

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,)	
)	
Plaintiff,)	2:17-cr-00585-GMS-1
)	
vs.)	Phoenix, Arizona
)	March 21, 2018
Thomas Mario Costanzo,)	9:07 a.m.
)	
Defendant.)	
)	

BEFORE: THE HONORABLE G. MURRAY SNOW, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRAIL - DAY 2

(Pages 218 - 426)

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A P P E A R A N C E S

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P R O C E E D I N G S

(Jury enters the courtroom at 9:07 a.m.)

(Proceedings resume at 9:08 a.m.)

THE COURT: Good morning.

Please be seated.

Mr. Cain, are you ready?

MR. CAIN: Yes, Judge.

THE COURT: Hope you had a pleasant evening. Thank you for being here.

We will now have the defense's opening statement.

MR. CAIN: Good morning.

This is not a case about dirty drug money. This is a case where the government and its agents designed an operation, they made a plan; they made a plan where they designed an objective, and they hoped for a certain outcome. They selected an individual, and they rolled out that plan against that individual using highly experienced law enforcement agents, with the hope that they would get the outcome that they hoped for. And that's why we're here.

The individual they selected is Thomas Costanzo, our client. When they selected Mr. Costanzo, what you're going to hear is that they did not have any specific knowledge or information that indicated that he was doing anything illegal. All they knew at that time was that he was an individual that was identified on that local Bitcoin dot com website, and that

1 they believed that he was the individual who was involved in
2 trading Bitcoin, along with all the other individuals that were
3 identified on that website.

4 You're going to hear that at least three highly
5 trained undercover agents set out to meet with Mr. Costanzo to
6 try to convince him to trade certain amounts of Bitcoin with
7 them; and that Mr. Costanzo met with them, and that when he met
8 with them, that he was extremely enthusiastic about Bitcoin,
9 and that the agents asked him to provide certain amount in
10 Bitcoin, and that Mr. Costanzo ultimately provided those
11 amounts.

12 In this case, the government is going to present a
13 number of deals that kind of increase in value. You heard the
14 government already talk about the very first deal was a deal
15 for \$2,000. You're going to hear about another deal that was
16 \$3,000.

17 In each of these deals, what you're going to hear was
18 that it was the government's agents who were pushing the dollar
19 amount up. It was not Mr. Costanzo who was encouraging the
20 agents to do more money. It was the agents who were
21 encouraging Mr. Costanzo to increase the money.

22 You've also heard the government already tell you that
23 when the agent first met with Mr. Costanzo to do that very
24 first 2,000-dollar exchange, Mr. Costanzo didn't solicit the
25 agent to do anything illegal, he didn't say anything about drug

1 money. And the agent didn't say anything to him about drug
2 money. It was at a subsequent deal that that agent then tried
3 to introduce that element to the deal.

4 You've heard the government talk about an individual
5 named Nolan Sperling, and we anticipate that you're going to
6 hear from Mr. Sperling. And you're going to have to evaluate
7 the importance of Mr. Sperling's testimony.

8 Mr. Sperling is an individual that did some Bitcoin
9 exchanges with Mr. Costanzo. We anticipate that he's going to
10 tell you that he told Mr. Costanzo that he was in business,
11 that he never told Mr. Costanzo that he was involved in drug
12 activity; that you'll hear that Mr. Sperling was actually
13 involved in importing drugs that actually started back when he
14 was in high school. And that as this case against Mr. Costanzo
15 developed from the government's standpoint, that they felt like
16 they needed to try to bring in somebody else to help bolster
17 their case, and that they gave Mr. Sperling some significant
18 benefit in exchange for his testimony.

19 But you're going to have to evaluate whether that
20 testimony is important or not, and you're going to have
21 evaluate the benefits he received and how that impacts his
22 credibility as a witness.

23 At the end of this case, we're going to ask you to
24 take a careful look at the actions that the agents used in
25 dealing with Mr. Costanzo, particularly with respect to the

1 fact that they didn't have information at the beginning that
2 suggested that he was involved in any illegal activity.

3 We're also going to ask you to take a hard look at the
4 government's reliance on Nolan Sperling and the benefits he
5 received for his testimony.

6 But lastly and most importantly, you guys are going to
7 have to decide what Mr. Costanzo intended when he did these
8 Bitcoin exchanges with the undercover agents. The government's
9 going to argue to you that he did these exchanges because he
10 was trying to avoid transaction reporting requirements or
11 because he was trying to conceal the fact that this was drug
12 money. And what we're going to tell you, or what we're going
13 to argue that the evidence shows, is that he wasn't motivated
14 by any of these things; that he was motivated by his enthusiasm
15 for Bitcoin, and that he was motivated by the fact that he
16 received a nominal -- well, not -- a fee, as you will hear most
17 people do, they will receive a fee for these exchanges, and
18 that's how he supported himself, and that he would have been
19 willing to do the deal regardless of the government's efforts
20 to try intro -- kind of introduce this alleged illegal element
21 to the day.

22 Thank you.

23 THE COURT: First witness?

24 MR. RESTAINO: Your Honor, the government calls
25 Special Agent Michael Fleischmann.

1 May I move the podium, Your Honor?

2 THE COURT: I'm sorry?

3 MR. RESTAINO: May I move the podium?

4 THE COURT: You may.

5 (MICHAEL FLEISCHMANN, Government's witness, is sworn.)

6 DIRECT EXAMINATION

7 BY MR. RESTAINO:

8 Q. Good morning, Agent Fleischmann.

9 A. Good morning, sir.

10 Q. Please introduce yourself to the jury.

11 A. Sure. My name is Michael Fleischmann. I am a Special
12 Agent for Internal Revenue Service, Criminal Investigation.

13 Q. So what type of work do Internal Revenue Service, Criminal
14 Investigations, agents do?

15 A. We investigate tax and other financial crimes, such as
16 money laundering.

17 Q. What was --

18 THE COURT: Agent, could I get you to slow down and
19 sort of enunciate --

20 THE WITNESS: Oh, sorry.

21 THE COURT: -- so the jury can hear you and I can hear
22 you too?

23 THE WITNESS: Sorry.

24 THE COURT: Thank you.

25

1 BY MR. RESTAINO:

2 Q. What was your involvement in this case?

3 A. In this case, I was the initial case agent.

4 Q. Let's talk about your background first.

5 Did you go to college?

6 A. I did.

7 Q. Where did you go?

8 A. I went to the University of Arizona down in Tucson, and I
9 studied accounting and finance.

10 Q. Following your college, what did you do?

11 A. I became a -- well, after -- about a year out of college, I
12 became a revenue agent with the Internal Revenue Service.

13 Revenue agent is basically a tax auditor. That was in 2001.

14 And then in 2005, I became a Special Agent.

15 Q. Are you a certified public accountant?

16 A. I am. In the state of Arizona.

17 Q. What does that mean?

18 A. It means I passed a rigorous exam, and then I did two years
19 of work under another Certified Public Accountant.

20 Q. What made you want to switch from being a revenue agent to
21 a criminal investigator?

22 A. Just wanted to change --

23 MS. WEIDNER: Objection. Relevance.

24 THE COURT: Overruled.

25 THE WITNESS: Just to change to something different.

1 BY MR. RESTAINO:

2 Q. And so did you receive any additional training as a
3 criminal investigator with IRS?

4 A. I did. I received approximately 26 weeks of training at
5 Glynco, Georgia, at our Federal Law Enforcement Training
6 Center. The -- the first half of the training was the criminal
7 investigator portion, and then the second half was our IRS
8 add-on.

9 Q. Have you also had training in undercover cases?

10 A. Yeah. Approximately probably seven or eight years ago now,
11 I became a cover agent. So as a cover agent, it's my
12 responsibility for the safety and security of the undercover
13 agent and of the operation during an undercover operation.

14 Q. And just to be clear, there were no safety or security
15 incidents during your role as a cover agent in this case, were
16 there?

17 A. Well, I was the case agent in this case, but there were no
18 safety and security issues.

19 Q. Now, have you always worked in Phoenix --

20 A. I have.

21 Q. -- with the IRS?

22 A. I have.

23 Q. Were you ever reassigned to a unit that's headquartered
24 outside of the Phoenix Division?

25 A. Yeah. In 2015, I was reassigned to a unit out of our

1 Washington, D.C. field office. It's the -- our cyber crime
2 unit.

3 Q. Where is -- where have you been physically located during
4 that time?

5 A. My desk is in Mesa.

6 Q. What do you do with the cyber unit?

7 A. We investigate Internet crimes and virtual currency data
8 breaches.

9 Q. Have you developed any experience on virtual currency cases
10 through your work with the cyber unit?

11 A. I have.

12 Q. So let's talk about that.

13 In simple terms, what is virtual currency?

14 A. Virtual currency is an unregulated currency based on
15 mathematical algorithms.

16 Q. So what does it mean to be "unregulated"?

17 A. Means it's not controlled by any bank, any individual, or
18 any country.

19 Q. Can Bitcoin be used to purchase -- or, sorry.

20 Can virtual currency be used to purchase everyday
21 goods and services, to your knowledge?

22 A. Yes, it can.

23 Q. Can you give the jury one type of virtual currency?

24 A. Bitcoin would be an example of virtual currency.

25 Q. Can Bitcoin also be used to purchase illegal goods and

1 services, to your knowledge?

2 A. Absolutely.

3 Q. What does virtual currency look like?

4 A. It doesn't really look like anything. I mean, it sits in a
5 virtual wallet. So it's something that you download mostly to
6 a phone, and it would sit in a virtual wallet. But there's no
7 actually physical -- there's nothing physical behind it.

8 Q. Could it be seized by law enforcement agents?

9 A. It can be.

10 Q. Is seizing virtual currency harder than seizing cash?

11 A. Yes.

12 Q. Why is that?

13 A. Well, because a lot of times we don't -- it's hard to know
14 where the -- the virtual currency sits. Cash is a lot easier
15 in the sense that we can go straight to a bank account; whereas
16 virtual currency, it's unregulated.

17 Q. In your work with IRS CI, have you developed an
18 understanding of how one can purchase Bitcoin?

19 A. Yes.

20 Q. So how can one buy Bitcoin?

21 A. You can buy it through a commercial -- commercial
22 exchanger, and you can also buy it via peer-to-peer method.

23 Q. Let's talk about the commercial exchanger first.

24 Can you give an example of a commercial exchanger?

25 A. Coinbase would be a commercial exchanger.

1 Q. What type of information does one have to provide in order
2 to purchase information from a commercial exchanger?

3 A. Personally identifiable information, so you would have to
4 provide your name, your address, last four of the Social. In
5 some instances if you want to move money back and forth, you
6 would have to provide either a bank account, credit card.

7 Q. In your lifetime, have you opened bank accounts before?

8 A. Yeah, I have.

9 Q. In your experience, is the type of information one has to
10 provide to open a bank account similar to the information one
11 would have to provide to open a commercial exchange?

12 A. Yes.

13 Q. Now, is an exchange a physical location where a person
14 could go to buy Bitcoin?

15 A. No.

16 Q. Where is that commercial exchange then?

17 A. Via based on the Internet.

18 Q. And how would one typically pay?

19 A. For a commercial exchange?

20 Q. Yes.

21 A. You would most likely either have a bank account linked or
22 you would have -- or you could also use a credit card.

23 Q. Are you familiar with the exchange rates typically charged
24 by exchanges like Coinbase?

25 A. It's typically one to one-and-a-half percent.

1 Q. So let's do an example a here. If someone purchased \$1,000
2 worth of Bitcoin with a credit card from Coinbase, how much
3 would Coinbase typically deduct for its fee?

4 A. It would be between 10 and \$15.

5 Q. Now, as part of this case, Agent Fleischmann, have you seen
6 a cartoon video that explains how to purchase Bitcoin from a
7 commercial exchange?

8 A. I have.

9 Q. What else does that video describe?

10 A. Basically just the process of Bitcoin and how it works.

11 Q. Where is the video available?

12 A. It's available on the Internet.

13 Q. In general terms, how does the video come up in this
14 investigation?

15 A. So, there was a search warrant on April 20th of 2017, and
16 there was a flyer that had the information on that.

17 Q. I'd like you to take a look at what's been marked as
18 Exhibit 77 -- if we can have the document camera up for the --
19 sorry -- the VGA up for the agent.

20 COURTROOM DEPUTY: Are you using VGA or a digital?

21 MR. RESTAINO: I'm using the digital. Sorry.

22 COURTROOM DEPUTY: Thank you.

23 BY MR. RESTAINO:

24 Q. Taking a look at that, is this the video -- do you
25 recognize this video?

1 A. I do.

2 Q. Is this, in fact, the video that you have seen that
3 explains Bitcoin?

4 A. Yes, sir.

5 MR. RESTAINO: Your Honor, request permission to show
6 this video, Exhibit 77, purely for demonstrative purposes.

7 MS. WEIDNER: No objection, Your Honor.

8 THE COURT: You may do so.

9 (Portion of videotape played.)

10 BY MR. RESTAINO:

11 Q. So Agent Fleischmann, to your knowledge, does this video
12 accurately describe how one can purchase Bitcoin from a
13 commercial exchange?

14 A. It does.

15 Q. And to your knowledge, does it fairly describe how one can
16 use Bitcoin to make purchases?

17 A. It does.

18 Q. At the end, the video describes the minimization of
19 transaction fees paid by a business. Can you explain to a jury
20 how Bitcoin can minimize transaction fees by businesses?

21 A. Yeah. Typically the transaction fees charged by Bitcoin
22 are less than transaction fees charged by credit card
23 companies.

24 Q. Like a Visa or a MasterCard payment, for example?

25 A. Correct.

1 Q. All right. Now, is there another way to buy Bitcoin aside
2 from these commercial exchanges described in that video?

3 A. You can also buy it via the peer-to-peer network.

4 Q. What is a peer-to-peer network?

5 A. So "peer-to-peer" would be two people meeting and
6 exchanging Bitcoin for cash.

7 Q. Does that involve a physical exchange?

8 A. Correct.

9 Q. How can a seller transfer the Bitcoins in that type of
10 exchange?

11 A. You would transfer it via virtual wallets, via phones.

12 Q. And how can a purchaser pay?

13 A. Via cash.

14 Q. What type of identifying information would you expect to be
15 collected in a peer-to-peer exchange?

16 A. Typically no identifying information is collected.

17 Q. So can peer-to-peer exchangers make your work more
18 difficult as an IRS agent?

19 A. Absolutely.

20 Q. Why is that?

21 A. Because it's harder to track. If we don't have any
22 information as far as who bought and/or sold the Bitcoin, it's
23 hard to track. It's almost impossible to track.

24 Q. But the video talks about there being a transparent public
25 ledger. Does that assist you?

1 A. It does. But if we don't know which the -- if we don't
2 know either individual that are part of that transaction,
3 there's no way that we'd be able to figure out anything about
4 that transaction.

5 Q. Now, are you familiar with the transaction rates charged on
6 peer-to-peer transactions?

7 A. I am.

8 Q. And what is the range of rates that can be charged?

9 A. Typically it's about 7 to 10 percent.

10 Q. So do the math again. Same \$1,000. What would the
11 peer-to-peer exchanger earn at 7 percent interest?

12 A. Seventy dollars.

13 Q. Now, through your work with IRS, are you familiar with how
14 that peer-to-peer process works to exchange cash for Bitcoins?

15 A. I am.

16 Q. Have you observed Bitcoin exchanges as part of your case
17 agent work?

18 A. I have.

19 Q. Does your agency provide training for undercover agents?

20 A. They do.

21 Q. Have you seen a training video on peer-to-peer
22 transactions?

23 A. I have.

24 Q. What does that video demonstrate?

25 A. That demonstrates two agents participating in a

1 peer-to-peer Bitcoin exchange.

2 Q. Does it actually show the agents?

3 A. It doesn't show their faces, but it shows -- I mean, you
4 hear their voices.

5 Q. Whose voices are in the video?

6 A. Special Agent Thomas Klepper and Special Agent Donald
7 Ellsworth.

8 Q. And if it doesn't show the agents' faces, what does it
9 show?

10 A. It shows both of their phones and the transaction
11 occurring.

12 Q. I'd like you to take a look on your screen -- I'd like you
13 to take a look on your screen, Agent Fleischmann, at
14 Exhibit 123.

15 Does this look like the beginning of the training
16 video that you have described?

17 A. I don't have anything on my screen.

18 (Pause in proceedings.)

19 THE WITNESS: It does.

20 MR. RESTAINO: Your Honor, at this time I would like
21 to play the excerpted portion of this video for demonstrative
22 purposes, starting at 14 seconds in.

23 MS. WEIDNER: Your Honor, may we have a quick sidebar?

24 THE COURT: All right.

25 (At sidebar on the record.)

1 MS. WEIDNER: This is Maria Weidner.

2 I just want to confirm with the government -- we did
3 not talk about this earlier this morning -- that everything has
4 been properly redacted as we requested yesterday.

5 MR. RESTAINO: Yes, Your Honor. This is Gary
6 Restaino.

7 We'll start it at 14 seconds because it's just for
8 demonstrative purposes here. That will eliminate the "bad guy"
9 reference. This is Exhibit 123, so the drug references have
10 already been redacted from that.

11 MS. WEIDNER: That's good with us.

12 THE COURT: Thank you.

13 (End of discussion at sidebar.)

14 MS. WEIDNER: No objection from the defense, Your
15 Honor, to the government playing this video for demonstrative
16 purposes.

17 THE COURT: You may.

18 MS. WEIDNER: Thank you, Your Honor.

19 (Portion of videotape played.)

20 BY MR. RESTAINO:

21 Q. Who is speaking here at this point in the video?

22 A. That's Special Agent Thomas Klepper, who is one of the
23 undercover agents in this investigation.

24 (Portion of videotape played.)

25

1 BY MR. RESTAINO:

2 Q. And who is speaking here in this video?

3 A. That's Special Agent Ellsworth who, after I went to the
4 cyber unit, the case was -- the case, because it was a Phoenix
5 case, was reassigned to Agent Ellsworth.

6 (Portion of videotape played.)

7 BY MR. RESTAINO:

8 Q. What is the QR code?

9 A. QR codes are found in everyday products. Basically the QR
10 code is what's used to scan to send Bitcoin from one phone --
11 from one wallet to the other wallet.

12 Q. So what is the Blockchain?

13 A. The Blockchain is -- it's readily available on
14 Blockchain.info. It basically lists every Bitcoin transaction
15 that's ever occurred.

16 Q. Is the Blockchain part of the public ledger that the
17 cartoon video described?

18 A. It is.

19 Q. Can you search the Blockchain by name?

20 A. No.

21 (Portion of videotape played.)

22 BY MR. RESTAINO:

23 Q. Does that "common fee" refer to what Agent Klepper was
24 charging Agent Ellsworth?

25 A. No.

1 Q. What does the "common fee" refer to?

2 A. That's going to be the miner transaction fee.

3 Q. So that's in addition to the cost of purchasing the Bitcoin
4 in the peer-to-peer exchange?

5 A. Correct, because Agent -- Agent Klepper charged Agent
6 Ellsworth 15 percent. So Agent Ellsworth gave him one dollar,
7 and he only sent over .85, or 85 cents' worth of Bitcoin.

8 (Portion of videotape played.)

9 BY MR. RESTAINO:

10 Q. Now, Agent Fleischmann, have you ever investigated a
11 peer-to-peer exchanger?

12 A. I have.

13 Q. What made you interested in investigating a peer-to-peer
14 exchanger?

15 A. I think -- I think it was the fact that Agent Ellsworth and
16 I started looking at virtual currency-type cases, and we
17 noticed that there was a bottleneck as far as there was a lot
18 of websites out there that would sell products, illegal
19 products, and how these individuals got their -- and a lot of
20 these products, they charged Bitcoin. And so we were
21 interested in seeing how these individuals were able to get
22 their money into Bitcoin from fiat currency such as cash.

23 Q. Did you, in fact, commence an undercover investigation into
24 a Bitcoin exchanger?

25 A. We did.

1 Q. How did you find the Bitcoin exchanger?

2 A. On localbitcoins.com.

3 Q. What is that?

4 A. It's a -- just a website.

5 Q. What does it show?

6 A. It shows individuals that are willing to buy and sell
7 Bitcoin.

8 Q. So how did you figure out, among all the people on that
9 website, who to approach?

10 A. So, on the localbitcoins website, you can search by area.
11 And so we searched by the Phoenix area. And there was one
12 individual that had received a lot of -- a lot more feedback
13 than all the other individuals. So much like eBay, it kind of
14 operates on a feedback system. At the time, I believe -- I
15 believe it was about 70, and everyone one else was
16 significantly less than that. And that individual was Morpheus
17 Titania.

18 Q. And so let me show you what's been marked for
19 identification purposes as Exhibit 75.

20 Do you recognize the first page of this document?

21 A. I do.

22 Q. How do you recognize it?

23 A. I recognize it by the date, 10-27-2014, which was about the
24 time when we started the investigation -- or started looking at
25 localbitcoins.com.

1 Q. Do you know who obtained this document?

2 A. I did.

3 Q. And is that -- that date is consistent with the timing of
4 your investigation?

5 A. Correct.

6 Q. Is it in substantially the same condition now as when you
7 first saw it?

8 A. It is.

9 Q. And taking a look at the second page of this document, is
10 this also substantially in the same form as when you first saw
11 it?

12 A. It is.

13 MR. RESTAINO: Your Honor, at this time I would move
14 for admission of Exhibit 75 into evidence.

15 MS. WEIDNER: No objection.

16 THE COURT: Exhibit 75 is admitted.

17 You may publish.

18 (Exhibit 75 is received into evidence.)

19 BY MR. RESTAINO:

20 Q. So, what is this document?

21 A. This document is Morpheus Titania's. This is his profile
22 on localbitcoins.com.

23 Q. Were you ever able to identify the name, the true name, of
24 Morpheus Titania?

25 A. We were. On the second page, there's a link to another

1 website, which was some additional information that we used to
2 be able to figure out his true name.

3 Q. And we'll get to that.

4 What was the true name that you were able to figure
5 out?

6 A. Thomas Costanzo.

7 Q. Do you see Thomas Costanzo here in the courtroom today?

8 A. I do.

9 Q. Can you describe where he's sitting and what he is wearing?

10 A. He's sitting in between his two attorneys. He's wearing
11 glasses and a suit.

12 MR. RESTAINO: Your Honor, may the record reflect the
13 identification of the defendant?

14 THE COURT: It may.

15 BY MR. RESTAINO:

16 Q. Now, taking a look at the first page of Exhibit 75, what do
17 the trade limits tell you?

18 A. "Trade limits" tells us that he's willing to do between
19 15,000 and up to 50,000 of -- of U.S. currency for Bitcoin.

20 Q. Why was that important to you in determining who to
21 approach in your investigation?

22 A. Well, one of the things that we were wondering is if he'd
23 be willing to exchange over \$10,000 for Bitcoin and not file
24 any paperwork such as a CTR or an A300.

25 Q. What would you expect to happen if someone walked into a

1 bank and deposited \$15,000 in cash?

2 A. I would expect the bank to file a currency transaction
3 report.

4 Q. Would you expect a peer-to-peer exchanger to file any such
5 report?

6 A. No.

7 Q. Now, is this the first page that came up on your local
8 Bitcoin search?

9 A. No. The first page would have been the Phoenix area, which
10 would have listed all the individuals in the Phoenix area that
11 were willing to conduct Bitcoin transactions.

12 Q. And that's where you were able to find out who had the most
13 trades at the time?

14 A. Correct.

15 Q. Do you see that information on this Exhibit 75?

16 A. No.

17 Q. Were you ever -- did you ever print out the home screen
18 where you found that information?

19 A. Unfortunately, I did not.

20 Q. Why was the number of trades important to you?

21 A. Well, we wanted to see -- I mean, we wanted to select the
22 individual who had -- who had done the most trades and who had
23 the -- the best feedback. So he had over 70-plus -- it said
24 70-plus transactions and 100 percent feedback.

25 Q. Let's go on to second page then.

1 And taking a look at the second page, it says there on
2 the screen that the meeting preferences are at McDonald's and
3 Starbucks.

4 Is that, in fact, consistent with what your
5 investigation revealed?

6 A. Yes.

7 Q. It also notes that Morpheus Titania travels all over for
8 work.

9 Was that consistent with what your investigation
10 revealed?

11 A. Yes.

12 Q. Was the phone number listed on Exhibit 75 consistent with
13 the phone number used by Thomas Costanzo?

14 A. Yes.

15 Q. It says that he loves working with newbies. What do you
16 take "newbies" to mean there?

17 A. People that are new to Bitcoin or are interested in
18 Bitcoin.

19 Q. And based on your listening to undercover recordings in
20 this case, is that consistent with the defendant's approach?

21 A. It is.

22 Q. It says he loves to talk, as well.

23 Is that consistent with what your investigation
24 revealed?

25 A. It is.

1 Q. And finally, it references Mycelium, on the bottom of this
2 highlighted segment. Do you have a limited understanding of
3 what Mycelium is?

4 A. I would say a very limited understanding of Mycelium.

5 Q. And so what is your very limited understanding?

6 A. It's basically that it takes -- it takes the Bitcoin,
7 breaks it up, and then brings it back together in a virtual
8 wallet.

9 Q. Who would have a more sophisticated understanding in this
10 case about what Mycelium is?

11 A. Our undercover -- our undercover agents who use that
12 application.

13 Q. And finally, this page from localbitcoins.com has a web
14 link. Did you click on that link?

15 A. I did.

16 Q. And what did that take you to?

17 A. It took us to a second website, web page.

18 MR. RESTAINO: I'd like to take it off of the
19 publication view then and show just the witness only the
20 digital feed.

21 BY MR. RESTAINO:

22 Q. Taking a look at the first page of Exhibit 76, do you
23 recognize this document?

24 A. I do.

25 Q. How are you able to recognize this document?

1 A. It's the same date, 10-27-2014.

2 Q. Is this also a document that you viewed and printed off the
3 Internet?

4 A. It is. I mean, it's been redacted, but it's -- it's -- the
5 relevant parts appear to be the same.

6 Q. Okay. And that would be my next question. Is this in
7 substantially the same form as when you first printed it out
8 from the Internet?

9 A. Yes.

10 MR. RESTAINO: Your Honor, the government would move
11 for the admission of Exhibit 76 into evidence.

12 MS. WEIDNER: No objection.

13 THE COURT: 76 is admitted.

14 MS. WEIDNER: And may I publish, Your Honor?

15 THE COURT: You may.

16 (Exhibit 76 is received into evidence.)

17 BY MR. RESTAINO:

18 Q. So what is this document generally?

19 A. This basically just describes who he is, what he's about,
20 that he's interested in Bitcoin.

21 Q. How did this document specifically advance your
22 investigation?

23 A. Well, I think it -- it lists that he has -- he doesn't need
24 a license, bank, or permit to conduct Bitcoin transactions,
25 which was significant because one of the things that we were

1 interested in seeing is if he was willing to conduct
2 transactions without filing any -- any paperwork.

3 Q. Did it also help you identify who Morpheus was?

4 A. It did.

5 Q. How?

6 A. So in the -- looks like the third paragraph here that's
7 listed, it lists a mail company called the Direct Hit, and an
8 ex-wife's name. So by Googling that business and that
9 individual's name, I was able to determine that that individual
10 and Thomas Costanzo had a house in Anthem, which I believe is
11 also listed somewhere in this document.

12 Q. Is this the part you're referring to that references
13 Anthem?

14 A. Correct, sir.

15 Q. And did this also help you identify Morpheus as Thomas
16 Costanzo, the defendant here?

17 A. That is correct.

18 Q. So what was the next step?

19 A. The next step for us was writing a limited undercover
20 request, which is a request to conduct an undercover operation
21 within our agency.

22 Q. Now, this document was printed out in October of 2014.
23 Were you ultimately able to conduct test transactions?

24 A. We did.

25 Q. When was the first one?

1 A. The first one was in March of 2015.

2 Q. And what was involved in the test transactions?

3 A. Agent Sergei Kushner met with -- with the defendant and did
4 a Bitcoin transaction in the amount of \$2,000.

5 Q. Was that transaction recorded?

6 A. It was recorded.

7 Q. And in addition to that first one in March of 2015, was
8 there another test transaction conducted?

9 A. Yeah. Agent Kushner did another transaction in May,
10 May 20th of 2015.

11 Q. And was that second transaction recorded?

12 A. It was. And that was in the amount of \$3,000 this time.

13 Q. And were you able to stay up to date on this investigation
14 at this point?

15 A. I was.

16 Q. And what was your role at those first two test
17 transactions?

18 A. Those first two test transactions, I was the case agent
19 assigned to the investigation.

20 Q. Now, following the test transactions, are you familiar with
21 what happened in the investigation?

22 A. I am.

23 Q. How is it that you stayed familiar with it?

24 A. Don and I were in the same office, Don -- Don Ellsworth
25 being the case agent that took over the investigation.

1 Q. And so what happened next after the test transactions?

2 A. Agent Klepper met with the defendant in October,
3 October 7th of 2015. He exchanged \$13,000 for Bitcoin. And
4 then Agent Kushner met with him again November 21st, 2015, and
5 he exchanged \$11,700 in Bitcoin.

6 Q. And again, each of those transactions was recorded and
7 preserved; correct?

8 A. Correct.

9 Q. Now, what happened after November of 2015 from the IRS'
10 perspective?

11 A. So after that, the IRS case continued. And at that point,
12 the DEA, Drug Enforcement Agency, also came on to the
13 investigation. So it became a joint investigation between the
14 two agencies.

15 Q. Were there more undercover transactions with the defendant
16 following November 2015?

17 A. Yes.

18 Q. Who conducted those?

19 A. That would be Task Force Officer Chad Martin.

20 Q. And which agency had the lead as to the undercover buys
21 from that point forward?

22 A. That would be the DEA.

23 Q. Were those transactions as well, to your knowledge,
24 recorded and preserved?

25 A. They were.

1 Q. So when did the investigation wrap up?

2 A. The investigation wrapped up April 20th of 2017, with an
3 arrest and a search warrant. Agent -- Task Force Officer Chad
4 Martin did a 107,000-dollar transaction on that date.

5 MR. RESTAINO: Your Honor, may I just have a moment?

6 THE COURT: You may.

7 (Pause in proceedings.)

8 MR. RESTAINO: Thank you, Your Honor.

9 I have no further questions on direct for Agent
10 Fleischmann.

11 THE COURT: Cross-examination?

12 CROSS-EXAMINATION

13 BY MS. WEIDNER:

14 Q. Good morning, Agent Fleischmann.

15 How are you doing?

16 A. Good morning, ma'am.

17 Q. So, you testified that you have almost 20 years of
18 experience now with the IRS?

19 A. That would be incorrect. I started in 2001.

20 Q. And now we're in 2018, so that would be about 17 years?

21 A. Correct.

22 Q. So that's almost 20.

23 And how long have you been in the cyber unit?

24 A. Since 2015.

25 Q. And upon joining the cyber unit, that is when you began to

1 specialize in virtual currency?

2 A. No, that would be before. So, I mean, in 2014, I started
3 this investigation.

4 Q. Uh-huh. So 2014 was when you began to specialize in
5 virtual currency?

6 A. 2014 is when I started working this investigation in
7 virtual currency.

8 Q. So when did you start to specialize in virtual currency,
9 Agent Fleischmann?

10 A. I wouldn't say it's a specialty, but in 2014 is when I
11 started working on this investigation.

12 Q. So when you came on to this investigation, you were
13 unfamiliar with virtual currency?

14 A. I was learning about virtual currency at that time.

15 Q. When did you begin to learn virtual -- when did you begin
16 to learn about virtual currency in your field, Agent?

17 A. 2014.

18 Q. Now, you know that Bitcoin has been around since 2010,
19 about?

20 A. Correct.

21 Q. And to your knowledge, Congress has not passed legislation
22 regarding Bitcoin?

23 A. That's my understanding.

24 Q. And Congress has not provided us with a legal definition of
25 Bitcoin.

1 MS. WEIDNER: Objection, Your Honor. Goes to a legal
2 conclusion. Argumentative.

3 THE COURT: I'll allow him to answer, if he knows.

4 THE WITNESS: I do not know.

5 BY MS. WEIDNER:

6 Q. You mentioned the Blockchain earlier, and you said that it
7 was -- it was open and transparent; correct?

8 A. The Blockchain is available on the Internet.

9 Q. And so anyone can access it --

10 A. Correct.

11 Q. -- correct?

12 And the IRS can access it?

13 A. Correct.

14 Q. But you also testified that it can be difficult to analyze.

15 A. Correct, because there's no names associated with any of
16 the Bitcoin wallets that are on there; no names, addresses,
17 Social Security numbers, date of births.

18 Q. Yes.

19 And likewise, Bitcoin is not impossible to track, but
20 it's difficult for the IRS to track; correct?

21 A. Correct.

22 Q. So it's not an anonymous kind of exchange. It's
23 pseudomonas?

24 A. That's correct.

25 Q. You testified about commercial exchanges. These commercial

1 exchanges, they typically have high volume in the sense of
2 having many accounts.

3 A. I wouldn't know. I don't know.

4 Q. So a commercial exchange like Coinbase could have only one
5 account?

6 A. I would assume that they have more than one account. But
7 specifically as far as how many accounts, I can't speak to
8 that.

9 Q. So that is not part of the work that you did in preparation
10 for this undercover operation. You -- you basically knew how
11 commercial exchanges functioned, but not whether or not or how
12 much they were used?

13 A. That's correct.

14 Q. But it is safe to say that with the commercial exchange,
15 any user would be entrusting their information to the exchange?

16 A. Correct.

17 Q. They would be entrusting their name?

18 A. Correct.

19 Q. Their bank account number possibly?

20 A. Correct.

21 Q. Their Social Security number possibly?

22 A. Correct.

23 Q. And also potentially the value of the Bitcoin they've
24 invested in.

25 A. Correct.

1 Q. Now, as someone who has spent some time in the cyber unit
2 focusing on virtual currencies, you've heard that there have
3 been significant security breaches at some major currencies.

4 A. Specifically what are you referring to?

5 Q. Security breaches at major exchanges that resulted in the
6 loss of hundreds of thousands, if not millions, of account
7 holders' holdings.

8 A. Can you be more specific as far as which exchange?

9 Q. Yes.

10 Are you familiar -- you're familiar with the
11 January 2015 breach of Bitstamp for 5 million?

12 A. Yes.

13 Q. Of the 460 million-dollar breach at Mount Box in March of
14 2014?

15 A. Correct.

16 Q. And the 250,000-dollar breach at Bitfloor in September of
17 2012?

18 A. I don't think I'm familiar with that one.

19 Q. I see. But you are familiar with Bitstamp and Mount Box?

20 A. Yes.

21 Q. And Bitstamp and Mount Box are situations where a
22 commercial exchange, as a result of a security breach, lost
23 substantial customer value and information?

24 A. Correct.

25 Q. You had also mentioned that you specialized in data

1 breaches in the cyber unit.

2 A. That's one of the investigations that I have.

3 Q. And data breaches don't just happen in -- with Bitcoin
4 exchanges, though clearly they have in the past?

5 A. Can you rephrase your question?

6 Q. Yes.

7 Data breaches don't just happen with Bitcoin
8 exchanges; correct?

9 A. I wouldn't be able to answer that.

10 Q. I'll ask it a different way.

11 There have been other significant data breaches. For
12 example, you're familiar with the breach of personal
13 information with -- in the federal government with the Office
14 of Personnel Management?

15 MS. WEIDNER: Objection, Your Honor. Relevance.

16 THE COURT: I'll allow it.

17 THE WITNESS: Yes.

18 BY MS. WEIDNER:

19 Q. You're familiar with the significant data breach of
20 individuals' personal information through the major credit
21 reporting company Equifax?

22 A. Yes.

23 Q. And you are familiar with -- with customer credit
24 information taken by malicious hackers from Target and Home
25 Depot, for example?

1 A. Yes, I'm familiar with that.

2 Q. And so there is an interest an individual these days might
3 have in protecting their personal information?

4 MS. WEIDNER: Objection. Calls for speculation.

5 THE COURT: Overruled.

6 THE WITNESS: (Pause.)

7 THE COURT: You may answer.

8 THE WITNESS: Oh. I'm sorry.

9 Can you repeat the question?

10 MS. WEIDNER: Yes.

11 BY MS. WEIDNER:

12 Q. So these days, an individual has an interest in protecting
13 their personal information?

14 A. Correct.

15 Q. And one way to protect one's personal information is to
16 assume responsibility for it?

17 A. That's correct.

18 Q. And one way to assume responsibility for your own
19 information is not to go through a commercial exchange?

20 A. That would be one way.

21 Q. A peer-to-peer option allows for exchange while maintaining
22 control of your own information?

23 A. That's correct.

24 Q. And maintaining control of the security of the value you
25 purchase when you purchase, for example, Bitcoin?

1 A. Correct.

2 Q. Because that video that we showed earlier, it mentioned
3 that a Bitcoin exchange is irrevocable?

4 A. Correct.

5 Q. And that means that once the exchange goes through, it
6 can't be undone, can it?

7 A. That's correct.

8 Q. That means if someone accidentally sends to the wrong
9 address, they can't get it back?

10 A. You'd have to try to reverse -- reverse it or redo the
11 transaction.

12 Q. But it would be difficult --

13 A. Correct.

14 Q. -- and you might not get it back.

15 A. Correct.

16 Q. In taking that example a step further, if your value is
17 stolen by malicious other individuals, hackers, it makes it
18 very hard to get your Bitcoin back.

19 A. Well, it could be stolen. I mean, it could be stolen in a
20 peer-to-peer. You get ripped off.

21 Q. It could be. And that's -- that's a very good observation,
22 because not every peer-to-peer trader is necessarily
23 trustworthy?

24 A. I mean, you could get ripped off. Yeah.

25 Q. And so that -- that's part of the reason why the reviews

1 would be important for someone looking to do a peer-to-peer
2 trade?

3 A. Well, we were looking for who would do -- who would be
4 willing --

5 Q. That wasn't the question I asked you.

6 Someone looking to do a peer-to-peer trade wants to
7 check out reviews of Bitcoin traders presumably?

8 A. Correct.

9 Q. And someone wanting to trade their hard-earned money for
10 Bitcoin wants to make sure they're not going to get ripped off.

11 A. That would be speculative -- I mean, speculative, though.
12 Anybody could rip you off.

13 Q. That's -- the government gets to object.

14 But -- let's see.

15 I wanted to back up.

16 On the issue of -- of getting ripped off, and as a
17 customer having a good experience, you're familiar with Yelp?

18 A. Yes.

19 Q. And Yelp is a website wherein individuals review
20 restaurants or other services; correct?

21 A. That's my understanding. I don't use it that frequently.

22 Q. And when one is looking for a restaurant, one doesn't go
23 for the one-star?

24 A. Most likely not.

25 Q. One wants to go for the five-star?

1 A. Sure.

2 Q. That's pretty much true across the board when we are
3 looking to get the best value for our money. We want the best
4 quality and the best service.

5 A. Correct.

6 Q. And that is the function of the reviews on localbitcoin.

7 A. Is that a question or...

8 Q. That is a question.

9 The purpose of the reviews on localbitcoin is to
10 provide potential purchasers of Bitcoin with a look at how
11 sellers are rated.

12 A. Correct.

13 Q. I wanted to ask you. You mentioned earlier about banks and
14 bank accounts. It's not required for individuals in this
15 country to maintain bank accounts; correct?

16 A. Correct.

17 Q. If we wanted to, we could store our money in our mattress
18 or, really, anywhere else.

19 A. That's correct.

20 Q. And the Blockchain, though, it can be hard to decipher.
21 It's -- it's not illegal, is it?

22 A. The Blockchain is public --

23 Q. The Blockchain.

24 A. -- it's publicly available.

25 Q. Yes. But it's hard to decipher, but it's not illegal;

1 correct?

2 A. I don't understand your question.

3 Q. The Blockchain has not been -- has not been criminalized.

4 It's not illegal.

5 A. The Blockchain is readily available. So in that instance,
6 no, it would not be illegal.

7 Q. And owning Bitcoin is not illegal?

8 A. Correct.

9 Q. And trading Bitcoin is not illegal?

10 A. Correct.

11 Q. And trading Bitcoin peer-to-peer is not illegal?

12 A. Correct.

13 Q. And the localbitcoins.com website, so it's still up and
14 running --

15 A. Yes.

16 Q. -- it hasn't been shut down.

17 A. It's still up and running.

18 Q. I want to turn now to the investigation aspect of this
19 case.

20 So, in December of 2014, you submitted a request for
21 your undercover operation with the Internal Revenue Service.

22 A. That's correct.

23 Q. And your request was approved?

24 A. Yes.

25 Q. And the purpose of your requested operation was to

1 investigate one Morpheus Titania?

2 A. Correct.

3 Q. And as you already testified, the IRS had identified
4 Morpheus through the localbitcoins.com website?

5 A. Correct.

6 Q. Specifically, the IRS had viewed his profile on
7 localbitcoins?

8 A. Correct.

9 Q. And at the time of your request, IRS intelligence on
10 Morpheus' Bitcoin exchanges was based only on his localbitcoins
11 profile.

12 A. That's correct.

13 Q. The profile advertised him as a Bitcoin trader?

14 A. Correct.

15 Q. Which is someone who buys and sells Bitcoin.

16 A. Yeah. It was based on that, and then on the link that was
17 attached.

18 Q. Yes.

19 Now, I want to revisit Exhibit 75, which is the
20 localbitcoins.com ad that you had printed out.

21 MS. WEIDNER: And can we show Exhibit Number 75 once
22 again to Agent Fleischmann and the jury?

23 I've got it on the ELMO.

24 BY MS. WEIDNER:

25 Q. So this is the first page of Exhibit 75.

1 Do you recognize it?

2 A. Do you mind just going to the bottom so I can see the date?

3 Q. Oh. Sure.

4 A. I just want to be sure this is the same -- yes.

5 Q. There you go.

6 A. Thank you.

7 Q. No problem.

8 So this is the same one that you reviewed with
9 Mr. Costanzo; correct?

10 A. It appears to be the same, correct.

11 Q. And we have trade limits here as 15,000 to \$50,000;
12 correct?

13 A. Correct.

14 Q. Let's look at the second page.

15 And on the bottom of that page, it lists a couple of
16 other ads that can also be accessed on localbitcoins.com.

17 Do you see those?

18 A. Yes.

19 Q. And those are also for Morpheus Titania's ads; correct?

20 A. Correct.

21 Q. And the first one lists a range of \$20 to \$1,500.

22 A. Correct.

23 Q. And the second, 7,000 to \$15,000?

24 A. Yep.

25 Q. So he was willing to do trades for very small amounts, as

1 little as \$20?

2 A. That's the way I read this ad.

3 Q. And up to the \$50,000 that's on the first page.

4 A. Correct.

5 Q. And you mentioned earlier in one of the questions I asked
6 you how the localbitcoins page connected to yet another page
7 of -- that would be the already published Exhibit 76.

8 I'm going to put that one on the ELMO.

9 And you'll note --

10 A. I see the date.

11 Q. Here is the date at the bottom.

12 A. Yeah.

13 Q. Is this the same one that you looked at with Mr. Restaino?

14 A. Appears to be the same one.

15 Q. And let's look through what is contained here.

16 At the top, the first paragraph, it explains the
17 source of the moniker "Morpheus"; correct?

18 A. Specifically where are you referring?

19 Q. The first three lines.

20 It mentions a science fiction movie. It sounds like
21 The Matrix, doesn't it?

22 A. I don't think I ever watched that movie.

23 Q. You're making me feel old.

24 This information, though, the information provided
25 here, it gives us a look at information that Morpheus wanted to

1 share about himself with potential Bitcoin buyers. He tells
2 about his direct mail -- mail business that he had in 2001.
3 You used that to find him; correct?

4 A. Correct.

5 Q. And he even gives the name of the business, Direct Hit?

6 A. Correct.

7 Q. He gives his -- well, he mentioned that the business
8 failed.

9 A. Correct.

10 Q. That he lost his house in the aftermath, and I believe it
11 even says it was in Anthem?

12 A. Correct.

13 Q. And he even gives his then wife's name?

14 A. Correct.

15 Q. And going on, this information -- this page mentions his
16 distrust of the government; his belief that the Federal Reserve
17 is evil?

18 A. Correct.

19 Q. And that he rebuilt a life for himself around Bitcoin.

20 A. Can you show me where that is?

21 Q. If you would look on the second paragraph where he mentions
22 that no one tells him what to do.

23 A. I see where he says: I now mostly sell Bitcoin. I don't
24 see where -- specifically where it states he rebuilt his life.

25 Q. It does not say that. That is a summary.

1 You -- your undercover investigation, it had defined
2 goals; correct?

3 A. That's correct.

4 Q. First was to confirm the identity of Morpheus Titania?

5 A. Correct.

6 Q. And the IRS believed at that point that Morpheus was
7 probably Thomas Costanzo.

8 A. Correct.

9 Q. And that was because his phone number was on the Bitcoin --
10 the local -- let me change that question. That's a poor
11 question.

12 Because of the wealth of information he provided about
13 himself on localbitcoins and the linked page; correct?

14 A. Correct.

15 Q. Second, the IRS wanted to determine whether Morpheus would
16 do a Bitcoin exchange for \$10,000 or more.

17 A. \$10,000 or more without filing any paperwork --

18 Q. Yes.

19 A. -- such as a Currency Transaction Report.

20 Q. That was the second half of my question.

21 And third, the third objective of your investigation,
22 was to see whether Morpheus would conduct a Bitcoin exchange
23 even if an undercover agent said that the cash for the trade
24 was from a specified unlawful activity.

25 A. Correct.

1 Q. Now, specified unlawful activities are also referred to as
2 SUAs?

3 A. That's correct.

4 Q. And -- just basically shorthand; right?

5 A. Correct.

6 Q. And there's actually a very long list of SUAs.

7 A. That's correct.

8 Q. And of all of the SUAs in the universe of those, the IRS
9 chose drug trafficking.

10 A. Correct.

11 Q. Could have chosen murder for hire. Didn't.

12 A. That's correct. We didn't choose murder-for-hire.

13 Q. Didn't choose kidnapping either?

14 A. No.

15 Q. Or arson?

16 A. Correct.

17 Q. Not human trafficking?

18 A. Nope.

19 Q. Not sex trafficking?

20 A. No.

21 Q. Not destruction of an aircraft?

22 A. No.

23 Q. Drug trafficking is probably the least offensive SUA.

24 A. I guess that's open for interpretation.

25 Q. Pardon me?

1 A. I said, that would be open for interpretation. I mean, I
2 don't --

3 Q. Yes. But the IRS chose drug trafficking and not any of the
4 ones I listed; correct?

5 A. Correct.

6 Q. You testified earlier that there were about five in-person
7 meetings conducted between the IRS undercover agents and
8 Morpheus.

9 A. I don't know if I testified to that specific number.

10 Q. There were a number. We can say there were a number. I
11 just counted them up, but --

12 A. Yeah, I think there was four.

13 Q. Okay.

14 A. Four or five, yeah, I believe.

15 Q. At some point during some of the transactions, the
16 undercover IRS agent supposed to make reference to drugs or
17 drug dealing. That was --

18 A. That was one of the listed in our plan of action. But that
19 wasn't on the first meet.

20 Q. Yes.

21 A. I mean, on the first meet it was about building rapport.

22 Q. And the purpose of making that reference was to see if
23 Morpheus would go ahead with the trade anyway.

24 A. Correct.

25 Q. After, of course, a rapport had been established.

1 A. Correct.

2 Q. And by "rapport," you mean that the agent basically formed
3 a -- a trusted relationship with Mr. Costanzo or Morpheus.

4 A. I mean, I would say it's just getting to know each other.

5 Q. And in each of the exchanges that occurred, the undercover
6 IRS agents used actual cash, U.S. currency?

7 A. Correct.

8 Q. But, of course, the undercover agents were not actually
9 drug dealers.

10 A. They were not.

11 Q. Because that was -- that was the ruse.

12 A. Well, they were undercover agents.

13 Q. Right. But that was the ruse. That was -- that was the
14 storyline.

15 A. They were not drug dealers.

16 Q. If you'll just give me a second, I want to make sure that I
17 hit on everything that I wanted to, and then we'll be done.

18 (Pause in proceedings.)

19 BY MS. WEIDNER:

20 Q. One more thing.

21 You mentioned that each of the meetings that was
22 conducted between the undercovers and Mr. Costanzo was
23 recorded.

24 A. I believe so, yes.

25 Q. Was it just audio recorded or also video recorded?

1 A. That I don't know. I believe some were both, and some
2 might have just been audio.

3 Q. But in each instance then, the IRS undercovers were
4 wearing, as they say, a wire?

5 A. I don't necessarily know how to refer to it as wearing a
6 wire. Sometimes -- I don't want to give away our techniques,
7 so to speak --

8 Q. Okay.

9 A. -- but they were recorded.

10 MS. WEIDNER: No further questions.

11 MR. RESTAINO: Your Honor, can we get a sidebar before
12 the redirect?

13 THE COURT: Ladies and gentlemen, why don't we take a
14 break. It's time for a morning break. Take 15 minutes, and
15 then we'll be back and resume redirect testimony.

16 Thank you.

17 COURTROOM DEPUTY: All rise.

18 (Jury leaves the courtroom at 10:28 a.m.)

19 THE COURT: You can step down and take a break while
20 we handle this.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: You need to be back for redirect in 15
23 minutes.

24 THE WITNESS: Okay. Thank you.

25 THE COURT: Mr. Restaino?

1 MR. RESTAINO: Your Honor, this sort of cues up that
2 issue that we've been discussing on when/if the Darknet comes
3 up or anything else, because the defense questioning went
4 towards the absence of predication towards Mr. Costanzo in --
5 it went there in two ways. One, directly, about the choice of
6 the SUA. I very much need to ask Agent Fleischmann now --

7 THE WITNESS: Would you like me to step out?

8 MS. WEIDNER: I would like him to step out, Judge, so
9 as not to cue up any response.

10 THE COURT: Yes. Yes.

11 MR. RESTAINO: I very much am going to need to ask him
12 why the IRS chose drugs. He's been cautioned, he's been talked
13 to about not saying the Darknet, but -- but that's where this
14 comes from is that there is predication that people were using
15 localbitcoins for drug transactions. So I at least am going to
16 ask why drugs. I'm confident the answer won't say -- won't
17 reference the Darknet from what he's said, but we're sort of in
18 a box here.

19 The second problem on this is, there's a gap between
20 the limited undercover request and the actual first undercover,
21 and at that point they know Mr. Costanzo's criminal history.
22 We're not suggesting we need to get into that, but at some
23 point in this case, the defense is going to open the door to
24 that if they continually try to pick at the absence of
25 predication as to why the approach was made to Mr. Costanzo.

1 THE COURT: Well, maybe they will, but they haven't
2 yet.

3 MR. RESTAINO: I'm not disagreeing with that, Your
4 Honor.

5 THE COURT: All right. So we're not getting into the
6 Darknet on redirect.

7 MS. WEIDNER: I do not anticipate that we will. I'm
8 happy to talk to Agent Fleischmann now for the limited purpose
9 of reinforcing that I will not be seeking a Darknet response.

10 THE COURT: That will be fine.

11 MR. RESTAINO: Thank you.

12 THE COURT: Thank you.

13 MS. WEIDNER: Your Honor, actually, I have one quick
14 thing I want to raise now, just based on the testimony of Agent
15 Fleischmann.

16 It appears that the government has already presented
17 expert testimony about Bitcoin and commercial exchanges and
18 peer-to-peer exchanges, and I question the need to have Agent
19 Ellsworth again testify on what Agent Fleischmann already
20 reviewed.

21 THE COURT: I'm going to allow it. I think Bitcoin is
22 not a clear concept. I think that there was some discussion of
23 it during this agent's direct testimony. You can, of course,
24 during the course of the testimony, if you feel it's getting
25 duplicative, you can make that objection. I don't think we're

1 there yet either.

2 MS. WEIDNER: Thank you.

3 (Proceedings in recess at 10:32 a.m.)

4 (Jury enters the courtroom at 10:50 a.m.)

5 (Proceedings resume at 10:53 a.m.)

6 THE COURT: Please be seated.

7 Mr. Restaino, redirect?

8 I do want to remind you, even though I have before,
9 witnesses and lawyers tend to speed up after I've reminded them
10 to slow down a little bit, so I'll ask you -- and I'll ask you,
11 if you would -- be slow and clear, and I appreciate that very
12 much.

13 MR. RESTAINO: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. RESTAINO:

16 Q. Agent Fleischmann, you had the opportunity to speak before
17 the break with the defense counsel; correct?

18 A. Correct.

19 Q. And you disagreed on a few areas with her.

20 A. That's correct.

21 Q. Were you trying to be difficult?

22 A. No, sir.

23 Q. So for example, you were asked if you were familiar with
24 the movie The Matrix. You're really not familiar with that
25 movie?

1 A. Correct, sir. I might have seen bits and pieces of it, but
2 I believe you and I also talked about it, and I think you were
3 surprised as well that I was unfamiliar with that movie.

4 Q. Let's talk about one other area.

5 You've worked for the IRS for how many years?

6 A. Since 2001. July of 2001.

7 Q. You disagreed that was 20 years.

8 A. That's correct.

9 Q. Why?

10 A. Because it's not 20 years.

11 Q. In your 17 or so years of service with the IRS, have you
12 handled different types of cases?

13 A. Yes, sir.

14 Q. You would agree -- would you agree that your virtual
15 currency casework is limited to about four years?

16 A. Correct.

17 Q. How many years of money laundering investigation experience
18 do you have?

19 A. Since I started with -- as a Special Agent, so 2005. So
20 about 13 years.

21 Q. Now, you were also asked about various hacks; correct?

22 A. Correct.

23 Q. Including hacks of exchanges?

24 A. Yes, sir.

25 Q. Let me ask you this: If one purchases Bitcoin from

1 Coinbase, do they have to keep their Coinbase there -- their
2 Bitcoin there?

3 A. No, sir. You can keep it actually on a paper wallet, as
4 well.

5 Q. What does that mean?

6 A. It's basically a physical piece of paper which is -- which
7 is -- is your wallet. So it has the two QR codes. It would
8 have your private code and then a public code. So the public
9 code would be the one, as we saw in the video, that the two
10 agents were sharing in order to transfer Bitcoin from one to
11 the other. The private code would be your own code that you
12 wouldn't want to share because if you share it, then your
13 Bitcoin can basically be stolen. But that's -- that could be
14 just kept on a piece of paper.

15 Q. Now, let's talk about some of the larger hack areas that
16 you were asked about.

17 You're familiar with the fact that there have been
18 hacks and intrusions into various websites; correct?

19 A. Correct.

20 Q. To your knowledge, has that stopped people from using
21 computers?

22 A. No, sir.

23 Q. Has it stopped them from using online commerce?

24 A. No.

25 Q. In your experience as a law enforcement officer, you've

1 heard of bank robberies?

2 A. Yes, sir.

3 Q. Have you heard of armed bank robberies?

4 A. Yes, sir.

5 Q. Do those actions, in your knowledge, cause people to stop
6 putting money in banks?

7 A. No.

8 Q. You were also asked some questions by defense counsel about
9 how you were able to trace Morpheus to Mr. Costanzo; correct?

10 A. Correct.

11 Q. Would it have been easier to identify the defendant if he
12 had used his real name in lieu of "Morpheus"?

13 A. Yes, sir.

14 Q. You were also asked a series of questions about the
15 specified unlawful activity that was chosen; correct?

16 A. Correct.

17 Q. Who chose the specified unlawful activity in this
18 investigation?

19 A. We did.

20 Q. You, meaning you as the case agent?

21 A. Correct.

22 Q. Were there other people involved in that decision in your
23 agency?

24 A. Yeah. I mean, we obviously talked to -- talked to our
25 manager about it. I believe Agent Ellsworth and I were the two

1 that kind of started looking at cyber crime, and so I think we
2 probably discussed it.

3 Q. All right. And you agree you didn't use aircraft
4 highjacking; correct?

5 A. Correct.

6 Q. You didn't use any of the other crimes that defense counsel
7 represented?

8 A. That would be correct.

9 Q. Did you use Hobbs Act extortion?

10 A. No.

11 Q. Did you use wire fraud or mail fraud?

12 A. No, sir.

13 Q. Did you use healthcare fraud?

14 A. No.

15 Q. Why did you choose drugs?

16 A. Well, when our undercovers would meet with the defendant,
17 everybody knows that -- I mean, everyone knows what heroin is.

18 Q. What do you mean by that?

19 A. So, I mean, it's -- it's cut and dry. It's black and
20 white. You know, if you say "heroin" on tape, everyone knows
21 that heroin is an illegal drug.

22 MR. RESTAINO: Your Honor, may I just have a moment?

23 THE COURT: You may.

24 (Pause in proceedings.)

25 MR. RESTAINO: Thank you, Agent Fleischmann.

1 THE COURT: Thank you.

2 BY MR. BINFORD:

3 Q. Prior to serving as a revenue agent, did you do anything
4 else?

5 A. I was employed as a revenue officer with Collection
6 Division of the IRS.

7 Q. What type of training did you receive in order to become a
8 Special Agent?

9 A. I completed Special Agent and criminal investigative
10 training in 1998 at the Federal Law Enforcement Training Center
11 in Georgia.

12 Q. And do you have any specialized assignment at the moment?

13 A. Yes. I -- my special assignment is an undercover agent,
14 and also I have another title, which is a computer
15 investigative specialist. I do computer forensics also for the
16 Criminal Investigation Division.

17 Q. How long have you been working in an undercover capacity?

18 A. Since 2003.

19 Q. And I notice today you're speaking with what appears to be
20 an accent. What is that accent?

21 A. This is Russian accent. I was born in Russia.

22 Q. Now, can anyone become an undercover agent?

23 A. No. Anyone can apply to become undercover agent. However,
24 they have to pass an interview process and to be subjected to
25 psychological evaluation, and pass the training successfully,

1 complete the training successfully.

2 Q. Are you currently assigned to a field office in the United
3 States?

4 A. I'm currently assigned to headquarters in Washington, D.C.,
5 but I work out of New York City field office.

6 Q. Have you done any undercover work here in Arizona?

7 A. Yes, I have.

8 Q. Tell us about that.

9 A. In early 2015, I was assigned an investigation. It was a
10 limited undercover contact investigation. That's how it was
11 classified. And the purpose of that -- the purpose of that
12 assignment was for me to contact individual known as Morpheus
13 Titania and conduct a Bitcoin transaction with him.

14 Q. Did you ever learn the true name of the person you knew as
15 Morpheus Titania?

16 A. Yes, I -- yes, I did.

17 Q. And what was his name?

18 A. Thomas Costanzo.

19 Q. And do you see that individual here in the courtroom today?

20 A. Yes, he's sitting right there.

21 Q. Will you describe him.

22 A. He's wearing a dark jacket, glasses, balding hairline.

23 MR. BINFORD: May -- may the record reflect that the
24 witness has identified the defendant?

25 THE COURT: It may.

1 BY MR. BINFORD:

2 Q. All right. So what was your role in that investigation?

3 A. It was an undercover agent.

4 Q. How were you selected?

5 A. I was selected based on my previous experience with
6 investigations involving Bitcoins, and also due to the fact
7 that I speak Russian, it was believed that I could fit a role
8 for this particular assignment.

9 Q. So, a role. Did you have a specific plan or theme that you
10 were going to go with during your meeting?

11 A. Yes. I prepared for the meeting, and my role was to be
12 business owner, specifically import/export business, which was
13 my cover business for my identity.

14 Q. And let's talk about your plan.

15 It's my understanding that you had several meetings
16 with Mr. Costanzo?

17 A. Yes, I had several meetings.

18 Q. What was your plan going into the first meeting?

19 A. In the first meeting, my plan was basically just to meet
20 Costanzo, to establish rapport, to find out a little bit more
21 information about him. Basically to build a relationship where
22 we can continue working together.

23 Q. Was there a plan at all to introduce a specified unlawful
24 activity at some point?

25 A. There was a plan to introduce specified unlawful activity,

1 but not during the first meeting.

2 Q. Do you recall what the specified unlawful activity was that
3 was selected?

4 A. The activity that was selected was drugs, narcotics;
5 specifically heroin.

6 Q. And why was that selected?

7 A. Because there's no question that heroin is illegal, unlike
8 some other drugs that may be considered acceptable. It's
9 pretty clear that heroin is an illegal narcotic.

10 Q. All right. What did you know about the person you were
11 meeting with before you first contacted him?

12 A. What I -- what I knew about him is what was disclosed to me
13 in the memo that I received with the assignment, and what I
14 learned from looking at Costanzo's web page on
15 localbitcoins.com.

16 MR. BINFORD: All right. At this point, I would like
17 to show the witness what's been previously identified as
18 Exhibit 75, identified and admitted.

19 COURTROOM DEPUTY: Just the witness?

20 MR. BINFORD: We can go ahead and publish it for the
21 jury, as well, with the Court's permission.

22 THE COURT: You may.

23 BY MR. BINFORD:

24 Q. Do you recognize that document?

25 A. Yes. This is Morpheus' or Costanzo's page on

1 localbitcoins.com website.

2 Q. All right. And did you use any information from that
3 profile when you reached out to Mr. Costanzo?

4 A. Yes. His web page showed his phone number, cell phone
5 number, and also showed that he preferred meeting at McDonald's
6 and Starbucks. So I -- useful information was the phone
7 number.

8 Q. How did you first contact Mr. Costanzo?

9 A. I contacted him via text to the phone number that I
10 obtained from localbitcoins.com.

11 Q. Was that the only time that you exchanged text messages
12 with Mr. Costanzo throughout this investigation?

13 A. No, I exchanged numerous text messages with Mr. Costanzo.

14 Q. And were you able to preserve your text message
15 conversations with Mr. Costanzo?

16 A. Yes.

17 Q. How did you do that?

18 A. I downloaded text messages from my phone that I was using,
19 using forensic tools that I have been trained on as a computer
20 investigator specialist.

21 Q. All right.

22 MR. BINFORD: I'd like to show the witness only what's
23 been previously marked for identification as Exhibit 70.

24 BY MR. BINFORD:

25 Q. Agent Kushner, without going into what's contained in that

1 document, do you recommend that -- can you identify that
2 document?

3 A. Yes, this is report of -- my forensic report of the text
4 messages that I downloaded from my cell phone which documents
5 all the text messages between myself and Mr. Costanzo.

6 Q. And do you recall how many pages that document was?

7 A. I believe it was five pages, and the text message is in
8 reverse chronological order.

9 Q. All right. Is that document a fair and accurate accounting
10 of the text messages that you exchanged with Mr. Costanzo
11 throughout the investigation?

12 A. Yes, it is.

13 MR. BINFORD: At this time, I'd move to admit
14 Exhibit 70 and publish for the jury.

15 MR. CAIN: No objection, Your Honor.

16 THE COURT: Exhibit 70 is admitted.

17 (Exhibit 70 is received into evidence.)

18 THE COURT: You may publish.

19 BY MR. BINFORD:

20 Q. Agent Kushner, what are we looking at here on the screen?

21 A. This is just a summary of some of the technical information
22 from my download of the messages.

23 Q. All right. And I think you mentioned previously that the
24 messages were extracted in reverse chronological --

25 A. Yes.

1 Q. What does that mean to us with this document?

2 A. Well, it means the most recent messages will appear first.

3 Q. So if we wanted to look at your first messages, we would
4 have to go --

5 A. You have to go to the last page and look at the very last
6 message.

7 Q. Can you read the information on the screen there?

8 A. Yes. Yes, I can.

9 Q. All right. So what was -- how did you first reach out to
10 Mr. Costanzo?

11 A. On January 27th, 2015 -- excuse me -- I contacted
12 Mr. Costanzo via text message to his phone number, and I
13 explained that I wanted to buy \$3,000 worth of Bitcoins from
14 him.

15 Q. And what were you trying to do there?

16 A. I was attempting to buy Bitcoins from Mr. Costanzo, see if
17 he was willing to conduct the trade.

18 Q. Were you in Arizona at the time?

19 A. No, I was not. I was in New York, and I explained to
20 Mr. Costanzo that I was in New York and I -- obviously not able
21 to give him cash, so I wanted to do a wire at the time.

22 Q. And what did he say?

23 A. Well, first he wasn't sure who I was, so he questioned who
24 am I and how I had found him. So I mentioned that I saw his ad
25 on the localbitcoins. And he asked me if I wanted to do a

1 trade with -- why -- why wouldn't I want to do a trade with
2 someone in New York, and I explained that I would rather deal
3 with someone who is in the area where I lived, and I explained
4 I lived in Chandler, Arizona, and I was only temporarily in New
5 York. So I would be more comfortable working with someone --
6 with one individual.

7 Q. And were you ever able to complete that transaction?

8 A. Not via wire, no.

9 Q. Okay. And now I'm going to zoom in on another part of this
10 document at the top.

11 This is page 5 of Exhibit 70.

12 Do you see when your conversation resumed?

13 A. Excuse me.

14 Yes. On March 17th, 2015, I contacted Mr. Costanzo
15 again via text message to his cell phone number, and I
16 mentioned that I would -- wanted to buy \$2,000 worth of
17 Bitcoins.

18 Q. And did you plan to meet in person that time?

19 A. Yes.

20 Q. And did you eventually meet with Mr. Costanzo?

21 A. Yes, sir. We arranged a meeting at Starbucks in Chandler,
22 Arizona.

23 Q. Do you recall the date of that meeting?

24 A. It was March 20th, 2015.

25 Q. So what did you wear when you showed up for that meeting?

1 A. I believe I was dressed casually, jeans and -- I don't
2 remember specific shirt, but dressed casually for that meeting.
3 I do recall wearing jewelry, gold Rolex, gold chain, gold ring,
4 gold diamond ring.

5 Q. Do you recall what Mr. Costanzo was wearing?

6 A. Not specifically. I just remember he was dressed very
7 casually also.

8 Q. During that meeting, were you carrying or wearing a
9 recording device?

10 A. Yes, I was -- I was carrying a recording device and a
11 transmitting device.

12 Q. And where was -- was that device hidden underneath your
13 clothing?

14 A. Yes, both devices were hidden in pockets in my clothing.

15 Q. Have you had an opportunity to review the audio since that
16 meeting?

17 A. Yes, I have.

18 Q. And did you notice anything about the audio based on where
19 the recording device was placed?

20 A. Well, due to the fact that the devices were in my pocket
21 and the fact that we were meeting outside -- outside in a
22 common area of Starbucks outside, there were a lot of
23 extraneous noises that affected some parts of the recording.
24 Plus, any movement by myself resulted in some static noises
25 during the recording.

1 Q. So it's -- it's not the clearest recording?

2 A. It's not -- it's not. It's not the clearest, but under the
3 circumstances it was the best that could have been
4 accomplished.

5 Q. All right. Have you also had an opportunity to review a
6 transcript that was prepared based on the audio from that
7 meeting?

8 A. Yes.

9 Q. And do you believe that the audio and the transcript are a
10 fair and accurate account of that meeting?

11 A. I do believe so.

12 MR. BINFORD: Your Honor, at this time the government
13 would move to admit what's been previously marked as
14 Exhibit 101, and, too, there are subparts A through R. We move
15 to admit the audio and play the transcripts for the jury,
16 without admitting the transcripts into the record.

17 THE COURT: Any objection?

18 MR. CAIN: No objection, Your Honor.

19 THE COURT: All right.

20 Ladies and gentlemen, you're about to hear a recording
21 that I have -- I am admitting into evidence. Please listen to
22 it carefully. There will be a transcript attached to the
23 recording. However, bear in mind that the recording is the
24 evidence, not the transcript. If you hear something different
25 from what the -- what you believe is in the transcript, what

1 you hear is controlling. You will not have the transcript with
2 you when you go to the jury room, although you will have the
3 recording.

4 (Exhibit 101 is received into evidence.)

5 MR. BINFORD: Thank you, Judge.

6 BY MR. BINFORD:

7 Q. All right. I'm cueing up what's been previously marked as
8 Exhibit 101A.

9 (Portion of audiotape played.)

10 MR. BINFORD: Before I ask you a question, I just want
11 to make sure the volume is turned all the way up on the court
12 system.

13 COURTROOM DEPUTY: I'm turning it up now.

14 Try that.

15 BY MR. BINFORD:

16 Q. The first question I have, so here you've mentioned that
17 you have an import/export business.

18 A. Yes, sir.

19 Q. What are you trying to do there?

20 A. I'm trying to establish -- this is my cover, basically.
21 This is my legitimate business cover for my drug business.

22 Q. All right.

23 (Portion of audiotape played.)

24 Q. All right. And it seems like he is asking you questions at
25 this point. Did you get the impression that he wanted to know

1 what you were doing?

2 A. Yes. He appeared curious about my business.

3 (Portion of audiotape played.)

4 BY MR. BINFORD:

5 Q. You mention a supply there. What -- why are you saying
6 that?

7 A. I said "supplier." Well, I'm sure during this first
8 meeting I'm throwing little hints that perhaps the -- my
9 import/export business is not really what it appears to be,
10 that it's just a cover for something else. So the "supplier"
11 is potentially a drug supplier, but not -- without mentioning.

12 Q. At this point, there's no overt talk about drug activity?

13 A. No, not at all.

14 (Portion of audiotape played.)

15 BY MR. BINFORD:

16 Q. What are you referring to there?

17 A. The Currency Transaction Report, required to be filed on
18 any transaction over \$10,000 -- cash transactions over \$10,000.

19 Q. Is there a reason that you mentioned depositing 10 grand
20 during that conversation?

21 A. I wanted to see -- wanted to see, wanted to gauge if
22 Mr. Costanzo knew of those requirements.

23 Q. Did you get the sense that he did know about that
24 requirement?

25 A. Yes, I did.

1 (Portion of audiotape played.)

2 BY MR. BINFORD:

3 Q. What amount had you set up to purchase from Mr. Costanzo
4 that day?

5 A. \$2,000.

6 Q. When he mentions \$20,000 here, is that important to the
7 investigation?

8 A. Yes.

9 Q. Why?

10 A. Because \$20,000 exceeds the threshold for reporting
11 requirements.

12 (Portion of audiotape played.)

13 MR. BINFORD: All right. At this time I'd like to
14 play what's been previously marked as 101B.

15 (Portion of audiotape played.).

16 BY MR. BINFORD:

17 Q. What was your understanding of his statement, "this is what
18 I do"?

19 A. Well, my understanding was that trading Bitcoins was his
20 only occupation.

21 (Portion of audiotape played.)

22 BY MR. BINFORD:

23 Q. He talks about a meet-up there. Did you end up attending
24 that meet-up?

25 A. Yes, I attended the meet-up the next day, March 21st, 2015.

1 Q. How many people were at that meet-up?

2 A. There were at least four individuals present during the
3 meet-up.

4 Q. Did you have an opportunity during that meet-up to talk to
5 Mr. Costanzo one-on-one at all?

6 A. No, it was a group setting. We didn't talk privately at
7 all during that meeting.

8 Q. So during that meet-up, did you make any attempt to at
9 least further your conversations with Mr. Costanzo about what
10 you were trying to do?

11 A. No, not on November -- not -- I'm sorry -- not on
12 March 21st.

13 Q. All right.

14 (Portion of audiotape played.)

15 BY MR. BINFORD:

16 Q. So you dropped the "IRS" there. What --

17 A. Well, I mean --

18 Q. -- what was that?

19 A. -- he appears to -- again, I wanted to gauge his feeling
20 for the government, for the authority. And he'd already
21 mentioned that he believes government is, in his words, you
22 know, is a bunch of criminals. So I wanted to see, to further
23 that discussion.

24 MR. BINFORD: And -- I'll just play it.

25 (Portion of audiotape played.)

1 BY MR. BINFORD:

2 Q. Who is he talking about there?

3 A. He's talking about the Internal Revenue Service.

4 (Portion of audiotape played.)

5 BY MR. BINFORD:

6 Q. You said "good luck." Give us a frame of reference for
7 that. What were you trying to convey?

8 A. Well -- well, with the Bitcoin, it's very hard to trace the
9 transaction, basically.

10 (Portion of audiotape played.)

11 BY MR. BINFORD:

12 Q. So here you say, everybody else takes -- what are you
13 referring -- who is "everybody else"?

14 A. Well, most listings on localbitcoins.com advertise
15 transactions of maybe up to \$2,500. There were very few that
16 appeared to be similar to Costanzo's where he was willing to
17 trade up to \$50,000 worth of Bitcoins.

18 Q. And you were aware that he was willing to do smaller
19 amounts as well; right?

20 A. Yes. He had several listings on the localbitcoins. Some
21 of them for much smaller amounts.

22 (Portion of audiotape played.)

23 BY MR. BINFORD:

24 Q. Did he one-up you there?

25 A. I'm sorry?

1 Q. Did -- did he increase the amount on you there?

2 A. Yes. I mentioned 20,000, 30,000, and he said, you know, go
3 up to 50,000.

4 Q. Did he say more than 50,000?

5 A. Hundred. Hundred thousand.

6 (Portion of audiotape played.)

7 BY MR. BINFORD:

8 Q. All right. So he talks about a personal banker there.
9 What did you understand that to mean, based on his prior
10 statements?

11 A. Well, I understood that he had -- had an ability to come up
12 with a large amount of Bitcoins very quickly, if it was
13 necessary. He previously mentioned he didn't have a bank
14 account, but, you know, he said he has a banker who was able to
15 provide Bitcoins to him.

16 Q. All right. And after the small talk and the conversation,
17 did you eventually get around to the business?

18 A. Yes. After we talked for a while, we got to the business
19 of actually me purchasing Bitcoins from Mr. Costanzo.

20 MR. BINFORD: All right. At this point I would like
21 to play Exhibit 101C.

22 (Portion of audiotape played.)

23 BY MR. BINFORD:

24 Q. Talks about scanning a code. What -- what type of code is
25 that?

1 A. It's a QR code. I don't know how to explain the QR code.
2 But it is a code that can be scanned with a smartphone and --
3 to initiate the transfer of Bitcoins, whether to send or
4 receive.

5 Q. Did you fly out here to testify?

6 A. I'm sorry?

7 Q. Did you fly out here to testify?

8 A. Yes.

9 Q. And did you get a boarding pass when you flew out?

10 A. Yes.

11 Q. Was there any code on that boarding pass?

12 A. It's similar, yes. A secure code that would appear on a
13 boarding pass. It's very common in a lot of other
14 transactions, aside from Bitcoin.

15 Q. Thank you.

16 (Portion of audiotape played.)

17 BY MR. BINFORD:

18 Q. Is that important to your investigation?

19 A. Yes, obviously. It appears that he's been successful
20 and -- with the Bitcoin trade, and had multiple transactions
21 resulting, you know, multimillion-dollar business, as he
22 mentions.

23 (Portion of audiotape played.)

24 BY MR. BINFORD:

25 Q. Did you end up completing this transaction through

1 localbitcoins?

2 A. Yes.

3 MR. BINFORD: I'm now pulling up Exhibit 101D.

4 (Portion of audiotape played.)

5 BY MR. BINFORD:

6 Q. Would you say he's enthusiastic about Bitcoin?

7 A. Very enthusiastic. I mean, he went on for a while
8 explaining the benefits of Bitcoin.

9 Q. Is your understanding that there's nothing illegal about
10 owning Bitcoin?

11 A. No, there's nothing illegal about owning Bitcoins.

12 Q. And nothing illegal about buying Bitcoin?

13 A. Nothing illegal about buying Bitcoins, no.

14 Q. All right.

15 MR. BINFORD: I'm now going to play Exhibit 101E.

16 (Portion of audiotape played.)

17 BY MR. BINFORD:

18 Q. Why do you mention a bank there?

19 A. Well, I wanted to see what -- what happens with the cash
20 that he receives for Bitcoins.

21 (Portion of audiotape played.)

22 MR. BINFORD: The next clip is 101F.

23 (Portion of audiotape played.)

24 BY MR. BINFORD:

25 Q. What are you doing there?

1 A. Throwing little hints that -- that perhaps my business --
2 my import/export business is not what it appears to be.
3 Because in the beginning of the conversation, I mentioned that
4 I do business mostly were Latvia and Russia, you know, import
5 and export. So now I'm talking about wiring money south of the
6 border.

7 Q. How did he react?

8 A. Didn't faze him at all.

9 Q. How would you expect someone else to react in that
10 situation?

11 A. Well, expect that --

12 MR. CAIN: Objection. Relevance.

13 THE COURT: Overruled on relevance.

14 You may answer.

15 MR. CAIN: Objection. Calls for speculation.

16 MR. BINFORD: I'll withdraw the question, Your Honor.

17 BY MR. BINFORD:

18 Q. How would you react if someone was talking to you and
19 telling you about their import/export business related to
20 Russia and Latvia, and then mentioned money coming from Panama
21 or Mexico?

22 MR. CAIN: Objection. Relevance.

23 THE COURT: Overruled.

24 You may answer.

25 THE WITNESS: I would be at least curious. I would

1 ask what does it have to do with -- what does it have to do
2 with the business you're doing with Russia and Latvia, if
3 that's what you're claiming your business is.

4 BY MR. BINFORD:

5 Q. Did he ask more about those South America or Central
6 America connections?

7 A. No, not at that time.

8 (Portion of audiotape played.)

9 BY MR. BINFORD:

10 Q. What did he say there?

11 A. So he says basically it's untraceable.

12 Q. And that's after you mentioned that --

13 A. After I mentioned Panama.

14 Q. Did you get the sense that he was stressing that point?

15 A. Yes, he -- I guess at this point he believed that it was
16 important to me to be discreet, and he was stressing that
17 Bitcoin is untraceable and anonymous.

18 Q. Is that something you would expect to hear if you were
19 talking about a legitimate business?

20 A. No.

21 (Portion of audiotape played.)

22 BY MR. BINFORD:

23 Q. When he mentioned that he didn't keep any records, was that
24 important to your investigation?

25 A. Yes, absolutely.

1 Q. And was that related to one of the goals of this
2 investigation?

3 A. Yes.

4 Q. What was that goal?

5 A. Was to determine if Mr. Costanzo keeps any records relating
6 to large -- large cash transactions.

7 MR. BINFORD: At this time, I'm going to play
8 Exhibit 101G.

9 (Portion of audiotape played.)

10 BY MR. BINFORD:

11 Q. Do you recall him telling you those rules?

12 A. Yes, he mentioned them several times.

13 (Portion of audiotape played.)

14 BY MR. BINFORD:

15 Q. If he knew at that time you were a law enforcement officer,
16 would he be violating his own rules?

17 A. I believe he would not be continue -- he would not be
18 talking to me at this time.

19 MR. BINFORD: The next clip I have is 101H.

20 (Portion of audiotape played.)

21 MR. BINFORD: The next clip is 101I.

22 (Portion of audiotape played.)

23 BY MR. BINFORD:

24 Q. Did he ever ask for your last name?

25 A. No.

1 Q. Did he ever ask to see your driver's license?

2 A. No.

3 Q. Did he ask whether you had a family?

4 A. No. Not that I recall.

5 MR. BINFORD: All right. The next clip is 101J.

6 (Portion of audiotape played.)

7 BY MR. BINFORD:

8 Q. Do you recall what rate he charged you during this
9 transaction?

10 A. It was approximately -- approximately 10 percent.

11 (Portion of audiotape played.)

12 BY MR. BINFORD:

13 Q. He mentions an address to you there. Is he talking about
14 your physical address?

15 A. No, he's talking about Bitcoin address, which is
16 combination -- often a combination of letters and numbers which
17 is used to identify a Bitcoin wallet, and is used to either
18 send or receive Bitcoins.

19 Q. He also mentioned something called Mycelium. Do you know
20 what "Mycelium" is?

21 A. Yes, Mycelium is an application which can be downloaded on
22 the smartphone, and it's essentially a Bitcoin wallet which
23 allows you to send or receive Bitcoin -- Bitcoins and store
24 them in your smartphone.

25 (Portion of audiotape played.)

1 BY MR. BINFORD:

2 Q. What are you doing there?

3 A. Again, I'm following with the same theme. I'm trying to
4 set the stage for later on to do drug talk, and basically
5 trying to indicate that my suppliers are -- the people I deal
6 with are serious, you know, people, that they're not being very
7 happy if I didn't get the money that I owe them.

8 Q. Did you ever get a sense that he thought you were joking or
9 boasting?

10 A. No, no.

11 (Portion of audiotape played.)

12 BY MR. BINFORD:

13 Q. Did you ever tell him that you had no income?

14 A. No.

15 (Portion of audiotape played.)

16 BY MR. BINFORD:

17 Q. What did you take him to mean when he said you could lower
18 your visibility?

19 A. Well, basically to be, you know, to be more discreet, more
20 anonymous.

21 MR. BINFORD: This next clip is 101K.

22 (Portion of audiotape played.)

23 BY MR. BINFORD:

24 Q. What's going on here?

25 A. Counting money.

1 Q. How much cash did you give him that day?

2 A. \$2,000.

3 MR. BINFORD: The next clip is 101L.

4 (Portion of audiotape played.)

5 BY MR. BINFORD:

6 Q. Is that important to your investigation?

7 A. Yes.

8 Q. Why?

9 A. Because \$90,000, again, it's an amount that's -- greatly
10 exceeds the reporting threshold for cash transactions.

11 (Portion of audiotape played.)

12 BY MR. BINFORD:

13 Q. So earlier you testified that you were aware he did lower
14 amounts. Is his statement there consistent with that?

15 A. Yes.

16 Q. Were you surprised that he engaged in transactions with
17 lower amounts?

18 A. Somewhat, yes.

19 MR. BINFORD: This is clip 101M.

20 (Portion of audiotape played.)

21 BY MR. BINFORD:

22 Q. Why -- why are you telling -- why are you asking him
23 whether it can be traced to you?

24 A. Well, again, I would be concerned if -- if law enforcement
25 found out what my true business was, I don't want any --

1 anything come back to me, to myself.

2 Q. But again at this point, you haven't mentioned any drugs or
3 other illegal activity?

4 A. No, I did not, but it was, again, throwing hints.

5 Q. Did he seem receptive to those hints?

6 A. Again, it didn't seem to faze him, and he just continued.
7 He seemed very receptive to -- when I mentioned I wanted
8 discretion or I wanted to -- not -- for the transaction not to
9 be traced to me, he just continued explaining how it would be
10 very difficult to trace those transactions to myself.

11 (Portion of audiotape played.)

12 MR. BINFORD: This is clip 101N.

13 (Portion of audiotape played.)

14 BY MR. BINFORD:

15 Q. What are those letters?

16 A. Basically those are four letters that are part of the
17 Bitcoin address. And again, Bitcoin address, wallet address is
18 too long -- it's very long. It's over, perhaps, 20, 25
19 characters. So -- and he's reading off the last four digits of
20 the Bitcoin address, just so we -- this way he doesn't have to
21 read the whole thing. We can just confirm it's the correct
22 address. I mean, each address is so unique that it's
23 impossible to have the same letters -- you know, any four
24 letters repeated in any given address combination.

25 (Portion of audiotape played.)

1 BY MR. BINFORD:

2 Q. Did you ever tell him you didn't want anyone to triangulate
3 your position?

4 A. I didn't say I didn't want anybody to triangulate my
5 position. I did say I didn't want it to be traced to me.

6 Q. So was that consistent with your inquiry?

7 A. Yes.

8 (Portion of audiotape played.)

9 BY MR. BINFORD:

10 Q. What do you think he was trying to stress with you at that
11 point?

12 A. Well, what he's trying to explain during this conversation
13 is that if -- if I use localbitcoins -- localbitcoin.com wallet
14 for transactions, the Bitcoin -- the address for each
15 transaction will be different, so it would be so much more
16 difficult to trace.

17 MR. BINFORD: This is clip 1010.

18 (Portion of audiotape played.)

19 BY MR. BINFORD:

20 Q. Earlier in the conversation it seemed like he wanted to
21 know a lot about your business. Did you feel that he still
22 wanted to know more about your business at this point?

23 A. No, does not appear that he is interested anymore.

24 (Portion of audiotape played.)

25

1 BY MR. BINFORD:

2 Q. When he says they scrambled it all up, what's he talking
3 about? Who is he talking about?

4 A. He's talking about the transaction at localbitcoins.com.

5 (Portion of audiotape played.)

6 BY MR. BINFORD:

7 Q. Why -- why do you mention that?

8 A. Well, again, I'm very concerned that I don't want anything
9 to be traced to me, obviously. And again, he's emphasizing
10 that if I set up, you know, if myself and supplier sets up at
11 localbitcoins.com, it would be so much more difficult to trace
12 the transactions because Bitcoins' address changes each time.

13 (Portion of audiotape played.)

14 MR. BINFORD: All right. This next clip is 101P.

15 (Portion of audiotape played.)

16 BY MR. BINFORD:

17 Q. He can do what?

18 A. He can do, you know, up to 50 grand. Up to \$50,000.

19 (Portion of audiotape played.)

20 MR. BINFORD: This next clip is 101Q.

21 (Portion of audiotape played.)

22 BY MR. BINFORD:

23 Q. Did he ask you why you might get arrested?

24 A. No, he did not.

25 Q. Did he ask you why you -- why you might want to stay out of

1 trouble?

2 A. He did not ask me.

3 (Portion of audiotape played.)

4 BY MR. BINFORD:

5 Q. Did he at any point tell you his real first name?

6 A. No.

7 Q. Did he at any point tell you his real last name?

8 A. No.

9 MR. BINFORD: This is clip 101R.

10 (Portion of audiotape played.)

11 BY MR. BINFORD:

12 Q. What are you -- what are you saying there about engine
13 blocks?

14 A. Well, saying engine blocks, he describes -- you know, when
15 you take the car apart and the engine is by itself, you'd be
16 surprised what you can hide inside.

17 Q. So you're talk -- talking about actually hiding items
18 inside?

19 A. Engine blocks, yes.

20 (Portion of audiotape played.)

21 BY MR. BINFORD:

22 Q. All right. At any point during that -- well, did you
23 ultimately complete the -- the Bitcoin for cash transaction
24 that day?

25 A. Yes.

1 Q. And how much cash did you give him?

2 A. \$2,000 in cash.

3 Q. And what was the rate you paid for the Bitcoin?

4 A. I don't recall the -- well, the fee he charged me was
5 approximately 10 percent above the going rate at the time. I
6 do not recall the rate at the time.

7 Q. Thank you. And that's what I meant to ask --

8 A. Yes.

9 Q. -- was the fee above the market rate.

10 A. Yes.

11 Q. At any point did Mr. Costanzo ask for your full name?

12 A. No, he did not.

13 Q. Did he ask for your street address?

14 A. No.

15 Q. Did he ask for your Social Security number?

16 A. No.

17 Q. Your Taxpayer Identification Number?

18 A. No.

19 Q. Did he ask to see your identification?

20 A. No.

21 Q. After that meeting, did he send you any text messages that
22 day?

23 A. Yes. I believe so.

24 Q. And what did he send you?

25 A. I have to -- I don't recall, but I have to --

1 Q. If I pull up Exhibit 70 that's already been admitted, would
2 that refresh your recollection?

3 A. Yes, it will.

4 Q. Is there a message there?

5 A. Yes, he's sending me his email address.

6 Q. And what was his email address?

7 A. It was morpheus@titanians.org.

8 MR. BINFORD: Thank you.

9 Judge, I think it's getting close to noon. I don't
10 know if this is a good stopping point.

11 THE COURT: If it's a good stopping point for you,
12 it's a nice stopping point for lunch.

13 Ladies and gentlemen, please remember the admonitions:
14 Don't discuss this case. Don't let anybody else discuss this
15 case.

16 Have an enjoyable lunch. We'll resume at 1:15.

17 Thank you very much.

18 (Jury leaves the courtroom at 11:57 a.m.)

19 THE COURT: I'll see you after lunch.

20 THE WITNESS: Thank you.

21 THE COURT: Anything?

22 MR. RESTAINO: Just a quick technical point on those
23 jury instructions, Your Honor. I was remiss in not printing
24 out the entire portion from the Ninth Circuit website.

25 Can we have until tomorrow at 8:30 to get those in to

1 your JA?

2 THE COURT: Yes.

3 MR. RESTAINO: Thank you.

4 (Proceedings in recess at 11:58 a.m.)

5 (Jury enters the courtroom at 1:17 p.m.)

6 (Proceedings resume at 1:25 p.m.)

7 (SERGEI KUSHNER resumes witness stand.)

8 THE COURT: Please be seated.

9 Thank you. Hope you had a pleasant lunch.

10 Ready to resume?

11 MR. BINFORD: May I approach the lectern, Your Honor?

12 THE COURT: You may.

13 DIRECT EXAMINATION (continued)

14 BY MR. BINFORD:

15 Q. Welcome back, Agent Kushner.

16 A. Thank you.

17 Q. I believe, when we left off, you had told us that you had
18 wrapped up the March 20th meeting; is that correct?

19 A. That's correct.

20 Q. Do you recall when you set up the next meeting with
21 Mr. Costanzo?

22 A. I believe I talked to him by mess -- text message again. I
23 have to refresh my memory from the text messages.

24 Q. All right. At this point I'm going to pull up what's been
25 previously admitted as Exhibit 70, and I'm on page 4 of that

1 document.

2 A. Yes. I talked to him on May 13th, 2015, and I informed him
3 that I wanted to buy \$3,000 worth of Bitcoins.

4 Q. Now, I notice there are date and time stamps on this
5 document, and it says: UTC plus zero.

6 Do you understand what that means?

7 A. Yes. "UTC" stands for Universal Coordinated Time. It's
8 similar to Greenwich Mean Time. It's a universal civil time
9 standard. To adjust for Phoenix, you have to subtract seven
10 hours from the given -- from the stated time.

11 Q. So the times listed next to the messages on this entire
12 document are seven hours off?

13 A. Seven hours off. So to determine the correct time, you
14 have to subtract seven from all the times that are listed in
15 this document.

16 Q. All right. So you reach out to him via text message, you
17 tell him you want to do a deal for 3,000.

18 Did you end up meeting with him?

19 A. Yes. We met -- we arranged a meeting again at the same
20 Starbucks that we met on previous occasion.

21 Q. And during that meeting, were you wearing a recording
22 device?

23 A. Yes.

24 Q. And have you had an opportunity to review that -- the audio
25 recording from that meeting?

1 A. Yes, I -- yes, I have.

2 Q. And have you also reviewed a transcript that was prepared
3 based on that audio?

4 A. Yes, I did.

5 Q. And was the audio and the transcript, were they both a fair
6 and accurate account of that meeting?

7 A. Yes.

8 MR. BINFORD: Your Honor, at this time I'd like to
9 introduce into evidence Exhibit 102. There are sections A
10 through J which are excerpts from that meeting. I'd like to
11 introduce the audio and display the transcript for the jury.

12 MR. CAIN: No objection.

13 THE COURT: All right. Exhibit 102 admitted.

14 (Exhibit 102 is received into evidence.)

15 THE COURT: You may remember, as I told you last time,
16 that what you will see is the audio, together with the
17 transcript portion. What you hear is the admitted exhibit. So
18 if you hear something different than what the transcript
19 indicates, that's what you should accept.

20 MR. BINFORD: Thank you, Judge.

21 BY MR. BINFORD:

22 Q. One last question.

23 Before that May 20th meeting, was that -- how was that
24 transaction completed; what software did you use?

25 A. I used Mycelium wallet.

1 Q. I'm sorry. For the March 20th meeting.

2 A. I'm sorry. For March 20th?

3 Q. Yes.

4 A. I apologize. For March 20th, I used the localbitcoins.com
5 wallet.

6 Q. All right. I want to start the audio from the May 20th
7 meeting right now. This is Exhibit 102A.

8 (Portion of audiotape played.)

9 BY MR. BINFORD:

10 Q. So this audio sounds a little different than what we
11 previously heard. What -- what type of -- or, I guess, where
12 was the recording device placed this time?

13 A. It was -- I cannot disclose specifically, but I wore
14 different -- I try not to wear the same attire to each meeting,
15 so I used a different attire. It was in a different pocket.
16 So it was just -- that's the way the quality of the recording
17 turned out based on what I was wearing and based on extraneous
18 noises from outside.

19 Q. Is this a covert recording device?

20 A. Yes, it's covert, obviously. Yes.

21 Q. All right. Since you mentioned wearing different clothes,
22 do you recall what you were wearing at this meeting?

23 A. Again, I was -- usually for meetings I dress very casually,
24 perhaps jeans, maybe a Polo shirt. But I do wear flashy
25 jewelry and, again, gold Rolex watch, gold chain, gold --

1 diamond ring -- gold diamond ring, bracelet.

2 Q. Thank you.

3 (Portion of audio played.)

4 BY MR. BINFORD:

5 Q. Do you know what the Bhakti Fest is?

6 A. I'm not familiar with it, but it's something to do with
7 some spiritual things maybe.

8 (Portion of audiotape played.)

9 BY MR. BINFORD:

10 Q. All right. For this -- this May 20th meeting, you said you
11 were at the Starbucks. Where were you sitting at the
12 Starbucks?

13 A. In outside area.

14 MR. BINFORD: Okay. This next clip is--on 02B.

15 (Portion of audiotape played.)

16 BY MR. BINFORD:

17 Q. When he says that's her, what's he -- what's he doing?

18 A. He's showing me a picture on his smartphone.

19 (Portion of audiotape played.)

20 BY MR. BINFORD:

21 Q. What's a -- do you know what a deity is?

22 A. It's a -- some kind of -- it's -- not 100 percent sure, no.

23 Q. Was he showing you anything when he was --

24 A. Showed me pictures on a smartphone. I don't recall what
25 those exact pictures were.

1 (Portion of audiotape played.)

2 BY MR. BINFORD:

3 Q. Do you recall what was going on at that point?

4 A. I don't recall what was going on. I know we were -- we
5 just making some small talk. We might have been getting
6 coffee. I'm not sure what was going on exactly.

7 (Portion of audiotape played.)

8 BY MR. BINFORD:

9 Q. Is your understanding that he was telling you about someone
10 that was selling a product at this fest he went to?

11 A. Yes, that's my understanding. Someone selling products
12 like deities for -- at festivals.

13 Q. And he was encouraging that business person to do what?

14 A. To accept Bitcoins.

15 MR. BINFORD: This next clip is 102C.

16 (Portion of audio played.)

17 BY MR. BINFORD:

18 Q. Do you know what Coinbase is?

19 A. Yes, it's the -- it's a Bitcoins exchanger. It's -- it's
20 on the web -- it's available on a web -- on the Internet. It's
21 a place where you can buy and sell Bitcoins.

22 Q. Did he ever suggest to you that you should use Coinbase for
23 any of your purchases or sales?

24 A. No, he never mentioned it to me, never recommended that
25 I -- specifically I use it.

1 Q. Did you get the impression that anything that this person
2 was selling at this festival was illegal at all?

3 A. No.

4 (Portion of audiotape played.)

5 BY MR. BINFORD:

6 Q. All right. So are we leading up to an important moment in
7 the conversation here?

8 A. Yes.

9 (Portion of audiotape played.)

10 BY MR. BINFORD:

11 Q. How does he react when you say: You know it's drugs;
12 right?

13 A. It doesn't -- doesn't same to faze him.

14 (Portion of audiotape played.)

15 BY MR. BINFORD:

16 Q. It sounded like there was something after "nothing." Did
17 you see what he was doing there?

18 A. He was laughing.

19 (Portion of audiotape played.)

20 BY MR. BINFORD:

21 Q. How would you react -- how would you react if someone told
22 you that the money they were about to give you was from drugs?

23 MR. CAIN: Objection. Relevance.

24 THE COURT: Sustained.

25 (Portion of audiotape played.)

1 BY MR. BINFORD:

2 Q. Why do you think -- well, I guess -- was it important to
3 the investigation when he said, "I like keeping things
4 super-duper, like, confidential"?

5 A. Yes.

6 Q. And why is that important to your investigation?

7 A. Well, again, because now that he knows it's drug money
8 and -- the money is drug proceeds, and he already stated he
9 doesn't keep any records, and he doesn't -- does any paperwork.

10 Q. At this point, have you said anything other than "drugs"?

11 A. No. At this point, I didn't. No.

12 Q. Do you get more explicit as the conversation goes on?

13 A. Yes.

14 (Portion of audiotape played.)

15 BY MR. BINFORD:

16 Q. Why are you -- why are you mentioning a person from New
17 York? What's your goal in -- in getting that across?

18 A. Well, because I'm trying to emphasize that, you know, first
19 of all, I'm trying to emphasize that I only want to deal with
20 the one person. That's why I contacted Costanzo in the first
21 place. And I'm -- and when I dealt with someone in New York
22 and they found out what my real source of the cash was, they
23 didn't want to have anything to do with me. So I wanted to see
24 what Costanzo's reaction would be.

25 (Portion of audiotape played.)

1 BY MR. BINFORD:

2 Q. So he says: Don't say that word out loud.

3 What word did you say?

4 A. I said "heroin."

5 Q. Did you say it again after he said don't --

6 A. I said it twice.

7 (Portion of audiotape played.)

8 BY MR. BINFORD:

9 Q. It sounded like the volume dropped there. Did his -- the
10 way he was talking to you change at all at that point?

11 A. Yes, his tone went down a little bit.

12 Q. Now, you picked the drug heroin to bring up in this
13 conversation. Why heroin?

14 A. Because heroin, it's pretty clear it's an illegal narcotic.
15 There's no -- there's no fine line there. It's clear to
16 everybody that it's illegal. And it -- it was the best -- this
17 situation was the best drug -- narcotic to use in the scenario.

18 (Portion of audiotape played.)

19 BY MR. BINFORD:

20 Q. What are you referring to there when you're talking about a
21 kilo?

22 A. Referring to prices of heroin, that you can pick up a kilo
23 of heroin in Arizona for 27,000, and you can sell it in New
24 York for 50,000. So it's kind of describing the extent of
25 my -- the business and how it operates.

1 Q. And what was his reaction when you said that?

2 A. He wasn't surprised at all, you know. He was curious.

3 Q. At that point, did he tell you he could no longer do any
4 exchanges with you?

5 A. No, he did not.

6 (Portion of audiotape played.)

7 BY MR. BINFORD:

8 Q. What is "black tar"?

9 A. Black tar is the type of heroin that comes from Mexico
10 illegally, and it's -- it's imported -- actually, it's imported
11 from Mexico to New York. All over the country, basically, but
12 it's a brand of heroin that was available at the time.

13 Q. And that's information you know from your experience as a
14 Special Agent?

15 A. Yes.

16 (Portion of audiotape played.)

17 BY MR. BINFORD:

18 Q. And again, when you mention these numbers, what are you
19 referring to?

20 A. Prices in thousands of kilogram of heroin.

21 (Portion of audiotape played.)

22 BY MR. BINFORD:

23 Q. So at this point you've made it clear what your business is
24 about, at least your undercover persona?

25 A. Yes.

1 Q. And at that point, did he walk away?

2 A. He did not.

3 (Portion of audiotape played.)

4 BY MR. BINFORD:

5 Q. So you tell him the story about a person in New York. Did
6 that really happen?

7 A. No.

8 Q. Why do you say something like that in this conversation?

9 A. Well, because I want to -- you know, because I want to -- I
10 want to be clear with him that would there be -- typical
11 reaction of someone in New York would have been -- was,
12 actually -- when he found out I was dealing with heroin, he
13 didn't want anything to do with me. So I wanted to see what
14 Costanzo's reaction would be.

15 Q. And is that your way of giving him an opportunity?

16 A. Yes.

17 Q. An opportunity to do what?

18 A. An opportunity not to do any business with me, to walk
19 away.

20 Q. Did he take you up on that offer?

21 A. No, he did not.

22 (Portion of audiotape played.)

23 BY MR. BINFORD:

24 Q. Did he seem reluctant at all?

25 A. Not at all. He actually seemed eager to provide for more

1 Bitcoins for more cash.

2 (Portion of audiotape played.)

3 BY MR. BINFORD:

4 Q. What do you mean when you say "put stuff in the car parts"?

5 A. Well, putting drugs in the car parts to hide them.

6 Q. And are you talking about the car parts that you're --
7 you're shipping overseas?

8 A. Right.

9 (Portion of audiotape played.)

10 BY MR. BINFORD:

11 Q. As -- as a drug dealer, what type of risks were you
12 concerned about?

13 A. Well, always concerned about being found out through -- the
14 police finding out, discovering drugs in your shipments and
15 then tracing everything back to myself.

16 (Portion of audiotape played.)

17 BY MR. BINFORD:

18 Q. How was his demeanor when he said "keep a low profile"?

19 A. He seems very -- he was laughing also. He seems, you know,
20 he seems to like my story I was telling him.

21 (Portion of audiotape played.)

22 BY MR. BINFORD:

23 Q. So you mention a seizure of heroin in New York. Why do you
24 bring that into the conversation?

25 A. Well, this was from actual event. So I wanted to see --

1 again, I wanted to see what his reaction was, you know. Again,
2 give him a chance to maybe walk away from it, to, you know, to
3 say, you know, it's too dangerous for him to be involved in.

4 Q. Did he walk away at that point?

5 A. No.

6 (Portion of audiotape played.)

7 MR. BINFORD: The next clip is 102D.

8 (Portion of audiotape played.)

9 BY MR. BINFORD:

10 Q. So of all the things you mentioned, what did he seem to be
11 concerned about?

12 A. The only thing he was simply concerned about was to make
13 sure that I give him legitimate money, not counterfeit.

14 (Portion of audiotape played.)

15 BY MR. BINFORD:

16 Q. What was he talking about when he said that's the only
17 thing he cares about?

18 A. The money -- the cash. Cash being good, in other words.

19 Q. Not the source of the cash?

20 A. Not the source of the cash, but the actual bills being
21 real.

22 (Portion of audiotape played.)

23 BY MR. BINFORD:

24 Q. How much did he say he did last year?

25 A. Half a million dollars.

1 Q. Now, if you were to walk into a bank and tell the teller or
2 one of the bankers everything you just told Mr. Costanzo in
3 that conversation, how would you expect them to react?

4 A. I expect them to not be doing business with me, and I
5 expect them to be doing some reporting of this -- this
6 conversation.

7 MR. BINFORD: The next clip is 102E.

8 (Portion of audiotape played.)

9 MR. BINFORD: And the clip after that is 102F.

10 (Portion of audiotape played.)

11 BY MR. BINFORD:

12 Q. You mention two numbers there. What are those numbers?

13 A. The \$3,000 in cash that I was preparing to buy Bitcoins
14 with, and 254 was the exchange rate that Mr. Costanzo agreed to
15 change cash for Bitcoins at.

16 Q. Is that 254 the market value of Bitcoin that day?

17 A. It's a volatile market value, and it includes approximately
18 10 percent fee that he charged me.

19 Q. So that price includes the fee that he was charging you?

20 A. It already -- it was already included in 254.

21 MR. BINFORD: All right. The next clip is 102G.

22 (Portion of audiotape played.)

23 BY MR. BINFORD:

24 Q. All right. We had a similar -- similar question like this
25 before. There is a string of letters there. What is he

1 referring to?

2 A. To the Bitcoin wallet address. We just want to make sure
3 that he's sending the Bitcoins to the correct address, that
4 it's not -- there's no mistake.

5 (Portion of audiotape played.)

6 BY MR. BINFORD:

7 Q. Did he seem to be detail-oriented when it came to the
8 transaction?

9 A. Yes, he was very thorough when he came to actual mechanics
10 of the transaction.

11 (Portion of audiotape played.)

12 BY MR. BINFORD:

13 Q. Was there some confusion there?

14 A. Well, yeah, because I was getting ready for him to scan --
15 to send me the Bitcoins, but then he -- he reminded me again
16 that the money came first, that I should give him the cash
17 first.

18 (Portion of audiotape played.)

19 BY MR. BINFORD:

20 Q. During the conversation during the exchange, did he ever
21 ask you if you used drugs?

22 A. Yes, he did.

23 MR. BINFORD: I'm now playing 102H.

24 (Portion of audio played.)

25

1 BY MR. BINFORD:

2 Q. And is this the part of the conversation?

3 A. Yes.

4 (Portion of audiotape played.)

5 BY MR. BINFORD:

6 Q. Do you know whether heroin is a drug that you can inject in
7 your arm?

8 A. Yes.

9 Q. Is that why you made that reference there to a needle?

10 A. Yes.

11 MR. BINFORD: The next clip is 102I.

12 (Portion of audiotape played.)

13 BY MR. BINFORD:

14 Q. At that point, what products had you told him about?

15 A. Well, the product we'd been discussing was drugs.

16 Q. Any other products that you told him about?

17 A. No.

18 Q. Did you talk about concealing the drugs inside of anything
19 else?

20 A. Well, earlier we talked about concealing drugs inside of
21 car parts.

22 (Portion of audiotape played.)

23 BY MR. BINFORD:

24 Q. So you had talked about car parts as a product, but also
25 heroin.

1 Based on your subsequent statements and his responses,
2 do you think it was clear which product you were talking about
3 at that point?

4 A. I believe it was pretty clear. We were talking about
5 drugs. Heroin, specifically.

6 (Portion of audiotape played.)

7 BY MR. BINFORD:

8 Q. How did you get the Bitcoin from Mr. Costanzo during this
9 transaction?

10 A. Through Mycelium wallet.

11 Q. And is that a wallet that you already had, or was that
12 something that was recommended to you?

13 A. Mr. Costanzo recommended that I use Mycelium wallet
14 earlier, and I downloaded it to my smartphone, and I used that
15 to receive Bitcoins from him.

16 Q. And do you know how that app works; do you know the details
17 of it?

18 A. I don't know the details. I just know that it's used to
19 send and receive Bitcoins, and it also has a feature -- there's
20 other features that Mycelium wallet has, such as encrypted
21 chat.

22 Q. But it was simple enough for you to use without having an
23 in-depth understanding?

24 A. Yes, it does not require in-depth understanding of how
25 Bitcoin process works. It's pretty clear and easy to use.

1 MR. BINFORD: This next clip is 102J.

2 (Portion of audiotape played.)

3 BY MR. BINFORD:

4 Q. Did you have any intention of actually bringing a million
5 dollars to Mr. Costanzo?

6 A. No.

7 (Portion of audiotape played.)

8 BY MR. BINFORD:

9 Q. There he says, "I like playing it as safe as I can."

10 Would you expect him to say that to you if he knew you
11 were a law enforcement agent?

12 A. No, of course not. Absolutely not.

13 (Portion of audiotape played.)

14 BY MR. BINFORD:

15 Q. He says, "Don't tell me anything I don't need to know."

16 What don't you think he wanted you to tell him?

17 A. Well, he -- you know, at this point he realized --

18 MR. CAIN: Objection. Calls for speculation.

19 THE COURT: Sustained.

20 BY MR. BINFORD:

21 Q. At the beginning of your conversation on March 20th, was he
22 interested in your business?

23 A. He -- in the car business or the...

24 Q. Yes.

25 A. On March 20th, yes, he was interested in the car business.

1 Q. At this point in the conversation on May 20th, did he seem
2 to be less interested in the details of your business?

3 A. He was not interested at all in the car business.

4 Q. Was he interested in your other business?

5 A. He was more interested in my drug business.

6 (Portion of audiotape played.)

7 BY MR. BINFORD:

8 Q. Did you get the sense that he was talking about a
9 traditional financial institution at that point?

10 A. No.

11 Q. Based on your conversation with him, what did you
12 understand that to mean, when he's referring to a banker?

13 A. I believed that he was not referring to an actual banker
14 with a conventional bank, but someone, perhaps not individual,
15 who is able to provide him with large amounts of Bitcoins when
16 needed.

17 Q. Now, as part of this investigation, would it be important
18 to identify who that person was that was supplying him when the
19 Bitcoin?

20 A. It would have been important to find out.

21 (Portion of audiotape played.)

22 BY MR. BINFORD:

23 Q. Why do you bring up selling flowers there?

24 A. Well, it was just something that popped into my head,
25 because I said, you know, if there was any question where the

1 cash is from, you know, I just said, selling flowers. Just
2 something to put somewhere, with a piece of paper.

3 Q. Is it legal to sell flowers?

4 A. No -- no, it's not illegal to sell flowers. It's legal.
5 It's legal to sell flowers, yes.

6 (Portion of audiotape played.)

7 BY MR. BINFORD:

8 Q. And how much cash did you give Mr. Costanzo on May 20th?

9 A. \$3,000.

10 Q. And do you recall the approximate rate above market price
11 that you paid for the Bitcoin?

12 A. Approximately 10 percent.

13 Q. At any point during that conversation, did Mr. Costanzo ask
14 for your full name?

15 A. He did not.

16 Q. Did he ask for your street address?

17 A. He did not.

18 Q. Did he ask for your Social Security number?

19 A. He did not.

20 Q. Taxpayer ID?

21 A. No.

22 Q. Did he ask to see your identification?

23 A. No, he did not.

24 Q. After that meeting, did you give the undercover wallet
25 address that you used to someone else, or document it in some

1 way?

2 A. I documented my wallet address, yes.

3 Q. And however you documented it, would that be available to
4 other agents in this investigation?

5 A. I documented a memo.

6 Q. And would that memo be available to other agents from the
7 IRS?

8 A. Yes.

9 Q. Did you communicate with Mr. Costanzo after that meeting?

10 A. Yes.

11 Q. And was that via text message or a different method?

12 A. It was a text message.

13 Q. Did you use any other non-text message way to communicate
14 with him after that meeting?

15 A. Not immediately after that meeting, no. Later on.

16 Q. All right.

17 MR. RESTAINO: At this point, I'd like to show the
18 witness only an exhibit that's been previously marked for
19 identification as number 94.

20 BY MR. BINFORD:

21 Q. Without going into the content of what you're looking at in
22 front of you, what does that appear to be?

23 A. That appears to be Mr. Costanzo's -- who is also known as
24 Morpheus, obviously. It's his listing that was found via
25 Mycelium.

1 Q. Can -- can I show you a few more pages of this Exhibit 94?

2 A. Sure.

3 Q. This is the second page.

4 This is the third page.

5 And this is the fourth page.

6 Do you recognize this item?

7 A. Yes. It's communication that I -- text messages that I
8 exchanged with Mr. Costanzo via Mycelium app. As I mentioned,
9 it allows you to communicate via text messaging -- via
10 encrypted text messaging.

11 Q. Do you know how I got these -- these -- this exhibit here?

12 A. I provided it from -- those are screenshots from my
13 smartphone.

14 Q. And are those a fair and accurate representation of the
15 screenshots from your phone and your conversations with
16 Mr. Costanzo?

17 A. Yes, that's correct.

18 MR. BINFORD: All right. At this point I would move
19 to admit Exhibit 94 into evidence.

20 MR. CAIN: No objection.

21 THE COURT: Exhibit 94 is admitted.

22 MR. BINFORD: And I would like to publish it for the
23 jury, please.

24 THE COURT: You may.

25 (Exhibit 94 is received into evidence.)

1 BY MR. BINFORD:

2 Q. All right. Will you tell us what we're looking at here?

3 A. Well, Mr. Costanzo advised me earlier that the best way to
4 communicate would have been -- the most secure way to
5 communicate would have been from Mycelium text messaging.

6 Q. Did he -- did he tell you that before or after you had
7 mentioned that your business involved heroin?

8 A. After I mentioned heroin.

9 Q. So you had not communicated through the Mycelium app prior
10 to that?

11 A. No, I did not.

12 Q. Okay. So after he suggested you look at this -- or that
13 your use this app, what did you do?

14 A. Well, in the beginning I didn't know how to communicate via
15 this app, so I exchanged several text messages with
16 Mr. Costanzo on the conventional means on my smartphone. And
17 he advised me what, you know, what to do in order to start
18 communication. So I had to place a small trade off -- start a
19 small trade on his page, and that opened up Mycelium to
20 communication.

21 Q. All right. What I'm going to do for everyone's awareness,
22 I'm going to split the screen into two, and I'm going to pull
23 up what's been previously admitted into evidence as Exhibit 70,
24 and show that on one side of the screen and keep this up on the
25 other side of the screen.

1 Do you see that -- that message there that I've
2 highlighted on the right side of the screen from Exhibit 70?

3 A. Yes. Again, this is after we concluded our meeting, May --
4 May 20th. He send -- Mr. Costanzo sent a message saying --
5 advising me to use Mycelium for secret communication.

6 Q. Would you read that message that's on the screen there?

7 A. "Thank you for your business, Sam. Use Mycelium to
8 connect. Has encrypted chat."

9 Q. All right. And this message was sent after your May 20th
10 transaction?

11 A. Yes.

12 Q. And so did you reach out to him through Mycelium?

13 A. Yes. Not right away. I had not -- I did not know at the
14 time how to initiate a chat, so I think we exchanged a couple
15 of messages to -- in order for me to figure out how to use it.
16 And then we exchanged a few messages on Mycelium.

17 Q. And he call -- he says "Sam" in that message. Do you know
18 why he says "Sam"?

19 A. Because I used "Sam" as my -- "Sam Stone" was my moniker on
20 the, you know, Mycelium.

21 Q. And is that -- looking at your screenshot from your
22 Mycelium app, is that what you have listed on there?

23 A. Yes.

24 Q. All right. So that conversation with him seems to be
25 pretty brief.

1 Did you have any further conversation, other than
2 what's shown on the screen right there?

3 A. No, that was -- that was it. He just showed me how to use
4 this, and there was -- I did not communicate with him further
5 through Mycelium.

6 Q. Did you reach out again -- or again to Costanzo in October
7 of 2015?

8 A. Yes.

9 Q. And what was your goal in reaching out to him in October of
10 2015?

11 A. I was attempting to set up another transaction with
12 Mr. Costanzo to purchase more Bitcoins.

13 Q. All right. I'm going to pull those up on the screen here.

14 This is Exhibit 70 on the screen now.

15 Do you recognize that exchange of messages there on
16 the screen that's been highlighted or enlarged?

17 A. Yes. This is my communication with Mr. Costanzo.

18 Q. All right. So it looks like you say you want him to meet
19 your business partner; is that correct?

20 A. Yes. So I contacted him on October 5th, 2015, and with
21 attempt to arrange purchase of Bitcoins of at least \$10,000.

22 Q. And does he seem agreeable to that?

23 A. Yes. I did tell him at the time that I was not able to
24 meet with him for whatever reasons, and my partner -- my
25 business partner, Tom, would be meeting with him. And if he

1 had any objections.

2 Q. And who is Tom?

3 A. Tom is another -- is an undercover agent with IRS.

4 Q. Do you know if Tom ever met with Mr. Costanzo?

5 A. Yes, he did.

6 Q. All right. Were you present at that meeting?

7 A. No, I was not.

8 Q. When did you next meet with Mr. Costanzo?

9 A. The next time I met with Mr. Costanzo was in November 21st,
10 2000 -- 2015.

11 Q. And you recall going to a Bitcoin meet-up on that day?

12 A. Yes. I went to Bitcoin meet-up on November 21st, 2015. It
13 was held at the Oasis Café.

14 Q. And during that meeting, were you wearing a recording
15 device?

16 A. I was wearing a recording and transmitting devices.

17 Q. And have you had an opportunity to review the audio from
18 that meeting?

19 A. Yes.

20 Q. And have you an opportunity to review a transcript that was
21 prepared based on that audio?

22 A. Yes.

23 Q. And is the audio and the transcript a fair and accurate
24 depiction of what took place during that conversation?

25 A. Yes, it is.

1 Q. Now, I want to just kind of set the stage for the jury here
2 and ask you, how many people were at that meeting?

3 A. There were at least four or five individuals present at the
4 meeting, including Mr. Costanzo.

5 Q. Did you have an opportunity to engage in some transactions
6 on that day?

7 A. Yes.

8 Q. How many people did you purchase Bitcoin from that day?

9 A. Mr. Costanzo and one other individual.

10 Q. Who was that other individual?

11 A. The other individual is named Peter Steinmetz.

12 Q. What type of transaction did you conduct with Peter
13 Steinmetz?

14 A. I purchased \$2,000 worth of Bitcoins from Mr. Steinmetz.

15 Q. During your conversation with Mr. Steinmetz, did you make
16 any mention of illegal activity?

17 A. No.

18 Q. Did you attempt any subsequent transactions with
19 Mr. Steinmetz?

20 A. Yes, I did.

21 Q. Tell us about that.

22 A. In March, approximately -- I believe it was March 8th,
23 2016, I met with Mr. Steinmetz at his residence for purposes of
24 purchasing \$20,000 worth of Bitcoins. I telephoned him on
25 February 29th to arrange that meeting, and he asked me to come

1 to his house. And I came to his house on March 20 -- I'm
2 sorry -- March 8th, 2016.

3 Q. Do you remember where his house was located?

4 A. I do not recall the address. I'd have to refresh my
5 memory.

6 Q. Do you remember the city?

7 A. I believe it was Tempe.

8 Q. And do you remember the street?

9 A. Julie Road?

10 Q. Thank you.

11 A. I believe. I think it was 1700 Julie Road.

12 Q. Now, during that transaction with Mr. Steinmetz -- or I
13 guess the attempted transaction -- did you make any mention of
14 illegal activity?

15 A. Yes. I -- I mentioned to Mr. Steinmetz that \$20,000 of
16 cash that I was going to buy Bitcoins with were proceeds from
17 drug sales, from heroin.

18 Q. Were you able to complete that transaction after you have
19 said that?

20 A. No.

21 Q. And without telling us what he said, why not?

22 A. Mr. Steinmetz refused to do any business with me once I
23 mentioned that proceeds were from drugs.

24 Q. All right. Did you have any subsequent transactions with
25 Mr. Steinmetz after that?

1 A. No. Not at all.

2 Q. All right. Let's go back to November 21st.

3 I can't recall. Did you tell us where that meet-up
4 was?

5 A. It was at the Oasis Café.

6 Q. All right. And I believe you previously said that you've
7 reviewed the transcripts and the audio, and they are a fair and
8 accurate representation of that conversation?

9 A. Yes.

10 MR. BINFORD: At this time, Your Honor, I would move
11 to admit Exhibit 104, which is A through F.

12 MR. CAIN: No objection, Your Honor.

13 THE COURT: Exhibits 104A through F are admitted.
14 You may publish.

15 MR. BINFORD: And like the other exhibits, the audio
16 is being admitted, but the transcripts will only be shown.

17 THE COURT: Correct.

18 (Exhibit 104 is received into evidence.)

19 BY MR. BINFORD:

20 Q. So did you end up conducting a transaction with
21 Mr. Costanzo that day?

22 A. Yes.

23 (Portion of audiotape played.)

24 BY MR. BINFORD:

25 Q. All right. There's a lot of numbers being thrown out

1 there. Can you give us some context for that?

2 A. Yeah. Again, we trying to figure out what the exchange
3 would be, including his fee at the time. So I believe it was
4 \$354.75, if I'm not mistaken.

5 Q. And would that have included his fee for the transaction?

6 A. Yes, his fee was already built in, whatever rate we agreed
7 on.

8 Q. Do you recall what that fee was?

9 A. Yeah, it was approximately 10 percent.

10 Q. And there's a number listed, 8200. What does that refer
11 to?

12 A. \$8,200, there was in cash.

13 Q. And was that all the cash that you gave him that day?

14 A. No. I conducted three transactions with Mr. Costanzo that
15 day.

16 (Portion of audio played.)

17 BY MR. BINFORD:

18 Q. Does he seem to be pretty detail-oriented?

19 A. He's very detail-oriented.

20 (Portion of audiotape played.)

21 BY MR. BINFORD:

22 Q. When he says he can still do some more, based on the
23 context of your conversation, your understanding, what is he
24 referring to?

25 A. He can do more -- more Bitcoins, sell more Bitcoins.

1 Q. How much were you -- what is the amount that you were
2 prepared to purchase in dollars that day of Bitcoin?

3 A. Well, when I first contacted him, I said I wanted to buy
4 \$20,000 worth, and so I was prepared to buy as much as 20,000.

5 (Portion of audiotape played.)

6 BY MR. BINFORD:

7 Q. Did you tell him prior to the meeting that you wanted to do
8 \$20,000?

9 A. Well, yes. When I called -- I called him earlier in the
10 day and let him know that I would be at the meet-up and see if
11 he could tell sell me \$20,000 worth of Bitcoins.

12 Q. Was there a reason you didn't give him more advance notice?

13 A. It was -- no, not particular reason, no.

14 (Portion of audiotape played.)

15 BY MR. BINFORD:

16 Q. What is HHTEO?

17 A. Again, it's five characters of the Bitcoin address.

18 (Portion of audiotape played.)

19 BY MR. BINFORD:

20 Q. What's going on there?

21 A. We're taking money out from my pocket, I guess.

22 Q. Does that have an impact on the recording?

23 A. Yeah. Yes, it did.

24 (Portion of audiotape played.)

25

1 BY MR. BINFORD:

2 Q. Sounds like there's another voice there. Do you know who
3 that was?

4 A. Well, we were in a coffee shop, so there were some
5 extraneous noises, employees serving coffee and such. That was
6 about it.

7 Q. Other than that, were you in a fairly private area?

8 A. Yes, this was toward the end of the meet-up. Most of --
9 most of the people had already left. So me and Costanzo were
10 on the side by ourselves.

11 (Portion of audiotape played.)

12 BY MR. BINFORD:

13 Q. So he says, "This is between you and me." Was there anyone
14 else there?

15 A. There was nobody -- nobody else in our immediate area.

16 (Portion of audiotape played.)

17 BY MR. BINFORD:

18 Q. When he says "I don't ever want to hear what you do," do
19 you know what he -- what did you understand him to mean by
20 that?

21 A. My understanding is referring to my drug business.

22 (Portion of audiotape played.)

23 BY MR. BINFORD:

24 Q. So you say again, "If you find out, I don't want any
25 issues."

1 (Portion of audiotape played.)

2 BY MR. BINFORD:

3 Q. What did you understand him to mean when he said, "Don't
4 tell anybody else"?

5 A. Well, don't tell anybody else about my drug business, where
6 the money is coming from. And he lowered his voice.

7 Q. He did what with his voice?

8 A. He lowered his voice a little bit.

9 (Portion of audiotape played.)

10 BY MR. BINFORD:

11 Q. All right. So you said that 8,200-dollar transaction
12 wasn't the only transaction?

13 A. No, there was two additional transactions.

14 MR. BINFORD: All right. At this time I'm going to
15 play what's marked as 104B.

16 (Portion of audiotape played.)

17 BY MR. BINFORD:

18 Q. What's going on right here?

19 A. Counting -- counting cash.

20 Q. Several bills?

21 A. Yeah, a few bills. \$8,200 worth.

22 (Portion of audio played.)

23 BY MR. BINFORD:

24 Q. On this day, what did \$8,200 in cash look like?

25 A. Stack of maybe, I don't know, half an inch, three-quarters

1 of an inch.

2 Q. Not too bulky?

3 A. No, it wasn't too bulky.

4 MR. BINFORD: All right. This next clip is 104C.

5 (Portion of audiotape played.)

6 BY MR. BINFORD:

7 Q. Did you get an understanding that he had more than one
8 account?

9 A. He had more than one account, and I understood it was
10 coming from more than one wallet.

11 (Portion of audiotape played.)

12 BY MR. BINFORD:

13 Q. Towards the end of the conversation that day, did he seem
14 eager to want to do more business?

15 A. Yes.

16 MR. BINFORD: I'm now playing 104D.

17 (Portion of audiotape played.)

18 BY MR. BINFORD:

19 Q. Didn't seem to be a big fan of government regulation?

20 A. No, not at all.

21 Q. Did he seem reluctant at all to continue to engage in
22 Bitcoin transactions with you?

23 A. Not at all. He seemed opposite. He seemed very eager to
24 do more.

25 MR. BINFORD: This is 104E.

1 (Portion of audiotape played.)

2 BY MR. BINFORD:

3 Q. Did you hear that sound?

4 A. Yeah. That was me receiving a text message, Mr. Costanzo
5 sending me the link to his podcast.

6 Q. And is that text message reflected in the extraction report
7 that you run that's been identified as Exhibit 70?

8 A. Yes, that's correct.

9 (Portion of audiotape played.)

10 BY MR. BINFORD:

11 Q. All right. At the end of the conversation, was he talking
12 about an online program or an online gaming type of thing?

13 A. He was talking about online poker, gambling program or
14 website.

15 Q. And did he talk about how Bitcoin could be used for that?

16 A. Yes, he said Bitcoin's accepted and could be used for
17 online gambling.

18 MR. BINFORD: All right. I'm going to play what's
19 been identified as 104F.

20 (Portion of audiotape played.)

21 BY MR. BINFORD:

22 Q. All right. During that meeting, did he ever ask for your
23 full name?

24 A. No.

25 Q. Did he ever ask for your street address?

1 A. No.

2 Q. Did he ever ask for your Social Security number?

3 A. No.

4 Q. Taxpayer ID?

5 A. No.

6 Q. Did he ask to see your identification?

7 A. No.

8 Q. Did he send you a text the day after the transaction?

9 A. Yes.

10 Q. And in that text, did he seem eager to do more business
11 with you?

12 A. Yes, he did.

13 MR. BINFORD: I'm going to pull up page 2 of
14 Exhibit 70.

15 BY MR. BINFORD:

16 Q. All right. At the bottom of that part that's been
17 enlarged, do you see a message there that talks about a Bitcoin
18 interview?

19 A. Yes. The number 15, the message number 15 is link -- the
20 message about his podcast and the link to his podcast.

21 Q. And is that the message you received during that meeting?

22 A. Yes.

23 Q. And so we talked about the time stamp. Do you know what
24 time 1:00 a.m. is in Arizona time?

25 A. So it's minus seven, which would have been 6:18 p.m., I

1 believe, of the 21st --

2 Q. And is that --

3 A. 2015.

4 Q. And is that when you were having the transaction with
5 Mr. Costanzo?

6 A. Yes. Yes.

7 Q. All right. There's a message above that. Is that message
8 consistent with the last clip we just heard about?

9 A. Yes. He sent me a link to the -- referencing the poker,
10 online poker that we discussed. And again, he sent it during
11 that meeting.

12 Q. And then did he thank you for your business?

13 A. Yes.

14 Q. And tell you that he has more Bitcoin to sell you?

15 A. Yes.

16 Q. Did you have any subsequent transactions with Mr. Costanzo?

17 A. Not after November 21st.

18 Q. And that phone number listed there on the screen where it
19 says "from," the text messages, is that the phone number you
20 contacted him on to set up the deal?

21 A. Yes, this is the phone number that I always contacted
22 Mr. Costanzo on.

23 Q. All right.

24 MR. BINFORD: May I have a moment, Your Honor?

25 THE COURT: You may.

1 (Pause in proceedings.)

2 MR. BINFORD: Thank you for that, Judge.

3 BY MR. BINFORD:

4 Q. Agent Kushner, I just have one question that my colleagues
5 brought to my attention.

6 What was the total amount of cash that you gave
7 Mr. Costanzo during that November 21st meeting?

8 A. November 21st, 2015, meeting, I gave Mr. Costanzo a total
9 of \$11,700 to purchase Bitcoins.

10 Q. And do you remember the rate that he charged you for the
11 Bitcoin you purchased that day?

12 A. He was always around 10 percent.

13 Q. Above the market value?

14 A. Above the market rate.

15 Q. All right. And do you remember how many transactions it
16 took to get to that 11,700 mark?

17 A. We did a total of three transactions: \$8,200, \$2,000, and
18 \$1,500.

19 Q. And were the Bitcoin wallet addresses that you used for
20 those transactions documented in a memo somewhere?

21 A. Yes, they are.

22 Q. And is that memo available to other agents in your agency?

23 A. Yes, it is.

24 MR. BINFORD: I have no further questions, Your Honor.

25 THE COURT: Okay.

1 Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. CAIN:

4 Q. Good afternoon, Agent Kushner.

5 A. Good afternoon.

6 Q. Your first face-to-face meeting with Mr. Costanzo was
7 March 20th, 2015.

8 A. That's correct.

9 Q. At a Starbucks?

10 A. That's correct.

11 Q. Prior to that meeting, the due diligence that you had done
12 to learn about Mr. Costanzo included reviewing that profile
13 that he had put up on localbitcoins.com?

14 A. That's correct.

15 Q. And you reviewed that during your testimony.

16 A. That's correct.

17 Q. That profile that we reviewed, it's fair to say that there
18 isn't anything in that profile from Mr. Costanzo that appears
19 to be inviting -- that appears to be inviting people to contact
20 him if they're drug dealers, if they want to do Bitcoin
21 business, does it?

22 A. No, it does not.

23 Q. That very first meeting you had with Mr. Costanzo, you
24 described how you dressed to come to that meeting.

25 A. Correct.

1 Q. And you talked a little bit about how Mr. Costanzo dressed.
2 I think you said he dressed casually.

3 A. Correct.

4 Q. There wasn't anything about the way that he dressed that
5 was flashy?

6 A. No, there was not.

7 Q. There wasn't anything about his jewelry that was flashy?

8 A. No.

9 Q. There wasn't anything about his clothing that was flashy?

10 A. No, not that I recall.

11 Q. You didn't see him pull up in any vehicle that was flashy?

12 A. That's correct.

13 Q. And in your subsequent meetings with Mr. Costanzo, again,
14 he continued to be an individual that, when you encountered
15 him, he dressed casually?

16 A. Correct.

17 Q. He didn't wear flashy clothing?

18 A. Correct.

19 Q. He didn't wear flashy jewelry?

20 A. Correct.

21 Q. He didn't drive flashy transportation?

22 A. Yes. No, he did not.

23 Q. And so even though in the conversations that we've listened
24 to, he apparently boasted about doing a lot of business, there
25 wasn't anything from his appearance that really supported that,

1 was there?

2 A. His appearance? No.

3 Q. When you first -- I think you mentioned that prior to that
4 March 20th initial meeting back in 2015 that there was actually
5 some text message contact with Mr. Costanzo.

6 A. Before March -- before our first meeting, yes, there was
7 some text messages exchanged between us.

8 Q. Where you indicated that you were interested in doing a
9 Bitcoin trade.

10 A. Yes.

11 Q. When you had that initial exchange with Mr. Costanzo,
12 during that exchange, Mr. Costanzo didn't communicate to you
13 that he was interested in engaging in any illegal activity with
14 you?

15 A. No, he did not.

16 Q. He didn't indicate that he was interested in accepting
17 money that was involved in illegal activity?

18 A. During the first meeting, no.

19 Q. Well, I'm talking about just that communication before that
20 first face-to-face meeting.

21 A. No, he did not indicate in that communication that he
22 was -- he wanted to -- he was willing to accept money from
23 illegal activity.

24 Q. Okay. And then we have that first face-to-face meeting at
25 the Starbucks in March?

1 A. Right.

2 Q. During that meeting -- we've listened to it -- he didn't
3 indicate to you that he -- he didn't indicate to you that he
4 only wanted to do that deal or that trade if it was drug money?

5 A. He -- can you repeat the question again?

6 Q. Sure. Let me ask it.

7 A. Okay.

8 Q. That first trade on March 20th of 2015 --

9 A. Yes.

10 Q. -- he didn't indicate to you that -- that he was interested
11 in doing anything illegal with you with respect to that trade?

12 A. Right. He didn't -- no, he didn't.

13 Q. The next trade you did with him was the May 20th, 2015;
14 correct?

15 A. Correct.

16 Q. And that's the 3,000-dollar trade?

17 A. That's correct.

18 Q. That's the trade where you introduced this idea that you
19 were involved in heroin?

20 A. That's correct.

21 Q. Now, you've already done a 2,000-dollar trade with him?

22 A. Correct.

23 Q. And you indicated that you wanted to meet up with him to do
24 a 3,000-dollar trade --

25 A. Correct.

1 Q. -- right?

2 Now, it was pretty clear to you at that point that he
3 was willing to do a 3,000-dollar trade?

4 A. Yes.

5 Q. Meaning that you showed up at that meeting with the
6 understanding that he wanted to do that 3,000-dollar trade?

7 A. Well, he agreed during our text -- exchange of text
8 messages before May 20th that he -- he had -- he would be able
9 to do a 3,000-dollar trade. So when I showed up, we both
10 showed some, were both on the same page, so to speak.

11 Q. My point -- I guess my point is that it was already agreed
12 that you guys were going to do a trade that day.

13 A. Correct.

14 Q. And that this -- this idea that you introduced about the
15 heroin wouldn't have affected whether or not you did the trade
16 or not. You had already agreed that you were going to do the
17 trade.

18 A. Well, it should have affected it, once I brought it up.

19 Q. I understand that that's your position as a law enforcement
20 officer. But -- but he was -- had you not introduced that
21 element, you guys were going to do a 3,000-dollar trade?

22 A. Trade would have still happened if I did not introduce the
23 heroin, yes.

24 Q. Okay. And the \$3,000 amount, that was an amount that you
25 proposed; correct?

1 A. Yes.

2 Q. It was a modest increase from the 2,000-dollar amount.

3 A. Correct.

4 Q. It wasn't an amount that Mr. Costanzo proposed.

5 A. It's the amount that I proposed initially, yes.

6 Q. The -- the next trade was actually a trade that occurred in
7 October of 2015 that you helped set up with one of your
8 partners; correct?

9 A. That's correct.

10 Q. And in that instance, you -- you kind of started that deal
11 by contacting Mr. Costanzo?

12 A. That's correct.

13 Q. And you indicated to him that up thought you guys were
14 going to want to trade \$10,000.

15 A. Correct.

16 Q. But again in that instance, it was you proposing that
17 amount; correct?

18 A. Correct.

19 Q. So it was -- it was the IRS criminal investigations
20 increasing the amount. It was not Mr. Costanzo.

21 A. It was myself, right, that proposed the amount.

22 Q. And then we just -- the government was just asking you
23 questions about that November 2015 meeting.

24 A. Yes.

25 Q. And I believe you testified that the trade was for \$11,700?

1 A. That's correct.

2 Q. And again, that was a trade where you initiated contact
3 with Mr. Costanzo.

4 A. That's correct.

5 Q. Indicating that you wanted to do a deal.

6 A. I did.

7 Q. And you indicated the amount that you wanted to do.

8 A. I indicated I wanted to do 20,000.

9 Q. And he wasn't able to come up with it all?

10 A. It was a very short notice, because I called a few hours
11 before the meet-up. Very short notice.

12 Q. Let me ask you some questions about that because when we --
13 when you answered some questions about that initial
14 localbitcoins.com profile --

15 A. Sure.

16 Q. -- Mr. Costanzo seemed to indicate that he was capable and
17 willing to do these much larger trades?

18 A. Right. I believe up to 15 and then 75,000, if I'm not
19 mistaken.

20 Q. And even in his conversations with you, he kind of boasted
21 about being capable of doing large trades.

22 A. Correct.

23 Q. But in one of those conversations we listened to, he said
24 he'd actually never done a trade any larger than 20,000; right?

25 A. He did mention that in one of the conversations.

1 Q. And so even though he kind of boasted about wanting to do
2 large dollar amounts, as you, the undercover agent, were
3 proposing larger amounts, he seemed to be struggling to put
4 together those amounts, as we talk about the deals we've talked
5 about so far. Isn't that true?

6 A. He -- well, he was -- he referred to timing issues usually.

7 Q. He -- he was coming up short.

8 A. He was coming up short. And with the -- when he mentioned
9 he -- the most he had was 20,000. I'm not sure that was
10 referring to any particular time frame or -- so it's -- it was
11 kind of open to interpretation.

12 Q. He wasn't...

13 One of the things that you -- you spoke about in your
14 direct testimony was he did appear to be an individual that was
15 extremely enthusiastic about Bitcoin?

16 A. He was.

17 Q. He could talk and talk and talk about Bitcoin?

18 A. Yes.

19 Q. About --

20 A. And he did.

21 Q. About how he thought it was just going to be really
22 important in the world?

23 A. Yes, he was very enthusiastic about it.

24 Q. And you talked about how he sent you a podcast that he had
25 done, talking about Bitcoin. And -- is that a "yes"?

1 A. Yes, he did. Of course.

2 Q. And he wanted you to listen to it?

3 A. Yes.

4 Q. And in fact, he pestered you to listen is to it; yes?

5 A. Yes.

6 Q. And he wanted you to share it with your friends?

7 A. Yes.

8 Q. And he talked to you about coming and showing up at his
9 meet-ups to talk about Bitcoin?

10 A. Correct.

11 Q. And I think you talked about this a little bit earlier, but
12 these meet-ups were basically meetings that people who are
13 interested in Bitcoin could come and talk about Bitcoin issues.

14 A. That's correct.

15 Q. He also talked about setting up a booth at the Home and
16 Garden Show.

17 A. Right.

18 Q. Where he would talk to people who attended the Home and
19 Garden Show to try to get them interested in Bitcoin.

20 A. That's correct.

21 Q. You indicated that you've been working as an undercover
22 agent for many years.

23 A. That's correct.

24 Q. And you've received a tremendous amount of training in that
25 regard?

1 A. I received training in this regard, yes.

2 Q. Both kind of formal training and on-the-job training?

3 A. Correct.

4 Q. When you were deployed in this investigation --

5 A. Okay.

6 Q. -- one of the objectives was to investigate potential
7 money laundering; would you agree with that?

8 A. Correct.

9 Q. And so as we listened to your recorded meetings with
10 Mr. Costanzo, and as we listened to you describe why you made
11 certain statements to Mr. Costanzo, is it fair to say that you
12 were saying those things because it was part of your money
13 laundering investigation?

14 A. Correct.

15 Q. Meaning that you were -- would say things in a calculated
16 way to see if you could get a certain reaction out of
17 Mr. Costanzo?

18 A. No, not necessarily certain reaction, but to see if he
19 would be willing to do business with me, given the set of
20 circumstances that I outlined.

21 Q. You knew, though, that -- obviously you knew that it was
22 being recorded --

23 A. Correct.

24 Q. -- because you -- I don't know how this works exactly, but
25 do you set up your own recording device?

1 A. No, we have agents who are trained in technical equipment
2 who assist us.

3 Q. But -- but you know that you're recording that meeting in
4 order to preserve what has happened.

5 A. Oh, yes. Correct.

6 Q. And you know that there's the potential that that recording
7 may someday be played in a court proceeding.

8 A. Of course. There's always the assumption that someday it
9 would be played in court.

10 Q. So as you're sitting in those meetings that are being
11 recorded, you are making statements that are helping you
12 potentially build a case against the individual that you're
13 sitting across from.

14 A. Okay. Yes. That's part of the investigation.

15 MR. CAIN: Your Honor, may I have a moment?

16 THE COURT: You may.

17 (Pause in proceedings.)

18 BY MR. CAIN:

19 Q. Agent Kushner, Counsel for the United States asked you
20 questions about whether Mr. Costanzo asked you to provide
21 certain information about yourself.

22 A. Yes.

23 Q. Like your last name.

24 A. Right.

25 Q. You didn't ever ask him for his last name, did you?

1 A. No, I did not. I did ask him about his -- if his name was
2 real or not.

3 Q. The government also asked if Mr. Costanzo ever asked you
4 for your Tax Identification Number; correct?

5 A. Right.

6 Q. And you indicated that he did not?

7 A. He did not.

8 Q. But you didn't intend to give him your Tax Identification
9 Number?

10 A. If he -- well, if he would have asked...

11 Q. You weren't going to give him your actual Tax
12 Identification Number?

13 A. Not my actual -- not the actual Tax Identification Number.

14 Q. And you weren't going to give him your actual street
15 address?

16 A. I would have given him my cover street address.

17 Q. But not your actual street address?

18 A. Not my real street address.

19 MR. CAIN: I have no further questions.

20 Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. BINFORD: I'll be very brief, Your Honor.

23 THE COURT: All right.

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REDIRECT EXAMINATION

BY MR. BINFORD:

Q. Mr. Costanzo's attorney asked you whether there was anything specifically that invited drug dealers on that localbitcoins page.

Despite the fact that there was nothing that said Welcome, Drug Dealers, were there things on that page that might appeal to people engaged in drug activity?

A. I think the reference to discretion.

Q. Would the use of an alias appeal to someone?

A. Yes.

Q. And would the opportunity to provide large amounts of cash appeal to someone?

A. Oh, absolutely, yes. They were -- there were not a lot of listings that provided -- that listed such large amounts of cash to be available.

Q. Do you know of any other place where you could transfer that amount of cash without more details being asked of you?

A. Not --

MR. CAIN: Objection. Relevance, outside the scope.

THE COURT: Overruled.

You may answer.

THE WITNESS: I know of no other place, no.

BY MR. BINFORD:

Q. How long have you been an undercover agent?

1 A. For 15 years this year.

2 Q. And as part of that being an undercover agent, do you have
3 certain backstopping that's necessary to protect you and --

4 A. Yes. It's -- backstopping involves -- it's a continuous
5 process from the day you finish the training. It's creating a
6 persona, undercover persona, creating documents, creating your
7 backstopping story, and profile to fit the role.

8 Q. Can that backstopping include an undercover address?

9 A. Yes.

10 Q. An undercover Tax Identification Number?

11 A. Yes.

12 Q. And are those things that you could provide to someone if
13 asked?

14 A. Yes, I did have all those things: Undercover address,
15 undercover Taxpayer Identification Number.

16 Q. Were you prepared in this case to provide that information
17 to Mr. Costanzo if he asked?

18 A. Well, I would have been very curious why he's asking me
19 that, but ultimately I would have given, if he would have
20 provided adequate -- acceptable enough answer to me.

21 Q. So 15 years as an undercover agent, would there be a need
22 for undercover agents if people engaged in criminal activity
23 out in the open?

24 A. Would you repeat that again? Sorry.

25 Q. Would there be a need for undercover agents if people

1 engaged in criminal activity out in the open?

2 MR. CAIN: Objection. Outside the scope.

3 THE COURT: I'm going to sustain that.

4 MR. BINFORD: All right.

5 BY MR. BINFORD:

6 Q. During your conversations with Mr. Costanzo, did he
7 repeatedly reference a bank that was his source of Bitcoin?

8 A. He referenced a banker that was his source of Bitcoins
9 several times.

10 Q. And is it your understanding that that was actually a real
11 financial institution?

12 A. My understanding was not. My understanding was perhaps
13 another individual.

14 Q. Were the amounts you suggested for your transactions --
15 2,000, 3,000, 10,000, and then the last 20,000 -- were those
16 all amounts within or under his advertised amounts?

17 A. It's well below his advertised amounts.

18 Q. And were those less than other amounts he told you he had
19 previously engaged in?

20 A. Yes.

21 Q. And were those amounts less than the amounts that he
22 suggested that he could do during your conversations?

23 A. Yes. He suggested several -- several occasions he could do
24 larger amounts.

25 Q. The attorney for Mr. Costanzo mentioned that you had

1 already set up the May 20th deal before you referenced heroin.

2 A. Uh-huh.

3 Q. Had you already set up the deal with Peter Steinmetz before
4 you referenced drugs during that discussion?

5 A. I -- yes, I set up the meeting with Peter --

6 MR. CAIN: Objection. Outside the scope.

7 THE COURT: Overruled.

8 THE WITNESS: So, yes, I set up the meeting with Peter
9 Steinmetz before I mentioned the drugs.

10 BY MR. BINFORD:

11 Q. And were you able to complete that transaction?

12 A. No, I did not.

13 Q. Did he refuse to engage in that transaction?

14 MR. CAIN: Objection. Relevance.

15 THE COURT: Sustained.

16 BY MR. BINFORD:

17 Q. Did you give Mr. Costanzo multiple opportunities to walk
18 away from engaging in a transaction involving drug proceeds?

19 A. Yes.

20 Q. Did he ever take you up on any of those opportunities?

21 A. No.

22 Q. And even after your last transaction, was he enthusiastic
23 to do business with you again?

24 A. I would say very enthusiastic.

25 MR. BINFORD: No further questions, Your Honor.

1 THE COURT: Thank you, Agent.

2 You may step down.

3 Ladies and gentlemen, we're going to take an afternoon
4 break. Please return, and be ready to return about 3:20.
5 We'll try and promptly begin at that time.

6 COURTROOM DEPUTY: All rise.

7 (Jury leaves the courtroom at 3:07 p.m.)

8 THE COURT: Anything the parties need to raise?

9 MR. BINFORD: Not from the government, Your Honor.

10 MS. WEIDNER: Nothing from the defense, Your Honor.
11 When are we supposed to be back?

12 THE COURT: 3:20.

13 MS. WEIDNER: Thank you.

14 THE COURT: Thank you.

15 (Proceedings in recess at 3:08 p.m.)

16 (Jury enters the courtroom at 3:26 p.m.)

17 (Proceedings resume at 3:28 p.m.)

18 THE COURT: Please be seated.

19 Hope you had a pleasant break and you can stay with us
20 for this last portion of the afternoon.

21 Next witness?

22 MS. ESCALANTE: Your Honor, the government would call
23 Officer David Alvarado.

24 Permission to approach the lecturn, Your Honor.

25 THE COURT: Oh, yeah. I'm just going to grant blanket

1 permission to approach the lecturn.

2 MS. ESCALANTE: Thank you.

3 THE COURT: Only if you're going to approach the
4 witness or the bench or the jury do you need to request it.

5 (DAVID ALVARADO, Government's witness, is sworn.)

6 DIRECT EXAMINATION

7 BY MS. ESCALANTE:

8 Q. Good afternoon, Officer Alvarado.

9 Could you introduce yourself to the members of the
10 jury and tell us where your work.

11 A. Yes. Task -- Task Force Officer Dave Alvarado. I'm
12 assigned to the Task Force Group 1 with the DEA, employed by
13 the Scottsdale Police Department.

14 Q. How long have you been employed with Scottsdale Police
15 Department?

16 A. For a little over 17 years.

17 Q. Did you have any previous law enforcement experience prior
18 to joining Scottsdale Police Department?

19 A. Yes. I worked for the U.S. Army military police for five
20 years.

21 Q. Any previous experience prior to that?

22 A. No, I did not.

23 Q. Do you have any college or education?

24 A. I have two years of college.

25 Q. And what were you majoring in?

1 A. Law enforcement. Criminal justice.

2 Q. Okay. And what did it take for you to become employed with
3 Scottsdale Police Department?

4 A. At the time you had to have 60 credit hours, you had to go
5 through an extensive background check, you had to do a physical
6 fitness test, a written test, oral board, polygraph, and then
7 you'd get an offer to be hired.

8 Q. Okay. And upon joining, what unit did you get sent to?

9 A. I initially worked patrol coming out of the academy. I
10 worked patrol for a couple years, and then went to the canine
11 unit where I worked a narcotics detection canine for about 10
12 or 11 years. Once I left the canine unit, then I went to our
13 Street Crimes Unit, which is the High Enforcement Arrest Team,
14 which we investigated different various crimes that occurred
15 within the city of Scottsdale.

16 Q. And you stated that you are a task force officer with the
17 DEA.

18 A. That is correct.

19 Q. What is a task force officer?

20 A. We're assigned to the -- to assess the DEA in a task force
21 to investigate large-level drug investigations happening within
22 the state of Arizona.

23 Q. And how long have you been a task force officer?

24 A. Just coming up on two years.

25 Q. And what do you have to do to become a task force officer?

1 A. You need to test for the position, which usually occurs
2 with an oral board and a background check, in which they look
3 at how many cases I've investigated and look through to see if
4 I'm a thorough investigator, look to see if I know what I'm
5 doing as far as an investigator.

6 Q. Okay. And just for the court reporter, I'm just going to
7 ask you to speak a little bit slower. Okay?

8 A. Sure.

9 Q. Slower and louder.

10 Were you a task force officer on April 20th, 2017?

11 A. Yes, I was.

12 Q. And were you on duty that day?

13 A. Yes, I was.

14 Q. And when did you, I guess, come on duty that day?

15 A. What time?

16 Q. Uh-huh.

17 A. I would estimate 0900.

18 Q. Okay. And what were you going to do that day; what were
19 you assigned to do that day?

20 A. Initially we were assigned to provide surveillance during a
21 UC meet, and then I was assigned to -- I was assigned to a
22 search party.

23 Q. And who were you conducting surveillance of?

24 A. Thomas Costanzo.

25 Q. Okay. And you said of a "UC meet." What does "UC" mean?

1 A. Undercover.

2 Q. Oh.

3 A. Undercover officer or detective.

4 Q. And what were you aware was going to happen that day?

5 A. The officer or detective was going to meet with Thomas
6 Costanzo, and he was going to exchange money for Bitcoin at the
7 time.

8 Q. Okay. And what -- who is the officer that was going to
9 meet with Thomas Costanzo?

10 A. Task Force Officer Chad Martin.

11 Q. Okay. And do you see Task Force Officer Chad Martin here
12 in the courtroom today?

13 A. Yes, I do.

14 Q. And where is he seated and what is he wearing?

15 A. He is directly in front of me wearing a suit with a tie
16 with white dots on it.

17 Q. Okay. And did you provide surveillance for the undercover
18 meeting?

19 A. Yes, I did.

20 Q. Where did that meeting occur?

21 A. At the Starbucks on Scottsdale Road just south of the 202.

22 Q. And what did you see while on surveillance?

23 A. I was inside the Starbucks right next to the UCDO. I saw
24 Task Force Officer Chad Martin meet with Thomas Costanzo. They
25 exchanged a bag, and then they put their phones together; and

1 then shortly after that, there was an arrest.

2 Q. Okay. And do you see Thomas Costanzo here in the courtroom
3 today?

4 A. I do.

5 Q. Can you identify where he is seated and what he is wearing?

6 A. He's to your right, to my left, between a male and a
7 female. He's wearing a black jacket and a -- looks like a gray
8 shirt. And he's wearing some glasses, as well.

9 Q. Okay.

10 MS. ESCALANTE: Your Honor, may the record reflect
11 that Officer Alvarado has identified the defendant?

12 THE COURT: Yes.

13 BY MS. ESCALANTE:

14 Q. Okay. And after you provided surveillance at the Starbucks
15 and observed the deal, what did you do later that day?

16 A. I was assigned to the search warrant at Mr. Costanzo's
17 apartment.

18 Q. Okay. And is that at 417 North Loma Vista in Mesa,
19 Arizona?

20 A. Yes.

21 Q. Okay. And did you go over there?

22 A. I did.

23 Q. And what did you do upon arrival?

24 A. Search warrant was served by the Maricopa County S.W.A.T.
25 team. Once the building was secured, we took over the scene,

1 and I began taking pictures and label each room with inside the
2 apartment.

3 Q. Describe the apartment as you enter for the jurors.

4 A. As you enter the front door, you immediately come into the
5 living room. To your right is a kitchen, slash, dining room.
6 If you make an immediate right, there is a small little laundry
7 room. If you proceed through the living room, you'll walk into
8 a small hallway. There's a closet in that hallway. If you
9 proceed straight across that -- that hallway, you'll go into
10 the master bedroom or the bedroom where Mr. Costanzo --
11 Mr. Costanzo's things were, his clothes and items and his bed.
12 If you come out of the room, directly to your right is a
13 secondary bedroom, and then there's a bathroom off that hallway
14 as well.

15 Q. Okay. So how many bedrooms were in the apartment?

16 A. Two.

17 Q. Okay. And were you able to identify which one was the
18 master and which one was the spare?

19 A. Yes.

20 Q. And how were you able to do that?

21 A. Master bedroom had the -- mainly most of the clothes and
22 the bed was made -- or there was sheets on that bed. There was
23 no sheets on the other bed.

24 Q. Okay. And were there any individuals in the apartment when
25 the search warrant was executed?

1 A. No. Nobody else was there.

2 Q. Okay. And were you able to identify who lived in there
3 from the items that you saw during the search warrant?

4 A. Yes.

5 Q. And who was that?

6 A. Thomas Costanzo.

7 Q. Okay. And did you take photographs during the search
8 warrant?

9 A. Yes, I did.

10 Q. Okay. In front of you -- and did you also seize certain
11 items during the search warrant?

12 A. Yes, I did.

13 Q. In front of you are multiple exhibits. Can you -- they are
14 numbers 17, 16, 34, 35, 7, 11, 9, 12, 36, 18, 20, and 19, and
15 80.

16 Will you review all of those, and once you're done
17 reviewing, if you can just look up so I'm aware you're done.

18 (Pause in proceedings.)

19 BY MS. ESCALANTE:

20 Q. Okay?

21 A. Sorry.

22 Q. It's okay.

23 Are all of those photographs and items that you saw on
24 the day of the search warrant?

25 A. Yes, they are.

1 Q. Are they true and accurate depiction of what you saw the
2 day of the search warrant?

3 A. Yes.

4 Q. And do you recognize each of those items?

5 A. I do.

6 MS. ESCALANTE: Your Honor, the government would move
7 to admit all of those exhibits.

8 THE COURT: I think I'm going to have to have you name
9 them specifically, Ms. Escalante.

10 MS. ESCALANTE: Yes, Your Honor. The government would
11 move to admit Exhibits 17, 16, 34, 35, 7, 11, 9, 12, 36, 80,
12 18, 20, 19, and 31.

13 THE COURT: Ms. Weidner, I'll give you a minute to let
14 me know if you have any objections to any of those.

15 MS. WEIDNER: Thank you.

16 Your Honor, may I -- may we consult with counsel very
17 quickly to make sure that we have the list correct?

18 THE COURT: You may certainly do so.

19 (Pause in proceedings.)

20 THE COURT: Ladies and gentlemen of the jury, if you
21 want to stand up and stretch, I going to certainly take the
22 opportunity.

23 (Pause in proceedings.)

24 MR. CAIN: Your Honor, of the exhibits that the
25 government has moved to admit, we only object to the admission

1 of Exhibit 9.

2 THE COURT: All right.

3 MR. CAIN: We would object --

4 THE COURT: All right. So here's how we're going to
5 handle this. I haven't seen Exhibit 9. I don't know what it
6 is, and I don't know what your objection is. I do have a
7 binder here. But I'm going to admit Exhibit 17, Exhibit 16,
8 Exhibit 34, Exhibit 35, Exhibit 7, Exhibit 11, Exhibit 12,
9 Exhibit 36, Exhibit 80, Exhibit 18, Exhibit 20, Exhibit 19, and
10 Exhibit 31.

11 What's your objection to Exhibit 9, Mr. Cain?

12 MR. CAIN: Relevance. Outside the scope of the
13 indictment, Your Honor. And hearsay.

14 MS. ESCALANTE: Your Honor, it goes to predisposition.
15 It's an item that was found during the search warrant.

16 THE COURT: Well, it may be that it does, but it still
17 seems to me you're going to have to lay foundation before it
18 comes in, and I mean foundation other than just that it was
19 found.

20 MS. ESCALANTE: Okay, Your Honor. One moment.

21 (Exhibits 17, 16, 34, 35, 7, 11, 12, 36,
22 80, 18, 20, 19, and 31 are received into evidence.)

23 BY MS. ESCALANTE:

24 Q. Officer Alvarado, do you see Exhibit 9 before you?

25 A. Yes.

1 Q. Okay. Where did you find that item?

2 A. Exhibit 9 was found in the spare bedroom in a box with
3 other items of paperwork.

4 Q. Okay. And is that exhibit the same place where Exhibit 34,
5 35, 7, and 11 were also found?

6 A. Yes.

7 Q. Okay. And when you located those items, was Officer Martin
8 present with you and also observed those items?

9 A. No.

10 Q. No. Did he -- where was he?

11 A. I believe he was offsite at the time.

12 Q. Did Officer Martin also attend the execution of the search
13 warrant?

14 A. No.

15 Q. He was not there the day that the search warrant got
16 executed?

17 A. No.

18 Q. Were you there the entire time?

19 A. Yes.

20 Q. Okay.

21 MS. ESCALANTE: Your Honor, I will lay more foundation
22 for Exhibit 9 through other witnesses.

23 THE COURT: Well, let me be specific so you
24 understand, Ms. Escalante, what kind of foundation I'm
25 interested in. It seems to me that the hearsay objection here

1 is well-founded, as long as you're offering it for the truth of
2 the matter asserted. If that is the case, then you're going to
3 have to lay foundation that this fits the hearsay exception.

4 MS. ESCALANTE: Your Honor, we're not offering it for
5 the truth to the matter asserted that those individuals --

6 THE COURT: The truth of the statement made in the
7 paper?

8 MS. ESCALANTE: Right. We are offering it for the --
9 to show predisposition in this case.

10 THE COURT: Well, I don't see how that demonstrates
11 predisposition unless I assume the truth of the matter
12 asserted.

13 Do you understand what I'm saying?

14 MS. ESCALANTE: Yes, Your Honor.

15 THE COURT: All right.

16 MS. ESCALANTE: The government is also offering, it,
17 Your Honor -- strike that.

18 THE COURT: If you want to discuss Exhibit 9 at
19 sidebar, we can do that. If you need to do it right now, we
20 can do it right now. If you can go on to the rest of your
21 testimony, why don't we do that and we can take up Exhibit 9
22 later if we need to.

23 MS. ESCALANTE: Okay.

24 THE COURT: Do you need to be heard, Mr. Cain?

25 MR. CAIN: No, Judge. I was just going to say, if we

1 wanted to talk sidebar, we could do that, or we could take it
2 up later.

3 THE COURT: All right. Thank you.

4 MS. ESCALANTE: Your Honor, permission to publish the
5 admitted exhibits.

6 THE COURT: You may do that.

7 BY MS. ESCALANTE:

8 Q. Okay. Officer Alvarado, could you please tell the members
9 of the jury what this is a picture of?

10 A. That's a picture of the living room from about where the
11 front door is.

12 Q. And that is Exhibit 17.

13 Now I'm moving on to Exhibit 16.

14 What is that a picture of?

15 A. That is a picture of a dry erase board that was on the
16 north wall of the living room.

17 Q. And did you review what was written on this board on the
18 day of the search warrant?

19 A. Yes.

20 Q. What does that say, Officer Alvarado?

21 A. "Avoid banks."

22 Q. And to the right in the middle, what does that say?

23 A. "Encrypted columns."

24 Q. And to the right at the very top, what does that say?

25 A. "Hand to hand."

1 MS. ESCALANTE: One moment, Your Honor.

2 (Pause in proceedings.)

3 MS. ESCALANTE: Sorry. Technical difficulties on my
4 end.

5 BY MS. ESCALANTE:

6 Q. Exhibit 34 is next.

7 What is that, Officer Alvarado?

8 A. It was a pamphlet that is located in the same area.

9 Q. Exhibit 35 now?

10 A. That's the other side of that pamphlet.

11 Q. And where was this pamphlet found?

12 A. In the -- the spare bedroom.

13 Q. And did you review this pamphlet?

14 A. I did.

15 Q. Start with the left side of the pamphlet. What does that
16 say?

17 A. (Reading) Bitcoin is an alternative currency that can be
18 transferred electronically anywhere in the world with no bank
19 and no government forms. It's cheaper than any other online
20 payment system, and thousands of websites already accept it.
21 The Bitcoin network uses state-of-the-art cryptography to
22 provide superior privacy protection, making it difficult to
23 confiscate by governments or other thieves, but accessible from
24 any Wi-Fi connection or mobile device.

25 Q. Continue.

1 A. (Reading) Bitcoin does not discriminate. You can open a
2 Bitcoin wallet without showing ID or providing a physical
3 address. Unlike traditional banks, Bitcoin is accessible to
4 the undocumented and the homeless, giving the unbanked a means
5 of savings and access to a vibrant global market. Bitcoin is
6 radically changing the economy from top to bottom. It's not
7 tied to any central bank, so it's not subject to dollar
8 inflation, which is at the root of systemic poverty and
9 homelessness in any otherwise wealthy economy. The global
10 dollar hegemony now has serious competition, giving us an easy
11 exit off of the dollar's worthlessness.

12 Q. Okay. Now we'll go to the middle portion of the pamphlet.

13 Can you read that from your screen?

14 A. Yes.

15 Q. Okay. What does it say?

16 A. The heading is The Honey Badger of Money.

17 (Reading) This is Bitcoin. It's the most fearless
18 currency on the Internet. Oh, Bitcoin is just crazy. It's
19 distributed all over the place. Watch out, banks. Bitcoin
20 does all the work. We don't need you anymore, stupid. Eew.
21 Oh, my gosh. Transactions are super fast. How disgusting is
22 that? Bitcoin is so nasty. Bitcoin has no regard for any
23 national borders anywhere, allowing it to move about freely.
24 Here comes a fierce battle between the State and Bitcoin, FYI.
25 It's got encryption. Nothing can stop Bitcoin. Now the feds

1 want to tax Bitcoin. Don't -- do you think Bitcoin cares?
2 Bitcoin don't give a Bit. Just do -- just -- it just does what
3 it does -- or what it wants.

4 Q. And now the right side.

5 A. Bitcoin Quick Start Guide. Bitcoin. Distributed network.
6 Instant transfers. Global markets. No frozen accounts. Free
7 to start.

8 Q. And this was found in the defendant's residence; correct?

9 A. Yes, it was.

10 Q. Now Exhibit Number 7. What is this?

11 A. It's a flyer that was also found in the same location.

12 Q. And do you see a phone number on that flier?

13 A. Yes, I do.

14 Q. And what is that?

15 A. (602)434-1275.

16 Q. And is there a reference to a video there?

17 A. Yes, there is.

18 Q. And what's the name of the video?

19 A. Quotations, We Use Coins.

20 Q. Okay. Now Exhibit Number 12. What is this?

21 A. This is the desk -- or the drawer next to the bed in the
22 master bedroom.

23 Q. And was that inside the drawer?

24 A. Yes, it was.

25 Q. And what is that?

1 A. They're wraps for increments of \$5,000 in U.S. currency.

2 Q. Okay.

3 Now, Exhibit 36. What is that?

4 A. These are coins that came out of that drawer, various
5 different metals.

6 Q. Okay. And do you have Exhibit 80 in front of you?

7 A. Yes, I do.

8 Q. And is that the coins that are depicted in this picture?

9 A. Yes, they are.

10 Q. Okay. Now Exhibit 18.

11 A. Those are business cards that were located in the same
12 drawer.

13 Q. Okay. And is there a phone number and email associated
14 with this?

15 A. Yes. (602)434-1725. The email is morpheus@titanians.org.

16 Q. Now Exhibit 20. What is this a picture of?

17 A. Picture of the dining room table.

18 Q. And where is this in proximity to -- in the apartment?

19 A. It's adjacent to the kitchen. As soon as you enter the
20 front door, it's right to your right.

21 Q. And what are those items enlarged on the screen?

22 A. Those are U.S. currency wraps for 2,000, and I believe the
23 other one is a thousand. It's kind of blurred on my screen.

24 Q. Okay. And then Exhibit 19?

25 A. That is a cell phone that was located in the kitchen, and

1 it was plugged in right where it was at.

2 Q. And what kind of cell phone is that?

3 A. I'd have to refer to my report, or look at it right now.

4 Q. Okay. And you have Exhibit 31 before you; correct?

5 A. I do.

6 Q. And is that a -- is that the actual cell phone?

7 A. Yes.

8 Q. Does it tell you there what it is?

9 A. It's a Samsung.

10 Q. Okay.

11 MS. ESCALANTE: May I have a moment, Your Honor?

12 THE COURT: You may.

13 (Pause in proceedings.)

14 BY MS. ESCALANTE:

15 Q. Officer Alvarado, when you did -- did you do -- conduct an
16 initial walk-through of the apartment?

17 A. Yes.

18 Q. And Officer Martin was or wasn't with you?

19 A. I don't recall if he was with me or not.

20 Q. Would it refresh your recollection to read a report that
21 was taken about the day the search warrant got executed?

22 A. Yes.

23 Q. And that's Exhibit 153.

24 May I approach, Your Honor?

25 THE COURT: You may.

1 BY MS. ESCALANTE:

2 Q. Will you review that report and let me know if it refreshes
3 your recollection.

4 A. It does.

5 Q. Okay. So was Officer Martin there during the search
6 warrant?

7 A. Are you asking, like, the initial search warrant?

8 Q. Yes. The initial walk-through.

9 A. I believe he did the walk-through, but then he had to leave
10 to go offsite.

11 Q. Okay. Thank you.

12 MS. ESCALANTE: No further questions, Your Honor.

13 THE COURT: Cross-examination?

14 MR. CAIN: No questions for this witness, Your Honor.

15 THE COURT: Thank you.

16 You may step down.

17 MR. BINFORD: United States calls Jason Shadle.

18 THE COURT: Thank you.

19 (JASON SHADLE, Government's witness, is sworn.)

20 MR. BINFORD: And, Judge, I'd like your deputy clerk
21 to give the witness what's been previously admitted as
22 Exhibit 31 before he starts. It should be in an evidence bag.

23 DIRECT EXAMINATION

24 BY MR. BINFORD:

25 Q. Good afternoon, Mr. Shadle.

1 A. Good afternoon.

2 Q. Mr. Shadle, where do you work?

3 A. I work for the United States Postal Inspection Service.

4 Q. And what do you do for the Postal Inspection Service?

5 A. I'm a senior forensic computer analyst.

6 Q. How long have you been doing that?

7 A. With the Inspection Service, for the last six years.

8 Q. And where were you employed prior to that?

9 A. I was a contract employee of the DEA in Lorton, Virginia.

10 Q. What did you do for the DEA?

11 A. I was a senior computer forensic examiner.

12 Q. And did you have any experience with electronic devices
13 prior to that?

14 A. Yes, I did.

15 Q. What did you do prior to working for the DEA?

16 A. If was a police officer in Ohio, and part of my duties were
17 to do computer forensic examinations.

18 Q. How long have you been involved in computer forensic
19 examinations?

20 A. Since 2005.

21 Q. What do you do now as a senior computer -- senior forensic
22 computer analyst?

23 A. Part of our duties -- my duties are to assist postal
24 inspectors in the execution of search warrants, so we will help
25 search for and seize electronic devices. If a computer is

1 running, I will help to triage it to make sure it's not
2 encrypted before seizure. And sometimes I will make forensic
3 images of computers on-scene.

4 Back in the laboratory, I will write block, make what
5 we call a forensic image or copy of the data. I will archive
6 it to optical disc. I will examine the data, I'll issue a
7 report, and testify as needed.

8 Q. Have you received any training in examining computers or
9 other electronic devices?

10 A. Yes, I've been through four training programs. One was
11 through the Ohio Peace Officer Training Academy, which led to a
12 certification as an evidence recovery specialist in a digital
13 environment.

14 My next training program was through the DEA.

15 My third training program was through the Department
16 of Defense Cyber Investigations Training Academy, which led to
17 a certification as a certified digital media collector.

18 And then my final one was also through Department of
19 Defense, and that led to a certification as a certified digital
20 forensic examiner.

21 Q. And do you have a graduate degree related to forensics?

22 A. I do. I have a master of science in digital forensic
23 management.

24 Q. And do you belong to any professional organizations?

25 A. I do. I belong to HTCIA. That's the High Technology Crime

1 Investigation Association. And I'm a member of AAFS. That's
2 the American Academy of Forensic Sciences.

3 Q. Now, when you examine electronic devices as part of a
4 criminal case, is there specialized software that you use?

5 A. Yes, there is.

6 Q. And is that software generally used throughout the
7 industry?

8 A. Yes, it is.

9 Q. Can you tell the jury a little bit more about that software
10 that you use?

11 A. Okay. The software will -- will vary depending on whether
12 I'm examining computer and computer storage media, or if I am
13 examining cell phones and other mobile devices like a tablet.

14 When it comes to the mobile devices, there's a company
15 called Cellebrite, which provides both a hardware and software
16 solution for copying data out of those mobile devices. The
17 package includes cables, the extraction tool, software for
18 analyzing the data, and software for reviewing a report of that
19 data that's been extracted.

20 Q. Can you approximate how many electronic devices you've
21 analyzed during your career?

22 A. I've never totaled it up.

23 Q. Do you think it's more or less than 1,000?

24 A. Probably right around there.

25 Q. Do you recall analyzing any electronic evidence that was

1 recovered from the apartment of Thomas Costanzo?

2 A. I received -- yes.

3 Q. Let me -- I want to show you what's been previously
4 admitted and marked as Exhibit 19.

5 I'm going to pull it up on the screen there in front
6 of you.

7 Do you see an electronic device in the center of that
8 photograph?

9 THE COURT: He's not seeing anything right at the
10 moment.

11 MR. BINFORD: You should have it now. Maybe.

12 THE WITNESS: Yes, I do.

13 BY MR. BINFORD:

14 Q. And I'm going to zoom in on that electronic device.

15 Does that device look familiar to you?

16 A. Yes. That's one of the pieces of evidence I examined.

17 Q. And what -- what is that?

18 A. That's the LG -- or, sorry -- the Samsung Galaxy S2 cell
19 phone that you had presented to me here. I guess Court's
20 Exhibit 31.

21 Q. And for the record, you're holding what's been marked as
22 Exhibit 31 and admitted into evidence.

23 Will you take a look at that and tell us if it looks
24 familiar to you.

25 A. Yes, this is -- this is the same device that I examined.

1 These are my -- my seals, my initials and dates, and my
2 indication of our laboratory's exhibit number 33.

3 Q. And is that the same device that's depicted in the
4 photograph in front of you, Exhibit 19?

5 A. Yes, it is.

6 Q. Did you analyze that cell phone?

7 A. Yes, I did.

8 Q. And how did you analyze that device?

9 A. When the device came in, I first of all began by examining
10 the exterior and saw there was damage to the face of it, which
11 I photographed. The battery had already been removed, so I
12 placed the device and the battery in what's called a Faraday
13 Box. It's an enclosure which blocks out radiofrequency.
14 Allowed the phone to charge. I attempted to extract data using
15 what's called a boot loader, and that was not successful. So I
16 powered the device on inside the enclosure, placed it into
17 airplane mode, and removed it so that I could examine the
18 device.

19 Q. And did you -- were you ultimately able to obtain
20 information from that device?

21 A. Yes, I was.

22 Q. What software did you use to do that?

23 A. It was Cellebrite's. The device is called a UFED Touch.
24 UFED is spelled U-F-E-D, and it stands for the universal
25 forensic extraction device. And I used that tool to pull

1 information from the phone, and I reviewed it with their
2 software called physical analyzer.

3 Q. And is Cellebrite, that's the software you mentioned
4 earlier on?

5 A. That's the company that provides it, yes.

6 Q. What type of information does that extract from the device,
7 from the cell phone?

8 A. There's a large number of categories of data which can be
9 extracted, from text messages, call logs, contacts, chat
10 conversations, pictures, videos, files that were saved on the
11 phone, browsing history, Internet browsing history.

12 Q. Did you -- sorry. Didn't mean to cut you off.

13 Sounds like there's a lot that is stored on mobile
14 devices.

15 A. Yes.

16 Q. Did you find information on each of those devices that
17 indicated usage?

18 A. On this device?

19 Q. Yeah, I'm sorry. On this device.

20 A. Yes, I did.

21 Q. The Samsung cell phone.

22 Were you able to identify a phone number associated
23 with that device?

24 A. When I extracted the data, the phone had recorded the phone
25 number of the last SIM card that had been in the phone. So it

1 had recorded it as area code (602)434-1725.

2 Q. Was there other information on that Samsung cell phone that
3 indicated who might have been using it?

4 A. Yes, there was a Telegram chat app with a user name of
5 Morpheus, and a full name of Morpheus Titania. There was a
6 Gmail account synced to the phone. The Gmail address was
7 morpheus2150@gmail.com. And it had a user name of Thomas Mario
8 Costanzo. And there was also a photograph on the phone of an
9 Arizona identification card in the name of Thomas Mario
10 Costanzo.

11 Q. Did you provide a report documenting your findings to other
12 investigators in this case?

13 A. Yes, I did.

14 MR. BINFORD: And I'd like to show the witness only
15 what's been previously marked as Exhibit 168: Just to the
16 witness.

17 BY MR. BINFORD:

18 Q. Do you recognize that? Without going into what it is, do
19 you recognize that document?

20 A. Yes, I do.

21 Q. And is that the report you authorized -- or you wrote,
22 authored?

23 A. Yes, that's the report I authored.

24 Q. All right. Now, did you also provide the other
25 investigators on this case with a forensic image that you

1 created from the extraction of the device?

2 A. What I provided was a report of the data extraction in a
3 format that made it so that the reviewer of it could introduce
4 search terms to search the data, could sort the information and
5 could generate their own reports in a variety of formats, if
6 needed.

7 Q. So, for example, would it be possible for the other
8 investigators to create a report documenting text messages that
9 were exchanged between the user of the phone and another
10 individual?

11 A. Yes.

12 Q. So you could pick a contact in the phone's message list and
13 their contact list and get a report of all text messages
14 exchanged with that person?

15 A. Correct.

16 Q. All right. Now, I'm going to pull up just for you to look
17 at what's been previously marked as Exhibit 32. And I can zoom
18 in, if that will help you.

19 Do you recognize that document?

20 A. If you could zoom in, it would help me.

21 Q. (Counsel complies.)

22 A. Yes.

23 Q. Is -- is that document an extraction of text messages that
24 were contained on that Samsung cell phone?

25 A. Yes.

1 Q. How do you know that?

2 A. Because this is what a report looks like that is run from
3 the report I provided. It indicates the Cellebrite software
4 that was used. I see information about the model of cell phone
5 that this was, and I recall -- and I recall reading some of
6 this content. So...

7 Q. All right. Now I want to show you what's been previously
8 marked as Exhibit 67, and I will zoom in on this as well.

9 Do you recognize this report?

10 A. Yes.

11 Q. And is this a fair and accurate report of text messages
12 that were extracted from that Samsung device?

13 A. Yes.

14 Q. And how do you know that?

15 A. Again, the Cellebrite software name is on the header of it.
16 I see information indicating that Telegram messenger name of
17 Morpheus on it, and again I recall having read some of this
18 content.

19 Q. All right. Now I'm going to direct your attention to the
20 screen and I'm going to show you what's been previously marked
21 for identification as Exhibit 120.

22 Do you also recognize this report?

23 A. Yes.

24 Q. And is this an extraction of text messages from the Samsung
25 phone?

1 A. Yes.

2 Q. And how do you know that?

3 A. For the same -- same reasons. It's indicated that it's a
4 Cellebrite UFED report. The data is from the same model of
5 Samsung that I analyzed, and I recall reading some of this
6 content.

7 Q. All right. And is that a fair and accurate representation
8 of the text messages that were contained on that phone to that
9 user?

10 A. Yes.

11 Q. Now I'm going to ask you to keep your eyes on the screen,
12 and I'm pulling up what's been previously marked for
13 identification as Exhibit 122.

14 And I'm actually going to go -- do you recognize that
15 document?

16 A. Yes.

17 Q. And is that document an extraction of text messages that
18 were contained on the Samsung phone, which is in front of you,
19 Exhibit 31?

20 A. Yes. They are.

21 Q. And how do you know that?

22 A. From the same reasons. The same header on the report, the
23 same reference to the device's model number, and in the
24 content -- some of the content I -- I read when I reviewed the
25 extraction.

1 Q. Thank you.

2 MR. BINFORD: Your Honor, at this time I would move to
3 conditionally admit Exhibits 32, 67, 120, and 122.

4 THE COURT: Any objection?

5 MS. WEIDNER: Your Honor, a moment.

6 (Pause in proceedings.)

7 MS. WEIDNER: Your Honor, the government has moved to
8 admit Exhibits 32, 67, 120, and 122?

9 THE COURT: Correct.

10 MS. WEIDNER: The defense does not object to the
11 admission of Exhibits 32 and 67. The defense does object to
12 the exhibits at 120 and 122, and would request a sidebar to
13 elaborate on that objection.

14 THE COURT: 32 and 67 are admitted.

15 (Exhibits 32 and 67 are received into evidence.)

16 THE COURT: I will give you a sidebar.

17 (At sidebar on the record.)

18 MS. WEIDNER: This is Maria Weidner, and, Your Honor,
19 it is the position of the defense that to the extent that the
20 120 --

21 THE COURT: 120 and 122.

22 MS. WEIDNER: Yes. Thank you. Exhibits 120 and 122
23 would be admissible as rebuttal only, rebuttal on an entrapment
24 defense.

25 At this point, Your Honor, the government seems to

1 have conflated the issue of intent and the defense of
2 entrapment. They are not necessarily the same thing. So we
3 would -- we object to the presentation of 120 and 122 in the
4 government's case in chief. If they feel rebuttal and the
5 Court feels rebuttal is appropriate, then we can progress to
6 that. But at this point, it is our position that we are not
7 there.

8 THE COURT: Haven't you already presented evidence of
9 entrapment?

10 MS. WEIDNER: Your Honor, we have presented evidence
11 that this was not something that our client had the specific
12 intent to be involved in, but rather something that was
13 presented to him.

14 THE COURT: All right. So let me understand again the
15 nature of your objection.

16 MS. WEIDNER: Yes.

17 THE COURT: You think this is only rebuttal evidence,
18 so the government can't present it in its case in chief why?

19 MS. WEIDNER: Government can't present rebuttal
20 evidence in its case in chief as --

21 THE COURT: No, no, no. Why can't the government
22 present this now? What kind of thing are you going to do in
23 your case in chief that would raise this for rebuttal that is
24 not appropriately raised now?

25 MS. WEIDNER: Well, Your Honor, we would argue that

1 now it is not appropriately raised because we are -- the
2 defense that we have raised thus far goes to the mens rea, not
3 necessarily to an entrapment defense.

4 THE COURT: Well, "not necessarily" is not a division
5 I'm going to make at this point. It is what it is, and it can
6 be used for both. It seems to me that you have raised it, and
7 you've raised it for both. And so I'm going to allow -- I am
8 going to overrule that objection. To the extent -- we've
9 already ruled on motions of limine.

10 MS. WEIDNER: Yes.

11 THE COURT: To the extent that it contains -- I do
12 think that there is probably enough foundational evidence to
13 suggest that this is the conversation of the defendant, at
14 least there are statements of the defendant here. To the
15 extent that it also contains statements of third parties,
16 they're not admitted for the truth of the matter asserted. So
17 I'm going to admit the exhibits conditionally.

18 MS. WEIDNER: Okay. The only -- the last issue with
19 the exhibits that the defense would raise is, I don't really
20 understand why, but it's -- they repeat themselves. Have you
21 noticed --

22 THE COURT: Yeah, you mean that there's double
23 entries?

24 MS. WEIDNER: Yes.

25 MR. BINFORD: I can certainly --

1 MS. WEIDNER: I don't know if there's any way to clean
2 it up.

3 MR. BINFORD: I can certainly have the expert explain
4 why that happened.

5 MS. WEIDNER: Okay, yeah. Because it's -- it's a
6 little confusing.

7 THE COURT: All right. Do we want to handle Exhibit
8 Number 9 at this point? Are you going to seek to introduce it,
9 or do you want to just do it at the end of the day since we're
10 in a different witness?

11 MR. RESTAINO: This is Gary Restaino, Your Honor.

12 I think that we are content with the foundation that
13 we've made. We'll do some mulling over the next couple of days
14 whether it's something we can get in.

15 THE COURT: All right. Let me just say then, if I
16 recall correctly, there was a hearsay objection. It seems to
17 me that it is hearsay, unless you can establish that it is a
18 statement of the defendant or there's some hearsay exception
19 that applies for the reasons that I indicated to Ms. Escalante,
20 which is, to the extent that you're asking it be admitted to
21 show predisposition, I have to accept the truth of the matters
22 as asserted in the note. And so I am excluding Exhibit 9
23 unless you can give me a foundation.

24 MR. RESTAINO: That's fine, Your Honor. We would
25 reserve the opportunity to see if there was a foundation, to

1 the extent there's handwriting comparisons and the like. I
2 don't expect we'll get there.

3 THE COURT: Okay. That's what -- just so you know.
4 That's the basis of ruling.

5 MR. RESTAINO: Thank you, Judge.

6 (End of discussion at sidebar.)

7 THE COURT: Exhibits 32, 67, 120, and 122 are
8 admitted.

9 (Exhibits 120 and 122 is received into evidence.)

10 (Exhibit 122 is received into evidence.)

11 BY MR. BINFORD:

12 Q. Mr. Shadle, on those exhibits that were just conditionally
13 admitted that we looked at previously, those extraction
14 reports, it appears that some of the messages are repeated.
15 Can you explain why that occurs?

16 A. In -- in the extractions, plural, that I was able to get
17 from the phone, one is called a logical extraction and one is
18 called a file system extraction. The way the tool is
19 programmed, the product is actually designed to go after the
20 same data in both extraction types. So when it's reported, it
21 can occur twice, if the same data was read in the logical
22 extraction as was read in the file system extraction.

23 Q. And that doesn't necessarily mean that those messages were
24 sent twice or received twice?

25 A. Correct.

1 Q. All right. I want to show you one last item, and this is
2 just for you, not for the jury. This is what's been previously
3 marked as Exhibit 97. And I'm going to pull it up on the
4 screen in front of you.

5 Without going into the content of that document, what
6 is it?

7 A. It's a partial report.

8 Q. And does that report show you -- well, is that a report
9 that was generated based on an extraction from the Samsung cell
10 phone?

11 A. Yes.

12 Q. Do you know whether or not that is a SMS text message or
13 some other type of message?

14 A. It is a Telegram chat conversation.

15 Q. And how do you know that?

16 A. Because some of the -- some of the data on it is not just
17 the chat content, but the source of the information. And the
18 information -- thank you -- the information came from a
19 database belonging to the Telegram messenger app.

20 Q. All right. Is this a fair and accurate depiction of the
21 extraction from the -- the Samsung cell phone?

22 A. Yes.

23 Q. And -- and based on this report, are you able to see
24 whether that message was sent or received from the cell phone?

25 A. It indicates it was sent from the cell phone.

1 Q. And does it indicate the user name of the person that sent
2 it?

3 A. Yes, it does.

4 MR. BINFORD: Your Honor, at this time I'd move to
5 admit Exhibit 97.

6 MS. WEIDNER: Objection, Your Honor. 403. And if the
7 Court would like to hear more, I'm happy to approach the
8 sidebar again.

9 THE COURT: Overruled. Exhibit 97 is admitted.

10 (Exhibit 97 is received into evidence.)

11 BY MR. BINFORD:

12 Q. Now, who sent this message; what user name?

13 A. The user name is Morpheus.

14 Q. Okay. And you mentioned this is Telegram. Do you know
15 what Telegram is?

16 A. Yes.

17 Q. What is it?

18 A. It is a chat application.

19 Q. And does it have any specialized technology?

20 A. Yes. Some of the features of it are that it transmits the
21 communications in an encrypted fashion. It allows for users to
22 set a self-destruct so that the message is erased after a
23 particular period of time. And one of its features is also
24 that a user can have the software on multiple devices, and if
25 they're logged in with the same user name, it will synchronize

1 the conversation across all the devices.

2 Q. Can you see who that message was sent to, the user name?

3 A. Yes, I can.

4 Q. What is that user name?

5 A. The user name is Amideo, A-M-I-D-E-O.

6 Q. And can you see what time and date that message was sent?

7 A. Yes.

8 COURTROOM DEPUTY: Counsel, do you want this
9 published?

10 MR. BINFORD: Sure. At this point, I'd move to
11 publish this -- oh. No, I wouldn't.

12 May I have one moment, Your Honor?

13 THE COURT: You may.

14 (Pause in proceedings.)

15 MR. BINFORD: At this point, I'm going to refrain from
16 publishing that exhibit, and I have no further questions for
17 this witness.

18 THE COURT: All right.

19 Cross-examination?

20 MS. WEIDNER: May I approach the lecturn, Your Honor?

21 THE COURT: Yes. I think I have given generalized
22 permission for everybody to approach the lecturn without asking
23 for permission.

24 MS. WEIDNER: Thank you.

25 THE COURT: It's only if you're going to approach the

1 witness, the jury, or the bench that you need to ask for
2 permission.

3 MS. WEIDNER: And, Your Honor, may I ask a question
4 very quickly of opposing counsel?

5 THE COURT: Sure.

6 (Pause in proceedings.)

7 CROSS-EXAMINATION

8 BY MS. WEIDNER:

9 Q. Good afternoon, Agent Shadle.

10 A. Good afternoon.

11 Q. So you conducted the forensic exam of all of the seized
12 devices from the April 20th, 2017, search; correct?

13 A. Yes.

14 Q. And that was the search of Mr. Costanzo's home that
15 resulted in the recovery of those electronic devices?

16 A. That's my understanding, yes.

17 Q. And you produced a report?

18 A. Yes.

19 Q. And it's dated November 15th, 2017, I believe?

20 A. Yes.

21 Q. That report contains a run-through of all of the devices
22 that you extracted information from.

23 A. Yes.

24 Q. And each of those devices is numbered as a separate
25 exhibit?

1 A. Correct.

2 Q. And Exhibit Number 35 is a Dell laptop computer?

3 A. Okay.

4 Q. Would it -- I know -- I know this is a big report. Would
5 it assist you in recalling this if I were to direct you to
6 Exhibit -- Government Exhibit 168?

7 MS. WEIDNER: This would be just for the agent.

8 And, I guess, may I approach so I can give him the --

9 THE COURT: Kathleen will get it for you.

10 MS. WEIDNER: So may I approach to get the report and
11 a take it to the witness, Your Honor?

12 Oh, you'll take it to the witness. Sorry.

13 THE COURT: That's all right.

14 THE WITNESS: Thank you.

15 COURTROOM DEPUTY: You're welcome.

16 BY MS. WEIDNER:

17 Q. So if I could direct, that is your forensic report, Agent
18 Shadle?

19 A. Yes, it is.

20 Q. And you'll notice that on the bottom right-hand corner,
21 there's a numeral, which is basically what we call a Bates
22 number.

23 Do you see that there?

24 A. Yes, I do.

25 Q. And the first one would be 4196?

1 A. Okay.

2 Q. So if I could direct you to 4923.

3 And if you moved down the first -- you see the first
4 exhibit that's listed in bold is Exhibit 31-3?

5 A. I do see Exhibit 31-3.

6 Q. And you move down to the next exhibit in bold, and that's
7 Exhibit 35?

8 A. I don't think we have the same reports in front of us.
9 Mine shows Exhibit 32 as the next one.

10 MS. WEIDNER: Well, in that case, I would move to
11 provide Agent Shadle with Defense Exhibit 348.

12 THE COURT: Mr. Binford?

13 MR. BINFORD: Your Honor, may I have a moment to speak
14 with defense counsel?

15 THE COURT: Yes.

16 (Pause in proceedings.)

17 THE WITNESS: Thank you.

18 BY MS. WEIDNER:

19 Q. So Agent Shadle, on that report, if you could turn to
20 page 4923.

21 A. In both reports I do see where Exhibit 35 is.

22 Q. Yes. And it lists Exhibit 35 was a Dell laptop computer?

23 A. Yes.

24 Q. And that in your exam -- your examination of the laptop,
25 you observed a number of files?

1 A. That is correct.

2 Q. And those files contained Bitcoin-related images, videos,
3 and documents?

4 A. That is correct.

5 Q. And if we could show Agent Shadle Defense Exhibit 336.

6 COURTROOM DEPUTY: Might you need any other exhibits?

7 MS. WEIDNER: Pardon me?

8 COURTROOM DEPUTY: Might you need any other exhibits?

9 MS. WEIDNER: That's the only one.

10 COURTROOM DEPUTY: 336?

11 MS. WEIDNER: Yes, ma'am.

12 THE WITNESS: Thank you.

13 COURTROOM DEPUTY: You're welcome.

14 BY MS. WEIDNER:

15 Q. Agent Shadle, do you see that -- that image?

16 A. I do.

17 Q. Do you recognize that image?

18 A. It's hard to say in a vacuum, because I hadn't had a chance
19 to review this particular image.

20 When I extract the files from the computer, I also
21 extract file information, which lists the file name and where
22 it was found. So without some reference tying it back to the
23 specific exhibit, that's why I say it's kind of hard to say.

24 MR. BINFORD: Your Honor, we would stipulate to the
25 admission of Exhibit 336.

1 THE COURT: Do you move the admission of 336?

2 MS. WEIDNER: Yes, Your Honor.

3 THE COURT: Admission -- or Exhibit 336 is admitted.

4 (Exhibit 336 is received into evidence.)

5 MS. WEIDNER: Just a moment.

6 (Pause in proceedings.)

7 MS. WEIDNER: No further questions.

8 THE COURT: Thank you.

9 Redirect?

10 MR. BINFORD: I have no questions, Your Honor.

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

12 THE WITNESS: Thank you.

13 THE COURT: Next witness?

14 MR. RESTAINO: United States calls Special Agent Tom
15 Klepper, Your Honor.

16 THE COURT: Come forward, Agent Klepper, please.

17 (THOMAS KLEPPER, Government's witness, is sworn.)

18 DIRECT EXAMINATION

19 BY MR. RESTAINO:

20 Q. Good afternoon, Agent Klepper.

21 A. Good afternoon.

22 Q. Please introduce yourself to the jury.

23 A. My name is Tom Klepper. I'm a Special Agent with IRS,
24 Criminal Investigation Division.

25 Q. And what was your role in the investigation of this case?

1 A. I was an undercover agent, and I met with the defendant.

2 Q. Did you -- did you go to college before being an IRS CI
3 agent, Agent Klepper?

4 A. Yes, I went to ASU.

5 Q. And what was your degree in?

6 A. Accounting.

7 Q. Are you a C --

8 A. Accountancy.

9 Q. Pardon?

10 A. It's officially accountancy.

11 Q. And after receiving your accountancy degree, did you get a
12 CPA certificate as well?

13 A. Yes, I did.

14 Q. What does that entail?

15 A. That entails a large test. Once you pass that, then you
16 have to take continuing professional education every two years
17 to keep up your certification.

18 Q. And did you have any experience in accountancy in the
19 private sector before you joined IRS?

20 A. Yes. Briefly.

21 Q. What did you do?

22 A. I worked at a bank as internal auditor.

23 Q. For how long have you been with Internal Revenue Service
24 criminal investigations?

25 A. Since 1995.

1 Q. Where have you worked for IRS CI in that time?

2 A. My entire career has been here in Phoenix.

3 Q. And to what type of work are you currently assigned?

4 A. I'm assigned to undercover work.

5 Q. For how long have you been assigned to undercover work?

6 A. Since 2013.

7 Q. Prior to that, what was your role with IRS CI?

8 A. I worked criminal investigations as a case agent.

9 Q. What types of cases were those?

10 A. Tax cases, money laundering cases, fraud cases,
11 white-collar type crimes.

12 Q. And now, in the role as an undercover officer, what does
13 that mean?

14 A. That means I help out other people on their cases, and I
15 get involved in an undercover capacity when it's needed.

16 Q. Did you have any training to be an undercover agent?

17 A. Yes, I did.

18 Q. What did that training generally involve?

19 A. That generally involved three weeks of rather intense
20 scenario-based training.

21 Q. Now, have you had experience in undercover operations
22 involving virtual currency?

23 A. Yes, I have.

24 Q. This case is one of them; right?

25 A. It's one of them, yes.

1 Q. Did you have to educate yourself about virtual currency
2 prying -- prior to engaging in those undercover operations?

3 A. Oh, yes. Yeah.

4 Q. How did you go about doing that?

5 A. A lot of it, honestly, was trial and error. When we got
6 involved in this, it was relatively new, so it involved a lot
7 of research, and it is primarily research.

8 Q. Have you had the opportunity in your capacity as an
9 undercover agent to train other agents about virtual currency?

10 A. I have.

11 Q. And how have you done that?

12 A. We've done that in numerous ways: Face-to-face trainings,
13 electronic media-type trainings. A number of different ways.

14 Q. Did you also have the opportunity to participate in a video
15 that showed two cell phones engaged in a transaction?

16 A. Yeah, I was one of those two cell phones in that video.

17 Q. Now, as part of this investigation, did you contact a man
18 named Thomas Costanzo?

19 A. Yes, I did.

20 Q. Do you recognize him in the courtroom today?

21 A. Yes, I do.

22 Q. Can you describe where he's sitting and what he's wearing?

23 A. He's sitting to the table to your right in the dark suit
24 and dark hair, glasses.

25 MR. RESTAINO: Your Honor, if the record may reflect

1 the identification of the defendant.

2 THE COURT: Yes.

3 BY MR. RESTAINO:

4 Q. When was your contact with the defendant?

5 A. I met with him face-to-face October 7th, 2015, and I had
6 some electronic text communications with him prior to that.

7 Q. What was your cover story when you reached out to him?

8 A. Well, I didn't explain all this right up front, but the
9 cover story, in general, built into the investigation was that
10 I was a heroin wholesaler, bought heroin here, sold it to an
11 associate in New York, another undercover agent.

12 Q. Do you know Sergei Kushner?

13 A. Yes.

14 Q. Who is he?

15 A. He is the other undercover agent in this case that -- he
16 was the one that, in our cover story, that I would have
17 purchased heroin here and sold it to him in New York.

18 Q. Step one then. How did you make contact with the defendant
19 in your role?

20 A. Through text messaging.

21 Q. Were you able to save your text messages to and from the
22 defendant?

23 A. Yes, I was.

24 Q. Let me ask you to take a look at Exhibit 124, which we'll
25 put up on the screen just in front of you.

1 Are you able to recognize this document?

2 A. Yes, this is the document of the text messages that I had
3 with the defendant that I pulled off my cell phone.

4 Q. Where was it saved?

5 A. It was saved on my cell phone device.

6 Q. And is it in substantially the same condition now as it was
7 in October 2015?

8 A. Yes.

9 MR. RESTAINO: Your Honor, at this time we would move
10 the admission of Exhibit 124 into evidence.

11 MR. CAIN: No objection.

12 THE COURT: Exhibit 124 is admitted.

13 (Exhibit 124 is received into evidence.)

14 MR. RESTAINO: And if we may publish, Your Honor.

15 THE COURT: You may.

16 BY MR. RESTAINO:

17 Q. So taking a look at the top of this, what is the date of
18 this?

19 A. The date is October 5th, 2015.

20 Q. And that's how long before your face-to-face meeting?

21 A. Two days prior.

22 Q. And what are you trying to do in your first entry?

23 A. I'm trying to introduce myself to him.

24 Q. What do you call him?

25 A. What do I call the defendant?

1 Q. Correct.

2 A. I call him "Tom."

3 Q. And how did you come to know the defendant in this
4 investigation?

5 A. I came to know him as Thomas Costanzo.

6 Q. Okay. Were there other names that are used?

7 A. Yes, he was -- he used the handle "Morpheus Titania," I
8 believe it was, on localbitcoins.com.

9 Q. And in fact, how would -- how would that entry in yellow
10 that says "Morpheus" have come to be entered on this text
11 message chain?

12 A. I put his contact information in my covert cell phone. His
13 phone number I associated with the name Morpheus.

14 Q. So what was the defendant's response to your invitation?

15 A. He said: Do you know about Telegram app for texting?
16 Let's use that. Okay?

17 Q. As it turns out, do you know about Telegram?

18 A. I do.

19 Q. What is Telegram?

20 A. It's a smartphone app that allows you to text back and
21 forth with other individuals, and the texts are encrypted.

22 Q. What does it mean for those texts to be encrypted?

23 A. It means if anyone were to intercept those texts between
24 the two users, the person intercepting the text wouldn't be
25 able to read it.

1 Q. Is one -- were you able to save your texts sent on the
2 Telegram app?

3 A. Was able to save them? I recreated them in that I typed
4 those texts from the -- from my cell phone onto a Word
5 document.

6 Q. Let me try and ask my question a different way.

7 You said no one could intercept the communication.
8 Could someone get it from your cell phone?

9 A. So. I understand. Yes. Absolutely.

10 Q. Could they get it, do you think, from the cell phone of the
11 person you're sending the message to?

12 A. Yes.

13 Q. What is the protection then; at what point in the chain?

14 A. When it's sent, is my understanding. Is -- when it's in
15 the air, going from myself to the defendant, it's encrypted
16 while it travels.

17 Q. Thank you.

18 And were you, in fact, able to then communicate with
19 the defendant via this Telegram app?

20 A. Yes, I was.

21 Q. If I can -- if we can unpublish so I can show Exhibit 125
22 just to the witness.

23 Taking a look at what's been marked Exhibit 125, what
24 is this document?

25 A. This is a document that I created that I alluded to

1 earlier. This is verbatim what came off the Telegram --
2 Telegram app that was on my cell phone.

3 Q. Where was it saved?

4 A. It was saved on the app in the -- in the smartphone.

5 Q. Is there a reason it doesn't look like the bubble text in
6 Exhibit 124?

7 A. Yeah. It -- at the time I didn't know how to pull it off
8 my cell phone in the same way, so I put the cell phone next to
9 my computer and typed it directly from the cell phone.

10 Q. So other than the formatting, is Exhibit 125 in
11 substantially the same condition as when it was saved to your
12 cell phone back in October of 2015?

13 A. Yes. Everything after the identifier -- there's a date, a
14 time, an identifier, and then a colon. Everything after that
15 colon is exactly what appeared on the Telegram app.

16 MR. RESTAINO: Your Honor, at this time the Government
17 would move for the admission of Exhibit 125 into evidence.

18 MR. CAIN: Objection. Not best evidence.

19 THE COURT: Overruled. The exhibit is admitted.

20 (Exhibit 125 is received into evidence.)

21 MR. RESTAINO: May I publish, as well, Your Honor?

22 THE COURT: You may.

23 BY MR. RESTAINO:

24 Q. So up on the screen in front of you, you have the first
25 page of Exhibit 124, on the right side of screen, and then 125

1 on the left side of the screen.

2 Do you see that?

3 A. Yes, I do.

4 Q. And so moving on October the 5th onto the left side of the
5 screen, what was the discussion there on the encrypted Telegram
6 app?

7 A. I started the text, and I said: Tom, Sergei's partner
8 here. How does your Wednesday early late afternoon look? And
9 then I signed it Tom.

10 He responded and said: What time are you thinking?

11 And I then answered and said: Around 12:30 or
12 1:00 p.m.

13 Q. All right. And then let's move on to the next day on the
14 Telegram app. October 6th. What happens there?

15 A. The next afternoon, I hadn't heard from him yet so I
16 reached back out, and I said: Does this work for you?

17 And he responded and said: That's great. Where are
18 you thinking to meet at?

19 And I responded and said: Around 17 and Happy Valley.
20 Do you know a good spot around there?

21 Q. So the actual location of the meeting was sent on the
22 encrypted channel rather than the public channel; correct?

23 A. That's correct.

24 Q. Now, let's go back to the right side and talk about the
25 public communication on October 7th.

1 You're able to see that?

2 A. Yes, I am.

3 Q. It says: Gonna meet your boy today.

4 Do you see that?

5 A. Yes, I do.

6 Q. Who did you intend to send that to?

7 A. I intended to send that to Sergei. I inadvertently sent it
8 to the defendant.

9 Q. How did you feel when you realized what you had done?

10 A. I felt rather silly. That was a mistake. That's not what
11 I intended to do.

12 Q. What did you -- what did you do next then?

13 A. I texted him and said: Disregard. Meant for someone else.

14 Q. In the remainder of your interaction with the defendant,
15 did he ever raise this inadvertent text again?

16 A. No, he didn't.

17 Q. Now, back to the encrypted side again on the left, on
18 October 7th, this is the day of the meet; correct?

19 A. That's correct.

20 Q. So what's the intent of your discussion here?

21 A. We're discussing logistics of the meeting. We're talking
22 about how much the transaction is going to be for from a value
23 standpoint, and time and location.

24 Q. So let's take that in order.

25 The first question from the defendant was, "How much

1 we doing?" Correct?

2 A. That's correct?

3 Q. What did you take that to mean?

4 A. How much value are we trading here?

5 Q. And how did you respond?

6 A. I responded initially "10." And then I followed that up
7 with "10K," meaning 10,000 U.S. dollars, was the "10" there.

8 Q. And here where it says SA followed by a four digit number,
9 who is that?

10 A. That's me.

11 Q. Okay. As it turns out, was 10 -- sorry -- what do you mean
12 by "10K"?

13 A. \$10,000.

14 Q. And as it turns out, was \$10,000 the amount that you wound
15 up transacting on that day?

16 A. No, it wasn't.

17 Q. What did you find up transacting?

18 A. 13,000.

19 Q. And how did it go from 10,000 to 13,000?

20 A. When I met with him face-to-face, I asked him if he could
21 increase the amount to 15,000. And he said: I don't know.
22 Let me see. Essentially. Looked at his phone and said: No,
23 but I can do 13 right now.

24 Q. Was that a plan you had going into that meeting?

25 A. Yes.

1 Q. Why?

2 A. We wanted to -- the case agents wanted to see how much
3 Bitcoin he had, so we were going to see how much we could get
4 him to do and see what he had on him. And then try to tap him
5 on it, essentially use all the Bitcoin he had, so that he could
6 be surveilled and see where he went after that.

7 Q. What was the point -- what was going to be the point of
8 that surveillance; what did you want to find out?

9 A. It would show where he would replenish his Bitcoins from.
10 If -- if I tapped all his Bitcoins out by increasing the
11 volume, then where he went next might be indicative of where he
12 was going to refill.

13 Q. And below the yellow highlights then, there's a further --
14 is there a further refinement of the location of the meeting?

15 A. Yes. I said: How about a Starbucks or something like
16 that?

17 And he responded: Sure. What location and time?

18 I said: Let's do 10:00 p.m. Let me get an address.

19 Hold on.

20 And then he responded: Ask 265.84.

21 Q. Let me stop you there.

22 Can you repeat the time that you said you would meet
23 him?

24 A. 1:00 p.m. One o'clock p.m.

25 Q. And is that what you recollect, this was an afternoon

1 meeting then?

2 A. Yes, it was.

3 Q. All right. And once the address was settled then, what
4 does "ask 265.84" mean to you?

5 A. I took that to mean that was the -- the price that he was
6 charging per Bitcoin, because I was taking cash to the deal and
7 buying Bitcoin from him. And that was his price.

8 Q. And finally, were you able to -- were you able to get a
9 description of what the person you were going to meet look
10 like?

11 A. Yes. If you -- you drop down to the bottom there at
12 1:01 p.m. -- well, to back up, I texted him about 30 minutes
13 prior to that and said I am running a little late, about 10
14 minutes.

15 And he responded and just said: NP. I am gray shirt,
16 shades.

17 I took that to mean: No problem. I'm wearing a gray
18 shirt and sunglasses.

19 MR. RESTAINO: And if I could unpublish then.

20 THE COURT: Mr. Restaino, we're looking -- about five
21 minutes to closing down. If you have a good ending spot
22 anywhere between now and then, that would be --

23 MR. RESTAINO: This is pretty good now, Judge.

24 THE COURT: All right.

25 Ladies and gentlemen of the jury, we're ending for the

1 day. We appreciate your attention.

2 Please remember the admonitions: Don't discuss this
3 case with anyone, including among yourselves.

4 Travel home safely. Come back tomorrow same time, and
5 remember that tomorrow is the last day. We will be having
6 trial next week, and then it's not until next Tuesday. We look
7 forward to seeing you tomorrow morning.

8 Thank you.

9 COURTROOM DEPUTY: All rise.

10 JUROR 1: 9:00 a.m.?

11 COURTROOM DEPUTY: 9:00; correct, Judge?

12 THE COURT: I'm sorry?

13 COURTROOM DEPUTY: 9:00 a.m.?

14 THE COURT: Yes, 9:00 a.m.

15 (Jury leaves the courtroom at 4:55 p.m.)

16 THE COURT: Anything?

17 MR. RESTAINO: Few matters on exhibits, Judge.

18 THE COURT: All right.

19 MR. RESTAINO: The two easy ones are just for the
20 record, so --

21 THE COURT: You may step down.

22 THE WITNESS: Thank you.

23 MR. RESTAINO: Exhibit 12 was shown to the jury in
24 redacted form at the request of the defense, and so we will
25 endeavor to print out a new version of that for the binders, as

1 well as the original.

2 I think that Exhibit 122, which was just admitted, the
3 text string with the angry putative wife, needs to be redacted
4 to get the snark factor out. We will do that from our end,
5 share that with the defense, and endeavor to replace both in
6 our database and on the binders.

7 THE COURT: That's fine. Just make sure we have the
8 stipulation of the defense that they've seen the exhibit
9 replacement and they stipulate to it.

10 MR. RESTAINO: We will do that, Your Honor.

11 I have 97, I just wanted to explain a little bit more,
12 which was the one that was discussed --

13 THE COURT: Yes, yes. I remember which 97 is.

14 MR. RESTAINO: So -- so, Judge, you had a concern
15 yesterday on that with the motions in limine. It may be that
16 Mr. Binford in his eloquence completely ameliorated your
17 foundational concern on that. But I did want to ensure that
18 the defense had an opportunity to raise any objections before
19 it was actually shown to the jury.

20 MS. WEIDNER: Your Honor, the defense's concern with
21 Exhibit 97 -- and I guess I didn't want to give -- launch into
22 an entire speaking objection -- is that unlike exhibits that
23 Court ruled should be admitted because, you know, the otherwise
24 potentially hearsay statements of third parties were okay in
25 that they contextualize Mr. Costanzo's statements.

1 Here we have a statement in a vacuum, and the 403
2 concern that -- that we had, even though it does appear to be a
3 statement from Morpheus and, therefore, not hearsay, is that it
4 is devoid of context. There is no real way to tell what that
5 floating statement is all about.

6 And for that reason, I think it's potentially
7 confusing. It could be misleading. It definitely doesn't
8 explain itself, and there is nothing that the government has
9 offered yet that would explain it.

10 THE COURT: Well, I may be overly technical, but I
11 tend to rule based on the objections that were offered. I'm
12 not sure that what the defense says doesn't have purchase with
13 me, but it wasn't the objection they raised at the time the
14 exhibit was admitted into evidence.

15 I'm not sure that there's a whole lot here one way or
16 the other, but it is a statement of the defendant. I think
17 that you -- that the witness established that it's a statement
18 of the defendant, and maybe I'm -- maybe I misunderstood your
19 objection at the time, Ms. Weidner, but I don't think it was
20 relevance.

21 MS. WEIDNER: Your Honor, it wasn't. It was 403. And
22 it was 403 based on the notion that it was confusing because
23 they had no context.

24 THE COURT: How are you going to seek to introduce
25 this, and for what purpose, Mr. Restaino?

1 MR. RESTAINO: Well, I think, A, Judge, that's one
2 reason for not showing it to the jury today. I think it likely
3 comes in through Agent Martin. I think we will be able to tie
4 this up through Task Officer Martin as he discusses both the
5 undercover deals he did and the remainder of his investigations
6 as the case agent. So we would like to try.

7 THE COURT: Well, thank you. Thank you for raising
8 it. You can try. But it does seem to me -- it is a statement
9 of the defendant, so it's not hearsay, but it is untethered,
10 and I'm not sure that it means anything, and I'm not sure that
11 Agent Martin can offer testimony that will provide any. But I
12 can't -- can't say that he won't. I haven't heard what he'll
13 say. So we'll deal with it when we deal with it.

14 MR. RESTAINO: Great. Thank you, Your Honor.

15 THE COURT: Anything else?

16 MS. WEIDNER: Your Honor, I'd just like to ask a quick
17 question about speaking objections. I -- I did not want to
18 elaborate on my --

19 THE COURT: No, you're right, and I probably should
20 have given you a sidebar. I just -- and I hope you won't take
21 any personal offense -- I just don't like sidebars because they
22 disrupt the trial a lot. And I had felt like we had had enough
23 today, and I guess I thought I understood your 403 objection.
24 And now that you say what it was, I realize that really it was
25 probably an appropriate objection. I was just thinking of it

1 in a different way.

2 MS. WEIDNER: I understand.

3 THE COURT: Let me raise one other issue that has --
4 that has just been brought to my attention by the United States
5 marshals.

6 You will remember yesterday I discussed with two --
7 the two men who were wearing Google Jury Nullification -- one
8 of them was here until a few minutes ago and has left -- Jury
9 Nullification, and indicated to them that they shouldn't be
10 attempting to make communications to the jury.

11 I've received a report from the marshals today that
12 the two of them were observed talking out loud about the case
13 at the break while the jury was milling around.

14 Does either party want me to take any action with
15 respect to that, with respect to the jurors and/or with respect
16 to those two men?

17 MR. RESTAINO: Judge, we were sort of more generally
18 aware of that issue and elected not to bring it to the Court's
19 attention, because what we had heard was similar to what the
20 Court has announced. They were speaking loudly in the hallway
21 rather than approaching jurors to speak directly with jurors.
22 So we were not able to come up with a particularly helpful way
23 to suggest to the Court.

24 I will say, we have additional anecdotal evidence
25 suggesting that they were speaking loudly at -- on an outside

1 table at Crazy Jim's as jurors were walking by, but I'm not
2 sure that we can really do anything about that either.

3 THE COURT: Yeah, it strikes me that that -- I mean,
4 I -- I do not want to have any participants in this trial
5 trying to influence the jury. And if I have better evidence
6 that they are, I will do something. But, of course, as
7 everybody recognizes, they have the right as members of the
8 public to be here.

9 I think what I will do, I would propose to the parties
10 doing and see if you have any objections, is just repeat to the
11 jurors before the break tomorrow, or maybe first thing in the
12 morning, that if they're out and about and they hear anybody
13 discussing the case, they should not listen to it, they should
14 move away. If they feel like anyone is trying to discuss the
15 case in a way that they hear and have concerns about it, they
16 should raise it with the Court.

17 Does either party have any objection to that?

18 MR. RESTAINO: No objection from the government, Your
19 Honor.

20 MS. WEIDNER: No objection from the defense. We would
21 just ask the Court to also just include -- and I think that
22 this is appropriate, given the kind of media coverage, even
23 though nobody in the jury pool had heard of it before, that
24 this case has already had, it -- to include in that, you know,
25 and if you see something in the media --

1 THE COURT: Yeah.

2 MS. WEIDNER: -- and --

3 THE COURT: If you want to write something up and you
4 can stipulate to it, I'll read it. Otherwise, I'll just say
5 that generally. I don't think it's inappropriate to include
6 the media at all.

7 Was there something else you wanted me to include,
8 other than the media?

9 MS. WEIDNER: No.

10 THE COURT: Okay.

11 All right. See you tomorrow morning.

12 (Proceedings in recess at 5:05 p.m.)

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C E R T I F I C A T E

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3 I, CHARLOTTE A. POWERS, do hereby certify that I am
4 duly appointed and qualified to act as Official Court Reporter
5 for the United States District Court for the District of
6 Arizona.

7 I FURTHER CERTIFY that the foregoing pages constitute
8 a full, true, and accurate transcript of all of that portion of
9 the proceedings contained herein, had in the above-entitled
10 cause on the date specified therein, and that said transcript
11 was prepared under my direction and control.

12 DATED at Phoenix, Arizona, this 16th day of May, 2018.

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14 s/Charlotte A. Powers
15 Charlotte A. Powers, RMR, FCRR
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