied being related to her.

10 Q And you deny also that I have not spoken to my brother
11 since 2007?

12 A I don't know when you last spoke to your brother, sir.

13 Q Did you confront Mrs. Claudia on that check the day you
14 approach her in the parking lot?

15 A I didn't show her the check, but I told her about its
16 existence.

17 Q And she confirmed the deposited check was in her account?

18 A No.

19 Q And what she told you then?

20 A What she told me was that she didn't recall a check being
21 deposited. She did admit -- acknowledge that she had a bank
22 account, Claudia Scotton, P.A., that I believe was used both
23 for her activities as a real estate agent. And I believe she
24 also might work in either a hair salon or a spa, and I believe
25 she told me that those are normally the types of checks that

1 she deposited. But I approached her after your arrest, so that
2 would have been likely the summer of 2012, and this check would
3 have been from four years earlier. So she did not recall the
4 check with any specificity.

5 MR. SCOTTON: Your Honor, may I approach the witness?

6 THE COURT: Yes.

7 BY MR. SCOTTON:

8 Q You hold in your hand is a paper right now. Can you tell
9 the jury what you are holding?

10 A Sure. This is a document identified as Bank of America
11 Bates No. 109. It's the second of a four-page document.

12 MS. MITRANI: Your Honor, I would object to him
13 publishing that --

14 THE COURT: Sustained.

15 BY MR. SCOTTON:

16 Q Can you confirm that the same check that was on the screen
17 a couple minutes ago is the same check that was deposited in
18 Mrs. Claudia's account?

19 A I can confirm that on or about the date of the check,
20 there was a deposit for \$927 deposited into Claudia Scotton,
21 P.A., account. The 927 is the same amount of the money on the
22 check that we previously showed the jury, the same amount.

23 Q So this is February 21 of 2008, the check was deposited in
24 Ms. Claudia's account, and the check also has a date of
25 February 21, 2008, correct?

1 A I believe so, yes.

2 Q Did Ms. Claudia has any recollection, did she inform you
3 how she paid for the shipment?

4 MS. MITRANI: Objection, hearsay.

5 THE COURT: Sustained.

6 BY MR. SCOTTON:

7 Q During your investigation, have you find out how they ship
8 this package?

9 A The package of Mr. Olivera that was shipped to Brazil was
10 sent via DHL.

11 Q But I see on this check -- we can agree that his
12 statement, it is wrong because he never did business with
13 Brazil Express?

14 A I would not agree with that. The check was mentioned on
15 the memo line, deliver Brazil Express, that was your company.
16 I could not agree with that statement, sir.

17 Q What is the memo on the check is for, Mr. Van Brunt?

18 A Normally so the person who writes the check can remind
19 themselves and document what exactly the transaction relates
20 to. Frequently, people write either the shipping bill number
21 or perhaps the last four digits on the account that they might
22 be paying the bill for.

23 Q Anyone can write anything on the memo of a check, right?

24 A Correct.

25 Q And when the bank send the check back to the customers

1 after it is paid, they can override that if they want to,
2 right?

3 A I don't know what you mean by override.

4 Q And during your interview, anybody has provided with list
5 of 19 box lost?

6 A I'm sorry, I don't understand that question, sir.

7 Q During your interview with Mrs. Claudia, have they
8 provided you with a list of 19 box that has been lost or
9 confiscated by the companies?

10 A Ms. Scotton never provided -- Ms. Claudia Scotton never
11 provided me with any list of boxes that were lost.

12 MR. SCOTTON: Your Honor, may I approach the witness?

13 THE COURT: Yes.

14 BY MR. SCOTTON:

15 Q Can you tell the jury what you hold in your hand?

16 MS. MITRANI: Objection, he's trying to publish it.

17 THE COURT: Can you give a vague general description.

18 THE WITNESS: They appear to be copies of sales
19 receipts from a Game Stop retail store located in Davie,
20 Florida.

21 BY MR. SCOTTON:

22 Q In this particular document you got in your hand was
23 provided by the account from DHL or has been provided by
24 Claudia Scotton?

25 A It was provided by DHL because on the bottom is a Bates

1 label referencing DHL.

2 Q And on top of the paper is a fax number, correct?

3 A Correct.

4 Q Have you contacted the fax number?

5 A No.

6 Q Have you investigated that number?

7 A No.

8 Q During February 27 of 2008, do you recall Mr. Steven from
9 DHL pass those documents to you perhaps?

10 A Mr. Steven from DHL?

11 Q Work together --

12 MS. MITRANI: Objection to relevance.

13 THE COURT: Sustained.

14 BY MR. SCOTTON:

15 Q This particular scenario, Mr. Van Brunt, has DHL has give
16 you the box or so that has been confiscated?

17 A I don't know what these sale receipts relate to, whether
18 they were for packages that were seized or not. I don't
19 believe any of the packages DHL gave me relate to these sales
20 receipts, sir.

21 Q Do you deny that on your report, you mention 8 to
22 10 packages has been seized by DHL?

23 A I have seized packages -- excuse me. DHL has provided me
24 with packages, but they have also seized many packages that I
25 have not taken custody of.

1 Q On your report, RVB36, do you recall that you mentioned
2 8 to 10 packages has been seized by DHL. Do you recall that?

3 A I recall that DHL notified me that they had received
4 packages, yes.

5 Q And did you get those packages in your hands?

6 A I don't know if I took custody or possession of those, no,
7 I don't know.

8 Q Any recollection if they have also faxed you or given
9 information besides those receipts with the DHL number invoice,
10 commercial invoice?

11 MS. MITRANI: Objection, relevance and vague.

12 THE COURT: Sustained.

13 BY MR. SCOTTON:

14 Q Those receipt, they have address with that. Do you have
15 any recollection of those address?

16 A The addresses on these sales receipts indicate a shopping
17 plaza named Sheridan Shops in Davie, Florida, on
18 Sheridan Street. It's not an address that I'm familiar with in
19 the course of the investigation.

20 Q That address do not refresh your mind of anything?

21 MS. MITRANI: Objection, relevance.

22 THE COURT: Sustained.

23 BY MR. SCOTTON:

24 Q During your investigation the name Adreana, B-O-R-B-A,
25 last name, come to you?

1 A I'm sorry. Could you spell that again, please, sir?

2 Q Adreana, B-O-R-B-A.

3 A Adreana Borba?

4 Q Yes, sir.

5 A Not particularly.

6 Q If I present a document, might refresh your mind?

7 A Possibly.

8 MR. SCOTTON: Your Honor, may I approach the witness?

9 THE COURT: Yes.

10 MS. MITRANI: I don't think there's any question
11 pending, Your Honor.

12 MR. SCOTTON: Oh, I was waiting for him to review the
13 document.

14 MS. MITRANI: What's your question?

15 THE COURT: All right.

16 BY MR. SCOTTON:

17 Q Mr. Van Brunt, have you go to the locations to interview
18 those people that is mentioned on that paper?

19 A No.

20 Q And that particular document also has been provided by
21 DHL?

22 A Correct.

23 Q And do you recall who sent this document to DHL?

24 A I believe it was submitted by Claudia Scotton.

25 Q And what does she claim to DHL, Mr. Van Brunt?

1 MS. MITRANI: Objection, hearsay.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q Mr. Van Brunt, is Mrs. Claudia also on the document to
5 DHL, she report that she used --

6 MS. MITRANI: Objection. Objection, hearsay.

7 THE COURT: Sustained. Mr. Scotton, if you could
8 please refrain from saying what other people allegedly said.

9 MR. SCOTTON: Yes, Your Honor. It's okay if I --
10 because I was trying to mention the paperwork that he has
11 reviewed, Your Honor. I'm sorry if I -- the Court didn't
12 understand.

13 THE COURT: Go ahead and ask a question, please.

14 BY MR. SCOTTON:

15 Q And that document present by -- to you by DHL, has someone
16 mentioned that they ship packages?

17 MS. MITRANI: Objection, has somebody mentioned.
18 Hearsay.

19 THE COURT: Sustained.

20 BY MR. SCOTTON:

21 Q Did you ask Mrs. Claudia to who she shipped packages,
22 Mr. Van Brunt?

23 A No.

24 Q So you interviewed Claudia, never asked her how she
25 shipped the packets to Brazil?

1 A I didn't interview her. I served her with a subpoena.

2 Q You went, approach Claudia just to ask about the check?

3 A No. I went to serve her with a subpoena.

4 Q But you asked her a question about the check, correct?

5 MS. MITRANI: Objection, Your Honor, asked and
6 answered.

7 THE COURT: Sustained.

8 BY MR. SCOTTON:

9 Q Mr. Van Brunt, if the check was made out to
10 Claudia Scotton and has Brazil Express, how can they claim now
11 they sent this package to Lider Mundanca?

12 MS. MITRANI: Objection, Your Honor, nobody is
13 claiming anything --

14 THE COURT: All right.

15 MS. MITRANI: -- except that it's Brazil Express.

16 THE COURT: Sustained. It's sustained.

17 MR. SCOTTON: Your Honor, can I just do the question
18 by that way over there? Is there any problem if I do my
19 questions from there?

20 THE COURT: As long as you speak into the microphone,
21 that's fine.

22 BY MR. SCOTTON:

23 Q Mr. Van Brunt, has anybody has added on that check on the
24 name of Brazil Express name after the --

25 MS. MITRANI: Objection, Your Honor, the check speaks

1 for itself.

2 THE COURT: I'm sorry. I don't recall. It is in
3 evidence as 6, right, and so sustained.

4 MR. SCOTTON: Your Honor, may I approach the witness
5 again?

6 THE COURT: Yes.

7 THE WITNESS: Thank you.

8 BY MR. SCOTTON:

9 Q This is a paper also has been provide from Claudia Scotton
10 to Nicole, Nicole from DHL?

11 A No, I don't believe it was provided by Claudia to DHL --
12 not provided by Claudia Scotton, no.

13 Q And who provided that letter to Nicole?

14 A I'm sure this letter was provided by Claudia Olivera, who
15 is the wife of Rodrigo Olivera.

16 Q Is Claudia Olivera friends with your wife?

17 A No.

18 Q And this is the same package that she claim over there
19 that was sent to -- that pay for the check?

20 A My understanding is that this letter was sent by
21 Claudia Olivera, the wife of Rodrigo Olivera, to DHL and
22 Nicole Nelson regarding the packages that were seized by DHL
23 that Claudia and Rodrigo had paid Brazil Express to deliver to
24 Brazil.

25 Q During your interview with you, have they show any proof

1 they came to my office and do any business with me?

2 A They showed me the copy -- excuse me. Rodrigo and
3 Claudia Olivera did not show me any records. The records that
4 I had and the records I may have shown them were provided to me
5 by DHL.

6 Q You mentioned Claudia Scotton work at a spa, a salon?

7 A I believe that's what she told me when I told her about
8 the check being deposited into her account.

9 Q Does she work for your wife in your wife's spa, salon?

10 A No.

11 Q Mr. Van Brunt, you saw the day of the check. And it's not
12 the truth that during this transaction of them shipping
13 packages and getting paid, I was in Brazil?

14 A I'm not sure where you were on the date that the check was
15 deposited. My recollection is that you were in Brazil earlier
16 in the year than September.

17 Q Have you attempt to incriminate my mother at any time?

18 MS. MITRANI: Objection, relevancy and form of the
19 question.

20 THE COURT: Sustained.

21 BY MR. SCOTTON:

22 Q Was not the true that all this retaliation become because
23 I'm a blow whistle on the scam, drugs from these companies?

24 MS. MITRANI: Objection, Your Honor, to the form of
25 the question.

1 THE COURT: Overruled.

2 THE WITNESS: No, this case has nothing to do with any
3 alleged whistleblower that you claim to be. Totally, totally
4 separate and based on your criminal activity, sir.

5 BY MR. SCOTTON:

6 Q Do you recall on August 2nd of 2013, I have sent a letter
7 to this prosecutor?

8 MS. MITRANI: Objection, relevancy.

9 THE COURT: Sustained.

10 BY MR. SCOTTON:

11 Q Have you got a contact by U.S. Attorney's Office in
12 California before?

13 A Regarding your --

14 MS. MITRANI: Objection -- wait, relevancy, vague, and
15 overbroad.

16 THE COURT: Sustained.

17 MR. SCOTTON: Let me see if I can do this better,
18 Your Honor.

19 BY MR. SCOTTON:

20 Q Have the United States California, the U.S. Attorney's
21 Office in California contact you because I have sent a letter
22 to them in reference to drug scam?

23 A No.

24 Q The same letter that I present to the prosecutor?

25 MS. MITRANI: Objection. Objection, not in evidence.

1 THE COURT: Sustained.

2 MR. SCOTTON: Your Honor, I have a letter in my hand
3 that I want to know if I can introduce as evidence.

4 THE COURT: I do not know. Is it authenticated? Can
5 you authenticate it?

6 MR. SCOTTON: Even by the Court because this is
7 something that was --

8 THE COURT: Why don't you come sidebar.

9 (Thereupon, the following was heard sidebar.)

10 MR. SCOTTON: This is a letter that I sent to the
11 prosecutor's office and I sent also to California.

12 THE COURT: It's hearsay. You cannot --

13 MR. SCOTTON: But it's me saying, Your Honor.

14 THE COURT: I know, but it doesn't matter because it's
15 only when what you say is an admission against interest can
16 come in unless it's you testifying. This would be the
17 equivalent of my allowing you to testify without you being
18 subject to cross-examination. So a letter that you wrote, the
19 six-page letter that you wrote to Ms. Mitrani or to the U.S.
20 Attorney's Office or whoever it may have been is not
21 admissible. There's no hearsay exception of which I am aware
22 that would allow you to do this. If you want to bring one up,
23 and I'll consider it. I will be happy to do that. But nothing
24 is coming to my mind at this time.

25 MR. SCOTTON: Bring what up, Your Honor?

1 THE COURT: Some hearsay exception that would allow
2 this to be admissible, but I'm not aware of any off the top of
3 my head. It seems to me pure hearsay. If you want to talk
4 about the things that are in here, if you want to talk about
5 these kinds of issues, then you have to testify under oath to
6 do it. You can't put your evidence or your version of the
7 story into evidence without subjecting yourself to
8 cross-examination. So I'm sorry, but it's not admissible
9 unless you can tell me some exception that I'm not thinking of.

10 MR. SCOTTON: No, just because I report to the U.S
11 attorney, California.

12 THE COURT: There's no exception for that.

13 (Thereupon, the following was heard in open court.)

14 BY MR. SCOTTON:

15 Q Those previous document that I present to you, you
16 acknowledge you got receipts from electronics that was given to
17 you by DHL of Mr. Olivera's packages that has been seized by
18 them, correct?

19 MS. MITRANI: Objection, relevance, asked and
20 answered.

21 THE COURT: Sustained.

22 BY MR. SCOTTON:

23 Q Those receipt came from Game Stop?

24 MS. MITRANI: Objection, Your Honor, same objection.

25 THE COURT: Sustained.

1 BY MR. SCOTTON:

2 Q Do you recall email that you share with the prosecutor on
3 February 4, 2012?

4 MS. MITRANI: Objection, Your Honor.

5 THE COURT: Sustained.

6 MS. MITRANI: Form of the question.

7 THE COURT: Sustained.

8 BY MR. SCOTTON:

9 Q Do you acknowledge that was saying -- DHL saying there
10 was --

11 MS. MITRANI: Objection. Objection. He's reading
12 from a document.

13 THE COURT: Sustained.

14 You can ask a question about the issue that's
15 addressed in there, I suppose, but you cannot read into
16 evidence or say in your question --

17 MR. SCOTTON: I'm not reading, Your Honor. She say
18 that I'm reading. I was not reading.

19 THE COURT: All right. Go ahead and ask the question.

20 BY MR. SCOTTON:

21 Q Has been indicate a clothing inside those package, or was
22 it electronics inside those packages?

23 A Are you talking about the packages regarding Claudia and
24 Rodrigo Olivera?

25 Q Yes, sir.

1 MS. MITRANI: Objection, asked and answered.

2 THE COURT: Overruled.

3 THE WITNESS: My recollection is that the package that
4 was sent by Claudia and Rodrigo Olivera contained clothing
5 items.

6 BY MR. SCOTTON:

7 Q But they present receipts that has it electronics,
8 correct, to the police office?

9 A No. Claudia Olivera and Claudia Scotton are two separate
10 people. They are not the same person, sir.

11 Q I understand that, sir. But the question is that they
12 both went and report, and they both report --

13 MS. MITRANI: Objection. Objection, facts not in
14 evidence and hearsay.

15 THE COURT: Sustained.

16 BY MR. SCOTTON:

17 Q Do you deny that I have done business with this man,
18 Olivera?

19 A Rodrigo Olivera and his wife paid for a company named
20 Brazil Express to send packages to Brazil.

21 Q That's what they told you or told DHL?

22 A Both.

23 Q And then in a police report, they do different?

24 MS. MITRANI: Objection, Your Honor, hearsay, facts
25 not in evidence.

1 THE COURT: Sustained.

2 BY MR. SCOTTON:

3 Q Did you send Ms. Olivera to my house?

4 MS. MITRANI: Objection, asked and answered.

5 THE COURT: Overruled.

6 THE WITNESS: To the extent your question was did I
7 send Ms. Olivera, no. If you meant or if I misunderstood and
8 you asked whether I sent Mr. Olivera, the answer is also no. I
9 have never sent anyone to your house, sir.

10 BY MR. SCOTTON:

11 Q You went and speak to Miss Adreana out at the condominium
12 that I rent in Boca Raton?

13 A I believe I may have had contact with the property manager
14 or someone from the property management office a few days after
15 you were arrested, if I remember correctly.

16 Q And that was the time you went inside my house?

17 A I have never been inside your house, sir.

18 Q If you have never been inside my house, why did you make
19 statement that you went inside the house to my family?

20 A I have never been inside your house, sir, although -- I
21 have never been inside your house.

22 Q Has the property manager provide you with a lease
23 agreement for my condominium?

24 A The lease agreement for the townhouse identified as 1921
25 was provided pursuant to a subpoena that was issued to the

1 owner of the property, a company named El, E-L, dash Ad, A-D,
2 National Properties, I believe they are the owners of the
3 property, made a decision not to contact the property
4 management office directly out of fear that they would notify
5 you that you were under investigation.

6 Q If you never have engaged, send anybody to my house, how
7 did they find the house if the house is not listed under my
8 name?

9 A Because the house was leased in the name of Samara Scotton
10 and I provided the subpoena that requested information
11 regarding that specific address, the townhouse located at
12 Unit 1921. So in light of the fact that I had identified with
13 specificity which unit I needed information on, they provided
14 the records.

15 Q So if the house is in the name of Samara, how can someone
16 know that I'm living in that house?

17 MS. MITRANI: Objection, asked and answered.

18 THE COURT: Sustained.

19 BY MR. SCOTTON:

20 Q Mr. Van Brunt, on August 24, 2013, do you recall that you
21 have a visitation in the jail with me?

22 A I recall, yes, I brought you documents.

23 Q Do you deny asking me questions about my family?

24 A I believe I asked how you and your family were doing.

25 Q And do you recall that I asked how is your wife and your

1 new baby doing?

2 A Yes.

3 MS. MITRANI: Objection, Your Honor. I object to this
4 invasion of privacy.

5 THE COURT: Well, I'm just going to sustain it because
6 it doesn't seem relevant to me.

7 BY MR. SCOTTON:

8 Q At that point, you were very upset with me. Do you recall
9 that?

10 A No. I anticipated you asking about my family.

11 Q And you handed me a plea offer also from the prosecutor,
12 correct?

13 MS. MITRANI: Your Honor.

14 THE COURT: Sustained.

15 Mr. Scotton, please come sidebar.

16 (Thereupon, the following was heard sidebar.)

17 THE COURT: This is yet another example of you
18 blatantly violating one of my orders. I previously told you
19 not to discuss plea agreements or plea offers of any type. It
20 can't be discussed during trial.

21 MS. MITRANI: He's also discussing the fact that he's
22 in jail.

23 THE COURT: That is also something else that is a
24 violation.

25 MR. SCOTTON: I apologize for that. The Court might

1 think I'm doing it intentionally. I wrote questions. That's
2 why I'm taking the time to go over the questions, so I don't
3 violate the procedures.

4 THE COURT: You wrote questions, but that's exactly my
5 point. You went back and you thought about these things, and
6 you wrote them out after you thought about them. And you know,
7 you have known for weeks before you wrote these questions out
8 that I was not going to allow you to go into those area. And
9 you are doing it anyway. So you need to avoid doing that.

10 MR. SCOTTON: Okay, Your Honor.

11 THE COURT: If you do it again, you're done.

12 MR. SCOTTON: I apologize, Your Honor.

13 (Thereupon, the following was heard in open court.)

14 BY MR. SCOTTON:

15 Q Mr. Van Brunt, is any procedure from FBI of an interview
16 to record interviews?

17 MS. MITRANI: Objection, asked and answered. We have
18 covered this.

19 THE COURT: Sustained.

20 BY MR. SCOTTON:

21 Q During this procedure, the name of Richard, last name
22 S-C-A-N-L-A-N, come to you?

23 A Could you please spell the last name?

24 Q S as in Sam, C-A-N-L-A-N.

25 A The last name of Scanlan doesn't come to the top of my

1 mind, although it's a fairly common name. I don't recall it
2 with any specificity in this case, sir.

3 Q He's not a friend of yours?

4 A Richard Scanlan?

5 Q Yes, sir.

6 MS. MITRANI: Objection to relevance if it's a friend
7 of his.

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q Is Mr. Richard a U.S. border patrol office?

11 A I have no idea.

12 Q Mr. Van Brunt, I understand you investigated this case
13 late summer of 2008, but how far do you think this case going?

14 MS. MITRANI: Objection, Your Honor, vague and
15 overbroad and we have covered this.

16 THE COURT: Sustained.

17 BY MR. SCOTTON:

18 Q Mr. Van Brunt, if this case was really about fraud, do you
19 think it would be substantial convince of physical evidence
20 against me here in this court?

21 A I'm sorry, sir, you lost me in the middle of your
22 question. I understood up through the part where you said if
23 this case were really about fraud, but then I didn't understand
24 your question after that. I'm sorry.

25 Q Do you think if this case was really about fraud, it would

1 be here, substantially convince of physical evidence?

2 A I believe the case is about fraud. I believe that there
3 is a significant amount of physical evidence in the form of the
4 packages and the rest of the evidence that has been admitted
5 during the government's case.

6 Q Have anyone during this trial present to this jury all the
7 true waybills, commercial invoice, customer certificate of
8 origin?

9 MS. MITRANI: Objection to the form of the question,
10 asked and answered. We have covered this ground.

11 THE COURT: Sustained.

12 BY MR. SCOTTON:

13 Q Is it not the truth the box present here to the Court was
14 lost and has been paid by claims?

15 A What's true is that these boxes were shipped on fraudulent
16 accounts, seized by the shipping companies and turned over to
17 the FBI as evidence for use in our criminal investigation.

18 Q My question is not the truth that those box has been paid
19 by claim department?

20 MS. MITRANI: Asked and answered.

21 THE COURT: Sustained.

22 BY MR. SCOTTON:

23 Q So are you very familiar with this case, the fact of this
24 case, correct?

25 A Yes, I believe I am familiar with the facts and evidence

1 of the case.

2 Q If you saw it, isn't it true that you know that the guilty
3 party of this case has already signed a confession?

4 MS. MITRANI: Objection, Your Honor, to the form of
5 the question and the foundation.

6 THE COURT: Sustained.

7 BY MR. SCOTTON:

8 Q Agent Van Brunt, those voice recordings you present to
9 Court, is it not the truth that those voice could not exist?

10 A The voices exist because they were played in court, so the
11 voices exist.

12 Q Mr. Van Brunt, why are you prosecuting me and not
13 prosecuting the right person involved in this?

14 MS. MITRANI: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MR. SCOTTON:

17 Q Mr. Van Brunt, as an experienced FBI agent, are you
18 familiar with the criminal voice analysis capability?

19 A No.

20 Q In your professional opinion, you don't think the voice is
21 unique as a fingerprint?

22 A I don't know that I have a professional opinion on voice
23 analysis. I don't have any training in voice analysis.

24 Q Do you have access to my fingerprints, Mr. Van Brunt?

25 A You were fingerprinted on the day of your arrest, yes.

1 Q And they confirm to be mine, correct?

2 A I submitted your fingerprints to the normal process and
3 have not been contacted by whichever component of the FBI
4 Department of Justice has entered those into the system.

5 Q Have you ever attempt to record my voice?

6 A Yes, I recorded your voice when I met you face to face as
7 a DHL employee. And I also briefly recorded your voice when I
8 conducted surveillance of you on the Coral Springs Pak Mail,
9 watched you go into the store, followed you into the store with
10 an audio video recording and was hoping to engage you in
11 conversation. But, unfortunately, you left rather quickly and
12 I never had the opportunity to attempt to strike up a
13 conversation with you.

14 Q Have I refused a voice analysis?

15 MS. MITRANI: Objection, Your Honor.

16 THE COURT: Overruled.

17 THE WITNESS: I have never asked you.

18 BY MR. SCOTTON:

19 Q If you are truly interested in investigating this case,
20 Mr. Van Brunt, and fairly, why you have not done a voice
21 analysis?

22 A I didn't believe it was necessary. The charges in this
23 case are mail fraud and later false statements. And in light
24 of the amount of evidence that was collected, the U.S.
25 Attorney's Office made a decision to present the information to

1 a grand jury which ultimately led to you being charged.

2 Q If that's the case, why you brought two people that I love
3 here to confirm that the voice on the recording is mine?

4 A The U.S. Attorney's Office decides who is going to be
5 called as a witness. The fact that the U.S. Attorney's Office
6 chose to call people as a witness who knew you well, who had
7 spent a significant amount of time with you, and played the
8 recordings for those people so they could testify to the jury
9 was a prosecutorial decision. I as the FBI agent are not
10 delegated with the authority to determine who is or is not
11 called as a witness.

12 Q Is it not the truth that you really know who the voice
13 belongs to on those records?

14 A I do. It belongs to you.

15 Q You say it belongs to me, correct?

16 A Yes.

17 Q To the blow whistler and not to the one, the fugitive to
18 Brazil, correct?

19 A I have no knowledge that you are a whistleblower. You
20 never brought up anything in your post arrest interview and you
21 never brought up anything in our face-to-face meeting in
22 Boca Raton, so --

23 I have also run your name through the FBI database since
24 your arrest and with the exception of your name being linked to
25 this specific case that we are in trial for, I don't believe

1 there are any records of you in the FBI system.

2 THE COURT: We are going to take a break and we will
3 return at ten of 3:00. All rise for the jury, please.

4 (Thereupon, the jury exited the courtroom at
5 2:40 p.m.)

6 THE COURT: We will see you back here at ten of 3:00.

7 (Thereupon, a recess was taken at 2:40 p.m.)

8 THE COURT: Mr. Scotton, how much longer do we have
9 with the agent?

10 MR. SCOTTON: Your Honor, I have a couple of questions
11 here, but as I'm going to the things that we have talked to, I
12 have been skipping some questions. So maybe 45 minutes, I
13 think, if I start skipping questions the way I have been doing.

14 THE COURT: Okay. I just want to make sure we have
15 enough time to get that other witness in today, but I would
16 like to finish with the agent. I think we have to end today at
17 4:00 -- no, 4:30. So that gives us an hour and 40 minutes. So
18 that should be more than enough time.

19 MS. MITRANI: I don't know, I thought --

20 THE COURT: Oh, today is 4:00. Yeah, today is 4:00 if
21 the juror has the class. So we have an hour and 10 minutes.

22 MR. SCOTTON: Your Honor, I will try to do my best,
23 so --

24 THE COURT: Where is the other witness from?

25 MS. MITRANI: They are local, Your Honor.

1 THE COURT: All right. Let's all rise for the jury.

2 (Thereupon, the jury entered the courtroom at

3 2:53 p.m.)

4 THE COURT: All righty, please be seated everyone.

5 And, Agent, you are still under oath.

6 Mr. Scotton, you may continue.

7 BY MR. SCOTTON:

8 Q Mr. Van Brunt, during the investigation as you subpoenaed
9 the banks, you have receive all of my bank statements, correct?

10 A I received the bank statements that the banks produced,
11 yes.

12 Q And your recollection, you see money coming in and money
13 going out, correct?

14 A Correct.

15 Q Then you see charges on those accounts for merchandise,
16 correct?

17 A Correct.

18 Q You see charge, grant from bills charge?

19 A Correct.

20 Q From shipping packages, shipping materials, correct?

21 A There were charges to a Coral Springs Pak Mail.

22 Q Have you seen any charges over there on my account of me
23 leasing a Ferrari before?

24 A Leasing a Ferrari?

25 Q Yes.

1 A No.

2 Q Have you seen me leasing a private jet?

3 A No.

4 Q Did you see charge of a mortgage of a house on oceanfront?

5 A No mortgage payments, just your rent paid to Mizner on the
6 green townhouse community.

7 Q Prosecutor has mentioned here during the statements of
8 my -- mentioned the bank statements, she tried to mention
9 charges of a jewelry store. Do you recall that?

10 A Yes.

11 Q Is it a crime to buy jewelry for someone you love?

12 A No.

13 Q Is it a crime go to a restaurant and pay for the dinner?

14 A No.

15 Q Then where is all the million dollars, Mr. Van Brunt, that
16 I committed fraud against these companies when I can't even
17 afford to pay for a lawyer?

18 MS. MITRANI: Objection, Your Honor.

19 THE COURT: Sustained. And you are done, Mr. Scotton.
20 All right. Is there any cross.

21 MS. MITRANI: Yes, Your Honor.

22 CROSS EXAMINATION

23

24 BY MS. MITRANI:

25 Q Good afternoon, Agent Van Brunt.

1 A Hello.

2 MR. SCOTTON: Your Honor, we gather the check as
3 evidence and the Court accept. I don't understand --

4 MS. MITRANI: Not that one.

5 MR. SCOTTON: -- you know --

6 THE COURT: All right. This is not the time to be
7 discussing this. We are in cross-examination now and I will be
8 happy to address your concern at a break.

9 MS. MITRANI: Thank you, Your Honor.

10 BY MS. MITRANI:

11 Q I want to clarify some things. Mr. Scotton, the defendant
12 was asking you questions about Rodrigo Olivera.

13 A Correct.

14 Q All right. Did you identify Mr. Olivera to assist you in
15 the undercover purchase in part because he had prior dealings
16 with the defendant's company Brazil Express?

17 A Correct.

18 Q Can you just, you know, and let me ask you.

19 MS. MITRANI: Can I approach, Your Honor?

20 THE COURT: Yes.

21 BY MS. MITRANI:

22 Q So the defendant showed you this as Bates labeled 759, the
23 check to Claudia Scotton from Rodrigo Olivera's Bank of America
24 account, correct?

25 A Correct.

1 Q And he introduced it into evidence through you, correct?

2 A Correct.

3 Q And then he also showed you the document that preceded
4 that document. In other words, the one that came before, DHL
5 758?

6 A Correct.

7 Q And 758 was asking you some questions and you indicated
8 that that was from Claudia Olivera, correct?

9 A Correct.

10 MS. MITRANI: Your Honor, the government would offer
11 DHL 758 into evidence.

12 THE COURT: Is there any objection?

13 MR. SCOTTON: Yes, Your Honor.

14 THE COURT: What is the objection?

15 MR. SCOTTON: When I tried to offer, she objected, say
16 that it was not legitimate paper and she said she's going to
17 object --

18 THE COURT: All right. Because she objected
19 previously is not necessarily an objection. Is there some
20 legal basis for it? Is there some -- I don't remember whether
21 she objected or not and what she said. So if you have a legal
22 basis for objecting, I will be happy to hear it.

23 MR. SCOTTON: They say it's not authenticated,
24 Your Honor.

25 THE COURT: All right. Go ahead and lay the

1 foundation.

2 BY MS. MITRANI:

3 Q All right. So 759, which the defendant introduced, was
4 that produced to you and to the government, then to the
5 defendant in discovery?

6 A Correct. The document --

7 Q Hold on a second and I will let you talk. I promise.
8 Were these documents that you received from DHL?

9 A Correct.

10 Q And also this DHL 758, which the defendant asked you
11 about, was that also produced by DHL in discovery?

12 A Yes.

13 Q And were the defendant's questions to you about the
14 Olivera transaction, do they concern the events that are the
15 subject of 758?

16 A Yes.

17 Q Has 758 been altered or changed in any way from the way
18 you received it from DHL?

19 A No.

20 Q And, again, is this basically the accompanying document to
21 759?

22 A Correct. It's -- they are associated with each other and
23 related to the information that was sent to DHL by Rodrigo and
24 Claudia Olivera.

25 MS. MITRANI: Again, Your Honor, we would offer 758

1 for completeness.

2 THE COURT: All right. Let me see it and let me have
3 the parties at sidebar.

4 (Thereupon, the following was heard sidebar.)

5 THE COURT: Why isn't this inadmissible as hearsay?

6 MS. MITRANI: He was questioning the agent extensively
7 on --

8 THE COURT: He did.

9 MS. MITRANI: -- this transaction. I think for
10 completeness --

11 THE COURT: I think you could have asked that come in
12 for completeness at the time maybe, but you didn't and now I
13 think it's -- it seems to me that it's hearsay. So I'm going
14 to sustain the objection.

15 MS. MITRANI: Okay.

16 (Thereupon, the following was heard in open court.)

17 BY MS. MITRANI:

18 Q And the check -- excuse me. And what was the transaction
19 that Mr. Olivera had with the defendant that ultimate -- as it
20 relates to that check. Can you explain that, please?

21 A Sure. The defendant and his wife had contracted with
22 Brazil --

23 Q Mr. Olivera or the defendant?

24 A I'm sorry. Rodrigo Olivera and his wife Claudia Olivera
25 had contracted with Brazil Express to deliver a certain number

1 of packages to Brazil. My recollection is the packages
2 contained clothing and other apparel. The packages were
3 shipped on DHL and were seized by DHL. Once Claudia and
4 Rodrigo contacted DHL, they were advised that the packages were
5 shipped due to fraud. Claudia and Rodrigo Olivera contacted
6 DHL in an effort to have their merchandise returned to them.
7 As part of that process, Claudia Olivera and Rodrigo Olivera
8 provided DHL with a copy of the check showing that they had
9 paid, that the payment mentioned the company Brazil Express.
10 They provided the waybill numbers and they provided copies of
11 the driver's license for both Claudia and Rodrigo Olivera to
12 DHL in an effort to prove to them that they had paid someone, a
13 different company to ship the packages to Brazil.

14 Ultimately, DHL refused to return their merchandise. So
15 Rodrigo and Claudia Olivera suffered not only the \$927 in lost
16 shipping, but they also lost access to the goods that they had
17 shipped down. That's what the document check references and
18 relates to.

19 Q The check that the defendant introduced that's payable to
20 Claudia Scotton which says Brazil Express in the memo line?

21 A Correct.

22 Q And the defendant was asking you whether this was
23 deposited into Ms. Claudia Scotton's account. My question to
24 you is, do you know whether she deposited this check into her
25 account on behalf of the defendant or not, do you know one or

1 the other?

2 A I don't know one way or another.

3 Q I think at the beginning of his -- or I don't know if it
4 was the beginning, I'm sorry. At some point during the
5 defendant's questioning of you, he was asking you some
6 questions about Go Daddy. Do you recall that?

7 A Correct.

8 Q And I believe he only showed you a couple, one or two
9 pages of the subpoenaed documents?

10 A I don't believe he showed me any documents.

11 Q Okay. Do you recall the whole entire Go Daddy all of the
12 documents that you received in response to the subpoena?

13 A No, I don't have them memorized.

14 Q Do you recall that Go Daddy linked Brazil Express directly
15 to the defendant by name and by his P.O. Box?

16 A I believe so, yes.

17 Q And when the defendant was asking you a question about
18 Luciana Sosa and Brazil Express, did he provide a time frame
19 for you?

20 A No.

21 Q And I could show you the records if you need to refresh
22 your recollection. Do the Go Daddy records show that
23 Luciana Sosa had that domain name Brazil Express for a period
24 of time and then the defendant took over that domain name?

25 MR. SCOTTON: I'm going to object, Your Honor.

1 THE COURT: What's the objection?

2 MR. SCOTTON: The best evidence rule.

3 THE COURT: I don't recall, is the whole document in
4 evidence at this time?

5 MS. MITRANI: It is not. The government would offer
6 it into evidence then.

7 THE COURT: Is there any objection?

8 MR. SCOTTON: Yes, Your Honor. The agent already
9 declined when I asked him those questions that he have no
10 recollect of such a woman.

11 THE COURT: What is the nature of the objection, the
12 legal nature?

13 MR. SCOTTON: Your Honor, he already say that he has
14 no recollection of that. So when I tried to bring that
15 evidence.

16 THE COURT: Okay. Let me ask if there is an
17 objection, a legal objection to the admissibility of this
18 document.

19 MR. SCOTTON: The counsel is testifying for the agent,
20 Your Honor.

21 THE COURT: All right. That's not a legal objection
22 to the document's admissibility. Last chance, is there a legal
23 objection to the document's admissibility.

24 MR. SCOTTON: My object to say what I mentioned
25 before, Your Honor. I cross-examined him those questions, he

1 said I have no recollection.

2 THE COURT: Overruled.

3 MS. MITRANI: For the record, Your Honor, these are
4 documents --

5 All right. Your Honor, we will call this Government's
6 Exhibit 36 -- or 35. We will call this Government's
7 Exhibit 35. And for the record, they are Go Daddy documents,
8 Bates labeled GD256 to GD280. I apologize, it's Go Daddy 1.

9 THE COURT: And of course, Mr. Scotton, you will have
10 an opportunity to redirect on this. So you will have a chance
11 to ask questions about it as well.

12 MR. SCOTTON: Thank you, Your Honor.

13 BY MS. MITRANI:

14 Q All right. So the defendant had asked you questions about
15 Go Daddy and he asked you about Luciana Sosa. Do you recall
16 that?

17 A Yes.

18 THE COURT: I'm sorry, I missed it. What did you say
19 the Bates numbers were?

20 MS. MITRANI: Hold on a second, Your Honor. GD01, 02,
21 03, 12, 13, 18, 20, 22, 235 and 246, 256, 257, 258, 259, 268,
22 270, 271, 273, 274, 275, 276, 277 and 278 and 279 and 280 and
23 282. And thank you to Mr. Frank for pulling those for me.

24 THE COURT: Okay.

25

1 BY MS. MITRANI:

2 Q I'm showing you GD012, and these are from the Go Daddy
3 records. And does that show that Roger Scotton with his -- an
4 ID of 5129010?

5 A Correct. It shows the contact information for
6 Mr. Scotton.

7 Q At Brazil Express, P.O. Box 629, Boca Raton, Florida?

8 A Correct.

9 Q With an email of R Scotton at Roger Racing dot com?

10 A Correct. And a phone number that ends in 7348.

11 Q And this is GD13. Does that same ID number that was
12 assigned to the defendant list other domain names registered to
13 the defendant?

14 A Yes.

15 MR. SCOTTON: Your Honor, we need a sidebar.

16 (Thereupon, the following was heard sidebar.)

17 MR. SCOTTON: I have seen those documents before and
18 talked to previous lawyers and no authentication in those from
19 Go Daddy.

20 THE COURT: I gave you a chance to object on any legal
21 grounds. You didn't say authenticity and I admitted them at
22 that time. I gave you three or four opportunities and I even
23 said this is the last chance.

24 MR. SCOTTON: How come the domain Brasil dot net,
25 those documents may be fabricated, they are allowed to bring it

1 into court.

2 THE COURT: Well, you could have objected, you did
3 not. You can ask questions on redirect as I previously said.

4 (Thereupon, the following was heard in open court.)

5 BY MS. MITRANI:

6 Q I'm showing you GD18. Do you see that?

7 A I can.

8 Q And it shows the defendant -- excuse me. It shows Brasil
9 Express Online dot com, correct?

10 A Correct.

11 Q With an update of 8/11/2008?

12 A Correct.

13 Q Under the same shopper ID that was assigned to
14 Roger Scotton, correct?

15 A Correct. The shopper ID ends in 9010.

16 Q And I think just the last questions I have for you are the
17 defendant was asking you about the checks that he received
18 from -- excuse me, the checks that you received pursuant to the
19 subpoenas?

20 A Correct.

21 Q And the checks that you received pursuant to the subpoenas
22 to the various financial institutions, was there often stuff
23 annotated in the for or shipping line?

24 A Yes, on what I would call the memo line of the check face.

25 Q And did you ever -- did you change or alter those in any

1 way?

2 A No.

3 Q And I believe in response to his questions, you had
4 indicated that you had reviewed many, many different checks, I
5 don't want to put a number on it, coming from many different
6 entities to the defendant's bank accounts, correct?

7 A Correct.

8 Q And so this is from SunTrust Bank, for example. This is
9 SunTrust 29. Is this --

10 A Correct, this is a check that was deposited into the
11 defendant's SunTrust Bank account.

12 Q From an individual whose initials are SM as indicated in
13 the top corner?

14 A Correct.

15 Q And here's another example from SunTrust. This is from an
16 individual whose name is -- you know, initials are VG to
17 Brazil Express and in the memo line, it says DHL?

18 A Correct, DHL followed by a ten-digit number.

19 Q And here's another check. This is SunTrust 40 from
20 individuals whose initials are WFA and ISA payable to
21 Brazil Express and in the memo are Brasil Express Online?

22 A Correct.

23 Q Do you know how many different customers the defendant
24 had?

25 A Hundreds.

1 MS. MITRANI: No more questions, Your Honor.

2 THE COURT: Any redirect.

3 REDIRECT EXAMINATION

4 BY MR. SCOTTON:

5 Q During the cross-examination, I show you the same paper
6 the prosecutor tried to present as evidence here with some
7 track numbers. Do you recall that?

8 A Yes. She showed me a letter from Claudia Olivera to
9 Nicole Nelson with tracking numbers on it, yes.

10 Q And I asked you a question if you recollect the box, if
11 you ever get any waybills or commercial invoice from
12 Mr. Rodrigo and you denied that?

13 A I believe you asked me if I received waybills or invoices
14 from other customers and I believe my answer to you was, yes, I
15 had received them but that the information I had received
16 regarding Claudia and Rodrigo Olivera was provided to me by
17 DHL, not from them individually.

18 Q But they spoke to you and they complained to you, they
19 lost the packets, but they couldn't provide you with the real
20 information through evidence, the waybills, commercial invoice,
21 that they have shipped packets through me?

22 A I didn't need them to provide me with any information
23 because I had received it from DHL, and I brought the
24 information that DHL provided me and I discussed it with
25 Rodrigo and his wife.

1 Q Right, you brought the numbers. What is the waybills and
2 commercials invoice and certify of origin?

3 A I assume they are still on the boxes that were seized by
4 DHL once they seized them based on your fraudulent accounts.

5 Q Right, and they don't provide the real evidence to show to
6 this jury?

7 A The real evidence is here.

8 Q You just say that you don't have it. In other words, the
9 evidence for Mr. Rodrigo Olivera.

10 A The waybill bills that you are referencing in the letter
11 that Claudia Olivera wrote to Nicole Nelson are not substantive
12 counts in the indictment. Therefore, they are not necessary to
13 be proven as criminal activity. What we are proving is the
14 specific substantive mail fraud counts that we have charged you
15 with and that's the evidence that's been presented.

16 Q So you mention him several times during this
17 investigation, but then you say now that it is not evidence to
18 bring it in to show to this Court?

19 A I believe there is plenty of evidence. If you would like,
20 I would summarize it again.

21 Q So they claim they lost clothing, but when you saw the
22 receipt, the receipt shows electronics, correct?

23 A No, the receipt that you showed me was from
24 Claudia Scotton. Claudia Scotton and Claudia Olivera are two
25 different people. I have met both of them. They are two

1 totally different people. Furthermore, if you looked at the
2 DHL Bates numbers, you see that the documents from
3 Claudia Scotton that were provided to DHL have Bates numbers
4 below 100, compared to what you entered as Defendant's
5 Exhibit 6, which has a Bates number of 589. So having reviewed
6 all the DHL records, I can tell you that they are in two
7 totally different parts of the production. The reason why I
8 know that is I'm the person who put the sticker on each one of
9 those documents.

10 Q So Rodrigo and his wife complained to Claudia, Claudia
11 file a report together and she --

12 A No.

13 Q And faxed those information to Nicole?

14 A No.

15 Q And you see Claudia Scotton names on that receipts that I
16 show you?

17 A There are two totally separate complaints that were filed
18 with DHL, and the receipts that you showed me from Game Stop,
19 sir, lacked the name of a single person on it. So I don't know
20 whether that's an actual Game Stop receipt, whether it's a
21 document that was created by Claudia Scotton, whether it was
22 created by you. All I know is that document was provided to
23 DHL as a Bates number of less than 100 compared with the
24 documents that were provided to DHL by Rodrigo Olivera and his
25 wife Claudia, two totally separate interactions with DHL from

1 two totally separate people.

2 Q Okay. And the same clients, correct?

3 A What do you mean the same client?

4 Q You tried to mention this to the jury like it's two
5 different persons here, but they went to Claudia to ship those
6 packages. They went to Claudia and complained to Claudia,
7 correct?

8 A They contacted Brazil Express, Rodrigo told me the person
9 he interacted with was Flavio Scotton. The packages were
10 seized. Rodrigo and Claudia Olivera contacted DHL, provided
11 DHL with documentation. Their packages were not returned to
12 them. They were never refunded any money. They were not
13 provided with any claims check based on their packages being
14 seized. The other documents that you showed me regarding
15 Claudia Scotton relate to totally separate packages that were
16 also seized by DHL.

17 Q The document that provide to you, it is DHL 758. Do you
18 recall the document?

19 A I believe that's Defendant's Exhibit 6, yes.

20 Q And Claude Olivera is Claudia Scotton's client, correct?

21 MS. MITRANI: Objection, Your Honor, asked and
22 answered now several times.

23 THE COURT: Sustained. Sorry, I was having trouble
24 getting it out.

25 MR. SCOTTON: And I know I'm driving you crazy,

1 Your Honor.

2 THE COURT: I did not say that.

3 BY MR. SCOTTON:

4 Q Agent Van Brunt, how can you allege these people have sent
5 packages to me when the evidence is right on the table that
6 they paid Claudia Scotton and you just mentioned that Rodrigo
7 called my brother, and during your investigation you say they
8 have not interviewed my brother, my brother doesn't even work
9 with me?

10 MS. MITRANI: Objection to the narrative and --

11 THE COURT: Sustained.

12 BY MR. SCOTTON:

13 Q It is not the truth that you have not interviewed my
14 brother?

15 MS. MITRANI: Asked and answered.

16 THE COURT: Sustained.

17 BY MR. SCOTTON:

18 Q Did you interview my brother?

19 MS. MITRANI: Asked and answered.

20 THE COURT: Sustained.

21 MR. SCOTTON: This is great.

22 THE COURT: If you have questions, you can ask them if
23 they haven't been asked before and they are otherwise
24 permissible questions. But please do not comment.

25

1 BY MR. SCOTTON:

2 Q So those packages that Nicole and Claudia Olivera been
3 talking about --

4 MS. MITRANI: Objection.

5 BY MR. SCOTTON:

6 Q -- is eight pages all together on this paper?

7 MS. MITRANI: We have covered this territory now.

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q Did you report ten packages in your reports?

11 MS. MITRANI: Objection, Your Honor, to the form of
12 the question and beyond the scope.

13 THE COURT: Sustained.

14 BY MR. SCOTTON:

15 Q Mr. Van Brunt, on the paperwork that prosecutor present
16 here by Go Daddy here, do you have the full report by Go Daddy?

17 A I believe the full report was provided in discovery. I
18 don't have it with me on the witness stand.

19 Q When has now Go Daddy provided with Brasil Express Online
20 dot net to you, as on my name?

21 A I'm sorry, I didn't understand your question.

22 Q Go Daddy has not provided you with a full report then?

23 A I don't know what you mean by full report.

24 Q If you guys present all the domains the defendant has
25 owned it should be Brasil Express Online dot net as part of the

1 evidence, correct?

2 A We send a subpoena to a company or a financial institution
3 or an individual. They produce the records that they tell us
4 are included within the scope of the subpoena.

5 Q What does that shows to you what, the investigator is not
6 accurate?

7 A No, it shows me that perhaps you opened up a new domain
8 name after I had subpoenaed them in an effort to further
9 continue your criminal activities.

10 Q That's your allegations, right?

11 A You asked me to speculate on why your Brasil Express
12 Online dot net might not be contained in the Go Daddy
13 production, and my response is depending on the date that I
14 sent the subpoena, a newly acquired or obtained domain name may
15 have been registered or created after the date of the subpoena.

16 Q And why did you submit a subpoena?

17 A Why did I submit?

18 Q When did you submit the subpoena?

19 A I don't recall. It may -- I don't recall.

20 Q Do you recall every single question this prosecutor ask
21 you, but when I ask you a question, you never recall those
22 questions I ask you to, right, and you investigated this case
23 since 2008, correct?

24 A Yes, I have investigated the case since 2008. To the
25 extent that you want to provide me with a document to refresh

1 my recollection, I'm happy to do it. You have provided me with
2 documents and it has had helped refresh my recollection.
3 Unfortunately, I don't have a photographic memory so I'm not
4 quite capable of remembering thousands of pages of documents.
5 But I'm happy to review any document that you think might help
6 refresh my recollection, sir.

7 Q And I asked you a question about Luciana down in
8 California, you flat out denied and you have no idea about what
9 I am talking about. Do you remember that?

10 A No, I don't believe that I flat out denied it. I believe
11 what I said was it wasn't a name that I was familiar with. I
12 did state that we subpoenaed Go Daddy as a domain provider. I
13 did state that they produced records. I did state that I
14 thought they were a company located on the west coast of
15 Florida. My recollection is that you didn't show me any
16 documents that might help refresh my recollection. And based
17 on not having any documents, I can only remember what I
18 remembered.

19 Q It's not the truth that after she put the website down, I
20 bought the domain? Did the records show that at one point she
21 owned Brasil Express Online dot com and then after she
22 dismissed that website, I bought that domain and then I started
23 my Brazil Express website?

24 A I think what the record showed is that the domain name
25 existed prior to you owning it, and she being the customer

1 either failed to renew it or chose not to renew it and you
2 purchased it and provided your name and mailing address and
3 phone number as the point of contact.

4 Q But when I asked you, you completely denied that?

5 A I didn't deny that. You asked me if I knew who the woman
6 was and I told you it was not a name I was familiar with.

7 MR. SCOTTON: No more questions, Your Honor.

8 THE COURT: Thank you, Agent. You may step down.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: And, Mr. Scotton, you may call your next
11 witness.

12 Mr. Scotton, is there anyone you will be calling?

13 MR. SCOTTON: Yes, Your Honor, I'm going to call Rihab
14 Hamade.

15 MS. MITRANI: Your Honor, can we have a brief sidebar
16 regarding that witness?

17 THE COURT: All right.

18 (Thereupon, the following was heard sidebar.)

19 MS. MITRANI: So it's my understanding that this
20 witness is the defendant's lawyer. She brought a file with
21 her. I wanted to see it. She wouldn't show it to me because
22 of attorney-client privilege.

23 THE COURT: She's not here to testify at all about any
24 legal matters as I explained on numerous occasions to
25 Mr. Scotton.

1 MS. MITRANI: Okay.

2 THE COURT: If you go into that, we are ending this
3 testimony. You told me that you were going to have her testify
4 about her observations of you with Ms. Reyes, and that's
5 allowed. But she cannot opine on the legality of things. If
6 you want to, you may or may not have told me that you wanted to
7 use her for a defense of advice of counsel. If you do, then
8 you have to reveal what you told her and she will be subject to
9 cross-examination on that. And you will have, as I also
10 explained to you on several occasions, you will have waived
11 your attorney-client privilege and all of that will be subject
12 to cross-examination. I just want to make sure you understand.
13 Do you have any questions at all about any of that?

14 MR. SCOTTON: No, Your Honor.

15 THE COURT: Okay.

16 MS. MITRANI: So I'm sorry, Your Honor. So I'm clear,
17 as we stand now there is no attorney-client waiver, he's not
18 going to ask her about that. If and when that occurs, I can
19 seek to see her file and have a waiver?

20 MR. SCOTTON: I am going to be asking questions about
21 my relationship going to ask questions about if I complied with
22 everything that the law requires she asked me for.

23 THE COURT: Well, I told you, you can't do that. What
24 you can do is you can tell her if you want to do an advice of
25 counsel defense, you can tell her what you told her and then

1 what she advised you with respect to telling the government,
2 that is, let's say, and I don't know what you told her because
3 we haven't discussed this. But I want to give an example. If,
4 for example, you told her, I'm not really married to Aylin, we
5 got married but I really have another relationship with someone
6 else, is it still okay for me to seek this and she said, yes,
7 then yes, you can get into that. That's called an advice of
8 counsel defense.

9 But she cannot opine on, you know, what's legal and
10 what's not legal. She can tell you what she told you in
11 response to what you -- to the questions that you asked her and
12 the information you gave her. Do you understand?

13 MR. SCOTTON: Anything related to the fact that I used
14 to live in one place several times and then I moved to another
15 place, any objection to that, any violation of the rule?

16 THE COURT: I don't know if you are asking me if she
17 is a fact witness, can testify as to where you lived because
18 she has been there, of course she can, or if you are asking me
19 about whether --

20 MR. SCOTTON: You are saying --

21 THE COURT: I don't know what you asking me.

22 MR. SCOTTON: You say about legal, then if I ask her
23 questions about the idea, something wrong by providing
24 immigration my address? That's the kind of question I'm going
25 to ask.

1 THE COURT: I don't want you to ask anything in
2 particular. I want you to ask anything you want to ask in your
3 defense as long as it's a permissible question. What I'm not
4 sure of, but what I think you might be trying to establish, is
5 advice of counsel defense. Let me tell you specifically what
6 you have to do. You have to show that you made a full and
7 complete good faith report of all material facts to an
8 attorney, that you are considered to be competent, that you
9 received the attorney's advice as to the specific course of
10 conduct that you followed, and that you reasonably rely on that
11 advice in good faith.

12 So if that's -- and I'm not telling you that you
13 should do that or not do that, I think that's what you were
14 trying to tell me you wanted to do. If that's what you wanted
15 to do, you need to prove all three of these things and this
16 would be the witness I imagine that you might do it with. And
17 you could ask questions that went to these issues regarding
18 what you told your attorney and what your attorney told you.
19 But beyond that, she cannot opine on, you know, whether it's
20 legal to reenter the country under certain circumstances.
21 She's not here to testify as an expert, as I have previously
22 explained. The Court provides the instruction on the law. Do
23 you understand?

24 MR. SCOTTON: Yes, Your Honor. If I ask her in the
25 beginning about trying to establish the -- establish the

1 character of the witness as lawyer, I ask her how long she been
2 practicing law, those kind of case she's done before.

3 THE COURT: You can go into a little bit on that
4 because part of this is demonstrating that you considered the
5 attorney to be competent, okay? But I don't expect you to go
6 on and on about this because it's not -- she's not here to
7 opine on the legality of issues.

8 MR. SCOTTON: I understand.

9 MS. MITRANI: Your Honor, if he goes down that road,
10 it's my understanding there's waiver of attorney-client
11 privilege.

12 THE COURT: Yes, absolutely.

13 MS. MITRANI: Then I get to see her file and ask
14 questions. That's where I'm coming from.

15 THE COURT: I'm just trying to remember if it's a
16 waiver on the entire thing or just on the subject matter that
17 he told you, but it might be. It might be just on the subject
18 matter, but it may be the case that the subject matter that he
19 told you is the entire file. I don't know.

20 MR. SCOTTON: The thing, I'm not asking question about
21 my personal information. I'm just trying to establish that
22 she's competent lawyer and, you know, she done this before. So
23 I'm not asking question about my particular case in this
24 matter, just the jury to get.

25 THE COURT: Then that's not relevant. Maybe you are

1 not trying to establish an advice of counsel defense and that's
2 okay, too, you don't have to. But if that's what -- if you are
3 trying to say, I told her everything and she told me it was
4 okay to file this the way I filed it, and that this wouldn't be
5 a false statement, then if she's going to testify to that, then
6 that's an absolute defense if it meets all of these things.

7 Now, I don't know whether you are putting her on for
8 that reason. Obviously, I'm not privy to that. But if that's
9 what you are doing, then you have to establish all these things
10 and you waive the attorney-client privilege with respect to all
11 of these things. If you are not doing that then, you know, I
12 don't -- I'm not sure why getting too deep into her background
13 other than just to explain who she is really matters, because
14 she can't give an opinion on the law. Do you understand?

15 MR. SCOTTON: Yes, Your Honor.

16 THE COURT: All right.

17 MS. MITRANI: I guess we will see how it goes.

18 THE COURT: I guess so.

19 MS. MITRANI: I don't want to offend the Court, I may
20 ask for another sidebar, see how things go.

21 THE COURT: Okay. I mean, I think I have been pretty
22 clear. So maybe you can tell us, are you intending to present
23 an advice of counsel defense? That would make it easier for me
24 to know.

25 MR. SCOTTON: The cross-examination is going to be

1 based on the --

2 THE COURT: I'm sorry, can you just answer my
3 question. Are you intending to present an advice of counsel
4 defense as I have just explained it you to?

5 MR. SCOTTON: No, Your Honor.

6 THE COURT: In that case, all that she will be
7 testifying to is her observations of you and Aylin.

8 MR. SCOTTON: Yes.

9 THE COURT: Is that right?

10 MR. SCOTTON: Yes, Your Honor.

11 THE COURT: Okay, then. Thank you.

12 MS. MITRANI: Thank you, Your Honor, so much.

13 (Thereupon, the following was heard in open court.)

14 THE COURTROOM DEPUTY: Please stand and raise your
15 right hand, ma'am.

16 RIHAB T. HAMADE

17 Having been first duly sworn on oath, was examined and
18 testified as follows:

19 THE COURTROOM DEPUTY: Please be seated. State and
20 spell your first and last name for the record.

21 THE WITNESS: Rihab T. Hamade, R-I-H-A-B, last name
22 H-A-M-A-D-E.

23 DIRECT EXAMINATION

24 BY MR. SCOTTON:

25 Q Hi, Ms. Rihab, how are you doing today?

1 A Good. Thank you.

2 Q Thank you for being here today. We really appreciate your
3 patience.

4 A Thank you.

5 Q Ms. Rihab, can you introduce yourself to the jury and kind
6 of give them a little information of what you do for a living?

7 A I'm an immigration attorney.

8 Q And how long have you been practicing immigration laws?

9 A Since 2003.

10 Q And out of which location you been doing this?

11 A From Boca Raton.

12 Q Ms. Rihab, do you recall the first time me and my wife
13 came to your office?

14 A Yes.

15 Q And do recall, can you explain to the jury what we are
16 seeking over there that day in your office?

17 A You came to see me regarding an application to adjust
18 status for you and her to become lawful permanent residents.

19 Q And was it two different applications, correct?

20 A Yes.

21 Q Can you explain to the jury, what is the difference
22 between both application?

23 A Well, she was applying for residency based on the fact
24 that she's Cuban, under the Cuban Adjustment Act. And you were
25 applying based under the same act based on your marriage to

1 her.

2 Q And on first date that we met, did we start the process of
3 the application or we still going -- we went through other
4 meetings?

5 A If I recall, the first time you -- I gave you information
6 on how to proceed with the case, and I believe you came back
7 the second time and then we started the case.

8 Q And the second time, I was with my wife next to me, or I
9 was by myself. Do you recall that?

10 A I'm almost sure she was with you. I'm not a hundred
11 percent, I don't remember.

12 Q Ms. Rihab, how many times did me and my wife has come to
13 you that you can recall, see us together?

14 A I would say three to four times.

15 Q And as we engage in this process, what exactly -- you
16 know, how that we start the process with you?

17 A Well, I gave you a list of documents that I need you to
18 bring to me, you prepared the documents. And I also gave you
19 questionnaires to fill out about personal information, you
20 filled out the questionnaires. You brought back the documents
21 and the questionnaires. I prepared the file. You came back,
22 reviewed the applications, confirmed everything was correct in
23 the application, signed, and then we filed on your behalf.

24 MR. SCOTTON: Your Honor, may I approach the witness?

25 THE COURT: Yes.

1 BY MR. SCOTTON:

2 Q Take your time, Ms. Rihab, and when you finish, let me
3 know.

4 A Okay.

5 Q Have you acknowledge those pictures has my wife in?

6 A Yes.

7 Q And do you acknowledge any other people in that picture?

8 A No, I recognize you and her.

9 MR. SCOTTON: Your Honor, I would like to introduce
10 those pictures in evidence, can I?

11 THE COURT: Is there any objection?

12 MS. MITRANI: Your Honor, I mean, he's trying to
13 publish them through her. She doesn't recognize the other
14 people. Maybe --

15 THE COURT: Is there an objection?

16 MS. MITRANI: Can I see them? I want to see if they
17 are the ones we have stipulated to. May I see them?

18 THE COURT: Yes.

19 MS. MITRANI: Your Honor, there are certain ones that
20 have a Bates label that we don't object to because we have
21 stipulated. There are others that do not have a Bates label
22 and we do object as cumulative and not the appropriate witness
23 through whom to introduce.

24 THE COURT: All right. Sustained.

25 MR. SCOTTON: Sustained?

1 THE COURT: So the ones that are stipulated to can
2 come in. The other ones just can't come in through this
3 witness, but if you have another witness who can properly
4 authenticate them, then they can.

5 MR. SCOTTON: And that will be No. 7, right,
6 Your Honor?

7 THE COURT: I'm sorry?

8 MR. SCOTTON: That will be defense Exhibit No. 7?

9 THE COURT: Yes.

10 (Thereupon, Defendant's 7 received in evidence.)

11 BY MR. SCOTTON:

12 Q Ms. Rihab, when I was with Aylin in your office, you asked
13 us quite a little bit of questions, correct?

14 A Yes.

15 Q And can you explain to the jury what is the necessary to
16 get to so deeply conversation with us and questions?

17 A Well, when I was interviewing you to determine if I will
18 take your case, I ask you questions to confirm that this is a
19 real relationship, that this is not an immigration purpose
20 relationship. And also when we went to the immigration
21 interview, we also prepared for that. So that's another
22 meeting that we had that I had to ask you the questions to tell
23 you what kind of questions to expect at the interview.

24 Q And during those questions, meetings that we have, have
25 you separated me and my wife?

1 A Yes.

2 Q And you be by yourself inside the room with my wife?

3 A Yes.

4 Q At any point, my wife has complained to you that being
5 afraid?

6 MS. MITRANI: Objection, hearsay.

7 THE COURT: Sustained.

8 BY MR. SCOTTON:

9 Q Did my wife comply with all the questions?

10 A Yes. What do you mean comply?

11 Q Did she answer the questions that you asked of her?

12 A Yes.

13 Q Can you tell some of the questions that you most of the
14 time asked to her?

15 A Where do you live. How long have you known each other.
16 What's your address. How many bedrooms is your house. Is it a
17 one story, two story. What do you do for a living. What does
18 your husband do. How many cars do you have. Who owns them.
19 Questions about your daily lives together.

20 Q Any social thing has been asked for during the question,
21 any intimacy?

22 A No.

23 Q And after that, you -- you took her out of the room?

24 A I'm sorry?

25 Q After you finished questioning her, so she left and you

1 questioned me?

2 A Yes.

3 Q And you pretty much ask the same questions?

4 A Yes.

5 Q And after that, we're both together in the room?

6 A Yes.

7 Q At any time that you feel perhaps that something was not
8 right?

9 A No.

10 Q Did you believe that Mrs. Aylin was forced to be in your
11 office?

12 MS. MITRANI: Objection.

13 THE WITNESS: No.

14 MS. MITRANI: Calls for speculation.

15 THE COURT: Sustained.

16 BY MR. SCOTTON:

17 Q Do you recall during -- show you some pictures. Do you
18 recall see Aylin with some family members?

19 A Yes.

20 Q And do you recall she mentioned her family members to you?

21 MS. MITRANI: Objection, hearsay.

22 THE COURT: Sustained.

23 BY MR. SCOTTON:

24 Q Do you recall the day in February when Immigration has set
25 up the first interview?

1 A Yes.

2 Q And we arrive at the Immigration somewhere around 7:55,
3 correct?

4 A I don't remember the time.

5 Q And the office, Yvette or Valencia has come to call
6 Aylin's name?

7 MS. MITRANI: Objection, leading.

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q Did immigration office has called both of us at the same
11 time?

12 A No.

13 Q And when she call the first name, what happened at that
14 point?

15 A They called her first. And --

16 THE WITNESS: I'm sorry, can I ask him something? We
17 went to immigration twice, so which interview is he talking
18 about?

19 THE COURT: Sure.

20 BY MR. SCOTTON:

21 Q The first one.

22 A Right. The first time, she was interviewed by herself and
23 because your file was not there.

24 Q And do you recall what she advised you why my file was not
25 there?

1 MS. MITRANI: Objection, hearsay.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q On the first interview, during the interview I was inside
5 the room also with you and Aylin?

6 A Probably. But it was only regarding her case, it wasn't
7 regarding your case.

8 Q I was scheduled for interview on the same day, correct?

9 A Yes.

10 Q And wasn't that day, Aylin -- I don't know if, I guess had
11 residence has been approved?

12 A Yes.

13 MS. MITRANI: Objection, Your Honor, he's leading.

14 THE COURT: Sustained.

15 BY MR. SCOTTON:

16 Q Months after this, we been sent some requests to
17 immigration, do you remember that, about my case?

18 A We sent or we received?

19 Q We been sent some requests to Immigration. I don't know
20 if you recall that it was taking so long for them to set up a
21 new interview?

22 A We inquired on your case, you mean?

23 Q Yes.

24 A Yes, we kept inquiring on the case.

25 Q And how many occasion that we send requirements of the

1 case to Immigration?

2 A I don't remember how many times.

3 Q Do you recall that I went personal to the INS office
4 request --

5 MS. MITRANI: Objection, leading and calls for
6 speculation.

7 THE COURT: Sustained.

8 BY MR. SCOTTON:

9 Q Six month after that interview, it was a new interview
10 scheduled?

11 A Yes.

12 Q And we have get in your office once again?

13 A Yes.

14 Q Did you put us apart again to ask questions?

15 A I met with you again. I don't know if I separated you
16 again. But I met with you to prepare again, yes.

17 Q And couple of days later, we're back to the INS office,
18 correct?

19 A Yes.

20 Q At this time, we in front of Mr. Fred Brooks?

21 A I don't remember the name of the officer.

22 Q Have Mr. Fred Brooks separate us?

23 A Yes.

24 Q During the interview, has Mr. Fred Brooks provided with a
25 Spanish speaking?

1 MS. MITRANI: Objection, Your Honor. The immigration
2 tape speaks for itself.

3 THE COURT: Sustained.

4 BY MR. SCOTTON:

5 Q Ms. Rihab, do you speak Spanish?

6 A No.

7 Q But during the interviews, did you have some -- a problem
8 understanding my wife?

9 MS. MITRANI: Objection, Your Honor, the immigration
10 interview speaks for itself --

11 THE COURT: Overruled.

12 MS. MITRANI: -- that she doesn't speak Spanish.

13 THE COURT: Overruled.

14 BY MR. SCOTTON:

15 Q During the interviews with Aylin, did you have a problem
16 understanding Aylin?

17 A Yes.

18 Q And who might be the person that was helping you of your
19 understanding, translated to you things that Aylin was saying?

20 A At the office or at Immigration?

21 Q At the office?

22 A My assistant.

23 Q And in your knowledge as a lawyer, did I comply with all
24 of your requirements?

25 A For the application?

1 Q Yes.

2 A If you qualified?

3 Q No. Did I comply with everything required in the
4 application?

5 A Yes.

6 Q And on 2011, 2010, was approved work authorization --

7 A Yes.

8 Q -- on my behalf?

9 And it is not the truth that work authorization was
10 renewed?

11 MS. MITRANI: Objection, leading.

12 THE COURT: Sustained.

13 BY MR. SCOTTON:

14 Q Do you have a copy of my work authorization cards with
15 you, Ms. Rihab?

16 A I might in the file. I have to check.

17 Q Can you take a little moment to check for me, please?

18 A Sure.

19 MS. MITRANI: If she's going through her file, we
20 would request the opportunity to review the file.

21 THE COURT: I agree. If you are relying on your file,
22 the government should have an opportunity to review it.

23 MR. SCOTTON: That's okay, Your Honor. Can I approach
24 the witness?

25 THE COURT: I'm sorry?

1 MR. SCOTTON: Can I approach the witness and show,
2 then, a copy of what I was --

3 THE COURT: Sure.

4 THE WITNESS: Then should I close the file?

5 THE COURT: Yes.

6 MS. MITRANI: May I see what the defendant is showing
7 her?

8 THE COURT: Yes.

9 BY MR. SCOTTON:

10 Q You got two copies of the authorization over there,
11 correct?

12 A Yes.

13 Q Can you give me the dates of the first one?

14 A The first card was approved from November 1st, 2010, to
15 October 31st, 2011, and then the second one was approved from
16 August 23rd, 2011, to August 22nd, 2012.

17 Q So between one and another, was -- what is the time frame
18 of the renewal?

19 A Three months.

20 Q And for how long was renewed for?

21 A One year.

22 Q During the interview with Mr. Fred Brooks, you separated
23 me and Aylin, correct?

24 A Yes.

25 Q And he asks questions separate from us, correct?

1 MS. MITRANI: Objection, Your Honor, we listened to
2 the whole immigration interview --

3 THE COURT: Sustained.

4 MS. MITRANI: -- at his request.

5 BY MR. SCOTTON:

6 Q With your knowledge as a lawyer, did you feel anything
7 wrong during that interview?

8 MS. MITRANI: Objection, Your Honor.

9 THE COURT: Sustained.

10 BY MR. SCOTTON:

11 Q Ms. Rihab, during the times that I come to your office --
12 oh, by the way, Ms. Rihab, let me phrase this in a better way.

13 Did I pay all the fees for the immigration?

14 A Yes.

15 Q Did I pay any other fees involved during the process that
16 I need to be paying?

17 MS. MITRANI: Objection, relevance.

18 THE COURT: Sustained.

19 BY MR. SCOTTON:

20 Q During the time that I was present in your office with
21 Aylin, did you view us -- did you look at us as a couple?

22 A Yes.

23 Q Did you at any time thought that our marriage was not
24 real?

25 A No.

1 MS. MITRANI: Objection, Your Honor.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q The little times that you have seen Aylin, does she feel
5 like she's happy?

6 MS. MITRANI: Objection, calls for speculation,
7 leading the witness and hearsay.

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q Have I complained to you about having problem in my
11 marriage?

12 MS. MITRANI: Objection, Your Honor, it's leading and
13 relevance.

14 THE COURT: It's also sustained because it's hearsay,
15 calls for a hearsay answer.

16 MR. SCOTTON: No more questions, Your Honor.

17 THE COURT: Any cross?

18 MS. MITRANI: Yes, Your Honor.

19 CROSS EXAMINATION

20 BY MS. MITRANI:

21 Q I'm sorry. Just give me one minute.

22 A Sure.

23 Q Good afternoon, Ms. -- is it Hamade?

24 A Hamade, yes.

25 Q Hamade. Okay. Good afternoon, how are you?

1 A Good, thank you.

2 Q Let me make sure I understand things correctly, okay? You
3 met with the defendant and Ms. Mollinedo on three or four
4 occasions?

5 A Yes.

6 Q And on those three or four occasions, those meetings were
7 at your office, correct?

8 A Yes.

9 Q At your law office?

10 A Yes.

11 Q You never visited the defendant at his home, correct?

12 A No.

13 Q And if I understood you correctly, your procedure is you
14 give -- you gave the defendant a questionnaire and a list of
15 documents to return to you?

16 A Yes.

17 Q And did you use the information that the defendant gave to
18 you to complete the I-485 application?

19 A Yes.

20 Q Okay. And so this perhaps sounds like a silly question,
21 but did you make up any of the information that's on the I-485
22 application?

23 A Of course not.

24 Q It's -- everything was the basis that the defendant gave
25 you?

1 A Yes.

2 Q Now, when you say you asked for a list of documents, would
3 a passport be a document that you would ask from your client?

4 A Yes.

5 Q Would it be a document you asked for from the defendant?

6 A Yes.

7 Q And did the defendant provide you with a passport?

8 A Yes.

9 Q And did you copy that passport and submit it in connection
10 with the I-485 application?

11 A Yes.

12 Q And --okay. So we have the I-485 application as
13 Government's Exhibit 200. Let me go to the ELMO.

14 MS. MITRANI: Your Honor, may I approach the witness?

15 THE COURT: Yes.

16 BY MS. MITRANI:

17 Q Maybe you haven't seen this in a while so I'm going to
18 show it to you, okay?

19 A Okay.

20 Q That's Exhibit 200. Let me show you 200A which is also in
21 evidence. If you just take a quick look at that.

22 A Okay.

23 Q There are some other documents.

24 A Oh.

25 Q You might just take a quick look --

1 A Sure.

2 Q -- or take as long as you want, I don't want to rush you.

3 A Okay.

4 Q So what I showed you is Government's Exhibit 200. Was
5 this the I-485 that you completed for Mr. -- the defendant
6 Mr. Scotton?

7 A Yes.

8 Q Based on the information he provided to you?

9 A Yes.

10 Q And did you review this with the defendant prior to its
11 submission to Citizen and Immigration Services?

12 A Yes.

13 Q And, likewise, the documents that I showed you on 200A,
14 were those the supporting documents that you submitted in
15 connection with the I-485?

16 A Yes.

17 Q And, again, these were documents that the defendant
18 provided to you, for example, the passport, correct?

19 A Yes.

20 Q Needless to say, if the defendant doesn't provide you with
21 a certain document or doesn't tell you certain information, you
22 would have no way of knowing one way or the other, correct?

23 A No.

24 Q You can only do what you do based on the information
25 that's provided to you by the people that are in front of you,

1 correct?

2 A Yes.

3 MS. MITRANI: Your Honor, can I just have a minute?

4 THE COURT: Sure.

5 BY MS. MITRANI:

6 Q I'm almost done. Let me just -- a couple things.

7 A No problem.

8 Q So as you indicated, you never visited the defendant at
9 his home, correct?

10 A No.

11 Q I'm showing you from Exhibit 200A, which I let you -- this
12 is the passport that the defendant, a copy of which that the
13 defendant submitted to you, correct?

14 A Yes.

15 Q And on that passport, and this is still Exhibit 200A at
16 USCIS402, and you may have a hard time seeing it. If do you,
17 let me know, Ms. Hamade. That shows a B2 visa stamped into
18 this particular passport, correct?

19 A Yes.

20 Q And it shows on the corner, an entry of 1992, correct?

21 A Yes.

22 Q And was that -- this is what the defendant gave you to
23 support his contention that his last entry into the
24 United States was in 1992, correct?

25 A Yes.

1 Q And that's what the defendant told you, correct?

2 A Yes.

3 Q And that's what you put on the application, Government's
4 Exhibit 200, correct?

5 A Yes.

6 Q I'm showing you Government's Exhibit 104, do you see that?
7 Can you just look through it for as long as you want. My
8 question is, do you see any visa or any stamps inside that
9 passport?

10 A No.

11 MS. MITRANI: No further questions, Your Honor.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. SCOTTON:

15 Q Ms. Rihab, the passport the government has present to you,
16 do you look at the passport?

17 A Yes.

18 Q Did you saw the day on the passport?

19 A The issue date?

20 Q Yes.

21 A Yes.

22 Q When I showed the first passport that has the stamp, the
23 passport already expired, correct?

24 A Yes.

25 Q And did I show another passport that has valid?

1 A To me?

2 Q Yes.

3 A No.

4 Q So what is the requirement when I show -- when we went to
5 the application, is it required that I need to show valid IDs?

6 A Yes.

7 Q Did I show valid IDs?

8 A Yes.

9 Q You don't recall if I show another passport --

10 A No.

11 Q -- besides the one with the stamped visa?

12 A No.

13 Q The employee work authorization, it is a document provided
14 by the INS, correct?

15 MS. MITRANI: Objection, beyond the scope.

16 THE COURT: Sustained.

17 BY MR. SCOTTON:

18 Q During the cross-examination, I show the pictures of the
19 employee authorization cards, correct?

20 MS. MITRANI: Objection, beyond the scope.

21 THE COURT: Sustained.

22 BY MR. SCOTTON:

23 Q Those cards were valid cards?

24 MS. MITRANI: Objection.

25 THE COURT: I sustained the objection, Mr. Scotton.

1 It was during the direct, it wasn't during cross-examination.

2 BY MR. SCOTTON:

3 Q From the period of the first application was approved by
4 INS, that application has --

5 MS. MITRANI: Objection beyond the scope. He's still
6 on the work authorization.

7 THE COURT: I didn't hear the whole question. I will
8 have to hear it again. I have to hear the question,
9 Mr. Scotton, I didn't hear it.

10 MR. SCOTTON: Your Honor, I'm going to try to rephrase
11 the question a better way then.

12 THE COURT: All right.

13 BY MR. SCOTTON:

14 Q Ms. Rihab, when we submit the application to Immigration
15 on the first time?

16 A When did we submit it?

17 Q Yes.

18 A 2010, I believe.

19 Q And you confirm that 2011, I have been approved by -- with
20 a work authorization, correct?

21 MS. MITRANI: Objection, beyond the scope, asked and
22 answered.

23 THE COURT: Sustained.

24 BY MR. SCOTTON:

25 Q From 2001 to 2012, I was living in the country?

1 A From what year?

2 MS. MITRANI: Objection, beyond this witness's
3 competency, beyond the scope.

4 THE COURT: Sustained.

5 MR. SCOTTON: Competency, Your Honor, she's a lawyer.
6 I don't understand how she's incompetent.

7 THE COURT: Mr. Scotton, I have sustained the
8 objection. Please move on.

9 MR. SCOTTON: No more questions, Your Honor.

10 THE COURT: All right. Thank you very much. You may
11 step down and you are excused.

12 THE WITNESS: Thank you.

13 THE COURT: Defense may call its next witness.
14 Actually, I just remembered there is something I need to let
15 the jury know that I meant to tell you a little bit earlier and
16 I neglected to do so.

17 During Agent Van Brunt's testimony, Agent Van Brunt
18 referred to some spreadsheets as having been admitted because
19 they were considered credible because they were business
20 records. I do need to let you know that, first, it is your
21 duty as jurors to evaluate the credibility or lack thereof of
22 the evidence. So the Court hasn't ruled on the credibility of
23 the evidence. And that would, of course, include the documents
24 that are admitted into evident.

25 Second, I need to let you know that my best

1 recollection is that the spreadsheets themselves were not
2 business records, but instead they were summaries of the
3 business records that have previously been admitted. Does
4 everybody understand? Anybody not understand? If so, please
5 raise your hand for me now, I will try to do a better job
6 explaining it. I see no hands. Thank you very much.

7 MS. MITRANI: Actually, Your Honor, can we approach
8 sidebar?

9 THE COURT: Yes.

10 (Thereupon, the following was heard sidebar.)

11 MS. MITRANI: I think what the Agent Van Brunt
12 testified were to FedEx spreadsheets and with respect to FedEx
13 spreadsheets there were two. There was one that was I think
14 12K, I have to look at it, and the underlying records were with
15 it. The other one is the bigger spreadsheet, 130A, which are
16 summary of business records. But all the underlying business
17 records, the waybills weren't admitted. So I think you said
18 all the underlying records were admitted and that's not true.

19 THE COURT: Okay. I'll correct that.

20 MS. MITRANI: 130 is a summary of business records,
21 but 130 doesn't have all the business records.

22 THE COURT: It's still a summary.

23 MS. MITRANI: Absolutely, but --

24 THE COURT: Okay. Thanks.

25 (Thereupon, the following was heard in open court.)

1 THE COURT: All right. The government has called to
2 my attention I may have misspoken so let me correct myself.
3 Although the spreadsheets are summaries of business records,
4 not all of the business records have been admitted at this
5 point. But they are -- but the spreadsheets are summaries of
6 the business records, which is how they were admitted into
7 evidence. But still, you will decide for yourselves as to the
8 credibility of those records.

9 All right. Thank you. And the defense may call its
10 next witness.

11 MR. SCOTTON: Genilde Guerra, Your Honor.

12 THE COURTROOM DEPUTY: Please raise your right hand.

13 GENILDE GUERRA

14 Having been first duly sworn on oath, was examined and
15 testified as follows:

16 THE COURTROOM DEPUTY: Please be seated, state and
17 spell your first and last name for the record.

18 THE WITNESS: My name is Genilde Guerra.

19 THE COURT: Would you spell it for the record, please.

20 THE WITNESS: Okay. G as in George, E-N-I-L-D-E.
21 Last name is Guerra, G-U-E-R-R-A.

22 DIRECT EXAMINATION

23 BY MR. SCOTTON:

24 Q How are you doing Miss Genilde, long time no see.

25 A Thank you.

1 Q Can you -- let's start up and kind of make the jury
2 understand what you do for a living?

3 A Yes, I am a lawyer.

4 Q In which field do you practice?

5 A I do corporate and real estate.

6 Q And how long have you been doing that?

7 A I graduated in 2000.

8 Q You graduated in 2000, but how long have you been working
9 as a lawyer?

10 A 2003, and '02 now.

11 THE COURT: Can the parties come sidebar for just a
12 moment, please.

13 (Thereupon, the following was heard sidebar.)

14 THE COURT: I may just not see it on my list, but I do
15 not recall hearing from you that this was a witness you would
16 be calling when we met last Friday and I told you needed to let
17 me know all the witnesses you would be calling. I need you to
18 remind me what this witness's testimony is. I just don't
19 recall it and it doesn't seem to be on my list, I may have
20 misplaced it.

21 MR. SCOTTON: This is the one I was trying to explain
22 before, Your Honor, that you ask me did I have a choice either
23 her or her partner. And at the time, I considered to bring her
24 partner, but I guess the Court --

25 THE COURT: Who was the partner?

1 MR. SCOTTON: Robert Kravitz.

2 THE COURT: You're right, you did. That's fine. And
3 you told me that the reason you were calling her was advice of
4 counsel. That's the reason why.

5 MR. SCOTTON: My I140.

6 THE COURT: Okay. But, again, as I explained to you
7 when we last met on Friday and on several other occasions,
8 including most recently when you had Ms. Hamade here, well,
9 with respect to this particular witness, the entire basis that
10 you gave for calling her was because you wanted to present an
11 advice of counsel defense. That's what you told me.

12 MR. SCOTTON: Right.

13 THE COURT: So you can ask her questions related to
14 that, but that's going to mean that she turns -- and I think
15 I'm pretty I sure I explained this to you on Friday as well and
16 I know I explained it to you a few minutes ago, that's going to
17 mean that this witness -- that you will have waived your
18 attorney-client privilege with respect to whatever you told
19 this witness that she used in order to prepare your
20 application. You understand that?

21 MR. SCOTTON: Right, Your Honor.

22 MS. MITRANI: Your Honor, I guess we will see how it
23 goes. I have never -- I spoke to this witness a few minutes in
24 the hallway. She was not his lawyer. She's not an immigration
25 lawyer, she's real estate lawyer. She may have served as a

1 translator, but she's not his lawyer.

2 THE COURT: Okay. Well, you will have to establish
3 that she was your lawyer for these purposes and if you do and
4 you want to do an advice of counsel defense, that's fine.
5 Otherwise, obviously, there's going to be a problem. All
6 right, thank you.

7 (Thereupon, the following was heard in open court.)

8 THE COURT: Thank you for your patience.

9 BY MR. SCOTTON:

10 Q Ms. Genilde, as far as you can remember, when did we meet?

11 A In the beginning of the 2002, 2003, I believe.

12 Q And do you recall how we met, where we met before?

13 A The first time that I met you was at the race track. You
14 were dressed up as a race car driver.

15 Q Is it a Mr. Robert, last name K-R-A-V-I-T?

16 THE COURT: I'm sorry to interrupt. We have a little
17 problem with our microphones and if you have a cell phone on,
18 it picks up near the microphone even if it's in silent mode, it
19 picks up.

20 THE WITNESS: Yes, let me check. Okay. I'm sorry.

21 THE COURT: That's all right.

22 Sorry, Mr. Scotton, please proceed.

23 Perhaps you can put your purse back behind.

24 THE WITNESS: Yeah, maybe. Yeah, because it was off.

25 THE COURT: All right. Go ahead, Mr. Scotton.

1 BY MR. SCOTTON:

2 Q Mr. Robert is your partner, correct?

3 A Yes, he's my law partner in the law firm.

4 Q Has come to a time that I was having problem with my
5 status here and I approach your law firm. Do you recall that?

6 A Yes, I'm a little bit familiar that you were a client in
7 my office for immigration purpose. I was not work on the case,
8 I didn't look at the case. I don't know much about the case,
9 but you were a client.

10 Q Also you have no knowledge on the case of my immigration?

11 A I do not see the case or have any recollection of the case
12 because since it was immigration, I was not actually working in
13 immigration. I didn't actually work on the case, but I had
14 knowledge that you were a client in the office. And today, I
15 reviewed some documents that Ms. Martinez showed me and you
16 actually were approved by your --

17 MS. MITRANI: Objection.

18 THE COURT: Sustained.

19 THE WITNESS: Excuse me.

20 THE COURT: Sustained. Sustained. So you don't need
21 to answer the question, but thank you.

22 THE WITNESS: Okay.

23 MR. SCOTTON: I have to have a sidebar, Your Honor.

24 THE COURT: I don't think so. I think we're done.
25

1 BY MR. SCOTTON:

2 Q Do you recall when I approach you and I have mentioned to
3 you there was a visa --

4 MS. MITRANI: Objection, Your Honor. He's testifying.

5 THE COURT: Sustained.

6 BY MR. SCOTTON:

7 Q When I called your office, Miss Genilde, do you recall,
8 did I mention to you --

9 MS. MITRANI: Objection.

10 THE COURT: Sustained. All right. Why don't you come
11 on up sidebar.

12 (Thereupon, the following was heard sidebar.)

13 THE COURT: Mr. Scotton, you told me specifically this
14 witness was being called to testify to advice of counsel
15 defense. She was not your attorney so I'm not sure how she can
16 do that. She just said everything she knows about the case she
17 knows from reviewing documents Ms. Martinez gave her. So, I'm
18 sorry, but I don't see why she's relevant. So you are going to
19 need to explain that to me.

20 MR. SCOTTON: That's why I asked before, Your Honor, I
21 approach Genilde in reference problems with the visa, one being
22 denied. And she called me to her office, introduce her partner
23 to me. And my knowledge, they are involved in the case.
24 That's why I told the Court, the Court told me who to choose, I
25 chose Mr. Robert.

1 THE COURT: No, you chose her. I said you can choose
2 one or the other and you said you chose here.

3 MR. SCOTTON: I chose Mr. Robert, Your Honor.

4 THE COURT: You did not. I'm not going to argue with
5 you, the transcript speaks for itself. I would never have told
6 you that you have to choose her over whatever his name is,
7 Robert is his first name, I think. I don't know what his last
8 name is. I would not have told you, you have to choose one
9 over the other. I said you can take one, but if they are both
10 going to testify about the same thing, you can have only one.
11 You chose Ms. Guerra. I'm sorry, but I don't see how she can
12 testify to advice of counsel. So I think you're done.

13 (Thereupon, the following was heard in open court.)

14 THE WITNESS: Can I say something?

15 THE COURT: No, there's no question pending, but thank
16 you.

17 THE WITNESS: Okay.

18 THE COURT: Is there any cross?

19 MS. MITRANI: No, Your Honor.

20 THE COURT: All right. Thank you very much,
21 Ms. Guerra, you are excused.

22 Mr. Scotton, you may call your next witness.

23 MR. SCOTTON: I need to speak to the Judge at sidebar.

24 THE COURT: I'll tell you what, we are going to let
25 the jury go for the rest of the night. You all have a

1 wonderful evening. We will see you on Monday. Monday, I
2 understand that one of the jurors has a scheduling issue so we
3 will be ending at about 2:00 on Monday so as to allow the juror
4 to attend to the appointment. I also need to let you know that
5 we will not be in court on Thursday or Friday of next week. So
6 if we are still in trial, it will be Monday, Tuesday,
7 Wednesday.

8 All right. You all have a wonderful weekend. Please
9 do remember my instructions, don't discuss the case with
10 anyone, don't disperse any information about the case, don't do
11 any investigation into the case. And do have a terrific week
12 end, we'll see you Monday at 9:00.

13 (Thereupon, the jury exited the courtroom at 4:25
14 p.m.)

15 THE COURT: All righty. What is the issue,
16 Mr. Scotton?

17 MR. SCOTTON: Your Honor, there is something in
18 reference to my defense. I prefer not talk in front of the
19 government.

20 THE COURT: All right. Let me ask the government to
21 step out for just a minute, please.

22 (Thereupon, the government exited the courtroom.)

23 (Thereupon, a sealed hearing was held.)

24 THE COURT: Yeah, I just was checking to see if
25 there's anything else we need to address before we adjourn for

1 the day.

2 MS. MITRANI: Nothing from the government. Does the
3 defendant have a sense of when he's going to be resting yet?

4 THE COURT: That would be good to know, Mr. Scotton.
5 I need to let the jury know that as well.

6 MR. SCOTTON: Your Honor, maybe another week I'm
7 thinking here. It depends what's going to happen with the
8 other subpoenas.

9 THE COURT: Another week? All right. Well, we will
10 check in again on this on Monday.

11 All right. Anything else we need to address?

12 MS. MITRANI: I don't think so, no, Your Honor.

13 THE COURT: All right. Then we will see you all on
14 Monday morning.

15 MS. MITRANI: Thank you. Have a nice weekend.

16 THE COURT: Have a good weekend.

17 (Thereupon, the trial adjourned at 4:52 p.m.)

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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

7/22/14

s/ Tammy Nestor
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,
Plaintiff(s),
vs.
ROGERIO CHAVES SCOTTON,
Defendant(s).

Fort Lauderdale, Florida
February 24, 2014

JURY TRIAL
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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FOR THE DEFENDANT(S): Rogerio Scotton, Pro Se

STANDY COUNSEL: Jason Kreiss, Esquire
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I-N-D-E-X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
TODD HORSLEY				
BY MR. SCOTTON	6		13	
BY MS. MITRANI		12		
FRANCISCO CAVALCANTE				
BY MR. SCOTTON	23		36	
BY MS. MITRANI		32		
MICHAEL PETERS				
BY MR. SCOTTON	58			
BY MS. MITRANI		70		
ADRIA WORTHINGTON				
BY MR. SCOTTON	92		98	
BY MS. MITRANI		97		
DEFENDANT'S EXHIBITS				PAGE
8				65

1 Thereupon,
2 following the proceedings began at 8:59 a.m.:

3 THE COURT: Good morning. Are we all ready to bring
4 in the jury?

5 MS. MITRANI: Yes, Your Honor.

6 MR. SCOTTON: Your Honor, a couple things has come up.
7 We can deal with that later on today?

8 THE COURT: Okay. Do you want to tell me briefly what
9 they are?

10 MR. SCOTTON: Some witness from the government that
11 has to -- I'm going from to put a motion today to bring them
12 back.

13 THE COURT: Which witness is that?

14 MR. SCOTTON: One Mrs. Larry and another one
15 Mrs. William.

16 THE COURT: I don't know who that is. I'm sorry.
17 Mrs. Larry and Mrs. William?

18 MR. SCOTTON: I don't know their last name. I'm
19 saying by their first name. They work for Fed-Ex, both of
20 them.

21 MS. MITRANI: Well, there's Larry Midyett, who was the
22 first witness in the case, a records custodian. I don't know
23 if he's talking about William Seligstein, who is another
24 records custodian at the beginning of the case.

25 THE COURT: Why do we need to bring back records

1 custodians? It's expensive.

2 MR. SCOTTON: Your Honor, there's something that is
3 reference my defense. I'm not going to talk in front of the
4 government.

5 THE COURT: Let me just explain something. We have
6 been through all of these things several times. I have had
7 numerous conferences with you about witnesses you needed. And
8 it doesn't seem to me that anything new has come up since our
9 last conference. I'm going to need you to explain why it is
10 you couldn't have known about this.

11 MR. SCOTTON: I have some documents I will be able to
12 present to you, Your Honor. You need to see.

13 THE COURT: All right.

14 MR. SCOTTON: By looking at those documents, you will
15 understand where I'm coming from.

16 THE COURT: We will discuss it a little bit later
17 then. Let's all rise for the jury.

18 (Thereupon, the jury entered the courtroom at
19 9:01 a.m.)

20 THE COURT: Welcome back. Please be seated. As you
21 know, we need to end by 2:00 today. We can either have a
22 little earlier lunch like from 12:00 to 1:00 so we can get an
23 hour in from 1:00 to 2:00, or it will be the same amount of
24 time, but if you prefer, we can go straight through until
25 1:00 and take our lunch hour from 1:00 to 2:00, and that way

1 you would be done at 1:00.

2 Option 2? Option 2. We will go with option 2.

3 All righty then. Welcome back. Hope you all had a
4 great weekend. And let me start by asking my usual questions.
5 Is there anybody here who has discussed the case, disbursed any
6 information about the case, or done any research into the case?
7 If so, please raise your hand for me now.

8 I see no hands. Thank you all for that.

9 Let's see. Mr. Scotton, you may call your next
10 witness.

11 MR. SCOTTON: Your Honor, let me have a minute,
12 please.

13 THE COURT: Okay. We have some warmer weather
14 everywhere except this courtroom.

15 MR. SCOTTON: Your Honor, the defendant calls Todd
16 Horsley.

17 TODD HORSLEY
18 Having been first duly sworn on oath, was examined and
19 testified as follows:

20 THE COURTROOM DEPUTY: Please be seated, state and
21 spell your first and last name for the record.

22 THE WITNESS: Hi. My name is Todd Horsley, T-O-D-D
23 H-O-R-S-L-E-Y.

24 THE COURT: Good morning. Thank you.

25 Mr. Scotton, whenever you are ready, you may proceed.

1 MR. SCOTTON: Yes, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. SCOTTON:

4 Q Good morning.

5 A Good morning.

6 Q How are you doing, Mr. Todd?

7 A Good. How are you?

8 Q First time I guess we met face to face, correct?

9 A Yes.

10 Q The first question I want to ask, I want you to try to let
11 the jury know where you coming from and which company you
12 working for. Explain to them.

13 A I'm from San Diego and I work for Matrix Direct Insurance
14 Services.

15 Q What does Matrix Direct Insurance Company do?

16 A We help people find life insurance policies all over the
17 United States.

18 Q How long you work for that company?

19 A Almost eight years.

20 Q Mr. Todd, do you remember the time that you got a phone
21 call from me?

22 A I don't recall, but I do once I replayed the tape.

23 Q And what is the call about?

24 A It was you obtaining life insurance.

25 Q And what kind of life insurance is the one that I tried to

1 obtain?

2 A You obtained a term life insurance policy.

3 Q Do I have a beneficiary on that life insurance?

4 A Yes, sir.

5 Q Who is my beneficiary on that policy insurance?

6 A I had your wife down as a beneficiary.

7 Q Do you remember the wife's name?

8 A I do not recall.

9 Q If I show you the policy, might it refresh your mind?

10 A It could.

11 MR. SCOTTON: Your Honor, may I approach the witness?

12 THE COURT: Yes.

13 BY MR. SCOTTON:

14 Q Mr. Todd, this policy that we opened with your company?

15 A Yes.

16 Q Which company is the top of the policy name shows?

17 A American General.

18 Q And what is the name of the person as the beneficiary on
19 the policy?

20 A Is it Aylin Mollinedo.

21 Q How much is the policy for, Mr. Todd?

22 A 800,000.

23 Q Do you recall in the beginning when we talk over the
24 phone, we talk some kind of number, million dollar policy?

25 A I do not recall.

1 Q And your recollection during this years of having this
2 policy, every single payment has been made?

3 A That's not my side of it, so I don't know. I know it was
4 paid for at least a year.

5 Q So after you opened the policy, you don't do follow-ups
6 with your clients?

7 A No, that's our other side of the business.

8 Q Did you recall when we talk over the phone, we scheduled
9 some kind of meeting with someone coming to the house?

10 A Yes.

11 Q And who might be this person come to the house?

12 A It was an examiner.

13 Q And why did she need to come to the house for?

14 A To verify your identity and take blood and urine sample.

15 Q Did she have to also verify the wife?

16 A No.

17 Q Do you have any reports if she has verified the wife was
18 present?

19 A I can't recall.

20 Q And on that report, does she verify that she married to
21 Rogerio Scotton that day?

22 A I'm sorry, repeat.

23 Q On the report, did you see in the report that shows that
24 she verified married to Rogerio Scotton?

25 MS. MITRANI: Objection, hearsay. He's referring to

1 the examiner's report.

2 THE COURT: Sustained.

3 BY MR. SCOTTON:

4 Q Any report come to you after I have seen the examine?

5 A I'm sorry, rephrase again.

6 Q Is any report has came back to you after I have this
7 visitation home?

8 A Yes, the approval of your policy.

9 Q And from that approval of the policy, anything happen from
10 that point? Did I got any call back from you?

11 A You got a follow-up call if there was one. If not, I
12 believe it was activated on line.

13 Q Mr. Todd, how long have you been doing this type of line
14 of duty?

15 A Almost eight years.

16 Q And how many policies do you think you have opened during
17 this eight years?

18 A Over 2,000.

19 Q And most of the time you open for singles, couples?

20 A Everyone.

21 Q And when they open this policy, they want to make sure
22 that, God forbid, something happen, loved ones would be taken
23 care of?

24 A That's the whole purpose.

25 Q Do you on your records and experience, do you think it's

1 unusual for someone to open a policy just for --

2 MS. MITRANI: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MR. SCOTTON:

5 Q Is any way during this policy that I opened with you any
6 false documentation has been presented to you?

7 A No.

8 Q Any fake IDs?

9 A No.

10 Q When you open a policy, how many beneficiaries can you
11 have on a policy?

12 MS. MITRANI: Objection, relevance.

13 THE COURT: Overruled.

14 THE WITNESS: As long as there is insurable interest.

15 BY MR. SCOTTON:

16 Q On that particular policy in front of you, the only person
17 you see over there is the wife, right?

18 A Correct.

19 Q You don't see mother, grandfather, nobody else but the
20 wife in that policy, correct?

21 A Correct.

22 Q And you don't have any record, any report when the policy
23 has been closed?

24 A They do send out lapse reports, but I was unaware of it.

25 Q But during this two-year policy, I mean, the policy is

1 current and has been paid, right?

2 A Correct, as far as I can see.

3 Q Did you have any report to show how did I pay for this
4 policy?

5 A I don't have a report, but usually it's electronic funds
6 through your bank.

7 Q What does that mean?

8 A It means that they draft it out every month.

9 Q Your recollection, the visitation that I got at home, what
10 the visitation exact explain to the jury, what is involved in
11 that visitation?

12 A Well, what happens is initial phone call is made and then
13 a nurse is sent out with the application to the insured's
14 address where they then perform the exam and to get started in
15 the process for obtaining life insurance.

16 Q What kind of exam was require?

17 A Blood and urine sample and a height, weight, blood
18 pressure check, and an EKG for certain types of policies.

19 Q Any type of drug tests?

20 A They do have a blood and urine sample. I don't know
21 exactly what they test for.

22 Q AIDS, cancer, all kinds of stuff, right?

23 A They do test for a lot. I don't know exactly what they
24 test for though.

25 Q Have you see the results of those tests?

1 A I don't get to see the results because of the HIPAA laws.

2 Q There's no way to tell if the doctor has said that I'm
3 crazy or not, right?

4 A There's only one way to know if you are approved or not
5 approved.

6 Q But everything matched, then the policy is on?

7 A Yes.

8 MR. SCOTTON: No more questions, Your Honor.

9 THE COURT: Any cross?

10 MS. MITRANI: Yes, Your Honor.

11 CROSS EXAMINATION

12 BY MS. MITRANI:

13 Q Mr. Horsley, is it your understanding that the policy has,
14 in fact, lapsed?

15 A Yes.

16 Q So we are clear, you were located in California when this
17 policy was issued?

18 A Correct.

19 Q You didn't visit the defendant's home, correct?

20 A Correct.

21 Q You didn't check to see if he was living with the person
22 who he claimed to be his wife?

23 A Correct.

24 Q You didn't do any investigation to verify whether this was
25 a legitimate marriage, correct?

1 A Correct.

2 Q You took whatever the insured said on the phone, you took
3 that as face value, correct?

4 A Yes.

5 Q Pending the passing of the medical exam, a life insurance
6 policy was issued?

7 A Correct.

8 Q As you indicated before, the person who home visitation,
9 the purpose is to do a medical examination of the insured,
10 correct?

11 A Correct.

12 Q In this instance, that is Mr. Scotton, correct?

13 A Correct.

14 Q And to verify the defendant's identity, correct?

15 A Correct.

16 Q That's it, correct?

17 A That's it, correct.

18 Q It has nothing to with the beneficiary, correct?

19 A Correct.

20 MS. MITRANI: No further questions.

21 THE COURT: Any redirect?

22 MR. SCOTTON: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. SCOTTON:

25 Q Mr. Todd, do you have life insurance?

1 A I do.

2 Q Have you heard about anybody else putting life insurance
3 in the name of anybody that they don't even associate
4 themselves?

5 MS. MITRANI: Objection, Your Honor.

6 THE COURT: Sustained.

7 BY MR. SCOTTON:

8 Q The prosecutor tried to ask you question few minutes ago
9 here if during the whole process of opening this policy, if
10 it's necessary to confirm that I'm marriage or not. Have we
11 present a marriage license to you guys?

12 A No.

13 Q So as she ask questions, anybody can open a policy, you
14 can put Mickey Mouse over there as a beneficiary, right?

15 A No, it has to be insurable interest.

16 Q Is it possible that someone fake policy?

17 MS. MITRANI: Objection, calls for speculation and
18 relevance.

19 THE COURT: Sustained.

20 BY MR. SCOTTON:

21 Q During the conversation I have with you on the phone, did
22 I mention to you anything at all about the wife? Can you
23 recall that?

24 A About the what, the wife?

25 Q My wife.

1 A I just recall you talking about her as a beneficiary.

2 Q And during the conversation, questions has been asked, age
3 and everything else, correct?

4 A Correct.

5 Q And your recollection understand as work for eight years,
6 do you think that I was trying to put a policy to a ghost?

7 MS. MITRANI: Objection, Your Honor.

8 THE COURT: What is the objection?

9 MS. MITRANI: Goes to the defendant's state of mind.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q During the conversation on the phone, was your
13 recollection understand that I was trying to insure my loved
14 ones?

15 A Correct.

16 Q Did you think I tried to establish a policy for another
17 purpose?

18 A No.

19 MR. SCOTTON: No more questions, Your Honor.

20 THE COURT: Thank you, Mr. Horsley. You are excused.

21 THE WITNESS: Thank you.

22 THE COURT: Mr. Scotton, you may call your next
23 witness.

24 MR. SCOTTON: Mike Peters, Your Honor.

25 MS. MITRANI: Your Honor, Mr. Horsley has requested

1 to -- is he excused now from his subpoena.

2 THE COURT: Yes.

3 MS. MITRANI: If Mike Peters is the next witness, may
4 we approach sidebar?

5 THE COURT: All right.

6 (Thereupon, the following was heard sidebar.)

7 MS. MITRANI: I don't see a Mike Peters on the witness
8 list.

9 THE COURT: Mr. Scotton?

10 MR. SCOTTON: The list was provided by --

11 THE COURT: No --

12 MR. SCOTTON: -- Martinez.

13 THE COURT: You cannot get away with that. I told you
14 this before. I told you you are responsible for the list. If
15 he's not on the list and the government objects, you can't
16 present him.

17 MR. SCOTTON: What's present, Your Honor, the list,
18 the list with all the names present to them.

19 THE COURT: Show me where he's on the list. If he's
20 on the list, you can present him.

21 MR. SCOTTON: Information is Jason has provided the
22 list and the --

23 THE COURT: Is this the list?

24 MS. MITRANI: Yes, Your Honor, this is my annotated
25 list.

1 MR. SCOTTON: And this is one the witness that end up
2 getting subpoenaed very late. That's why, you know. And Jason
3 supposed to update the list, but there's a lot of witnesses.

4 THE COURT: Guess what, Mr. Scotton. I have told you
5 many times it is your responsibility. I gave you an
6 investigator and a standby lawyer to help you out, but it has
7 always been your responsibility. I reviewed that fact with you
8 before you even turned this list over. You have always been
9 responsible for all that.

10 I'm sorry. If he's not on the list, he's not going --
11 for the record, I will say that I don't think that his
12 testimony is -- I think it's cumulative at best anyway because
13 under the best case scenario, the way that you described his
14 testimony was that he would talk about the fact that you bought
15 auto parts from him which doesn't really go to any issue.

16 MR. SCOTTON: He has been come with me many times to
17 the --

18 THE COURT: No one is suggesting that you didn't buy
19 auto parts and sell them. So that's not even relevant. And as
20 to whether Aylin went with you to the dealership or not,
21 whether he could actually testify to that or not, even assuming
22 that he could, you have had other people testify that she did
23 other things. At best it is cumulative.

24 MR. SCOTTON: It goes to my character as well, Your
25 Honor.

1 THE COURT: You have had several character witnesses.
2 In any case, this is not on the Court. This is on you. It's
3 your responsibility to have done it. If you didn't, I'm sorry,
4 but you can't call him now. Call your next witness.

5 (Thereupon, the following was heard in open court.)

6 MR. SCOTTON: Your Honor, may we approach sidebar?
7 This is the list I provided to the government.

8 THE COURT: All right.

9 (Thereupon, the following was heard sidebar.)

10 MR. SCOTTON: These are the people supposed to receive
11 subpoena and the time.

12 THE COURT: When was this provided?

13 Have you seen this?

14 MS. MITRANI: No. No, Your Honor, I have never seen
15 this.

16 THE COURT: It doesn't look like it was filed. Maybe
17 it was, but I don't see it on the docket sheet.

18 MS. MITRANI: It's a sealed order, Your Honor, so I
19 don't have access to sealed orders either.

20 THE COURT: Let me see it.

21 Oh, it's an order. That doesn't matter. That's my
22 order. That's not your list. That changes nothing.

23 MR. SCOTTON: Martinez said that they have give them
24 to them.

25 THE COURT: I don't know what she gave to them.

1 MS. MITRANI: Ms. Martinez didn't give it to me. As I
2 was walking up here, she said, Jason didn't give it to you? I
3 said, I have never seen it. I don't know if it was a
4 miscommunication or what.

5 THE COURT: I'm sorry. There is no indication that it
6 was given at this point.

7 MR. SCOTTON: All these people that I'm supposed to
8 call in, Your Honor, I'm not supposed to call all of these
9 people here?

10 THE COURT: If they are not on the list, you can't
11 call them. An order that I signed authorizing subpoenas is
12 different from a list that you provided to the government.
13 That was your responsibility. You wanted them. You did not
14 want the government to be here when I listened to the
15 subpoenas; therefore, I instructed you to turn over the list of
16 names at the beginning of your case so that the case could flow
17 smoothly.

18 At that time I told you that it was entirely your
19 responsibility to do that. You could not blame Ms. Martinez or
20 Mr. Kreiss. It was your responsibility. The fact that you are
21 taking advantage of these things and putting these things off
22 on other people does not then make it somebody else's problem.
23 It's still your problem. Do you understand?

24 MR. SCOTTON: Your Honor, I understand all this. I
25 understand all the names that have been provided and has been

1 listed has been ready to give to the prosecution.

2 THE COURT: Unless you can prove it --

3 MR. SCOTTON: The thing that it is, it get to the
4 point once again --

5 THE COURT: I'm not listening to this. No, that's
6 ridiculous. I'm not listening to this. Sit down, please.

7 (Thereupon, the following was heard in open court.)

8 THE COURT: Ms. Martinez, do you want to come up
9 sidebar, please.

10 THE AGENT: Absolutely.

11 THE COURT: Mr. Scotton.

12 (Thereupon, the following was heard sidebar.)

13 THE COURT: Was the order that I signed dated the 14th
14 turned over to the government?

15 THE INVESTIGATOR: What happened is that Jason office
16 is the one who created a spreadsheet with the people who were
17 updating and he emailed me and Jermaine everybody that was
18 adding to the list, so I thought that Jason provided it to
19 them.

20 THE COURT: You don't know one way or the other?

21 THE INVESTIGATOR: I don't know one way or another.

22 THE COURT: And the other attorney who's here in the
23 back of the courtroom who's been helping you out who just
24 stepped out, I guess --

25 THE AGENT: No, he was representing someone from

1 California.

2 MS. MITRANI: That is Mr. Horsley's lawyer.

3 THE COURT: Thank you. All right.

4 THE INVESTIGATOR: That's what happened. Remember the
5 list was updated every single day because also the marshal
6 didn't have the time to subpoena two more people.

7 THE COURT: Right. I remember all of that. But you
8 may also recall that I instructed Mr. Scotton to turn over a
9 list of all of his witnesses and I told him that it was his
10 responsibility, not yours and not Mr. Kreiss's to do that.

11 THE INVESTIGATOR: I do remember.

12 THE COURT: I don't know if you saw anybody turn it
13 over to the government. Did you see anybody turn over the list
14 of the last six witnesses that were in that order?

15 THE INVESTIGATOR: I remember Jermaine gave a copy to
16 me and to Jason. I don't remember if Jason gave it to her.

17 MR. SCOTTON: Did I give all the names of the witness
18 to you?

19 THE INVESTIGATOR: No, because --

20 THE COURT: It doesn't matter, Mr. Scotton.

21 MS. MITRANI: Can I say something? I guess I will
22 take this and make it an exhibit. They gave me a document that
23 was a cut and paste job, a three-page document. So this
24 three-page document that I'll get a clean copy -- I'll make a
25 record. Ms. Martinez, the government acknowledged the

1 government was given a witness list the first day of the
2 hearings. Now I'm hearing there may be additional subpoenas.
3 If the Court is going to allow additional witnesses, I would
4 make a request right now for any additional names.

5 THE INVESTIGATOR: There's going to be more names.

6 THE COURT: I'm not going to allow more witnesses. I
7 said he had to turn over the list. I said that if there's
8 anybody you want to call whether they have been subpoenaed or
9 not, turn it over now. If they are not turned over, that's
10 fine. He didn't do it. We are not going to have trial by
11 ambush.

12 THE INVESTIGATOR: There were like five subpoenas, but
13 we didn't have the order and they didn't have the time to
14 subpoena --

15 THE COURT: I understand that. I told him whether
16 they had been subpoenaed or not, if he wanted to call them as
17 witnesses, he needed to put them on the list. We are not going
18 to do that. We are done.

19 (Thereupon, the following was heard in open court.)

20 THE COURT: Mr. Scotton, you may call your next
21 witness.

22 MR. SCOTTON: Your Honor, the defendant calls
23 Francisco Cavalcante.

24 FRANCISCO CAVALCANTE

25 Having been first duly sworn on oath, was examined and

1 testified as follows:

2 THE COURTROOM DEPUTY: Please be seated. State and
3 spell your first and last name for the record.

4 THE WITNESS: My first name is Francisco. Last name
5 Cavalcante. Do you want me to spell it?

6 THE COURTROOM DEPUTY: Your last name.

7 THE WITNESS: C-A-V-A-L-C-A-N-T-E.

8 DIRECT EXAMINATION

9 BY MR. SCOTTON:

10 Q How are you doing, Frank?

11 A Good.

12 Q Good to see you. I'm going to start asking you simple
13 questions. Tell the jury where you are from.

14 A I'm from Brazil original.

15 Q And how long have you been living in United States?

16 A Almost 24 years, I think.

17 Q And where are you living here?

18 A Better life. And actually, my mom moved here and
19 retirement and then decide to come over here, stay with her.

20 Q And how far you live from here?

21 A Almost live in Boston right now. Like probably -- I live
22 in Boston. You say how far, right, from Boston?

23 Q Frank, can you tell the jury how long we know each other?

24 A Since kids. Six, seven years old, right?

25 Q Where did we met?

1 A A long time ago.

2 Q Did we met in United States or we met back in Brazil?

3 A Back in Brazil.

4 Q Did you know my family?

5 A Very well.

6 Q What can you tell to this jury about my family?

7 A Great family. His father like unbelievable guy. Like I
8 think he one of the best teacher in university in Brazil. And
9 what else? His whole family looks like -- there's family
10 stuff, but it looks like they have a great family over there in
11 Brazil. Nothing complain. Very nice people.

12 Q I'm going to show a picture. I want you to identify
13 person in this picture for me.

14 A Yes.

15 MR. SCOTTON: Your Honor, may I approach the witness?

16 THE COURT: Did you show it to the government first?

17 MR. SCOTTON: Yes.

18 MS. MITRANI: Yes, Your Honor, he did.

19 THE COURT: All right.

20 BY MR. SCOTTON:

21 Q Can you tell the jury who is in this picture right now?

22 A Yeah, I think that's your legal wife, right?

23 Q Yes, sir. And what is the next one next to the wife?

24 A I don't recognize, but it looks like -- I only know Aylin
25 by the pictures.

1 Q When is the last time you have saw my mother?

2 A Since when I left Brazil. I never saw her here.

3 Q Did you remember back in 2011, you came to my house for
4 two weeks. Do you recall that?

5 A Yes.

6 Q And do you recall why you spent over there that time with
7 me?

8 A Yeah, I had like a very tough time before I got married.
9 I got a little issue with my present wife. Actually, I'm the
10 middle to get divorced now. And then I call him like, oh, I
11 need to get out of Boston, can I go visit and spend some time
12 and see if I can put myself down and get a little chilly. And
13 he invite me to come over. He's very, you know, host a guy and
14 I spend three or four days here.

15 Q And during that time, did you met anybody else in my
16 house?

17 A Your secretary, Renata, that's the person that I met over
18 there.

19 Q And do you recall anybody else, housekeeping, wife,
20 nobody, right?

21 A Not really.

22 Q And during the time of your problems, I advise you that
23 also I have my problems on my own, correct?

24 MS. MITRANI: Object.

25 THE COURT: Sustained.

1 BY MR. SCOTTON:

2 Q Frank, have I spoke to you anything at all about my
3 marriage?

4 A No.

5 Q Can you tell the jury, your recollection, have I live in
6 Boston before?

7 A Say it again.

8 Q Have I live in Boston before?

9 A Yes.

10 Q And any recollection, have I live with your family before?

11 A Yes.

12 Q Did you have any recollection of me being married in
13 Boston before?

14 A Yeah, I think you got married over there with Junior's
15 sister.

16 Q Was Junior's sister, correct?

17 A Yes.

18 Q Do you remember her name?

19 A Venusa.

20 Q Where is Venusa from?

21 A Brazil.

22 Q Do you recall during my marriage to Venusa, do you recall
23 the marriage, the time living together?

24 A Yeah.

25 Q Your recollection, did I marry Venusa to get immigration

1 benefits?

2 A Not really.

3 Q You don't remember how long I was married to Venusa?

4 A I don't know exactly. I don't want to answer. But I know
5 it's more than three or four years, I think, right?

6 Q And you mentioned the name Junior Silva, correct?

7 A Yes.

8 Q How close I was to Junior Silva?

9 A Me? Oh, you guys was connect all the time, very close.

10 Q And before this happens to me, I was still close with
11 Junior Silva?

12 A I think you guys still connect a little bit, not very
13 often, but I know you guys pretty much see each other.

14 Q The time that you spent in my house, did have any
15 recollection of seeing pictures of me and my wife in the house?

16 A I saw a couple pictures on the stand and on the wall.

17 Q Did you see female stuff in the house?

18 A Yeah, because when I went to your room, I see some like
19 female stuff I believe belong to her.

20 Q You didn't think it was mine, right?

21 A Of course not.

22 Q How can you describe to this jury the kind of man I am,
23 Frank, as you know me since I was six years old?

24 MS. MITRANI: Object. That's vague and overbroad.

25 THE COURT: Sustained.

1 THE WITNESS: Yeah, like --

2 THE COURT: Mr. Cavalcante, thank you. He's going to
3 ask another question a little bit more specific. All right?

4 THE WITNESS: Uh-huh.

5 BY MR. SCOTTON:

6 Q Mr. Frank, 1991, do you recall when I moved to Boston?

7 A Yes.

8 Q Do you recall a company Colonel Clean, do you remember
9 that company?

10 A Yeah, that's a -- the company you used to clean all the
11 houses.

12 Q Did we work over there together?

13 A Yeah.

14 Q Did we deliver some pizza together?

15 A Yes, we did.

16 Q Did we enjoy there?

17 A It was nice.

18 Q Was Junior Silva also delivering pizza with us?

19 A He did.

20 Q During this time live in the United States, in your
21 recollection have you seen me engage in any illegal activity?

22 MS. MITRANI: Objection, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: No.

25

1 BY MS. MITRANI:

2 Q Why not?

3 MS. MITRANI: Objection.

4 THE COURT: Sustained.

5 THE WITNESS: Can you repeat the question.

6 BY MS. MITRANI:

7 Q I'm going to rephrase the question. Let me jump to
8 something else here, then we will go back to that.

9 Did you remember also, as far as you can remember, if you
10 don't, that's fine, at one point you came here with your wife
11 and we went to a restaurant?

12 MS. MITRANI: Object, relevance.

13 THE COURT: Sustained.

14 BY MR. SCOTTON:

15 Q Did you recall having dinner with me and my wife and your
16 wife together?

17 A I don't remember that.

18 Q Frank, during all this time that I have been in the United
19 States, have you seen me engaged -- have you seen my brother
20 work for me?

21 A No.

22 Q Do I have a relationship with my brother?

23 A Which one, because you have --

24 MS. MITRANI: Objection, Your Honor. It goes to the
25 defendant's state of mind.

1 THE COURT: Sustained.

2 BY MR. SCOTTON:

3 Q Am I violent person?

4 A No.

5 Q Have you seen me fighting with anybody?

6 A Not really.

7 Q Am I good with kids?

8 A A lot, very nice guy with the kids.

9 Q Have you got any complaint about me threaten anybody's
10 life?

11 MS. MITRANI: Objection, Your Honor, relevancy.

12 THE COURT: Sustained.

13 BY MR. SCOTTON:

14 Q During time that you saw Ms. Renata at the house, did you
15 guys engage in any kind of conversation? Do you recall any
16 kind of conversation you guys engaged in?

17 A Just normal stuff, like hello, how are you. And I think
18 she was pregnant at that time. I think. I don't know. She
19 got big or she was pregnant, something like that.

20 Q And that was in 2011, correct?

21 A Yes.

22 Q She told you that she was concerned about the pregnancy?

23 MS. MITRANI: Objection, Your Honor, hearsay.

24 THE COURT: Sustained.

25

1 BY MR. SCOTTON:

2 Q Mr. Frank, you know that I used to operate a website,
3 correct?

4 A Yeah, but I never knew exactly what type of stuff you are
5 doing.

6 Q So then you don't have any recollection that I used to
7 sell things to Brazil?

8 A Kind of. I see like -- I don't understand exactly what
9 the office -- what you guys doing over there, but I believe
10 that's what you were doing.

11 Q Before you came to this court here today to testify, did
12 you got a call from anybody involving this case?

13 A No, except for book the flight stuff and, you know, write
14 the subpoena letter I received in Boston. That's all.

15 Q Any office of the government or anybody else has contact
16 you?

17 A No.

18 Q Anybody went over questions with you?

19 A No.

20 Q You do recall see Aylin's pictures everywhere in the
21 house, correct?

22 A Yes.

23 Q And do you recall seeing Aylin's stuff in the house,
24 right?

25 A Yes, I did.

1 Q But you never saw Aylin in the house, right?

2 A Personally, no.

3 Q And when you at my house, did you recall me talk to
4 anything in reference my marriage?

5 MS. MITRANI: Objection, leading and hearsay.

6 THE COURT: Sustained.

7 BY MR. SCOTTON:

8 Q Did you get impression of trouble my marriage?

9 MS. MITRANI: Objection, leading.

10 THE COURT: Sustained.

11 BY MR. SCOTTON:

12 Q Have I complain about my wife to you, Mr. Frank?

13 MS. MITRANI: Objection, hearsay.

14 THE COURT: Sustained.

15 MR. SCOTTON: No more questions, Your Honor.

16 THE COURT: Cross.

17 MS. MITRANI: Yes, Your Honor. Thank you.

18 CROSS EXAMINATION

19 BY MS. MITRANI:

20 Q Good morning.

21 A Good morning.

22 Q How are you?

23 A Very good.

24 Q Where is the weather better, in Boston or south Florida?

25 A Florida is paradise.

1 Q Well, I apologize. I'm not going to have that much for
2 you so I think you are going to have to go back. Let me be
3 very clear. You live in Boston?

4 A Uh-huh.

5 Q How long have you been living in Boston?

6 A Almost 24 years.

7 Q Let's limit the time period. From 2007 to the present,
8 you have been in Boston, correct? You have lived in Boston,
9 sir, from 2007 to the present?

10 A Yes.

11 Q I talk a little fast. I'll slow it down. As you
12 indicated in your direct testimony, you have no involvement
13 with the defendant's business, correct?

14 A Of course.

15 Q And you don't know the details of how the defendant
16 conducts his business, correct?

17 A Not really.

18 Q All right. And you stayed with the defendant some time in
19 2011?

20 A Yes, I did.

21 Q Do you recall how long?

22 A I think it's three or four days maximum.

23 Q Three or four days maximum?

24 A Yes.

25 Q Okay, sir. Do you know what month it was in 2011?

1 A I'm very bad with dates and stuff.

2 Q That's okay, sir. Three or four days in 2011, correct?

3 A Yes.

4 Q Other than those three or four days in 2011, have you
5 stayed with the defendant from 2007 to the present, other than
6 those three or four days?

7 A Before I came here, like 2011, I saw Roger too. I don't
8 remember exactly the date, but I did because I used to come
9 here very often. And I saw him like maybe six months before or
10 something like that.

11 Q Okay. And when you testified when you were here in 2011
12 for these three or four days, the only woman you saw in the
13 defendant's apartment was Renata, correct?

14 A Yeah, that's his secretary.

15 Q And the apartment you stayed at, was it in Boca Raton?

16 A Yeah, townhouse, I think. It's a yellow one.

17 Q A townhouse, sir?

18 A Yes.

19 Q And you never saw Aylin living there, correct?

20 A Not really. I saw like, you know, pictures, but I never
21 met her personally.

22 Q You saw some women's clothing, correct?

23 A Yes.

24 Q Those women's clothing, those didn't have Aylin's name on
25 them, correct?

1 A I believe, but it --

2 Q Right, so it could have belonged to anybody, correct?

3 A Yeah, but it's --

4 Q Just bear with me.

5 A Yes.

6 Q So all you can say is you saw some women's clothing in the
7 defendant's apartment, correct?

8 A Yes, I did.

9 Q But again, it didn't have Aylin's name --

10 MR. SCOTTON: Objection, Your Honor.

11 BY MS. MITRANI:

12 Q -- Aylin wasn't there, so you can't say it was Aylin's?

13 THE COURT: What is your objection?

14 MR. SCOTTON: Leading.

15 THE COURT: It's cross. Overruled.

16 BY MS. MITRANI:

17 Q Do I need to repeat that?

18 A I don't think a woman's clothes come with a name.

19 Q All right. So you can say that there's women's clothing,
20 but you can't say that they are Aylin's and you can't say that
21 Aylin lived there, correct?

22 A Yes.

23 Q You would agree with me it could be any woman's clothing,
24 correct?

25 A Yeah.

1 MS. MITRANI: No other questions.

2 THE COURT: Any redirect?

3 REDIRECT EXAMINATION

4 BY MR. SCOTTON:

5 Q When you saw those clothes or those items all over the
6 house, did you ask me any question of whose those clothes
7 belongs to?

8 A Not really. I know the pictures, your wife.

9 Q And at the time, you know that I was married to Aylin,
10 correct?

11 MS. MITRANI: Objection, leading.

12 THE COURT: Sustained.

13 BY MR. SCOTTON:

14 Q And by seeing those clothes, what you thought on your
15 mind?

16 A It looks like you guys have, you know, marriage, you know,
17 legal. Of course, like me, little arguments and stuff, but I
18 think at that time you guys just married.

19 Q During this whole time, Frank, that you know me, how much
20 different woman did you saw me engage with them?

21 A I know you married like Venusa.

22 Q I'm talking about in general, not marriage. I mean --

23 A You used to go with a lot of girls, but engaged, I don't
24 think I saw anybody else.

25 Q Any recollection, you know, knowing me, the kind of man I

1 am, do I need to engage in some kind of fake marriage?

2 MS. MITRANI: Objection, Your Honor.

3 THE COURT: Sustained.

4 MR. SCOTTON: No more questions, Your Honor.

5 THE COURT: Thank you very much, Mr. Cavalcante. You
6 are excused. Sorry we have to send you back to Boston.

7 THE WITNESS: I'm not happy.

8 THE COURT: Have a safe trip though.

9 THE WITNESS: Thank you.

10 THE COURT: Mr. Scotton, whenever you are ready, you
11 may call your next witness.

12 MR. SCOTTON: Next witness, Your Honor is Officer
13 Shifflet.

14 THE COURT: All right. Before we do that, I need to
15 have counsel up here sidebar.

16 (Thereupon, the following was heard sidebar.)

17 THE COURT: This is one of the witnesses who I told
18 you you could call if you testified but you can't call
19 otherwise because everything she will testify to will be
20 hearsay because everything she's going to testify to is the
21 report that you made to her unless there's something that I
22 have forgotten. Is there something else she's going to testify
23 to other than the fact that you made this report to her and
24 what was in the report?

25 MR. SCOTTON: She's going to testify that fraud has

1 been brought up to them and they say it's a civil matter.

2 THE COURT: Unless you testify, she cannot testify. I
3 explained this to you in detail on more than one occasion in
4 the defense ex parte meetings. And as I explained, everything
5 she's going to testify to is hearsay. I would allow her to do
6 it if you testified. But since you haven't testified at this
7 point -- and it's your right not to testify. There's no
8 requirement that you testify. But because you haven't
9 testified, it wouldn't be fair to allow her to get on the stand
10 and tell your story as you said it but not subject you to
11 cross-examination.

12 So if you want her to testify, you can have her
13 testify, but only after you testify. But again, you do not
14 have to testify. It is your constitutional right not to
15 testify and that cannot be used against you. But I'm not going
16 to allow you to circumvent the rules and try to get your own
17 testimony in without subjecting you to cross-examination by
18 calling a witness to testify to hearsay. You can decide how
19 you want to proceed.

20 MR. SCOTTON: I'm not trying to get my way of
21 testimony through cross-examining, Your Honor. Basically is
22 that accused of a fraud here.

23 THE COURT: I understand what it's about. But that's
24 my ruling. I explained this in detail when we discussed this
25 the last couple of times. And I'm sorry, but that's the

1 ruling. It's still the ruling. It was the ruling before.

2 MR. SCOTTON: If the Court overrule every single
3 witness I bring in here, I'm not going to have any witnesses to
4 cross-examine today, so I have to wait until tomorrow to bring
5 other people here.

6 THE COURT: Mr. Scotton, you can not blame this on the
7 Court. I explained all of these things to you previously. The
8 fact that you don't follow the rules when I tell you what they
9 are does not entitle you to some kind of exemption from them.
10 The rules apply whether you decide to follow them or not. If
11 you decide not to follow them, I'm sorry, but as we previously
12 discussed, you are not going to be allowed to do those things.

13 I want to allow you to have these witnesses, but you
14 have to follow the rules. If you want to testify, go right
15 ahead, and then you can call Officer Shifflett. That's fine.
16 I don't have a problem with that because you will have
17 subjected yourself to cross-examination. And there's no
18 problem with having her testify about what you told her because
19 presumably you are going to say it in your examination and you
20 will be subject to cross-examination.

21 What you cannot do is attempt to testify through
22 somebody else without subjecting yourself to cross-examination.
23 I have explained this numerous times. So you have a decision
24 to make. If you wish to testify, you may do so. And then you
25 may call Officer Shifflett, but you do not have to testify. If

1 you do not wish to testify, that is your constitutional right
2 that cannot be used against you. But I will not allow you to
3 call Officer Shifflett to testify to things you would have
4 testified to. So you can make a decision.

5 MR. SCOTTON: So the jury not going be allowed to know
6 that I have report this before and I walked to the government
7 to complain about crime, so they are not going to be able to
8 know the truth, right?

9 THE COURT: We have had this discussion at length on
10 several prior occasions. This is not the first time you are
11 hearing this. That's the choice. You decide. No one is
12 stopping you from presenting that evidence. But you have to
13 present it through yourself so you are subject to
14 cross-examination, then you can present her as well if you wish
15 to do that to substantiate the fact that you complained about
16 it. I have no problem with that.

17 I am not going to allow you to testify through her
18 without subjecting yourself to cross-examination. It's a very
19 simple matter. We are not going to take any more of this
20 jury's time. Either you testify and then you can call her or
21 you decide not to testify which is your absolute constitutional
22 right.

23 MR. SCOTTON: I'm trying to understand here.

24 THE COURT: But then she can't testify either.

25 MR. SCOTTON: I'm trying to do my testimony through

1 her. How am I going to do my testimony through her?

2 THE COURT: I'm not going to go through this any more,
3 Mr. Scotton. I have spent literally hours discussing the rules
4 of law, the rules of evidence, how they apply, explaining what
5 you could do. You keep taking up time from this jury to argue
6 about these things that I have ruled on numerous times.

7 Make your decision. You testify or you don't testify.
8 It's up to you entirely. No one can force you to testify. It
9 can't be used against you if you don't testify. But if you
10 want her to testify about what you told her, then you have to
11 testify first. That's it. You decide how you wish to proceed.

12 (Thereupon, the following was heard in open court.)

13 MR. SCOTTON: Your Honor, can I have a sidebar?

14 THE COURT: All right.

15 (Thereupon, the following was heard sidebar.)

16 MR. SCOTTON: Your Honor --

17 THE COURT: Wait for the other attorney to come up,
18 please. All right. Go ahead.

19 MR. SCOTTON: The other witness is going to be after
20 1:00 so I don't have anybody to call.

21 THE COURT: Well, are you going to testify?

22 MR. SCOTTON: No, Your Honor, I'm not.

23 THE COURT: Okay. That's fine then. In that case
24 well, we don't have any -- the jury is leaving at 1:00. I
25 don't know if you can arrange to get them here sooner. I can

1 give you a 15-minute break and you can see if you can arrange
2 to get anybody here sooner so we don't lose all of today.

3 (Thereupon, the following was heard in open court.)

4 THE COURT: We are going to take a 15-minute break.
5 And we will see you here at 10 after 10:00. All rise for the
6 jury.

7 (Thereupon, the jury exited the courtroom at
8 9:56 a.m.)

9 THE COURT: All right. What we are going to do is we
10 are going to take a little break so that if there is a
11 possibility of getting any witnesses here sooner, we can take
12 care of that. Before we do that, just for purposes of the
13 record, I'm sorry to ask you this, Mr. Kreiss, but I need to
14 put it on the record one way or the other and deal with it one
15 way or the other.

16 There was a sealed order that I issued on or about
17 February 14 that named six witnesses. Are you aware of whether
18 that order was given by the defense to Ms. Mitrani or anyone
19 from the prosecution?

20 MR. KREISS: My understanding, and I'm trying to
21 recollect, I remember we had a hearing on a Friday, the 14th.
22 The Court entered an order. I believe the following Monday an
23 issue came up of witness lists. Mr. Scotton was supposed to
24 turn over the witness list by 9:00. He had not turned it over,
25 did not have a list to turn over. I think we started

1 folding -- we had our own spreadsheet, folded it, there were
2 comments on it, phone numbers, addresses, and the like. We
3 took the single column with the names. I recall it was folded
4 over. I believe Mr. Creary made copies of it so we didn't have
5 to give folded up pieces of paper. I have my own spreadsheet
6 that I can go back to if there are witnesses missing, but my
7 understanding was that spreadsheet encompassed all of the
8 sealed -- all the newest witnesses that were in the sealed
9 proceeding from the 14th.

10 THE COURT: So just to be clear, why don't you take a
11 look at the one Ms. Mitrani has and you can let us know if
12 that's the same one that the defense turned over. Just to be
13 clear, of course, at all times this was Mr. Scotton's
14 responsibility, not Mr. Kreiss's responsibility or
15 Ms. Martinez's responsibilities as I explained at that time and
16 before that time.

17 MS. MITRANI: And, Your Honor, I guess we will mark
18 this as, I don't know, Government's Exhibit or Court Exhibit
19 510 so we have a record of what was turned over.

20 THE COURT: All righty.

21 MS. MITRANI: Okay. So I'm going to put -- in blue
22 ink, I'm going to put Government 510.

23 THE COURT: Put court exhibit because I don't want it
24 to get turned over to the jury.

25 MS. MITRANI: I put Court Exhibit 510. I'm showing it

1 to Mr. Kreiss and this is what was handed to me.

2 MR. KREISS: I am -- I have no reason to doubt that
3 this is what Ms. Mitrani has at this point in time. This list
4 is not complete. There is another page to it. I have a copy
5 of what I believe was the original that we started working off
6 of, and that's -- again, I'm put in a terrible, precarious
7 position to walk into court and try to help Mr. Scotton get the
8 list and I volunteered to give a copy of my list. I believe it
9 was complete. There was certainly no intention to --

10 THE COURT: Of course not. And as I explained, and I
11 recall explaining on that morning in particular when
12 Mr. Scotton attempted to blame Ms. Martinez and Mr. Kreiss for
13 not turning over a list, that it was always Mr. Scotton's
14 responsibility to prepare and turn over the list of all
15 witnesses and that he needed to turn over a list of any
16 witnesses that he wanted to call even if they hadn't been
17 served yet in case they were served and that I had provided him
18 with a standby attorney and with an investigator, but that it
19 was always his responsibility, and neither the standby
20 attorney's responsibility, nor the investigator's
21 responsibility to handle this case and to turn over the list of
22 names.

23 So I find absolutely no fault with anything that
24 Mr. Kreiss did in order to try to make things easier for
25 Mr. Scotton when it was his responsibility in the first place.

1 I understand there may have been a fourth page that you recall.
2 Do you know for sure whether that fourth page was turned over
3 to the government?

4 MR. KREISS: Judge, it would absolutely have been my
5 intention on behalf of Mr. Scotton and as a friend to the Court
6 to try to help the process along to have turned over the fourth
7 page. I believe it was turned over. You know, in this mess of
8 paperwork, I don't know what happened to it.

9 THE COURT: All right.

10 MR. KREISS: But I have a list and it was certainly
11 Mr. Scotton's intention that the entire list be turned over.

12 MS. MITRANI: Let me say, Your Honor, I don't doubt
13 Mr. Kreiss's intention to turn it over, but I can say, and I
14 just glanced at it over my shoulder with the fourth page. You
15 can even see that fourth page is plainly different in format
16 than the first three pages because they have redacted stuff. I
17 can tell you also as an officer of the court, I did not receive
18 that fourth page. I received Court Exhibit 510, which is three
19 pages. The Court can examine it. The Court can examine
20 Mr. Kreiss's fourth page, and you can plainly it's a different
21 format.

22 MR. SCOTTON: May I say something here?

23 THE COURT: Just a moment.

24 MR. KREISS: Just so, and I'm assuming Ms. Mitrani has
25 noticed, the fourth page is the last set of witnesses, the last

1 set that was worked on. There was a forth page and we had less
2 information. I'm happy to -- I can give to the Court, I will
3 give you my copy. And also, just so the record is clear, I
4 believe every updated spreadsheet was sent to Mr. Creary just
5 so that Mr. Creary would be advised of scheduling issues. And
6 again, I know it was the intent to turn it over. Ms. Mitrani
7 may not have received it at some point.

8 THE COURT: Here's the dilemma. The dilemma is this.
9 We, as you know, every one of these discussions that I have had
10 with Mr. Scotton has been ex parte by Mr. Scotton's request.
11 And so the Court has not made public any of the orders that it
12 has issued, nor has the Court compared the orders for subpoena
13 that it has issued ex parte with what the list was that was
14 turned over to the government. In fact, the Court did not see
15 the list that was turned over to the government until earlier
16 this morning when it was brought up sidebar.

17 So the Court has no way of knowing who's being called
18 or whose names have been turned over either. This is solely
19 Mr. Scotton's responsibility. It's not the responsibility of
20 Ms. Martinez. It's not the responsibility of Mr. Kreiss. It's
21 not the responsibility of the government. It's the
22 responsibility of Mr. Scotton. If Mr. Scotton did not turn the
23 information over, then it's too late now.

24 Let me go ahead and see the fourth page of the list
25 that apparently there is some controversy over whether it was

1 turned over. And I completely understand it was Mr. Kreiss's
2 intent to turn it over. And I'm not suggesting otherwise. And
3 he may well have done so. And I completely credit the
4 government's statement that it didn't receive it, but there may
5 be an issue, so let me just take a look at the fourth page of
6 the list.

7 MR. SCOTTON: Your Honor, may I say something here?

8 MR. KREISS: One second, please. Do you have the
9 witness list that was stamped with the blue copy stamp on it?
10 That was the last -- that should have been at least the copy
11 that was produced to everybody. Do you have that?

12 MS. MITRANI: I guess, for the record, Mr. Creary is
13 confirming that the government was never given the fourth page?

14 THE COURT: Mr. Kreiss, right?

15 MS. MITRANI: Mr. Kreiss, right. I'm sorry.

16 MR. KREISS: I'm going to approach Mr. Creary. Judge,
17 it does appear --

18 MR. SCOTTON: Jason --

19 MR. KREISS: That's it. That's the answer.

20 MS. MITRANI: Did he give it to me?

21 THE COURT: Let me take a look at it.

22 In the meantime, while I am looking at that,
23 Mr. Scotton, I want to make sure that I have thoroughly and
24 fairly covered your right to testify. You understand,
25 Mr. Scotton, that you have a constitutional right not to

1 testify under the fifth amendment? Do you understand that?

2 MR. SCOTTON: Yes, Your Honor.

3 THE COURT: Do you have any questions about that
4 right?

5 MR. SCOTTON: No, Your Honor.

6 THE COURT: On the other hand, if you wish to testify,
7 it is your absolute right to do so. Do you understand that?

8 MR. SCOTTON: Yes, Your Honor.

9 THE COURT: Do you have any questions about that?

10 MR. SCOTTON: No, Your Honor.

11 THE COURT: Do you understand that if you do not
12 testify, then you will not be able to rely on any of the
13 statements that you make in opening or in closing or in asking
14 questions as evidence in this case. Do you understand that?

15 MR. SCOTTON: Yes, Your Honor.

16 THE COURT: Do you have any questions about that?

17 MR. SCOTTON: Is any way I can introduce those reports
18 any kind of thing related to those complaints that I made about
19 that fraud?

20 THE COURT: Only if you are going to subject yourself
21 to cross-examination. Reports, as I have previously explained,
22 police reports are not admissible. So I would have allowed her
23 to testify, her being the officer, that you complained to her
24 to substantiate the fact that you complained about fraud if you
25 first testified that you complained about fraud. But I'm not

1 going to allow you to present what is essentially your own
2 version of the facts without being subject to
3 cross-examination. Do you understand?

4 MR. SCOTTON: Yes, Your Honor.

5 THE COURT: Understanding all of these things, is it
6 your desire to waive your right to testify and instead to
7 invoke your right to remain silent?

8 MR. SCOTTON: Yes, Your Honor.

9 THE COURT: Has anyone forced you to make this
10 decision?

11 MR. SCOTTON: No, Your Honor.

12 THE COURT: Are you doing it of your own free will?

13 MR. SCOTTON: Yes, Your Honor.

14 THE COURT: I will find a knowing, voluntary, and
15 intelligent waiver of your right to testify.

16 MS. MITRANI: Your Honor, may we be excused?

17 THE COURT: Yes, sure.

18 MS. MITRANI: Thank you, Your Honor.

19 (Thereupon, a recess was taken at 10:09 a.m.)

20 THE COURT: All righty. Back on the record. In the
21 break, Mr. Creary was letting me know that the Court actually
22 made copies of the list that was turned over to Ms. Mitrani the
23 morning that it was turned over. So we actually have a court
24 copy. And it does not have the fourth page. Also, I'm
25 instructing Mr. Creary to return the fourth page that's stamped

1 copy to Mr. Scotton on the record right now. So, Mr. Creary,
2 if you would, please do that. Thank you.

3 THE COURTROOM DEPUTY: Yes, Your Honor.

4 THE COURT: And the only -- it looks like the only
5 people who are on that fourth page are -- who the defendant
6 intended to call and who are not officers who would testify
7 only to what Mr. Scotton had told them and, therefore, are not
8 going to be admissible, are Rodrigo Olivera and Mike Peters.
9 Have I missed anyone, Mr. Scotton?

10 MR. SCOTTON: Your Honor, we have like at least two
11 employees.

12 THE COURT: Who else?

13 MR. SCOTTON: Is one employee from Fed-Ex that is
14 missing out of the list as well?

15 THE COURT: Well, I'm pretty sure I denied -- tell me
16 the name of the person. Ivonny Valencia?

17 MR. SCOTTON: No, Your Honor. On the letter they give
18 right here, the letter present right here this morning on
19 sidebar got a couple of names here that was --

20 THE COURT: Can you give me the names, please.

21 MR. SCOTTON: Last name is spelled D-R-I-S-K-I-L-L,
22 Christian Driskill.

23 THE COURT: Christian Driskill, he's not on the fourth
24 page. He's not on the fourth page, right?

25 MS. MITRANI: I think he's on the list though. It's

1 misspelled, but he's on the first page.

2 THE COURT: That's fine. I'm talking to you about the
3 fourth page. The only witnesses who are on the fourth page who
4 you were looking to call other than the officers who I'm not
5 going to allow you to call under the circumstances we have
6 previously discussed, it appears to me are Rodrigo Olivera and
7 Mike Peters. So just look at that fourth page and let me know
8 if I have missed anyone from that list. I think you told me
9 other ones were officers or people that you changed your mind
10 and you did not want to call.

11 Just on the fourth page, just look at the fourth page.
12 Is there anybody on the fourth page other than Rodrigo Olivera
13 and Mike Peters that you were intending to call?

14 MR. SCOTTON: No, Your Honor.

15 THE COURT: Okay.

16 MR. SCOTTON: We got Chris Turner and Rodrigo Olivera
17 and Mike Peters on the fourth page. We got three names here
18 out of this fourth page.

19 THE COURT: Rodrigo Olivera and Mike Peters, right?

20 MR. SCOTTON: And also Chris Turner.

21 THE COURT: What is Chris Turner going to testify to?

22 MR. SCOTTON: It's the DHL. He's the one in the video
23 that say I'm flipping badge and I'm a supercop.

24 THE COURT: Has service been made on him?

25 MS. MITRANI: In the meantime, Your Honor, I know

1 Officer Shifflett is outside.

2 THE COURT: She can be released.

3 MS. MITRANI: And Mr. Peters is outside too.

4 THE COURT: We'll hold on Mr. Peters for a moment.

5 MR. KREISS: Judge, my last list says no service. My
6 office was not provided with an address.

7 THE COURT: Okay. We can't serve someone whose
8 address we don't have. I tell you what I'm going to do. I
9 know the government objects. I'm sorry. I'm going to allow
10 Mike Peters to testify since he's here over the government's
11 objection noting that the government received no prior notice
12 in violation of the order. I'm going to allow him to testify
13 because he's here. Has Rodrigo Olivera been served?

14 MR. KREISS: My list indicates no. I don't have an
15 address on my list.

16 THE COURT: Okay.

17 MR. KREISS: Ms. Martinez may have. They may be --
18 they may have been served. I can check to see if I received
19 any emails back to Mr. Steinberg.

20 THE COURT: You can let us know. In the meantime, I
21 think we will call Mr. Peters and Mr. Scotton. I need to know
22 because I need to tell this jury, how many other witnesses who
23 have been served and who are on the list that has been turned
24 over remain to be called?

25 THE AGENT: Your Honor. In the meantime we are going

1 to have another officer at 1:00 p.m., Mrs. Eames. Is she going
2 to be in the same position of Mrs. Shifflett? She's going to
3 basically testify based on the report also.

4 THE COURT: Right, and this one I also explained, I
5 have it in my notes, that I gave a conditional yes. And the
6 condition was that Mr. Scotton would testify because the only
7 thing that Ms. Eames would testify to would be basically what
8 Mr. Scotton reported to her. So because it will all be hearsay
9 and Mr. Scotton is not testifying, I will not allow her to
10 testify, so she can be released.

11 THE INVESTIGATOR: Okay. Perfect. Thank you.

12 MR. SCOTTON: Your Honor, on my list here I have eight
13 witnesses, but on the schedule Martinez has here, they are not
14 here for today.

15 THE COURT: What eight witnesses are they, please?

16 MR. SCOTTON: Say it again.

17 THE COURT: What eight witnesses are they, please?

18 MR. SCOTTON: Christian Driskill.

19 MS. MITRANI: Your Honor, can we limit to people who
20 have been served.

21 THE COURT: I want to hear who is on the list.

22 MS. MITRANI: Got it. Sorry.

23 MR. SCOTTON: I have Allen Menson.

24 THE COURT: Mason?

25 MR. SCOTTON: Yes, Your Honor.

1 THE COURT: Who else?

2 MR. SCOTTON: I have Chris Turner.

3 THE COURT: Who else?

4 MR. SCOTTON: Mike Peters.

5 THE COURT: Who else?

6 MR. SCOTTON: Shawn Bombaro.

7 THE COURT: Who else?

8 MR. SCOTTON: Luely Leite.

9 THE COURT: Can you spell that name for me.

10 MR. SCOTTON: Last name, Your Honor, is L-E-I-T, first
11 name L-U-E-L-Y.

12 THE COURT: Who else?

13 MR. SCOTTON: I have Ron Wolff.

14 THE COURT: By the way, we have not heard from
15 Mr. Wolff. We have both emailed him and sent him voice mails,
16 and we have heard no response. As far as we know, he is out of
17 the country.

18 Who else?

19 MR. SCOTTON: Nick Brown.

20 THE COURT: Anyone else?

21 MR. SCOTTON: Yvette Narvette.

22 THE COURT: Anyone else?

23 MR. SCOTTON: The witness that I need to recall back
24 here to the court that I'm going to --

25 THE COURT: Who else?

1 MR. SCOTTON: Larry, I guess his last name is spelled
2 M-I-D-Y-E-T-T-E.

3 THE COURT: Who else?

4 MR. SCOTTON: William Seligstein, last name
5 S-E-L-I-G-S-T-E-I-N.

6 MS. MITRANI: Your Honor, regarding Mr. Wolff, it's
7 the government's understanding that he was out of the country.
8 He's returned to the country. I don't know if he's been
9 properly served, but he is back in the country.

10 THE COURT: His attorney accepted service on his
11 behalf. So we view him as having been properly served. Do you
12 have contact information for him?

13 MS. MITRANI: We do.

14 THE COURT: All right. Would you provide that to the
15 Court, please.

16 MS. MITRANI: I don't have it on my person. I think
17 Agent Van Brunt does.

18 THE COURT: Thank you.

19 MS. MITRANI: I think he just got back Saturday or
20 something which is maybe why you haven't heard from him.

21 THE COURT: Okay. Can we get through the rest of
22 these witnesses tomorrow and Wednesday? It seems like that
23 should be more than enough time.

24 MS. MITRANI: Plus, Your Honor, it's my understanding
25 that they all haven't been served.

1 THE COURT: Right, whoever has been served obviously.

2 MS. MITRANI: I'm not sure how obvious it is to the
3 defendant, but --

4 MR. SCOTTON: Is that including with the witness I'm
5 going to recall, Your Honor?

6 THE COURT: I don't know. I'm trying to figure out
7 right now the ones who have been served. It seems like that
8 should be more than enough time to get through them,
9 particularly based on what you have told me about what they are
10 going to testify to. Does that sound right?

11 MR. SCOTTON: Wednesday, Thursday, yes.

12 THE COURT: We are not in trial on Thursday. So
13 tomorrow is Tuesday, so tomorrow and Wednesday. And we should
14 expect to finish up the case on Wednesday and go into closing
15 arguments, right? Is that right?

16 MR. SCOTTON: Are we going to play the witness I am
17 going to have to recall here, Your Honor?

18 THE COURT: I don't know. We will discuss that later.
19 But even so, it's not like they should be that long. They have
20 testified extensively and they are only records custodians. We
21 will bring the jury back in. We will hear from Mr. Peters. Is
22 there anyone we can possibly bring in before 1:00 today?

23 THE INVESTIGATOR: I'm trying to call the people
24 scheduled for 1:00 p.m., but I haven't heard from three
25 witnesses.

1 THE COURT: We are ending at 1:00 since we were going
2 to end at 2:00 and take a lunch break from 12:00 to 1:00, the
3 jury prefers to take a break and leave at 1:00.

4 THE AGENT: I'm going to call everybody again, Your
5 Honor.

6 THE COURT: Very good. In the meantime, we will bring
7 the jury in and we will hear from Mr. Peters.

8 (Thereupon, the jury entered the courtroom at
9 10:28 a.m.)

10 THE COURT: Welcome back. Please be seated. Welcome
11 back. Sorry for long delay. We hope to get things under way
12 again shortly.

13 Mr. Scotton, would you please call your next witness.

14 MR. SCOTTON: Mike Peters, Your Honor.

15 THE COURT: All right.

16 MICHAEL PETERS

17 Having been first duly sworn on oath, was examined and
18 testified as follows:

19 THE COURTROOM DEPUTY: Please be seated state and
20 spell your first and last name for the record.

21 THE WITNESS: First name Mike Peters, official
22 Michael. And you want the spelling on the last name?

23 THE COURTROOM DEPUTY: Yes, sir.

24 THE WITNESS: P-E-T-E-R-S.

25 DIRECT EXAMINATION

1 BY MR. SCOTTON:

2 Q Mike Peters, good to see you.

3 A Hi.

4 Q Mr. Mike Peters, let's start up get the jury familiar with
5 you. What do you do for a living?

6 A I work for Champion Porsche in sales and manage Champion
7 Racing.

8 Q And how long you doing this?

9 A Since 19 -- for that dealership, since 1991.

10 Q And as a general manager for the race team, how long you
11 doing that?

12 A '98, '99.

13 Q Mike, as far as you can recollect, as far we can go here,
14 how long ago we met?

15 A I think it was probably 10 to 12 years ago. It was in the
16 late '90s or early 2000 time limit.

17 Q Did you recall how we met?

18 A I don't recall exactly if it was at the track or if it was
19 at the dealership first.

20 Q Any recollection, did you remember how many difference
21 racing events did we attend together?

22 A I believe one or two events that I was at that you were
23 probably at at the same time.

24 Q What series did we run together before?

25 A At that time it was the Firestone Firehawk, I believe,

1 series, it changes quite a bit, or Speed Vision, and the
2 American Le Mans. Prior to that, USRRC, and they kind of
3 changed in between through EMSA Racing as well who was a
4 sanctioning group.

5 Q What kind of level those racing is?

6 A I would consider it more semiprofessional and ultimately
7 moving into professional.

8 Q In your recollection, can you describe me at the race
9 track?

10 A Just as I would describe anybody else, you know, pretty
11 open about racing and what was going on during racing, and
12 everyone's looking for opportunities in racing to move ahead as
13 drivers.

14 Q Do you think I'm a good driver?

15 A I think you drove well enough to be licensed to drive,
16 yes.

17 Q During this time that we know each other, Mr. Peters, did
18 you ever see any signs of a violent man on me?

19 A No, never.

20 Q Have I, your recollection, you probably don't remember,
21 but I came several different times to the dealership, correct?

22 A Yes.

23 Q Have I mentioned to you about some import export business
24 that I was involved shipping parts?

25 MS. MITRANI: Objection, hearsay.

1 THE COURT: Sustained.

2 BY MR. SCOTTON:

3 Q This time that I came to the dealer, did I come to -- why
4 did I come to the dealer for, Mr. Peters?

5 A Usually we were doing -- it was a visit with discussions
6 about what you were doing for your future with racing. And we
7 as a dealership put together a little bit of a support program
8 for your car where you would put our name on the car and we
9 provided you parts at a very inexpensive cost, discounted cost.

10 Q Do you recall if I ever apply to work at the dealer as
11 well?

12 A No, I don't believe so.

13 Q Do you recall me buying parts out of the dealer?

14 A Yes, on that discounted program.

15 MR. SCOTTON: Your Honor, can I have a minute?

16 THE COURT: Yes.

17 MR. SCOTTON: May I approach the witness?

18 THE COURT: Did you show it to the government first?

19 MS. MITRANI: That's fine. Thank you.

20 THE COURT: All right.

21 BY MR. SCOTTON:

22 Q Mr. Peters, at the time that I walked through the dealer,
23 did you recall if I have walk with this girl in the black at
24 the dealer?

25 A I don't recall.

1 Q Is any recollection that I was married the last couple of
2 years?

3 A Not that I know of. We never really -- we were mostly on
4 the motor sport conversation.

5 Q As a manager of the most respected American Le Mans teams,
6 you always have control your drivers, correct?

7 A Yeah.

8 Q And can you agree with me that most time drivers get
9 chased by womens in the racetrack?

10 MS. MITRANI: Objection, leading, relevancy.

11 THE COURT: Sustained.

12 MR. SCOTTON: Your Honor, may I approach the witness?

13 THE COURT: Yes.

14 MS. MITRANI: Your Honor, can we have a sidebar?

15 THE COURT: Yes.

16 MS. MITRANI: Can Mr. Frank come with me at sidebar?

17 THE COURT: All right.

18 (Thereupon, the following was heard sidebar.)

19 MS. MITRANI: The defendant wants to show this picture
20 which purports to have DHL on him, and this is a photo-shopped,
21 fabricated picture that we discovered. I can mark this as an
22 exhibit, but this is a document that the defendant had provided
23 us in discovery a few weeks ago. No DHL anything on it.

24 THE COURT: I can see it's cut out, actually.

25 MS. MITRANI: And Mr. Frank will go through the

1 metadata to show that this defendant is trying to fabricate
2 documents and introduce it, and we would move for contempt.

3 THE COURT: Here's what we are going to do. We are
4 going to mark both of these as court exhibits. Can I have some
5 stickers, please. Thank you.

6 All right. Mr. Scotton's proposed entry will be Court
7 Exhibit 3, and both of these are the same, so I will give
8 Mr. Scotton back one of his and I will keep the other. And the
9 government's proposed exhibit will be Court Exhibit 4. And we
10 will have a hearing about this at a later point in time right
11 after today's proceedings, unless, Mr. Scotton, you wish to
12 withdraw your request to try to introduce this document at this
13 time.

14 MR. SCOTTON: No, I'm not going to withdraw, but I
15 didn't fabricate anything.

16 THE COURT: Very good. You cannot ask about this
17 document at this time.

18 MR. SCOTTON: I'm not going to be able to show him
19 this picture?

20 THE COURT: No.

21 MR. SCOTTON: Then what is the reason to introduce it
22 into evidence?

23 THE COURT: Because as I look at this document -- why
24 don't we do it this way. Mr. Frank, can you explain what Court
25 Exhibit 4 shows.

1 THE WITNESS: Sure. So Court Exhibit 4 shows this
2 picture labeled DHL American Le Mans. It's a PDF file. So if
3 you look at the metadata, you can see that it was created in
4 Microsoft Word on January 23 at 9:23 p.m. and then created in a
5 PDF. So a picture would have had to have been copied onto Word
6 which is very rare and made into a PDF. This is a PDF
7 document. Exhibit 3 is the PDF document. The original photo
8 is image No. 1. It's a jpeg.

9 THE COURT: The metadata shows --

10 THE WITNESS: Last time it was modified was in
11 July 12, 2007, and then so that's the last time it was
12 modified, and then this is actually that photo.

13 MS. MITRANI: The fourth page.

14 MR. SCOTTON: It is also the truth, Your Honor, this
15 is the picture. But the reason here Ms. Martinez probably has
16 take this out of the computer that was an email, and the reason
17 this picture is here, because part of relationship with -- this
18 is the original picture.

19 THE COURT: You can ask him if he's aware of whether
20 you raced for DHL. I have no problem. This is not coming into
21 evidence at this time.

22 MR. SCOTTON: I'm not saying I'm race for DHL. That's
23 not the thing. I'm not trying to say I race for DHL. As a
24 matter of fact, here this discovery, this one, that race team
25 he is going to recognize these responsible for the team.

1 During this time here, we are putting deals together. We are
2 talking to them about sponsorship. I am not saying race for
3 them. What they do most of the time, PR people, they put
4 presentations together to present to the company.

5 THE COURT: Yeah, it's not authenticated. You can't
6 use it. Sorry. You can ask him whether you used a DHL uniform
7 to race. I have no problem with that. You are not bringing
8 into evidence -- it's clearly a doctored picture. You can tell
9 by looking at it that it was cut out and pasted. The metadata
10 represents the same thing. It's the same photograph with you
11 and a DHL emblem added. I'm sorry, you can't use it.

12 MR. SCOTTON: What you say?

13 THE COURT: How are you going to authenticate it?

14 MR. SCOTTON: What is my option here with him?

15 THE COURT: How are you going to authenticate this
16 document?

17 MR. SCOTTON: I ask him if those were used during
18 the --

19 THE COURT: No. You can ask him if those companies
20 sponsored you. I don't have a problem with that. But you
21 clearly doctored this photo and you are not going to put in a
22 doctored piece of evidence. This isn't the first time you have
23 lied and created fabricated evidence in this case.

24 MR. SCOTTON: When did I create fabricated evidence in
25 this case, Your Honor?

1 THE COURT: I'm not going through the whole thing
2 again. It's very clear in the record.

3 MS. MITRANI: Thank you.

4 (Thereupon, the following was heard in open court.)

5 MR. SCOTTON: Your Honor, Mr. Mike has a see those
6 three pictures, and I will like to introduce those pictures
7 into evidence.

8 THE COURT: Which pictures? Don't hold them up.

9 MS. MITRANI: Your Honor, for the record, these are
10 pictures that are Bates labeled RSPIC32, RSPIC2, RSPIC23. The
11 government has no objection.

12 THE COURT: All right. Then they shall be admitted as
13 Defendant's Exhibit 8.

14 (Thereupon, Defendant's 8 received in evidence.)

15 BY MR. SCOTTON:

16 Q Mr. Peters, do you remember, do you have any recollection
17 of this day?

18 A I believe that's a promotional day in advance of the Miami
19 race based on the graphics on the car.

20 Q And can you see myself in that picture?

21 A Yes.

22 Q And it is the team, the champion auto team cars presented
23 in this picture as well?

24 A Yes, it is.

25 Q Did you remember this picture as well?

1 A Yep. That was taken at Road Atlanta, I believe.

2 Q Everybody used to remember that week, right?

3 A I'm sorry?

4 Q You remember that week well, right?

5 A I'm sorry?

6 Q You remember that week very well, correct?

7 A I remember the race, yes.

8 Q Did you any recollection in this kind of series of car?

9 A Not -- I mean, it looks like some kind of NASCAR type
10 stuff, but I'm not familiar with that, no.

11 Q Mr. Peters, I'm guessing here, my recollection, I hope you
12 remember that, on your recollection was last year that my
13 family has approach you or 2012?

14 MS. MITRANI: Objection, relevance.

15 BY MR. SCOTTON:

16 Q Do you have any recollection if my family come to you?

17 A Yes.

18 Q And they inform you that I --

19 MS. MITRANI: Objection.

20 THE COURT: Sustained.

21 BY MR. SCOTTON:

22 Q When did you learn, Mr. Peters, that I have been charged
23 with a crime?

24 MS. MITRANI: Objection, relevance.

25 THE COURT: Sustained.

1 BY MR. SCOTTON:

2 Q Mr. Peters, before you come to this court today, anybody
3 else has contact you besides the investigator?

4 A I was contacted a couple of years ago by your -- someone
5 in your family.

6 Q And besides that, anybody else, any federal agency, or any
7 prosecutor or anybody has contact you?

8 A Only to discuss the possibilities of coming to court,
9 which would have been within the last two weeks or ten days.

10 Q By look at that picture that I just flip here, Mr. Peters,
11 we at the race track, as a manager, did you recall what is the
12 duties of the drivers?

13 MS. MITRANI: Objection, relevance, Your Honor.

14 THE COURT: Sustained.

15 BY MR. SCOTTON:

16 Q Can you explain to the jury the picture that has myself
17 with a bunch of girls in it?

18 MS. MITRANI: Objection, Your Honor, vague, and the
19 picture speaks for itself.

20 THE COURT: Sustained.

21 MS. MITRANI: And relevancy.

22 THE COURT: Sustained.

23 BY MR. SCOTTON:

24 Q As a race car driver, Mr. Peters, as your recollection
25 dealing with us many, many times, many years, do you believe

1 the race car driver has a problem to get a woman?

2 MS. MITRANI: Objection, relevance.

3 THE COURT: Sustained.

4 BY MR. SCOTTON:

5 Q Do you believe -- do you understand that I have been
6 charged with a fake marriage?

7 MS. MITRANI: Objection, relevancy.

8 THE COURT: Sustained.

9 BY MR. SCOTTON:

10 Q On your recollection, the little you know about me,
11 Mr. Mike, how can you describe my character to this jury?

12 A I always saw you as nice, friendly, professional, and any
13 of the dealings that we had were fair and equitable with
14 whatever we did.

15 Q On 2010, if I am correct, did you have any recollection of
16 DHL involved in American Le Mans?

17 A Specifically 2010, I don't know.

18 Q Have you had any recollection of DHL sponsor anybody
19 during the race?

20 A Yes.

21 Q Did you recollect the team they sponsored?

22 A Porsche Penske.

23 Q As a general manager, can you explain to the pictures like
24 those that I introduce here today, it is those pictures most of
25 the time used to approach sponsors as well?

1 MS. MITRANI: Your Honor, objection, relevancy, calls
2 for speculation.

3 THE COURT: Sustained.

4 BY MR. SCOTTON:

5 Q Mr. Peters, has anybody complained or made any statement
6 to you about me?

7 MS. MITRANI: Objection, vague, overbroad, and calls
8 for hearsay.

9 THE COURT: Sustained.

10 BY MR. SCOTTON:

11 Q And you say you don't recall seeing my wife at the dealer
12 with you?

13 A I don't.

14 Q Those promotion events like you have saw on a photograph
15 here, as a manager, do you recollect that some of the contracts
16 as manager for the driver to do such a thing?

17 MS. MITRANI: Objection, Your Honor, relevancy.

18 THE COURT: Sustained.

19 BY MR. SCOTTON:

20 Q Mr. Mike, I have been charged with a crime.

21 MS. MITRANI: Objection, asked and answered.

22 THE COURT: Sustained. Please ask a question,
23 Mr. Scotton.

24 MR. SCOTTON: I'm trying, Your Honor.

25 THE COURT: Well, go ahead and do it then.

1 BY MR. SCOTTON:

2 Q On your recollection, Mr. Mike, do you recall seeing me
3 engaged in any illegal activity?

4 MS. MITRANI: Objection, Your Honor.

5 THE COURT: Overruled.

6 THE WITNESS: Can you repeat the question.

7 BY MR. SCOTTON:

8 Q In your recollection, have you seen me engage in any
9 illegal activity?

10 A No.

11 MR. SCOTTON: No questions, Your Honor.

12 THE COURT: Any cross?

13 CROSS EXAMINATION

14 BY MS. MITRANI:

15 Q Good afternoon. Just so we are very clear, your dealings
16 with the defendant were strictly limited to what you talked
17 about in direct examination, that is, the racing and the buying
18 of the auto parts, correct?

19 A Yeah, through the dealership relationship and on track on
20 race day.

21 Q I'm sorry.

22 A On track or at track race activities.

23 Q You were never employed by the defendant, correct?

24 A No.

25 Q You had nothing to do with the defendant's business,

1 correct?

2 A No.

3 MS. MITRANI: No further questions.

4 THE COURT: Any redirect?

5 MR. SCOTTON: No, Your Honor.

6 THE COURT: Thank you very much, Mr. Peters. You are
7 excused.

8 Defense may call its next witness.

9 MR. SCOTTON: Sidebar, Your Honor.

10 THE COURT: All right.

11 (Thereupon, the following was heard sidebar.)

12 MR. SCOTTON: Martinez say that she's not going to
13 have anyone until 11:30 or 11:45.

14 THE COURT: Just to be clear, and I want to make sure
15 it's clear on the record, it is totally fine that you waived
16 your right to testify and we have already talked about that.
17 But I want to be clear that we are not going to at some later
18 point have you testify because we have time right now. I am
19 going to excuse the jury until 11:30 so we can wait for your
20 witness; otherwise, I would make you testify now if you wanted
21 to testify.

22 MR. SCOTTON: I'm not going to testify.

23 THE COURT: That's fine. I want to make sure you
24 understand that by deciding not to testify, it doesn't mean at
25 some later point in time you are going to be able to testify.

1 Do you understand that?

2 MR. SCOTTON: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. SCOTTON: I would like to make a comment about --
5 I don't know if it's appropriate time right now.

6 THE COURT: Let me excuse the jury until 11:30 and
7 then you can make your comment.

8 MR. SCOTTON: Right.

9 (Thereupon, the following was heard in open court.)

10 THE COURT: Let me apologize. We have some scheduling
11 issues. We should have our next witness here by 11:30. Very
12 sorry about that, but we don't want to excuse you for rest of
13 the day and not squeeze in someone since you already took today
14 off from work. So what we are going to do, we are going to
15 give you a break until 11:30. And we will start up again at
16 11:30. And we apologize for the inconvenience.

17 All rise for the jury. Please remember my
18 instructions, don't discuss the case with anyone, don't
19 disburse any information about the case, and don't do any
20 research into the case. Thanks. We will see you at 11:30.

21 (Thereupon, the jury exited the courtroom at
22 10:58 a.m.)

23 MS. MITRANI: Your Honor, I want to say something. So
24 just so we are clear, it was my understanding that Mr. Wolff is
25 out of the country and has come back. I don't know if he came

1 back Friday or Saturday. We briefly spoke with him and told
2 him to consult with his lawyer regarding his subpoenas and
3 appearance and what have you.

4 THE COURT: Thank you. His attorney advised the Court
5 that he was not representing him, that although he accepted
6 service on Mr. Wolff's behalf, that he does not represent
7 Mr. Wolff with respect to the subpoena. So if you have a way
8 of contacting him, we would want to find out what that was so
9 we could insure that he's here.

10 MS. MITRANI: I think Special Agent Van Brunt did some
11 investigative work because a police report has been provided
12 and got a cell phone number and that cell phone number was
13 provided to Mr. Creary.

14 THE COURT: Is that the same cell phone number that we
15 have already left a voice mail on?

16 THE COURTROOM DEPUTY: Yes. He also provided another
17 number.

18 THE COURT: We will try that in a little while.

19 Mr. Scotton, what is it that you needed me to hear?

20 MR. SCOTTON: In reference here the picture, the
21 prosecutor tried to say I'm trying to fabricate evidence, that
22 picture, yes, Your Honor, that picture has been modified. Has
23 a bunch of other things here that I can provide the Court here
24 that is modified. The point here to Mr. Peters when he was
25 doing his testimony is to show him that, recollect his mind,

1 that at one point I associated myself with DHL, and that's what
2 we do here.

3 THE COURT: You could have asked him was I ever
4 associated with DHL. But since there's absolutely no
5 indication whatsoever that that photograph is authentic, it
6 would be completely improper and there's no evidentiary basis
7 or foundation for that to have been admitted or to have been
8 used to question the witness. I told you when we were sidebar
9 that you could ask him about that. You chose not to. That was
10 your decision.

11 MR. SCOTTON: Your Honor, I want to keep clear here
12 because, enough with all this allegations already here and one
13 more that I'm fabricating picture. I want the Court to
14 understand here every time we approach sponsor people, we have
15 to put images together with logo to show how things are going
16 to work. This particular car here in this picture, I drove
17 this car. That was my intention to show in Peters, that I
18 drove this car.

19 THE COURT: Why is that relevant in any way, in any
20 way?

21 MR. SCOTTON: Because I was associated all this time
22 with those companies, Your Honor. I'm trying to bring to the
23 jury all this time the company has been part of my life. Now
24 there are all these allegations here that, oh, I defraud them.

25 THE COURT: First of all, there is absolutely no

1 indication whatsoever and you have provided no indication or
2 any way of authenticating the document. There's no evidence
3 that authenticates this. At this point it's clear it was
4 fabricated. You admit that it is a doctored photo.

5 The only thing that you are saying is the case is that
6 it was doctored for some other reason. But you have no one to
7 testify to that. So it's not coming in under those
8 circumstances.

9 Number two, even if it did come in and even if it were
10 actually a legitimate doctored photograph, if you will, it
11 shows you years ago before the alleged conduct where you
12 allegedly defrauded DHL. So it's not even relevant even if it
13 were authenticated.

14 So for all of those reasons, that document is not
15 coming in. You may not show that document to anyone on the
16 witness stand unless and until you authenticate it. It's as
17 simple as that. If you authenticate it, I will be happy to
18 revisit this ruling. Unless and until you do that, it is not
19 coming in.

20 You can ask questions about whether you were
21 associated with DHL. I told you that sidebar. You chose not
22 to. That's fine. You don't have to. That's your decision.
23 Anything else we need to address?

24 MR. SCOTTON: Your Honor, I want to address about the
25 people I need to bring in for cross-examination and I guess it

1 has to be under seal.

2 MS. MITRANI: Your Honor, if it's recalling witnesses,
3 we would object to it being sealed. We would like the
4 opportunity to respond because we believe that, again, he's had
5 extensive cross-examination. The government made a very
6 calculated decision not to make objections, for example, beyond
7 the scope. And so it would be hard-pressed for him to think of
8 any new areas that were not discussed with those two witnesses.

9 THE COURT: Let me talk to him about it. And if I
10 think there's something I need to address with the government,
11 I will call you back in.

12 MS. MITRANI: Very well, Your Honor.

13 THE COURT: Before we do that, Mr. Creary, would you
14 do me a favor and see if you can get Mr. Wolff, please.

15 THE COURTROOM DEPUTY: Yes, Your Honor.

16 THE COURT: Actually, before we do that, let me ask
17 one more thing with respect to the doctored photograph.

18 Ms. Martinez?

19 THE INVESTIGATOR: Yes, Your Honor.

20 THE COURT: What can you tell me about that
21 photograph, Court Exhibit No. 3?

22 THE INVESTIGATOR: Can I see it?

23 THE COURT: Sure.

24 MS. MITRANI: Mr. Scotton has it actually.

25 THE COURT: Let's get it back from Mr. Scotton.

1 MS. MITRANI: We can give you Court Exhibit 4 if we
2 can have a copy at Mr. Creary's convenience.

3 THE COURT: Of course.

4 THE INVESTIGATOR: I brought the computer to jail one
5 time and I think he was working on this picture. Actually, he
6 copied and pasted the picture from one folder and he add the
7 yellow, the yellow strip on the top, and basically modified it,
8 yes.

9 THE COURT: Okay. Thank you very much. So when you
10 saw the photograph, that's not how it originally appeared?
11 That's what Mr. Scotton made it look like?

12 THE INVESTIGATOR: That's correct.

13 THE COURT: Let's go ahead and call Mr. Wolff now.

14 Mr. Scotton, I could hold you in contempt based on
15 that, but I'm not going to do it. You are not to fabricate any
16 additional evidence. That should be obvious to you.

17 MR. SCOTTON: Your Honor, I didn't fabricate the
18 picture, Your Honor. I took the picture from the email file
19 and put it there so she could print it. I did not fabricate
20 it. I can prove to the Court if the Court want satisfaction.
21 Your Honor, may I approach with the computer show you this?

22 THE COURT: To show me what?

23 MR. SCOTTON: You can understand what Martinez told
24 you the original picture, that's not fabrication.

25 MS. MITRANI: The original picture is in Court Exhibit

1 No. 4 where the defendant doctored it to include DHL on it.

2 THE COURT: Yes, I did see that.

3 MR. SCOTTON: Your Honor, may I approach?

4 THE COURT: Just a moment.

5 Let me put on the record that we have just called
6 Mr. Wolff, that one of his employees answered the phone and
7 stated that he could not find Mr. Wolff or put him on the phone
8 at this time. And then I explained to this individual that we
9 needed Mr. Wolff to return our call before 5:00 today, that we
10 had been trying to reach him for several days now, and that he
11 hasn't responded and that we would like to work this out in a
12 way that doesn't require me to have to send out the marshals to
13 get him, but if he doesn't respond, that that's what I will
14 have to do. I just want to put on the record that I have given
15 that information to Mr. Wolff's employee and we will let the
16 parties know when we hear from Mr. Wolff. And if not, we will
17 decide how to proceed.

18 MS. MITRANI: Like I said, Your Honor, before, it is
19 my understanding that he's been out of the country. I don't
20 know that there's been a deliberate attempt to not call you
21 back. I don't know one way or the other. It's not our
22 witness.

23 THE COURT: I understand that. That's why I haven't
24 sent the marshals out because I always like to give somebody a
25 chance to explain himself or herself, and it might be just an

1 innocent misunderstanding. But if I sense that a witness is
2 avoiding a subpoena, then, you know, obviously I need to
3 address that. I can't just let that occur. That's all I am
4 putting on the record.

5 MR. SCOTTON: May I approach, Your Honor, please?

6 THE COURT: Yes.

7 MR. SCOTTON: You can see here this is email from my
8 brother. Okay. An email was sent on 2009. The email has the
9 picture. If I pull this picture here, right, like I pull it
10 here, as you can see --

11 THE COURT: I don't know what you did. I have no idea
12 what you did. I have no idea. I have no idea what that is.

13 MR. SCOTTON: Your Honor, hold on a second. Let me
14 explain to you here. That's the picture right here. Okay. So
15 what I did here, when Martinez asked, we don't need to
16 introduce the whole thing here because I just want to ask
17 question Mr. Peters. I called this part here the picture. I
18 don't show the whole flyer. This is a flyer, as you see here.
19 This is same picture. If you get the picture, you are going to
20 see just this part right here that I cut and paste. That
21 that's what I did. I didn't want to show the whole flyer.
22 There's no need for the whole flyer.

23 THE COURT: I have no idea what you did. I have no
24 idea whether it was, in fact, Mr. Alexander Scotton who sent
25 it. I have no idea what it looked like at the time he sent it

1 or if you doctored it. I have no idea. I have no idea. I'm
2 sorry to tell you that your record has not been very good so
3 far in this case for being truthful with the Court. I can't
4 tell what you did. This doesn't show me anything. I'm sorry,
5 but it just doesn't. Thank you.

6 MS. MITRANI: Your Honor, I think Court Exhibit 4
7 shows that the doctored photograph was modified January 23,
8 2014. I'm not sure that we said the year into the record.

9 THE COURT: Thank you. So as soon as the witness
10 arrives, if you could let the Court know, and then we will see
11 if we can round up the jury and start up again. In any case,
12 we will be back here no later than 11:30.

13 MR. SCOTTON: Your Honor, are you going to do the
14 later thing with the --

15 THE COURT: Right. Sorry. Let me ask the government
16 to step out and find out about Mr. Midyett and Mr. Seligstein

17 (Thereupon, the government exited the courtroom.)

18 (Thereupon, a sealed hearing was held.)

19 (Thereupon, a call was placed to Mr. Wolff.)

20 THE COURT: Mr. Wolff?

21 MR. WOLFF: Yes.

22 THE COURT: Hi. This is Robin Rosenbaum. I am the
23 judge that is presiding over the trial that I believe you
24 received a subpoena for. I'm sorry to take up your time, but
25 we wanted to make sure that you will be coming in and that you

1 have made arrangements to come in for the trial. And no one
2 here seems to know about whether that's happened, so I just
3 wanted to check with you.

4 MR. WOLFF: You know, I was away on a trip. They
5 subpoenaed my nanny. They never really subpoenaed me. But I
6 did get my lawyer involved. This is starting to cost me a lot
7 of time and a lot of money. I got my lawyer involved. I have
8 no recollection. I did do a police report a few years ago, but
9 I'm filing police reports -- it's not unusual for me to do
10 that. I have 35 employees. We do 15, 20 thousand transactions
11 a month when the dollar amount is over a certain amount.

12 They are saying I'm a key component in this case. I
13 have pretty much zero recollection of any of this matter. So I
14 don't know how I have become a key component. But I'm an
15 online retailer. I have a website. It has a fairly decent
16 amount of traffic 10, 15 thousand hits a day, and I deal with
17 stolen credit cards and fraud daily. I wouldn't be able to
18 identify a guy that stole from me last week.

19 This has been going back and forth. My lawyer --
20 nevertheless, with all that said and done, I contacted the
21 marshals' office. There were some names, a list of -- I was
22 supposed to be on somebody's list, and I wasn't on the list.
23 So I did take that measure to, you know, respect the Court's
24 wishes, but I was not on any travel list or anything like that.
25 I contacted the marshal, a marshal I believe a called.

1 THE COURT: Let me just maybe we can address --

2 MR. WOLFF: I spoke to a Ms. Christian at a marshals'
3 office, and she stated that my name was not on the travel list
4 given to her by Mr. Kreiss. I moved on and that was last week.

5 THE COURT: All right. But I have called you since
6 that time and there's been no response. In any case, let's see
7 if we can resolve the issue.

8 MR. WOLFF: I would say on a personal level, I have
9 nothing to contribute. I got back from my vacation. The pipes
10 in my house burst. I'm dealing with insurance companies and my
11 family. I had eight burst pipes. It was minus ten degrees. I
12 have a business to run. And they are trying to fly me out
13 there for a few days to testify on something I have zero
14 recollection. I could just say I don't know, I don't know, I
15 don't know. I don't know anything about it.

16 THE COURT: Mr. Wolff.

17 MR. WOLFF: I have a lot of personal issues plus a
18 business to run.

19 THE COURT: Mr. Wolff --

20 MR. WOLFF: I came back to a terrible situation with
21 pipes burst in my house.

22 THE COURT: Excuse me, Mr. Wolff.

23 MR. WOLFF: I'm dealing with that, and a family, and a
24 baby --

25 THE COURT: Mr. Wolff, I need you to stop for a

1 moment.

2 MR. WOLFF: -- and insurance companies --

3 THE COURT: Mr. Wolff, I need you to stop for a
4 moment.

5 MR. WOLFF: Not a good time for me.

6 THE COURT: Mr. Wolff, I don't want to have to send
7 the marshals out.

8 MR. WOLFF: I'm not a good mood witness with anything
9 to add needless to say.

10 THE COURT: Mr. Wolff, are you done?

11 MR. WOLFF: I have no idea why they are calling me for
12 this case.

13 THE COURT: Mr. Wolff, are you done? All right.
14 Mr. Wolff, I would like to try to see if we can address this
15 right now, but I can't do that --

16 MR. WOLFF: Hello?

17 THE COURT: I'm here. Can you hear me?

18 MR. WOLFF: Hello?

19 THE COURT: Mr. Wolff, I'm here. I know you can hear
20 me. Please do not hang up, Mr. Wolff. Mr. Wolff.

21 MR. WOLFF: Hello. You are breaking up. I'm here.
22 Can you hear me?

23 THE COURT: Yes, I can hear you perfectly clearly.
24 All right. So Mr. Wolff --

25 MR. WOLFF: Hello?

1 THE COURT: Mr. Wolff, I don't want to have to send
2 the marshals out to bring you into court. I hope we can
3 resolve this over the phone.

4 MR. WOLFF: Can we try to call back? It's a terrible
5 connection. I'm getting only pieces of what you are saying.
6 Can I call you right back or can you call me back?

7 THE COURT: Sure. Give me the number. Can you give
8 me the number, please? Mr. Wolff, can you give me the number?

9 MR. WOLFF: 718-522-1071. It's the number that you
10 left me a message for earlier today.

11 THE COURT: Thank you. We will call you right back.

12 MR. WOLFF: 718-522-1071.

13 THE COURT: We will call you right back. Thank you.

14 MR. WOLFF: Thank you.

15 (Thereupon, a call was placed.)

16 THE COURT: Mr. Wolff?

17 MR. WOLFF: Yes.

18 THE COURT: All right. As I was saying, I want to see
19 if we might be able to resolve this without having to bring you
20 down.

21 THE WITNESS: That would be great. I don't know if
22 you heard my spiel about the pipes and everything.

23 THE COURT: I heard it. Please don't go through it
24 again. I heard it. But now I need you to answer some
25 questions and then we will see whether we really need to bring

1 you down.

2 Mr. Scotton, go ahead and ask the questions that you
3 would ask Mr. Wolff if we had him down here.

4 MR. SCOTTON: Mr. Wolff, can you hear me?

5 MR. WOLFF: Yes.

6 MR. SCOTTON: Okay. Seems to be that you have a
7 client couple years ago Mr. Osvaine Duarte out of Georgia.

8 THE COURT: You know what. I'm sorry. Why don't we
9 go ahead and swear Mr. Wolff first. Mr. Wolff, can you go
10 ahead and raise your right hand for me, please.

11 MR. WOLFF: It's raised.

12 THE COURT: Do you solemnly swear that the testimony
13 you are about to give will be the truth, the whole truth, and
14 nothing about the truth so help you God.

15 MR. WOLFF: I do.

16 THE COURT: Thank you.

17 Mr. Scotton, please proceed.

18 MR. SCOTTON: Mr. Wolff, did you have any recollection
19 of Osvaine Duarte as a person that buy merchandise out of your
20 website?

21 MR. WOLFF: I do not.

22 MR. SCOTTON: Did you have recollection that you made
23 a police report against him on November 29 of 2010?

24 MR. WOLFF: This police report was forwarded to me. I
25 do see it. I don't have a recollection of it, but I do have

1 the police report.

2 MR. SCOTTON: Right. Do you have recollection that
3 Mr. Osvaine was using a Fed-Ex account and pretend to be some
4 kind of employee from your company?

5 MR. WOLFF: I have no recollection of any of it, so...

6 MR. SCOTTON: Do you have any information on those
7 labels or from Fed-Ex or any records from your company that
8 shows that Mr. Osvaine has provided with a credit card or
9 driver's license and you have been shipping packets to his
10 location?

11 MR. WOLFF: I have no -- nothing in my system, nothing
12 of the sort.

13 MR. SCOTTON: But do you have the recollection that
14 you filed this report on him using Federal Express account?

15 MR. WOLFF: This report was sent to me over the last
16 week or so. I don't recall the process. As I mentioned to the
17 Judge, we deal with fraud pretty much on a weekly basis here
18 and I have submitted quite a few police reports since the date,
19 so I can't recall the details.

20 MR. SCOTTON: Did you receive any call from FBI Agent
21 Roy Van Brunt?

22 MR. WOLFF: I have received calls from people
23 regarding this case in the last week or so, yes.

24 MR. SCOTTON: And the FBI called you too?

25 MR. WOLFF: I do believe the FBI called me. I can

1 check my records.

2 THE COURT: Anything else, Mr. Scotton?

3 MR. SCOTTON: I thought he was going to look his
4 records, so...

5 THE COURT: Mr. Wolff, are you checking your records
6 right now?

7 MR. WOLFF: As far as which question?

8 MR. SCOTTON: Calls that you have received the last
9 couple of days of prosecutor or FBI agent.

10 MR. WOLFF: What was the name of the agent?

11 MR. SCOTTON: Roy Van Brunt.

12 MR. WOLFF: Excuse me?

13 MR. SCOTTON: Roy Van Brunt.

14 MR. WOLFF: Hold on a second. This was the FBI?

15 MR. SCOTTON: Yes, sir.

16 MR. WOLFF: Hold on. It's hard for me to understand
17 you a little bit with your accent. His name was what?

18 THE COURT: Roy Van Brunt.

19 MR. WOLFF: Roy Van Brunt. I received a call by the
20 FBI agent by the name of Roy. I didn't write the last name
21 down. So Roy. That's what I have, Roy.

22 MR. SCOTTON: And did you talk to him about this
23 report?

24 MR. WOLFF: Yes, I did.

25 MR. SCOTTON: And that's why you don't have any

1 recollection any record from Osvaine Duarte?

2 MR. WOLFF: Excuse me?

3 MR. SCOTTON: That's why you have no recollection at
4 this point from this report that you filed against Mr. Duarte?

5 MR. WOLFF: Well, I have a recollection because it's
6 been discussed with me this week, but I don't recall the
7 specifics of the case when it happened however many years ago
8 that it was.

9 MR. SCOTTON: So your company, you guys don't hold
10 any -- you know, in storage have any accounts, details of --

11 MR. WOLFF: Well, being that this -- we ship so much
12 volume here, we are shipping 15,000 items a month, we can't
13 save Fed-Ex or UPS invoices here, we would have boxes and boxes
14 of storage.

15 And since then, we have left Federal Express. We
16 haven't been shipping. So I'm not even using that carrier. We
17 moved locations and we upgraded our inventory and sales system.
18 So a lot of the data from the old customers was not transferred
19 over. And we certainly don't save Fed-Ex or UPS or shipping
20 invoices after a year.

21 MR. SCOTTON: In your system you don't have a client's
22 name? Did you search in your system if you have this client
23 back in those days?

24 MR. WOLFF: I did search in the system for that name
25 but didn't find that name because we switched. We upgraded our

1 technology and moved all of our balances, all of our customer
2 base into a new network and that name was not on there.

3 MR. SCOTTON: And at the time --

4 MR. WOLFF: Unfortunately, in regard to this case, we
5 upgraded our point of sale system about a year and a half ago
6 and the customer database did not transfer. And this customer
7 was not part of our mailing list for our website so the
8 information or the name did not transfer over.

9 MR. SCOTTON: So you don't have any recollection that
10 you have any contact with Mr. Duarte in reference to this
11 report you filed?

12 MR. WOLFF: I have no recollection of having any sort
13 of contact, no relationship. The police report was done by me.
14 I don't recall the details of the case.

15 MR. SCOTTON: That's all, Your Honor.

16 THE COURT: Thank you, Mr. Wolff. We will give you a
17 call back one way or the other today and let you know whether
18 we need you to come down. We really appreciate your time.
19 Have a good day.

20 THE WITNESS: Thank you very much.

21 THE COURT: All right. Bye-bye.

22 All right. Mr. Scotton, it doesn't seem to me that
23 there's any basis for expending government money to bring
24 Mr. Wolff down under the circumstances. If you think I'm
25 missing something, let me know.

1 MR. SCOTTON: What can I say, Your Honor? You know,
2 on emails talking to investigator and everybody else, seems to
3 be at one point, he's got a recollection. Now he spoke to the
4 government, he can't even remember he filed a police report.

5 THE COURT: Ms. Martinez, was there ever any time that
6 Mr. Wolff indicated that he had a recollection of this?
7 Because if there was, that would be something that I need to
8 know.

9 THE INVESTIGATOR: Not at all.

10 THE COURT: So that would be another false
11 statement --

12 THE INVESTIGATOR: Just the attorney say that they
13 received the report, they received the material, and he's going
14 to forward to Mr. Wolff, but he never get back to me.

15 THE COURT: Okay. Thank you.

16 THE INVESTIGATOR: You're welcome.

17 THE COURT: In that case, I don't see any basis for
18 expending government money to bring him down because it doesn't
19 seem to me that he has any relevant information. And honestly,
20 as we have previously discussed, I think it was of marginal
21 relevance anyway since it pertained to a shipment through Sandy
22 Springs, Georgia and the shipments involved in this case went
23 through south Florida.

24 So for all of those reasons, I am going to instruct
25 Mr. Creary to please call Mr. Wolff and release him from the

1 subpoena.

2 Do we have the witness here for the 11:30?

3 MS. MITRANI: I want to the put on the record, I don't
4 know that it matters, but Mr. Kreiss was shaking his head
5 vociferously denying also that the defendant -- he had told the
6 defendant that he had spoken to Mr. Wolff, so just more lies by
7 the defendant.

8 THE COURT: All right. Why don't we go ahead -- do we
9 have the witness here for 11:30?

10 MR. SCOTTON: No. Mrs. Adria is on the way, Luely
11 Laite is not answering the phone, and Janice Morrison, she
12 don't answer the phone.

13 THE COURT: The one who is on the way, do we know how
14 far away she is?

15 THE INVESTIGATOR: She's in Boca Raton.

16 THE COURT: Is she still in Boca?

17 THE INVESTIGATOR: No, she's on the way. She said she
18 would be here 11:30 or 11:40.

19 THE COURT: Mr. Creary, would you mind just letting
20 the jury know that the witness hasn't arrived yet, but as soon
21 as she gets here, we will start up again.

22 MR. KREISS: Your Honor, may I have permission to run
23 down to magistrate court. I have a client that's down there.

24 THE COURT: Yes. Absolutely.

25 MS. MITRANI: Your Honor, can I go to the bathroom?

1 THE COURT: Yes.

2 (Thereupon, a recess was taken at 11:35 a.m.)

3 (Thereupon, the government exited the courtroom.)

4 (Thereupon, a sealed hearing was held.)

5 (Thereupon, the jury entered the courtroom at
6 11:49 a.m.)

7 THE COURT: All right. Thank you. Please be seated.
8 Mr. Scotton, you may call the next witness.

9 MR. SCOTTON: Your Honor, we call Adria.

10 THE COURT: Who are you calling?

11 MR. SCOTTON: Mrs. Adria, W-O-R-T-H-I-N-G-T-O-N,
12 Worthington.

13 ADRIA WORTHINGTON

14 Having been first duly sworn on oath, was examined and
15 testified as follows:

16 THE COURTROOM DEPUTY: Please be seated. State and
17 spell your first and last name for the record.

18 THE WITNESS: Okay. Adria Worthington, A-D-R-I-A
19 W-O-R-T-H-I-N-G-T-O-N.

20 THE COURT: Thank you.

21 Whenever you are ready, Mr. Scotton, you may proceed.

22 DIRECT EXAMINATION

23 BY MR. SCOTTON:

24 Q Hi, Ms. Adria. How are you doing today?

25 A Good. Thank you.

1 Q Good to see you.

2 A Good to see you.

3 Q Ms. Adria, I'm not going to take too much your time. I'm
4 just going to ask a couple quick questions.

5 A Okay.

6 Q Can you just let the jury know where you work.

7 A I'm the property manager for Mizner on the Green.

8 Q Where is Mizner on the Green located?

9 A It's in east Boca Raton. Do you need the address?

10 Q Yes. Can you provide that?

11 A It's 200 Southeast Mizner Boulevard, Boca Raton 33432.

12 Q And you -- what your position with that company?

13 A I am the property manager.

14 Q Ms. Adria, as far you can remember, do you recall when I
15 moved to that location?

16 A You moved in in March of 2007.

17 Q And when I moved to that location 2007, did I move by
18 myself?

19 A At the time of the move-in, you had two people on the
20 lease, but for the most part, you were there by yourself. You
21 were there for five years or approximately five years.

22 Q During the time that I live over there, Ms. Adria, did you
23 recall any problem with me?

24 A Nothing out of the ordinary, no, not really.

25 Q And has been times that I was struggle to pay rent?

1 A I would say overall, you were a pretty good resident.
2 There were a couple late payments in the file, but overall,
3 pretty good.

4 Q Ms. Adria, I would like to show a picture of an
5 individual. I want to know if you recognize this picture.

6 A Okay.

7 MR. SCOTTON: Your Honor, can I have a moment?

8 THE COURT: Can you show it to the government first.

9 MR. SCOTTON: I need the one that has the label.

10 THE COURT: All right.

11 MS. MITRANI: Your Honor, he hasn't posed a question,
12 so there is nothing that this witness needs her -- I guess I
13 would object to him just showing a picture without there being
14 a prior question.

15 THE COURT: I think he's going to show a picture and
16 then he's going to ask a question.

17 BY MR. SCOTTON:

18 Q I'm going to show a picture. I want to see if you can
19 recognize the young lady in this picture.

20 A Okay. I do not.

21 Q You never recall seeing this girl in the office?

22 A I do not. I remember at one point there was a woman who
23 came into our office and introduced herself to me. But I don't
24 recognize it as this person. It was a long time ago, so I
25 don't know.

1 Q And you don't recall at one point out at the LA Fitness
2 seeing this lady with me?

3 A No. I remember you and I had mentioned in the office a
4 couple times that we both worked out at that gym, but I don't
5 remember seeing you there or anybody with you.

6 Q Ms. Adria, did you ever receive any calls from federal
7 agent, FBI, prosecutor?

8 A I don't think we received any phone calls. I do believe
9 people came in asking some questions after you moved out.
10 Again, this was a while ago. So I think it was just questions.
11 I believe it was after your move-out, but no, I don't recall.

12 Q And any of those persons that I came to ask questions
13 present in court today?

14 A Not that I recall, no, or not that I recognize anyway.

15 Q Do you have any recollection of open the door of my house
16 for any federal agent?

17 A No, I do not.

18 Q Have you receive any subpoenas to allow anybody go inside
19 my property?

20 A Not that I recall.

21 Q Do you have any recollection of any of your employees over
22 there open my door for somebody else?

23 A No, I do not.

24 Q During this time that I live in your condominium, what can
25 you describe as being -- what can you describe to the jury as

1 my character? Was I a troublemaker?

2 A No, I wouldn't say that. No, you were there about five
3 years. And you would come in the office periodically for
4 whatever reason that residents normally come in, work orders or
5 paying rent or things like that. But you were always very
6 pleasant to everybody in our office, I would say.

7 Q And you have any recollection that -- I mean, you have
8 recollection when I moved the first time with my first wife,
9 correct?

10 A I didn't actually remember that very well. But I do know
11 that she was on the original application and that she was on
12 the original lease.

13 Q Have I -- from your recollection of my contracts, do you
14 have a recollection that I -- how long a period of time did I
15 used to lease the condominium over there?

16 A You were there from March 2007 and I think we have the
17 move-out date as June 2012.

18 Q And did I used to sign this lease contract for 6, 12?

19 A Well, you are able to sign anywhere from 7- through
20 12-month leases, and you did different lease terms, it looked
21 like, each time. You did some 7-month leases, some 12-month
22 leases. So there was, I guess, a variety of lease terms.

23 Q You just said at one point I was having problem paying my
24 rent late as well?

25 A I do remember a period of time where you were having some

1 late payment issues. I believe after a while it cleared up
2 because for the most part, during the five-year period, it was
3 pretty good, but there was a point where there were some late
4 payment issues.

5 Q As far as go your recollection, you cannot remember the
6 lady in the picture or even see her with me in the LA Fitness,
7 correct?

8 A I do not, like I said, I remember meeting one person that
9 was in your apartment. I don't remember what year it was.
10 They came into our office and introduced themselves. Dark hair
11 like this person, smaller build, I believe. But again, it was
12 a while ago and I know pictures, you know, people look
13 different over time too, so I'm not sure.

14 MR. SCOTTON: Okay. No more questions, Your Honor.

15 THE COURT: Any cross?

16 CROSS EXAMINATION

17 BY MS. MITRANI:

18 Q Ms. Worthington, just a couple questions. You testified
19 that the defendant, Mr. Scotton, lived there by himself,
20 correct, or he was the only person on the lease?

21 A For the most part, yes.

22 Q In the very beginning, in 2007, there was a Samara Moreira
23 Scotton on the lease, correct?

24 A Samara Scotton, correct.

25 Q And then she dropped off, correct?

1 A Yes, we only have her on the first lease.

2 Q Which would be 2007, correct?

3 A Yeah, the first lease started in 2007, so it was either a
4 7-or 12-month lease after that.

5 Q After that, the defendant was on the lease by himself?

6 A Correct.

7 Q No other person on the lease?

8 A No.

9 Q No other woman on the lease?

10 A No.

11 MS. MITRANI: No other questions.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. SCOTTON:

15 Q Ms. Adria, any warning has been -- has any kind of warning
16 has been presented to your location to get any kind of files?

17 MS. MITRANI: Objection, beyond the scope.

18 THE COURT: Sustained.

19 BY MR. SCOTTON:

20 Q On your recollection, did can you receive any warrant?

21 MS. MITRANI: Beyond the scope.

22 THE COURT: Sustained.

23 BY MR. SCOTTON:

24 Q Did you present any my files to this government here?

25 MS. MITRANI: Beyond the scope.

1 THE COURT: Sustained.

2 BY MR. SCOTTON:

3 Q In your recollection, you mentioned that you never opened
4 my door for anybody?

5 MS. MITRANI: Beyond the scope.

6 THE COURT: Sustained.

7 MR. SCOTTON: No more questions, Your Honor.

8 THE COURT: Thank you very much, Ms. Worthington. You
9 are excused. Have a great rest of your day.

10 THE WITNESS: All right. You too.

11 THE COURT: Mr. Scotton, you may call your next
12 witness.

13 MR. SCOTTON: The witness is not here yet, Your Honor.

14 THE COURT: Do you know when the witness will be here?
15 All right. Let's see if we can reach the witness and figure
16 out when they will be here.

17 THE INVESTIGATOR: We had to schedule Luely Laite and
18 Janice Morrison. They are not here.

19 THE COURT: Would you mind giving a call and seeing
20 how far away they are, please?

21 THE INVESTIGATOR: They don't answer the phone, Your
22 Honor.

23 THE COURT: What time were they planning on coming?

24 THE INVESTIGATOR: 1:00 p.m., Your Honor.

25 THE COURT: We are going to be ending at 1:00. All

1 right. Well, if there is no one further, then I guess what we
2 will do is we will conclude a little early today for the rest
3 of the day and we will start up again tomorrow at 9:00. Is
4 that right, Mr. Creary?

5 9:00 tomorrow. You all have a wonderful rest of your
6 day. Have a good afternoon off. See you tomorrow at 9:00.
7 Please do remember my instructions. All rise for the jury.

8 (Thereupon, the jury exited the courtroom at
9 12:02 p.m.)

10 THE COURT: All right. Is there anything else we need
11 to address today with everybody here?

12 MS. MITRANI: The only thing I heard is them
13 indicating, I think, Janice Morrison. I don't know if that
14 witness has been served or not, but she was called in the
15 government's case in chief. Is the defendant going to proffer
16 what additional information? She was also a very limited
17 records custodian.

18 THE COURT: I will have to check my records on that.

19 MS. MITRANI: She was with DHL and she was called
20 towards the end of the trial.

21 THE COURT: The last name is Morrison, am I correct?

22 MS. MITRANI: Yes, Your Honor, if I'm understanding
23 Ms. Martinez correctly, and they do have her on the list.

24 THE COURT: Okay. Why do we need to have Ms. Morrison
25 come back?

1 MR. SCOTTON: I don't want do give my strategy here,
2 so this is my defense. I'm not going to --

3 THE COURT: Let me ask the government to step out for
4 a moment, please.

5 (Thereupon, the government existed the courtroom.)

6 THE COURT: Why do I need to bring Ms. Morrison back?

7 MR. SCOTTON: Your Honor, come again to the records
8 that she say that she has provide and spreadsheet from DHL the
9 accuracy of names. Ridiculous my being sitting here. Some of
10 the documents the government has present to me, they have not
11 present to the Court, but the records shows even account from
12 some kind of sheriff's department and has some kind of \$7,000
13 outstanding balance. So if the government allege that I did
14 all this crime, Your Honor, and I'm using a sheriff's
15 department DHL account, I'm the dumbest person in the world.
16 So all this nonsense that has been throw here in this --

17 THE COURT: I haven't heard the government make any
18 allegations about your using the sheriff's department DHL
19 account. I may have missed it, but I don't recall hearing
20 that.

21 MR. SCOTTON: I have all the papers, Your Honor, here.

22 THE COURT: Are you charged with having used the
23 sheriff's department's DHL account?

24 MR. SCOTTON: It's part of the spreadsheet. They put
25 it in. If it's part of the spreadsheet, then --

1 THE COURT: I don't remember and I need to see it
2 because other things you have told me have not been accurate.

3 In any case, I would need to know what it was that you
4 intended to ask.

5 MR. SCOTTON: Got several different pages, but the one
6 they say, that's the accounts right there.

7 THE COURT: Are you saying that this is in evidence?

8 MR. SCOTTON: Yes, Your Honor.

9 THE COURT: What government's exhibit is this?

10 MR. SCOTTON: Well, it's part of the spreadsheet they
11 have presented here.

12 THE COURT: What is the government exhibit number?
13 Every piece of evidence has an exhibit number. If you are
14 telling me this is in evidence, you should be able to tell me
15 what the exhibit number is. I mean, there are thousands of
16 pieces of paper, and I'm sorry, I can't take your word for it
17 that this is in evidence. It may be, but it may not be. I
18 don't know.

19 I could ask the government if it's in evidence, but
20 you don't want them here, so...

21 MR. SCOTTON: I have another list, like I said, Your
22 Honor, like I told you before.

23 THE COURT: Again, is it in evidence? If so, what is
24 the exhibit number?

25 MR. SCOTTON: Your Honor, I'm going by what the

1 spreadsheet say. They print --

2 THE COURT: Is it in evidence?

3 MR. SCOTTON: The spreadsheet is in evidence, right.

4 THE COURT: I don't know because this does not have an
5 exhibit number on it and you can't tell me what exhibit it's a
6 part of and you have lied frequently during this trial. So you
7 need to tell me what exhibit this is a part of or else -- or we
8 can bring the government in and they can tell me what exhibit
9 it's a part of.

10 You might be right. It might be an exhibit. I don't
11 know. And I'm not going through thousands of boxes of
12 documents to figure out whether this is a needle in a haystack
13 or whether you are trying to mislead the Court.

14 So if you think this is an exhibit that's in evidence,
15 let's call the government in and they can tell us or you can
16 tell me what it's a part of. But I'm not going to sit here and
17 rule on this as if it's an exhibit and you won't tell me what
18 exhibit it's a part of and you won't let me bring the
19 government in to tell me either. Otherwise, we are not going
20 to bring Ms. Morrison back to talk about something that may not
21 even be in evidence.

22 How do you want to proceed? Do you want me to bring
23 the government in and ask them if that's a part of an exhibit?
24 Do you want to tell me what exhibit it's a part of? It's your
25 choice.

1 MR. SCOTTON: As far I understand, by look what they
2 present here through cross-examination, it is spreadsheets.
3 That's all that's been presented here one after another,
4 spreadsheets.

5 THE COURT: Mr. Scotton, either you can identify it as
6 an exhibit or you can't. I'm sure that there are lots of
7 things that have been produced to you that are not made a part
8 of a court exhibit because that's the nature of discovery. If
9 you look at the bottom of that, it says Jencks material. It
10 doesn't say it's an exhibit. And Jencks material frequently is
11 not made exhibits.

12 So I will ask you once again, is it an exhibit? If
13 you are not sure and you want me to ask the government --

14 MR. SCOTTON: I'm not sure, Your Honor.

15 THE COURT: And if you want me to ask the government,
16 I will be happy to do that.

17 MR. SCOTTON: I'm not sure, Your Honor.

18 THE COURT: Do you want me to ask the government?

19 MR. SCOTTON: Yes, Your Honor.

20 THE COURT: Would you, Mr. Creary, go ahead and see if
21 we can find out if this document is a part of an exhibit.

22 (Thereupon, the government entered the courtroom.)

23 THE COURT: Do we have a copy of the document for
24 Ms. Mitrani? I think I gave it back.

25 Can you tell us whether either of these documents are

1 a part of any exhibit that has been entered? Take as much time
2 as you need to be sure, please.

3 MS. MITRANI: I'm sorry, Your Honor, what was the
4 question?

5 THE COURT: Are either of those documents or are any
6 of those documents a part of anything that is an exhibit in
7 evidence in this trial?

8 MS. MITRANI: No, these documents are not exhibits in
9 trial. What these documents are, Your Honor, are summaries
10 that were prepared by Special Agent Van Brunt and given to me
11 and produced over to the defendant as part of Jencks. So I
12 mean, we have DHL spreadsheets and Fed-Ex spreadsheets, but
13 these are not the spreadsheets. These are Agent Van Brunt's
14 documents.

15 THE COURT: Thank you very much. Ms. Morrison will
16 not be returning. Anyone else we need to address? Let's give
17 those back to Mr. Scotton. On the record I'm noting that
18 Ms. Mitrani has handed back all the documents to Mr. Scotton.

19 Anything else we need to address?

20 MR. SCOTTON: I have a couple more names, Your Honor,
21 that we going over.

22 THE COURT: Other than the ones we have already
23 discussed? Because I have said no on all of those.

24 MR. SCOTTON: Yes.

25 THE COURT: All right. Let me ask the government to

1 step outside, please.

2 (Thereupon, the government exited the courtroom.)

3 (Thereupon, a sealed hearing was held.)

4 THE COURT: Ms. Mitrani, can you take a look at the
5 document that Mr. Scotton has and let us know the first time
6 the government provided it to Mr. Scotton, please.

7 MS. MITRANI: Which one is that?

8 Ill need a minute --

9 THE COURT: No problem.

10 MS. MITRANI: -- or two. I know it was provided
11 because it's Bates labeled.

12 MR. SCOTTON: Your Honor, if the government wants to
13 save some time to recollect, it's when they give me the bunch
14 of stack of paper with the Jencks material recently.

15 MS. MITRANI: I don't know what the defendant's
16 talking about, but if he's -- I'm not sure what he's talking
17 about.

18 THE COURT: Have you been able to figure out when you
19 gave it to him?

20 MS. MITRANI: I'm sorry.

21 THE COURT: That's all right. Do you need more time
22 to look?

23 MS. MITRANI: Yeah, we need to go up to the igloo.

24 THE COURT: That's fine.

25 MS. MITRANI: I don't think it was recent.

1 Okay. Your Honor, this document USCIS 815 as part of
2 the A file.

3 I'm sorry, it's not part of the A file. It was
4 produced as part of a USCIS production. In any event, Your
5 Honor. 1 through 934 was sent to the copier company back in
6 2012 and I believe Ms. Doakes made arrangements to get that
7 production from the copier service which was Expedia when she
8 took over the case in 2012.

9 And then on June 14, 2013, we have correspondence with
10 Mr. Adelstein giving him the supplemental list of the discovery
11 in this case, so --

12 THE COURT: And does the list include that Bates
13 number?

14 MS. MITRANI: It does. I think my recollection was
15 that Mr. Adelstein had gotten discovery from -- I don't know if
16 it was Ms. Doakes or Mr. Armstrong, but he had reached out to
17 me saying he was missing some things. We had correspondence
18 back and forth. And this letter I have here dated June 14,
19 2013 is part of our discovery index.

20 THE COURT: Let's make a copy of that. We are going
21 to make a copy of it, Court Exhibit 6.

22 MS. MITRANI: As I indicated, I believe it was part of
23 the first production back in 2012. I know there were some
24 issues about whether Mr. Friedmain or Mr. Abreu got it from
25 Expedia, but I know Ms. Doakes who was then a public defender

1 had the funds to get it, and then again in 2013.

2 THE COURT: Thank you. And I'm sorry to ask you this,
3 but would you mind stepping out again.

4 MS. MITRANI: No, no problem.

5 AGENT VAN BRUNT: Your Honor, can we return this to
6 Mr. Scotton?

7 THE COURT: Yes, please return it to him. I'm noting
8 on the record it's being returned. Thank you.

9 (Thereupon, the government exited the courtroom.)

10 (Thereupon, a sealed hearing was held.)

11 (Thereupon, the government entered the courtroom.)

12 (Thereupon, Mr. Scotton exited the courtroom.)

13 THE COURT: I'm a little concerned about speaking to
14 you all without Mr. Scotton here. I am afraid that it might be
15 some kind of a violation. I know you have requested to do
16 that, but I am going to ask that we wait until the trial is
17 over if that's all right with you. Would that be all right?

18 MR. KREISS: Sure. I made the communication to
19 Mr. Creary on Ms. Martinez's behalf, and absolutely, I
20 understand the Court's concern about that issue.

21 THE COURT: All right. Thank you.

22 MR. KREISS: We will certainly respect the Court's
23 opinion and order on that issue.

24 THE COURT: Let me say this just to set Ms. Martinez's
25 mind at ease. I don't think -- I haven't seen any reason to

1 believe that you have done anything wrong in any way. So if
2 that's what's concerning you, please know that I have no reason
3 at this time to believe that that's the case. But beyond that,
4 I wouldn't want to go into anything further.

5 THE INVESTIGATOR: All right, Your Honor. I
6 understand.

7 THE COURT: Thank you.

8 THE INVESTIGATOR: May I make a comment, Your Honor?

9 THE COURT: As long as it doesn't address anything
10 substantive.

11 THE INVESTIGATOR: Let me ask Jason.

12 THE COURT: Thank you.

13 THE INVESTIGATOR: Fine, Your Honor, we are going to
14 let you know at the end of the trial.

15 THE COURT: One other thing. Can I ask the government
16 to step outside for one minute, please.

17 (Thereupon, the government exited the courtroom.)

18 (Thereupon, a sealed hearing was held.)

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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

7/30/14

s/ Tammy Nestor
Tammy Nestor, RMR
Official Court Reporter
299 East Broward Boulevard
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,
Plaintiff(s),
vs.
ROGERIO CHAVES SCOTTON,
Defendant(s).

Fort Lauderdale, Florida
February 25, 2014

JURY TRIAL
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): Bertha Mitrani, Esquire
United States Attorney's Office
500 East Broward Boulevard
Seventh Floor
Fort Lauderdale, Florida 33301

FOR THE DEFENDANT(S): Rogerio Scotton, Pro Se

STANDY COUNSEL: Jason Kreiss, Esquire
The Kreiss Law Firm
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REPORTED BY: Tammy Nestor, RMR
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I-N-D-E-X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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NICHOLAS BROWN

BY MR. SCOTTON	6			
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SHAWN BOMBARO

BY MR. SCOTTON	11		23	
BY MS. MITRANI		20		

GOVERNMENT'S EXHIBITS	PAGE
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1 Thereupon,
2 the following proceedings began at 9:03 a.m.:

3 THE COURT: Mr. Scotton, did you have something to
4 say?

5 MR. SCOTTON: Yes, Your Honor. Some stuff came to my
6 attention here. I'm not going to call this witness. There
7 seems to be a problem and I'm not going to bring her in.

8 THE COURT: That's your choice.

9 MR. SCOTTON: Yes, it is.

10 THE COURT: We don't need a Portuguese interpreter
11 then?

12 MR. SCOTTON: No, Your Honor. My mother is not going
13 to be able to testify, is she?

14 THE COURT: If you put her on the list, she can
15 testify.

16 MR. SCOTTON: She's on the list, right?

17 MR. KREISS: She's outside.

18 MR. SCOTTON: I don't know if she went on list at the
19 time or not, but she's outside.

20 THE COURT: You are responsible for knowing what's on
21 your own list. I am going to excuse the interpreter.

22 MR. SCOTTON: Okay, Your Honor.

23 THE COURT: I'm sorry for your inconvenience and thank
24 you very much.

25 THE COURT INTERPRETER: Not to worry.

1 MR. SCOTTON: Yesterday I reviewed some papers, and by
2 accident I took this with me, so this has been marked as
3 evidence. I don't know if there's a problem.

4 THE COURT: Why don't you give it back to Mr. Creary,
5 please. Thank you.

6 All right. If the jury is here, we will go ahead and
7 bring the jury in.

8 MS. MITRANI: Your Honor, I anticipate we may have a
9 charge conference today. I have a copy of the proposed jury
10 instructions which i filed. I don't know if the defendant has.
11 Can I ask Mr. Creary to make a copy for the defendant?

12 THE COURT: Sure. Thank you.

13 Is everybody here?

14 Ms. Mitrani, can you do me a favor and send those
15 instructions to me in Word or Word perfect if you don't mind?

16 MS. MITRANI: I can, but it's going to require a phone
17 call. Your Honor, may I step out?

18 THE COURT: Yes.

19 MS. MITRANI: Your Honor, I left a message. My cell
20 phone is in MY car. I have some other numbers. Can I run down
21 to my car?

22 THE COURT: You know what, when Mr. Creary gets back,
23 maybe you can use his phone to call over there.

24 Heres's Mr. Creary.

25 MS. MITRANI: I left a message. I have my assistant's

1 phone number, but I have my supervisor's phone number in my
2 cell phone. I don't know it off the top of my head.

3 THE COURT: Can you not just call the main line and
4 ask to be connected or no?

5 MS. MITRANI: I can try.

6 THE COURT: Everybody is here. We will do that later.

7 MS. MITRANI: Okay. I'll do what I can.

8 THE COURT: Thank you very much. And including the
9 supplemental instruction.

10 MS. MITRANI: Okay.

11 THE COURT: Thanks. All righty. All rise for the
12 jury.

13 (Thereupon, the jury entered the courtroom at
14 9:10 a.m.)

15 THE COURT: Thank you, everyone. Please be seated.
16 Good morning. Welcome back. I hope everybody had a great
17 afternoon and evening. Let me just start by asking my usual
18 question. Is there anyone here who has discussed the case with
19 anyone, disbursed any information about the case, or done any
20 research into the case? If so, please raise your hand for me
21 now.

22 I see no hands. Thank you all for that. Mr. Scotton,
23 whenever you are ready, you may call your next witness.

24 MR. SCOTTON: Yes, Your Honor, the defendant call
25 Nicky Brown.

1 Q Nick, any recollection as far you can -- do you recall
2 when you met me?

3 A I do not recall.

4 Q Can you explain to the jury what kind of relationship we
5 have back in the days?

6 A I am assuming it was a relationship for leasing matters.

7 Q During the time, can you care to tell the jury what have
8 we done together, what -- you know, the business act?

9 A Again, I cannot recall exactly what the business was or
10 what it was, but I am assuming, again, it was for commercial
11 leasing.

12 Q And which companies did you used to work before?

13 A I previously worked for Investments Limited.

14 Q Is that the same company that has leased a property to me?

15 A Again, I'm assuming that's what it was.

16 Q So you don't recall showing locations to me before?

17 A I do not before.

18 Q Before you come here to this court here to testify,
19 Mr. Brown, did you get any calls from prosecutor or federal
20 agents in reference to this case?

21 A I did not get any calls.

22 Q Is anybody has tried contact in reference to this case?

23 A Contacted me in reference to this case? Just for
24 appearance matters.

25 Q So you say that you don't recall that we went around town

1 showing some properties?

2 A Again, I was showing about 10 to 12 leases per month, so
3 it's tough for me to pinpoint exact things from that long ago.

4 Q So you don't recall the stores that the defendant has
5 opened in Boca Raton?

6 MS. MITRANI: Asked and answered.

7 THE COURT: Sustained.

8 BY MR. SCOTTON:

9 Q Do you recall signing a contract with me before?

10 A I do not.

11 Q So when you get -- did you get a call by Investigator
12 Martinez in reference this case?

13 A Just a call for -- yes, just a call for showing up.

14 Q And she did not explain to you who I am and what the
15 business we have done before?

16 MS. MITRANI: Objection to the form of the question.

17 THE COURT: Sustained.

18 BY MR. SCOTTON:

19 Q Has Martinez given you any information reference the case?

20 MS. MITRANI: Objection to the form of the question.

21 THE COURT: Sustained because it calls for hearsay.

22 I'm explaining why I sustained it.

23 MR. SCOTTON: Thank you, Your Honor.

24 BY MR. SCOTTON:

25 Q Do you remember a James, Mr. James, from the gym, the

1 trainer?

2 A Yes.

3 Q Is the same trainer that has trained both of us together?

4 A I don't know the answer to that.

5 Q If you call James, Mr. Nick Brown, did you recall show me
6 some properties on Royal Palm Place?

7 MS. MITRANI: Objection, asked and answered.

8 THE COURT: I will allow that specific question.

9 THE WITNESS: I'm sorry, would you please repeat the
10 question.

11 BY MR. SCOTTON:

12 Q Do you recall showing me places at Royal Palm Place?

13 A I do not recall.

14 Q So you are going to tell to this jury that you don't even
15 remember my face?

16 A Again, sir, I was -- we did 10 to 12 leases a month, so it
17 was tough for me to pinpoint everybody who I was doing it with
18 at that time ago.

19 Q And Ms. Martinez never explained to you anything at all?

20 THE COURT: Sustained.

21 MS. MITRANI: Calls for hearsay.

22 MR. SCOTTON: No more questions, Your Honor.

23 THE COURT: Any cross?

24 MS. MITRANI: No, Your Honor.

25 THE COURT: All right. Thank you, Mr. Brown. You are

1 excused. Mr. Scotton, you may call your next witness.

2 MR. SCOTTON: The next witness is Shawn Bombaro, Your
3 Honor.

4 Sidebar, Your Honor?

5 THE COURT: All right

6 (Thereupon, the following was heard sidebar.)

7 THE COURT: Yes.

8 MR. SCOTTON: The witness is not here yet, Your Honor.

9 THE COURT: Well, why not?

10 MR. SCOTTON: Martinez call him and he's supposed to
11 be here and he's not here yet.

12 THE COURT: Well, maybe we should bring up
13 Ms. Martinez so we know why.

14 MR. SCOTTON: He's here.

15 THE COURT: All right.

16 MR. SCOTTON: Thanks.

17 (Thereupon, the following was heard in open court.)

18 MR. SCOTTON: Your Honor, the defendant call Shawn
19 Bombaro.

20 SHAWN BOMBARO

21 Having been first duly sworn on oath, was examined and
22 testified as follows:

23 THE COURTROOM DEPUTY: Please be seated and state and
24 spell your first and last name for the record.

25 THE WITNESS: Shawn Bombaro, S-H-A-W-N B-O-M-B-A-R-O.

1 DIRECT EXAMINATION

2 BY MR. SCOTTON:

3 Q Good morning.

4 A Good morning.

5 Q Really good to see you.

6 Shawn, can you tell the jury if you live in south Florida?

7 A I'm sorry, can you repeat that.

8 Q Can you tell the jury if you live here in south Florida?

9 A Yes, I do live here in south Florida, Pompano Beach.

10 Q And are you married? Are you currently married?

11 A Yes, happily.

12 Q Do you have kids?

13 A Two boys.

14 Q What are you doing for living?

15 A I work at Calvary Chapel Fort Lauderdale Church.

16 Q How long have you been working over there?

17 A Five years two days ago.

18 Q Before you work there, any other place that you have
19 worked before?

20 A Yeah, I was self-employed before that.

21 Q Shawn, tell this jury how that we met.

22 A We met in '98, maybe '99. You had submitted a resume to
23 work at a company called TriCom Pictures and I was one of the
24 managers there, comanagers. And you came in for an interview
25 and you started working for the company.

1 Q During the time that I work over there at TriCom Pictures,
2 did we engage in some kind of friendship?

3 A Yes, we were friends outside of work.

4 Q Can you tell this jury things that you recall doing
5 together with me?

6 A Yeah, going out after work, socializing, going to your
7 house, watching games, just stuff that guys do. I wasn't
8 married at the time so we partied a little bit. No drugs, just
9 clean fun.

10 Q I'm glad you cleaned that up. What was my position with
11 TriCom Pictures?

12 A You were an associate producer.

13 Q And how good I was in that position?

14 A Pretty good, probably the best in our group.

15 Q Ever receive any award from TriCom?

16 A Uh-huh, yes. I think employee of the year or performer of
17 the year or something like that.

18 Q And have anybody else in TriCom Pictures get close to us
19 or close to me?

20 A Yeah. The guy that I comanaged with, Edward Eade, also, I
21 guess, had a friendship with you too.

22 Q What is the location for TriCom Pictures?

23 A It's on Sample Road in Pompano Beach, 2001 West Sample
24 Road.

25 Q As your recollection, how can you describe to this jury,

1 my personality?

2 A Outgoing, friendly, jokey. Those would be three that come
3 to mind.

4 Q So I am the clown?

5 A A little bit, yeah.

6 Q Do you recall met anyone from my family, Mr. Shawn?

7 A I have met your stepfather, met your mother. I think I
8 met your brother one time when he was visiting, and those are
9 the three people of your family that I recall meeting. I think
10 your father-in-law worked for us too.

11 Q And did you recall being at any of my races?

12 A I was at some of them, yes.

13 Q Did you recall being at any of those sponsorship events
14 and community works that I done?

15 A Yes.

16 Q What kind of events do you recall seeing me?

17 A I remember the one at the Bank Atlantic Center for -- I
18 don't remember what it was for. I just remember because my son
19 was only two at the time and we had taken pictures and stuff
20 like that. I remember the Dark Dog event in Miami when you had
21 the yellow suit. And those were the two that I personally was
22 at. I know you were at other events that were out of the state
23 or just too far for me to travel to.

24 Q And race car, race team present at the time?

25 A Repeat that.

1 Q Was the race car and the whole complete race team present
2 at the time?

3 A The car, sure, yeah.

4 Q I am going to show you a picture and I want to see if you
5 can recall this person in the picture. Okay?

6 A Sure.

7 Q Got two beautiful ladies in the picture, right?

8 A Uh-huh.

9 Q One is present in court today?

10 A Maybe that lady in the back right there.

11 Q Might be that lady in the back?

12 A I think that's your mom.

13 Q And what the one next to my mom on the picture?

14 A Oh, in the picture. I don't know.

15 Q You don't recall that one?

16 A I mean, a little bit. She put on a little weight I think
17 if it's -- I have seen you with somebody who looks similar to
18 that, but she was skinnier. I hope she's not here or heard
19 that. Sorry.

20 Q Do you recall seeing this lady in the middle?

21 A No.

22 Q You never went to see her at my house before?

23 A I have seen a lady at your house before, but not with
24 shades on. And the lady that I saw at your house was a little
25 slimmer.

1 Q Any recollection seeing me and my wife at the Calvary
2 Chapel?

3 A Yes.

4 Q How many times do you think you saw us over there?

5 A Maybe two or three times.

6 Q Have we attempt those, what do you guys call in your
7 house, group prayers group?

8 A Yeah, couples group.

9 Q And do we attend that?

10 A I think you came to one of them, yeah.

11 Q Did you recall see us in the gym as well?

12 A One time, yes.

13 Q Shawn, not long ago, if you recall, you came my house in
14 Boca?

15 A How long ago?

16 Q No, do you recall coming to the house in Boca?

17 A Which one?

18 Q The townhouse.

19 A Yes.

20 Q And you were by yourself that day?

21 A I think I brought one of my kids or two of my kids. I
22 don't remember. I know I was with one of them.

23 Q And that's the only time you recall being at the house?

24 A No, I came before by myself.

25 Q And did you see any person in the house at the time?

1 A I saw some people, yeah.

2 Q And is any time that you came to the house those people
3 was alone in my house without my present?

4 A Did I come to your house when you weren't there?

5 Q Yes, with those people alone in the house without me
6 present?

7 A No, you were always there.

8 Q Do you recollect the name Renata?

9 A Not really, no.

10 Q Ever came across to you when I opened the store in Boca?

11 A When you opened a store in Boca? No.

12 Q All these times that we know each other, Mr. Bombaro, have
13 you seen any signs of violence from me?

14 A No, no.

15 Q Did you recall if I was loveable husband?

16 A I don't know. I assume so.

17 Q Why you assume so?

18 A Because I know your personality.

19 MS. MITRANI: Objection, calls for speculation.

20 THE COURT: Well, it's already answered.

21 BY MR. SCOTTON:

22 Q Mr. Bombaro, before you came here today, have you spoke to
23 Mrs. Martinez?

24 A Is that the lady with the accent?

25 Q Yes.

1 A Yes.

2 Q And have anybody else from this case has contact you?

3 A Yes, a U.S. marshal.

4 Q Besides a U.S. marshal, anybody else?

5 A No.

6 Q During this work with TriCom Pictures, in your
7 recollection as knowing me for all these years, have I been
8 dishonest with anyone you know?

9 A Not to my knowledge, no.

10 Q The last time that you come to the house with the kids, do
11 you recall that?

12 A Yes.

13 Q You don't recall the year, do you?

14 A I'm sorry?

15 Q Do you recall the year?

16 A No. I would be guessing if I did.

17 Q Have you recall seeing me burning money in any way?

18 A Burning money? Like literally? No.

19 Q Have you seen me like rich person?

20 A Doing better than I was.

21 Q If you can remember, was Aylin happy at the time we were
22 together?

23 MS. MITRANI: Objection, Your Honor.

24 THE COURT: Sustained. You haven't established a
25 foundation.

1 MR. SCOTTON: Say it again, Your Honor.

2 THE COURT: You have not established a foundation.

3 BY MR. SCOTTON:

4 Q Do you recall the wife couple times see us together,
5 right?

6 A Uh-huh, correct.

7 Q Any time you see she's upset or afraid or threat --

8 A No.

9 Q -- in any way?

10 A No.

11 Q Do you believe in the times that you know me,

12 Mr. Bombaro -- let rephrase this question better.

13 Do you understand that I have been charged with a crime?

14 MS. MITRANI: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MR. SCOTTON:

17 Q Do you believe those allegations change who I am?

18 MS. MITRANI: Objection, Your Honor.

19 THE COURT: Sustained.

20 BY MR. SCOTTON:

21 Q Somewhere around 2000 change, do you recall any company
22 that I tried to establish with Ed Eade?

23 A Yes, you were working on a beverage deal with him.

24 Q And did you recall anything happen to that deal?

25 A From what I remember, he passed away. And I think you

1 continued to work on the deal. And I remember a conversation
2 that we had and you said they weren't going to give you the
3 distribution rights anymore because you weren't ordering a
4 certain amount of product to warrant them doing business with
5 you.

6 Q Have anyone in TriCom Pictures mentioned anything about
7 the defendant being dishonest, conduct any wrong business?

8 MS. MITRANI: Objection, calls for hearsay.

9 THE COURT: Overruled.

10 THE WITNESS: Can you repeat the question?

11 BY MR. SCOTTON:

12 Q Have anybody on TriCom Pictures complain about any wrong
13 conducted from me?

14 A No.

15 Q Have during my business with Eddie when he was still
16 alive, mention anything to you in reference myself?

17 A That you were doing something bad or upset with you?

18 Q Yeah.

19 A No.

20 Q By knowing me all these years, Shawn Bombaro, knowing my
21 family, what can you tell the jury about my character?

22 A Somebody that worked hard, want to be successful in life,
23 a good person meaning that my personal belief is that we all
24 have stuff in our heart. We are not good at our core. But,
25 you know, Roger genuinely was trying to be a better person

1 everyday which is why I think he attended church and liked to
2 hang around me because I tried to help him be a better person
3 because I was working on myself trying to be a better person,
4 trying to be a better husband, trying to be a better dad, and I
5 think that he admired that in me and in a sense wanted that as
6 well.

7 We tend to gravitate toward people that are good and do
8 good and want to kind of emulate that lifestyle. So that's
9 what I saw in him. That's why I liked him, because I did see
10 that he was genuinely trying to do the right things and be a
11 good person and be successful.

12 You know, being from Brazil and stuff like that and having
13 an accent, it's not easy to walk into a place and just get a
14 job because people are speculative of you. I always noticed
15 that Roger worked hard. I think that's why he was so
16 successful at our job because he did the things that we taught
17 him to do and trained him to be successful. And those are the
18 things he did, and that's why he was successful.

19 MR. SCOTTON: No more questions. Thank you, Shawn.

20 THE COURT: Cross?

21 MS. MITRANI: Yes, Your Honor.

22 CROSS EXAMINATION

23 BY MS. MITRANI:

24 Q Good morning. How are you?

25 A Good. How are you doing?

1 Q Good. Thank you so much. Do you recall the year that you
2 saw the defendant in your church or the time period, the time
3 frame?

4 A When I last saw him?

5 Q When you saw him in the church, was it 2010, 2011, 2009?

6 MR. SCOTTON: Object, Your Honor.

7 THE COURT: What's the objection?

8 MR. SCOTTON: Leading.

9 THE COURT: It's cross-examination, so overruled.

10 THE WITNESS: I don't remember the year. If I said, I
11 would be guessing. It was in the 2000s.

12 BY MS. MITRANI:

13 Q Somewhere this century.

14 A In the last seven years, I guess.

15 Q That's okay. And we don't want you to guess. You are not
16 sure of the year?

17 A Correct.

18 Q Did you know the defendant was married multiple times?

19 A No.

20 Q Okay. The defendant showed you a picture before of a
21 woman and an older woman -- younger woman and an older woman.
22 You didn't recognize the younger woman, correct?

23 A Yes.

24 Q Let me show you something from Government's Exhibit 102, a
25 picture, and tell me if you recognize this person or not.

1 A Okay. Yes, that looks more like the lady remember Roger
2 being with.

3 Q So what you are looking at, it's Government's Exhibit 102,
4 that has no meaning to you. That's okay. It's a CD, and the
5 woman who is on the cover and on the cover of the actual DVD,
6 that's the woman you recall the defendant being in church with,
7 correct?

8 A Yes.

9 Q Do you recall her name?

10 A No.

11 Q Does the name Cerline Dos Santos ring a bell?

12 A No.

13 MR. SCOTTON: Object, Your Honor.

14 THE COURT: What is the objection?

15 MR. SCOTTON: Relevance.

16 THE COURT: Overruled.

17 MS. MITRANI: Just one minute, Your Honor.

18 No further questions, Your Honor.

19 THE COURT: Redirect?

20 MR. SCOTTON: Your Honor, can I have a minute?

21 THE COURT: Yes.

22 MR. SCOTTON: Your Honor, I need to put a video for
23 Mr. Bombaro to see it.

24 THE COURT: Well, why don't you come sidebar.

25 (Thereupon, the following was heard sidebar.)

1 THE COURT: What video do you need to put up?

2 MR. SCOTTON: We talk about the race in Miami Grand
3 Prix.

4 THE COURT: It wasn't discussed on cross. It's beyond
5 the scope.

6 MR. SCOTTON: I asked him about that.

7 THE COURT: Yes, that was in direct, but it wasn't
8 addressed in cross, so you cannot bring it up on redirect.
9 Sorry.

10 MR. SCOTTON: Okay.

11 (Thereupon, the following was heard in open court.)

12 REDIRECT EXAMINATION

13 BY MR. SCOTTON:

14 Q Prosecutor has shown you a DVD here with picture of a
15 female. Do you recall if this was 2009?

16 A No, I don't know.

17 Q But you do not recall Aylin when you come to the house?

18 MS. MITRANI: Objection, Your Honor. There's no
19 foundation for that question. This witness did not remember
20 anybody's name.

21 THE COURT: I know. I'm just thinking about it.

22 MS. MITRANI: I'm sorry.

23 THE COURT: That's all right.

24 MS. MITRANI: I'm sorry.

25 THE COURT: That's okay.

1 Mr. Scotton, I think you need to reask the question in
2 a different way.

3 BY MR. SCOTTON:

4 Q The day you come with the two kids to the house, try to
5 see if we can go deep and recall the date.

6 MS. MITRANI: Objection, beyond the scope.

7 THE COURT: Sustained.

8 BY MR. SCOTTON:

9 Q You walked to the townhouse?

10 MS. MITRANI: Objection, beyond the scope.

11 THE COURT: Mr. Scotton, I'm sorry, but I have
12 sustained the objection. On redirect you can ask any questions
13 that arose on cross or that relate directly to things that
14 arose on cross.

15 MR. SCOTTON: No more questions, Your Honor.

16 THE COURT: Thank you very much, Mr. Bombaro. You are
17 excused. Have a great day.

18 THE WITNESS: Thank you.

19 THE COURT: The microphone attacks everyone.

20 Mr. Scotton, you may call your next witness.

21 MR. SCOTTON: Sidebar?

22 THE COURT: All right.

23 (Thereupon, the following was heard sidebar.)

24 MR. SCOTTON: Seems to be some of the witnesses has
25 been subpoenaed, one is Galdamez, nowhere to be found. She has

1 been served as far as I --

2 THE COURT: We talked about this yesterday and
3 previously as well. And I told you I would be more than happy
4 to see what I could do to get her here. But it was your
5 responsibility to give me contact information. Although I have
6 repeatedly asked you for it, you have never given it to me. If
7 she's not here, she's not here.

8 Do you have any other witnesses?

9 MR. SCOTTON: No, Your Honor.

10 THE COURT: So are you resting then?

11 MR. SCOTTON: Yeah, I'm going to have to.

12 THE COURT: All right.

13 (Thereupon, the following was heard in open court.)

14 THE COURT: All right. Mr. Scotton?

15 MR. SCOTTON: Defendant rests, Your Honor.

16 THE COURT: All right. What we are going to do, and
17 I'm sorry, I know we wound up taking a long break yesterday, I
18 need to take a little bit of a break to take care of some legal
19 issues. I'm thinking that we should take about an hour at this
20 time. So why don't we all come back at 10:45. I'm sorry for
21 the long breaks, but I'm hopeful since we are now at the end of
22 the case, that we will be able to perhaps conclude the case
23 today and get it to you for consideration.

24 So again I apologize for the long gaps, but the reason
25 is so that we can tie up the loose ends and try to get it to

1 you for your consideration today. So we will see you back here
2 at 10:45. All rise for the jury.

3 (Thereupon, the jury exited the courtroom at
4 9:46 a.m.)

5 THE COURT: All righty. Mr. Scotton, did you wish to
6 make a motion at this time?

7 MR. SCOTTON: I guess is the motion rule 29 if I am
8 not mistaken here?

9 THE COURT: All righty.

10 MR. SCOTTON: Directed verdict.

11 THE COURT: All right. And did you want to make any
12 argument or did you want me simply to rule?

13 MR. SCOTTON: Your Honor, you know, as I state before,
14 so, you know, a lot of things here has not been showed to this
15 jury. You know, I'm standing for the last motion that I have
16 filed so I don't have much to argue at this point.

17 THE COURT: Thank you, Mr. Scotton. I am going to
18 deny the motion for the reason that I think that the government
19 has presented sufficient evidence that if the jury chose to
20 believe it, they could find beyond a reasonable doubt that you
21 committed the crimes that are charged in the indictment. They
22 could also reach the opposite conclusion. But the mere fact
23 that they could if they believed the evidence agree with the
24 government requires me to deny the motion.

25 All right. What we need to do is we need to go

1 through the jury instructions at this time because I would like
2 to give you the jury instructions so if you wish to use them in
3 your closing, you will have them available to you. And I think
4 the government has provided proposed jury instructions. And,
5 Mr. Scotton, you have received a copy of those, is that
6 correct?

7 MR. SCOTTON: This is supplemental proposed jury
8 instruction?

9 THE COURT: And the other ones as well?

10 Let's go ahead and see if we can print another copy of
11 those out for Mr. Scotton, please, so he has one handy.

12 MR. SCOTTON: Government proposed jury instruction.

13 THE COURT: You have it, is that right, Mr. Scotton?

14 MR. SCOTTON: That's right, Your Honor, I have it
15 here. Your Honor, I'm going to object to this supplemental
16 proposed instruction.

17 THE COURT: Let's do this. We are going to go through
18 each instruction, but before we go through the supplemental
19 one, are there any that you object to in the original group of
20 instructions?

21 MR. SCOTTON: Are you talking about the first one or
22 the second one, Your Honor?

23 THE COURT: There is something called supplemental
24 instruction. Set that one aside for a moment, if you would,
25 there's another one called government's proposed jury

1 instructions, right?

2 MR. SCOTTON: Yes, Your Honor.

3 THE COURT: And that one is about 23 pages long,
4 right?

5 MR. SCOTTON: That's correct.

6 THE COURT: So what I want you to do is let me know
7 whether there are any instructions that the government has
8 proposed in that packet, not the supplemental one, we will get
9 to that later, but in the government's proposed jury
10 instructions packet that you object to.

11 And I should say that we are going to trade out
12 jury -- or 11th Circuit pattern basic instruction 6.3 which is
13 on page 10 because that is the 11th Circuit instruction for
14 when the defendant testifies. These instructions were prepared
15 for the government before trial, so the government assumed you
16 might be testifying. But there is a comparable instruction
17 which is -- actually, I think it's earlier.

18 MS. MITRANI: I think it's 6.1, Your Honor.

19 THE COURT: Right, it's earlier. So we would just
20 remove 6.3 since you did not testify because the first two
21 paragraphs of 6.3 are the same as the first two paragraphs of
22 6.1. 6.3 simply adds the paragraph about a defendant
23 testifying. Since you did not testify, it would not be
24 applicable. So I would take out 6.3.

25 Mr. Creary, would you mind very much, I'm sorry to ask

1 you this, would you mind printing out a hard copy for me so I
2 can write on this?

3 MS. MITRANI: Your Honor, I have an extra pad and jury
4 instruction book if the defendant wants one.

5 THE COURT: Thank you. Mr. Scotton, Ms. Mitrani is
6 going to loan you an extra 11th Circuit pattern jury
7 instructions criminal manual and this instruction book sets
8 forth all of the 11th Circuit adopted instructions so that you
9 can see what we are referring to in the book form in addition
10 to seeing it on the paper as it's printed out. Do you
11 understand?

12 MR. SCOTTON: Yes, Your Honor.

13 THE COURT: So I'm sorry, Mr. Scotton, did you have
14 any objections to any of the instructions in the government's
15 proposed jury instruction packet, that is the 23-page packet?

16 MR. SCOTTON: I'm reading right now, Your Honor.

17 THE COURT: I'm sorry. Let me know when you are done.

18 MR. SCOTTON: Thank you.

19 MS. MITRANI: Your Honor, while we are waiting, is it
20 the Court's intention to proceed to closing at 10:45?

21 THE COURT: Yes.

22 MS. MITRANI: I need about 10 or 15 minutes, I'm not
23 sure how long this charge conference is going to take, if
24 that's possible.

25 THE COURT: While Mr. Scotton is reviewing the

1 instructions, would that work out for you? Because what we
2 could do is I could give you the 10 or 15 minutes now,
3 Mr. Scotton can review the instructions again, and then I will
4 bring you all back here at 5 after 10:00. Will that work?

5 MS. MITRANI: Yes, Your Honor.

6 MR. SCOTTON: Your Honor, we are talking about here
7 close argument.

8 THE COURT: Yes.

9 MR. SCOTTON: Is there any way I can get a day for
10 closing arguments so I can get my stuff together?

11 THE COURT: We are going to do the closing arguments
12 today.

13 MR. SCOTTON: There's no way for the Court to give me
14 a day to do that?

15 THE COURT: The jury has been sitting here, I don't
16 know if it's the fourth or fifth week. I don't think it's
17 fair.

18 I think what's going to wind up happening is your
19 argument will probably be after lunch. I don't know how much
20 the government is asking for. How much time is the government
21 requesting?

22 MS. MITRANI: I guess -- I don't know that I'm going
23 to use it all. I guess we would request an hour and 45 total
24 for opening and rebuttal.

25 THE COURT: I would give each side the same amount of

1 time. So your argument will be after lunch in any case. So
2 you will have the lunch hour to, you know, put your thoughts
3 together, which is more time than the government is going to
4 have, and to organize whatever it is you wish to organize. And
5 presumably, I guess you would have known that we were going to
6 finish today since it's your case. That's how we are going to
7 do it. Actually, let's do this, I am going to give the
8 government until 10 after 10:00.

9 MS. MITRANI: Thank you.

10 THE COURT: And then during that time, Mr. Scotton, if
11 you would, please review the instructions. And when the
12 government returns, you can let me know if you have any
13 objections. And if you have additional time during that time,
14 of course you can also start pulling together papers that you
15 want to show the jury. All right? We will see you back here
16 at 10 after 10:00. I'm just going to sit here and do some
17 work.

18 MS. MITRANI: Thank you, Your Honor.

19 (Thereupon, a recess was taken at 9:55 a.m.)

20 MR. KREISS: Your Honor, is it your practice to send
21 back the instructions to the jury?

22 THE COURT: Yes. Just to let you know, I do take off
23 the headings and I put instruction No. 1 and instruction No. 2.
24 But I will leave the headings on for our discussion.

25 MR. SCOTTON: Thank you.

1 THE COURT: Are we ready?

2 MR. KREISS: Still working on it, Your Honor.

3 MS. MITRANI: Can I have two more minutes?

4 THE COURT: All right.

5 MS. MITRANI: Thanks.

6 (Thereupon, a brief break was taken.)

7 THE COURT: All right. Are we ready?

8 MS. MITRANI: Thank you, Your Honor.

9 THE COURT: Mr. Scotton.

10 MR. SCOTTON: Still going through it, Your Honor.

11 THE COURT: Please try to finish up because we need to
12 get moving here.

13 While Mr. Scotton is doing that, the only transcript
14 that we have is regarding the Van Brunt videotape, is that
15 right, or are there transcripts also for phone calls?

16 MS. MITRANI: Yes, there are transcripts for the four
17 Fed-Ex phone calls. There's a transcript for the Fred
18 Kennicutt call, which is 29A. There is transcripts for the
19 immigration interview, so yes.

20 THE COURT: What I need you to do then, because I am
21 going to add an instruction, I am going to add trial
22 instruction three basically. I'm going to modify it a little
23 bit. I need you to tell me the exhibit numbers for the
24 transcripts and the exhibit numbers for the recordings to which
25 they correspond.

1 MS. MITRANI: Yes.

2 THE COURT: Maybe you could work on that right now
3 while Mr. Scotton is finishing up. Thank you.

4 MS. MITRANI: Your Honor, I'm ready to provide that
5 information.

6 THE COURT: Okay. One second.

7 Go ahead. Thank you.

8 MS. MITRANI: Your Honor, the Fed-Ex calls, 14A is the
9 recording, 14A1 and 14A2 are the transcripts that go with 14A.

10 THE COURT: Okay.

11 MS. MITRANI: 14E is the another Fed-Ex recording of
12 two phone calls. And the transcripts are 14F and 14H. The
13 Fred Kennicutt call, the recording is 29A. The transcript is
14 29B.

15 THE COURT: Okay.

16 MS. MITRANI: The undercover with Special Agent Van
17 Brunt, the recording is -- because of the issues, the
18 allegations, that the defendant made regarding it, we
19 introduced 7A, 7A1, and 7A2. They are all the same recording
20 in different formats, and the transcript is 7C.

21 THE COURT: All right.

22 MS. MITRANI: And the citizens and immigration
23 interview, the recording is 201A and the transcript is 201C.

24 THE COURT: Thank you.

25 MS. MITRANI: Thank you.

1 THE COURT: Do the transcripts purport to identify the
2 speakers?

3 MS. MITRANI: Yes.

4 THE COURT: Mr. Scotton, are you ready?

5 MR. SCOTTON: Yes.

6 THE COURT: Let's take care of this then. Do you have
7 any objections to any of the proposed trial instructions in the
8 packet? Let's start with that.

9 MR. SCOTTON: I guess I need to see if we can add some
10 things here, Your Honor.

11 THE COURT: Let's start with the ones that we have.
12 Do you have any objections to the ones that are in the packet?

13 MR. SCOTTON: No, Your Honor.

14 THE COURT: What do you think we need to add?

15 MR. SCOTTON: 101.1.

16 THE COURT: Which one?

17 MR. SCOTTON: 1.1.

18 THE COURT: 1.1?

19 MS. MITRANI: I think he's probably referring to
20 special instruction 1.1. No objection.

21 THE COURT: Okay. What else?

22 MR. SCOTTON: Special instruction 17.

23 THE COURT: Okay. Any objection?

24 MS. MITRANI: No, Your Honor.

25 THE COURT: Okay. Any other ones?

1 MR. SCOTTON: Special instruction 18.

2 THE COURT: Nope, sorry, you can't have that one.
3 That's good faith reliance on counsel. I previously told you
4 exactly what you had to prove in order to do that one, and you
5 chose not to present that as a defense. I explained it
6 thoroughly to you when we were without the government on more
7 than one occasion, and I explained it thoroughly to you at
8 sidebar and I explained to you what the implications would be
9 if you chose not to ask those questions. You chose not to ask
10 those questions, so I'm sorry but no special instruction 18.

11 What else?

12 MR. SCOTTON: Special instruct 12.

13 THE COURT: Any objection?

14 MS. MITRANI: No.

15 THE COURT: All right. 12 is added. What else?

16 MR. SCOTTON: 2.2, Your Honor.

17 THE COURT: Special instruction?

18 MR. SCOTTON: Yes, Your Honor, the defendant not
19 testifying.

20 THE COURT: I am not sure I am on the same one that
21 you are on. What is the page number that you are looking at?

22 MR. SCOTTON: I looked at it in the book, Your Honor.

23 THE COURT: Do you want to just read how it begins,
24 and then I will know whether it's the same one. 2.2 of the
25 special instructions is called confession or statement of

1 multiple defendants, but we only have one defendant, so...

2 MR. SCOTTON: No, Your Honor, 2.2.

3 THE COURT: Basic instruction 2.2?

4 MR. SCOTTON: Yes.

5 THE COURT: Let me take a look. Okay. Any objection?

6 MS. MITRANI: No.

7 THE COURT: Anything else?

8 MR. SCOTTON: Not on this one here, Your Honor. I
9 have the other one, the supplemental.

10 THE COURT: We are going to address that. There are
11 two things that I think need to be added there before we do
12 that. Let me run through those real fast if you don't mind.

13 First, I think that it's important to put in the trial
14 instruction No. 3 basically, which is about the transcripts.
15 And that will say something like -- that will say, certain
16 exhibits have been identified as typewritten transcripts. They
17 were all conversations heard on recordings received in
18 evidence. The transcripts also purport to identify the
19 speakers engaged in the conversations. These exhibits are
20 numbered as follows. And then there's going to be a chart that
21 shows the recording number and the exhibit number for the --
22 the exhibit number for the recording and the exhibit number for
23 the transcript that allegedly goes with it.

24 And then it continues, I have admitted the transcripts
25 for the limited and secondary purpose of helping you follow the

1 contents of the conversations as you listen to the recordings
2 and also to help you identify the speakers, but you are
3 specifically instructed that whether the transcripts correctly
4 reflect the content of the conversations or the identity of the
5 speakers is entirely for you to decide based on your own
6 examination of the transcripts in relation to hearing the
7 recordings themselves as the primary evidence of their own
8 contents.

9 If you determine that the transcripts in any
10 respect -- that the transcripts are in any respect incorrect or
11 unreliable, you should disregard them to that extent.

12 Any objection?

13 MS. MITRANI: No, Your Honor.

14 THE COURT: Mr. Scotton?

15 MR. SCOTTON: No, Your Honor.

16 THE COURT: And then one more instruction I think
17 needs to be added and that is the following: During the trial,
18 the government presented a purported translation of an email
19 from Portuguese to English. You may choose to accept that
20 translation in whole, in part, or not at all. In making this
21 decision, you may consider the testimony regarding the manner
22 in which the document was translated as well as any evidence
23 admitted bearing on the correctness of that translation and any
24 other evidence relevant to the issue.

25 Any objection?

1 MS. MITRANI: No, Your Honor.

2 THE COURT: Mr. Scotton?

3 MR. SCOTTON: Your Honor, I don't know if I have
4 brought this before. As I was looked at translation of the
5 email, it's a lot of things that is not accurate, is mistakes.

6 THE COURT: Well, that's why I gave you the
7 opportunity during the trial to present your own version of it,
8 but you didn't do that. But that's why I'm adding this
9 particular instruction because I know that you brought up that
10 issue. So that's why I added the instruction. But if you
11 don't want it, I will be happy to take it out or if you think
12 it needs to be modified in some way to reflect -- well,
13 modified in some way, then you can let me know that too.

14 MR. SCOTTON: If we can modify it in a way that
15 understand that is my concern those emails not being accurate.

16 THE COURT: No, because you didn't present any
17 evidence. That's why I can only say you may consider the
18 testimony regarding the matter in which the document was
19 translated as well as any evidence admitted bearing on -- and I
20 can say the correctness or incorrectness --

21 MR. SCOTTON: Okay, Your Honor.

22 THE COURT: -- of that translation and any other
23 evidence relevant to the issue. Okay? Is that all right with
24 you?

25 MR. SCOTTON: Yes.

1 THE COURT: Let's go to the last one that the
2 government added. What are your objections to that one,
3 Mr. Scotton?

4 MR. SCOTTON: Your Honor, I didn't agree here with
5 they said the defendant has elected to represent himself. This
6 is not true.

7 THE COURT: How about if we say the defendant
8 represents himself? How about that?

9 MR. SCOTTON: Okay.

10 THE COURT: And is not represented by a lawyer.

11 MS. MITRANI: Your Honor, the reason I think it's
12 important to include elected, the defendant has made comments
13 throughout this trial, in particular I'm thinking of the
14 cross-examination of Special Agent Van Brunt where he said
15 something to the effect of all this money, but I can't afford a
16 lawyer. So it might give the impression that the defendant is
17 not being represented because he can't afford it. So that's
18 why, I mean, I feel strongly the word elected should be
19 included in that. He's also given other comments throughout
20 the trial about counsel. And again, I don't want them to have
21 the impression because he couldn't afford it.

22 THE COURT: Well, that's true, Mr. Scotton. How do
23 you respond to that?

24 MR. SCOTTON: Your Honor, I did not elect to represent
25 myself here in this court, and I don't think it is fair for the

1 jury to have the belief and understand that I'm choose to play
2 myself here as a lawyer. I don't want that to be in.

3 THE COURT: Well, I think, as I have previously
4 explained, that your prior conduct was a knowing and voluntary
5 and intelligent waiver of your right to be represented by
6 counsel when you went through numerous prior attorneys
7 including three that the government paid for -- the court paid
8 for to learn the case and fired all of them, were abusive to
9 all of them, sued one of them and threatened his life, and
10 threatened to sue another one for \$10 million.

11 I think that that conduct, as I have previously
12 explained, is a knowing and intelligent waiver by conduct of
13 your sixth amendment right to be represented by an attorney. I
14 will hear anything further you want me to consider on this
15 matter, but I don't think it's an unfair statement to say that
16 you have elected to represent yourself under those
17 circumstances.

18 MR. SCOTTON: Your Honor, I don't want to start
19 getting debate about this all again because I'm done with all
20 that. So if attorneys has really represented me as Mr. Jason
21 has represented me as even standby, you know, you put all those
22 lawyers together, they are not going to get close to this man
23 here what he have done for me as a standby lawyer. I think
24 this shows to this Court here that if I have this kind of
25 service from day one, I never have any problem with attorneys

1 represent me.

2 I don't think it is fair at all to have this here.
3 And the Court keep saying my conduct. No, I'm here fighting
4 for my life, number one. I'm trying to defend myself, number
5 two, of the allegations here on the table. And number three is
6 that, you know, lawyers, as you understand and you guys been in
7 this business for so long here, they make mistakes too. They
8 human beings. And sometimes they don't operate the way they
9 are supposed to as the bar guarantee to receive -- the client
10 receive effective assistance of the counsel. In reference that
11 if I sue Stuart or if I tried to sue another one, it's not to
12 hurt anybody or to do any misconduct here. It's to protect my
13 rights that I felt has been violated at that point.

14 Now to the prosecutor want to say, well, I elect
15 myself here, no the jury going to think that, you know, that's
16 it, I want to be a lawyer.

17 THE COURT: I think that that's a fair representation.
18 On the other hand, I'm not sure -- let me put it this way. I
19 think the instruction that the government has written is fair
20 and adequately and accurately represents what you -- what
21 choice, I think, you have made through your conduct in a
22 knowing, voluntary, and intelligent way.

23 However, I'm not sure that it's necessary to say that
24 again. I think I have already been through that with the jury.
25 And I don't think anybody is under the mistaken impression that

1 Mr. Scotton did not receive counsel because he can't afford it
2 even though you're right, he did improperly say it, and I don't
3 think it would be wrong to, therefore, note that.

4 But I think that unless something is said on closing
5 that suggests, once again, that Mr. Scotton was denied his
6 constitutional rights of representation or something to that
7 effect, I'm just going to say the defendant represents himself,
8 period. The United States Constitution and the rules of this
9 court permit self-representation, period.

10 And then we will say, Mr. Scotton's representation of
11 himself has no bearing on whether he is guilty or not guilty
12 and it must not affect your consideration of the case, and
13 then, because Mr. Scotton has acted as his own lawyer, you have
14 heard him speak throughout the trial, and it will go on from
15 there.

16 That's what I'm going to do. Any further objections?
17 I know the government objects and your objection is noted for
18 the record.

19 Any further objections, Mr. Scotton?

20 MR. SCOTTON: No, Your Honor.

21 THE COURT: As I said, if in closing the defense
22 attempts to make an argument on this bases in violation of my
23 order, then I will have no choice but to further explain this
24 in the instruction.

25 Are there any other changes that are requested of the

1 instructions? Hearing none --

2 MS. MITRANI: No, Your Honor.

3 THE COURT: -- I am going to go ahead and put this
4 together.

5 As for the verdict form, has the government prepared a
6 proposed verdict form?

7 MS. MITRANI: No, Your Honor. I started to, and I
8 didn't. I can do it over lunch.

9 THE COURT: That would be great. I think the way to
10 do it is just to say -- just a very basic form that says, we,
11 the jury, unanimously find the defendant, Rogerio Scotton, as
12 to, and then Count~1, and then put a guilty or not guilty with
13 a line that they check, and then Count~2, same thing, all the
14 way through the 28 counts, and then signed and so say we all
15 and signed and dated by the jury foreperson.

16 But we will take a look at that, and Mr. Scotton will
17 have an opportunity to review it before we send it back. But
18 if you could get that prepared over lunch, that would be super,
19 and have it emailed.

20 MS. MITRANI: Yeah, I'll book out of here as soon as
21 Your Honor says to. I thought we were closing tomorrow.

22 THE COURT: I understand. I don't think any of us --
23 well, I know I didn't know that -- in fact, I thought we were
24 having another eight witnesses so I understand.

25 All right. Then we will bring the jury back in in

1 about eight minutes and we will get started with closings.

2 MS. MITRANI: Thank you.

3 (Thereupon, a recess was taken at 10:38 a.m.)

4 THE COURT: Mr. Scotton, you had something you want to
5 raise?

6 MR. SCOTTON: Yes, Your Honor.

7 THE COURT: I will hear it now, please.

8 MR. SCOTTON: The video the Court wanted to see is
9 just two minutes video.

10 THE COURT: A video that you want to use in closing
11 that is not in evidence?

12 MR. SCOTTON: Yeah.

13 THE COURT: You can't submit it into evidence at this
14 point because you have closed your case. What is it that is on
15 the video?

16 MR. SCOTTON: Your Honor, it shows more, you know,
17 like has been my life here 25 years, has been shows some of the
18 pictures that has been presented in evidence has been showed,
19 you know, things that have been present to the jury here during
20 the trial anyway.

21 THE COURT: I'm sorry, I'm not going to allow it. You
22 can present the pictures that have been presented into
23 evidence, no problem. Anything that's in evidence, you can
24 use. If it's not in evidence, it's not appropriate unless it's
25 a demonstrative exhibit, but that is not one. That sounds more

1 like an attempt to testify without taking the stand.

2 Respectfully, I am going to deny that. All right. Let's all
3 rise. We will bring in the jury. Let me ask the government
4 how much time do you want to reserve for rebuttal?

5 MS. MITRANI: 30.

6 THE COURT: Okay. So an hour and 15 and then 30,
7 right?

8 MS. MITRANI: Yes, Your Honor.

9 THE COURT: All right.

10 MS. MITRANI: Your Honor, does the Court give
11 warnings?

12 THE COURT: Yes. Would you like a warning or
13 warnings? When would you like them?

14 MS. MITRANI: Can I have a ten-minute warning.

15 THE COURT: Sure.

16 MS. MITRANI: Thank you.

17 (Thereupon, the jury entered the courtroom at
18 10:48 a.m.)

19 THE COURT: Welcome back. Please be seated. Thank
20 you. Let me just double-check. Is there anybody who has
21 discussed the case with anyone, disbursed any information about
22 the case, or done any research into the case? If so, please
23 raise your hand for me now.

24 I see no hands. We all thank you for that. Now what
25 we are going to do is we are going to proceed to closing

1 arguments. I want to explain that because the burden of proof
2 is always on the government to prove beyond a reasonable doubt
3 that Mr. Scotton committed the crimes with which he is charged,
4 the government has the opportunity to go first and then to have
5 what is known as a rebuttal closing. So we will hear first
6 from the government, then from Mr. Scotton, and then from the
7 government again.

8 Just so you know, each side has equal amounts of time.
9 It's just that the government's time is divided. With that,
10 whenever you are ready, Ms. Mitrani, you may proceed.

11 MS. MITRANI: Thank you, Your Honor. May it please
12 the Court, Mr. Scotton, members of the jury.

13 In the beginning of this case, I told you that this
14 was a case about theft, lies, and deception. Those are the
15 three words out of my mouth. Now that we have presented the
16 evidence to you, I believe the evidence shows beyond any
17 reasonable doubt this gentleman here, the defendant, there's
18 your thief, there's your liar, there's your deceiver.

19 Members of the jury, we have proven to you beyond any
20 reasonable doubt that this individual, the defendant, Rogerio
21 Scotton, created hundreds, thousands of fraudulent shipping
22 labels. He used those labels to ship packages to Brazil. He
23 created new accounts. He used existing accounts. He used
24 whatever means necessary to deceive the shippers, to mail these
25 packages and not pay.

1 And this crime of opening and using accounts without
2 authorization fraudulently, and that's the word you are going
3 to be hearing throughout the closing, it's the word I
4 believe -- it's the concept I believe we have proven to you
5 throughout this trial is the crime of mail fraud.

6 Members of the jury, we have proven to you beyond any
7 reasonable doubt that the same individual lied to the United
8 States Citizen and Immigration Services in his bid to gain
9 legal permanent resident status. He lied to them by saying he
10 was living with his purported wife Aylin Reyes when he was not.

11 We have also proven to you beyond any reasonable doubt
12 that the defendant lied again to citizen and immigration
13 services when he told them that his last entry into the United
14 States was in 1992. That wasn't true. The defendant knew full
15 well, full well, that his last entry into the United States was
16 in 2008. He knew that he entered without a visa, without
17 inspection. He knew that because he entered in this manner, he
18 could not get a green card, legal permanent resident status. I
19 use these those terms interchangeably. So he lied. He said
20 his last entry was in 1992 because then he did have a visa, he
21 was inspected.

22 These two lies are the crimes of making materially
23 false and fraudulent statements.

24 So here we are at the end of the case. It's been a
25 journey. Pretty soon you are going to have this case in your

1 hands. And what that means is you are going to go back to that
2 room and you are going to decide. You are going to decide
3 whether the defendant is guilty of the crimes alleged in the
4 second superseding indictment.

5 Now, this is our chance. Remember, I told you the
6 beginning was coming attractions, opening statements. Well,
7 this is actually our chance to review the evidence with you so
8 that when you go back to decide, we call that deliberations,
9 when you go back to decide, it's going to make it very easy,
10 very easy for you to decide that the defendant is guilty of all
11 29 counts alleged in the second superseding indictment.

12 So I need to talk a little bit about the second
13 superseding indictment with you. But first I want to go
14 through some concepts, concepts that you are going to need to
15 understand in order to decide this case and some concepts that
16 her honor is going to go over with you in what's called jury
17 instructions. She's going to instruct you on what the law is.
18 I'm going to highlight some, just some, not all of those
19 instructions so you can start thinking about and adjusting
20 these concepts.

21 The first concept that is very important is the
22 concept of reasonable doubt. You heard me say that in opening.
23 You heard me say it now. What's reasonable doubt. I have on
24 the screen the instruction that her honor will read to you, but
25 I want to read the first paragraph which is, the government's

1 burden of proof is heavy, but it doesn't have to prove a
2 defendant guilty beyond all possible doubt. The government's
3 proof only has to exclude any reasonable doubt concerning the
4 defendant's guilt. And then the judge will instruct you about
5 what the rest says.

6 That's important. Now, you are going to weigh the
7 evidence against the standard, but there's something else
8 that's very important for you to understand. How do I decide.
9 How do I weigh this evidence.

10 Again, her honor is going to instruct you on the law.
11 But she's going to tell you that your own recollection and
12 interpretation of the evidence is what matters.

13 In considering the evidence, you may use reasoning and
14 common sense to make deductions and reach conclusions. You
15 shouldn't be concerned about whether the evidence is direct or
16 circumstantial.

17 Direct evidence is the testimony of a person who
18 asserts that he or she has actual knowledge of a fact such as
19 an eyewitness. Circumstantial evidence is proof of a chain of
20 facts and circumstances that tend to prove or disprove a fact.

21 And there's no legal difference in the weight that you
22 assign to either direct or circumstantial. There's going to be
23 law that is going to be read to you and there's going to be
24 evidence. You have your common sense to guide you in
25 evaluating all the evidence that you have heard throughout the

1 trial and that you have had the opportunity to review again in
2 that room.

3 So the second superseding indictment is a lengthy
4 document. I'm just going to hold it up here. It looks
5 something like this. And her honor will give you a copy of it.
6 And it starts with general allegations and talks about other
7 things, manner and means.

8 But then you get to paragraph 31 and paragraph 31 is
9 where the counts -- you have heard me talk about 29 counts.
10 Paragraph 31 is where the counts start. And you are going to
11 see that each count is a mailing with respect to the mail
12 fraud. Mail fraud is Counts 1 through 27, 27 mailings. We
13 identify them by the approximate date shipped, a description of
14 the mailing, and for your convenience, we talk about the
15 account number that was used.

16 Now, let me just step aside for a second. There are a
17 lot of numbers floating around here. So let me make sure we
18 are all clear on this. The count, Count~1 and Count~2, is a
19 specific mailing. The mailing is identified by waybill number
20 which we have talked about throughout the case. So the count
21 is attached to the waybill number. The waybill number is
22 attached to the account number with either DHL, UPS, or Fed-Ex
23 that was used.

24 We have also talked in this trial about exhibit
25 numbers. And later in my closing, I am going to link up these

1 counts to the exhibit numbers. And remember the exhibit
2 numbers are going to have like little yellow stickers. And
3 then when we have an exhibit that has a lot of documents, I'm
4 walking around too much, I apologize, but when you have an
5 exhibit that has a lot of documents, we have what's called a
6 Bates label. I have tried to show it to you throughout the
7 trial so if there is a specific number within Exhibit 20, I
8 might say Fed-Ex 62. So hopefully that will ease your
9 deliberations as we start to link everything up to you.

10 All right. So now we know that with respect to mail
11 fraud, we have 27 mailings that we have to decide whether they
12 were part of a scheme to defraud. And the last two counts are
13 the false statements. We will address those towards the end of
14 my closing.

15 So let's start -- or let's continue. What's mail
16 fraud, right? We have been talking mail fraud, mail fraud.
17 What is mail fraud?

18 It is a federal crime to transmit something by private
19 or commercial interstate carrier in carrying out a scheme to
20 defraud someone. So first thing is you don't have to use the
21 United States mail to commit mail fraud. You could use a
22 private or interstate commercial carrier. What's a private or
23 commercial interstate carrier. A private or commercial
24 interstate carrier includes any business that transmits,
25 carries, or delivers items from one state to another. It

1 doesn't matter whether the message or item actually moves from
2 one state to another as long as the message or item is
3 delivered to the carrier.

4 So in this case, members of the jury, Fed-Ex, UPS, and
5 DHL, they are your commercial interstate carriers. You have
6 heard from each of them and they have told you about how they
7 have had hubs throughout the United States. They have told you
8 how they move packages throughout the United States, each of
9 these DHL, Fed-Ex, and UPS. They also move packages, all three
10 of them, throughout the world.

11 So they transmit packages, letters, throughout the
12 United States, interstate, throughout the world, and they
13 charge money for it. So that makes them commercial. So that
14 element of mail fraud has been met here through the use of
15 these three shipping companies.

16 Now, the use of a private or commercial interstate
17 carrier is what we call one element, one part of the mail
18 fraud. There are actually four parts. That's one part. Let's
19 talk about another part.

20 Mail fraud occurs when the defendant knowingly -- that
21 the defendant knowingly devised or participated in a scheme to
22 defraud someone or to obtain money or property using false or
23 fraudulent pretenses, representations, or promises.

24 By now you all know what these fraudulent pretenses,
25 representations, and promises were. There were many here. He

1 mailed thousands of packages to Brazil and also some within the
2 United States on accounts that he fraudulently created. He
3 mailed packages on accounts that he took over without the
4 account holder's authorization. Either way it's a fraudulent
5 shipment because they were accounts other than the defendant's
6 accounts, the shippers didn't know that, and accounts which the
7 defendant did not pay, accounts which the defendant had no
8 intention of paying.

9 And, of course, this is the heart of the fraud, right?
10 This is why the defendant did it. By shipping with accounts
11 that weren't his own or that he fraudulently created, he could
12 in a sense hide from the shippers, run his business of selling
13 stuff over the internet, run his business of forwarding stuff
14 to Brazil without paying the carriers. It was a great profit.
15 He doesn't have to pay the carriers. The customers would pay
16 him. You heard the undercover purchase. The FBI through the
17 source, Mr. Olivera, was charged \$125 for shipping. Paid it to
18 the defendant. And the package Exhibit 9A gets shipped to
19 Brazil on an account, not on Sky Air, not on Rogerio Scotton,
20 on Citrix.

21 Now, you have heard the recordings, the Fed-Ex
22 recordings in this case. You have heard them several times. I
23 am going to play a portion of them for you the last time in the
24 government's case in chief. So let's start. These are
25 Government's Exhibit 14A and 14E, and you will have the

1 opportunity to hear these recordings as well.

2 (Thereupon, the audiotape was played.)

3 MS. MITRANI: You heard Ms. Mezentsef, Renata
4 Mezentsef, testify that this was the defendant's voice. You
5 know that Ms. Mezentsef was the defendant's employee, worked
6 for him every day or five days a week for almost two years.
7 You heard Carla Felini, the defendant's ex-fiancee who also
8 knew the defendant for years and saw him every day. You heard
9 her testify that it was the defendant's voice.

10 You heard Special Agent Van Brunt who also had
11 interactions with the defendant testify that it is the
12 defendant's voice. You know that this is the defendant's
13 voice. You know it based on the evidence, the additional
14 evidence, the physical evidence which we will get into in
15 addition to that.

16 Let me take an aside. You heard one of the
17 defendant's witnesses Elane Costa listen to about 20 seconds of
18 one phone call and say to you, the defendant, yeah, he has the
19 same voice as Osvaine Duarte, but, no, that's Mr. Duarte's
20 voice. She says they sound similar but, wow, 10, 20 seconds,
21 she was able to determine that just like that. Is that
22 credible? She didn't hear any other recordings. She didn't
23 hear them in their entirety.

24 She didn't know the defendant's business dealings;
25 whereas, you heard Ms. Mezentsef, Ms. Felini, and Special Agent

1 Van Brunt testify that they heard the entire recording, the
2 recordings in their entirety, as I like to say, the whole
3 thing. They heard it and they testified conclusively that it
4 was the defendant's invoices.

5 Moreover, you remember Ms. Costa's testimony. She
6 knew all about the defendant's wife and Ms. Aylin and Carla.
7 She knew all about them. She wasn't very good with dates,
8 didn't know who he was married to or why. She wasn't good with
9 locations when I started asking her about Golf Circle Drive.
10 She's a real estate broker and she testified to you that she is
11 not good with locations in response to cross-examination. Is
12 that credible? Is that believable to you? You are going to
13 decide.

14 Now, Impulse Energy Drink, you probably have that
15 account memorized. You heard the Fed-Ex recordings. You have
16 seen me wave, you have touched these your yourselves,
17 Government's Exhibits 101A and 101B sent on the Impulse Energy
18 Drink account, same account number that you just heard. Well,
19 you didn't hear the account number being given, but you have
20 heard it throughout the trial.

21 And this is now, 101B, that's the label from Steve
22 Brian at Impulse Energy Drink at 2234 North Federal Highway.
23 And remember, it's been a while, but that's the defendant's
24 address, the Pak Mail.

25 You see this, the 2234, you have seen it in evidence

1 and that's the defendant's address. And moreover, we went a
2 little too quick. That's my fault. 101A, that's Count 11,
3 101A.

4 101B, the other Impulse Energy Drink package, Count
5 12, 101B, Count 12. This one is from Paulo. Remember
6 Ms. Mezentsef told you that people would call for a Paulo and
7 she would look at the defendant and hand him the phone.
8 Remember that?

9 And this is PO Box 629, Boca Raton, Florida. And we
10 spent a lot of time the first week or two talking about PO Box
11 629. I'm sure I remember Inspector Fernandez testifying to
12 this PO box application, and again, Roger Scotton, Brazil
13 Express, because it's his PO box.

14 There's more because, not only is it the defendant's
15 address and you heard his voice opening the account, I know you
16 have seen this before during the trial. It's the defendant's
17 brochure at Brazil Express. They were inside both of these
18 packages.

19 And both of these packages contained DHL labels. One
20 was for a baby stroller. Ms. Martins was shipping a baby
21 stroller or wanted to ship a baby stroller to Brazil. The
22 other was a Christmas gift. 101A was the Christmas gift.

23 This is great because it also gives you an example.
24 Remember we told you and the evidence has shown that there were
25 two aspects to the defendant's business. He sold stuff like

1 the camera which we purchased, but he was also a freight
2 forwarder. People would come and say we want to send something
3 to Brazil. You heard Ms. Mezentsef testify she would give them
4 a quote based on what the defendant told her to do, a
5 60 percent markup or more, and then they would send the
6 shipping label. So then he would get paid for the shipping
7 label for the freight forwarding, send the label to the
8 customer, and then off the package would go to Brazil.

9 Exhibit 14K, you may remember that's the spreadsheet,
10 the smaller spreadsheet that Mr. Seligstein testified to. He
11 lists the counts that we have been talking about in this trial
12 and in particular he lists the Impulse Energy Drink account and
13 how it was closed for fraud because it wasn't paid. You will
14 notice on the spreadsheet the account opening date matches
15 perfectly with the phone call.

16 And on Impulse Energy Drink, if you go to Exhibits
17 14I8, there was a claim that the defendant made on Impulse
18 Energy Drink and you know it's the defendant making it for a
19 lot of reasons. Again, there's his address, 2234 North Federal
20 Highway. And where does the check end up? The check to
21 Impulse Energy Drink, attention Steven Brian, gets deposited
22 into the defendant's bank account, the defendant's Bank of
23 America Brazil Express bank account.

24 The bank records of Bank of America are Exhibit 16,
25 but also remember we have Exhibit 120, composite 120, which was

1 the spreadsheet of all the checks and all the different company
2 names and all the different names that were deposited into the
3 defendant's many different bank accounts, and you can look
4 those others.

5 So Impulse Energy Drink says it all. I think,
6 likewise, Citrix, Count 27. So this package, this mailing is
7 Count 27. And you will see we identify it by waybill number
8 6503 which you will see on the actual package. And you
9 remember Special Agent Van Brunt testified they went with his
10 source, Mr. Olivera, they purchased the camera on Sky Air.
11 Exhibits 9B and 9C are the email communications where you can
12 select the camera and the color and the method of payment, Sky
13 Air where the camera was purchased.

14 And then this is Exhibit 9E, which is this is the
15 receipt that you heard Agent Van Brunt testify where they
16 deposited \$344.99 in the defendant's Bank of America account.
17 Remember 125 for shipping, the rest for the camera, \$219.99.

18 And then Exhibit 16A1, again the defendant's bank
19 account. You see on March 14 the \$344.99 counter credit. The
20 defendant gets paid for the camera and the defendant
21 provides -- ships the camera as instructed all the way to
22 Brazil.

23 But it wasn't shipped on a Sky Air account. It wasn't
24 shipped on a Brazil Express account. It wasn't shipped on an
25 account opened by Rogerio Scotton. It was shipped on a Citrix

1 account, Exhibit 32L.

2 And you remember the 32 series. Ms. Morrison, the
3 records custodian from DHL, we went label by label where she
4 printed out what we call the archival copy which has the
5 account number right there. And that account number went back
6 to Citrix. As you went further into 32L, she actually provided
7 the invoice to Citrix for this waybill which is, I think, 6503.

8 That's the fraud. That's the fraud in this case.
9 Fraudulent shipments to Brazil and throughout the United States
10 on accounts that the defendant didn't pay, weren't his accounts
11 were opened under fraudulent pretenses.

12 So let me take this time now then we have talked about
13 Counts 27 and Counts 11, 12. Let's go through all the mail
14 fraud counts in the second superseding indictment.

15 So Count~1 you will see is a shipment with DHL Sun and
16 Moon Corporation. It's the DHL package with waybill number
17 ending in 8684 with the return address of Sun and Moon Corp.,
18 PO Box 629, Boca Raton, Florida, shipped to Brazil. Again 629,
19 that's the defendant's PO Box. And the exhibits Exhibit 132B,
20 line 88, we put that up with Nicole Nelson -- it was either
21 Nicole Nelson or Scott Kamlet, I believe it was Nicole Nelson,
22 the spreadsheet. And we put it up again with Special Agent
23 Van Brunt. And you can pull it up if you want. Line 88 showed
24 that that package was shipped. Line 88 of that spreadsheet
25 showed that that package was shipped on the Sun and Moon

1 Corporation. And exhibit 12B, that's the DHL claim form, and
2 you see here that the defendant made claims on the Sun and Moon
3 account to DHL, and that's contained in Exhibit 12B. And here
4 again, from 12B, I know you have seen this one before many
5 times, this is DHL 72 within 12B. You know it's the defendant
6 sending this because it's sent on his phone number, remember,
7 561-368-7347. Remember we went through all those headers and
8 we had the exhibits showing you that it was the defendant's
9 phone number.

10 So it's the defendant's account. He opened Sun and
11 Moon. He made claims on Sun and Moon. The claim checks get --
12 he got one claim check. It was deposited into his bank
13 account. And that shipment, Count~1, got sent on the same Sun
14 and Moon account as set forth in that spreadsheet.

15 And then if you look at Exhibit 120E, again, I'm being
16 repetitive, but those are the summaries of the checks deposited
17 into the defendant's account. If you look at 120E, Bank of
18 America 780, you see that Sun and Moon check that was deposited
19 into the defendant's account from DHL. So that's Count~1,
20 proof beyond a reasonable doubt.

21 Count~2 is Fed-Ex Citrix. So there's a package with a
22 tracking number ending in 9000, shipped from purports to be
23 Citrix at 851 Cypress Creek Road, shipped to Brazil. You have
24 Exhibit 14L which was the actual waybill, a copy of the waybill
25 that is going to match Count~2. And Exhibit 14I3, those are

1 Fed-Ex claims, 14I3, that same waybill number, it's easy to
2 remember because it's 9000, same waybill number, there's the
3 claim being made, Exhibit 14I3, and this is Fed-Ex 850 --
4 excuse me, 590, claim being made on that same shipment waybill
5 9000.

6 A check gets cut. This is that same Exhibit 581.
7 It's also Bank of America 786. The check gets cut from Fed-Ex
8 to Citrix for that same waybill number 9000. And where does
9 this check get deposited? It gets deposited into the
10 defendant's bank account, again Exhibit 120, you will see that
11 check. So you know the defendant was controlling that
12 shipment. He made a claim on that shipment. He caused that
13 shipment to be made. He's not Citrix. It's a fraudulent
14 shipment.

15 14K which you have seen already is that big
16 spreadsheet which has that Citrix account identified by Fed-Ex
17 as a fraudulent account, closed for fraud, that Fed-Ex shipment
18 waybill 9000 shipped on that same Citrix account identified in
19 Exhibit 14K which Mr. Seligstein testified to.

20 Count 3, Count 3 is UPS Triunfo. So here we have,
21 it's a UPS package. And remember the actual account numbers
22 contained, as Mr. Santiago testified, within the waybill
23 number. So R9Y04 is the account number. And you heard
24 Mr. Santiago that that belonged to Triunfo. That package
25 was -- the return address 398 Southeast Mizzner, misspelled,

1 Boca Raton, shipped to Brazil. You have heard throughout this
2 trial that 398 is where the defendant lived. That's his
3 address and that's 100A.

4 Remember 100A, the Epson printer? I'm not going to
5 fall. I only look that way. Remember this same package?
6 Remember it had the defendant's name on the side of it? So you
7 know he received it, forgot to take off the side, slapped on
8 the fraudulent UPS shipping label so he could ship it on the
9 Triunfo account, but fortunately UPS seized it before it got
10 through, but it's still mail fraud. Because remember the
11 instruction, it was his intent to mail it on that. All you
12 have to do is tender it. It doesn't mater if it actually gets
13 delivered or not. It doesn't have to be delivered. It has to
14 be tendered. And the intent has to be there. And you know the
15 intent is there because that's not a Sky Air account. That's
16 not a Roger Scotton account. That's not a Brazil Express
17 account. That is Triunfo. And that is fraud.

18 Likewise, Exhibit 4 is that same Triunfo. Most of
19 these big boxes here you will have an opportunity to see
20 yourself, but you remember I showed you all with Santiago and
21 there were Xboxes and things like that. That was more of a
22 workout than I thought.

23 Count 5 is 100C. And all of them go back to
24 Exhibit 15C which is the UPS spreadsheet showing the
25 fraudulent -- the fraudulent use of the Triunfo account.

1 Count 6, Count 6 is a 100D, another package, 15C. And
2 Count 7, another UPS Triunfo, 100E. One of these packages is
3 100E. Count 8, another UPS Triunfo, Exhibit 100F. Count 9,
4 another UPS Triunfo, Exhibit 100G, again, the physical
5 packages.

6 Is that it? No. Okay. Let's go back. Okay. So
7 those are the Triunfo accounts in the indictment 3 through 9,
8 15C, again the UPS spreadsheet identified the account, plus you
9 heard Mr. Lima testify how the account had been compromised.

10 All right. Count 10, another Fed-Ex Citrix. And this
11 one is tracking number ending in 6720. Once again, the
12 defendant's return address without the misspelling, right? You
13 see, 398 Southeast Mizner Boulevard, Apartment 1920, Boca
14 Raton, Florida, shipped to Brazil.

15 Then if you go to the Fed-Ex claims 14J4 which I will
16 put on the ELMO, 14J4, this is the first page of 14J4 which
17 shows Citrix Online with the account number in the corner. And
18 this is the fourth page. It's Fed-Ex 479. This is the invoice
19 that Fed-Ex sent to Citrix for that same package, 6720, that's
20 identified in Count 10. So you know that Count 10 was sent on
21 the Citrix account. It was sent from the defendant's return
22 address. And again, Exhibit 14K, the spreadsheet, same as
23 Count~2, Fed-Ex Citrix, a fraudulent account that wasn't paid.

24 Count 11, we have talked about that. Count 11 is the
25 Impulse Energy Drink. We have spoken about that. 101A, 14K

1 count 12 we just spoke about a few minutes ago. It's the
2 second Impulse Energy Drink envelope.

3 Okay. Count 13 is Fed-Ex B&H Photo a/k/a BHPV,
4 tracking number of 1212, return address of BHPV at 934 North
5 University Drive, 329 in Coral Springs, Florida, tendered to
6 Fed-Ex for shipment to Brazil. And remember, 934 North
7 University Drive, that's the defendant's Pak Mail address. And
8 this is another physical package. It's 102A. And you remember
9 on the inside of 102A, it's the defendant's Retrospectiva da
10 Amour, the defendant there with a woman on one DVD and another
11 of him sending this to friends of his or whoever. That's how
12 you know it's the defendant. It's his address, his CD, a
13 fraudulent account, not Sky Air. It says 934, but the
14 defendant is not BHPV, right? The defendant is Sky Air or
15 Rogerio Scotton or Roger Racing or some of the other
16 corporations that we showed to you. And this was mailed on the
17 BHPV account.

18 And 14K, Mr. Seligstein's spreadsheet, he testified
19 that these were billed to that account. The shipments were
20 based -- excuse me, the shipments were on the BHPV account that
21 he put on Exhibit 14K, and that makes it a fraudulent account.

22 Plus, don't forget, and I'm not going to carry it, but
23 remember 102D and E. I will carry the small one. These are
24 the handwritten waybills. Remember Ms. Mezentsef testified
25 that she wrote these and the defendant gave her the template.

1 I asked her, where did you get this BHPV number because when
2 it's handwritten, it's handwritten right on there, and remember
3 she told you, the defendant gave me the template. 1020D and E,
4 same account as Count 13. Count 13 charges the mailing of
5 102A.

6 Next please. Okay. Count 14 is another saying BHPV.
7 Defendant's return address of 934 North University Drive,
8 shipping number 0090 which corresponds to Exhibit 102B which is
9 another Retrospectiva de Amour. And this one was being sent to
10 Atlanta, Georgia on the BHPV account, not the defendant's
11 account. Fraudulent shipping.

12 And then Count 15 is 102C, same thing, BHPV, another
13 Retrospectiva de Amour. Count~2C goes with Count 15, 102C.

14 I'm going to speed this up a little because my time is
15 limited. Remember with Ms. Morrison, we went through all of
16 those labels so Counts 16 through 26 were all being shipped on
17 the Apple computer account, not the defendant's account.
18 Remember?

19 Now, Count 16 charges, it's DHL waybill 2095 with the
20 defendant's return address of 934. Now, Exhibit 3A you may not
21 even remember because it was weeks and weeks ago. But remember
22 Scott Baker testified that he copied shipping labels and he
23 gave them to Special Agent Van Brunt? Do you remember that?
24 That's Exhibit 3. 3A is the same waybill. Then 32 is the
25 archival copy that gives you the Apple Account number on it so

1 you can look it up. It's the defendant bringing it into the
2 Pak Mail, Mr. Baker's store, 32A showing you it's on the
3 fraudulent Apple account because the defendant is not Apple
4 Computers. Ms. Morrison testified that Apple pays its bills,
5 but this wasn't an authorized account.

6 And also on Scott Kamlet's spreadsheet, which is 132C,
7 each of the -- it's listed as one of the shipments that were
8 sent out from DHL and not paid. Mr. Kamlet's spreadsheet I
9 think I went over. I think it was on redirect. And we went
10 through maybe four packages. I think. Do you remember that?
11 If not, look at 132C. But really 3A and 32A and Mr. Baker's
12 testimony and Ms. Morrison's testimony tells you everything you
13 need to know.

14 Let's go through them. 17 is the same thing. It's
15 waybill 4911. Apple Computer account, 3B, what was brought to
16 Mr. Baker, 32B, the archival, same spreadsheet, 132C.

17 18, it's package 4721. It says Air Express with the
18 same 934 address. 3C, 32C, it's kind of simple because it's 3
19 and 32 and the letters are all going to match.

20 19, waybill No. 0304, 3D, 32D, links that up.
21 Count 20 is 3E and 32E links that up. Count~21 is 3F, 32F,
22 links that up. Count~22 is 3G and 32G, linking those up to the
23 Apple account. 23 is 3H and 32H. It's waybill number 8382,
24 Appleputer.

25 Next please. Thank you very much.

1 Count~24, 3I, 32I. Next please. Count~25, 3J and 32J
2 linking those up. Again, all the defendant's return address.

3 Next please. Thank you. 26, Count 26 is Exhibit 3K
4 and 32K. And that's the Apple Computer DHL fraudulent
5 shipments.

6 And then the last account of the mail fraud is
7 Count 27 which we have talked about already, the camera, which
8 Exhibit 9A is the camera.

9 9B and 9C, I think I went through this already are the
10 email communications. 32L shows that it was sent on the Citrix
11 account. That was the last in the 32 serious from
12 Ms. Morrison.

13 Okay. So the first -- we have talked about two
14 elements of mail fraud, that it was an interstate carrier and
15 what the scheme was. And then now we also have to prove beyond
16 a reasonable doubt that the false and fraudulent pretenses were
17 about a material fact. Everything was material. Material
18 basically means it's something that is important. It's obvious
19 that the shipping companies want to know who the account
20 holders are and the shipping companies want to know that it's a
21 genuine account holder. And by concealing all, that he was
22 deceiving all these shippers.

23 And the false pretenses where he used the phony names,
24 opening accounts under his own name and not paying, opening
25 accounts under names and entities other than the defendant's

1 name and entity and not paying, using existing account numbers
2 that do not belong to the defendant to ship packages, and using
3 return addresses with names like Targeting and BHPV Photo and
4 the like.

5 And again, the misrepresentations are material, and
6 the nonpayment obviously is very significant to the shipping
7 company, and that's why we are here today.

8 Also, remember, members of the jury, that the
9 defendant took advantage of the ship first pay later because
10 the accounts were opened and you heard Mr. Cory testify that no
11 sooner would they catch one or two accounts, and new accounts
12 would spring up. But the shipments had already gone through so
13 it was too late.

14 And it was a double whammy because remember Fred
15 Kennicutt told you, remember, duties and taxes paid. To
16 facilitate the clearance of customs, DHL would pay the duties
17 and taxes first and then bill the account for it. So they got
18 robbed of both the shipping costs when they shipped the
19 packages and of the duties and taxes that they fronted.

20 And remember Mr. Kennicutt testified that one of the
21 ways they were able to start identifying the packages was
22 through that DTP. Remember, DTP meant the duties and taxes
23 were paid.

24 And, oh, you remember Mr. McMahon was very excited
25 that it was going to be a DTP because that made things easier.

1 So he was excited when he opened the account, sad case for
2 defendant which we will get to hopefully in a few minutes, that
3 it was going to be that, and that's what makes it a double
4 whammy, a double loss to the shippers.

5 So defendant intended to defraud someone is the third
6 element of mail fraud. The intent was to defraud UPS, Fed-Ex,
7 and DHL. The intent was to defraud them and he did. You have
8 heard testimony about the losses that they suffered.

9 All right. And then there are some definitions that
10 her honor, the Honorable Robin Rosenbaum, will give you further
11 instructions on, what a scheme to defraud is. As I told you in
12 opening, basically it's a scheme to cheat and steal and that's
13 what we have proven here.

14 All right. During the trial you have heard some
15 suggestions through questionings which, of course, the
16 questions aren't evidence, but you have heard questions and
17 answers of the witnesses about this third party shipper. Well,
18 in this case, members of the jury, as you know, it was the
19 defendant. The defendant was a third party shipper. He didn't
20 get these labels from anybody else. People went to him to get
21 the labels.

22 You heard Ms. Mezentsef testify to that. You know
23 from the facts of this case because, of course -- okay, if it
24 was a legitimate third party shipper, then the defendant's
25 name, of course, would be on these labels. It would say Roger

1 Scotton. His address would say Brazil Express or Sky Air at
2 his address. There would be no concealment. But since we want
3 concealment, we don't get Sky Air or Rogerio Scotton. You
4 don't see one label, not one of these counts with the
5 defendant's name on it. Instead, you get Wal-Mart.

6 And remember, this is Exhibit 13B, remember we saw the
7 DHL -- the video of him bringing the packages on those two
8 different days? So the first day he brings in a package. It
9 was him. You saw the video. You can identify it. He's
10 bringing in a package where it says it's from Wal-Mart, not
11 Roger Scotton, not Sky Air.

12 Next please. And then Exhibit 13E on the second clip
13 from that DHL video, what's he bringing? He's bringing
14 packages that say Targeting. It doesn't say Roger Scotton. It
15 doesn't say Brazil Express, but his return address. And 13F is
16 another Targeting label.

17 So there's no third party shipper. It's the
18 defendant. He's the one who's bringing it in. And, of course,
19 plus we also get labels that look like this BHPV and what have
20 you. It's all part of the concealment.

21 Don't forget, at DHL, you saw that clip, you can see
22 it again, the defendant goes back, right, the third time -- the
23 date is escaping me, but he goes back a third time and you saw
24 he was belligerent. You saw that sort of interaction and you
25 heard the testimony of the witness from Kentucky, Mr. Bonilla.

1 You heard Mr. Bonilla tell you how he heard it and it
2 was loud. And the clerk gives him the white sheet saying
3 contact our fraud department. And you see his demeanor. It
4 wasn't like, oh, my fraud. No, it was belligerent. It was
5 like, here is my police badge and argumentive because he knew
6 he was caught.

7 Likewise, I think there's been -- the name Osvaine
8 Duarte has been thrown around throughout the course of the
9 trial. You saw the checks. Mr. Duarte was the customer. He
10 was paying the defendant. You can look at the bank statements,
11 Exhibit 16, 17, you are going to see lots of checks from
12 Mr. Duarte and from others paying the defendant. You are not
13 going to see a single check from any of these bank records
14 where the defendant's paying Mr. Duarte. You are not going to
15 see a single check in these bank records where he's paying
16 Lider Mundanca or any of these other entities that he tries to
17 play the game, that he tries to pin blame on because they
18 didn't do it. It's a sham. It's a straw man. It didn't
19 happen. It was the defendant and you know that from all the
20 evidence in this case.

21 I have a lot more and I have 20 minutes left, but
22 let's talk about the Fred Kennicutt call which is another great
23 example of the blame game. 29A, remember, 29 -- hold on a
24 second. Okay. 29A is that label that Fred Kennicutt told you
25 about and you can see it where they seized the package on TO

1 International. There was the phone number there. And then
2 with Special Agent Van Brunt remember he called that phone
3 number, the defendant's phone number, in order to resolve this
4 issue with the package. Remember that? And you remember the
5 phone call was Exhibit 29A.

6 Here we go. Here's Exhibit 29C. Here's the package
7 with defendant's number 561-361-4343. You know it's the
8 defendant's number for a lot of reasons including Exhibit 25
9 which is records from Comcast showing that that number,
10 3614343, go back to Sky Air. So you know it's the defendant's
11 number. It's right there on the label. But you heard the
12 phone call. First you get the voice mail.

13 (Thereupon, the videotape was played.)

14 MS. MITRANI: You hear that's Sky Air Express. It's
15 not TO International. But then Mr. Kennicutt calls back.

16 (Thereupon, the audiotape was played.)

17 MS. MITRANI: And this is what the defendant does,
18 right. Every time they are on to him, he blames somebody else.
19 Now it's his company, Sky Air, but now he's not Roger Scotton.
20 He's Pablo Servente. Again, you heard Ms. Mezentsef,
21 Ms. Felini -- Ms. Mezentsef and Ms. Felini testify it's the
22 defendant's voice. You don't need their testimony. You know
23 it's the defendant's voice. You know it's his company. This
24 is what he always does. He's going to try to create a name and
25 blame someone else for all of this.

1 That's what happened with Zap Games, remember? Zap
2 Games, he meets with Justin McMahon. They have a meeting. He
3 wants to open up Zap Games. Justin McMahon he sends -- okay,
4 this is Exhibit 8D. He sends Justin McMahon a phony Chase
5 Manhattan statement showing that Zap Games supposedly had
6 \$65,000 in its account, but really it had \$2 in its account.

7 And you remember what Special Agent Van Brunt, we
8 showed you the actual JP Morgan Chase statement. It was the
9 defendant's bank account, Zap Games, that he used to alter
10 this.

11 He sends this phony document to Justin. And it goes
12 beyond that. When Justin sends him the letter to Roger Scotton
13 to open the DHL Zap Games account, the defendant is like, oh,
14 no, I messed up, I used my name, I can't do that.

15 So you have Exhibit 8C where the defendant whites out
16 his name and puts in Alex because the defendant has nothing to
17 do with Zap Games. It's Alex. And that Paulo Servente, Paulo
18 Moreira, pick a name because that's what the defendant does,
19 picks a name from the air. He's always trying to deceive and
20 it's not me. It's anybody but me.

21 Again, you know Zap Games is the defendant,
22 Defendant's Exhibit 6U with the defendant's name on it and his
23 address.

24 So let's me try to wrap up with the mail fraud in a
25 few minutes so we can get to the false statements.

1 DHL starts getting good at identifying these
2 fraudulent accounts with the defendant, so they seize the
3 packages with Zap Games. So Justin says you have to meet my
4 supervisor Roy. And remember there was the August 29, 2011
5 undercover meeting with Special Agent Van Brunt. And then,
6 members of the jury, it's a festival of lies. All of a sudden,
7 it's one lie right after another. Alex? It's not Alex, it's
8 Alex Colon Moreira. Of course you remember Alex is his
9 brother's name Alexander Scotton. Colon is his stepfather's
10 last name. And Moreira was his wife Samara's maiden name. But
11 that was just the start.

12 (Thereupon, the audiotape was played.)

13 MS. MITRANI: We were intending to play you some of
14 these clips, but that's okay, but our time is short. I will
15 remind you of some of the lies during of the undercover and
16 maybe we will play one. You can hear it for yourself. You
17 heard it for yourself. Who is Carlos Colon. It's not my
18 father. It's just a friend.

19 Special Agent Van Brunt, why don't we do that one real
20 quick.

21 (Thereupon, the audiotape was played.)

22 MS. MITRANI: 934, not even mine.

23 (Thereupon, the audiotape was played.)

24 MS. MITRANI: Carlos Colon, just a friend. It's his
25 stepfather.

1 (Thereupon, the audiotape was played.)

2 MS. MITRANI: There were more because remember that
3 convoluted explanation when Special Agent Van Brunt tried to
4 confront him with the camera and it was, oh, he dropped it off
5 at my store. The store wasn't operational. \$125, that was to
6 ship in Broward County. It was because he got caught, and
7 that's what the defendant does. It's a festival of lies. It's
8 lie upon lie if he's being caught and he's going to point in
9 the direction of everything else.

10 In the undercover he also says he never had a DHL
11 account. I could go on and on, but I think you get the point.

12 Special Agent Van Brunt went to confront him with the
13 Zap Games account and you saw the results of that. Everybody
14 but me. I had nothing to do with Zap Games. I had nothing to
15 do with nothing. I think he mentions Lider during that, Lider
16 Mundanca. Remember he told Fred Kennicutt in 2009 that it was
17 no longer operational. In 2009 he told Fred Kennicutt it's no
18 longer operational. In 2011 he's still bringing it up.

19 I am going to -- so I am trying to summarize the
20 evidence. There's even more. You remember the testimony we
21 went through with Nicole Nelson and Special Agent Van Brunt,
22 all the faxes going back to him and the different names. You
23 have the claims. Let me talk a minute or two on the claims
24 files. I think you have seen them many times. What happens
25 the defendant sends out a package and it either gets held up

1 or --

2 THE COURT: Ten minutes.

3 MS. MITRANI: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 MS. MITRANI: He makes a claim which is all well and
6 good except if you look at the claim file, he's making claims
7 under all these different companies and under all these
8 different names; DHL, U.S. Trade International, Sun and Moon,
9 Sunshine Express, Rio Motors Matte Lion, Electronika. Fed-Ex
10 it's Pittiman Corporation, Cargo Air, Citrix Online, Rodge
11 Online Air, Global Express Online, Targeting Express Online,
12 Paulo Impulse Energy Drink.

13 I know I'm talking fast. You have seen it. You can
14 see it again in your deliberations. And then exhibit 120, even
15 more checks under all different kinds of names. That's how you
16 know that the defendant is responsible for these fraudulent
17 shipments. That's how you know, because the checks end up,
18 among all the other reasons, checks ends up it his account.

19 Let's talk about the false statements. Count 28
20 charges the defendant with making two materially false
21 statements on his I485 application, that's Government's
22 Exhibit 200, that he was residing with Aylin Reyes, and that
23 his last entry was in 1992.

24 And Count 29 charges him with making a false statement
25 to Fred Brooks during that immigration interview which you saw

1 the tape in its entirety saying that they were living together,
2 that he and Reyes were living together at 7797 Golf Circle.

3 You know, members of the jury, you know, you know that
4 the defendant's marriage to Ms. Reyes was a sham. You heard
5 the defendant's fiancée testify that they were engaged in June
6 of 2011, Ms. Felini. You heard Ms. Felini testify that they
7 were engaged, that she knew about the Cuban wife, but she knew
8 it was just for the green card and it didn't bother her.

9 You heard Ms. Felini testify that Ms. Reyes wasn't
10 living with the defendant because she was just the Cuban wife
11 for the papers. You heard Ms. Mezentsef testify that nobody
12 was living with the defendant at 398 Mizner Boulevard. You
13 heard the undercover. We didn't play it and we are not going
14 to play it, but you heard it. You heard that to Special Agent
15 Van Brunt -- we do have it? Okay.

16 Special Agent Van Brunt, he identifies two days before
17 his immigration interview, he identifies Carla Felini as his
18 fiancée.

19 (Thereupon, the audiotape was played.)

20 MS. MITRANI: That's August 29, 2011 right before his
21 immigration interview. This evidence alone, by itself, is
22 enough to prove to you beyond a reasonable doubt that he wasn't
23 living with Ms. Reyes, that his marriage was a sham, that
24 alone.

25 But you heard from Ms. Reyes. She was here. She told

1 you. She told you their relationship started well and good.
2 It was okay. It was good. It was boyfriend-girlfriend. Then
3 she told you things started to change when the defendant wanted
4 that green card. At first she went along. Your recollection
5 of her testimony governs this, but she went along. And then
6 she didn't want to do it. She wanted to get her own green card
7 on her own accord. She didn't need the defendant for that.
8 The defendant needed her. She didn't need the defendant. She
9 was entitled to that green card on her own merit under the
10 Cuban adjustment act.

11 The defendant needed the green card through her. And
12 when she tried to back out, you heard her, he was bullying her,
13 threatening her, you don't know what I can do to your family,
14 I'm going to get you deported to Cuba. So she went along with
15 it.

16 In fact, he was so controlling of the situation,
17 remember the immigration tape, where did her green card come
18 out? Who was holding that green card? Did it come out of her
19 wallet? No. It came out of the defendant's wallet. Where did
20 it go back? It went back into the defendant's wallet. He was
21 controlling that situation. He was controlling that woman. He
22 kept on insisting to her, you remember through his questions,
23 we celebrated you getting your green card. He asked her over
24 and over and over again. What did she say? No, I didn't get
25 it until after the interview with you. Because he had that

1 green card. He was controlling her. He was controlling the
2 situation. It was a sham marriage. You know that. And he was
3 never living with her. She told you.

4 Second, the false entry into the United States --
5 excuse me, the false statement about 1992. You remember
6 Katherine Mortensen from the state department. She told you
7 about the visas. The defendant was in Brazil.

8 Remember Exhibits 204 and 205? You heard
9 Ms. Mortensen tell you he was in Brazil. He was in Brazil
10 applying for the visa. He was denied twice. Twice he was
11 denied.

12 And here's 204. You can see it circled. This is the
13 July one, the second one, denied, denied. No visa. You are
14 not allowed to come back to the United States. And the
15 defendant knows that. But he came back anyway, right? He's
16 here.

17 You have his passport, his new passport that doesn't
18 have a single visa in it. It doesn't have an entry stamp. You
19 heard Bruce Marar tell you that that is key. If you enter
20 legally, as the defendant did in 1992, he entered legally, you
21 saw that B2 visa, if you enter legally and overstay, that's
22 okay, you can adjust status under the Cuban adjustment act and
23 get your green card. That's okay. Mr. Marmar testified to
24 that.

25 If you enter illegally, if you don't have a stamp

1 showing inspection by immigration, that is a nonstarter. That
2 is the end. You cannot get your green card. You cannot apply
3 for an adjustment of status under the Cuban adjustment act.
4 The defendant knew this. How do you know he knew this?
5 Because he gave his lawyer the old passport showing the 1992
6 entry. Remember I showed her the new passport. She went page
7 by page. No visa, no entry stamp. He didn't give her that.
8 He deceived her as well.

9 And that was what was submitted to show his last
10 entry. And that is false. You know that is false. You know
11 he was in Brazil in 2008. And you know that he's back here and
12 it was not a lawful entry and that's the reason he lied. And
13 that is Counts 28 and 29, and we have proven that beyond a
14 reasonable doubt.

15 Your Honor, am I up?

16 THE COURT: You have about two and a half minutes
17 left.

18 MS. MITRANI: Let me use them well.

19 Members of the jury, thank you so very much for your
20 time and attention in this matter. I hope you can all see me.
21 I can see all you. Like I said, I have tried to review the
22 evidence with you. The defendant is going to have an
23 opportunity now to give his closing argument. But remember,
24 stay focused on the 27 counts, those 27 specific mailings and
25 the two false statements because that's what this case is

1 about. It's not about anything else. It's not about anything
2 else.

3 After that I will have the opportunity to address you
4 once again because, as her honor told you, it is the
5 government's burden, it is our burden to prove this beyond a
6 reasonable doubt, and we do so proudly. And when I come back
7 and I'm going to do it now and I'm going to do it again, I'm
8 going to ask you to return verdicts of guilty, guilty on all 29
9 counts of the indictment because that is what the evidence has
10 shown. It is your decision. It is your job to decide whether
11 the government has proven that beyond a reasonable doubt. And
12 we submit that the evidence here shows that beyond any
13 reasonable doubt. And we are going to ask you to speak the
14 truth, speak the truth, and return verdicts of guilty on all
15 counts of the second superseding indictment. Thank you so
16 much.

17 THE COURT: Thank you, Ms. Mitrani.

18 I don't want to have to interrupt Mr. Scotton's
19 argument halfway. I don't think that would be fair. So what
20 we are going to do instead is we are going to have a little
21 earlier lunch than usual today and maybe take a little bit
22 longer also than usual and come back at 1:15. I have to remind
23 you, of course, please don't discuss the case with anyone,
24 please don't distribute any information about the case, and
25 please don't do any research into the case. Have a great lunch

1 and we will see you all at 1:15. All rise for the jury.

2 (Thereupon, the jury exited the courtroom at
3 12:03 p.m.)

4 THE COURT: All right. Mr. Scotton, you will have
5 about an hour and 15 minutes to get your thoughts in order.
6 And when we return, we will begin with your closing argument.
7 You will have an hour and 45 minutes to present.

8 MS. MITRANI: I'm sorry, Your Honor, what time do we
9 have to come back?

10 THE COURT: 1:15 we will start. We will be in recess
11 until then.

12 Ms. Mitrani, will you be emailing me a proposed
13 verdict form?

14 MS. MITRANI: Yes, Your Honor.

15 (Thereupon, a recess was taken at 12:04 p.m.)

16 THE COURT: All righty. Let's all rise. We will
17 bring the jury in and we will get started straight away.

18 (Thereupon, the jury entered the courtroom at
19 1:17 p.m.)

20 THE COURT: Welcome back. I hope everybody had a
21 great lunch. And let me just keep our record clean. Is there
22 anybody here who discussed the case, disbursed any information
23 about the case, or did any research into the case? If so,
24 please raise your hand for me now.

25 I see no hands. Thank you all for that. Please be

1 seated. Mr. Scotton, you may proceed.

2 I'm sorry. Mr. Scotton, did you want a warning? Did
3 you want me to warn you when you have a certain amount of time
4 left before your time expires?

5 MR. SCOTTON: Yes, please.

6 THE COURT: How much would you like?

7 MR. SCOTTON: Ten and five minutes.

8 THE COURT: Ten and five?

9 MR. SCOTTON: Yes.

10 THE COURT: Okay.

11 MR. SCOTTON: Thanks for all your guys' patience. I
12 appreciate it. I'm going to try to go through a couple of
13 things here as fast as I can. As the law say, reasonable
14 doubts, right? So you need to look at the evidence to show
15 that I have done this, right?

16 This is what this government has present to you guys
17 during this trial, spreadsheets. I'm not talking about the
18 side show here. I'm talking about the spreadsheet, right.
19 Thousand, thousand of accounts and thousand, thousand dollars
20 has been go over these accounts, phone calls, they try to play
21 here and pretend and say it was me.

22 So far here the real evidence they have not provided
23 to you guys, have they? Where is all the waybills for all
24 those accounts? Accounts with \$200,000 from Fed-Ex? You think
25 Fed-Ex going to allow account to be opened for six months and

1 \$200,000 going to go by? Are you kidding me?

2 Of course they have -- they think it's funny here.

3 Put on the end of the whole thing here, account picture. Let's
4 go have fun and destroy someone's life. That's what they
5 think. For them, like I told you from this day one, I told you
6 guys, this is going to be a trial about lie like they say, but
7 they doing the lying here. This is going to be about
8 conviction at all costs. This is not about conviction here.
9 That's their job. I appreciate their job. That's what they do
10 for a living. They convict people. Do you think they want to
11 go ahead and spend all this time here in the court and say, all
12 right, let's sent Mr. Scotton to Disney. They don't want to
13 send me to Disney. They want to destroy my live and that's
14 what they are here for.

15 Your Honor, am I supposed -- can I approach them
16 because I need to go over with the jury here.

17 THE COURT: Let's stay about there. That's fine.

18 MR. SCOTTON: Let me go ahead and use the evidence.
19 Do you mind?

20 THE COURT: All right. But if you can use the
21 microphone, please. Thank you.

22 MR. SCOTTON: Thank you so much.

23 Can she help me out here, Your Honor, just to hold.

24 THE COURT: Sure, of course.

25 MR. SCOTTON: As you see the spreadsheet here, this is

1 the account they have been talking about over and over again,
2 packets that was shipping to my clients. As the testimony here
3 from Mr. Larry here from the expert of the call center calls,
4 right, they say the calls hold in the server for 30 days, 30
5 days. And then you saw Mr. William say and Mr. also Cory that
6 every single calls here was the day that account was put on the
7 fraud. Call me up here and try to understand here this coverup
8 here.

9 The account was opened in November of 2008 and they
10 say it was closed on November -- September of 2009, 11 months.
11 11 months they went back on the server to collect the phone
12 call when they say that the call going to be stored only for 30
13 days. 30 days the call was going to be storage on the
14 sophisticated system. And they went back 11 month to pick up
15 that call, right. This doesn't exist.

16 They say here that this account here on Rio
17 Motorsports, the account was opened on September 17 of 2001 and
18 the account was closed on September 18 of 2001. They don't
19 have a lost amount. But they saw the testimony of them, they
20 have all this information coming up out of the sophisticated
21 database from Fed-Ex, but they missing data.

22 Not only that, the account was closed on September 18,
23 2001 while they say the first shipment went October 8 of 2001.
24 How can that be possible if the account was closed on
25 September, shipping went out on October? This doesn't exist.

1 Data is missing. They don't know who is calling.
2 They don't know how the account was opened. They don't have
3 emails. This is a spreadsheet, ladies and gentlemen of the
4 jury. What is the details? What the account details here that
5 you can match all the amounts they show here? They got a
6 Target account here opened for eleven months with \$3,000, but
7 then they have account here opened four months with almost
8 \$250,000.

9 Some of you guys might have company yourself, have
10 clients yourself. If you have a client that has not paid his
11 bill in two months and already hit \$160,000, are you going to
12 allow him to go on?

13 This doesn't match. What matches is the evidence that
14 they didn't brought to you guys in here. It was a four years
15 of investigation. Where is the account detail? Those company
16 has account details?

17 Reasonable doubts here, ladies and gentlemen. What is
18 the account details to match everything here, every single
19 shipment. Not this side show here. This is a side show to get
20 you guys confused over here. Oh, he's a bad person. Look at
21 him.

22 How can you relate it to this when you see -- you are
23 going to see for yourself when you guys go back inside room one
24 mistake off another here.

25 Then they have accounts here over \$500,000. So are

1 you going to tell me Fed-Ex allowed someone to use \$500,000
2 bill here and nobody has done anything about it? You saw
3 testimony of Ms. Cory, that most of the time he go to those
4 address. In his first statement, he never went to my address.
5 But seems to be after he come back here, he change all his
6 version. He even changed here that he even met me before.

7 You saw how many times these people has getting with
8 the prosecutor over there to get training, to get coach.
9 That's all they do. How many times here Fed-Ex people sitting
10 there, stand over there say they have so much knowledge about
11 of business. But I want to ask a questions, oh, my gosh, they
12 don't have a memory anymore. They don't remember things. This
13 is what I call coach, coached by these people. Just like I
14 said from day one, this is conviction at all cost. Of course,
15 let's go ahead and try to put a show here to the jury and throw
16 immigrations here on top of this whole thing.

17 Some of you guys here on this jury here know what
18 immigration is all about. You went through this. Is any one
19 of you guys here that went through this immigration process in
20 your life want to be in this country illegal? No. I didn't
21 want to be in this country illegal. I claimed the law. What
22 the law done to me? Took my money. You know, but they want to
23 put on their show here that I threat my wife.

24 You saw testimony of some people that I brought in
25 here. The pictures speak for themself. Even the CD that they

1 brought here for the interview immigration, Aylin by herself
2 with the agent and the lawyer. Why didn't she complain to
3 them? That shows to you like someone who has been threat?

4 Let me ask this: Falling in love is a crime today?
5 Because my marriage, it fell apart, I fell in love with
6 somebody else, this is a crime? Even Mr. Bruce here has say,
7 yes, if no living with someone that is from Cuba, you know, you
8 not allowed to get a green card. But I don't recall him
9 saying, oh, it's a crime. You are not allowed to get a green
10 card.

11 Renata, the prosecutor witness, she can come here with
12 immunity here, of course, and lie. Oh, I don't know who the
13 father is. You already lie on your application already. You
14 already lie. You don't know who the father is, but you put on
15 the application for immigration that John was the father.

16 They want you guys to believe in this. They want you
17 guys to believe in this here. Are you kidding me? This is
18 what this has become. You need to send a message today to this
19 government, they are very powerful, but their power has limits.
20 They have been used to destroy people's life with your money,
21 the taxpayer money. They destroy people's life, but they don't
22 care.

23 Do you think they care about that lady sitting over
24 there 70 years old? Do you think they care about any of those
25 things what I have done for this community? They don't care

1 about anything. She probably got champagne on ice right now in
2 her office. It's all about conviction. It's all about win for
3 them, not about justice.

4 Four years investigation they have shown here to you
5 guys pictures from the store in Coral Springs that I used to
6 have a business with them. Pictures of the store in Boca
7 Raton. So if after four years investigation, why they don't
8 have one picture of me going inside those stores? They should
9 have a thousand. No phony recording from me talking to any
10 clients. This agent claim that he's done son surveillance.
11 Where are the videos of the surveillance? His helper Rodrigo
12 Olivera went to the website to buy a camera. How come he's not
13 here to testify? How come nobody can even find him, as I tried
14 to bring him myself here to testify? The truth is it's not
15 even him. His wife was helping him with that.

16 A lot of people is keeping telling my family over and
17 over again, his wife used to be involved with my brother back
18 in the days. I told you from day one here, this is about
19 coverup. UPS already covered up the investigation by paying
20 \$40 million. Not one single person went to jail. Fed-Ex is
21 under investigation. It's going to end up all sewn up. Hey,
22 here, let me go. I got to go in front of you guys with all
23 this retaliations here. That's what this is all about here.

24 7797 Golf Circle Drive, you saw this address during
25 this whole process here, 398 Southeast Mizner Boulevard. Who

1 is the person going to do crime from his own damn address on
2 this? I have to be one of the stupid idiot in the world. Let
3 me do a crime, put on my license, put on my ID, put everything
4 on it, they can come and track me out. Are you kidding me? 25
5 years in this country here, and these people, that's the best
6 they have.

7 Let's show to the jury here some side shows here. And
8 on the end of the side shows, let's put a clown full of money.
9 This is ridiculous.

10 I used to have so much respect for the law enforcement
11 in this country. Not anymore. I used to help them. Not
12 anymore. Enough is enough. You want to talk about
13 immigration? You see on TV every day the congress, the
14 president of this country say that they need to fix the
15 immigration reform here in this country. It's all messed up,
16 messed up. And they want to say that I tried to claim to be in
17 this country illegally like you see me all over the TV most of
18 the time give interview, racing cars. I'm not living under a
19 bridge here and hiding myself from anything, never did it. But
20 these people want to believe that I'm this terrible person.

21 You 12 people here don't know who I am. Maybe one day
22 you guys get to know who I am or read somewhere on the
23 internet. And some of the people that come to testify here,
24 they know. They live with me many years. They know who I am.
25 You saw the testimony of Dave Conklin from the sheriff's

1 department. I gave him shelter when he need it. These people
2 don't care about that.

3 During this process here, you have people take the
4 stand here and swear. I don't know if they even waste their
5 time because they know they going to be sitting over there and
6 lie. Renata came here because she's afraid. I don't blame
7 her. From the beginning when I see she's sitting over here and
8 lie, I was mad. But I can't blame her. She's afraid. She has
9 kids. She have her husband living under her roof illegally.
10 But they have to cooperate with this government here. Better
11 throw Roger under the bus than my own family. So she have to
12 come here and lie.

13 At the end of the testimony she give you here, she
14 just flat out start crying here. Why? She want to stand up
15 over there during her testimony here and almost like want to
16 attack me. If I was nice guy to her, I was a good boss to her,
17 she know that I am going to have to come and attack her with
18 the immigration thing, the problem that she has, because these
19 people use against her.

20 Same thing with Carla Felini. How come someone that
21 love me that went to my mother's house crying when this thing
22 happened to me, she change completely now and I use even her
23 name. But you saw the testimony here from the girl in the
24 bank. She went to her store. She signed the application. Who
25 use whose name here? Carla Felini lie to you guys here. She

1 lied because she say that she didn't authorize me to open a
2 store together with her. We opened a store together. Her
3 store was falling apart and I was trying to help her and her
4 family by accept to open the second store.

5 Now, when you want to take advantage of someone, use
6 someone, use because of money, right, or for whatever purpose
7 it is, right? Did you see me take any money from Mrs. Felini
8 here or is there any way that I need Mrs. Felini for anything
9 here? I didn't use Ms. Felini. I loved that woman. I still
10 do. These people don't care about love. They destroy what
11 love is. They don't care. All they care, like I told you from
12 day one, is at cost conviction. And I have to give you a
13 reasonable doubts. I'm going to give you 11.

14 Spreadsheet, I asked Mr. William here when he came up
15 with this spreadsheet, this is accurate. Oh, yeah, it came up
16 out of the database. You saw a couple little mistakes I just
17 point to you guys right now. But when you saw the testimony
18 today from Mr. Bombaro, they have account here that was opened
19 2001. 2001 I don't even have the business. I not even ship
20 anything to Brazil. I don't have any website. I was working
21 for TriCom Pictures. This is accurate?

22 They want to go ahead and say that I commit a crime
23 based on this spreadsheet here. What is the account detail?
24 I'll ask you, if it is a fraud here, we should have a box here
25 full of waybill that you can guys now go back in the room and

1 compare. This is the amount, \$200,000. Here this all the
2 waybills to match that \$200,000. And let's see if all this
3 \$200,000 in all these waybills come up out of Mr. Scotton's.

4 They come up with a bunch of names and companies here.
5 Where is all the affidavit from those companies? Have all
6 those companies filed a complaint? Have anybody else from
7 those companies come here to testify? Oh, by the way, they
8 brought in Triunfo. Have they told you guys that I have a
9 judgment against Triunfo? That company damage my beverage
10 company years ago. I sued them and I have a judgment against
11 them. They took advantage, said let's bring Triunfo over here,
12 they might want to hate this guy. I have a judgment.

13 Where is everybody else? The best that they have here
14 is put two people that love me to say it is his voice over the
15 phone. Really? Four years investigation, that's all the
16 recordings they have in four years? They should have more.
17 What about the claim department? What about the customer
18 service department? How come they don't have the customer
19 service me talking to them complain about things, report
20 situations to them?

21 I never denied to the jury that I have a company. I
22 never denied that I have a website. But they tried to show
23 here this huge operation. Look, Mr. Scotton with this bunch of
24 websites, bunch of company names. You are going to look at the
25 facts. It is a crime to open a company? I opened a company.

1 It didn't work out. I had a race time a whole year. Lost my
2 sponsor. Everything got closed. Things change. People move
3 on.

4 Now they try to say something about the undercover
5 agent video. Look here, he can't even recognize his address.
6 Did you see exact what the paper on that video he's showing me?
7 You saw my image. Did you saw me -- did you saw at any time
8 the paper that he show me? That video is entrapment. That's
9 what it is. He has nothing on me. And he's tried to confuse
10 me during the whole thing. And you think I'm going to provide
11 information for a strange person? Who is Carlos Colon. Who is
12 this person. You know, I can say the same of the picture of
13 the clown they put over there at the end of the day in closing
14 arguments.

15 Are you go ahead and going to give personal
16 information to your family, loved ones to someone you just met
17 on the street and start asking questions. Wait a minute. This
18 guy supposed to come here and talk about accounts that we
19 opened a couple days ago. Now he's asking me all these
20 questions.

21 Something here is fish. Something here stinks. This
22 stinks, all of this.

23 Where did you see in the video, like Mr. Van Brunt
24 here say, that I open my badge like this to a guy? This is the
25 badge right here. This is a souvenir that we buy in Brazil.

1 This is a wallet. And what kind of power Brazilian police
2 office has here in the United States?

3 I played the video myself because I couldn't believe
4 what this man say, oh, that I tried to pretend like this. If
5 I'm gong to pretend to someone, I'm going to show like, yeah,
6 I'm a police officer here. This is a souvenir. What does that
7 mean? When I have the picture over there with Aylin with the
8 cap that say FBI, I'm pretending to be FBI too?

9 They don't have a case, but they have to go ahead and
10 put this side show for you guys to make you believe they have a
11 case. They show pictures to you guys. They show inside a box
12 videotapes that I have sent to loved ones. And I am committing
13 crime? Who is committing crime that is going to put his IDs
14 and information, every single thing here? Man, I have to be
15 something wrong with me then. I'm stupid, very stupid.

16 No wiretaps in four years. This government cannot
17 present one phone call here and say, hey, I'm Roger, want to
18 ship a package. They have no phone call for me talking to any
19 clients whatsoever in four years investigation. This man say
20 that many time he drove by the house. Where is the videos?
21 Where is the surveillance of me doing all this fraud in four
22 years, four years investigation?

23 Bunch of packages here with the dates of 2008. Why
24 didn't they arrest me 2008 if I was doing this fraud? Why
25 didn't they arrest me 2009? Four years have to go by and

1 that's what they have here, 27 box, the side show here, and now
2 they claim \$3 million and millions of box went to Brazil.

3 You guys have no idea what is the reality here, you
4 know, it is. You have not. You think you do.

5 Mr. Samuel Cory has the guts to come here and lie. I
6 asked him flat out, have we met before. I show him a receipt.
7 Did we have lunch together. He deny flat out. Two days later,
8 of course, another meeting probably with the prosecutor to get
9 him coaching, come up say that you walked to the table. Are
10 you going to walk to a table in a restaurant when I have five
11 people in the table that I never saw before and say, hey, my
12 name is Rogerio Scotton, nice to meet you. And I asked more
13 than one I talked to you about it. Oh, I don't know. He's
14 lying.

15 You want these people keeping lying? Can you imagine
16 if it was you here today and these people is lying and you try
17 to defend yourself? And they lie. They put people to here on
18 the stand to lie. That's what they do. Side show here. But
19 that's their reality.

20 They want you guys to convict me over this spreadsheet
21 when they don't have the account details with the waybills
22 match every single shipment that went to those companies.
23 Phone calls not be in the server in 30 days.

24 I asked questions here many times to every single one
25 of them here. They have no knowledge. Amaze me, every single

1 time I ask question about the company, they work for 20 years
2 for the company, they have no knowledge. When the prosecutor
3 cross-examine, they seem to have a lot knowledge of the
4 business.

5 And they want to show you guys a spreadsheet of
6 history of checking accounts that I have before. When I saw
7 this account, this spreadsheet here, it's like, wow, I thought
8 I was poor and now I see how poor I am. In seven years, a
9 million dollar 700 gross. That money goes to the account and
10 that money goes out. Why?

11 When you see all the accounts, if all the accounts is
12 there in those box, you are going to see Best Buy, Circuit
13 City, all kind of companies over there. Clients deposit it and
14 I have to buy the merchandise. How much profit do you think I
15 got out those things? Do you think I really have a business
16 here that was making like a life like Renata say, that I was
17 make some kind of thousands and thousands and thousands of
18 dollars, live in a townhouse, two bedroom. Even the lady here
19 explained sometimes I used to struggle to pay my rent.

20 I trust people to do things for me. As much I have
21 trust my wife, as much I have trust Carla, as much I have trust
22 Osvaine Duarte, Ruebens Amaral, and all the companies that I
23 use. There are so many companies in the Brazilian community
24 that offer service, freight, ocean freight, any kind of service
25 to ship anything to Brazil. Brazil is a very difficult country

1 to ship things. Customs is unbelievable. The laws and the
2 corruption. So that's why relating in companies like this,
3 they can handle things for us when they get delivery. They can
4 do brokers if we need them. That's why I put my trust on those
5 guys.

6 If they done this, who am I to blame anybody here? I
7 know what I know and I say what I say. I use those companies.
8 Osvaine siting in Brazil right now. As you heard the testimony
9 from the DHL security guy here, they still doing it. And I'm
10 here. That should showing something to you right there.

11 Prosecutor probably spent so many years in school and
12 she's probably proud of herself for her job. I understand a
13 lawyer when he take his license he swear to tell the truth, to
14 seek the law, to do justice. But when you see the prosecutor
15 here come to this court here in front of everybody else and
16 this judge here and lie, it should tell you something about
17 this justice system today.

18 I asked Aylin, did you get immunity. She object me
19 here. She said Aylin never receive anything. And I proved to
20 this judge here that she have give my wife immunity to come
21 here and lie. She lie here. She's not supposed to lie. And
22 that's okay? Let's pretend and close our eyes, one lie.

23 How much lies do you think she did during this whole
24 process to you guys? She said about lie. That's what they do
25 all day long, lie, cheat, intimidate people, tell other inmates

1 to jump on your case. How much power do you think these people
2 has?

3 For 15 months I been fighting this case here. The
4 next thing I know, let's go ahead and put some immigration
5 charges here. Next thing I know, I have to worry about inmates
6 saying that my family want to hire someone to kill this agent
7 here. How far are those people going to go? How far?

8 Now he's involved my family. 70 years old lady over
9 there legally blind. She's a killer now? They have a case
10 four years. They come to this Court. They have so much
11 stronger case. They need all this, all this sidebar. That's
12 what this is is a side show they put in it to confuse you guys
13 to reality because they show you here a bunch of spreadsheets
14 here, some packages here, that if it is lost, they already paid
15 claim, whatever it is happened to those packages, God knows
16 what, I know I got my money back out those packages. Let's go
17 ahead and that's all we going.

18 When I asked for more evidence, we got the evidence
19 upstairs. How come it is not here in this room. The
20 prosecutor choose what to go ahead and try to convince the jury
21 that you are a bad person.

22 Prosecutor has showed to you guys in closing arguments
23 some bill from Citrix. The address has Citrix. I bet Citrix
24 received that bill. They probably received that bill and
25 complained with Fed-Ex. Where is the bills from Brazil

1 Express? Where are those invoices and waybills from Brazil
2 Express or Rio Motorsport or all the other companies.

3 How come these people has been investigating the case
4 for four years and they don't have the fact in their hands?
5 When I asked them the question where is all the waybills, we
6 don't have it. If you are going to investigate a crime, you
7 are going to collect the evidence, correct? You are going to
8 have to collect the evidence. Here, I got evidence to prove
9 that he did it, but they don't have it. They have spreadsheet.
10 They can't find waybills to match the amounts they claim here
11 also.

12 Accounts detail records, they don't have. How come a
13 huge company like Federal Express don't have the account detail
14 records in four years investigation? Because they don't exist.
15 They don't have a case here. There's reasonable doubts for
16 you, ladies and gentlemen of the jury. Do not exist. They do
17 not have.

18 This is a fabrication here. This is a lie. This is
19 manipulated. Anybody can do this here on the computer. Do did
20 you guys know who is Mr. Douglas's company? He's the vice
21 president of Target. Do you know that this BH Video account
22 here is the real true account for BH Photo Video. This account
23 has been fabricated. They opened the account in 2001. If
24 someone get ahold of the account to use, they should
25 investigate that.

1 But for them to put in these charges saying oh, he
2 just opened account with BHPV. That is their account. Fed-Ex
3 has their account. This is not accurate. This is manipulation
4 here. You cannot find me guilty when you have a spreadsheet in
5 your hand and you don't have here the facts. You have some box
6 here that I deny that I ship things to Brazil to you guys, that
7 I have a company.

8 Let's go ahead and put a show to the jury here many,
9 oh, I'm a police officer. Let's put a show here.

10 They say that you have not seen one label with my
11 name. Exactly. They have not shown to you the labels with my
12 name, have they? They show you what want you to see. Where is
13 the shippers with my names then? Hard to believe in four years
14 they claim that I am doing this here, there is going to be one
15 label that will have my name, but the labels have my address.

16 And she claim that when I was talking to someone at
17 DHL location, he's caught. If I'm caught, why was I not
18 arrested on the spot? Why wasn't their police officers
19 standing outside?

20 On the beginning of my wife testimony here, she say
21 that we have relationship. On the end of her testimony, we
22 never even have sex before. What kind of relationship we used
23 to have? We play Barbie all day long? They lie. They coach
24 her to lie. 2012 this FBI agent went to see Aylin and Aylin
25 say, and you see his testimony, she no love you anymore, and if

1 she have the money, she would do the divorce. Two years went
2 by. Aylin didn't make a hundred dollars to make a divorce, a
3 hundred dollars fee to file for divorce?

4 And then on 2013, they went back to Aylin and they
5 shake her down. They intimidate her. Now she change her
6 story. They have two different reports. Carla has two
7 different reports. One report Carla say I met Mr. Scotton
8 through my family that used to be friends with his family.
9 It's not true. Then she change and give her testimony here
10 that she met me through another friend that throw a party.

11 People here seems to change their story here most of
12 the time because they feel intimidated by this government.
13 That's what this is all about intimidation.

14 Let's continue here, you know, play this side show
15 here, a pack of lies here. That's what it is.

16 They got all the equipment necessary here to make this
17 beautiful show here. They should go ahead and get an Oscar.
18 This is a show, beautiful everything else, to convince someone.

19 This government didn't provide you guys those records.
20 No record has been provided to you guys. Spreadsheet is not
21 record. If they have four years investigation, every single
22 account of every single shipment should be here on this table
23 right now and you guys can match those amounts, match every
24 single shipment that went out of those accounts.

25 You saw many of those people that I asked even asking

1 questions here, oh, how many times did you get together with
2 the prosecutor, one even say ten times. Prosecutor has the
3 best corner that money can buy to coach people.

4 FBI, they claim to be one of the most powerful law
5 enforcement in the world. They have a four years
6 investigation. They present here three, four voice recordings
7 here, no analysis on those voice. Why not? Why they didn't
8 make analysis? Because they have put two person that I love to
9 point finger on me and then now she tried to discredit Elane's
10 testimony. She just listened for four seconds, oh, she know
11 the guy, she met the guy many times.

12 And she don't have nothing to lose. She came here to
13 tell you guys the truth because a lot of people that I used to
14 love, they used to be next to me, they afraid and that's why
15 they can't be here.

16 Your Honor, may I present some pictures to the jury
17 that has been labeled?

18 THE COURT: If they are in evidence, you can present
19 them. You can use the ELMO if you like.

20 MR. SCOTTON: Now, I can't recall if this has been --
21 I know it has labels. I don't know if it is evidence.

22 THE COURT: Well, I mean, it's your responsibility to
23 know what is in evidence and what is not. If it's not in
24 evidence, it cannot be presented. If it is, it can.

25 MR. SCOTTON: This is evidence.

1 THE COURT: Okay.

2 MR. SCOTTON: I wanted you guys to pass down these
3 pictures as I talk to you guys.

4 I got a piece of information here in my hand. It's
5 DHL invoice in the name of Citrix system, not Fed-Ex, DHL.
6 This information here has been given by Mr. Osvaine Duarte
7 together with the box over there full of invoices from Pfizer,
8 Dell Computers, and all different companies. That employees
9 from those companies used to give to him.

10 MS. MITRANI: Objection, Your Honor.

11 THE COURT: What is the objection?

12 MS. MITRANI: Holding up evidence and papers that have
13 not been admitted. He's also referring to --

14 THE COURT: Sustained. Come sidebar.

15 (Thereupon, the following was heard sidebar.)

16 THE COURT: This one is in evidence so this can be
17 used.

18 MS. MITRANI: Citrix, but he start pointing at other
19 companies saying Osvaine testified. There's been no testimony
20 to that effect. I know I can address it on redirect. I'm
21 trying to hold my tongue.

22 THE COURT: I know and I think you have been very
23 restrained. I was going to actually say something myself. I
24 have told you time and time and time again, I don't even know
25 how many times I have told you, I have lost count how many

1 times I have told you. You may not testify when you are doing
2 your closing argument. If you wanted to testify, you had an
3 opportunity to do it during the trial. But nothing that you
4 say in closing is evidence and you cannot attempt to circumvent
5 the rules by trying to testify. And if you do it again and the
6 government objects, I'm sustaining the objections.

7 By the way, I'm giving an instruction at the end of
8 this about the fact that nothing that you say during your
9 closing argument that is not in evidence can be relied on by
10 the jury.

11 (Thereupon, the following was heard in open court.)

12 MR. SCOTTON: Don't you think there's something wrong
13 here when you have someone claim from the FBI that he's been
14 investigating a case like this white color for four years and
15 the best they have here is the spreadsheets and then you
16 already saw for yourself how many errors on the spreadsheets.

17 They claim they have a phone calls here they shouldn't
18 have been exist one expert phone to call center say 30 days
19 only. Account Target has 11 months. How they go back in 11
20 months and retrieve a call when the call should not be there?
21 It doesn't exist.

22 See some of the pictures in your hands right now and
23 some of them I am together with Aylin, some of them I'm
24 together with other people. I don't see anybody over there
25 afraid of me in those pictures like they tried to go ahead and

1 make your jury believe.

2 How can someone come here to this jury here and play
3 that little show and say I was fear for my life. Why should
4 they contact the FBI? I married this guy, now I want a divorce
5 and I'm fear for my life. You want to believe on that for
6 real. Have you see any records in the statement here signs of
7 violence or records of police reports people saying that I have
8 engaged in fights or carrying guns or anything like this? Oh,
9 but it is the job of this prosecutor to make me a terrorist
10 because she need to go ahead and make sure you guys believe
11 every single thing she can make a side show here to you guys.

12 Mr. Samuel Cory has say that he received the calls via
13 email and handle to Mr. Van Brunt at his location, Pompano
14 Beach. But Mr. Van Brunt claims that Mr. Christian Driskill, I
15 don't know how to pronounce the last name, has went to Miami to
16 hand him those calls.

17 Everybody here seems to be different story here and
18 this is four years investigation, no reports. I asked the
19 people from Fed-Ex, the people from DHL, where is the reports,
20 do you have reports during your investigation. Nobody seems to
21 have anything. What is this? Someone shipped 5, 10, 20
22 packets, oh, my God, someone pick up the phone and call FBI
23 supercop to save us. They have their own fraud department.
24 They don't come to your door and knock and say, Mr. Scotton,
25 you shipped those packets? No, let's right away call the FBI

1 and conduct this four years investigation that we can present
2 to the jury this spreadsheets with a bunch of companies name
3 and a bunch of amounts.

4 They don't lost money. They claim money most of the
5 time on their insurance company. How can they claim now a
6 million dollars in lost when they paid this government here
7 \$40 million for the drug scam.

8 No waybill, jury, no waybill. They provide you guys
9 few waybills and they want to claim \$3 million in lost.

10 Where is the accounts detail records to match
11 \$500,000, \$200,000? Does that make sense to you? Do you
12 believe that Fed-Ex is going to go ahead and allow someone to
13 put a \$500,000 and don't pay one dollar in 11 months, a year,
14 two years. Something here stinks like a rat.

15 No phone calls. The only phone calls they got is the
16 phone calls here someone open account on the name of Impulse.
17 What about Brazil Express? Where is the calls from Brazil
18 Express? Where is the calls from Sky Air, Matte Lion, Rio
19 Motorsports, Citrix Online, Triunfo? Where are all the calls?
20 If they have those calls someone open those accounts, where is
21 the rest of the phone calls here?

22 Why they hide evidence from you guys? Why they hiding
23 the truth from you guys? But it's okay for her to come here
24 and threaten people and lie like she lied that she has given
25 immunity for Aylin. Poor Aylin. I feel sorry for her. I

1 don't hate her. She's crying here. I know why she's crying.
2 It's not because she's fear me. She's fear them. She's fear
3 she have to go back to Cuba. Do I have a power to deport her?
4 I'm not Fidel Castro's cousin. How am I going to deport her
5 back to Cuba? Like they claimed I tried to say I'm going to
6 deport you back to Cuba. It's no sense. It's side shows.
7 Prosecutor lie, lie here. This is perjury. They lie to you
8 guys.

9 Your Honor, this is a copy that the Court has handed
10 to me yesterday.

11 THE COURT: I don't know what it is.

12 MR. SCOTTON: I don't see it on the table, but this is
13 a copy and it has the -- I want to show it to the jury.

14 THE COURT: No, that's not in evidence. Let me see
15 it. That is not in evidence.

16 MR. SCOTTON: What is that for?

17 THE COURT: That is a court exhibit. It is a part of
18 the record, but it is not in evidence. It has not been
19 admitted.

20 MR. SCOTTON: But I can talk about this?

21 THE COURT: No, you cannot.

22 MR. SCOTTON: Thousands, thousands name of companies
23 they put in the spreadsheets. I don't see one affidavit from
24 those companies. Oh, we lost money. Hey, Fed-Ex, we didn't
25 make those calls. We didn't make those shipment. Give us a

1 credit. Why they don't have those reports from those companies
2 calling over there saying, hey, we did authorize the shipment?
3 Why? And this is a four years investigation.

4 Bring people from those companies to come here and
5 lie, the spreadsheet is accurate.

6 Anybody can manipulate this when you don't have the
7 information in your hand, in your face, all the waybills with
8 the account details that you guys can match the amounts, match
9 every single shipment. Have no case. They didn't provide a
10 case. They want you to believe they provided a case. They
11 didn't provide a case.

12 25 years in this country here they want to destroy.
13 What I used to be seen in this picture over there, they wants
14 to destroy.

15 Mr. Brooks here didn't say it is a crime if I'm not
16 living with my wife. You cannot receive your paper. I don't
17 see he say, oh, it's a crime.

18 And they claim now that I came into the country 2008
19 illegal. You know what, jury, even if it is the truth, it is
20 not. I left this country at least maybe 20 times to go back
21 and forth to scuba dive and fish in Bahamas, and the
22 requirement is to call channel 16 and report, give information.
23 As a matter of fact, at one point we have been stopped by coast
24 guard. They check everybody IDs, everybody paperwork, free to
25 go.

1 This is a side show here. Even this doesn't matter
2 anymore because this is a side show. If this is about four
3 years investigation mail fraud, why immigration has something
4 to do with this now? Why four years investigation now
5 immigration, why? They don't have a case. That's what I even
6 call spaghetti case. Let's throw spaghetti on the wall, see if
7 it's going to stink over there.

8 They come in here and try to assassinate my character
9 with you guys. I'm a scumbag. I'm the worst human being in
10 this country here. That's what they do. You do everything to
11 do right like Mr. Shawn has told you here today, just like
12 this, they destroy because they have to power to do.

13 But you have the power today to stop this nonsense
14 here of destroying people's life. You have the power to show
15 to them you have no case. This is not case. This is a side
16 show. This is not case.

17 Spreadsheet, you want to incriminate someone with the
18 spreadsheet when you don't have the waybills here. I don't
19 think this is funny. She tried to come put a show for you
20 guys, lifting box, make you guys laugh. I'm not laughing. I'm
21 not laughing. Destroy people's lives is not funny. They built
22 for that. They are used to that. Sometime I ask myself, it is
23 the prosecutors, do you have a heart. They got to pay for
24 this. That's how they live their lives. That's their jobs.
25 Think they care that I have a mother over there that depend on

1 me? She's sick. She's desperate, hanging there waiting to do
2 surgery because she want this to be over.

3 They don't care about any of that. Claiming here that
4 I give false statement to immigration office, the 7797 Golf
5 Circle Drive, it is my place. I pay for. I pay bills over
6 there. I have the key of the front door. I don't have to
7 knock on the door to come in, may I come in. It's my house.
8 It's my mother's house. Elane confirm that in the short time I
9 live over there with Aylin, when I have people staying in my
10 house. But they want to make you guys believe that never
11 happened.

12 Then why Aylin has driver's license with the address
13 mails coming in, still mails coming in at my mother's house in
14 her name. Why she didn't change? Why we still legally
15 married? She say she's got to work full-time. She doesn't
16 have a hundred dollars to file divorce.

17 There's something here that doesn't make any sense.
18 We talking about here worldwide companies, ladies and gentlemen
19 of the jury. They have the sophisticated system. They have
20 computer experts for them to say that people is opening
21 accounts. They don't know on the spreadsheet how the accounts
22 was opened. They don't know who open the account. The dates
23 doesn't match. They don't know the lost amount. The date
24 missing. You want to believe in this or the side shows,
25 because this is a side show. This is what they do. They train

1 for this. You going to believe their side show and allow them
2 to keep destroying people's lives because they got jobs to do?

3 And the best they have to do here is talk about
4 immigration. Immigration know the whole time I am in this
5 country. I apply in 2008. Why? Show to you, it was denied.

6 She say that I give to my lawyer a passport that
7 doesn't have any visa on it. The lawyer say, give me your
8 passport, you are going to have a passport, you are going to
9 hand it to your lawyer that has passport that has expiration
10 dates, or are you going to have a current passport.

11 Now, if she say to me, give me your passport with your
12 visa, I hand her the passport with the visa. She looked at the
13 passport, she saw the dates. That's what she asked me for.
14 Let's go ahead and manipulate everything else here. What ever
15 I say, whatever I do, they have to manipulate and make it like
16 it is a crime, I did a crime.

17 Talking about manipulation. Why at one point this
18 visa was approved right here? It's marked. It was approved.
19 This is a federal paper. If this is a mistake, they should
20 correct by what, make another paper or go ahead and circle and
21 keep going? They don't want. Was right there. Was denied.

22 When the race team apply for this visa for me,
23 immigration charge me, asked me all the requirements, I fulfill
24 all the requirements and I pay all the fees. They approve, but
25 later on they deny. In 2009 I apply for another visa. Another

1 race team apply for another visa for me. I just got
2 information that visa is still isn't approved.

3 MS. MITRANI: Objection, Your Honor.

4 THE COURT: Sustained. Mr. Scotton, as I have
5 previously explained on several occasions, nothing that is said
6 during your closing is evidence. The only evidence is the
7 evidence that has come from the witness stand and that has been
8 admitted into evidence as exhibits.

9 Is there anybody here who doesn't understand that
10 instruction? If so, please go ahead and raise your hand for
11 me.

12 I see no hands. Is there anyone who cannot follow
13 that instruction? If so, please raise your hand for me.

14 Again I see no hands. Thank you.

15 You may proceed, Mr. Scotton.

16 MR. SCOTTON: She called today here my marriage a
17 sham. In your mind, what is a sham marriage? Engaged to a
18 marriage, you pay, but why just my half of the marriage is a
19 sham, Aylin half is not a sham? Is not two people commit a
20 sham fraud? A sham marriage here just one or two?

21 She can walk away, but because they want to destroy me
22 so bad, she got immunity like the others. It takes two people
23 to do a sham marriage, not one. Keep that in mind. Everything
24 else is a side show.

25 During the cross-examination of Van Brunt here, I

1 asked him questions about Fred Brooks. I asked questions to
2 Mr. Fred Brooks as well. And what he did, lie. I asked him,
3 when did you give this video to Mr. Van Brunt. Oh, right
4 after, you know, I have interview with you. Van Brunt makes
5 statement, it was November. One say one thing, one say
6 another, and you think they have four years investigation here.

7 If they have such a strong four years investigation
8 here, they should have their plans together, right? They
9 should have all the reports together. And even though they did
10 their classes over there of coaching in the prosecutor's
11 office, they still couldn't get together because when you don't
12 have the truth, you cannot manipulate the truth. You can
13 manipulate all this, but not the truth because when you have
14 the truth, you come here and you are going to lie like they did
15 it, and now they are saying I'm the liar, I'm the cheater here,
16 I'm the once who fabricated documents here.

17 I'm tired. I don't know what else to tell you. I'm
18 tired of this nonsense. If it is the wish of the United States
19 of me leaving this country, just tell me, I'll leave.

20 MS. MITRANI: Objection, Your Honor.

21 THE COURT: Sustained.

22 MR. SCOTTON: You need to set me free. Nobody could
23 put up this for four years. 2008 Cory say he start
24 investigation in December. Van Brunt say he started in the
25 summer. Four years investigation, my address has been revealed

1 right there who I am and where I live. Why does not say
2 anything for four years. When everybody talk about, oh,
3 Rogerio Scotton, Rogerio Scotton, 4997 Golf Circle Drive, 398
4 Southeast Mizner Boulevard, and four years went by, you really
5 want to believe that?

6 The Federal Express with all sophisticated softwares
7 and fraud department, you going to allow four years knowing
8 that I am the one doing this and nobody approach me to even say
9 how this happen here. And they want to go ahead and put the
10 blame on me now. Why? Because I blow the whistle on their
11 game.

12 Let's not forget here that I become authorized
13 shipping center. You see even their own testimonial say, yeah,
14 we know you have a Federal Express store now. Not anymore. So
15 are you stealing from this company for four years and it so
16 happy that I am stealing from them that they offer me a license
17 to represent them for real?

18 This man has not present one phone call here that
19 shows me talking to anybody, no phone calls in four years, no
20 emails, no pictures. And they got the little slide show here,
21 the video with him sitting with me pretending to be a DHL guy.
22 Oh, look, him lying in the video. I didn't lie in the video?
23 He asked who is your fiancée, I said Carla Felini. Did he know
24 if I was still with Carla Felini at that time.

25 Did immigration went to my house to verify if Aylin is

1 living with me? Did you see anyone say that immigration has
2 conduct any investigation during his testimony to see if the
3 marriage is a sham.

4 I don't know about you guys how many here went through
5 different marriages here, have a marriage problem, but be
6 careful when you go ahead and divorce your wife, you might get
7 charged because it seems to be a crime now.

8 This is all side show here. And I hate it. And this
9 the end of the closing argument here, they think it's fun. I
10 took that very offended to put a picture of a clown with a fill
11 of money. They think it's funny to destroy people's life.

12 You guys need to send a message today here. This
13 government has power and the power is limited. They cannot
14 keep on doing this. Today it is me in front of you. Maybe
15 tomorrow it's going to be you here in front of somebody else
16 too begging for their life, begging for their dignity back.

17 Your Honor, let me have a minute.

18 THE COURT: Yes.

19 MR. SCOTTON: Is a reasonable doubt. I think you have
20 plenty here. When they just have spreadsheet here and they
21 claim \$3 million in lost. They didn't provide you guys with
22 the company's records. DHL, Fed-Ex, and UPS, they were not
23 like a little clubhouse in the corner. They are worldwide
24 company. They have those records. I'm going to correct that.
25 They don't have those records. Those don't exist because if

1 those exist, would be in this courtroom right now after four
2 years investigation.

3 2000 went by so we should go ahead and collect that
4 information out of the database, right? You claim here
5 accounts that have over \$200,000. Why didn't collect right
6 then, 2008, all the waybills. Why they don't have the detailed
7 records to match every single shipment that went out of the
8 accounts that match the amount of money they claim here? They
9 don't. They don't have. They never exist.

10 Some of the images you over there you guys saw over
11 there may speak for themselves. This is who I am. I'm going
12 to tell you this right now, they don't care. I told you from
13 day one, whatever it takes, they are going to try to get a
14 conviction because their job is this.

15 They are not going to come here, put on this show here
16 to you guys here for you guys to go ahead let's send him to
17 Disneyland. I'm asking you guys, please let me go home. I'm
18 tired of this nonsense. I helped this country for many years.
19 I done more for this country than what I done for Brazil. And
20 they destroy it already. They took it away from me. Now they
21 trying to build some monster.

22 They present this document to you guys, right? It's
23 in evidence. You want to talk about fabrication? The whole 38
24 section is missing out this document.

25 MS. MITRANI: Objection, Your Honor.

1 THE COURT: Sustained.

2 MS. MITRANI: I would like an instruction.

3 THE COURT: The reason that section 38 is missing is
4 because Mr. Scotton wished for it to be missing.

5 Go ahead, Mr. Scotton.

6 MR. SCOTTON: Yes, part of my strategy just to show
7 that things get manipulated. They wanted to remove it. I said
8 go ahead and remove it. But now you can see things get
9 manipulated. Like that immigration document was manipulated.
10 The whole section 38 is gone. And I took it? I didn't took.
11 They did it. I agree.

12 THE COURT: All right, Mr. Scotton.

13 MS. MITRANI: Objection, Your Honor.

14 THE COURT: Let me explain to the jury. Section 38
15 was removed at Mr. Scotton's request. If Mr. Scotton would
16 like it back in, I would be happy to allow the unredacted
17 version of section 38 to be put into evidence. It's up to you,
18 Mr. Scotton.

19 MR. SCOTTON: It doesn't matter to me. I have nothing
20 to hide to this jury.

21 THE COURT: It's whatever you want to do.

22 MR. SCOTTON: During the immigration hearing, you
23 heard me talk to Fred Brooks. Fred Brooks asked me questions,
24 have you had problems before in your life. Yes, I have. I
25 have a dispute with a company in North Carolina. Was a sponsor

1 that has give me a check, the check went to my account,
2 bounced, and they come after me for the check. As a matter of
3 fact, the check has been expunged, the whole record has been
4 expunged.

5 THE COURT: Sustained.

6 MR. SCOTTON: It's in the video, Your Honor.

7 THE COURT: Mr. Scotton, please focus on the things
8 that are in evidence.

9 MR. SCOTTON: I didn't hide anything from Mr. Fred
10 Brooks. I don't have any need to hide anything from anybody.
11 I hope you see the true now. Then I ask you, go ahead and send
12 me home because those companies have not suffered any lost.
13 They didn't. Going because they wouldn't allow this nonsense
14 to go for four years.

15 Probably some of you guys have used those companies
16 before and how they operated or misconduct of those companies,
17 misleading, losing people's box, break things. If they break
18 my box now and deposit check over there in my account, that's a
19 crime. If I'm doing crime like they say here that I'm doing
20 crime, why did I deposit the checks in my account? Don't you
21 think it's an easier way to go to a cash check store and find
22 another way to cash those checks.

23 Those checks was deposit my account because came to me
24 on claims the third party companying has made and some I made
25 myself because they lost the packages, they damaged the

1 packages. I deposit my accounts. I didn't hide that. Have
2 Fed-Ex call me back, Mr. Scotton, you deposit a check that
3 doesn't belong to you in your account. No, they already got a
4 fraud account. Now they have a check. But, hey, no phone
5 calls to what's going on here, Mr. Scotton, this fraudulent
6 account and you deposit this check in your account. Let's go
7 ahead and claim four years investigation here on this nonsense.

8 Who is the guy doing this kind of fraud? You got your
9 address and every single thing. You got address. Now I
10 understand that Mr. Osvaine was using my name all over.

11 MS. MITRANI: Objection.

12 THE COURT: Sustained.

13 MR. SCOTTON: Three times, four times Brazil Express.
14 What kind of system Federal Express has? You going to open
15 over there Federal Express, I want to open account, and I'm
16 going to go ahead and put in \$22,000. Next month I open
17 another Federal Express account, you don't think they have in
18 their system on the database Brazil Express already owes money,
19 you can't open account on Brazil Express. Four accounts like
20 the spreadsheet here with the bank here, they claim here
21 accounts that has been over and over again here and a credit
22 card that they claim that I have four different type of credit
23 cards when it's not even true.

24 Spreadsheet, gentlemen, spreadsheet. Why you guys do
25 not have the fact this your hand. Spreadsheet. This? This

1 spreadsheet, this is garbage. Four years investigation this is
2 the best that they can have to flash to you guys here, some
3 checks of claims, some spreadsheets, and this side show here.

4 This is Fed-Ex, right? This is my face on the box and
5 Mr. Samuel Cory said he never saw my face before. Pictures
6 videos, interviewing him in a restaurant, and he has guts to
7 sit over here and say I never saw your face before, that's the
8 first time a couple days later. Oh, yeah, I saw you before you
9 introduce yourself to me in the restaurant.

10 And who do the crime? Should I go ahead and start
11 sending packages to Federal Express with a letter, please send
12 me another count, I'm doing this?

13 This is nonsense. This is a side show here. And then
14 here's a guy that claim shipping packages to my brother. You
15 saw the check. The check is to my sister-in-law. I don't talk
16 to my sister-in-law. Never had it. I have not spoken to my
17 brother since 2007. They deposit check in her account and this
18 guy claim 2008 shipped those packets. But then in 2010, this
19 man here sending him to my door. And I told him to get out of
20 my door, I don't know who you are, whatever business you do
21 with my brother, you deal with him. Where is the video? Who
22 sent this man to my door after two years, he sent some packages
23 that he claimed he lost.

24 This is nonsense here. You guys going to get out of
25 here and go back to your normal life. I appreciate it for your

1 time in here to understand all this fact here. And I know you
2 are doing your job as citizens of this country. But you guys
3 way far from what the truth here what the reality is.

4 If this guy, if these people here has four years
5 investigation here and such a strong case, they don't have the
6 need to threaten my wife and bring her here to lie. They don't
7 have the need to threat Renata after Renata commit her fraud
8 immigration, come here to lie. They don't have to threat Carla
9 here with her whole family that has done real estate fraud.

10 Three people that I love they brought here to try to
11 convince you it was me in four years investigation and some
12 employees and some even people that I don't work for them
13 anymore. They come here to lie you.

14 This doesn't make any sense here. You guys need to
15 come up with a not guilty because I do not have this crime. I
16 do not have commit an immigration crime. I was previous
17 married. I do not have the need to marry a Cuban citizen.

18 This prosecutor tried to come here and claim that I
19 need something from Aylin. If Aylin has a green card, thanks
20 to me. She don't even have money. That's why she was two
21 years in this country here under parole, and when she
22 approached me, told me the story. Here, go do your thing. And
23 the lawyer told me you guys both need to do it together because
24 you guys married. I don't need Aylin for that.

25 As a matter of fact, if you look closely here, they

1 saw the I140. And the I140 still on the table to go pick it
2 up. It was no need for me to marry Aylin.

3 The lady over there, she's a citizen of this country.

4 MS. MITRANI: Objection, Your Honor.

5 MR. SCOTTON: I can apply to her.

6 THE COURT: Sustained.

7 MR. SCOTTON: That's the way it is. Let's go ahead
8 now blaming Roger. And they laugh here during the whole trial.
9 They having fun, enjoy themselves. Every single time they come
10 here and lie, put on a show.

11 You know what it is to be accused for 23 months after
12 you know you done good in your life and everybody else say you
13 can't win this. They too powerful. Look on the records. It's
14 United States versus Rogerio Scotton. How can you win that?
15 How can you win that? People told me like you crazy. You go
16 to a war you can't win. This is not about war. It's about the
17 truth. And I really hope you guys seeing right now the truth
18 here.

19 Fabrication? Not from me. Things get manipulated
20 here. Things can get changed. Videos can change. Voice can
21 change. Look around you today. It's all to computers. They
22 can create whatever they want to create.

23 Why they didn't present any wiretap to you guys here?
24 Four years investigation. I'm doing this \$3 million fraud, and
25 they don't have one wiretap. This man claim to pass by my

1 house. Where is the video surveillance? During the day that I
2 was in his office, no video, no recording. We don't need it
3 because we the FBI, we the government, we do whatever we want
4 to do.

5 I'm not saying anything bad -- don't get it confused
6 here because I'm not saying anything bad about this country.
7 But start take a look at some part this justice system here if
8 it makes sense to you guys. This is a great country. This is
9 a beautiful country. That's why I live here for 25 years. And
10 that's why 25 years I have done my best to help this community.
11 But some of these people here is destroying this country little
12 by little. And it's you, some of you guys realize it's too
13 late maybe.

14 I'm going to beg you guys to go ahead and come up with
15 a not guilty and send me home. I didn't and I couldn't done
16 this. When those companies has all the resource they have on
17 the first five shipments or the first ten shipments to knock at
18 my doors knowing where I live, I have a file a claim of four
19 wheels that has appeared on my door. They came to my door
20 claimed justice came to the door. If the fraud is going on,
21 why they don't come to the door too? Oh, because we
22 investigating, four years.

23 They claim here over and over again from 2008, 2009
24 they got so much side show here, so let's continue losing
25 money. We know this guy is stealing money from us. Let's

1 continue this man stealing from us 2009, 2010, 2011. Now it's
2 enough, let's go ahead and get him. Because I talk too much.
3 That's what my problem is.

4 By the way, Samuel Cory is involved in the drug scam.
5 I provide him information, and he sold me out here. You don't
6 need to if believe me. You can see it in the funny papers.
7 Federal Express under investigation and UPS has paid
8 \$40 million. It's in everybody's face these days. Not one
9 person has got arrested.

10 I don't know what the future is going to hold for me.
11 And today seems like I consider the future in your hands. But
12 I believe it is in God's hands more than anything else.
13 Whatever God decide for my life, I'm going to accept. But from
14 you I cannot accept anything less than not guilty. I did not
15 do this crime.

16 Immigration know from day one that I'm in this
17 country. If they have an issue with me, why they keep approve
18 visas? They know I was in this country. They witness came
19 here to testify here and they say how long you been here. How
20 I get here in 2012. She became a citizen in 2009. Do the
21 math. How long she stay in this country without status.
22 Renata, the same thing.

23 MS. MITRANI: Objection, Your Honor.

24 THE COURT: Sustained.

25 MR. SCOTTON: But their witness get immunity. Okay.

1 They can walk away with that. I have a family and they need
2 me. I need them. Please give me back my family.

3 Thank you, Your Honor.

4 THE COURT: All right. We are going to have rebuttal
5 closings. Does anybody need a bathroom break?

6 Let's do that. We will take ten minutes and we will
7 see you back here at 10 of 3:00.

8 (Thereupon, the jury exited the courtroom at
9 2:40 p.m.)

10 THE COURT: We will see you back here at 10 of 3:00.
11 And would the government please prepare an unredacted version
12 of the documents.

13 (Thereupon, a recess was taken at 2:41 p.m.)

14 THE COURT: Back on the record. Let's just clarify
15 this situation. The record, the document that Mr. Scotton
16 showed to the jury and claimed had been fabricated by the
17 government was which exhibit?

18 MS. MITRANI: So I think he put up Exhibit 205 and it
19 was question 38 that was redacted. There were two exhibits,
20 204 and 205, because there were two separate visa applications
21 Ms. Mortensen testified about, and we redacted 38 on both 204
22 and 205 because it looked funny not to do it that way at the
23 defendant's request. And then we have the original 204 and 205
24 that has not been redacted with 38.

25 THE COURT: Mr. Scotton, do you want us to put in the

1 original version?

2 MR. SCOTTON: Your Honor, the document I presented is
3 right here in my hand. If they going to present this one here
4 in my hand, I don't have a problem, this one here that I have
5 in my hand.

6 THE COURT: I don't know what you are talking about.
7 It's not labeled. You are showing me a random page all by
8 itself. You have done this throughout the trial. You have
9 brazenly violated my rulings over and over and over again,
10 knowingly done so, and done so with a purpose clearly of
11 prejudicing this jury. It has been unprofessional and I'm not
12 going to stand for it.

13 You have lied to this Court. You have repeatedly
14 shown things that you purport to be exhibits when they are not
15 exhibits. They are not in evidence. I don't know where they
16 came from. So you need to show exactly what it is that you are
17 talking about. Don't just wave an isolated piece of paper in
18 the air.

19 Let me give this to the government to see what it's a
20 part of. I have no idea. It's an isolated piece of paper.

21 MS. MITRANI: So what the defendant showed you is a
22 page from Government's Exhibit 204. And again, the problem is
23 the defendant is implying to the jury through his closing that
24 we redacted 38, that we wanted to hide something from them when
25 it was the defendant who requested that 38 be redacted in its

1 entirety.

2 So the one that the defendant waved to the government
3 is what's in evidence, and the one that I guess we would like
4 to substitute in is the unredacted version of 204 and 205 since
5 they sort of go together because they are the same form but on
6 different dates.

7 THE COURT: All right. Mr. Scotton, do you want the
8 unredacted version substituted in for 204 and 205 which are
9 currently redacted and were redacted at your request?

10 MR. SCOTTON: First I'm going to object the comment of
11 the prosecutor here. I didn't request. They offered me to
12 take it off. As part of my strategy here, I accepted. For
13 them to come here and say I asked them to take it off, I never
14 asked for anything.

15 THE COURT: The only reason that we had to describe it
16 that way is because you lied to the jury and suggested that the
17 government was hiding evidence from the jury when the only
18 reason the government redacted that was because you wanted the
19 government to redact that. So I'm not going to argue with you
20 about that. You either want it in evidence or you don't want
21 it in evidence, but you are not going to get away with
22 misleading this jury.

23 MR. SCOTTON: This is not the document. This is not
24 the document.

25 THE COURT: Do you want the unredacted version in

1 evidence or do you not want the unredacted version in evidence?
2 It's as simple as that.

3 MR. SCOTTON: Your Honor, let me find the one that we
4 are going to match that one.

5 MS. MITRANI: Just so the record is clear, and I know
6 it is, the defendant was given the choice of whether he wanted
7 the redacted or the unredacted. We didn't want to insert any
8 collateral issues since question 38 dealt with prior arrests.

9 THE COURT: That's an accurate statement of what
10 occurred, as Mr. Scotton well knows.

11 Mr. Scotton, you have exactly one minute to find it.
12 You obviously thought you knew what you were talking about or
13 acted like you knew what you were talking about at the time
14 that you showed this to the jury and insisted that the
15 government had fabricated evidence which you knew to be false
16 at the time. So you either have it or you don't have it.

17 If you want the one that is unredacted put into
18 evidence, I'm happy to do that for you. But we are not going
19 to waste any more of this jury's time while you try to come up
20 with a document that you should have already known.

21 You hurl those kinds of accusations at the government,
22 or anyone for that matter, of fabrication, you darn well should
23 know what the document is you are talking about.

24 MR. SCOTTON: Your Honor, for the record, I did not
25 accuse the government. I said things in court can get

1 manipulated. Things in Court can get manipulated.

2 THE COURT: You said that it was fabricated.

3 MR. SCOTTON: This is the document right here. Yeah,
4 let go ahead and present that to the jury.

5 THE COURT: Show it to the government, please.

6 MS. MITRANI: Your Honor, it's a whole exhibit. I'll
7 show it to the defendant.

8 THE COURT: Let's make sure we are talking about the
9 same document. Why don't you take a look at what Mr. Scotton
10 has. Make sure it's part of the same document.

11 MS. MITRANI: Okay.

12 MR. SCOTTON: This one here, it is a different
13 application because this one doesn't even have everything here
14 that I sign and put the address. So here is the original right
15 here.

16 THE COURT: Ms. Mitrani.

17 MS. MITRANI: Your Honor, I think you are going to
18 have to resolve this. The defendant knows and what's in
19 evidence, let's be clear, are two separate visa applications,
20 204 and 205. Both 204 and 205 have question 38 redacted.

21 THE COURT: Are there any other exhibits that have
22 question 38 redacted other than 204 and 205?

23 MS. MITRANI: No, Your Honor.

24 THE COURT: So the question is, Mr. Scotton, do you
25 want to replace 204, the images that are currently in evidence

1 in 204 and/or 205 with an unredacted version? It is a simple
2 question, yes or no?

3 MR. SCOTTON: Your Honor, I present a document to the
4 jury.

5 THE COURT: Can you answer me yes or no.

6 MR. SCOTTON: Your Honor, I can't answer that yes or
7 no.

8 THE COURT: Then that's fine. That's fine.

9 MR. SCOTTON: I present a document to the jury and I
10 don't want to present something else to the jury. This one I
11 present to the jury. Now they going to put a different
12 application. It is two different applications.

13 THE COURT: What exhibit are you holding up? I keep
14 asking you and you don't identify it. The government has
15 indicated that that is a part of only Exhibits 204 and 205.
16 Those are the ones. If it's a part of another exhibit, you
17 need to let me know.

18 MS. MITRANI: I don't even understand the defendant.
19 I don't know what he's talking about. I don't know which one
20 he showed. One, 205 on paragraph 34 lists Samara Scotton.

21 MR. SCOTTON: We are going to show 204 to the jury.
22 That's it. That's 204 that I showed to the jury.

23 THE COURT: So you want 204?

24 MR. SCOTTON: Yes.

25 THE COURT: You want 204 in an unredacted form entered

1 into evidence, is that right?

2 MR. SCOTTON: Yes, Your Honor.

3 THE COURT: Do you want 205 in an unredacted form?

4 MR. SCOTTON: No, Your Honor, because I show only 204.

5 THE COURT: I'm going to ask you these questions in
6 front of the jury then. Let's bring the jury in. We will do
7 that, and then we will have rebuttal.

8 (Thereupon, the jury entered the courtroom at
9 2:59 p.m.)

10 THE COURT: Please be seated. Thank you.

11 During Mr. Scotton's closing, you may recall that he
12 referred to a document that he put on the ELMO. That's our
13 little machine over there. And it was the second page of a
14 document. That document is Exhibit 204. 205 is a similar
15 document. Both 204 and 205 have been redacted with respect to
16 question 38.

17 So I want to give Mr. Scotton a chance, if he would
18 like, to have the unredacted version put into evidence, I will
19 be happy to do so.

20 Mr. Scotton, how would you like to proceed with regard
21 to Exhibits 204 and 205? Would you prefer if we continue with
22 redacted versions or would you prefer instead that we go with
23 an unredacted version of either or both 204 and 205?

24 MR. SCOTTON: Your Honor, the document that I put on
25 the screen was the 204 as far as I understand, and that's the

1 one that I want the jury to see.

2 THE COURT: Just so we are clear, you want an
3 unredacted version of 204, but you want to keep the redacted
4 version of 205, is that correct?

5 MR. SCOTTON: Yes.

6 THE COURT: Very good. That's what we will do. Would
7 the government please put in an unredacted version of 204.

8 MR. SCOTTON: Let me take a look at that again.

9 THE COURT: And let's make that 204A for purposes of
10 our record. There is not a 204A, is there, already?

11 THE AGENT: No, Your Honor.

12 THE COURT: That will be 204A. We will leave the 204
13 in. We are not going to replace. We will do it in addition.
14 Now the jury will have both if it wishes to look at it.

15 (Thereupon, Government's 204A received in evidence.)

16 THE COURT: All righty. Are we all set on that?

17 MS. MITRANI: Yes, Your Honor.

18 THE COURT: Very good then. Ms. Mitrani, you may
19 proceed whenever you're ready.

20 MS. MITRANI: Thank you, Your Honor.

21 May it please the Court, Mr. Scotton, members of the
22 jury, good afternoon.

23 Let me start by saying that the defendant has
24 repeatedly appealed to you contending that the government has
25 destroyed his life. The government has not destroyed his life.

1 The defendant took the actions that he took deliberately and on
2 purpose. He committed the acts of mail fraud. He was the one
3 who lied to citizen immigration services. And he is upset now
4 that he is being called to answer for his crimes.

5 The position that the defendant finds himself here
6 today is a result of his own actions, not the actions of the
7 government.

8 Likewise, members of the jury, the defendant kept on
9 saying that the government was intimidating witnesses, the
10 government was coaching witnesses, a whole litany of
11 accusations against the government. So let's be very clear
12 here, members of the jury. You heard from the witnesses. The
13 government did not intimidate, harass, or threaten anybody.
14 The intimidator in this case is the defendant.

15 You heard from Aylin Reyes. By the way, you also
16 heard from Renata. I don't know if you recall, but at one
17 point during cross-examination, she looked at the defendant and
18 she said, you are not my boss anymore. You might also remember
19 that she stood throughout her testimony wanting to be --

20 MR. SCOTTON: Object, Your Honor.

21 THE COURT: Overruled.

22 MS. MITRANI: She stood throughout her testimony
23 wanting to be at the same level as her former boss.

24 Members of the jury, the Court has said this to you
25 many times now, but I'm going to say it again because it is

1 very important. What I say isn't evidence. What the defendant
2 says isn't evidence. Throughout his closing argument, there
3 were a lot of things that he said, a lot, some of which I
4 objected to, most of which I didn't. There's no evidence.
5 There's no evidence. It's just his say-so. It's just his
6 say-so. It isn't evidence any more than my words are either.

7 And her honor is going to instruct you on that. The
8 evidence, members of the jury, as you know, I don't want to
9 belabor the point, the testimony of all the witnesses, the
10 documents, the physical packages, the recordings, the
11 spreadsheets, everything, that is the evidence. You will weigh
12 it and you will deliberate on it and you will decide what to
13 give more credit or less credit. That's all going to be your
14 job as jurors.

15 But this defendant's words throughout his closing,
16 they are just not evidence and you are not going to see
17 anything. What goes back to you, you are not going to see
18 anything reflecting most of what he said, I dare say all of
19 what he said.

20 And it's your recollection of what the witnesses said
21 that govern. Closing argument is designed to help you remember
22 that.

23 Members of the jury, one of the things that the
24 defendant said during his closing, he pointed to a woman
25 indicating his mother saying maybe she has health problems,

1 maybe she doesn't. None of that is in evidence. He needs her,
2 she needs him, all that stuff, that's not in evidence. There's
3 a deeper point here which I --

4 MR. SCOTTON: Object, Your Honor.

5 THE COURT: Overruled.

6 MS. MITRANI: -- which I need to emphasis. And again,
7 Judge Rosenbaum will tell you, sympathy, sympathy is not a part
8 of the deliberations. She will tell you that. You are going
9 to hear her say that. You are going to hear her say that you
10 cannot base your decision either on sympathy for the defendant,
11 sympathy against the defendant, sympathy for the government,
12 simply against the defendant. That's not an exact quote, but
13 she will tell you you cannot base your decision on sympathy.

14 Members of the jury, I submit to you that those
15 statements by the defendant was an appeal to sympathy. It was
16 an appeal to sympathy because the evidence in this case, the
17 evidence dealing with mail fraud, the evidence dealing with
18 false statements to immigration, citizen and immigration
19 services, that's overwhelming. So if you can't win on the
20 merits, he's going to try to win someplace else.

21 Now, one other matter. I think the defendant referred
22 to -- I think there may have been a slide with a straw man with
23 money coming out of it. The defendant seemed to take umbrage
24 at that, didn't like it. Let me be clear about that slide.
25 It's just a demonstrative. It's not anything that is going to

1 be back because the defendant's arguments are a straw man.
2 They are built of straw like that image. And they can be all
3 blown down as readily as that image. And that is the point.
4 It's an illustration.

5 All this talk, all this talk of third party shippers
6 is just that. It's just that. It's talk. It's a straw man.
7 Osvaine Duarte, it's a straw man. I can blow it away.

8 The defendant tried to even mention it in his closing
9 and I objected. He was trying to suggest that there's evidence
10 of that that's not here of where he may be located, what he
11 might be doing. Let me remind you what the evidence is in this
12 case regarding Mr. Duarte. And the evidence in this case,
13 members of the jury, is Renata told you, Renata Mezentsef, his
14 employee, he was a client and a friend.

15 The evidence of Mr. Duarte in this case, members of
16 the jury, are all the checks that Mr. Duarte paid to the
17 defendant which we published. And mind you, by publish, I mean
18 showed you, that had shipping in the memo line because that
19 made it very easy. But make no mistake, if you want to take
20 the time to go through Exhibit 16, 17, 18, you will see other
21 checks from Mr. Duarte payable to the defendant. That is what
22 you will see. That is the evidence in this case.

23 The checks that you will see, have seen, from
24 Mr. Duarte to the defendant mirror other checks that you -- I
25 think we showed some during my opening closing and again they

1 are in the bank records from countless, countless, because I
2 literally didn't count the number because there were too many,
3 but countless other people with other names. I don't have the
4 names memorized so I will use Jane Doe as a generic term, Jane
5 Doe, John Smith, and all these other people, you are going to
6 see similar checks payable to the defendant because they, like
7 Mr. Duarte, were clients of the defendant. And that is the
8 evidence in this case.

9 And the defendant's attempts to constantly put the
10 blame on somebody else -- you know what, let me rephrase that.
11 The defendant's attempts to put the blame on everyone else,
12 everyone else except him, is a sham. It's a straw man. It is
13 not true. That's what he's done. It's an attempt to deceive.
14 In fact, members of the jury, you heard him in his closing
15 consistently referring to the government saying that government
16 was making up evidence and trying to deceive you. Who is the
17 person who put up a redacted document trying to claim that it
18 was the government who manipulated it when it was him, the
19 defendant, who requested that to be redacted.

20 MR. SCOTTON: Object, Your Honor.

21 THE COURT: Overruled.

22 MS. MITRANI: Deception, it's a continuation of
23 deception.

24 How about that whole sex tape thing? Do you remember
25 that, where he had Aylin and he tried to suggest to her that he

1 had a sex tape of them when she said they never had sex.
2 There's no sex tape. It was an attempt to mislead you. It was
3 deceptive.

4 Even this morning, members of the jury, with his
5 friend from church, he showed that friend from church, I think
6 it was Mr. Bombaro, please don't hold it against me if I have
7 the name wrong, a picture of Aylin, and he said, I don't know
8 that person because they are heavier or what have you. It was
9 deceptive. He knew that that witness didn't know Aylin. He
10 wasn't married to Aylin at the time he went to church.

11 Then when I showed the woman who is in that
12 retrospective de amour, oh, yeah, that's the woman. But that
13 wasn't Aylin. It's deception. It's what the defendant has
14 done throughout his crimes of mail fraud, his crimes of false
15 statement, and you can see the conduct here before your eyes.

16 So he could try to blame the government, he could try
17 to say Agent Van Brunt is a liar and Renata is a liar and Carla
18 is a liar and Aylin is a liar. Everybody is a liar but him.
19 But, members of the jury, I guess -- I don't guess, I actually
20 know, that's what you are going to decide. That's what you are
21 going to decide.

22 Let me tell you, let me make a word on this whole
23 thing with Aylin and immunity. You know, when we asked Aylin
24 that -- when the defendant asked her, she didn't remember. You
25 saw her, she didn't remember. You might remember on redirect I

1 tried to ask her myself directly many times, do you remember we
2 gave you immunity or we told you that your truthful testimony
3 will not result in any criminal exposure. I think those are
4 the exact words I used. Your memory will govern. She couldn't
5 remember. If you remember, I asked her repeatedly. I asked
6 her two or three times, and she couldn't remember.

7 If you remember, members of the jury, when the
8 defendant says, I'm objecting to immunity, it's quite the
9 opposite. I stipulated, I agreed that she was given immunity
10 after Ms. Mollinedo's testimony.

11 Likewise, members of the jury, even Agent Van Brunt,
12 he was confused. He forgot about the immunity. I was the one,
13 I asked him, don't you remember we sent this letter. Nobody is
14 trying to hide anything here. And this whole thing with
15 immunity, think about it, what subjected her to immunity, that
16 is that she wouldn't be prosecuted. Who's telling the truth?

17 By telling the truth that she didn't live with the
18 defendant that made her subject, that opened her up, right, to
19 a false statement charge. It was the truth that resulted in
20 her getting immunity. So what was her motivation to lie? Had
21 she continued in her previous -- had she told immigration, yes,
22 we were living together, had she continued to say that, there
23 would be no immunity because she wouldn't be lying. Think
24 about that. You have to get your head around it. What was her
25 motivation to lie? Because it was by telling you the truth

1 that she lied to citizen immigration services. It was by
2 telling you the truth that subjected her to immunity.

3 So think about that. The defendant -- and again, you
4 are the finders of truth. You are the finders of fact. You
5 will weigh the witnesses. You will decide who you believe, who
6 you don't believe, what you believe. That's all within your
7 province. I wanted to put that immunity thing because the
8 defendant made an accusation that the government was trying to
9 hide that. And I submit to you the evidence shows that the
10 government wasn't.

11 Let's talk about spreadsheets and waybills. There are
12 27 counts of mail fraud. And during my opening closing, I
13 linked up all those counts directly to the defendant. We
14 showed you waybills. All of Exhibit 3 are waybills, more than
15 the counts because Exhibit 3 were the waybills that the
16 defendant gave to Scott Baker at the Pak Mail owner. Exhibit
17 32, more waybills. Exhibit the Fed-Ex waybills are in
18 evidence. The waybills that are on all these packages. There
19 were a lot of waybills. There are 27 mail fraud counts that we
20 have to prove beyond a reasonable doubt, which we did.

21 Now, the spreadsheets that -- and I'm going to talk to
22 you in a little bit of detail that we presented -- go beyond
23 those 27 counts. Why? Like I told you, there is a second
24 superseding indictment that you are going to get a copy of.
25 The second superseding indictment describes those 27 counts of

1 mail fraud, those 27 mailings as part of a larger scheme, a
2 larger plan.

3 So, yes, we did not introduce every waybill as part of
4 the larger scheme and larger plan, but the government charged
5 it the way it did and the evidence came out so that you can
6 understand these 27 mailings were part of a scheme. They
7 didn't exist in a vacuum.

8 So there's the larger scheme that you heard evidence
9 about including the spreadsheets, and I'm going to talk about
10 them in a little bit of detail in a minute, but then there's
11 the narrow 27 counts that you are going to decide and you are
12 going to decide whether there was a scheme, an artifice, a
13 scheme to -- I keep saying cheat and steal, but the judge will
14 read you the exact language of mail fraud, a scheme to defraud
15 by obtaining money and property by false and fraudulent
16 pretenses.

17 You are going to decide if there was a scheme. You
18 are going to decide whether the defendant was the perpetrator,
19 he's the one who came up with the scheme and did it, and
20 whether the 27 specific counts, the 27 specific counts are part
21 of that scheme.

22 So that is the task. That is the narrow task with
23 respect to mail fraud. Then there's the task of the false
24 statements in Counts 28 and 29.

25 Now, the defendant says where are all the waybills.

1 As I said, we showed you all the waybills of the 27 counts. As
2 far as the larger spreadsheets, they are -- so we have 132B
3 which is a spreadsheet that was prepared by Nicole Nelson and
4 had specific accounts in it, and we showed it to you during
5 Ms. Nelson's testimony.

6 And 132C which was another DHL spreadsheet by
7 Mr. Kamlet.

8 And is that 132B? We are going to put 132B up on the
9 screen in a minute.

10 So 132B is on the screen and that is, again, the
11 spreadsheets prepared by Nicole Nelson. And when you talk
12 about detail as you go through it, you see the specific waybill
13 numbers. You see the dates of shipment. You see the consignee
14 name, the consignee address, the account number, the consignee
15 city -- it's okay -- the state, the phone.

16 And you heard Ms. Nelson testify that this information
17 was pulled from their database. It was not information that
18 came out of thin air, abracadabra let me make up waybill
19 numbers on these account numbers. These were based on the
20 business. These are summary exhibits. They are a summary of
21 voluminous records. And she testified that they were based on
22 the DHL records that came electronically.

23 Similarly, members of the jury, 132C, which is on the
24 board, Mr. Kamlet testified about it. Likewise, it has invoice
25 numbers, ship dates, account name -- keep on going over -- ship

1 name, ship address, weight charge, et cetera. And Mr. Kamlet,
2 likewise, testified that this was based on DHL records. This
3 was not numbers that were made up for the sake of making them
4 up. And this is part of the larger scheme that's set forth in
5 the indictment, not necessarily the specific counts in the
6 second superseding document.

7 Likewise, 130 was a big spreadsheet that was
8 introduced through Mr. Seligstein. Special Agent Van Brunt
9 filtered it to certain accounts which are 130A. 130A is on the
10 board. If you go column by column, it's invoice number,
11 account number, invoice date, invoice amount, invoice due, bill
12 address, bill address. Keep going, please.

13 THE COURT: Ten minutes.

14 MS. MITRANI: Thank you, Your Honor. And so on. And
15 that shows in the testimony. Again, you will recall on your
16 own. I think you were provided pads to take notes.
17 Mr. Seligstein testified, Ms. Nelson testified, Mr. Kamlet
18 testified, and others, and Mr. Cory testified about the
19 nonpayment of these invoices set forth in the spreadsheet.

20 Finally, members of the jury, Exhibit 14K which the
21 defendant blew up and tried to say that there were flaws in it,
22 again, Mr. Seligstein testified that he prepared it, that the
23 backup documentation for 14K actually is part of 14K. In fact,
24 the defendant, I think, talked to Mr. Seligstein about screen
25 shots, if you remember, so the backup actually is there. And

1 you will recall that Seligstein prepared the spreadsheet to
2 highlight certain accounts that you may see mentioned in the
3 second superseding indictment.

4 I'm sorry, I have about eight minutes left, Your
5 Honor?

6 THE COURT: Now you have eight minutes.

7 MS. MITRANI: Thank you. Again, there are a lot of
8 things the defendant said. And you have to -- I don't know
9 what he's trying to suggest about these Fed-Ex recordings, but
10 you heard Mr. Midyett, the very first witness, it was a long
11 time ago, but he knew all about the system and he testified
12 about how the records are maintained, and obviously they were
13 pulled before they were erased because -- the Fed-Ex calls,
14 because if they had been erased, they couldn't be pulled.

15 And Mr. Sam Cory testified about how he requested
16 these to be pulled because that's how, in fact, his
17 investigation started. So this whole notion of trying to tie
18 the Fed-Ex calls to Exhibit 14K, that they were somehow pulled,
19 what the defendant suggests is if you go by the spreadsheet,
20 they couldn't have been pulled because he's saying they were
21 pulled 11 months after the account was closed, but that's not
22 what the testimony was in the case.

23 The testimony was Mr. Cory began his investigation
24 with a few accounts, was able to request these phone calls, and
25 received them and they were all turned over to the FBI and they

1 have all been presented here --

2 MR. SCOTTON: Object, Your Honor.

3 THE COURT: Overruled.

4 MS. MITRANI: -- as evidence.

5 What the defendant says is not evidence. He keeps
6 saying that Renata got immunity, that all these witnesses got
7 immunity. Let's be very clear what's on the record. Aylin
8 Reyes received immunity. There's not a single other witness
9 who received immunity.

10 Again, the defendant was trying to make up motivations
11 why Renata would be lying, and Carla, I mean, everybody
12 according to the defendant, right, all these witnesses were
13 lying. You heard what they had to say in the context of what
14 they said and you will determine. I submit to you there is
15 nothing suggesting that Ms. Felini lied. There's no
16 motivation. I suggest to you that if you weigh the evidence,
17 you would see no motivation for her to lie. The defendant
18 hasn't brought up any motivation for her to lie. And the same
19 thing with Ms. Renata.

20 And again, you heard them. That's the whole purpose
21 of why we do these things, have the witnesses, so you get to
22 evaluate them. You get to evaluate them in the context of the
23 whole trial. You get to evaluate them in how they answer
24 questions and how they appear to you.

25 So, you know, calling somebody a liar doesn't make it

1 so. However, I did that, right? I called the defendant a liar
2 and a thief and a deceiver, but the reason I did that, members
3 of the jury, is because I had the evidence to back it up
4 because that's what this case is about. It's not a character
5 aspersion, but it's what this case is about, because it's about
6 fraud, fraud on the shippers and fraud on Fed-Ex and fraud on
7 citizen immigration services.

8 Two final thoughts before my time runs out. Now,
9 there's one thing -- and you might recall this. The whole
10 immigration tape was played for you. There's one thing that
11 the defendant actually said there that was true.

12 (Thereupon, the audiotape was played.)

13 MS. MITRANI: That, members of the jury, that was one
14 thing the defendant said was true. And that's why we are here
15 and that's why you are here committing your civic duty. You
16 have to have respect for the law, and if you don't have respect
17 for the law, you will be held accountable.

18 This man, this man here, Rogerio Chaves Scotton, had
19 no respect for the law. This man blatantly, blatantly --
20 here's a better word, brazenly, brazenly broke the law. And
21 you're right, it went on for a long time and he got more
22 emboldened as he went along. Investigations do take time. You
23 know why? Because it's the government's burden to prove a case
24 beyond any reasonable doubt. And the investigation went on and
25 the evidence was collected and the evidence presented here to

1 you.

2 You have to have respect for the law. If not, you
3 have to be held accountable. That is the rule of the United
4 States of America. And now, members of the jury, I'm going to
5 show you something. It is called a verdict form. And her
6 honor is going to explain it to you and give it to you.

7 And let me tell you something. Verdict, it comes from
8 a Latin word called veritas, three words, veritas. It means to
9 speak the truth. Verdict comes from the Latin means to speak
10 the truth.

11 This verdict, members of the jury, has each count.
12 It's very simple. It says we, the jury, find the defendant,
13 Rogerio Chaves Scotton, as to Count 1 guilty or not guilty,
14 Count~2 guilty or not guilty, and they have two columns and you
15 are going to see it.

16 Members of the jury, on behalf of the United States of
17 America, I ask you to speak the truth, speak the truth through
18 your verdict and return verdicts of guilty, guilty as to each
19 of the 29 counts in the second superseding indictment. Thank
20 you. Thank you for your time.

21 Thank you, Your Honor.

22 (Thereupon, jury instructions were read by the Court.)

23 THE COURT: Let's see. I need to do one thing before
24 I can release you to do your deliberations. Let me ask -- I
25 need to have the jurors please continue to follow my earlier

1 instructions, that is, don't discuss the case with anyone,
2 don't disburse any information about the case, and don't do any
3 independent research into the case, and I need probably until
4 about 4:00 just to resolve one thing. So if you wouldn't mind,
5 all rise for the jury.

6 (Thereupon, the jury exited the courtroom at
7 3:53 p.m.)

8 (Thereupon, a juror entered the courtroom at
9 3:54 p.m.)

10 THE COURT: Welcome back, Mr. La Barbera. How are you
11 doing?

12 THE WITNESS: Great.

13 THE COURT: I need to ask you some questions and I
14 need you to be completely honest. The only way you can answer
15 the questions wrong is if you are not honest. Do you
16 understand?

17 A JUROR: I do.

18 THE COURT: Let me, just so our record is nice and
19 clean, do you mind if I place you under oath.

20 A JUROR: Not at all.

21 THE COURT: Raise your right hand for me, please.

22 AMY LA BARBERA

23 Having been first duly sworn on oath, was examined and
24 testified as follows:

25 THE COURT: Thank you very much. Please feel free to

1 be seated.

2 Ms. La~Barbera, earlier in the trial you indicated
3 some concern about sitting as a juror in this case. And you
4 were very good to agree to continue to sit through the trial
5 and try to set that aside. And as I have noted previously and
6 I will note again, I saw that you paid intent attention to what
7 was going on during the proceedings and took scrupulous notes.
8 I mean, I obviously haven't seen your notes, but it looked like
9 you were doing that.

10 But I need to make sure. It's not just a question of
11 wanting to. I need to be sure that if we ask you to deliberate
12 in this case, that you can be fair to both Mr. Scotton and to
13 the government and that you can decide this case based only on
14 evidence in this case.

15 I am not going to be upset in any way. If the true
16 answer is that you cannot be fair to Mr. Scotton, you need to
17 let me know that. Do you understand?

18 A JUROR: I do.

19 THE COURT: How do you feel about that?

20 A JUROR: I think I can deliberate and come to a
21 decision fairly. I can deliberate.

22 THE COURT: Do you have any doubt at all?

23 A JUROR: I don't.

24 THE COURT: Let me ask the lawyers to come up and
25 Mr. Scotton to come up sidebar for just a moment, please.

1 (Thereupon, the following was heard sidebar.)

2 THE COURT: Is there anything else that you would like
3 me to ask her?

4 MR. SCOTTON: Your Honor, she's -- I'm not convinced
5 because she say, well, I think, I'm sure, like she doesn't give
6 like really hundred percent. We are dealing here with my life.

7 THE COURT: She corrected herself and said I am sure.
8 I think that was just a colloquialism. But I'm happy to
9 inquire again. I have no problem. Is there anything else?

10 MR. SCOTTON: Why she throw the whole thing about her
11 husband work? Why she feel afraid of me if I found guilty?

12 THE COURT: I'll ask her if she still feels afraid of
13 you. Fair enough?

14 MR. SCOTTON: Yes.

15 THE COURT: Anything else from the government?

16 MS. MITRANI: No, Your Honor.

17 (Thereupon, the following was heard in open court.)

18 THE COURT: Ms. La Barbera, I need to ask you a few
19 more questions for our record. Earlier you mentioned that you
20 might be fearful of Mr. Scotton and I need to find out, do you
21 have any fear of Mr. Scotton at all?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: Are you sure about that?

24 A JUROR: I am.

25 THE COURT: Okay. And, in fact, you heard lots of

1 witnesses testify that they never had any reason to believe
2 Mr. Scotton was violent. Is that fair to say?

3 A JUROR: I did.

4 THE COURT: Okay. And when I asked you the first time
5 about whether you could be fair and consider this case on the
6 evidence only and on nothing else, you said first, I think I
7 can, and then you said I know I can. And what I need to find
8 out is whether you, in fact, know that you can or whether you
9 have any doubt whatsoever about that.

10 A JUROR: I do not have any doubt.

11 THE COURT: Okay. Anything else that we need to
12 address with Ms. La~Barbera?

13 MS. MITRANI: Nothing from the government, Your Honor.

14 MR. SCOTTON: No, Your Honor.

15 THE COURT: Thank you, Ms. LaBarbara.

16 (Thereupon, a juror exited the courtroom at 3:58 p.m.)

17 THE COURT: Does anybody wish to be heard on this?

18 MS. MITRANI: No. I mean I think she's fine. She
19 indicated she's fine.

20 THE COURT: Anything, Mr. Scotton?

21 MR. SCOTTON: Your Honor, the defendant, you know, as
22 I mentioned before when I begin the trial, the way she walked
23 into this courtroom here hysterical and crying and everything
24 else.

25 THE COURT: Well, she wasn't hysterically crying.

1 That's just not an accurate statement.

2 MR. SCOTTON: When she walked that first -- second
3 day, Your Honor, she was pretty much crying here and said she
4 was afraid of me.

5 THE COURT: She wasn't crying. I will agree with you
6 that she was upset, but she was not crying.

7 MR. SCOTTON: And I don't think she's going to be fair
8 with me. For whatever reason she has that decision, you know,
9 I'm still have my statement as strike her from the jury if I
10 have the choice.

11 THE COURT: I'm going to overrule that objection. I
12 tried to make it very clear to her that I wanted her -- and I
13 think I did make it very clear to her that I wanted her to be
14 honest, there would be no penalty for her to tell me that she
15 could not be fair, and she insisted that she could be fair. I
16 had her sworn under oath before she did that. And I will note
17 for the record that she also -- I mean, I have seen her smiling
18 as she comes in here looking quite comfortable while taking
19 notes and does not appear in any way to be in fear of you. And
20 her demeanor during this event just now, she also seemed very
21 at ease.

22 And I also reminded her of the evidence that you put
23 on, Mr. Scotton, that no one thinks you are a violent man, and
24 she agreed that she had heard all of that evidence.

25 And finally, the only reason that she expressed

1 concern about sitting on this jury after we explained to her
2 about the difference between Citrix and the other, the only
3 reason she expressed any concern about that was because you
4 moved to strike her in her presence which you knew you were not
5 supposed to do and you violated the Court's procedures.

6 So for all of those reasons and because she has
7 demonstrated herself under oath to be able to decide this case
8 based on the evidence only and she has further indicated that
9 she has no fear of you, Mr. Scotton, I'm overruling the
10 objection.

11 We are going to go ahead. I will bring back in the
12 jury. And I'm going to dismiss the two alternates, but I will
13 direct them to continue following the instructions so in case
14 we lose a juror during deliberations, we can replace that juror
15 with one of the alternates. Is there anything else I need to
16 do before we bring the jury back in?

17 MS. MITRANI: No, Your Honor.

18 THE COURT: Mr. Scotton?

19 MR. SCOTTON: No, Your Honor.

20 THE COURT: All right.

21 (Thereupon, the jury entered the courtroom at
22 4:01 p.m.)

23 THE COURT: All right. Please be seated, everyone.
24 Thank you. Thank you for your patience. Before I excuse you
25 to begin your deliberations, I need to take care of one little

1 matter, and that is this. Ms. Raisman and Mr. Tucker have
2 diligently sat through this entire lengthy proceeding. First
3 of all, I want to thank them both. We very much appreciate
4 that. And then, because no good deed goes unpunished, I have
5 another request to make of you, and that is this.

6 Occasionally we will lose a juror during the course of
7 deliberations. And so what I want to ask of each of you is, if
8 you would, please continue not to discuss the case with anyone,
9 not to disburse any information about the case, and not to do
10 any research into the case. The reason being that if we do
11 lose a juror during the course of deliberations, what I would
12 do then is we would call you up and ask you if you would please
13 come in, and then we would begin the deliberations again.

14 And in that way, we would avoid needing to put on the
15 trial again. And so that's why I ask if we could just ask you
16 this one more favor. Ms. Raisman, is that all right with you?
17 Can you do that?

18 A JUROR: Yes, Your Honor.

19 THE COURT: Terrific.

20 And how about you, Mr. Tucker?

21 A JUROR: Yes, Your Honor.

22 THE COURT: Thank you very much. I appreciate that.
23 We all do. Finally, I would like to thank Ms. Raisman and
24 Mr. Tucker and give a small token of our appreciation for the
25 sacrifices that each of you has made. And so I am going to

1 excuse Ms. Raisman and Mr. Tucker for now. And you should feel
2 free to call Mr. Creary if you would like to do so.

3 If we have a verdict before we need you, then he will
4 be able to let you know what that is. And obviously if there
5 comes a point in time where we have a verdict and we did not
6 need you to participate in the deliberations, then you will be
7 released from your obligations not to discuss the case, et
8 cetera. All right?

9 Anything we need to address with respect to
10 Ms. Raisman and Mr. Tucker before I excuse them?

11 MS. MITRANI: No, Your Honor.

12 MR. SCOTTON: No, Your Honor.

13 THE COURT: All right then. Thank you very much. Let
14 me excuse Ms. Raisman and Mr. Tucker.

15 (Thereupon, the alternate jurors exited the
16 courtroom.)

17 THE COURT: All right. You all may be seated. I
18 think we go until 4:30 on Tuesdays, so what I think might be a
19 good thing to do today is maybe select a foreperson. After
20 you've selected a foreperson, if you wish to begin your
21 deliberations, you may do so. Otherwise, I think tomorrow at
22 9:30, right, because somebody has an appointment?

23 So if you want to wait to come back until tomorrow to
24 begin your deliberations, meet here at 9:30, and you will begin
25 your deliberations at that time.

1 As I have previously explained, you cannot start your
2 deliberations until everybody is present. And obviously once
3 you begin your deliberations, you can discuss the case with
4 each other and should discuss case with each other, but please
5 don't discuss case with anybody outside of the jury.

6 All righty. Anything else we need to address with the
7 jury before I dismiss them to begin their deliberations?

8 MS. MITRANI: Nothing, Your Honor.

9 MR. SCOTTON: No, Your Honor.

10 THE COURT: All right. Thank you very much. All rise
11 for the jury.

12 We are going to send the exhibits back to you as well
13 as jury instructions.

14 (Thereupon, the jury exited the courtroom at
15 4:06 p.m.)

16 THE COURT: All righty. Let's do this. If the
17 parties would please get together and make sure that all of the
18 exhibits that are in evidence go back to the jury room and
19 nothing that is not in evidence goes back. Then we can get
20 those exhibits together, get them back to the jury, and move on
21 from there.

22 MS. MITRANI: Your Honor, we have also prepared a
23 clean copy of the exhibit list, that is, a copy of only the
24 admitted evidence which I could pass a copy to Mr. Scotton and
25 the Court if that can go back with the jury.

1 THE COURT: Let's give it to Mr. Scotton so that he
2 can determine if he has any objections.

3 Since this is lengthy, I think what we are going to do
4 is I want to give Mr. Scotton overnight to look at it. If you
5 have any objections, Mr. Scotton, can we come back tomorrow at
6 9:00, and if Mr. Scotton has objections, I will address them
7 tomorrow morning. I have an 8:45 tomorrow morning. Well, it
8 will probably be closer to 9, 15 but we will get you in here as
9 soon as we can.

10 MS. MITRANI: Not that it makes a big difference, but
11 should we be here at 9:00 or 9:15? It doesn't matter to me.

12 THE COURT: I have an 8:45, but it's an argument on a
13 404(b). I don't know how long that will take.

14 MS. MITRANI: 9:00 do you want to start?

15 THE COURT: Do you mind? I'm sorry to ask you because
16 I know it's going to mean that you are going to have to wait a
17 little bit.

18 MS. MITRANI: No, that's fine.

19 THE MARSHAL: It's possible he will be in by like
20 8:20, 8:30.

21 THE COURT: That's okay. I've got an 8:45 anyway. I
22 really appreciate it. Let me tell you, I really appreciate the
23 offer.

24 THE MARSHAL: No problem, Your Honor.

25 THE COURT: For now let's just make sure all the

1 exhibits that are admitted go back and that there's nothing
2 that's not admitted that goes back. If the parties want to get
3 together and take care of that, maybe you can check it off and
4 we will send that information back.

5 Did we give them copies of the instructions?

6 MR. SCOTTON: They already made a decision?

7 THE COURT: I don't think so.

8 MR. SCOTTON: There's a paper here without a tag.

9 THE COURT: I'm sorry, I can't hear you.

10 MR. SCOTTON: There's a paper here doesn't have a
11 little tag.

12 THE COURT: If it's a court exhibit, it doesn't go
13 into the jury. It's not in evidence. It's just a part of the
14 record. I did that so --

15 MR. SCOTTON: It doesn't have anything.

16 THE COURT: Just one second.

17 THE COURTROOM DEPUTY: They have selected a
18 foreperson, Your Honor.

19 THE COURT: Do they wish to go home for the evening?

20 THE COURTROOM DEPUTY: They said they would like to
21 retire for the evening and come back in the morning and begin
22 deliberations.

23 THE COURT: That's fine. Would you excuse them and
24 tell them we will see them tomorrow and they can begin their
25 deliberations.

1 As I was saying, court exhibits are part of the court
2 record in case anybody wishes to appeal so that the appellate
3 court is able then to see what we were talking about in those
4 exhibits.

5 So, for example, the exhibit of you in the yellow
6 outfit with the DHL that you wanted to admitted that I said you
7 could not admit, the appellate court would be able to look at
8 that picture and decide whether it thought that my decision was
9 correct or not.

10 But since it can't go to the jury, it's not in
11 evidence in the trial, but I'm trying to make the record
12 complete so that if the appellate court disagrees with me, to
13 give the appellate court a chance to see what it is that we are
14 talking about so it can make an intelligent decision about
15 whether it disagrees if necessary. Do you understand?

16 MR. SCOTTON: Yes.

17 THE COURT: Once again, if it's marked as a, quote,
18 court exhibit, it is not in evidence and it does not go back.
19 Only government exhibits and defense exhibits go back.

20 MS. MITRANI: I'll say this on the record. The
21 updated exhibit list does not contain 204A since we did that
22 today. So Mr. Scotton knows, we will add 204A for tomorrow's
23 version.

24 THE COURT: Okay. That will be the only difference?

25 MS. MITRANI: As far as I know, yes, Your Honor.

1 THE COURT: Okay. Thank you.

2 MR. SCOTTON: Your Honor, I need to make some
3 correction here. Seems to be some the labels here is marked,
4 you know, is like double 3, double 2. I don't know how you got
5 them on your system of your computer of the defense evidence.

6 THE COURT: Well, I can tell you what I have. I've
7 got FBI 458 is Exhibit 1. Case query results for Scotton is
8 Exhibit 2. DHL Citrix account record is Exhibit 3. The four
9 credit cards or credit card pictures are Exhibit 4. The two
10 police wallets are Exhibit 5. A check was Exhibit 6. Certain
11 pictures were Exhibit 7. And three photographs of you racing
12 and with the women were Exhibit 8.

13 MS. MITRANI: I'm sorry, Your Honor, can you go back
14 to what 6, 7, and 8 were.

15 THE COURT: 6 was a check. 7 was some collection of
16 pictures. I think that was the pictures that included
17 Ms. Mollinedo, et cetera. And then 8 is three photographs, one
18 of Mr. Scotton Racing, and I think there were two of
19 Mr. Scotton with women while he was dressed in a racing outfit.
20 That was 8.

21 MS. MITRANI: Thank you.

22 THE COURT: So if the parties could please
23 double-check and make sure we have all of the exhibits but only
24 the exhibits that were admitted, we can put that in the room so
25 tomorrow morning when the jury comes in, they can go right to

1 work.

2 MR. SCOTTON: Your Honor, your records do you have
3 Exhibit 3?

4 THE COURT: Exhibit 3 is DHL Citrix account record.
5 My recollection is that was that thick one maybe.

6 MS. MITRANI: Thin.

7 THE COURT: No, thin, right. It was originally thick,
8 but then you decided to just put in the first page or two,
9 right?

10 MR. SCOTTON: Yeah. I have this one here. I'm trying
11 to figure out which one it is because it's got No. 3 here.

12 THE COURT: Show it to government. They might know.

13 MR. SCOTTON: I think that goes with No. 5, Your
14 Honor, because it's reference the wallet.

15 THE COURT: Is it the wallets?

16 MS. MITRANI: No, Your Honor. To be honest with you,
17 these are pictures, but I don't know if defendant -- I don't
18 know they were admitted or not.

19 THE COURT: What are they pictures of?

20 MR. SCOTTON: The souvenirs. As I was testifying, I
21 showed the wallet as a souvenir.

22 THE COURT: Well, you didn't testify.

23 MS. MITRANI: I think when Agent Van Brunt was
24 testifying.

25 MR. SCOTTON: I was cross-examining someone here.

1 MS. MITRANI: Agent Van Brunt.

2 THE COURT: I don't remember off the top of my head
3 whether they were put into evidence or not.

4 Let me do this the easy way first before we have to
5 start searching the record. Is there any objection if they go
6 into evidence in case they weren't already put in?

7 MS. MITRANI: No objection.

8 THE COURT: You can make them a part of Exhibit 5.

9 MS. MITRANI: Your Honor, it's going to take a few
10 minutes because we have a lot of documents.

11 THE COURT: Take your time. I'm going to go do some
12 work.

13 (Thereupon, the trial adjourned at 4:16 p.m.)

14 - - -

15 C E R T I F I C A T E

16
17 I hereby certify that the foregoing is an
18 accurate transcription of the proceedings in the
19 above-entitled matter.

20
21
22 7/24/14

s/ Tammy Nestor
Tammy Nestor, RMR
Official Court Reporter
299 East Broward Boulevard
Fort Lauderdale, Florida 33301
tammy_nestor@flsd.uscourts.gov

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60049-CR-ROSENBAUM

UNITED STATES OF AMERICA,
Plaintiff(s),
vs.
ROGERIO CHAVES SCOTTON,
Defendant(s).

Fort Lauderdale, Florida
February 26, 2014

JURY TRIAL
BEFORE THE HONORABLE ROBIN S. ROSENBAUM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): Bertha Mitrani, Esquire
United States Attorney's Office
500 East Broward Boulevard
Seventh Floor
Fort Lauderdale, Florida 33301

FOR THE DEFENDANT(S): Rogerio Scotton, Pro Se

STANDY COUNSEL: Jason Kreiss, Esquire
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REPORTED BY: Tammy Nestor, RMR
Official Court Reporter
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1 Thereupon,
2 the following proceedings began at 9:08 a.m.:

3 THE COURT: Good morning. We are back on the record
4 in case No. 12-60049, United States versus Rogerio Scotton.
5 Would the parties please state their appearances for the
6 record?

7 MS. MITRANI: Good morning, Your Honor. Bertha
8 Mitrani for the United States. And with me at counsel's table
9 is Special Agent Roy Van Brunt.

10 THE COURT: Good morning and thank you.

11 MR. SCOTTON: Good morning, Your Honor. Rogerio
12 Scotton, the defendant.

13 THE COURT: Good morning and thank you. All righty.
14 When we left yesterday, the parties were putting together the
15 exhibits. Is that all done?

16 MR. SCOTTON: Your Honor, I never got a chance to
17 really go over everything else. The marshal has a schedule and
18 end up have to --

19 THE COURT: How long were you here for?

20 THE MARSHAL: An hour.

21 THE COURT: An hour? It seems to me that an hour
22 should have been enough time to verify whether all the exhibits
23 were there.

24 MR. SCOTTON: I have a question here, Your Honor. The
25 two thing, 204 or 224, the one we talk about yesterday, the

1 immigration file, the paper?

2 THE COURT: Yes.

3 MR. SCOTTON: The jury going to have both of them,
4 right, or just the one?

5 THE COURT: Yes. 204 is the one that was submitted
6 originally and 204A is the one that you asked be added. So
7 yes, they will have both of them.

8 MR. SCOTTON: Also, Your Honor, I want to take the
9 moment of the Court here and object the scenario yesterday on
10 the end of the prosecution closing argument. I think is very
11 unprofessional for a lawyer to make a joke out of this whole
12 system here, put a clown picture and disrespect the Court and
13 disrespect my family. And I'm going to object that that's an
14 error also. I don't think that was very appropriate to do that
15 and try to get the attention of the jury here to have the side
16 show here.

17 THE COURT: It is overruled for a few reasons. First
18 and foremost, it was not a clown picture. It was a picture of
19 a scarecrow, a straw man, and it was used as a demonstrative
20 aid to assist in the government's argument that the arguments
21 that you were making were straw men, that is, that they could
22 be blown down.

23 The government never at any point said that you were a
24 clown, implied that you were a clown, implied that this was
25 funny, or that there was anything funny about it. That is just

1 an inaccurate characterization of what occurred. There was
2 nothing unprofessional that this Court saw in at least the
3 government's closing arguments.

4 Second, while I completely agree with you that there's
5 nothing funny about a trial and that it's a very serious matter
6 whenever we have a criminal trial, for you to come in here and
7 pretend like you haven't made jokes during the trial is also
8 inaccurate. I can think of a number of them and a number of
9 very inappropriate remarks that you made.

10 Now, I'm not going to go through all of them on the
11 record here today, but you know, I think that the record is
12 very clear about these types of things. And your repeated
13 attempts to mislead this jury to make it believe that there was
14 evidence that did not exist, to make it believe that witnesses
15 would testify to things that you knew they had no knowledge of.
16 And to suggest, when you knew darn well that it was not true,
17 that the government had fabricated Exhibit 204, that just
18 speaks for itself. So that objection is denied.

19 All right. Are there any objections to the exhibit
20 list that the government has proposed to send back?

21 MR. SCOTTON: Yes, Your Honor, several.

22 THE COURT: I will hear them now.

23 MR. SCOTTON: The case here is the United States
24 versus Rogerio Scotton. I'm trying to understand here why they
25 have Exhibit 28B, driver's license of Carlos Colon and 2C

1 Florida identification card of my mother. If the case is --
2 they have my family been diving.

3 THE COURT: One second. What are you looking at?

4 MR. SCOTTON: 28B and 28C.

5 THE COURT: Was it admitted into evidence? I will
6 have to check and see.

7 MS. MITRANI: It was admitted into evidence, Your
8 Honor. In the indictment we had talked about how the defendant
9 used that address and we introduced it. I don't think it was
10 published because I think ultimately it became a nonissue, but
11 it was admitted as a certified --

12 THE COURT: Certified record, I see it now. It was
13 admitted on January 27th. I'm sorry, that sounds more like an
14 objection to the content of the exhibit. That's already been
15 admitted.

16 This is not about whether things were properly
17 admitted. This is about whether you have any objections about
18 the way the government has characterized the exhibits so when
19 it sends back the exhibit list, it is a fair characterization.
20 Do you have any objections to the exhibit list, and that would
21 include if there's anything on the exhibit list that was not
22 admitted into evidence, then that would be a fair objection.
23 It there's any objection that things were not characterized in
24 a correct or fair way, that would also be a fair objection. I
25 would be happy to hear those. Do you have any of those?

1 MR. SCOTTON: Your Honor, they have several documents
2 over there that I was looking at on this paper. For example,
3 on the third SunTrust Bank account, they don't have no account
4 opening documents.

5 THE COURT: Once again, this is not about the content
6 of the exhibits. Do you have any objection to the way that the
7 exhibits are described on this exhibit list or do you have any
8 objections that any of the exhibits that are described on this
9 exhibit list were not actually admitted into evidence?

10 MR. SCOTTON: No, Your Honor.

11 THE COURT: Okay. In that case I'm going to go ahead
12 and send that back. Did you want me to send back a list of the
13 defendant's exhibits as well?

14 MR. SCOTTON: Yes, Your Honor.

15 THE COURT: Have you prepared one?

16 MR. SCOTTON: No, I have not, Your Honor.

17 THE COURT: All right. Mr. Scotton, well, once again,
18 I am going to do this for you. Mr. Creary is going to give you
19 a blank exhibit and witness list and you can write it out. And
20 if you need to take a look at what I have written out, I'm
21 happy to lend it to you, unless you want to do your own
22 description, and that's fine too.

23 Do you want to see what I wrote out?

24 MR. SCOTTON: Yes, Your Honor.

25 THE COURT: All right.

1 MR. SCOTTON: I will go on the Court list.

2 THE COURT: You want to use the Court's list?

3 MR. SCOTTON: Yes, let's go ahead and do that.

4 THE COURT: Show it to the government and make sure
5 that the government is okay with that.

6 MR. SCOTTON: Do I have to give this back, the blank
7 one?

8 THE COURT: You can keep it if you want.

9 MS. MITRANI: Your Honor, I want to point something
10 out that I just noticed.

11 THE COURT: All right.

12 MS. MITRANI: So Exhibit 14A is a recording and there
13 were three calls on it, Wal-Mart, Sound Stream, and Target.
14 Sound Stream was the one that only half of it had the
15 defendant, not the other one. We didn't publish it. We had
16 discussed it at sidebar. But the 14E was admitted in its
17 entirety because that's how the disc was saved and that's how
18 it was given to the FBI. So I don't know how the Court wants
19 to handle that.

20 THE COURT: Well, if it was admitted into evidence,
21 then it was admitted into evidence and this is a proper
22 reflection of the exhibit.

23 MS. MITRANI: We never played it. We haven't
24 referenced it because the defendant had, you know, made some
25 kind of objection. I wanted to streamline the process. But

1 yes, that is how the exhibit was admitted because we didn't
2 alter or change it in any way from the way that Fed-Ex had
3 provided it to us.

4 THE COURT: Okay. Thank you.

5 Anything else we need to address? No? Okay. Well,
6 if counsel would please stay within a ten-minute radius of the
7 courthouse and make sure your contact information is provided
8 to Mr. Creary, if we receive any questions or information from
9 the jury, then we will be able to call you back here and
10 hopefully resolve that as soon as possible. Thank you. See
11 you all later. Have a good day.

12 (Thereupon, a recess was taken at 9:17 a.m.)

13 MR. KREISS: Can I ask a question of the Court? What
14 is the Court's protocol as far as my representation as standby
15 trial counsel?

16 THE COURT: What do you mean?

17 MR. KREISS: As far as moving forward, does the Court
18 expect me to remain as standby counsel throughout the
19 sentencing process? Is the Court expecting a motion after a
20 verdict or post conviction?

21 THE COURT: I think -- well, I have to think about it,
22 but I think you probably should be here as standby counsel
23 during the sentencing process, thank you, if there is a
24 sentencing process because there may not be.

25 (Thereupon, a recess was taken at 9:19 a.m.)

1 THE COURT: Okay. We have received actually a few
2 questions from the jury. You each have a copy of the paper
3 that contains the questions.

4 It reads as follows: Question, Count 10, what is the
5 charge. Is there a claim? Is there a box missing? We need
6 supporting documentation. Waybill No. 6720. Cannot find
7 anything in boxes. And then it's signed and dated.

8 My thought is to respond to this in writing by saying
9 all evidence -- all exhibits that were admitted into evidence
10 have been provided to you. The charge is contained in the
11 second superseding indictment at Count 10, and please use your
12 best recollection of the evidence to evaluate the claim. How
13 does that sound? Any objections to any of that?

14 MR. SCOTTON: No, Your Honor.

15 MS. MITRANI: To evaluate the count?

16 THE COURT: The count, yes.

17 Any objections?

18 MS. MITRANI: So you are going to say all exhibits
19 entered into evidence have been provided to you. The charge is
20 contained in the second superseding indictment at Count 10.
21 Please use your best recollection of the evidence as to that
22 count. Did I read that correctly?

23 THE COURT: Let me just double-check.

24 MS. MITRANI: I'm sorry.

25 THE COURT: No, that's okay.

1 Maybe I will just reorder it so that it comports with
2 the order in the question. Okay. The charge is contained in
3 the second superseding indictment at Count 10. All exhibits
4 that were admitted into evidence have been provided to you.
5 Please use your best recollection of the evidence to evaluate
6 the count.

7 MS. MITRANI: No objection.

8 THE COURT: Any objection?

9 MR. SCOTTON: No, Your Honor.

10 THE COURT: So I'm going to send that back in writing
11 to them as soon as I make it into a nicer note.

12 All right. I added one sentence. It says, dear
13 members of the jury. We have received your note provided at
14 11:58 a.m. today, February 26, 2014, and then it continues as I
15 previously stated.

16 Any objection?

17 MS. MITRANI: No, Your Honor.

18 MR. SCOTTON: No, Your Honor.

19 THE COURT: All right. Go ahead. Let me just send
20 that to Mr. Creary and he will provide it.

21 All right. It should be on its way. Let me give you
22 the original so you can file it in the record, Mr. Creary. We
23 will let you know if we hear anything further.

24 (Thereupon, a recess was taken at 12:12 p.m.)

25 THE COURT: All righty. All rise for jury.

1 (Thereupon, the jury entered the courtroom at
2 2:47 p.m.)

3 THE COURT: Welcome back to the courtroom for the last
4 time. Everybody please be seated.

5 I understand that you all have reached a verdict, is
6 that correct, Ms. Brzezniak?

7 A JUROR: That's correct.

8 THE COURT: And I understand that you were elected as
9 the foreperson. Is that also correct?

10 A JUROR: That's correct.

11 THE COURT: Would you please turn the verdict over to
12 Mr. Creary. Thank you.

13 All righty. Mr. Creary, would you please publish the
14 verdict.

15 MS. MITRANI: Yes, Your Honor. United States District
16 Court, Southern District of Florida, case
17 No. 12-60049-Criminal-Rosenbaum. United States of America
18 versus Rogerio Chaves Scotton a/k/a Roger Scotton.

19 Verdict. We, the jury, unanimously find the
20 defendant, Rogerio Chaves Scotton, as to Count 1, guilty as
21 checked. As to Count~2, guilty as checked. As to Count 3,
22 guilty as checked. As to Count 4, guilty as checked. As to
23 Count 5, guilty as checked. As to Count 6, guilty as checked.

24 As to Count 7, guilty as checked. As to Count 8,
25 guilty as checked. As to Count 9, guilty as checked. As to

1 Count 10, guilty as checked. As to Count 11, guilty as
2 checked. As to Count 12, guilty as checked. As to Count 13,
3 guilty as checked. As to Count 14, guilty as checked.

4 As to Count 15, guilty as checked. As to Count 16,
5 guilty as checked. As to count 17, guilty as checked. As to
6 count 18 guilty as checked. As to count 19 guilty as check.
7 As to count 20, guilty as checked. As to do you want 21 guilty
8 as checked. As to Count~22, guilty as checked.

9 As to Count~23, guilty as checked. As to Count~24,
10 guilty as checked. As to Count~25, guilty as checked. As to
11 Count~26, guilty as checked. As to Count 27, guilty as
12 checked. As to Count 28, guilty as checked. As to Count 29,
13 guilty as checked.

14 So say we all, Michelle Brzezniak, dated 2/26/14.

15 THE COURT: All right. Thank you, Mr. Creary. Would
16 either side like to have the jurors polled? Ms. Mitrani?

17 MS. MITRANI: No, Your Honor.

18 THE COURT: Mr. Scotton?

19 MR. SCOTTON: No, Your Honor.

20 THE COURT: All right. Let me thank the jurors for
21 your service. We all very much appreciate it. As I said when
22 we started the process, we couldn't have jury trials, we
23 wouldn't be able to fulfill the constitutional guarantee of a
24 jury trial in criminal trials if we didn't have citizens like
25 you who were willing, at great personal sacrifice I might add,

1 to come in here and do your civic duty day after day and week
2 after week in what has been a very long trial, and we all very
3 much appreciate it.

4 It's also -- we also appreciate the fact that it is
5 evident from the fact that you started your deliberations at
6 9:30 this morning and it is now 10 of 3:00 that you obviously
7 spent a lot of time going through the evidence and considering
8 this case and really conducting your deliberations so we thank
9 you for that as well.

10 With that, we have certificates for each of you for
11 your service, and Mr. Creary is going to hand them out. As I
12 explained at the beginning of this trial, no one can ever force
13 you to talk to them about your jury service or what happened in
14 this case or anything of that nature. If you wish to speak
15 with the attorneys, that's up to you, but you would have to --
16 or I should say the attorney or party. You would have to
17 contact them yourself because they will not be contacting you.

18 All right. Is there anything else that we need to
19 address before we dismiss this jury, Ms. Mitrani?

20 MS. MITRANI: No, Your Honor.

21 THE COURT: Mr. Scotton?

22 MR. SCOTTON: No, Your Honor.

23 THE COURT: All right then. Thank you all. You are
24 excused with our great appreciation. All rise for the jury.

25 (Thereupon, the jury exited the courtroom at

1 2:52 p.m.)

2 THE COURT: Please be seated. The next thing that
3 will occur in this case will be the sentencing. And in
4 conjunction with that, a probation officer will visit you,
5 Mr. Scotton, and will ask you for information in the
6 preparation of the presentencing report that the probation
7 officer will prepare. That report will contain information
8 that helps me to decide what an appropriate sentence is in this
9 case. So she's going to or he's going to interview you a
10 little bit regarding that.

11 It's very important that you cooperate and be truthful
12 with the probation office or else things may not go as well for
13 you as you might like at sentencing.

14 Mr. Creary, when are we setting sentencing for in this
15 case?

16 THE COURTROOM DEPUTY: Sentencing will be May 9th at
17 1:00 p.m.

18 THE COURT: May 9th at 1:00 p.m.?

19 THE COURTROOM DEPUTY: Yes, Judge.

20 THE COURT: May 9th at 1:00 p.m. Is there anything
21 else that we need to address before we adjourn the proceedings
22 in this case?

23 MS. MITRANI: No, Your Honor.

24 THE COURT: Mr. Scotton?

25 MR. SCOTTON: No.

1 THE COURT: Thank you all, and we will be in recess.

2 Is there any reason why I should not unseal the court
3 record with regard to the ex parte hearings that I had with the
4 defendant regarding defense strategy, Mr. Scotton?

5 MR. SCOTTON: What is the options here, Your Honor?

6 THE COURT: I'm asking you if you have any objection
7 to my unsealing -- I am assuming, although I don't know, that
8 you may want to appeal. And I should tell you that you have a
9 right to appeal both the conviction and the sentence within 14
10 days of the entry of the judgment and that will occur after
11 your sentencing.

12 And if you can't afford to pay the cost of an appeal,
13 you may apply for leave to appeal in-forma-pauperis. So
14 anticipating that you may wish to appeal, one of the things
15 that the person appealing must do is to determine what
16 transcripts need to be made available for the appellate court
17 to review in considering any issues on appeal.

18 And in anticipation of the possibility that you may
19 wish to appeal some of the rulings I made with respect to, for
20 example, denying subpoenas or declining to provide you with a
21 court appointed counsel from the court, those types of things,
22 it is occurring to me that you may possibly need to use those
23 transcripts. And if you do, it seems likely that the
24 government would have the opportunity to respond.

25 But in order to sort of expedite that process, I am

1 asking you if you want me to unseal the transcripts of those
2 and just those meetings that we had, if you want me to unseal
3 those transcripts so that they will be readily available after
4 your sentencing. I don't have to. I could wait and you could
5 designate things and then we could unseal them. But I'm just
6 asking you to try to facilitate things so this can move a
7 little more quickly if that's what your desire is.

8 MR. SCOTTON: Your Honor, I really appreciate the
9 Court concern, but at this point I'm going to keep it sealed
10 until I have a lawyer to decide on my behalf.

11 THE COURT: No problem.

12 All righty. Anything else we need to address?

13 MS. MITRANI: No, Your Honor.

14 MR. SCOTTON: No, Your Honor.

15 THE COURT: I think the government's records are
16 probably too voluminous for us to upload into our system on the
17 record, the docket record, because there are boxes upon boxes.
18 But I note that Mr. Scotton's exhibits are -- there aren't too
19 many of them. And also, again, for convenience and so we don't
20 have to worry about them getting lost, what I would like to do
21 is have them uploaded as a docket entry as your exhibits. That
22 way if for some reason you get separated from them or whatever,
23 you can always obtain a copy of them from the court record
24 because they will be filed in the court record. All right?

25 MR. SCOTTON: Your Honor, also I want to put on the

1 record here I release all my personal paperwork that was in
2 court to Nina Martinez today so she will have custody of all my
3 discovery and all my paperwork to release to my family.

4 THE COURT: Ms. Martinez, did you say that was okay
5 with you?

6 THE INVESTIGATOR: It's okay, Your Honor.

7 THE COURT: So there's no question about what was
8 released, do you guys have some kind of bag and some tape or
9 something, we could put it all into a bag, tape it up, and have
10 Mr. Scotton initial over the tape so that way we can make sure
11 that everything you gave to Ms. Martinez gets to your family.
12 Do we have any supplies of that type that we can use?

13 THE INVESTIGATOR: You can put it on those boxes.

14 THE COURT: That's fine. Tape it up nice and tightly.
15 And when you are done, Mr. Scotton, I want you to initial right
16 over the tape and onto the box so anyone who looks at it will
17 know if it was tampered with.

18 THE INVESTIGATOR: I would like to put on the record
19 that I have the laptop computer in my car, and inside the
20 briefcase is an external drive and couple of DVDs from the
21 discovery too.

22 THE COURT: Okay. And, Mr. Scotton, what do you want
23 done with those items?

24 MR. SCOTTON: That's all going to be returned to my
25 family.

1 THE COURT: So with respect to those items, if you
2 would, Ms. Martinez, please go ahead and prepare a cover letter
3 for those materials saying what is included, make a copy for
4 your records, and then return that material as well to
5 Mr. Scotton's family. All right?

6 THE INVESTIGATOR: All right, Your Honor. Thank you.

7 THE COURT: Why don't we go ahead and take care of
8 this on the record right now. Put everything that you have in
9 the box. And, Mr. Scotton, satisfy yourself that it's all
10 there.

11 MR. KREISS: Your Honor, may I just confirm my status
12 in this case?

13 THE COURT: Absolutely.

14 MR. KREISS: At this point in time, it's my
15 understanding I am going to remain as standby counsel through
16 sentencing.

17 THE COURT: That is correct unless Mr. Scotton hires
18 an attorney.

19 MS. MITRANI: Your Honor, we should retain obviously
20 custody of the government's exhibits, correct?

21 THE COURT: Yes.

22 Mr. Scotton, have you had the opportunity to inspect
23 the materials to your liking and ensure that everything was
24 there?

25 MR. SCOTTON: Yes, Your Honor.

1 THE COURT: And have you sealed the box? How many
2 boxes are there?

3 MR. SCOTTON: Three box, Your Honor.

4 THE COURT: Have you sealed the three boxes and signed
5 over the tape of each of the three boxes?

6 MR. SCOTTON: Yes, Your Honor.

7 THE COURT: All right. Thank you. Is there anything
8 else we need to address here today before we recess?

9 MS. MITRANI: No, Your Honor.

10 THE COURT: Anything further, Mr. Scotton?

11 MR. SCOTTON: No, Your Honor.

12 THE COURT: All right. Then we will be in recess.
13 Thank you.

14 (Thereupon, the trial concluded at 3:05 p.m.)

15 - - -

16 C E R T I F I C A T E

17

18 I hereby certify that the foregoing is an
19 accurate transcription of the proceedings in the
20 above-entitled matter.

21

22

23 7/24/14

24

25

s/ Tammy Nestor
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