

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,)
)
 Plaintiff,) 2:17-cr-00585-GMS-1
)
 vs.) Phoenix, Arizona
) March 22, 2018
 Thomas Mario Costanzo,) 9:08 a.m.
)
 Defendant.)
 _____)

BEFORE: THE HONORABLE G. MURRAY SNOW, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRAIL - DAY 3

(Pages 427 - 645)

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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 9:08 a.m.)

(Proceedings resume at 9:09 a.m.)

THE COURT: Good morning.

Thank you for being here.

Hope you had a pleasant evening.

Please be seated.

Ready to resume?

MR. RESTAINO: Yes, Your Honor.

THE COURT: Please do so.

(THOMAS KLEPPER resumes the witness stand.)

DIRECT EXAMINATION (continued)

BY MR. RESTAINO:

Q. Good morning, Agent Klepper.

A. Good morning.

Q. Do you recollect that yesterday when we left off, you were talking about setting up a meeting for October 7th, 2015, with the defendant?

A. Yes.

Q. And did that meeting take place?

A. Yes, it did.

Q. So let's talk about what happened on October 7th, 2015.

What time was the meeting for?

A. It was an afternoon meeting around one o'clock.

Q. And you had settled on a meeting where?

1 A. At the Starbucks at I-17 and Happy Valley.

2 Q. And so when did you arrive?

3 A. I arrived a few minutes after one o'clock.

4 Q. And what were you wearing?

5 A. I was probably -- I don't remember exactly, but I would
6 have gone to a meeting like this dressed in blue jeans and
7 probably a Polo shirt or something of that sort.

8 Q. You -- you weren't wearing the suit you're wearing now, for
9 example?

10 A. No, I was not.

11 Q. And where -- did you -- did you get there first?

12 A. I don't believe so.

13 I think the defendant was there before I was.

14 Q. And where did you wind up sitting with him?

15 A. We met briefly in the Starbucks, and then we moved down the
16 sidewalk and ended up sitting in front of the Café Rio
17 restaurant.

18 Q. All right.

19 And where were each of you facing?

20 A. I was sitting at a small table, facing the defendant.

21 I was facing the Café Rio; he was facing the parking
22 lot. We were across from each other.

23 Q. Were you able to record your conversation with the
24 defendant?

25 A. Yes, I was.

1 Q. In general terms, how did you do so?

2 A. I had a covert recording device that I placed on the table.

3 Q. Okay.

4 Did you also have a cell phone that you placed on the
5 table?

6 A. Yes.

7 Q. So were both of those devices on the table?

8 A. Yes.

9 Q. Have you had an opportunity to listen to the recording?

10 A. I have.

11 Q. And does the recording fairly and accurately reflect your
12 conversation with the defendant?

13 A. Yes, it does.

14 Q. Now, is there also a video?

15 A. Yes. There is video.

16 Q. Okay. What does the video show most -- most of the time?

17 A. Most of the time it shows the sky.

18 Q. Were you able to get some video clips during the audio
19 presentation?

20 A. Yes. If I was to take the device and -- and lean it
21 towards the defendant at any point during our conversation, I
22 could pan across him and pick up his picture.

23 MR. RESTAINO: Your Honor, at this time the government
24 moves to admit Exhibit 103, the audio clips A through K of the
25 October 7, 2015, transaction.

1 MR. CAIN: No objection.

2 THE COURT: All right.

3 I take it that you have a transcript attached to
4 these?

5 MR. RESTAINO: We do, Your Honor.

6 THE COURT: All right.

7 So ladies and gentlemen of the jury, you remember as
8 I've told you before, that when we listen -- thank you,
9 Kathleen.

10 COURTROOM DEPUTY: You're welcome.

11 THE COURT: -- that when you're listening to these
12 recordings, it is the recordings themselves that is the
13 evidence.

14 The parties have agreed to attach a transcript to
15 you -- for your convenience. But if you hear something
16 different than what the transcript says, the recording is the
17 evidence; the transcript is not.

18 Okay?

19 MR. RESTAINO: And if I may publish, Your Honor.

20 THE COURT: You may.

21 BY MR. RESTAINO:

22 Q. So we'll start with clip 103A, Agent Klepper.

23 A. Okay.

24 (Portion of audio played.)

25

1 BY MR. RESTAINO:

2 Q. Who is Sergei?

3 A. Sergei is the other undercover agent in this case, and
4 Sergei had previously met with the defendant before my meeting.

5 (Portion of audio played.)

6 BY MR. RESTAINO:

7 Q. What was the defendant's demeanor like during this part of
8 the conversation?

9 A. He was just kind of like, ah, I don't want to know.

10 He was friendly, but I felt that he was making it
11 clear that he was trying to cut me off from going down that --
12 that road of the business that we were in.

13 He said: Hey, hey, I don't want to know, I don't want
14 to know.

15 (Portion of audio played.)

16 MR. BINFORD: Now I'll move to clip 103B.

17 (Portion of audio played.)

18 BY MR. RESTAINO:

19 Q. So a couple questions for you on this clip.

20 First of all, the defendant references himself as a
21 "teacher." Did you find his explanation of Bitcoin to be
22 generally accurate?

23 A. Yes.

24 Q. And what did you mean when you said that "moving it" around
25 is a lot safer?

1 A. If you're in the drug business, which I had purported to
2 be, it would be much easier to move something of value in the
3 form of a virtual currency versus bulk cash.

4 If I were to sell drugs to Sergei and have a large
5 chunk of currency, I'd have to transport that back to Arizona,
6 or do something with it.

7 It takes up a lot of space, raises a lot of questions
8 if I'm found with a large amount of currency.

9 But if it's in the form of virtual currency like
10 Bitcoin, it would be on my cell phone and nobody would ever
11 know.

12 Q. Great.

13 Let's move on to clip 103C.

14 (Portion of audio played.)

15 BY MR. RESTAINO:

16 Q. When assets are stored as Bitcoin, can that make your work
17 as a law enforcement officer more difficult?

18 A. Yes. If we're trying to trace financial transactions, it
19 absolutely could make it more difficult.

20 MR. BINFORD: And I'll move on to clip 103D.

21 (Portion of audio played.)

22 BY MR. RESTAINO:

23 Q. To your understanding, what is a Trezor?

24 A. A Trezor is a device. It's similar to, like, a thumb
25 drive, would be one way to think about it, where you plug a

1 thumb drive into your computer so it's external to the
2 computer. It's external to your phone, and it can hold virtual
3 currencies. And you just plug it into your phone and you can
4 access it through your phone.

5 Q. Also earlier in that conversation you talked about wallets.
6 Did you set up a wallet for this transaction?

7 A. Yes, I did.

8 Q. And how did you go about setting up a wallet?

9 A. It's very simple. You just go to the app store in Apple,
10 search for Bitcoin wallet, and you'll have dozens to choose
11 from. You just download one, and it's available for use.

12 Q. What type of personally identifying information did you
13 have to use to set up a wallet?

14 A. On the cell phone? None.

15 Q. Did you have to provide your name, for example?

16 A. No.

17 Q. Any other personal information?

18 A. No.

19 Q. In your experience, can wallets easily be traced to the
20 owner of the wallet?

21 A. If they're on a smartphone, no, they can't. Not easily.

22 (Portion of audiotape played.)

23 BY MR. RESTAINO:

24 Q. And there's a discussion of Mycelium there. What's your
25 understanding of Mycelium?

1 A. Mycelium is one of many Bitcoin wallets. It's one of the
2 apps that you can download and use as a Bitcoin wallet. That's
3 the name of it.

4 Q. Are there other functions that you've used with Mycelium?

5 A. I have not. I am aware that Mycelium also has a chat
6 function embedded in it.

7 Q. It's not anything you used in your transactions with the
8 defendant though?

9 A. No.

10 (Portion of audiotape played.)

11 BY MR. RESTAINO:

12 Q. Just for clarity's sake, there is some noise in the
13 background. What did that appear to be?

14 A. It was a crying baby. There were many people in the
15 background. You'll hear that throughout.

16 (Portion of audiotape played.)

17 BY MR. RESTAINO:

18 Q. So what are "keys" that you're referring to here?

19 A. Those would be the public and private keys that control the
20 Bitcoin wallet.

21 (Portion of audiotape played.)

22 BY MR. RESTAINO:

23 Q. Do you know what the 12 or 24 words are that the defendant
24 is referencing there?

25 A. Yes.

1 Q. What is that?

2 A. When you set up a smartphone Bitcoin wallet, you set it up
3 and, like you asked me, you don't put any personal information
4 in there. So one way that you can access that is whoever
5 physically is holding the phone when the wallet is set up will
6 see the app display a phrase of, say, 12 words in a specific
7 order. And you can record that, write it down on a piece of
8 paper, or something to that effect. And then if something
9 happens to your cell phone, it gets run over by a truck or
10 something, you could download the app again on a new cell phone
11 and use those 12 words or that phrase in that order as a pass
12 phrase, if you will, and then it would reload whatever Bitcoins
13 you had in that wallet onto your new phone. It's just -- it's
14 essentially a password.

15 (Portion of audiotape played.)

16 BY MR. RESTAINO:

17 Q. So you mentioned here that you were using Coinbase for your
18 wallet. Is that correct?

19 A. Yeah.

20 Q. And is that actually what you were using for an undercover
21 wallet?

22 A. I also mentioned Breadwallet, and the Breadwallet is what I
23 used to actually do the transaction with then.

24 Q. Have you used Coinbase, as well, as a wallet?

25 A. Yeah.

1 Q. When one uses a wallet for Coinbase, do you know where that
2 Bitcoin is actually stored?

3 A. I'm not sure I understand your question.

4 Q. If you have a wallet from Coinbase, does Coinbase control
5 the Bitcoin, or does the wallet have the Bitcoin?

6 A. Coinbase controls the Bitcoin. They have the keys.

7 (Portion of audiotape played.)

8 BY MR. RESTAINO:

9 Q. In your experience, what -- what steps does the government
10 need to take before going into a bank account and taking money?

11 A. Well, in a -- in a criminal investigation, if the
12 government can trace that funds in a specific bank account are
13 derived from a criminal activity, they can apply for a warrant
14 and get a judge's signature to go in and seize that bank
15 account -- or seize the money in that bank account.

16 Q. And does it make it more difficult to seize funds when they
17 are held in virtual currency rather than cash or an account?

18 A. Yes. Especially if it's in a virtual currency wallet
19 that's set up on a small phone where you don't put any
20 identifying information in it.

21 (Portion of audiotape played.)

22 BY MR. RESTAINO:

23 Q. What happened there at the end?

24 A. When he made the comment that the government can come in
25 and take your money and say "fuck you very much," he actually

1 made a gesture as a "fuck you very much." And he was sitting
2 across from me. So I think he was explaining, hey, I didn't
3 mean to flip you off.

4 Q. What was his body language like during this ending portion
5 of that clip in talking about the government seizing money?

6 A. You know, he was animated. He was using his hands to talk,
7 and that sort of thing.

8 Q. Because Coinbase came up in that clip, let me ask a few
9 more questions on that. Let's say you actually made a purchase
10 through a commercial exchange like Coinbase. Would you be able
11 to take the Bitcoin out of Coinbase's control and put it in a
12 wallet of your own choosing?

13 A. Yes, you could do that.

14 MR. RESTAINO: Let's go on to 103E.

15 (Portion of audiotape played.)

16 BY MR. RESTAINO:

17 Q. So what was the defendant's demeanor like in this portion
18 of the conversation?

19 A. He was, to use a term, he was geeked out. He enjoyed this
20 stuff. It was clear that this is something that he got into,
21 and he was excited to be able to explain it to somebody.
22 That's the way I felt.

23 Q. Again, in -- in your experience at this part of the
24 conversation, was his recitation of Bitcoin generally accurate?

25 A. Yes.

1 Q. Did he appear to have a sophisticated understanding of
2 Bitcoin?

3 A. Yes, he did.

4 (Portion of audiotape played.)

5 BY MR. RESTAINO:

6 Q. So you recognized that, from your familiarity with the
7 recording, these clips of the longer audio are being played
8 chronologically?

9 A. Yes.

10 Q. So at this point, has there been any discussion of the
11 exchange of Bitcoin for cash?

12 A. Between the defendant and I? No. We haven't gotten to
13 that point yet here in this discussion.

14 MR. RESTAINO: We'll now go to 103F.

15 (Portion of audiotape played.)

16 MR. RESTAINO: Let me just keep going.

17 (Portion of audiotape played.)

18 BY MR. RESTAINO:

19 Q. So, how did the defendant react when you said it's
20 expensive?

21 A. A little bit defensive. He was, like, ah, I'm not -- I
22 felt like he was trying to say, I'm not that expensive.

23 Q. Are his rates expensive?

24 A. Yes.

25 Q. What did he wind up charging you for your transaction as a

1 percentage?

2 A. About 7 percent.

3 Q. So let's take the \$10,000 you started with.

4 How much would a purchaser pay the defendant on
5 \$10,000 at that 7 percent rate?

6 A. It would be a 700-dollar fee to do the transaction.

7 Q. What about going to a commercial exchange like Coinbase;
8 what would you expect to be taken out of that transaction?

9 A. Coinbase charges about a percentage-and-a-half. So on a
10 \$10,000 transaction, that would be about 150 instead of 700.

11 (Portion of audiotape played.)

12 MR. RESTAINO: And I'll move on to 103G.

13 (Portion of audiotape played.)

14 BY MR. RESTAINO:

15 Q. Do you think cash outside the banking system is as
16 difficult to trace as Bitcoin outside a commercial exchange?

17 A. Yes. It is -- yeah. It's very, very difficult to trace.

18 Q. Are there aspects that make Bitcoin more difficult to trace
19 than cash?

20 A. Yes, especially because you don't have physical cash that
21 you have to transport. At some point, cash outside the banking
22 system has to move around, and it's vulnerable when it's moving
23 around. If it's in Bitcoin, it's in a cell phone, and it can
24 be sitting on the table here and you'd never -- I could have
25 \$100,000 worth of Bitcoin in it, and you'd never know.

1 (Portion of audiotape played.)

2 BY MR. RESTAINO:

3 Q. Did the defendant ever get to know your full name?

4 A. No.

5 Q. Did he ever ask you for your full name?

6 A. No.

7 MR. RESTAINO: I will move on to 103H.

8 (Portion of audiotape played.)

9 BY MR. RESTAINO:

10 Q. Your voice seems to get lower here on the recording. Why
11 is that?

12 A. It's a technique used to -- to let the person that you're
13 talking to know that, hey, I'm -- I'm about to tell you
14 something that I don't want other people to overhear. It's
15 common to lean in when -- when you do that, and it's kind of a
16 signal that, hey, we're going to talk business here.

17 Q. How did the defendant react to that signal?

18 A. I don't recall if he leaned in. I don't believe he lowered
19 his voice either. But he continued the conversation.

20 Q. Did he continue to do the transaction with you?

21 A. Yes.

22 Q. And did he ever hesitate to sell you Bitcoin on that day?

23 A. No.

24 (Portion of audiotape played.)

25

1 BY MR. RESTAINO:

2 Q. Are purchases of trips and yachts something you've seen in
3 prior investigations you've worked?

4 A. Oh, yeah. I mean, people that earn money dispose of it in
5 a number of ways, and that's -- that's one way that they would
6 do it.

7 (Portion of audiotape played.)

8 BY MR. RESTAINO:

9 Q. Under your scenario, why couldn't you just go to a
10 commercial exchange to buy your Bitcoins?

11 A. We could, but if we did that and we really were heroin
12 dealers, if we went to a commercial exchange like Coinbase,
13 we'd have to put -- you have to tell them your name, you have
14 to tell them your Social Security number, your address; you can
15 link bank accounts and credit cards to it. Even have to take a
16 digital image of your driver's license and send it in to them
17 so they would know who you are. And that -- one of the
18 beautiful things about Bitcoin is that if it's in a smartphone
19 wallet and you have possession of that wallet, they're your
20 coins. But if law enforcement figures out that those coins in
21 that wallet were from some fraudulent activity, they still
22 can't tie that wallet to the person holding it.

23 If I went to Coinbase and set up that wallet through
24 Coinbase, they can drop a subpoena on Coinbase and figure out
25 whose account it was.

1 Q. All right. We'll move on.

2 (Portion of audiotape played.)

3 BY MR. RESTAINO:

4 Q. Did the defendant at any time say "I'm out" during this
5 discussion?

6 A. He did not.

7 (Portion of audiotape played.)

8 BY MR. RESTAINO:

9 Q. So there's talk of a burner there. What's a "burner"?

10 A. A burner phone. It would be a throw-away phone, if you
11 will. Generally it's something you'd buy at Walmart and you'd
12 buy a card with minutes, and you'd load that card up and then
13 you could use that phone until you didn't want to use it
14 anymore, throw it away.

15 Q. And Telegram there refers to Exhibit 25 that we looked
16 at -- Exhibit 125 that we looked at yesterday?

17 A. Yes. That's the encrypted chat application on smartphone.

18 (Portion of audiotape played.)

19 BY MR. RESTAINO:

20 Q. You talk here about getting the confirmation in. How --
21 what does that process involve?

22 A. When we do a transaction, like when the defendant sent me
23 Bitcoins on my phone, you have to wait a certain amount of time
24 while the Blockchain is -- is crunching the numbers and -- and
25 running their algorithms, and they are confirming all the coins

1 in that -- that block. And that takes some time. And once all
2 those coins are confirmed, you get a notification on your phone
3 that says, okay, they've been confirmed, and then it will get
4 confirmed a second, third, fourth, and fifth time. And you get
5 notations of that each time. So it would be a security for me,
6 if I had handed him cash, which I did, and he sent me Bitcoins,
7 if he'd gotten up and walked away at that point, I wouldn't
8 know for sure that I'd gotten my Bitcoins.

9 I would have to wait that amount of time until my
10 phone told me, yes, this transaction has been confirmed and you
11 have the Bitcoins.

12 (Portion of audiotape played.)

13 BY MR. RESTAINO:

14 Q. Do you recollect talking about upping the amount yesterday?

15 A. Yes.

16 Q. And -- and is this the portion of the conversation where
17 you did that?

18 A. Yeah.

19 This is the first time I had mentioned that I wanted
20 to do more than the 10 we had originally set up.

21 (Portion of audiotape played.)

22 BY MR. RESTAINO:

23 Q. So were you ever able to do more than the original \$10,000?

24 A. Yes.

25 Q. How much were you able to transact?

1 A. 13,000.

2 Q. Did you ever wind up meeting with him to do the additional
3 \$2,000?

4 A. No.

5 Q. Why not?

6 A. I talked to the case agents after the meeting and said: Do
7 you want me to still meet with him? And the decision --
8 decision was made, no, we don't need to have that meeting.

9 Q. Did he seem to you interested in doing more that evening at
10 this point?

11 A. He was certainly willing to.

12 Q. So how many Bitcoins did you eventually get for that
13 \$13,000?

14 A. It was about 48.9.

15 Q. And how many transactions did that come to you in?

16 A. It was two transactions.

17 Q. For what?

18 A. One was 40 Bitcoins, 40.0, and the other was 8.9 something
19 cents, but it was about 8.9. Not "cents." Bitcoin, rather.

20 Q. I'm sorry?

21 A. I said 8.9 "cents." It wasn't cents. It was Bitcoins.

22 MR. RESTAINO: I'll move on to 103I.

23 (Portion of audiotape played.)

24 BY MR. RESTAINO:

25 Q. What's happening here in this part of conversation?

1 A. I'm getting ready to hand him the cash.

2 (Portion of audiotape played.)

3 BY MR. RESTAINO:

4 Q. So can you describe the way in which the money was
5 organized?

6 A. Yeah. I had the money bundled in rubber band --
7 rubber-banded in three groups of 5,000 apiece. I took 15 to
8 the meeting. So I was handing him two bundles of money and
9 telling him that each of these is 5,000 apiece.

10 Q. And then what did you have to do for the third chunk of
11 5,000?

12 A. While he was counting the 10,000 I gave him, I took my
13 third bundle of 5,000, broke it apart, and counted out 3,000 to
14 give to him later.

15 (Portion of audiotape played.)

16 BY MR. RESTAINO:

17 Q. Now, shortly after this money exchange, did you notice the
18 presence of someone else nearby you?

19 A. I did.

20 Q. What did you see?

21 A. Well, as I had described, I was sitting across from the
22 defendant, and he had his back to the Café Rio restaurant. And
23 there was a glass window to his back, and I could see the
24 reflection in that window. So I saw a police officer in a
25 police uniform walking up, approaching the restaurant. And I

1 could see that in the window.

2 Q. Great.

3 MR. BINFORD: Let me ask to unpublish at this point,
4 and then I'll show on the witness screen digitally Exhibit 38.

5 BY MR. RESTAINO:

6 Q. Taking a look at Exhibit 38 on the screen in front of you,
7 what is this?

8 A. This is a -- a scene capture from that video that I had
9 mentioned that I had taken with the recording device. I tipped
10 it up at that point to get a picture of the defendant, and
11 that's -- that's the defendant while he's talking to me.

12 Q. Does this still photograph of the video fairly and
13 accurately represent where you and Mr. Costanzo were sitting on
14 that day?

15 A. Yes, it does.

16 MR. RESTAINO: Your Honor, at this time we'd move the
17 admission of Exhibit 38.

18 MR. CAIN: No objection.

19 THE COURT: Exhibit 38 is admitted.

20 (Exhibit 38 is received into evidence.)

21 MR. RESTAINO: And if we may publish.

22 THE COURT: You may.

23 BY MR. RESTAINO:

24 Q. So how is it that you're able to see the police officer
25 then, if you are facing the window?

1 A. Well, you can see in the window, over on Mr. Costanzo's
2 right shoulder, you can see that red square there, that's an
3 umbrella. You can see the top of it in the top of the picture
4 as well. So that's -- that's a reflection. You can see the
5 clouds. So I was -- I don't know if it was tinted or mirrored,
6 but I could easily see a reflection of the parking lot and what
7 was behind me.

8 Q. And just to be clear, you're not saying that this
9 photograph was from the moment when the police officer walked
10 up behind you?

11 A. No.

12 Q. But this is the way that you were able to see?

13 A. Right.

14 Q. So what did you say -- what did you say to Mr. Costanzo?

15 A. I brought it to his attention, something to the effect of,
16 do you see this or have you got this? Just so that he was
17 aware of the police officer's presence.

18 Q. And what did he say at first?

19 A. He said, yeah, I got it. No -- no worries.

20 Q. Did he subsequently change his position?

21 A. He did. He -- he backed away from that because he said:
22 Well, hold on, let's wait until he passes.

23 MR. RESTAINO: And we'll move on to clip 101 -- 103J.

24 (Portion of audiotape played.)

25

1 BY MR. RESTAINO:

2 Q. Can you describe the defendant's demeanor in that portion
3 of the conversation?

4 A. Yeah, he was -- he was emphatically making a point that,
5 you know, "I don't care." He was emphasizing that point.

6 (Portion of audiotape played.)

7 BY MR. RESTAINO:

8 Q. During your conversations with the defendant, were you ever
9 posing as a medical marijuana dealer instead of a heroin
10 dealer?

11 A. No, I wasn't.

12 Q. Now, elsewhere on the audio, were you able to verify the
13 wallet addresses that were used --

14 A. Yes.

15 Q. -- to send the Bitcoin?

16 A. Yes.

17 Q. And was the transaction confirmed?

18 A. Yes, it was.

19 Q. Do you have a record of the confirmation of the
20 transaction?

21 A. Yes.

22 MR. RESTAINO: If we can unpublish.

23 BY MR. RESTAINO:

24 Q. And I'd like to show you what's been marked for
25 identification purposes as Exhibit 37.

1 Taking a look at the first page of what's been marked
2 as Exhibit 37, do you recognize this document?

3 A. Yes, I do.

4 Q. And what is this document?

5 A. This is a printout from my Coinbase account when I took the
6 48.9 Bitcoin that I purchased from Mr. Costanzo and eventually
7 deposited it -- or transferred it to a Coinbase account, and
8 this is the record of that transaction.

9 Q. So just for the record, describe how that money -- how that
10 Bitcoin flowed, and which step of the transaction this document
11 represents.

12 A. This would have been the final step of the transaction. I
13 did the transaction with Mr. Costanzo with my Breadwallet on my
14 smartphone. Then I transferred it to two other wallets, two
15 other smartphone wallets, and then transferred it from there to
16 Coinbase to cash it out.

17 Q. And is the amount of Bitcoins here generally consistent
18 with the amount that you received from Mr. Costanzo?

19 A. Yes. This is slightly lower because each one of those
20 transfers incurred a nominal fee. But aside from that, yes.

21 MR. RESTAINO: Your Honor, at this time the government
22 would move for the admission of Exhibit 37 into evidence.

23 MR. CAIN: Objection. Foundation, hearsay.

24 THE COURT: Do you want to lay some foundation for the
25 hearsay exception?

1 BY MR. RESTAINO:

2 Q. From where did you get this record?

3 A. I printed it from my Coinbase account.

4 Q. And are you able to print out such a document from the
5 Coinbase account?

6 A. Yes.

7 Q. And to your knowledge, are these maintained in the regular
8 course of the business of Coinbase?

9 A. Yes. I could access my Coinbase account at any point and
10 access the transactions. I have done that. Just like a bank
11 account.

12 Q. Have you, in fact, accessed those transactions --

13 A. Yes.

14 Q. -- in the past?

15 A. Yes.

16 Q. Have you found these transaction reports to be reliable
17 assertions of the Coinbase transactions?

18 A. Yes, I have.

19 MR. RESTAINO: Your Honor, we would -- that's the best
20 we can do on the foundation.

21 We'd move for the admission of Exhibit 37.

22 THE COURT: Exhibit 37 is admitted.

23 (Exhibit 37 is received into evidence.)

24 THE COURT: You may publish.

25 MR. RESTAINO: If we may publish?

1 THE COURT: You may.

2 BY MR. RESTAINO:

3 Q. And so again, looking at page 1, this represents the amount
4 of the Bitcoins --

5 A. That's correct.

6 Q. -- that you received for that transaction?

7 A. Yes.

8 MR. RESTAINO: And finally we'll move to clip 101 --
9 103 -- I'm sorry. 103K.

10 (Portion of audiotape played.)

11 BY MR. RESTAINO:

12 Q. What did you take that to mean?

13 A. The defendant was telling me the benefits of Bitcoin for a
14 drug dealer, in that if I carried product from -- heroin from
15 Arizona to New York, I'm exposed then. And then I convert that
16 heroin into currency in New York, I've got a large amount of
17 U.S. currency, then I have to transport that back to Arizona,
18 and I'd be exposed both directions.

19 His point was if I used Bitcoin and converted the cash
20 into Bitcoin, I'd only -- my -- I'd cut my exposure in half.
21 I'd be exposed with the drugs in one direction, but I wouldn't
22 have to transport the currency, the bulk currency back.

23 Q. And did the defendant, in your understanding, have a
24 sophisticated understanding of the logistics problems in a drug
25 trafficking organization?

1 A. He --

2 MR. CAIN: Objection. Foundation. Calls for
3 speculation.

4 THE COURT: Sustained.

5 BY MR. RESTAINO:

6 Q. Were you able to provide the wallet address and a memo to
7 the case agent in this case?

8 A. Yes.

9 Q. And who was that at the time?

10 A. The case agent?

11 Q. Correct.

12 A. Don Ellsworth.

13 MR. RESTAINO: Might I just have a moment, Your Honor?

14 THE COURT: You may.

15 (Pause in proceedings.)

16 BY MR. RESTAINO:

17 Q. So did you ever have any more communication with the
18 defendant after your meeting with him on that day?

19 A. Not two-way communication, but he did send me some texts
20 after that.

21 Q. Let's take a look at what's been admitted as Exhibit 124.

22 All right. So taking a look at this document, are you
23 able to date some of the post-transaction communications?

24 A. Yes. This occurred on October 14th. And I stand
25 corrected. This was a two-way communication that we did have

1 after the transaction. And then after that, they were one-way
2 communications.

3 Q. Right. So what predicates the communication; what starts
4 it?

5 A. It's a text that I get from the defendant that says: Thank
6 you for your business, Tom. By the way, recently I was invited
7 to talk about Bitcoin on podcast Bad Business. Would you let
8 me know how you liked it. And then there's a link there.

9 And he says: I'll answer any questions that you have.
10 Okay.

11 And I responded and said: Thanks, Tom. I'll check
12 this out. I'm sure we'll do more business in the future too.
13 Have a good evening.

14 Q. And what did the defendant respond?

15 A. He said: Who is Tom?

16 Q. And why did you call him "Tom"?

17 A. Because I knew his name to be Tom, and I was under the
18 impression that he had told Sergei that his name was Tom.

19 Q. And did the -- what did the defendant do when you called
20 him "Tom" then?

21 A. His response is: Who is Tom?

22 Q. And how does he continue?

23 A. Well, I -- I said: Well, I thought you said your name was
24 Tom. Did I get that wrong?

25 He said: I'm Morpheus. Your name is Tom.

1 And I said: Yeah, I'm Tom. My bad on your name.
2 Morpheus it is.

3 And he said: Make sure we're on the same page.

4 Q. And that was the end of that conversation?

5 A. Yes.

6 MR. RESTAINO: Thank you, Agent Klepper.

7 Your Honor, at this time we have no further questions
8 on direct.

9 THE COURT: All right.

10 Cross-examination?

11 CROSS-EXAMINATION

12 BY MR. CAIN:

13 Q. Agent Klepper, you testified on direct that it was you that
14 upped the amount of the trade.

15 A. That's correct.

16 Q. And you did it because you wanted to try to tap him out?

17 A. Correct.

18 Q. Originally you'd agreed on 10,000 bucks, basically.

19 A. Yes.

20 Q. And then you upped the amount to 15,000?

21 A. Yes, I did.

22 Q. And you had the instinct that he wasn't going to have
23 enough to cover it?

24 A. I thought that was a possibility.

25 Q. But in your dealing with him, he wasn't suggesting the

1 amount to you. It was you suggesting the amount to him?

2 A. We had agreed on \$10,000, and I asked to up the amount,
3 that's correct.

4 Q. In your dealings with him, I think in your words, he was
5 pretty "geeked out" about Bitcoin.

6 A. Yes.

7 Q. Pretty enthusiastic about it.

8 A. I think that's fair to say.

9 Q. He seemed to think that Bitcoin was going to be a -- pretty
10 important in the world in the future?

11 A. Yeah. He -- he -- he enjoyed talking about the subject,
12 certainly.

13 Q. We got to listen to some of your conversation with him on
14 that October day. Is it fair to say that in that conversation,
15 he didn't introduce the discussion about heroin, that it was
16 you that introduced the discussion about heroin?

17 A. That is fair to say. It was clear to me that he would
18 rather not talk about that.

19 Q. So along that same line, is it fair to say that he would
20 have done that deal with you, whether you talked about heroin
21 or not?

22 A. I have no idea whether he would have or not, but he didn't
23 stop when I told him it was heroin.

24 Q. Well, but let's -- let's talk about what you knew about him
25 up until that point. I'm assuming that you'd done some due

1 diligence on him before you met with him that day.

2 A. Correct.

3 Q. You'd been briefed on the investigation.

4 A. Yes.

5 Q. You knew that he was an individual who essentially made a
6 living out of trading Bitcoin?

7 A. I don't know if he made a living, but I know that he
8 regularly traded Bitcoin.

9 Q. Right, which meant he ran around town trading Bitcoin with
10 individuals.

11 A. Correct.

12 Q. And you knew that he'd already done some trades with
13 Sergei?

14 A. Yes.

15 Q. And you knew he'd done a trade with Sergei where there was
16 no discussion of heroin?

17 A. I don't know exactly what he discussed with Sergei. I know
18 that before I got there, Sergei had told him that we were in
19 the business of heroin. I don't know how many deals he did
20 with Sergei prior to that.

21 Q. But don't you think it's fair to say that had you not said
22 anything about Sergei, had you not said anything about heroin,
23 he still would have done the 13,000-dollar deal with you that
24 day?

25 A. I think he probably would have.

1 Q. He certainly didn't make it a condition of the deal with
2 you that it had to be used for heroin; right?

3 A. He did not.

4 Q. And in the recordings that we heard, it -- it was you
5 telling the story about your business; right?

6 A. Yes.

7 Q. He wasn't telling you to tell him your story.

8 It was you deciding to share your story?

9 A. Yes and no. Part of the reason that I went into the
10 explanation of why we told him is because he brought up the
11 fact that, hey, when I talked to Sergei, the first time he told
12 me, I was, like, why did he tell me for?

13 And then that's why I said: Well, I'll explain to you
14 why he told you. This is why.

15 Q. But -- but the other reason you're -- you're sharing that
16 story is you're -- you're recording this; right?

17 A. I did have a recording device, yeah.

18 Q. And -- and you knew that as you're inserting those elements
19 of drug activity, that by inserting those elements, those
20 potentially would be used against Mr. Costanzo in a later
21 prosecution?

22 A. Yes. That's possible. Yeah. Absolutely.

23 Q. The government asked you some questions about your
24 appearance for that meeting, and I think you testified that you
25 were dressed casually?

1 A. Yes.

2 Q. Jeans and a Polo. You weren't dressed in a -- I'm sorry.

3 Did you -- I don't think you answered audibly. Is that a

4 "yes"?

5 A. Yes. I did testify to that.

6 Q. Okay. You weren't dressed in a flashy manner?

7 A. I'm not sure what you mean by "flashy," but jeans and a

8 Polo is not -- it is what it is.

9 Q. You weren't -- you weren't -- well, you weren't dressed in
10 a way where you were trying to communicate "I'm made of money"?

11 A. I was wearing a nice watch, and that's -- that's about it.

12 Q. And we got to hear your voice in that audio; right?

13 A. Uh-huh. Yes.

14 Q. And we kind of got to hear your demeanor in the way that
15 you interacted with Mr. Costanzo; right?

16 A. Correct.

17 Q. And would you agree that your demeanor in that audio is
18 very similar to your demeanor today?

19 A. Yeah. That's fair.

20 Q. You were very conversational?

21 A. Uh-huh.

22 Q. "Yes"?

23 A. Yes. Yes.

24 Q. You were very approachable?

25 A. I tried to be.

1 Q. You were trying to come off as likable so that he would
2 engage with you?

3 A. Yeah, that -- yeah.

4 Q. You weren't presenting yourself as somebody who is hardened
5 from the streets.

6 A. Yeah, that's fair to say. My cover story was not that I
7 was a street dealer, I was wholesaler. And that's why my cover
8 story is like that. I can't pull off a street dealer. Your
9 point is well made. But that's not what I said I was.

10 Q. Fair. You know, you were -- you didn't come in with a
11 bunch of fake tattoos to make it look like you'd been living a
12 hard life?

13 A. No.

14 MR. CAIN: May I have a moment, Your Honor?

15 THE COURT: You may.

16 (Pause in proceedings.)

17 BY MR. CAIN:

18 Q. Mr. Costanzo, when you met with him that day, he was also
19 dressed casually.

20 A. Yes. He was in shorts and a Polo shirt.

21 Q. He wasn't dressed in a -- in a way that -- well, you didn't
22 like my word "flashy." He wasn't dressed in a way that
23 indicated that he'd spent a lot of money on his clothing.

24 A. No, he did not stand out in that way.

25 Q. He didn't appear to have any expensive jewelry?

1 A. Not that I recall.

2 Q. You didn't see him pull up in what appeared to be an
3 expensive vehicle?

4 A. I didn't see him pull up, so I don't know what he drove
5 there.

6 Q. Okay. You talked a little bit about the Telegram app.

7 A. Yes.

8 Q. And that's an application that you can use on a smartphone?

9 A. Correct.

10 Q. Now, that's an app that anybody could put on a smartphone?

11 A. Yes. It's available in the app store.

12 Q. So it's not an app that is illegal to use?

13 A. No, it's not illegal to use.

14 Q. It's not illegal to download?

15 A. Nope.

16 Q. So law-abiding individuals could use that if they wanted to
17 have encrypted communications that couldn't be intercepted?

18 A. Yes.

19 Q. You talked a little bit about Trezor, and we heard that
20 discussion; correct?

21 A. We did.

22 Q. And you explained it as being like a thumb drive for a
23 smartphone?

24 A. Yes.

25 Q. Same thing. A Trezor, if that's the correct way to refer

1 to it, it's essentially a storage device?

2 A. Yes, it is.

3 Q. So there's nothing illegal about a Trezor storage device.

4 A. It's all in how you use it, but it's not illegal to -- to
5 own it or use it, depending on how you're using it.

6 Q. So an average citizen could be using it to store
7 information they wanted to safely store from their phone?

8 A. I think that's fair to say, yeah. That could be used that
9 way.

10 Q. Okay.

11 MR. CAIN: I pass the witness.

12 Thank you, Your Honor.

13 THE COURT: Thank you.

14 Redirect?

15 MR. RESTAINO: No, thank you, Your Honor.

16 THE COURT: You may step down.

17 THE WITNESS: Thank you.

18 THE COURT: Mr. Restaino, next witness?

19 I'm looking to take a break in about 15 minutes.

20 Oh, I'm sorry.

21 MS. ESCALANTE: It's okay.

22 Thank you, Your Honor.

23 The government would call Nolan Sperling.

24 (NOLAN SPERLING, Government's witness, is sworn.)

25 ///

1 DIRECT EXAMINATION

2 BY MS. ESCALANTE:

3 Q. Okay. Good morning, Mr. Sperling. Can you introduce
4 yourself to the jurors, please.

5 A. Hi. My name is Nolan Sperling. I'm 22 years old, and I'm,
6 you know, currently living in Scottsdale, Arizona.

7 Q. Thank you. What do you do?

8 A. Currently I am a full-time student at Arizona State
9 University, and I also work two jobs, two part-time jobs.

10 Q. Okay. What are you studying at ASU?

11 A. It's called technological entrepreneurship and management.
12 So it's in the polytechnic school. And it's -- it's like a
13 business-focused tech degree, so it prepares the students for,
14 essentially, to create value in a business, so in terms of,
15 like, product creation, marketing, branding, as well as, like,
16 operations management. It's a very well-rounded business
17 degree.

18 Q. Okay. Now, Mr. Sperling, on September 27th, 2016, you were
19 indicted in federal court for two charges; correct?

20 A. That is correct.

21 Q. What are those charges?

22 A. Importation of a controlled substance, and intent to
23 distribute, I -- I believe.

24 Q. And what was the controlled substance that you were
25 importing?

1 A. It was MDMA, which is a, I guess, like a -- it's an
2 abbreviation, an acronym, for ecstasy, Molly. I don't know
3 what MDMA stands for. It's a long technical name.

4 Q. And on October 12, 2016, you came to court to make your
5 first appearance for that indictment; correct?

6 A. That is correct, yes.

7 Q. Prior to your first appearance, did you have the two jobs
8 that you have currently?

9 A. I did.

10 Q. And prior to your first appearance, were you enrolled at
11 ASU?

12 A. I was.

13 Q. Had you enrolled at the community college first?

14 A. I was -- so I went to ASU first in fall of 2016. And, you
15 know, I went to the dorms and I, you know, messed around too
16 much and I failed out, and that was in 2013. And then after
17 that I went to community college for a semester-and-a-half or
18 two years, something like that. And then I came back to ASU.

19 Q. And prior to your first court appearance, you were doing
20 drugs; correct?

21 A. That is correct, yes.

22 Q. Tell the members of the jury the drugs that you were doing.

23 A. So, I guess going back to, I believe it would be late 2012,
24 you know, I had done LSD, ecstasy, 'shrooms; I've done Xanax,
25 smoked marijuana. You know. I'd done OxyContin before.

1 That's about it.

2 Q. Okay. And when was the last time that you consumed drugs?

3 A. It would have been October of 2016.

4 Q. Okay. And on November 27th, 2016, you pleaded guilty to
5 importation; correct?

6 A. That is correct. Yeah.

7 Q. You accepted a plea agreement?

8 A. I did, yeah, with the government.

9 Q. What was your -- what was your understanding of the
10 consequences that you were facing for the charges against you
11 prior to entering into a plea agreement?

12 A. So to my knowledge, I would be prosecuted, you know, for
13 the MDMA that I imported. I believe I was facing anywhere from
14 four to five years, I think it was, in federal prison.

15 Q. That was your understanding?

16 A. That was my understanding, yeah.

17 Q. Okay. And what was your understanding of what the plea
18 agreement meant to you?

19 A. Um, so, you know, to my understanding, the plea agreement
20 basically says that, you know, pending my cooperation and, you
21 know, my good -- goodwill, and just doing the best I could to
22 help in anything that would relate to my case or anything that
23 would help the government, I would -- you know, I would perform
24 to the best of my ability something, you know -- like, for
25 example, giving a testimony in trial or helping out with an

1 ongoing investigation -- and, you know, also, of course,
2 cooperating with Pretrial Services and Probation, and
3 cooperating with that. That's what that entailed to me.

4 Q. Okay. So you entered into a cooperation agreement with the
5 government; correct?

6 A. That is correct.

7 Q. Which is separate than the plea agreement; correct?

8 A. Yes, that is correct.

9 Q. Okay. So are you right now describing what your
10 understanding is of the cooperation agreement?

11 A. Yeah, I guess essentially so. I reviewed both documents at
12 the exact same time and signed them both at the same time, so
13 the plea agreement would be in -- with, you know, me
14 cooperating, I would take a plea, and my sentence would be
15 reduced at the discretion of the judge presiding over my case,
16 James Teilborg, and he'd be the one who would oversee that
17 agreement and decide what happened.

18 Q. Okay. And when you entered into the plea agreement and the
19 cooperation addendum, did you know that you were going to have
20 to testify against an individual who you knew as Morpheus
21 Titania?

22 A. No. I had no idea what -- what I would be doing, who --
23 you know, what would be important to the government. I -- I
24 had no idea what I would be doing, but I knew I was -- it was
25 in my best interests to cooperate with whatever needed to be

1 done, and I had no idea who it would be against or anything.

2 Q. Was the name "Morpheus Titania" directly written or
3 included in either your plea agreement or the cooperation
4 addendum?

5 A. No, absolutely not. It wasn't mentioned at all.

6 Q. Okay. And we'll get more into specifics as to how you know
7 Morpheus Titania.

8 But do you see him here in the courtroom today?

9 A. Yes, I do.

10 Q. Could you tell us where he is seated and what he is
11 wearing?

12 A. I believe he is sitting right over there with glasses on,
13 in the middle of those three people -- that lady, and then he's
14 in the middle, and then the gentleman in the blue stripe
15 suit -- to his right, my left.

16 MS. ESCALANTE: Your Honor, may the record reflect the
17 witness has identified the defendant?

18 THE COURT: Yes.

19 BY MS. ESCALANTE:

20 Q. You just stated that you also had to comply -- or part of
21 your corporation includes complying with Pretrial Services
22 and/or the Probation Department. What do you mean by that?

23 A. Yes. So with Pretrial Services, it's very similar to
24 probation. So, I entered into a contract, I believe it was
25 October 12th -- maybe it wasn't a contract. I just -- you

1 know, it was an agreement where I can't, you know, take any
2 drugs, I can't drink any alcohol; and it's, you know, part of
3 my release conditions on not being in -- you know, being held
4 in jail while the duration of my -- of my case is going on. So
5 it's part of my release agreement.

6 Q. Okay. And prior to your first appearance in court, you had
7 a medical marijuana card; correct?

8 A. That is correct, yes.

9 Q. Do you still have that?

10 A. No, I do not. It expired -- it expired in May of 2016.

11 Q. Okay. Let's talk about the offense conduct that let you
12 to -- that led to the federal charges against you, the
13 importation and the drug distribution. When did you begin to
14 sell drugs?

15 A. I guess -- I guess it would be when I started to buy them.
16 That was -- that was, like, late 2012.

17 Q. How old were you then?

18 A. I had just turned 17.

19 Q. Okay. Were you still in high school?

20 A. Yes, it was -- it was my senior year. It would have been
21 November/December of my senior year or 2012. You know,
22 December of 2012. Yeah. That's when that started.

23 Q. Okay. And how were you purchasing the drugs that you were
24 both using and selling at that time?

25 A. You know, right when I started there, I used Bitcoin to

1 purchase the drugs online.

2 Q. Okay. And where were you purchasing your Bitcoin when you
3 started?

4 A. I think when I first started, there is this website called
5 Mt. Gox where you would do a wire transfers, like MoneyGram or
6 something. But that got taken down within, I don't know, maybe
7 a year or something, eight months. And then after that, I
8 switched to a website called Coinbase.

9 Q. Okay. Let's talk about Mt. Gox. What did you have to do
10 to set up an account with Mt. Gox?

11 A. To my knowledge, I don't think there was an account set up.
12 I think you -- you know, you had to go into anywhere that had
13 that red telephone, you know, like a -- I think it was, like, a
14 CVS or something, you know, that had like a MoneyGram wire
15 transfer, and you would -- I believe you'd just transfer money,
16 I think, to a wallet or something. Maybe you did have to set
17 up an account. I didn't really remember. I was -- I only used
18 it briefly.

19 Q. Okay. Did you have to provide any identification,
20 telephone number, bank account number?

21 A. I think I had to provide my name and stuff, yeah. I don't
22 think a bank account was necessary because it was a wire
23 transfer. But I had to give my name, maybe my email address or
24 something, yeah. There was something about it. You can't
25 just -- yeah. You can't just call. They had to know, like,

1 who I was. I think they got my name, yeah.

2 Q. Okay. And then you switched to Coinbase.

3 A. Yes. That is correct, because I think Mt. Gox got taken
4 down. It was shut down or something.

5 Q. Did you lose any Bitcoin when Mt. Gox got taken down?

6 A. No, I did not. I did not. I don't -- I don't recall
7 having, like, an account there. I would transfer it to an
8 outside wallet once I, you know, wired the money. So, no, I
9 didn't -- I didn't have any, like, money in that account, no.

10 Q. Let me take a step back.

11 Why were you purchasing your drugs with Bitcoin?

12 A. Because it provided a level of anonymity. You didn't have
13 to -- you know, it's not like you were using PayPal or
14 something where they know who you are. It's -- it's a way to
15 keep yourself anonymous online.

16 Q. Okay. Now, tell us what you had to provide or what you do
17 to use Coinbase.

18 A. So, Coinbase was a little bit more thorough. I think they
19 wanted to cooperate more with, I guess, maybe the U.S.
20 government or something because they didn't want to get shut
21 down. So you had to provide your -- at least full name. I
22 believe you have had to provide, like, a phone number or email
23 address, and you had to verify it. And then in most
24 situations, you know, enable to purchase Bitcoins, you had to
25 either link a credit card or a debit card or, like, a bank

1 account, or something like that. And so that provided another
2 layer of authen -- to auth -- you know, to authenticate your
3 identity. And you could -- by authenticating your identity,
4 unlock, you know, be able to buy more coins at a certain time,
5 you know. So if you only had, like, your phone number, it
6 might take five days to buy your Bitcoin. But once you, you
7 know, linked your bank account, email, a number of things, you
8 could instantly get, like, a thousand dollars without waiting.
9 And that was appealing to me, so I subsequently linked a lot of
10 my information to that website.

11 Q. And what was the maximum amount that you were able to
12 purchase on a daily basis?

13 A. Um --

14 Q. Based on the level of your account.

15 A. Sure. So I believe I was at the maximum level. And it was
16 a thousand dollars was the cap for, like, a one-time purchase.
17 I don't recall if that was the daily limit. It might have
18 been, like -- it might have been the daily limit, a thousand
19 dollars a day, or something. It might have been, like, a
20 weekly limit? No. Maybe it was a biweekly thing, or
21 something. But it was a thousand dollars at once, was what it
22 was.

23 Q. And you just stated that you had to provide a phone number
24 or an email for a verification process. What do you mean by
25 that?

1 A. So, you know, with a lot of websites, you enter an email
2 address, and they'll send you an email with a code or a link or
3 something, and you have to provide that code or click on the
4 link, and basically verify that you have access to that email.

5 And, you know, it's a similar thing for a phone. You
6 know, they text you a code or something, similar to, like,
7 Amazon or some company would do, you know.

8 Q. And how long did you use Coinbase for?

9 A. Maybe like a year-and-a-half or something. Eighteen months
10 about.

11 Q. And did you use the Bitcoin that you purchased on Coinbase
12 to purchase drugs online?

13 A. Yes. That was the only thing I used it for.

14 Q. Okay. And during the time that you were using Coinbase and
15 purchasing drugs online, you had a lot of drugs seized;
16 correct?

17 A. Yes, that is correct.

18 Q. And where were you -- what country were you ordering these
19 drugs from?

20 A. It -- it varied. It was -- it depended on what I was
21 buying. There's certain vendors from different countries. So,
22 like, for example, I ordered LSD from Canada, or, for example,
23 that MDMA that was seized, that was from The Netherlands. So
24 it -- it just -- it would depend on what I was getting.

25 Q. Okay. And the fact that it got seized didn't prevent you

1 from abstaining from purchasing drugs online?

2 A. Definitely scared me. I wasn't aware most of the time that
3 my drugs did get seized, like the first couple times it
4 happened, I -- you know, it wouldn't show up, but, you know,
5 things wouldn't show up, oftentimes it wasn't surprising. And
6 I never got, like, a seizure letter in the mail or anything.

7 But the time that I knew that my -- that something had
8 got seized was when I lost -- I had a lot of Xanax ordered in
9 from -- from Canada, and it was -- it was, like, \$10,000 worth.
10 And that was seized by the Canadian government. And that's
11 when I -- that's when I knew that -- you know, that scared me a
12 lot. I was -- I was kind of waiting for something to happen.
13 I think -- I think that was, like, I think that was, like,
14 September of 2015, somewhere around there.

15 Q. Okay. Prior to that seizure of the \$10,000 worth of Xanax,
16 you were no longer using Coinbase; correct?

17 A. That is correct.

18 Q. Why did you stop using Coinbase?

19 A. Because I was starting to purchase a larger dollar amount
20 of drugs online, you know. I was selling more, bigger
21 quantities. And so that thousand-dollar limit was inhibiting
22 me from, you know, I -- because like you said, it was -- they
23 wouldn't just let you purchase more than a thousand dollars at
24 once. You had to wait. And so that was a nuisance. And then
25 also because I was buying a higher dollar amount, I knew that

1 after a while I -- you know, there would be statements on my
2 bank statement saying that I had, you know, purchased this from
3 Coinbase, because that's how I was buying it, with a linked-up
4 bank account. So if I purchased more than a couple thousand
5 dollars at a time, I just figured, you know, they would report
6 it to the IRS or something, you know.

7 THE COURT: Ms. Escalante, I'm looking for a good time
8 for a morning break. So when you get there, let me know.

9 MS. ESCALANTE: Now is fine, Your Honor.

10 THE COURT: All right.

11 Ladies and gentlemen, we are going to take the morning
12 break now, and you'll have 15 minutes so that you can recruit
13 your energy and pay attention for the rest of the morning.

14 I will remind you of the admonitions. And I would
15 also remind you that you should not pay any attention, or
16 should try -- be sure that you don't let anybody talk to you
17 about this case, that you don't overhear any discussions about
18 this case from the media, maybe outside of the courtroom, or
19 anywhere else where you may hear it. It's just your job to
20 keep yourself untainted by anything that you might hear, other
21 than what's in this courtroom. We appreciate your cooperation.
22 I know it's difficult, and I hope you understand why we ask you
23 to do that.

24 You're now excused for your break.

25 Thank you very much.

1 COURTROOM DEPUTY: All rise.

2 (Jury leaves the courtroom at 10:31 a.m.)

3 THE COURT: Anything?

4 MS. ESCALANTE: No, Your Honor.

5 MR. RESTAINO: Judge, just briefly on exhibits.

6 THE COURT: Yes.

7 MR. RESTAINO: I just want to put on the record that
8 we have replaced Exhibit 12 with the redacted version that was
9 shown electronically to the jury yesterday, and we've replaced
10 admitted Exhibits 11 and 122, which were admitted but not
11 shown, with the redacted versions. I understand that the
12 defense stipulates to the redactions but, of course, the
13 defense would preserve its objection to the admissibility of
14 122.

15 THE COURT: Is that correct?

16 MS. WEIDNER: Yes, it is, Your Honor.

17 THE COURT: All right. Thank you.

18 Anything else that we need to put on the record or
19 otherwise take up?

20 MR. RESTAINO: Nothing from the government, Your
21 Honor.

22 MS. WEIDNER: Nothing from the defense, Your Honor.

23 THE COURT: All right.

24 Thank you.

25 (Proceedings in recess at 10:33 a.m.)

1 (Jury enters the courtroom at 10:48 a.m.)

2 (Proceedings resume at 10:50 a.m.)

3 THE COURT: Thank you.

4 Please be seated.

5 Ms. Escalante, please.

6 MS. ESCALANTE: Thank you.

7 BY MS. ESCALANTE:

8 Q. Mr. Sperling, where were you getting the money to purchase
9 the drugs for -- from?

10 A. Well, you know, I guess in the beginning, it was just money
11 I earned from my jobs that I had. And, you know, after selling
12 drugs, you know, make money, and then I'd reinvest money from
13 selling drugs into buying more drugs.

14 Q. Okay. So I think we left off with you were no longer going
15 to use Coinbase.

16 A. Yeah. Yeah.

17 Q. What did you do with your Coinbase account?

18 A. I -- I closed it. I wanted to permanently shut it down.
19 Yeah.

20 Q. Okay. And why was that?

21 A. Kind of going off on why I switched from Coinbase too is
22 because it, you know, linked my bank account, kind of linked to
23 me. And, you know, those purchases I was making at the time of
24 a thousand dollars I knew weren't serious, I wouldn't raise any
25 flags.

1 But I didn't want to raise any flags in the future, so
2 I just decided it was best for my own interest to shut down the
3 account. You know, I wasn't sure if it would erase the
4 information off the website servers, but, you know, I was -- I
5 would hope it would.

6 Q. And what was your concerns with Coinbase linking to your
7 bank account?

8 A. You know, just linking to my identity. You know, that's --
9 almost defeats the purpose of using Bitcoins because Bitcoins
10 can help to conceal your identity; at least, you know, if you
11 already have them in your possession, then you can just use
12 them online and no one can trace them back to you. So if you
13 have to sync up who you are to get them in the first place, it
14 almost defeats the purpose of, you know, the anonymity it gives
15 you.

16 Q. Who were you concerned would be able to identify you?

17 A. I guess just -- just anyone, like -- you know, like for
18 example, like the government, you know. If I made, like, too
19 high of a purchase, it might get, you know, like reported to
20 the IRS, or maybe just a suspicious behavior, you know, for my
21 bank. And then, you know, like an investigation might get
22 started or something.

23 Q. And were you concerned about an investigation for drug
24 trafficking?

25 A. Yeah. Drug trafficking, drug -- you know, just sell --

1 drug selling. Just everything I was doing. I was -- I was --
2 yeah, yeah -- scared for that.

3 Q. Okay. And you met with the government on three occasions
4 after you were indicted federally; correct?

5 A. Yes. That is correct.

6 Q. I believe one was in December of 2016, another time in May
7 of 2017, and then as recent as of March of this year; correct?

8 A. Yes. That's correct. That first one in December was
9 almost Christmastime. I believe it was, like, the 21st or
10 something.

11 Q. Okay. And the first time that you met with the
12 government -- and to be fair, you've never met with defense
13 counsel; correct?

14 A. No, I've never met with any -- I've never seen them before
15 this, besides Morpheus.

16 Q. And the first time that you met when the government, did
17 anyone -- any representative from the government bring up
18 Morpheus Titania?

19 A. No. That first meeting, no. Nothing was brought up.

20 Q. Who is the first -- who was the first person to mention
21 Morpheus Titania?

22 A. I -- I believe I brought him up. And I think I was asked,
23 you know, who I bought Bitcoins from, and I went through almost
24 the whole story I went through right now, like how I went to
25 Coinbase, and then I switched to buying them in person.

1 Q. Okay.

2 A. And then, you know, revealed I bought them through this guy
3 with, you know, code name Morpheus.

4 Q. Okay. Well, let's -- let's pick up right there. You ended
5 purchasing Bitcoin on Coinbase. What did you do next?

6 A. I think I did a little research online. I think more like
7 Reddit or something, or some forum website.

8 Q. What is Reddit?

9 A. So Reddit is a -- I guess it's like a peer-to-peer
10 community. It's like an online almost like forum-type website,
11 where you can go into these different sub Reds, they're called,
12 almost sub forums, so each sub Reddit can be about a different
13 topic. And so members of, you know, a similar community can
14 kind of meet together and talk about similar issues related to,
15 you know, any topic you can imagine.

16 So I was, you know -- I think I went on to, like,
17 Bitcoin, you know, Bitcoin sub Reddit or something. It's like,
18 how do you guys buy Bitcoin or some -- I don't think I posted.
19 I was just reading, like, what other people had gone through,
20 and I decided to use this website called, I think,
21 localbitcoins.com.

22 Q. Okay.

23 THE COURT: Mr. Sperling?

24 THE WITNESS: Yes?

25 THE COURT: Can I ask you to slow down and speak a

1 little bit more clearly?

2 THE WITNESS: Yes, yes.

3 THE COURT: Sometimes we have a tendency to slur our
4 words --

5 THE WITNESS: Yeah.

6 THE COURT: -- but it's important that we get
7 everything you're saying in the record.

8 THE WITNESS: Yes, Your Honor. Okay. Yeah. I can --
9 I can slow down.

10 THE COURT: Thank you.

11 MS. ESCALANTE: And maybe just pull the mike up a
12 little closer to you.

13 THE WITNESS: Sure.

14 BY MS. ESCALANTE:

15 Q. So you went to localbitcoins.com?

16 A. Yes, that is correct.

17 Q. And what did you do upon entering that website?

18 A. So on the website, I believe there was an area where you
19 could look at a map of, you know, around where you -- where you
20 type in your ZIP Code or something. And it pops up, you know,
21 a map of your area, and it shows, you know, little pin marks of
22 people who you can buy Bitcoins from locally.

23 Q. And how did you come across Morpheus Titania?

24 A. I think it was just the closest one to me. One of -- you
25 know, the closest dot on there. I don't really recall looking

1 at anyone else's profile. I just -- I think I clicked on his.

2 Q. Did you find anything appealing about his profile?

3 A. I don't know. I mean, it wasn't -- you know, like I said,
4 I think it was the first one I clicked on. I looked at it. He
5 was -- you know, seemed friendly. He was, like, you know, I
6 love working with new people. Just shoot me a text. And,
7 yeah, it was, you know -- seemed good enough.

8 Q. And how did you contact Morpheus?

9 A. I believe I sent him a text message.

10 Q. And did you guys meet?

11 A. Yeah. Yeah. We ended up meeting up.

12 Q. And so why did you want to use a peer-to-peer exchanger?

13 A. Because localbitcoins.com, I knew you could buy from people
14 in person, and it was a way to buy Bitcoins anonymously because
15 you could, you know, just essentially meet up with someone in
16 person, give them money, and then sit down and they'd send
17 Bitcoins to your account. And, you know, you'd wait until it
18 showed up, and then you guys could leave.

19 Q. Okay. When -- when was it that you first contacted
20 Morpheus?

21 A. It was probably like early springtime, like 2015, I think.
22 Yeah. That sounds right.

23 Q. Okay. And how long did you buy Bitcoin from Morpheus?

24 A. I think all the way up until -- until my -- until, you
25 know, my -- until I was caught, per se, in -- in May of 2016.

1 So it was at least a full year.

2 Q. Okay. And all of the Bitcoin that you purchased from
3 Morpheus, what were you using for?

4 A. Just to buy drugs online.

5 Q. Okay. And you just mentioned being caught in May. But
6 you -- you were indicted in September of 2016, and your first
7 Court appearance was in October 2016. What do you mean by
8 getting caught in May?

9 A. So I was -- I was out of the country, and my -- my house
10 was raided by Homeland Security while I was out of the country.
11 And --

12 Q. Do you know why?

13 A. I believe they had a warrant that they had acquired because
14 I had ordered an MDMA from The Netherlands, and I believe it
15 came to New York, and I believe it was seized there. And I
16 think they used that as probable cause to get a warrant to
17 search my residence.

18 Q. Did you list your first name and last name to be -- as the
19 recipient for the drugs that you ordered in The Netherlands?

20 A. Yes, I did.

21 Q. Okay. And where were those drugs supposed to be shipped
22 to?

23 A. So, I had a PO box they were supposed to be shipped to, you
24 know, down the street from my house.

25 Q. When did you get that PO box?

1 A. Did you say "why"?

2 Q. When. When and then why.

3 A. When? It was maybe, like, a year-and-a-half before. So
4 maybe like just before I met Morpheus. Might have been, like,
5 two years. Probably a year-and-a-half. I got it because, you
6 know, I was living at home at the time, and I didn't want to
7 order any of these drugs to my parents' house, you know, and
8 have them be, oh, Nolan, you got a package from Germany or
9 something; like, why are you getting these? I didn't want to,
10 like, raise suspicion with my parents. So I got a PO box.

11 Q. Okay. Did your PO box also get raided, as you state?

12 A. It -- it did, yeah. I believe both of them did. I had two
13 at the time.

14 Q. Okay. What did agents from Homeland Security find in your
15 bedroom when they went to your house in May?

16 A. So, I believe they found, like, \$5,000 in cash.

17 Q. Were there drugs in your room?

18 A. Yes, there were. There was, like, mushrooms, magic -- you
19 know, magic mushrooms; maybe some of the -- some MDMA. Yeah, I
20 believe there was some MDMA. And then some Xanax, probably, as
21 well.

22 Q. Was there marijuana also?

23 A. There might -- yeah, I think there was maybe small amounts,
24 like some paraphernalia and -- yeah, some -- some concentrate
25 marijuana.

1 Q. Did you also have MD capsules?

2 A. Yes, I did have MD capsules.

3 Q. What were you using those for?

4 A. So, there was a dual purpose for those capsules. So the
5 first one was I would capsule-up MDMA, which is ecstasy, and
6 sell those. And then I also bought capsules because I was
7 looking at this class of new drugs called nootropics. They're
8 kind of like a -- like a brain-enhancing drugs. And that
9 was -- you know, they're legal in the United States, and I was
10 researching different ones. And so it's -- you know, it's
11 really common for, I guess you would say, like younger people,
12 like a lot of people in, like, California, like Silicon Valley,
13 they use them to, like, just, you know, give themselves more
14 energy, more clarity and focus. And so I was exploring those
15 drugs, and I had a lot of those pill capsules because I was
16 capping up a lot of different, like, supplements and stuff.

17 Q. Okay. Did you also have a digital scale and metal
18 grinders?

19 A. Yes, I did.

20 Q. What are those for?

21 A. So, the digital scale would have been to weigh out, like,
22 powders, for example, like the powders I was using, like those
23 supplements. You know, I'd also, like, weighed out, like,
24 cocaine on it before. It was a little -- a tiny, little metal
25 scale. You know, I guess marijuana sometimes. I never used it

1 too frequently, but...

2 Q. And you had cocaine in your bedroom that day, too; correct?

3 A. Yes, that got seized as well.

4 Q. What did agents from Homeland Security find at the post
5 mailbox that you had leased?

6 A. On the PO boxes? I believe they seized, I think, 4,000
7 pills of Xanax.

8 Q. Anything else?

9 A. I think -- I think that was it.

10 Q. Was there any MDMA?

11 A. Yeah, I think -- okay, yeah. I think half of it was seized
12 at the box, and the other half was what was seized in New York,
13 if I recall collect -- correctly.

14 Q. And the drugs that were seized by Homeland Security that
15 May, did you purchase those drugs with Bitcoin that you
16 purchased from Morpheus?

17 A. Yes, I did.

18 Q. Okay. And what were the other kinds of drugs that were
19 seized prior to you meeting Morpheus?

20 A. So, I think I mentioned this previously. I had LSD that
21 was -- I ordered in earlier. Maybe, like, 2014 or something.
22 So I know that got seized. The one that I know of, that I
23 remember, is when I got the \$10,000 worth of Xanax seized. I
24 believe that was seized in Montreal by the Canadian government.

25 Q. Okay. And that was seized after you met Morpheus; correct?

1 A. Yes, that is correct.

2 Q. Okay. So you mentioned to meeting him in the spring of
3 2015, and you texted him. Where did you guys first meet?

4 A. I believe we originally met at Whole Foods in North
5 Scottsdale.

6 Q. Okay. And who suggested that location?

7 A. I think it was me. I think I suggested it.

8 Q. Okay. And tell us about your first meeting, what you can
9 recall of it.

10 A. I don't know, you know. We sat down, I guess introduced
11 ourselves. You know, I bought some Bitcoin and, you know, it
12 takes like 25, 35 minutes to clear before, you know, I see it
13 in my account. So we were just talking, I guess, just -- I
14 think we were talking about, like, Bitcoins and, you know, how
15 did you get involved, and, you know, how did you hear about it.
16 I think that first meeting was just kind of an introductory,
17 like, hey, like, what's up.

18 Q. Okay. And what did you tell him your name was?

19 A. I believe I told him my name was Nolan. I'm not sure I
20 specified my last name or anything.

21 Q. Did he --

22 A. The --

23 Q. Sorry. Go ahead.

24 A. No. I'm finished.

25 Q. Okay. Did he ask for your ID?

1 A. No, he did not ask for my ID.

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

3 A. No, definitely not.

4 Q. Your date of birth?

5 A. No. Not my date of birth.

6 Q. A tax ID?

7 A. No.

8 Q. Or a bank account?

9 A. No, he didn't. He didn't ask for a bank account or
10 anything.

11 Q. How would you have reacted if he had asked for that?

12 A. For what; all of those things or which, you know?

13 Q. Any one.

14 A. Any one? Like even my ID or something? I don't know,
15 other than, like, um, all right, like -- I'd be kind of
16 wondering why, you know, like -- I assume he works -- he would
17 work on his own. I don't know. I would kind of wonder why he
18 wanted to see my ID.

19 Q. Did you tell him during your first meeting that you were
20 purchasing Bitcoin for drugs?

21 A. No. I -- I did not. That first meet-up I -- no, I
22 definitely wouldn't have mentioned that.

23 Q. Okay. And did he tell you his true name?

24 A. No, I -- I never found out, I guess, as he called his legal
25 name, until -- until this trial.

1 Q. Okay. So how often did you meet with Morpheus?

2 A. I guess it varied. It was whenever I texted him and wanted
3 to meet up. You know, maybe at least once a month maybe.
4 Maybe sometimes it would, you know -- like for example, when I
5 lost that \$10,000 worth, I think. I don't think I ordered
6 anything for, like, two months because I was -- you know, I
7 lost a lot of money and I was discouraged. But on average, you
8 know, maybe once a month or so, once every six weeks.

9 Q. And what were the amounts of the transactions that you were
10 doing?

11 A. Again, it varied a lot. I'd say typically it was anywhere
12 from maybe, like, two, 3,000, all the way up to, you know,
13 eight, 9,000, 10,000 maybe.

14 Q. What is your best guess of the total amount that you spent
15 with Morpheus?

16 A. Just all together over the course of, like, everything?
17 It's probably at least, like, 30,000. Yeah. Yeah. 30,000,
18 around, maybe 35 or something.

19 Q. Okay. And during the times that you were meeting with him,
20 how would you hand him the cash?

21 A. So I'll just have, you know, a white envelope, you know,
22 stuffed with 20s. And, you know, just put in my pocket and,
23 you know, we'd walk up. It was Whole Foods, and we sat outside
24 at the tables they have there, and that was it. You know, I'd,
25 you know, put it on the table or hand it to him under the table

1 or something. And that's it.

2 Q. And would he count the cash after you would hand it to him?

3 A. Yeah, he would. Basically almost always count the cash,
4 yeah.

5 Q. Okay. And there was once an occasion where you completed a
6 transaction at the Lifetime Fitness?

7 A. Yeah.

8 Q. Can you tell the jury about that?

9 A. Sure. So, I guess the Lifetime Fitness, it's the one in
10 north Scottsdale. Yeah. The reason we went there is because,
11 you know, in order to buy Bitcoins, you have to transfer it to
12 a wallet. And I think my phone died, and, you know, I needed
13 to trans -- we needed to transfer the Bitcoins. So I -- I
14 didn't have a phone charger, and we were at Whole Foods, and I
15 was, like, how do I get my -- how do I get my phone charged?
16 So I go to this gym, and I just thought maybe one of the guys
17 at the front check-in desk was, like, charging their phone
18 there. And we went there, and sure enough, someone had a phone
19 charger. So we -- I just plugged in my phone, we waited for,
20 like, 10 minutes, and then we did the transaction in, like, the
21 lobby of the Lifetime Fitness.

22 Q. Okay. And originally that transaction was at the Whole
23 Foods?

24 A. I believe we originally were at Whole Foods, yeah.

25 Q. Did you guys drive to the Lifetime Fitness together, or --

1 A. No. In fact, maybe, in fact, maybe -- I think we
2 originally planned for Whole Foods, and then maybe my phone
3 died, and I think I might have showed up there just to tell
4 him, hey, let's go to Lifetime, it's right there,
5 da-da-da-da-da. And then we drove separately, you know.

6 Q. Was Morpheus any different during the time that the
7 transaction occurred in the Lifetime as opposed to the Whole
8 Foods?

9 A. Was he any "different"?

10 Q. Uh-huh.

11 A. I -- I don't know. I mean, he didn't -- I don't think he
12 counted the cash because we were in, like, you know -- we were
13 in the lobby of a gym. So I think he just -- you know, I
14 handed it to him and he looked at it, and I think he was just,
15 like, put it away. He was, like, all right, I think it's all
16 there. But besides that, I don't know. I feel like it was
17 usual.

18 Q. Typically how would he arrive to the meetings?

19 A. He would almost always be there before I got there. I
20 believe he would drive there, if that's what you're asking.

21 Q. Yeah.

22 A. Yeah.

23 Q. Do you recall specifics to the vehicle he was driving?

24 A. I don't think I ever saw him pull up. But it was, you
25 know, it was, like -- maybe like a late '90s, like, Dodge Neon,

1 something, just a small, two-door car, kind of an older car.

2 Q. Okay. In the course of your relationship, did you ever
3 mention to Morpheus that you were purchasing drugs online?

4 A. I think after a while that, like, that came up because
5 like, you know, going back to that story where I lost the
6 \$10,000, you know, that was in September 2015. So I'd known
7 him for, I don't know, like, six, seven, eight months,
8 something at that point. And I believe I told him about that
9 when I had those -- that drug -- that amount seized in -- in
10 drugs.

11 Q. Okay. Did he ever ask you to purchase drugs for him?

12 A. There was this one time he asked me if I could get DMT.

13 Q. And what is DMT?

14 A. So, it's a -- it's an extremely powerful psychedelic
15 substance. It's -- you know, it's a naturally occurring
16 substance. It's in a lot of actual living things.

17 Q. Do you know what "DMT" stands for?

18 A. I -- I could try and say it, but I -- I don't really
19 remember. It's like di -- dimatried -- I don't -- I don't
20 remember. It's a technical -- you know, it's an abbreviation.

21 Q. Okay. So let's go back. How -- so how -- when -- did he
22 ask you to get him DMT after you told him about your Xanax
23 seizure, or before?

24 A. I -- I guess it was after, but I don't think that's what
25 led to it necessarily. I think, you know, it's not like that

1 was, like, the next conversation we had. But I believe it was
2 after that point in time when he asked me to do that. It would
3 have been after that, you know, September of 2015.

4 Q. Okay. And did you get the DMT for him?

5 A. Yes, I did.

6 Q. On how many occasions?

7 A. I think it was once, maybe twice. Yeah.

8 Q. Okay. And where did you purchase the DMT from?

9 A. Online.

10 Q. And did you purchase it with Bitcoin?

11 A. I did.

12 Q. And how did he pay you for the DMT?

13 A. I -- I think he just transferred me Bitcoin. You know, I
14 told him how much I was going to charge him for it, and then I
15 think he just transferred it to me. He might have given me
16 cash, but he would have had to give me just Bitcoin to buy it,
17 because he's, you know, who I buy my Bitcoin from. So I'd
18 imagine, yeah, it was with the Bitcoins.

19 Q. Okay. After you told him about the 10,000 Xanax pills
20 seizure, did he stop doing business with you?

21 A. It was \$10,000. It wasn't 10,000 pills.

22 Q. I'm sorry. \$10,000 worth.

23 A. No, he never stopped doing business with me.

24 Q. Okay. What was your phone number at the time?

25 A. It would have been (480) 686-7050.

1 Q. And is that the phone number that you had every time you
2 texted Morpheus?

3 A. Yes. That's the phone number I had for a really long time,
4 you know, since I got a phone.

5 Q. Okay. And did you ever communicate through a different
6 means, other than the regular text messages, on your phone?

7 A. So, yeah, he -- I think he one day wanted me to get an app
8 called Telegram, and it was a -- it's like an encrypted
9 messaging app. So --

10 Q. Had you had Telegram prior to meeting Morpheus?

11 A. No, I never heard of it before that.

12 Q. Did you download it after he told you about it?

13 A. Yeah.

14 Q. Okay. And you were describing it. It was an encrypted
15 messaged app?

16 A. Sure. So, I guess it's similar, like WhatsApp or
17 something, where it's just a peer-to-peer messaging service,
18 but I guess they emphasized the fact that it was encrypted
19 messaging and it was secure, like encrypted on their own
20 servers as well. I think that was, like, an advertising staple
21 of theirs, you know, because like other apps, like WhatsApp
22 also, I think, encrypt their messages. But this one, I think,
23 like heavily advertised it or something.

24 Q. And what is your understanding of what "encrypted" means?

25 A. So, encryption is a, you know, it's a way to, I guess,

1 scramble up a message. And in order to de-scramble the
2 message, you need an encryption key. Typically those keys are
3 long and complex. And depending on the level of encryption,
4 you know, it could be so complex that, like, computers can't
5 figure it out because, you know, the key might change every 30
6 seconds, or something like that. So it -- it scrambles up the
7 message so you can't do it unless you have the key to
8 unscramble it.

9 Q. And approximately when did he tell you to download
10 Telegram?

11 A. I don't really remember, maybe around that time in fall of
12 2015.

13 Q. Okay. Did he ever tell you -- did he ever mention
14 something called Mycelium to you?

15 A. Yeah. I believe Mycelium, that's the coin -- the Bitcoin
16 wallet.

17 Q. Tell the jury how that came up.

18 A. So, you know, I think it was the same way he brought up
19 Telegram. It's, like, hey, man, there's this app that acts as
20 a Bitcoin wallet -- which if you don't know what a Bitcoin
21 wallet is, it's a wallet where -- you know, it's a digital
22 wallet you have on your phone where you can store Bitcoins. So
23 it's your own account, essentially, that will transfer Bitcoins
24 to. And I think before that I wasn't using my phone. I was
25 just transferring directly to, like, an online website. And so

1 I -- I just -- yeah, I think it just added, like, a level of
2 convenience, you know. It was on your phone. It was, you
3 know, like you could scan a QR code. It was really nice.

4 Q. Okay. Did you download the Mycelium?

5 A. Yeah. Yeah, it was. It was great.

6 Q. Prior to your testimony, did you get the opportunity to
7 review text messages that you had exchanged with Morpheus?

8 A. Yes, I did get a chance to do that.

9 Q. Okay. And was your phone number on those text messages?

10 A. Yes, it was.

11 Q. Okay. And were those true and accurate conversations that
12 you had via text message with Morpheus?

13 A. Yeah, those were the original texts that we sent.

14 MS. ESCALANTE: Your Honor, I would like to publish
15 what has been previously admitted as Exhibit Number 32.

16 THE COURT: You may do so.

17 BY MS. ESCALANTE:

18 Q. Mr. Sperling, are these the text messages that you
19 reviewed?

20 A. (Pause.)

21 Q. It's on the screen in front of you.

22 A. It looks similar. It's kind of blurry on my screen. I
23 can't read line by line, but it looks like the exact document I
24 reviewed, yes.

25 Q. Okay. And I can try and make it larger here.

1 A. Yeah, it looks -- it looks like the exact document I
2 reviewed.

3 Q. Do you see that on the screen?

4 A. Yeah, I can read that.

5 Q. Are these your text messages?

6 A. Yeah. Yeah, those look like my texts.

7 Q. Okay. Let's go through them.

8 A. Okay.

9 Q. Do you see number 10?

10 A. Yes.

11 Q. And I guess 10-1 is a duplicate of 10. What is the date
12 for that text message?

13 A. It looks like 2-5-15. So, February 5th, 2015.

14 Q. Okay. And who is that text message from?

15 A. It looks like it's from my phone number, (480)686 -- yeah,
16 it's my phone.

17 Q. And what's the name stored for that phone number?

18 A. It says Nolan Whole Foods 4:30 furry -- Ferreri -- furry?

19 Q. And your first meeting with Morpheus was at Whole Foods?

20 A. Yeah. Yeah, I believe so.

21 Q. Okay. And what does the text message say?

22 A. (Reading) Morpheus, I was looking for some coins today.
23 When can you meet?

24 Q. Do you believe that's your first text message sent to him?

25 A. I don't think so, because I feel like -- yeah, maybe it

1 might have been. I don't know. Over the -- yeah. Could have
2 been.

3 Q. Okay. Let's go down.

4 A. I feel like I would, like, introduce myself for, like, a
5 first message. That's why I was only hesitant to say it
6 might -- it might not have been.

7 Q. Okay. So there may have been a text message prior to the
8 February 2015 one?

9 A. Yeah, I think it was on here, too. I think it might have
10 been lost somewhere in the page, because I do remember looking
11 at a message.

12 Q. Okay. Let's keep going.

13 A. All right.

14 Q. Then there is a message to you, 11-1. Who is that from?

15 A. I -- I imagine it's from Morpheus.

16 Q. Okay. And what does the message say?

17 A. It says: Sure. Where you at?

18 Q. And what do you respond?

19 A. (Reading) I'm in Cave Creek, but I'm heading Scottsdale in
20 a couple hours.

21 Q. Is that consistent with your text messages for that time?

22 A. Just -- was what consistent?

23 Q. What you're reading.

24 A. Yeah, yeah. It's the same day. It's -- yeah.

25 Q. Did you -- did you guys meet that day?

1 A. I believe so, yeah.

2 Q. Okay. Let's look at text 13. What is that?

3 A. So, that looks like a Bitcoin address to send to a Bitcoin
4 wallet. So it's the address you send to.

5 Q. And based on when this is sent, had you already received
6 Bitcoin?

7 A. Yeah. I bought it through Coinbase and whatnot, so I had
8 received Bitcoin at this point in time.

9 Q. So, I'm sorry. Let me clarify that. For number 13, did
10 Morpheus send that to you or did you send that to him?

11 A. I sent that to him.

12 Q. And what was that for?

13 A. That was so he could send me Bitcoins to that address. I
14 was providing him the key to my address.

15 Q. And did he send Bitcoin to that address?

16 A. Yeah, I -- to my recollection, I believe he did.

17 Q. Okay. Go to text 14.

18 What does that say?

19 A. Number 14?

20 Q. Uh-huh.

21 A. So it says: Nolan, great to meet and do business. Hit me
22 up any time you're buying or selling.

23 Q. And who was that from?

24 A. That would be from Morpheus.

25 Q. Okay. Let's talk about text 15.

1 A. Okay.

2 Q. What does that say?

3 A. (Reading) Sounds good and will do. Thanks for being so
4 professional.

5 Q. And did you send that to him?

6 A. Yeah. I did.

7 Q. And how did he respond in text 16?

8 A. (Reading) Birds of a feather.

9 Q. What did that mean to you?

10 A. I have no idea. "Birds of a feather." I assume it was a
11 saying.

12 Q. Okay. After this meeting, did you guys continue to have
13 communications and interactions?

14 A. Yeah. Yeah, we did.

15 Q. Did he ever send you links to look at?

16 A. Yeah. Yeah. He sent me stuff before.

17 Q. Okay. Let's go to text 26.

18 Do you see text 26?

19 A. Yes, I do.

20 Q. And what's the date?

21 A. That would be 8-9-15. So, August 9th, 2015.

22 Q. Okay. And what does it say?

23 A. Says: Hey, Nolan, how's it going?

24 Q. So Morpheus reached out to you?

25 A. Yes, that's correct.

1 Q. And how did you respond?

2 A. I said: Pretty swell. I'm just here to talk a little
3 business. Last time we met I was purchasing coins for a
4 friend. I get my coins off Coinbase, so I don't usually need
5 to buy in person. I'm now starting to purchase rather large
6 amounts of coin; and as such, I am looking for the cheapest
7 in-person buyer to anonymously get my coins from.

8 Q. Okay. Let's go to text 28.

9 A. Do you want me to read it?

10 Q. Uh-huh, if you could read it and tell us who it's from.

11 A. So that's from my phone number, that's from my cell. I
12 wrote that. And it says: I remember your rate was 10 percent,
13 but you must have felt -- felt I was nice or something because
14 you gave me a slight discount per my request. I'm wondering
15 what's the best rate you can give me on \$3,500 and \$6,500 worth
16 of coin.

17 Q. Okay. So let's stop there and just discuss the previous
18 text messages.

19 So where you tell him that the last time you were
20 purchasing coins for a friend, was that true?

21 A. Yeah, I believe so.

22 Q. Okay.

23 A. Yeah.

24 Q. And when you told him you wanted to look for the cheapest
25 buyer to anonymously get your coin from, what did you mean by

1 that?

2 A. I mean exactly what it says. I was trying to find someone
3 in person who would sell me Bitcoins, and that was one thing
4 that you, I guess, could call sacrificed when you switched from
5 Coinbase, which Coinbase charged, like, a percent-and-a-half,
6 but a standard for a lot of the in-person meet-ups was, like,
7 10 percent.

8 Q. Okay. And why make the sacrifice?

9 A. Again, I felt like it was a small price to pay to maintain
10 my level of ana -- anonymity.

11 Q. Okay. Okay. Let's go to text 29. If you could read it,
12 who it's from, and what it says.

13 A. Yeah, sure. So, that's to me. It says: When you want to
14 do it?

15 Q. And then let's go to 30.

16 A. So that's from me, and I said: This wouldn't be for a few
17 weeks. I'm just scooping -- scooping out -- around beforehand.

18 Q. Okay. 31?

19 A. Scoping. Sorry. Not "scooping." Scoping.

20 And then 31 would say -- that's to me from Morpheus,
21 and he says: Usually I do 7 percent for over 10K. What if I
22 do that for 6500? What kind of volume you want to do, question
23 mark? If you're going to be a baller, I might come down more.

24 Q. Okay. Did text 31 convey to you that he's willing to do
25 large volumes?

1 A. Yeah. Yeah, it does, because you usually do 7 percent for
2 over 10K, and implies that he would have done that at least
3 once before.

4 Q. And that's larger than the daily limit you could purchase
5 off Coinbase?

6 A. Yeah, that would be, like, 10 times larger. Would be
7 exactly 10 times larger.

8 Q. Go to text 32.

9 A. Okay. So that was from me. And it says: LOL. Let's keep
10 that 7 percent the first time around, and how about every time
11 I make that same 6,500-dollar purchase after that, the rate
12 goes down to a fixed 5.5 percent. I'd hopefully -- hopefully
13 be making that every one to two months.

14 Q. Okay. Text 33?

15 A. (Reading) Making that purchase.

16 With asterisk marks, you know, correcting my --
17 correcting what I had previously said.

18 Q. Text 34?

19 A. That was to me from Morpheus, and it says: Sounds good.

20 Q. Text 35?

21 A. That's from me, it says: All right. So the big orders are
22 still in the works. Then in the meantime, could I get 1550
23 worth today?

24 Q. Text 36?

25 A. So, that's to me from Morpheus: Sure thing. Where meet.

1 Q. Okay. And did you guys meet to conduct the purchase?

2 A. I believe so, yeah.

3 Q. Okay. And these text messages, you had not reviewed them
4 the first and second -- the first and second time that you met
5 with the government; correct?

6 A. No, I -- I just looked over these maybe a few weeks ago, a
7 month ago, for the first time since writing them.

8 Q. And the second time that you met with the government, you
9 had stated that you had not told Morpheus what your -- what you
10 were using your Bitcoin for; correct?

11 A. Yeah, I might have said that, because I feel like, yeah, I
12 never -- I feel like I never, like -- he never asked.

13 Q. But then after you reviewed these text messages, did that
14 refresh your recollection?

15 A. Yeah. Because, like I said, I hadn't read these texts
16 since I sent them, until a few weeks ago. And, yeah, it
17 refreshed my memory, you know. I can -- yeah. Yeah, it did.

18 Q. And so -- and we're going to keep going into a few more.
19 But after reading these text messages, you feel that -- or you
20 believe that you did tell Morpheus that you were purchasing
21 Bitcoin to buy drugs online?

22 A. I'm not -- I'm not sure if I ever explicitly said that, but
23 I think, you know, when I said I lost -- I told him I lost
24 \$10,000 in a deal, I -- I think I told him it was for Xanax.
25 Yeah. That would make -- I mean, it would make sense.

1 Q. Okay. So you at least were telling him that the Bitcoin
2 that you were buying --

3 MR. CAIN: Objection. Leading.

4 THE COURT: Do you want to rephrase your question?

5 MS. ESCALANTE: Okay.

6 BY MS. ESCALANTE:

7 Q. So although you never directly told him what -- why you
8 wanted the Bitcoin from him, you told him what you were using
9 it for?

10 MR. CAIN: Objection. Leading.

11 THE COURT: Sustained.

12 BY MS. ESCALANTE:

13 Q. What is your understanding of what you told him, how he --
14 how did you tell him -- or how did -- yes. How did you tell
15 him that the Bitcoin that you were using was associated to
16 drugs?

17 A. I think it came up over a while, you know. We -- we'd just
18 done so many deals together. I was doing large volumes with
19 him. And I believe in one of these texts here I mentioned how
20 I lost \$10,000 worth of -- I'm not sure that I said coins, I
21 might have said drugs -- and I think that might have prompted
22 later discussions on what I was using the coins for.

23 Q. Okay. And these text messages that we see here, are
24 they -- do these include the Telegram text messages?

25 A. No, I believe these are just SMS text messages.

1 Q. Okay.

2 A. So this doesn't include anything that we would have
3 corresponded over the Telegram encrypted messaging app.

4 Q. Okay. Let's go to text 56.

5 A. All right. So that was from myself. It says: I'm sending
6 my buddy Jake your way. He's looking for 40 BTC.

7 Q. Okay. And who is Jake?

8 A. Jake is an old friend of mine, yeah. He lives in, I think,
9 like, Montana now, or maybe, like -- I think he might have
10 moved to Oregon or something. I forget.

11 Q. Do you know what he was buying Bitcoin for?

12 A. I believe he was buying Bitcoin to buy drugs.

13 Q. And let's look at text 57.

14 A. That's to me from Morpheus. (Reading) How well you know
15 Jake? We are meeting tomorrow.

16 Q. Let's look at text 58.

17 A. So that's from me. It says: He was the friend who I
18 originally bought these coins off of you at Whole Foods that
19 one time. I think it was a few thousand worth.

20 Q. And then text 59.

21 A. So, that's from me. (Reading) The thing is is that he
22 will send the money. He's various -- he's very serious about
23 that for sure.

24 Q. Why did you feel the need to send that message?

25 A. I guess I was just backing my friend up, vouching for him.

1 Q. Okay. Let's look at text 60.

2 A. That's from myself: This is the guy I was buying for that
3 time at Whole Foods.

4 Q. Okay. Then let's look at 61. This is different -- a
5 different day.

6 A. Sure. So that would be September 2nd from myself: Could
7 you do -- I think it says -- 3850 at 7 percent later today or
8 sometime tomorrow?

9 Q. Is this approximately around the time where your Xanax got
10 seized?

11 A. Yeah, it's around the same time. I don't remember exactly
12 when it happened, but it was around this time, yeah.

13 Q. Let's look at text 62.

14 A. So it says: Let's talk on Telegraph. Okay?

15 It's an app. And it looks like that was sent to me
16 from Morpheus.

17 Q. Okay. 63.

18 A. So that's from me: Sounds good. I'll download it now.

19 Q. 64?

20 A. And that's also from me: What's your email or full name so
21 I can add you?

22 Q. Did he ever -- did he ever send you his full name?

23 A. I -- I don't think he did, no.

24 Q. 65.

25 A. So that's to me: Whoops. It's called Telegraph.

1 Q. 66?

2 A. Telegram. I think he was correcting himself because I
3 think it's called Telegram, not Telegraph.

4 Q. 68?

5 A. So that would be from myself and it says: Oh, ha-ha. All
6 right. That's funny because there's a private messaging app
7 called Telegraph as well.

8 Q. 69?

9 A. That's to me from Morpheus: Telegram is the one I've been
10 using.

11 Q. Okay. And did you guys, from that point on, use Telegram
12 to communicate?

13 A. Yeah. And I believe anytime we talked, I -- especially
14 about business, we would just use that app. He might have
15 texted me once or twice outside of the app.

16 Q. Okay.

17 A. -- after that, but it was dominantly through the app after
18 he told me about it.

19 Q. Let's look at text 84.

20 A. Okay. So that's to me.

21 Q. And when is that?

22 A. That would be November 16th of 2015.

23 Q. And what does it say?

24 A. It says: Okay. You know info. You can send to your
25 customer so they can understand.

1 Q. Actually, let me back up so we can see the preceding text.

2 83-1.

3 A. So that's from me. It says: Listen to the first 15
4 minutes and got bored. Ha-ha. But it was good. I'm just busy
5 and can't listen to the whole thing. It was similar to the
6 last talk show thing you did a while back.

7 Q. Okay. So he had sent you a link to a talk show that he
8 did?

9 A. Yeah. I think he was interviewed on, like, a radio talk
10 show.

11 Q. Okay. And then in text 84, he was telling you so you could
12 share that or send that to your customers?

13 A. I -- I guess that's what he was saying with that, yeah.
14 That's what appears.

15 Q. And who -- who were the customers that you had?

16 A. Just various people I knew.

17 Q. And what were those customers buying from you?

18 A. They were buying Xanax and MDMA, predominantly.

19 Q. So he's aware that you had customers.

20 A. Yes. This -- this would imply that, yeah.

21 Q. Nolan, what is your understanding of the duration for your
22 cooperation agreement?

23 A. So, I believe I entered into the plea agreement and the
24 cooperation agreement on -- I think that was at the beginning
25 of the year, maybe around December, January-ish. And it was a

1 three-year probation period.

2 Q. Okay. And so right now as you testify, how much longer do
3 you think you have?

4 A. Like at least two-and-a-half years.

5 Q. And you're expected to graduate this May?

6 A. That is correct, yeah.

7 Q. And what is your current GPA?

8 A. I think it's like a 3.77, 3.76 or something like that.

9 Q. Okay.

10 MS. ESCALANTE: May I have a moment, Your Honor?

11 THE COURT: You may.

12 (Pause in proceedings.)

13 MS. ESCALANTE: No further questions.

14 THE COURT: Thank you.

15 Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. CAIN:

18 Q. Mr. Sperling, when you say that you knew that your buddy
19 Jake was going to use the Bitcoin to buy drugs -- you don't
20 have to look at those right now.

21 A. Okay.

22 Q. When you say you knew your buddy Jake was going to use that
23 Bitcoin to buy drugs, you didn't tell that to Mr. Costanzo, did
24 you?

25 A. I don't believe I did.

1 Q. Okay. And you knew -- you didn't explain to us how you
2 knew, but I'm assuming you knew that because you knew your
3 buddy Jake.

4 A. You're saying -- I'm sorry. Can you rephrase the question?

5 Q. You knew that your buddy Jake used drugs.

6 A. I knew that he sold them, yeah.

7 Q. Okay. And you knew that because you guys were friends.

8 A. Yes.

9 Q. Had you guys used drugs before together in the past?

10 A. I mean, we'd smoke weed together.

11 Q. Had you sold drugs together in the past?

12 A. Yeah.

13 Q. Now, when the government was asking you questions about
14 whether or not you ever told Mr. Costanzo that you were selling
15 drugs, and you kept talking about the 10,000-dollar loss, you
16 said that, maybe I said something about 10,000 -- losing
17 \$10,000 in coin or \$10,000 in Xanax, I'm not sure.

18 A. Uh-huh.

19 Q. We need you to be sure about what you recall. So, what is
20 it that you recall saying precisely to Mr. Costanzo?

21 A. I recall that I mentioned that my -- a package was seized,
22 and I lost \$10,000 as a result of a seizure -- a "seizure"
23 being a seized package, not someone having a seizure, of
24 course.

25 Q. At that point -- prior to that point, had you ever told

1 Mr. Costanzo that you were a drug dealer?

2 A. I never flat-out told him that I was a drug dealer.

3 Q. Did you ever tell him that you were selling pills?

4 A. I never probably used the terminology "pills," but I -- no,
5 I don't believe I ever told him I was -- I sell drugs.

6 Q. I want to ask you some questions about some of the packages
7 that you imported that were seized.

8 A. Okay.

9 Q. Do you understand?

10 So you mentioned already that you were arrested by
11 Homeland Security in May of 2016.

12 A. I was never arrested. My house was -- they had a warrant
13 to search my house, and I was out of the country at the time.

14 Q. You were in Canada at the time?

15 A. I was in Canada at the time.

16 Q. But there was a seizure of drugs in San Francisco in May of
17 2016.

18 A. Was it in San Fran? Okay. I -- I thought -- I thought it
19 got -- I thought it was New York. But there was a seizure of
20 drugs at some international port, yes.

21 Q. And it was a seizure of MDMA?

22 A. Yes, it was.

23 Q. Approximately 133 grams.

24 A. Yes, I believe it was, yeah.

25 Q. And that was a package that you had ordered from The

1 Netherlands?

2 A. Yes.

3 Q. And that was a package that you intended to have delivered
4 to you at your post office box in Cave Creek?

5 A. That is 100 percent correct.

6 Q. Now, in -- on March 31st, 2013, so that would have been --

7 A. That would have been --

8 Q. -- spring of your senior year --

9 A. Yes.

10 Q. -- does that sound right? --

11 A. Yes, that is correct.

12 Q. -- there was a package seized in Chicago; correct?

13 A. Yes, I believe that is correct.

14 Q. And that was another package that was coming from The
15 Netherlands; right?

16 A. I -- I don't recall where it came from. It could have
17 been -- it could have been The Netherlands, yeah. Could have
18 been Canada. It came from somewhere out -- out of the country.

19 Q. And that was a sizable quantity of LSD that you ordered.

20 A. I think it was, like -- I don't remember. It was either 25
21 or 50 tabs. So 25 to 50 hits.

22 Q. And that was an order that you placed?

23 A. Yes, that was an order I placed online.

24 Q. Okay. About a month-and-a-half later on May 19th of 2013,
25 also in Chicago, another package was seized. Is that correct?

1 A. Yes, I believe that is correct.

2 Q. And was that also LSD?

3 A. I -- I'd have to look at the report. It might have been,
4 yeah.

5 Q. Well, at that time, what do you recall that you were
6 ordering from The Netherlands; were you ordering both LSD --

7 A. Yeah, it was -- it could have been LSD, it could have
8 been -- there's, like, some research chemicals I was ordering
9 in, like 25I. Yeah, because I was -- that would have been my
10 senior year. Yeah. It could have -- it could have been
11 marijuana, honestly. I don't really recall at this -- at this
12 point. I never got, you know, like a letter in the mail,
13 telling me it was seized. So I don't have a recollection of it
14 being seized. It just didn't show up. I would assume it was
15 seized, you know.

16 Q. But you came to know about these seizures as part of this
17 investigation.

18 A. Absolutely, yeah.

19 Q. Because after you became aware of this investigation,
20 you've had meetings with the federal agents where they have,
21 obviously, interviewed you about your activities.

22 A. That is correct.

23 Q. And they've brought to your attention all of these seizures
24 and let you know that you've been under their radar for a
25 while?

1 A. Yes, that is correct.

2 Q. So in September, specifically September 29th of 2013, there
3 was another seizure also in Chicago; is that correct?

4 A. Yes, that sounds correct.

5 Q. And that was an MDMA package from The Netherlands.

6 A. That sounds right.

7 Q. And then in February of 2014, another package seized in
8 Chicago; correct?

9 A. I believe so, yes.

10 Q. And that was a package containing marijuana?

11 A. That sounds right.

12 Q. So at this point, by my count, we've -- we've covered five
13 importations of drugs from other countries; is that fair to
14 say?

15 A. Yeah, I believe so. I think this marijuana was from Oregon
16 or something, so -- or it might have been from Canada. Again,
17 I don't recall exactly where it came from, but...

18 Q. I will circle back with you on that.

19 A. Sure.

20 Q. I want to ask you some more questions about that.

21 A. Okay.

22 Q. The government did ask you some questions about the search
23 warrants. Do you recall answering some questions about those?

24 A. Uh-huh, yeah.

25 Q. So in this case, as part of the investigation, there was a

1 search warrant served at your parents' home?

2 A. That is correct.

3 Q. And there was a search warrant served at the Post Office --

4 A. Yes.

5 Q. -- box. Let's talk about the search warrant at the Post
6 Office box.

7 A. Okay.

8 Q. There was a package in the Post Office box that was seized
9 that contained a large quantity of Xanax; correct?

10 A. That is correct.

11 Q. And that was a package that was imported from Canada; is
12 that correct?

13 A. Yes. I believe so. Yeah.

14 Q. Specifically from Montreal?

15 A. Uh-huh.

16 Q. Is that a "yes"?

17 A. That is a "yes."

18 Q. Sorry. I -- I have to ask you to say -- make a verbal
19 answer.

20 A. Of course, yeah. My bad.

21 Q. And how many pills or how many doses were part of that
22 package?

23 A. I think a thousand or 2,000. I think it was split up into
24 one or two packages. It might have been -- I think it was
25 2,000.

1 Q. And I may have made a mistake. There were actually two
2 parcels from -- there were actually two parcels from Montreal;
3 were there not?

4 A. I believe so, yes.

5 Q. Okay. And then there was actually a third package found in
6 that Post Office box that was -- that contained another
7 133 grams of MDMA?

8 A. Yes, that would have been the other half of the shipment
9 that was seized.

10 Q. And so that would have come from The Netherlands?

11 A. Yes, it would have.

12 Q. Okay. So right now we're talking about seven or eight
13 importations --

14 A. Yes.

15 Q. -- if we talk about those packages that were found;
16 correct?

17 A. Yes. Yes, we are.

18 Q. Now, the -- the agents who served the search warrant on
19 your parents' home obviously found a large quantity of drugs in
20 your bedroom; is that correct?

21 A. That is accurate, yes.

22 Q. Okay. And those drugs were drugs that you imported, as
23 well?

24 A. Yes. Yes, they were.

25 Q. And that included MDMA; right?

1 A. Uh-huh, MDMA, yes.

2 Q. Cocaine?

3 A. Yes. That cocaine was not imported, though. I bought it
4 from some acquaintance, a friend of a friend.

5 Q. So that was purchased here in Arizona?

6 A. That was local, yes.

7 Q. Okay. There were Adderall pills?

8 A. That was also locally.

9 Q. There were Xanax pills?

10 A. Yes, that was imported.

11 Q. Mushrooms?

12 A. That was also locally.

13 Q. And I'm sure this goes without saying, but your parents
14 were not aware that you were selling drugs out of their home?

15 A. They were -- they were completely unaware. It was --

16 Q. They were -- I didn't mean to cut you off.

17 A. Sorry. It was --

18 Q. Your parents were unaware that you were receiving packages
19 that you had imported that contained illegal controlled
20 substances?

21 A. They were completely unaware.

22 Q. And you were being dishonest with them by not letting them
23 know that you were doing that?

24 A. I guess "dishonest," that implies that I lied at some
25 point. They never found out about it, so I never had the

1 opportunity to lie. So I guess I was devious, you could say.

2 MR. CAIN: Your Honor, this may be a good time to
3 break.

4 THE COURT: All right. Ladies and gentlemen, it's
5 time for our noon break. Remember the admonition. Please be
6 back about 1:15. We'll be ready to resume.

7 Thank you very much.

8 COURTROOM DEPUTY: All rise.

9 (Jury leaves the courtroom at 11:58 a.m.)

10 THE COURT: Just so all parties are aware,
11 Mr. Sperling informed me that our witness box is falling apart.
12 We'll try to have it fixed at lunchtime.

13 THE WITNESS: I think -- I see Velcro on here as if
14 someone had a Velcro unstrapped or something.

15 THE COURT: Maybe. We'll check it out.

16 Is there anything else that either party has to raise?

17 MS. WEIDNER: Nothing from the defense, Your Honor.

18 MS. ESCALANTE: No, Your Honor.

19 THE COURT: All right. Thank you.

20 (Proceedings in recess at 11:59 a.m.)

21 (Jury enters the courtroom at 1:22 p.m.)

22 (Proceedings resume at 1:23 p.m.)

23 THE COURT: Please be seated. Hope you had a nice
24 lunch. Ready to proceed, Mr. Cain?

25 MR. CAIN: Yes, Your Honor.

1 THE COURT: Please do so.

2 (NOLAN SPERLING resumes witness stand.)

3 BY MR. CAIN:

4 Q. Mr. Sperling, when Homeland Security served the warrant on
5 your parents' house, your parents were very surprised.

6 A. Yes. That is an understatement.

7 Q. You had successfully concealed from them that you were
8 involved in this type of drug activity.

9 A. Yeah, you could say that, during this time. You know, they
10 weren't very snoopy, they never really -- you know, my mom
11 never cleaned my room or anything. They were never really in
12 there, you know.

13 Q. Your parents did not know that for approximately three to
14 four years, that you were involved in international drug deals?

15 A. That is correct. But they did know that I was doing drugs.
16 Back in high school, they found out about me using, like, Molly
17 and acid, whatnot. That was probably back in February of 2013.
18 But after that, they -- they had no idea I was buying these
19 drugs online and keeping at their house, no.

20 Q. Right. They didn't know you were buying drugs in bulk and
21 then distributing them to others.

22 A. Yeah. Absolutely not.

23 Q. And you had been able to carry on in your life in a way to
24 conceal that from them so that they didn't catch on.

25 A. That is correct.

1 Q. You told us that you had imported drugs from The
2 Netherlands and from Canada; correct?

3 A. Correct.

4 Q. Were there other countries that you had also imported
5 substances from?

6 A. Yeah. I think I might have gotten -- once gotten MDMA from
7 Germany. That's -- Germany and The Netherlands were the two
8 most popular countries for doing that.

9 Q. On how many occasions did you import drugs from Germany?

10 A. I don't know. Maybe half a dozen. Maybe more or less.
11 You know, the country changed all the time, just depending on
12 what vendors were available. You know, vendors -- new vendors
13 popped up all the time, and others went away. You had to
14 constantly find new people.

15 Q. I don't want you to guess. I want you to give us your best
16 accurate estimate. Let's talk about The Netherlands. How many
17 times -- how many orders or packages did you order from The
18 Netherlands?

19 A. If you count orders, because, for example, with the MDMA, I
20 ordered one order, but they ship it in multiple packages. So
21 would you want to count each package or an order?

22 Q. Each package.

23 A. Each package. I would say maybe 10, 10, 12, 10 to 12.
24 That's -- you know, it's a loose estimate based on what you
25 want me to supply.

1 Q. How many packages did you order from Canada?

2 A. It's more than 10. Maybe around 20. You could say 15
3 maybe. Fifteen to 20.

4 Q. Did you ever obtain or order drugs from another state?

5 A. I think I might have ordered marijuana once from Oregon.
6 It might have gotten seized, though, to my knowledge. I don't
7 recall ever getting it. Although I don't believe that was one
8 of the items brought up today.

9 Q. When we talked about some of the items that were found in
10 your bedroom during the service of the search warrant, you
11 talked about some of the drugs you had actually bought locally;
12 correct?

13 A. That is correct.

14 Q. In that three to four-year time period, how many times had
15 you bought drugs locally for the purpose of reselling them, or
16 redistributing them?

17 A. Maybe 10, 15 times. Fifteen, 20 individual times. Yeah,
18 maybe closer to 15 to 20.

19 Q. Between 2012 and the time of the bust in May of 2016, how
20 much money do you think you spent on buying drugs that you were
21 going to then distribute?

22 A. Probably \$30,000, give or take five grand. In my mind, at
23 least 30, maybe \$35,000.

24 Q. And between 2012 and 2016, how much money did you make from
25 selling drugs?

1 A. Are we accounting for that 10,000-dollar loss that I had?

2 Q. Well, let's not include the loss.

3 A. Okay. So assuming that loss never happened, and assuming
4 all the money that was seized at my residence was still in
5 play, I don't know, maybe 50,000, 40,000; 45, 50,000.

6 Q. How much money was seized?

7 A. Five grand.

8 Q. That's the money that was found in your bedroom?

9 A. I believe so. Maybe 5400, I think, was the number.

10 Q. You have two exhibits that have been marked, sitting in
11 front of you, Exhibits 320 and 321. Have you had an
12 opportunity to review those exhibits?

13 A. Yes, I had an opportunity to look at each one.

14 Q. I'm going to ask you to look again at what has been marked
15 as Exhibit 320.

16 Do you recognize that exhibit?

17 A. Yes, I do.

18 Q. That is the plea agreement that you entered in your
19 criminal case?

20 A. That is correct.

21 Q. That is essentially the written agreement that you have
22 entered with the federal prosecutor in your case?

23 A. That is correct.

24 Q. It has your name written in the caption; correct?

25 A. Yes, that is correct.

1 Q. And it has a case number written in the caption, as well;
2 correct?

3 A. Yes, that is correct.

4 Q. And that case number is CR16-1198-PHX-JAT?

5 A. That is accurate.

6 Q. And to your understanding, that is the case number assigned
7 in your matter?

8 A. That is correct.

9 Q. And across the top of that document, there is some case
10 filing information that indicates that this document has
11 actually been filed through the Clerk of the Court.

12 A. Yes, there's a stamp on here that says that.

13 Q. And it says Clerk of the U.S. District Court, District of
14 Arizona; correct?

15 A. Yes. And then by a -- a signature deputy.

16 Q. And it's -- that stamp is dated November 27, 2017?

17 A. That is correct. November 27th of 2017.

18 Q. And this is a document that you've actually signed with
19 your own signature?

20 A. Yes. Yes, I did.

21 Q. On page 10?

22 A. That is correct.

23 Q. And this is a document that you reviewed very carefully
24 before you signed it?

25 A. Yes, I did. I read every single line with my lawyer.

1 MR. CAIN: Your Honor, we would move for the admission
2 of Exhibit 320.

3 MS. ESCALANTE: No objection, Your Honor.

4 THE COURT: Exhibit 320 is admitted.

5 (Exhibit 320 is received into evidence.)

6 BY MR. CAIN:

7 Q. Mr. Sperling, I'm going to ask you to set that exhibit
8 aside, and take a look at what has been marked as Exhibit 321.

9 Actually, let's -- let's hold off on that.

10 I'm going to put up what has been admitted as
11 Exhibit 32200 on the screen.

12 COURTROOM DEPUTY: Are you using VGA or --

13 LINDA ONDROVIC: VGA.

14 COURTROOM DEPUTY: Is this for the witness or --

15 MR. CAIN: May we also publish for the jury?

16 THE COURT: Yes.

17 BY MR. CAIN:

18 Q. Now, Mr. Sperling, in Exhibit 320, we can see that the
19 title of this document is Plea Agreement; is that correct?

20 A. That is correct.

21 Q. And if we look at line 19, we have a paragraph that is
22 titled Plea.

23 Do you see where I'm talking?

24 A. Yes, I do.

25 Q. Okay. And that describes the charge to which you've pled

1 guilty?

2 A. That is correct.

3 Q. And it says that you've pled guilty to importation of a
4 controlled substance in violation of federal law; correct?

5 A. That's correct. Yes.

6 Q. And below that in paragraph 2, there is a paragraph that
7 says: Maximum penalties.

8 Do you see that?

9 A. I -- yeah, I'm looking at that right now.

10 Q. Now, to your understanding, this describes the maximum
11 penalty under the law for the crime that you have pled guilty
12 to.

13 A. That is my understanding, yes.

14 Q. And so for the crime of one count of importation of a
15 controlled substance, you could receive up to 20 years in
16 federal prison; correct?

17 A. Correct.

18 Q. You could receive a fine of up to \$1 million; correct?

19 A. Correct.

20 Q. You could be placed on a term of supervised release for any
21 period between three years -- correct? --

22 A. Yes.

23 Q. -- and up to the rest of your life?

24 A. Yes.

25 Q. Now, as part of your deal with the federal prosecutor in

1 this case, you've only been required to plead guilty to one
2 criminal charge.

3 A. That is correct.

4 Q. You understand, though, that each one of your prior
5 importations really constitutes a separate violation of the
6 law.

7 A. Yes, I -- I suppose they do.

8 Q. Well, they do, don't they?

9 A. Yes. Technically, they would, yes.

10 Q. They very clearly do, don't they?

11 A. Yes, absolutely.

12 Q. I mean, even though you've pled guilty to one importation,
13 your prior six importations from Germany, your prior 10 to 12
14 importations from The Netherlands, and your prior 15 or 20
15 importations from Canada theoretically under federal law at a
16 minimum would each carry at least zero to 20 years in prison
17 each; right?

18 A. Yes, that is correct.

19 Q. So -- so based upon your estimate, you've imported drugs
20 into this country on the low end 31 times, and on the high end
21 38 times; right?

22 A. Number of packages, yeah, that sounds right.

23 Q. So theoretically, you could be facing up to 20 years in
24 prison for 38 separate counts of importation; correct?

25 A. That sounds correct, yes.

1 Q. Theoretically, you also face prosecution by other
2 authorities, as well. Would you agree with that?

3 A. Yes, I would agree with that.

4 Q. Meaning you could also be prosecuted by state authorities.

5 A. Yes, I -- I very well could be.

6 Q. Meaning the numerous packages that were found in Chicago,
7 for instance, you could be prosecuted out of that district.

8 A. Yes. Yes, it is possible. Yes. I could be.

9 Q. So you could be prosecuted out of the Federal District
10 Court in Chicago; correct?

11 A. If they chose to do so, correct.

12 Q. But you could also be prosecuted by the state or county
13 courts?

14 A. Of Illinois.

15 Q. Of Illinois.

16 A. Yeah, correct.

17 Q. And this package that was seized in San Francisco, you
18 could have been prosecuted in the -- that district in
19 California in federal court; correct?

20 A. Yes.

21 Q. And you could also have been prosecuted in -- I don't know
22 my California districts very well in state court -- but the
23 relevant state or county District Court there, you could have
24 also been prosecuted?

25 A. Yes, that is correct.

1 Q. And here in Arizona, you've obviously committed numerous
2 local violations of Arizona state law; is that correct?

3 A. Yes, that is correct.

4 Q. For possession with the intent to sell --

5 A. Yes.

6 Q. -- dangerous drugs; correct?

7 A. Drugs, yes.

8 Q. And under Arizona law, you would face many years in prison
9 for those, each of those acts, as well, wouldn't you?

10 A. Yes.

11 MS. ESCALANTE: Objection, Your Honor. Foundation.

12 THE COURT: I'm going to sustain the objection.

13 THE WITNESS: I believe under current Arizona state --

14 THE COURT: When I sustain the objection, you're not
15 to answer the question.

16 THE WITNESS: Sorry, Your Honor.

17 THE COURT: That's all right.

18 BY MR. CAIN:

19 Q. Are you aware of the penalties that you face under state
20 law for violating state law related to possessing drugs for
21 sale?

22 A. I am not specifically aware of the exact sentence, but I am
23 aware that there are steep penalties at the state level that
24 I'm sure in Arizona would be either similar to the federal or
25 greater than the federal punishments.

1 Q. And by "steep," what you mean is they would require steep
2 incarceration time.

3 A. Yes. Because I know Arizona is a -- you know,
4 Republican-leaning state and we have relatively harsh drug
5 conviction laws that are probably equally extreme as the
6 federal laws, if not more.

7 Q. And so you recognize by entering this deal with the federal
8 prosecutors in this case, and by your cooperation in this
9 matter, you are getting some very significant benefits.

10 A. Absolutely, yes.

11 Q. I'm going to ask you to take a look at what has been
12 marked as Exhibit 321.

13 A. All right. I am looking at that now.

14 Q. And have you had a chance to review that exhibit?

15 A. Yes, I have.

16 Q. And you're familiar with this document?

17 A. Yes. I, again, reviewed every single line with my lawyer,
18 and I signed this document.

19 Q. Okay. And I'm just going to go through and describe it so
20 that we can make a record of what it is.

21 A. Awesome, yeah. That sounds good.

22 Q. Okay. This is essentially an addendum to your plea
23 agreement; correct?

24 A. Yes. Yes, it is.

25 Q. And it's a document that is titled Deferred Sentencing

1 Cooperation Addendum to the Plea Agreement.

2 A. That is correct.

3 Q. And it is a -- an eight-page document; correct?

4 A. Yep. That is correct.

5 Q. That has also been filed with this Court.

6 A. Yes, it has.

7 Q. And it also has your name on it?

8 A. That is correct.

9 Q. And it is also a document that you signed?

10 A. Yes, I did.

11 Q. Along with the assigned prosecutor in your case?

12 A. That is correct.

13 Q. And it contains additional agreements that you have made
14 with the government in your case?

15 A. Yes, it does.

16 MR. CAIN: Okay. Your Honor, at this time we would
17 move to admit Exhibit 321.

18 MS. ESCALANTE: No objection, Your Honor.

19 THE COURT: Exhibit 321 is admitted.

20 (Exhibit 321 is received into evidence.)

21 MR. CAIN: And I would ask we put 321 on the screen
22 and publish to the jury.

23 BY MR. CAIN:

24 Q. Just for the benefit of the jury, this is the document
25 we've been discussing, Mr. Sperling?

1 A. Yes, this is the document.

2 Q. And if we could go to page 2. And Mr. Sperling, it may be
3 easier if you just follow along on the screen.

4 A. Sure.

5 Q. This document describes your obligations with respect to
6 cooperating with the -- the government; correct?

7 A. Yes, it does.

8 Q. It essentially says, this is what you have to do in part to
9 get the benefits of your plea agreement.

10 A. It says if it's requested of me, yes.

11 Q. Right. But it's, you know, basically here are some things
12 we may ask you to do, and you must do them to get the benefits.

13 A. I feel like that's implying that they're forcing me. I'm,
14 you know, very cooperative. I feel like I'm acting out of good
15 faith doing this because not only will it help me, but I feel
16 like it's currently the right thing to do. So the verbiage
17 sounded -- it was being, like, almost forced upon me.

18 Q. I appreciate that. That's not what I'm trying to -- I'm
19 just trying to explain for the benefit of the jury, because
20 they don't have as much understanding and knowledge of this
21 document. So part of what we're doing is just trying to
22 describe what this is so the jury understands what it is.

23 This just describes some of your duties and
24 obligations that you've agreed to with the government; correct?

25 A. Yes, that is correct.

1 Q. So if we look at this page, if we go to paragraph C, which
2 is on line 10, one of the things that you have agreed to do is
3 that you've agreed to testify at any time and place that is
4 essentially requested by the government. Is that true?

5 A. That is true.

6 Q. And you essentially agree that you won't invoke your right
7 to remain silent.

8 A. That is correct.

9 Q. And then if we go down to line 25 on that same page, which
10 is paragraph F --

11 A. I see it.

12 Q. There is an agreement that says that the United States
13 Attorney's Office will not use your statements against you in
14 any criminal proceeding.

15 Do you see that?

16 A. Yes, I do.

17 Q. And you understand that to mean that you're essentially
18 being given immunity for your statements.

19 A. Yes, that is exactly what I interpret.

20 Q. Meaning that as you sit here and talk about other things
21 that you may have done in your life that are illegal, that
22 you're not going to be prosecuted for them.

23 A. That is correct.

24 Q. You're -- you're protected from criminal liability?

25 A. Yes.

1 Q. Now, if could go to page 4, and at the bottom of page 4,
2 paragraph 3, line 26 --

3 A. I see that.

4 Q. -- there's a paragraph titled Breach of the Plea Agreement
5 or the Addendum.

6 This is a section that talks about ways in which you
7 could potentially violate the agreement and lose the
8 protections of the agreement; correct?

9 A. That is correct.

10 Q. And it says: If you fail to comply with any of the
11 obligations -- and then we're going to go to the top of the
12 next page, page 5 -- or promises in this agreement, that the
13 government, or the United States, in its sole and absolute
14 discretion, can declare any provision of this plea agreement or
15 the addendum null and void, basically meaning you could lose
16 the benefits. Is that correct?

17 A. Yes, that's correct.

18 Q. Meaning that you have to be really sure that you're meeting
19 your obligations.

20 A. Yes, absolutely.

21 Q. And that if you fail to meet those obligations -- I'm
22 looking at subparagraph 2 on line 5 -- that the prosecutor --
23 prosecutor could recommend any sentence up to and including
24 that statutory maximum sentence of 20 years?

25 A. Yes, that is correct.

1 Q. And if we go down to line 13, one of the other benefits you
2 could lose is that they could also advise the Bureau of Prisons
3 that you were no longer a cooperating witness and recommend
4 that you be redesignated to a higher custodial level. Is that
5 true?

6 A. That is true.

7 Q. Meaning that if you ultimately received a prison sentence
8 in this case, that you could be housed in a higher security
9 level?

10 A. Yes, that's what I interpreted from that.

11 Q. So that would be a benefit that you would lose?

12 A. That is correct.

13 MR. CAIN: Okay. We can unpublish 321.

14 Thank you.

15 BY MR. CAIN:

16 Q. So in summary, Mr. Sperling, if you satisfy the government
17 in this case with your cooperation, your single felony charge
18 is going to be dismissed; correct?

19 A. That is correct, at the end of the three-year probation
20 period.

21 Q. It's going to be dismissed with prejudice?

22 A. I'm not sure what that means.

23 Q. Well, why don't you take a look at --

24 A. "With prejudice"?

25 Q. Why don't you take a look at your plea agreement again.

1 A. To what line were you referring?

2 Q. Take a look at Exhibit 321, page 4, line 23.

3 A. Yes, that is correct.

4 Q. Dismissal with prejudice means that the government could
5 not refile that charge against you.

6 MS. ESCALANTE: Objection, Your Honor. Defense
7 counsel is testifying.

8 THE COURT: Sustained.

9 You got a question?

10 BY MR. CAIN:

11 Q. Is it your understanding that that means that the
12 prosecutor could not file that charge against you again in the
13 future?

14 A. At the end of the -- of the probation period, yes, at the
15 end of all this, that is what that means.

16 Q. Meaning the charge would essentially be wiped clean from
17 your record?

18 A. Yes.

19 Q. Is it also your understanding that you would be escaping
20 felony charges for any of the other criminal acts that we've
21 discussed in your testimony today?

22 MS. ESCALANTE: Objection, Your Honor. 403. It
23 mischaracterizes what's contained in the plea agreement.

24 THE COURT: Okay. I'm going to see the parties at
25 sidebar.

1 (At sidebar on the record.)

2 THE COURT: I, of course, don't know if this is the
3 standard plea agreement, Mr. Cain, but if it is, I think your
4 question does mischaracterize it.

5 Objection is sustained.

6 (End of discussion at sidebar.)

7 THE COURT: Objection is sustained.

8 BY MR. CAIN:

9 Q. As part of this deal, Mr. Sperling, you are going to escape
10 having to pay a fine in this case.

11 A. That is correct.

12 Q. You're going to not be required to pay back any of the
13 money that you earned from selling drugs?

14 MS. ESCALANTE: Objection, Your Honor. Same objection
15 as previous.

16 MR. CAIN: Let me rephrase the question.

17 BY MR. CAIN:

18 Q. Other than the \$5,400 that was seized in your bedroom, the
19 government is not going to require you in this case to repay
20 any of the money that you earned from importing drugs from
21 other countries?

22 MS. ESCALANTE: Objection, Your Honor. 403. If we
23 could have a sidebar.

24 (At sidebar on the record.)

25 MS. ESCALANTE: Your Honor, this is Carolina

1 Escalante. Civil forfeiture is not part of the agreement.
2 Although criminal charges will be dismissed, civil forfeiture
3 is still fair game.

4 THE COURT: I get that.

5 MS. ESCALANTE: Okay.

6 THE COURT: But I think that you can handle that on
7 redirect --

8 MS. ESCALANTE: Okay.

9 THE COURT: -- can't you?

10 MS. ESCALANTE: Yes.

11 THE COURT: All right.

12 (End of discussion at sidebar.)

13 BY MR. CAIN:

14 Q. Let me ask this a different way. Have you been informed by
15 the federal prosecutors in this case that they intend to try to
16 forfeit or take away from you any money that you earned from
17 selling drugs from your importations?

18 A. No, they have not.

19 Q. Is it your understanding from this deal that they intend to
20 do that in the future?

21 A. It is my understanding that they do not intend to do that
22 in the future.

23 Q. Is it also part of your understanding that as part of this
24 deal, that you're not going to have to have spent a single day
25 in jail?

1 A. That is my understanding.

2 Q. You're not going to have to have spent a single day in a
3 federal prison?

4 A. That is my understanding, correct.

5 Q. You're going to get to remain at ASU?

6 A. That is correct.

7 Q. You're going to get to complete your studies?

8 A. I hope so, yes.

9 Q. You're -- you're going to get to continue to spend time
10 with your family?

11 MS. ESCALANTE: Objection. Asked and answered.

12 THE COURT: I'm going to allow it.

13 THE WITNESS: Yes, I will.

14 BY MR. CAIN:

15 Q. And you're going to get to continue to do the things that
16 are important to you, and you're going to have the time and the
17 freedom to do that?

18 A. Yes, I will.

19 MR. CAIN: May I have a brief moment, Your Honor?

20 THE COURT: You may.

21 (Pause in proceedings.)

22 MR. CAIN: No further questions.

23 THE COURT: Redirect?

24 MS. ESCALANTE: Yes, Your Honor.

25

1 REDIRECT EXAMINATION

2 BY MS. ESCALANTE:

3 Q. Okay. Mr. Sperling, defense counsel asked you about the
4 amount of money that you made selling drugs, and you, I
5 believe, stated was somewhere in the 50,000-dollar range, give
6 or take.

7 A. Yes, that's true.

8 Q. And that the day that the search warrant was executed at
9 your residence, about \$5,400 was seized?

10 A. Yes, that is correct.

11 Q. Did you use your drug proceeds to purchase a Ferrari?

12 A. No.

13 Q. Have you ever had a Ferrari?

14 A. Never.

15 Q. What -- what happened to the remainder of the 50,000 minus
16 the 5400 that was seized?

17 A. Well, virtually all of that money was the money that I
18 spent on drugs, like 30, 35,000. You know, it's all money I
19 spent back into it. It's the money I got. I kept bringing it
20 back in. I kept putting it into the system, per se. You know,
21 I didn't start off buying \$10,000 worth of drugs. It was a
22 hundred dollars' worth. And I just kept on building it up be
23 up and up. And like I said sometime in the fall of 2015, I
24 lost \$10,000, and I had to rebuild again. And --

25 Q. And when you're talking about that money got lost, you're

1 actually talking about the Bitcoin equivalent of that cash;
2 correct?

3 A. Yes, because I used \$10,000 worth of Bitcoin to buy Xanax.

4 Q. Who actually had the \$10,000?

5 A. Whoever I bought the Xanax from.

6 Q. I mean, the actual hard cash that you used to purchase the
7 Bitcoin?

8 A. Oh. That was from previous drug sales.

9 Q. Okay. And who did you give those \$10,000 to?

10 A. That was Morpheus.

11 Q. Okay. And who had also the cash -- who had the hard cash
12 for all of your Bitcoin purchases, starting in February of
13 2015?

14 A. Who had the hard cash?

15 Q. Uh-huh. Who did you give the cash to?

16 A. Oh. Morpheus.

17 Q. Okay. Let's look at your plea agreement, which has been
18 admitted, and that's Exhibit 320.

19 MS. ESCALANTE: Permission to publish, Your Honor?

20 THE COURT: Yes.

21 MS. ESCALANTE: Defense Exhibit 320.

22 It is the government's Exhibit 81.

23 THE COURT: Do you care which one is put up?

24 MS. ESCALANTE: If we could put 81, just because it's
25 synced to the computer. Is that okay?

1 THE COURT: Well, 320 has been stipulated -- or has
2 been entered into evidence. So it is easier. Maybe the
3 defense counsel will cooperate with you and put that up for
4 you.

5 MR. CAIN: Can you put 320 up.

6 MS. ESCALANTE: Your Honor, I could use the ELMO.

7 THE COURT: All right. Thank you.

8 BY MS. ESCALANTE:

9 Q. Okay. Mr. Sperling, on paragraph -- beginning on
10 paragraph 25 where it says number 2 maximum penalty.

11 A. I see that.

12 Q. Okay. Does it state what the minimum penalties are?

13 A. No, it does not.

14 Q. And what are your understanding -- what is your
15 understanding that the minimum penalty is, regardless of your
16 cooperation?

17 A. I'm not sure what the minimum penalties are. But if -- I
18 would assume it's nothing.

19 Q. Okay.

20 A. For three years. Three years' probation maybe. I don't
21 know. I assume it's nothing.

22 Q. And when you say "nothing," you mean no jail, no prison?

23 A. Yeah, yeah. I do.

24 Q. Now, on page 2 of the -- page 3 of the exhibit, on
25 paragraph 16, read -- can you read what that says?

1 A. So that's the Non-binding Recommendations. And it says:
2 The defendant understands that recommendations are not binding
3 on the Court. The defendant further understands that the
4 defendant will not be permitted to withdraw the guilty plea if
5 the Court does not follow a recommendation.

6 Q. Okay. So what is your understanding of who has the
7 ultimate decision in what happens in your case?

8 A. It's the Court.

9 Q. Is it the prosecution?

10 A. No, it's the judge. It's Judge James Teilborg, who is
11 presiding over my case.

12 Q. Now, defense counsel asked you a lot of questions about
13 whether you could be charged in another district, in another
14 state, by the county, by the sea authority, all that line of
15 questioning. Do you recall?

16 A. I do recall that.

17 Q. Can you read paragraph number 23, please.

18 A. So that says: This agreement does not in any manner
19 restrict the actions of the United States and any other
20 district or bind any other United States Attorney's Office.

21 Q. What is your understanding of that?

22 A. It doesn't restrict the actions of another jurisdiction if
23 they wanted -- if they wanted, you know, to -- in any --
24 anything they want to do, this doesn't limit another -- another
25 investigation.

1 Q. Now, defense counsel asked you about fines and fees and the
2 forfeiture of cash; correct?

3 A. That is correct.

4 Q. Can you read paragraph 14, where it begins at the number 8?

5 A. Yes. So it says: Forfeiture civil and administrative
6 proceedings. Nothing in this agreement shall be construed to
7 protect the defendant from administrative or civil forfeiture
8 proceedings, or prohibit the United States from proceeding with
9 and/or initiating an action for civil forfeiture. According to
10 18 U.S.C. 3613, all monetary penalties, including restitution
11 imposed by the Court, shall be due immediately upon judgment,
12 shall be subject to immediate enforcement by the States United
13 States, and shall be submitted to the Treasury Offset Program
14 so that any federal payment or transfer of returned property
15 the defendant receives may be offset and applied to federal
16 debts, which offset will not affect the periodic payment
17 schedule. If the Court imposes a schedule of payments, the
18 schedule of payments shall be merely a schedule of minimum
19 payments and shall not be a limitation on the methods available
20 to the United States to enforce the judgment.

21 Q. Okay. So is that your understanding, that actual civil
22 forfeiture can still continue, despite your agreement?

23 A. Yes.

24 Q. Okay. And I know we just spoke about what happened to the
25 remainder of the \$50,000 that was --

1 THE COURT: Ms. Escalante?

2 MS. ESCALANTE: Sorry. My apologies.

3 BY MS. ESCALANTE:

4 Q. I know that we spoke about a -- a little bit about what
5 happened to the remainder of your, we'll call it, drug
6 profits --

7 A. Uh-huh.

8 Q. -- and you stated that you don't -- you don't have it.

9 A. Yeah. I mean, after everything was seized, I didn't keep
10 any money in my bank account, you know. I was afraid of, you
11 know, the bank reporting it, you know, to the IRS or somewhere
12 for unreported income. So, you know, I only had, like, a
13 couple hundreds dollars to my name after that happened.

14 Q. So the only amount that you actually had access to was the
15 amount that was taken from your bedroom drawer?

16 A. Yes. But I did still, you know, of course make money at
17 the two jobs I had, and I deposited that, you know, by direct
18 deposit to my bank account. And most of my drug money was all
19 in cash, and I usually kept that in my bedroom. So they were
20 all -- it was pretty well separated.

21 Q. Okay. So let's just focus on your drug proceeds.

22 Can you read paragraph B to the end of the first?

23 A. So that's line 26?

24 Q. Yes. 26, 27.

25 A. Can you move it up a little bit for me, please.

1 Q. Yes.

2 A. Thank you. (Reading) The defendant agrees to forfeit and
3 hereby forfeits all interest in any asset that defendant owns
4 or over which defendant exercises control directly or --

5 Q. And now we'll go to the next.

6 A. (Reading) -- directly or indirectly, as well as any
7 property that is traceable to, derived from, fungible with, or
8 a substitute for property that constitutes the proceeds of his
9 offense, or which was used to facilitate the commission of his
10 offense, including the following property: \$5,400 of United
11 States currency.

12 Q. So is that the only property that you had control of that
13 was a direct result of your drug proceeds?

14 A. Yes. And -- and the computer that was seized was also, but
15 that was -- you know, that's seized.

16 Q. So a computer was taken from your bedroom that day?

17 A. No. My -- my mistake. It wasn't taken. It was seized
18 when I landed in Seattle, coming back from Vancouver.

19 Q. Okay. And have you received that computer back?

20 A. No. I forfeited it with my plea agreement.

21 Q. Okay. Defense counsel asked you a lot about the potential
22 sentences that you could receive, which would be addressed
23 right now in discussing the minimums. Did you discuss
24 sentencing guidelines with your attorney?

25 A. Yes, I did.

1 Q. And explain to the jury what your understanding is of the
2 sentencing guidelines.

3 A. So, my current understanding of the sentencing guidelines
4 is that the United States federal government does not have
5 formal sentencing guidelines for MDMA, which is what I was
6 charged with. And so I was charged with the importation of
7 500 grams, I believe, or -- I don't think I -- it was that
8 amount, but -- anyway, so the point is that how they sentence
9 you is they'll convert MDMA to marijuana, and so I believe it's
10 1 gram of MDMA converts to, I believe, it's 2 kilograms of
11 marijuana. So however much MDMA you had, they convert that to
12 marijuana and then use the marijuana sentencing guidelines to
13 give you a time period of sentence in jail. So it was around
14 four to five years, I think, was the period.

15 Q. And you learned this information from discussing with your
16 attorney?

17 A. I did, yes.

18 Q. Okay. Here is page 9 of the plea agreement.

19 Can you read 26 and 27, please?

20 A. (Reading) I have been advised by my attorney of the nature
21 of the charges to which I'm entering my guilty plea. I have
22 further been advised by my attorney of the nature, and --

23 Q. We're going to page 10, and it's line 1 and 2.

24 A. Can you scoot it down a little bit?

25 There you go. That's good.

1 (Reading) -- range of the possible sentence, and that
2 my ultimate sentence shall be determined by the Court after
3 consideration of the advisory sentencing guidelines. My guilty
4 plea is not the result of force, threats, assurances or
5 promises, other than the promises contained in this agreement.
6 I voluntarily agree to the provisions of this agreement, and I
7 agree to be bound according to its provisions. I understand
8 that if I am granted --

9 Q. Nolan? Okay. Let's look at paragraph 17.

10 A. Okay. (Reading) I further agree that promises, including
11 any predictions as to the sentencing guideline range or to any
12 sentencing guideline factors that would apply, made by anyone,
13 including my attorney, that are not contained within this
14 written plea agreement, are null and void and have no force and
15 effect.

16 Q. Okay. Now, if we could go over your cooperation addendum,
17 and that's what's been admitted as Defense Exhibit 321.

18 MS. ESCALANTE: Your Honor, permission to publish?

19 And I'll use the ELMO.

20 THE COURT: All right.

21 BY MS. ESCALANTE:

22 Q. Mr. Sperling -- okay. Defense counsel asked you --
23 emphasized about the benefit that you were receiving, and the
24 compliance that you had to follow in this agreement; correct?

25 A. That is correct.

1 Q. But you guys did not go over a few portions.

2 Can you please read, beginning at paragraph number 5.

3 A. Yes. So: (Reading) Answer all questions asked about any
4 topic whatsoever, and provide full and complete information
5 about the topics discussed in each interview, if necessary, by
6 volunteering information about which no questions are asked.

7 Q. What is your understanding as to what it means to provide
8 full and complete information?

9 A. To answer any question asked of me to the best of my
10 ability, and include any related information that would, you
11 know, be important or, you know, maybe not that important, to
12 be -- to the question asked.

13 Q. Okay. Another subsection skipped was subsection C, which
14 begins on paragraph 10.

15 A. So: (Reading) If requested by the United States --

16 Q. I'm sorry. That one was actually not skipped.

17 I meant paragraph D, beginning on paragraph 13.

18 A. So: (Reading) All information, evidence, and testimony
19 provided by the defendant pursuant to this addendum on any
20 topic whatsoever shall be truthful, honest, candid, and
21 complete with no knowing material omissions or false
22 statements. The defendant shall not attempt to either protect
23 or falsely implicate any person or entity through false
24 information or omission.

25 Q. What do you take that paragraph to mean in terms of your

1 cooperation?

2 A. That means, you know, I'm expected to and required to act
3 out of good faith and not to sugarcoat anything or, as it says,
4 purposefully omit certain things that might not qualify as
5 lying, but would qualify as devious behavior. And again,
6 wouldn't be performing these -- this time to the best of my
7 ability, you know.

8 Q. And line 14, what does that require you to be?

9 A. Truthful, honest, and candid.

10 Q. Let's look at page 3, paragraphs J and K. Can you read
11 those?

12 A. (Reading) The defendant shall not violate any local,
13 state, federal, or foreign laws. The defendant shall comply
14 with all terms and conditions of the defendant's pretrial
15 release.

16 Q. Are you currently on some sort of monitoring program while
17 you're on release?

18 A. Yes. I'm on the Pretrial Services program.

19 Q. Okay. And what is your understanding that you're supposed
20 to do?

21 A. So, part of my pretrial agreement is --

22 MR. CAIN: Objection. Cumulative.

23 THE COURT: I don't know that until I hear the answer,
24 so I'm going to allow the answer.

25 THE WITNESS: So as part of this, the pretrial

1 program, it allows people like me to not be in jail while the
2 trial is going on. So part of that conditions of release is
3 that I will cooperate with my pretrial officer, and I am to
4 report in, similar to a probation program, where I'm called
5 down randomly to take drug tests. I have to have a job or be a
6 full-time student, or be actively looking for work. The first
7 of every month I have to report in to my pretrial officer. I
8 have to call them, tell them what's new in my life, you know,
9 are things still the same. I have to send proof of -- proof of
10 employment, a copy of my pay stub and -- it's just a ongoing
11 compliance. And I also, of course, am not allowed to ingest
12 any sort of drugs or drink alcohol during this entire time
13 frame, so I've been sober since, I think, October 12th, or
14 around October 12th. Since 2016.

15 BY MS. ESCALANTE:

16 Q. Okay. And those conditions will apply to you for up until
17 the three-year period ends?

18 A. Yes, that is correct. The entire term of the probation
19 period.

20 Q. On page 4, please read paragraph D for the jury.

21 A. (Reading) During the period of deferred sentencing, the
22 Court, for good cause shown, may revoke or modify the terms of
23 this agreement or, on a willful violation of the conditions of
24 this agreement, sentence the defendant on Count 1 of the
25 indictment. The maximum sentence which defendant could receive

1 if sentenced on Count 1 is 20 years' imprisonment, a
2 1 million-dollar fine, or both, and a term of supervised
3 release of at least three years up to life.

4 Q. Okay. Thank you. And on page 5, please read paragraph B.

5 A. (Reading) If there is a dispute regarding the obligations
6 of the parties under this agreement, the United States District
7 Court shall determine whether the United States or the
8 defendant has failed to comply with this agreement, including
9 whether the defendant has been truthful.

10 Q. Thank you. Nolan -- or Mr. Sperling, sorry -- there we
11 go -- how old was your friend Jake?

12 A. How old was he?

13 Q. Uh-huh.

14 A. Like, when these text messages were going on?

15 Q. Yeah.

16 A. I think he was 19 or 20.

17 Q. And did he -- are you aware whether or not he met with
18 Morpheus?

19 A. I believe he did meet up with Morpheus, yes.

20 Q. Okay. And do you know how much cash Jake gave Morpheus in
21 exchange for Bitcoin?

22 MR. CAIN: Objection, foundation.

23 THE COURT: Sustained.

24 THE WITNESS: Um, I can't --

25 MS. ESCALANTE: Oh, wait.

1 THE COURT: You can't answer the question. I
2 sustained the --

3 THE WITNESS: Oh, sorry.

4 BY MS. ESCALANTE:

5 Q. A lot of questions were asked what you specifically told
6 Morpheus regarding your drug purchases online. When you bought
7 the DMT from Morpheus, did you tell him you bought it online?

8 MR. CAIN: Objection.

9 Outside the scope of cross.

10 THE COURT: I'll allow it.

11 THE WITNESS: Yes, to my knowledge, I did tell him
12 that I got it online.

13 BY MS. ESCALANTE:

14 Q. Okay. And how he -- what did you ever say that indicated
15 you had customers?

16 MR. CAIN: Objection. Outside the scope.

17 THE COURT: Sustained.

18 BY MS. ESCALANTE:

19 Q. Defense counsel asked you whether your parents knew you
20 were involved in international drug deals. Do you recall that?

21 A. Yes, I remember that.

22 Q. Did you want your parents to know you were involved in
23 international drug deals?

24 A. Absolutely not, you know. I mean, what -- what child wants
25 their parents to know that?

1 Q. Isn't that your goal, to remain anonymous?

2 A. Yes, absolutely.

3 Q. Is that why you were using Bitcoin?

4 A. Yeah. That's exactly why I was using Bitcoin.

5 Q. When you opened up your bank account, did you list the
6 address for your parents' residence?

7 A. So I never opened up my bank account. It was opened up for
8 me by my parents. It's a joint account with their account.

9 Q. Okay.

10 A. So it has their address on it, yes.

11 Q. Okay. And so it would have their information, as well?

12 A. Yeah. All their bank account information, everything.

13 Q. And so that potentially was linked to your Coinbase
14 account?

15 A. It was.

16 Q. But you never gave that information to Morpheus; correct?

17 A. No.

18 Q. Now, defense counsel asked you a lot about the number of
19 times that you imported drugs into the United States. Do you
20 recall?

21 A. Yes, I recall.

22 Q. There is no question whether or not you were a drug dealer;
23 correct?

24 A. That is correct.

25 Q. Okay. And eventually, you got caught; correct?

1 A. Yes, that is correct.

2 Q. Did you get caught because somehow Bitcoin provided your
3 identity to law enforcement?

4 A. No.

5 Q. Would you have been able to order drugs from Germany or The
6 Netherlands without Bitcoin?

7 A. Some online places might have accepted other forms of
8 crypto currency. But a crypto currency was required. Bitcoin
9 was the predominant one, but you might have been able to use,
10 for example, Litecoins on another one of these websites. But
11 it's the same thing.

12 Q. Okay. Well, specifically all the drugs that you purchased
13 and imported to the United States, you used Bitcoin; correct?

14 A. Yes. It was the predominant currency to use and it was --
15 yeah. Yes, I did. I used Bitcoins.

16 Q. And did you start buying bigger bulks of drugs online after
17 you began meeting with the defendant?

18 A. That is correct.

19 Q. And why the -- why the correlation?

20 MR. CAIN: Objection. Outside the scope.

21 THE COURT: Sustained.

22 MS. ESCALANTE: May I have a moment, Your Honor?

23 THE COURT: You may.

24 (Pause in proceedings.)

25

1 BY MS. ESCALANTE:

2 Q. Mr. Sperling, you said you brought -- bought the prior --
3 you said you bought your drugs, primarily the ones that you
4 bought internationally using Bitcoin, what was your primary
5 source of that Bitcoin?

6 MR. CAIN: Objection. Outside the scope.

7 THE COURT: One moment, please.

8 Sustained.

9 MS. ESCALANTE: Okay. May I have one more moment,
10 Your Honor?

11 THE COURT: You may.

12 (Pause in proceedings.)

13 MS. ESCALANTE: No further questions.

14 THE COURT: Thank you.

15 You may step down, Mr. Sperling.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Next witness?

18 MR. RESTAINO: United States calls Task Force Officer
19 Aric Manore.

20 (ARIC MANORE, Government's witness, is sworn.)

21 MR. RESTAINO: May I proceed, Your Honor?

22 THE COURT: You may.

23 DIRECT EXAMINATION

24 BY MR. RESTAINO:

25 Q. Good afternoon, Officer Manore.

1 A. Good afternoon.

2 Q. Please your introduce yourself to the jury.

3 A. My name is Aric Manore, a detective with the Scottsdale
4 Police Department. I'm assigned to our special investigations
5 section, specifically the U.S. Drug Enforcement Task Force,
6 Group 1.

7 Q. And what was your involvement in this investigation?

8 A. I worked associated with TFO Martin, was conducting an
9 investigation and asked if I could assist him on several
10 occasions for surveillane purposes.

11 Q. Now let's talk about your background. Did you go to
12 college?

13 A. I did.

14 Q. Where did you go?

15 A. I went to a bible college down in Greenville, South
16 Carolina. And then I went to Detroit Baptist Theological
17 Seminary in Detroit following that.

18 Q. And were you able to use what you studied in the seminary
19 in a career?

20 A. Well, when it comes to building relationships with people
21 and thing like that, I suppose.

22 Q. What did you do right after graduating from the seminary?

23 A. I worked at Ford Motor Company for, I guess, about a year
24 or so. And then I went from there to a -- become a family
25 pastor at a church just north of Detroit.

1 Q. When did you get into law enforcement?

2 A. 2006. August of 2006, I believe.

3 Q. And what law enforcement agency did you join?

4 A. The Scottsdale Police Department.

5 Q. What type of training have you received as a Scottsdale
6 police officer?

7 A. Well, there's our formal academy training where we learn
8 general police tactics and principles, things like that, you
9 know, criminal law, at least as it applies to, you know, police
10 officers. And from there, specialized training based on
11 various assignments that you get and things like that, a lot of
12 it informal, some of which is formal.

13 Q. Did you receive any additional training when you became a
14 detective?

15 A. I did.

16 Q. What type of training there?

17 A. General investigations training, laboratory analysis
18 training, things like that. And then as I got into -- into the
19 persons crime investigation section, we were taught undercover
20 techniques, CS -- confidential source training, things like
21 that.

22 Q. And when did you become a Task Force Officer with the DEA?

23 A. About three years ago.

24 Q. Did you receive any additional training there?

25 A. Just what I learned by being mentored on the task force,

1 and, of course, by doing the job, you know, learning things
2 like -- kind of as we go. And then there is some formal
3 training that comes with -- that's offered by the DEA to
4 accompany that as well.

5 Q. Let's talk about your surveillance in this investigation.

6 What does it mean, to surveil someone?

7 A. Well, it's basically to monitor their activities; sometimes
8 it means monitoring their conversations, what they're saying;
9 their movements, what they drive. And it's to do so in a way
10 that's not detectable by them. So we, generally speaking, are
11 not in uniform, not driving marked vehicles. We kind of blend
12 in.

13 Q. And who did you surveil in this case?

14 A. In this particular case, it was Mr. Costanzo.

15 Q. Do you recognize Mr. Costanzo here in the courtroom today?

16 A. I do. He's seated at the defendant's table wearing a black
17 suit and glasses.

18 MR. RESTAINO: Your Honor, may the record reflect that
19 the witness has identified the defendant?

20 THE COURT: It may.

21 Officer Manore, can I get to you slow down just a
22 little bit?

23 THE WITNESS: Oh, I'm sorry. Absolutely.

24 THE COURT: Thank you.

25

1 BY MR. RESTAINO:

2 Q. So what was the date of the first surveillance you did?

3 A. I believe our first -- or my first involvement as far as
4 surveillance goes was on September 14th, 2016.

5 Q. And what was going on in the investigation on that day?

6 A. TFO Martin had advised that he was meeting with
7 Mr. Costanzo, and had asked if I would assist in the
8 surveillance, and also to provide what we call UC support or UC
9 rescue support, where I basically keep my eyes on the officer
10 that's going to be meeting with somebody, at least as best I
11 can, and also to monitor a sound device that he had so that if
12 he needed help or needed assistance, I could be there to render
13 that aid as quickly as possible.

14 Q. So where did you wind up going on that day in that
15 surveillance role?

16 A. On that particular day, I believe it was the McDonald's
17 restaurant in Mesa. The number 909 sticks in my mind. I
18 believe it was on Dobson Road maybe.

19 Q. Do you remember what time of day it was?

20 A. I believe it was between 5:00 or 5:30, somewhere in there.

21 Q. And where were you stationed to observe?

22 A. I parked my vehicle in the parking lot, which gave me a
23 good view of the south-facing wall of the restaurant, which I
24 believe was probably going to be the most likely entrance point
25 for somebody arriving at the restaurant. So I was in a parking

1 stall in the parking lot that allowed me to see that side --
2 that side of the wall and into the restaurant a little bit.

3 Q. Again, I think if you could try to speak a little bit
4 slower still.

5 A. Sorry.

6 Q. Were you able to see the defendant arrive in September of
7 2016 on that day?

8 A. I was.

9 Q. And did he arrive by car?

10 A. He did not. He was on foot. And as I recall, the first
11 time I saw him, he was actually in a jog, running towards the
12 restaurant.

13 Q. Aside from observing the defendant arrive in a jog and
14 staying put for his meeting with Task Force Officer Martin, did
15 you have any other involvement with the case on that date?

16 A. I don't believe so. Again, I was monitoring conversation
17 just for any kind of support that he might need. And then he
18 left, and I think we broke off surveillance at that point, or
19 at least I did.

20 Q. What was -- did you do a follow-up surveillance later in
21 the investigation?

22 A. I did.

23 Q. What was the date of your second surveillance in this
24 investigation?

25 A. That would have been November 16th, 2016, if memory serves.

1 Q. And what was going on in the investigation on that date?

2 A. On that particular date, TFO Martin advised that he was
3 going to be meeting with Mr. Costanzo, possibly at a Starbucks
4 restaurant in Tempe, and asked me to again serve as support in
5 a surveillance capacity, and also as a rescue capacity if he
6 needed assistance.

7 THE COURT: Officer Manore, I'm going to remind you
8 one more time. Some of us just speak more quickly than others.
9 You speak very fast just habitually. We need to have you slow
10 it down just a little bit.

11 THE WITNESS: Fair enough. I'll try and slow it down.

12 BY MR. RESTAINO:

13 Q. So, on that second surveillance date, what did you do; were
14 you able to observe the defendant with Task Force Officer
15 Martin?

16 A. Yes, I did. I was again parked in my vehicle within a
17 parking stall in the parking lot. I believe that Mr. Costanzo
18 arrived on a bicycle. I saw him arrive, and then I saw TFO
19 Martin move from the Starbucks restaurant to, I believe, a
20 Jersey Mike's restaurant that was located just a couple doors
21 down in that same retail area.

22 Q. Were you able to take any photographs on that surveillance
23 day?

24 A. I did.

25 Q. And after the defendant arrived at Jersey Mike's, were you

1 able to continue following him?

2 A. Yes. The meeting concluded. Mr. Costanzo then got on his
3 bicycle and we initiated -- I say "we," myself and the team
4 that was with me -- initiated a rolling surveillance of him as
5 he rode to, I believe, a train depot at Miller and Third, if
6 memory serves, in Tempe.

7 Q. And where was the rolling surveillance able to surveil him
8 to?

9 A. To a Panda Express restaurant. So he got on the train. We
10 paralleled that train to the 24th Street station, if memory
11 serves. We observed him get out, got back on his bike, and
12 then he went up 24th Street, went along a canal bank that took
13 him to Glendale Avenue, and I believe he ended up at the Panda
14 Express, which is located at 16th and Glendale Avenue, I
15 believe.

16 Q. Did he seem to be moving at a good speed on the bicycle?

17 A. He was. He was moving very quickly. We learned later that
18 it was a motorized bicycle which allowed that to happen, so....

19 Q. Were you able to recollect how the defendant was dressed on
20 that date?

21 A. I believe that he was in, I guess, normal street attire, a
22 Polo shirt, and I think he had sunglasses and a fanny pack of
23 some sort. And it was difficult to tell if it was two fanny
24 packs on top of each other, or just one with two pockets. But
25 he had a black fanny pack on.

1 Q. And were you eventually able to observe the defendant
2 within the Panda Express restaurant on or around 24th Street?

3 A. Yes. I went into the Panda Express after he did, and
4 grabbed a bite to eat, and I sat down at a table approximately
5 15 feet away from where he was seated.

6 Q. And while you were eating, did you have an opportunity to
7 observe the defendant?

8 A. I did.

9 Q. Was he sitting alone?

10 A. Initially, yes.

11 Q. And then what happened?

12 A. Several minutes later, I would say maybe five or 10 minutes
13 later, a Caucasian male came into the restaurant. They
14 greeted, he and Mr. Costanzo. And then he sat at the table
15 across from Mr. Costanzo.

16 Q. Were you able to overhear portions of what the defendant
17 said to the man?

18 A. Yes. Portions of the conversation.

19 Q. In particular, what were you able to overhear?

20 A. I heard Mr. --

21 MR. CAIN: Objection. Hearsay. Relevance.

22 THE COURT: Sustained, unless it's being -- is it
23 being -- what's it being offered for?

24 MR. RESTAINO: May I try to lay a --

25 THE COURT: Do you want to see me at sidebar?

1 MR. RESTAINO: Sure, Judge.

2 (At sidebar on the record.)

3 MR. RESTAINO: This is Gary Restaino, Your Honor.

4 This is pretty straightforward. This is an overhear of what
5 this defendant said from the report that's been disclosed.

6 It's about banks and about banks being evil. That's all that
7 we anticipate eliciting, and we think that has pretty direct
8 relevance towards the charges and elements in this case.

9 THE COURT: All right. To the extent you're only
10 asking about what you heard the defendant say, you've got no
11 hearsay objection; right?

12 MR. CAIN: Yes.

13 THE COURT: All right. Overruled.

14 (End of discussion at sidebar.)

15 THE COURT: All right. Overruled. You may answer.

16 MR. RESTAINO: May I rephrase that question then, Your
17 Honor?

18 THE COURT: You may.

19 BY MR. RESTAINO:

20 Q. So I'm only asking you about anything you were able to hear
21 the defendant say. What were you able to hear the defendant
22 say?

23 A. Mr. Costanzo said to the male -- he started talking about
24 banking systems. He referred to the banking systems as
25 criminal and not always operating in the best interests of the

1 clients.

2 Q. Now, following what you heard the defendant say, were you
3 able to observe anything between the defendant and the man
4 seated with him?

5 A. Yes. There was, like I say, ongoing conversation. He
6 mentioned something about --

7 Q. Let me stop you there. I'm only asking about what you
8 observed and not anything that you heard at this point.

9 A. If see.

10 Q. What did you observe after that con -- after what you heard
11 the defendant say?

12 A. Mr. Costanzo passed a telephone across to the male. It was
13 a smartphone, it had a screen on it. It went back and forth a
14 couple of times. I heard the word "it's confirmed" or
15 "confirmed" as they were talking. And then I heard the male
16 that he was with say something to the effect of --

17 MR. CAIN: Objection. Hearsay.

18 MR. RESTAINO: I'm not seeking to get that in.

19 BY MR. RESTAINO:

20 Q. Officer Manore -- if I may, Your Honor?

21 THE COURT: You may.

22 BY MR. RESTAINO:

23 Q. What we're asking for here is observations and not anything
24 that you heard. So in addition to the phones being passed back
25 and forth, did you see the man give anything to the defendant?

1 A. Yes. The male produced a stack of -- of cash and laid it
2 on the table, and Mr. Costanzo took receipt of the cash and
3 began to count the cash out there on the table. I was able to
4 get a look at the cash, and I could see that it was -- they
5 were 100-dollar denominations.

6 Q. What did the defendant do with the cash?

7 A. Mr. Costanzo, after he was done counting the cash, took it
8 and unzipped the fanny pack, one of the pockets on the fanny
9 pack, and he put it into the fanny pack. And just before he
10 did that, I could see that there was also another pretty large
11 stack of currency or cash already in the pack. And so he put
12 it in there, and zipped it up. They exchanged some more
13 conversation, and then the male left.

14 Q. Did you have any other actions on that day with respect to
15 the investigation?

16 A. I remained in the restaurant for a few more minutes. A
17 second male arrived, they greeted, at which point I exited, and
18 we followed him away from -- from the restaurant eventually.

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

20 THE COURT: You may.

21 (Pause in proceedings.)

22 MR. RESTAINO: Thank you, Your Honor.

23 We have no further questions for Task Force Officer
24 Manore on direct.

25 THE COURT: All right.

1 Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. CAIN:

4 Q. Officer Manore, I believe you said that you took some
5 photographs on November 16th when you were doing that
6 surveillance.

7 A. I believe it was September -- yes, it was November.
8 November 16th, yes.

9 Q. Can I ask you to take a look at what has been marked as
10 Exhibit 362.

11 A. Yes, sir.

12 Q. That's a photograph that you took on that date?

13 A. Yes, sir.

14 Q. And that's a photograph that depicts Mr. Costanzo seat --
15 seated at a table with Task Force Officer Martin?

16 A. Yes, sir.

17 Q. That's a fair and accurate representation of the scene that
18 you photographed at that time?

19 A. Yes, sir.

20 MR. CAIN: Your Honor, at this time we would move for
21 the admission of Exhibit 362.

22 MR. RESTAINO: No objection, Your Honor.

23 THE COURT: Exhibit 362 is admitted.

24 (Exhibit 362 is received into evidence.)

25 MR. CAIN: And, Your Honor, permission to publish just

1 briefly for the jury.

2 THE COURT: You may do that.

3 MR. CAIN: And may I have a brief moment, Your Honor?

4 THE COURT: You may.

5 (Pause in proceedings.)

6 MR. CAIN: Sorry for that delay. We can unpublish
7 362, and I pass the witness.

8 THE COURT: Redirect?

9 MR. RESTAINO: No, Your Honor. Thank you.

10 THE COURT: You may step down, Officer. Thank you.

11 THE WITNESS: Thank you, sir.

12 THE COURT: Next witness?

13 MR. BINFORD: The United States calls Special Agent
14 Schuyler Kenney.

15 THE COURT: Just so you know, Mr. Binford, I'm looking
16 to break for the afternoon about three o'clock.

17 MR. BINFORD: I may be done by then, Your Honor.

18 THE COURT: All right.

19 MR. BINFORD: If not, I will find a good stopping
20 point around there.

21 THE COURT: Okay. Thanks. It doesn't have to be
22 right at 3:00.

23 MR. BINFORD: Yes, sir.

24 THE COURT: If you can finish, fine.

25 (SCHUYLER KENNEY, Government's witness, is sworn.)

1 THE COURT: Please.

2 DIRECT EXAMINATION

3 BY MR. BINFORD:

4 Q. Agent Kenney, welcome.

5 Where do you work?

6 A. I am employed by the United States Drug Enforcement
7 Administration.

8 Q. And what do you do for the DEA?

9 A. I'm a Special Agent.

10 Q. And what was required to become a Special Agent with the
11 DEA?

12 A. Eighteen weeks of specialized training at our academy in
13 Quantico, Virginia.

14 Q. And did you receive any specialized training during that
15 academy?

16 A. I did.

17 Q. And what was that?

18 A. Lots of different subjects, everything from the trading in
19 the Controlled Substances Act, which we are tasked with
20 enforcing, to street tactics, surveillance, common law
21 enforcement, arrest tactics, law, Fourth Amendment law, search
22 and seizure. Stuff like that.

23 Q. What did you do before becoming a Special Agent?

24 A. I was in law school.

25 Q. And did you graduate from law school?

1 A. I did.

2 Q. Were you admitted to the bar?

3 A. I was.

4 Q. And did you go to college before that?

5 A. I did.

6 Q. Did you have any involvement in the investigation of Thomas
7 Costanzo?

8 A. Yes.

9 Q. What was your involvement?

10 A. I primarily served as a surveillance agent.

11 Q. Do you recall conducting surveillance on the afternoon of
12 November 16th, 2016?

13 A. I do.

14 Q. And where was that surveillance conducted?

15 A. In multiple cities here in the Phoenix metro area.

16 Q. So what was happening that day that required you to work as
17 a surveillance agent?

18 A. I was tasked with assisting in a surveillance capacity of
19 a -- of a undercover -- undercover deal.

20 Q. And do you recall where that deal took place,
21 approximately?

22 A. Yes. Tempe, Arizona.

23 Q. And were you present during that deal?

24 A. I was.

25 Q. You weren't at the table, right? But...

1 A. No, I couldn't observe it, but I was in the area.

2 Q. Okay. And did you see -- well, we mentioned Thomas
3 Costanzo earlier. Do you see the person you know as Thomas
4 Costanzo here in the courtroom today?

5 A. Yes.

6 Q. Can you point out where he's sitting and identify something
7 that he's wearing?

8 A. Certainly. He's sitting at the table to my left, which
9 would be to your right, and he's wearing a black coat with
10 glasses.

11 MR. BINFORD: Your Honor, may the record reflect that
12 this witness has identified the defendant?

13 THE COURT: It will.

14 BY MR. BINFORD:

15 Q. Did you see Mr. Costanzo that day?

16 A. Yes.

17 Q. And so tell us about your surveillance. You said you were
18 there for the meeting, in the neighborhood. What did you do
19 after that?

20 A. After the meeting concluded, I participated in surveillance
21 of the defendant as he left the meeting area.

22 Q. And what did you see him do?

23 A. Observed him travel using a bicycle to a nearby train
24 station.

25 Q. And what did he do at the train station?

1 A. He boarded the train and eventually got off at another
2 train station, at which point I resumed surveillance.

3 Q. And where did he go at that point?

4 A. He left the train station using his bicycle, traveled north
5 to the area of 16th Street and Glendale.

6 Q. And --

7 A. -- Avenue.

8 Q. What was he doing at 16th Street and Glendale?

9 A. We observed the defendant enter a Panda Express restaurant.

10 Q. Did you go inside that restaurant?

11 A. I did not.

12 Q. Did you see him leave that restaurant?

13 A. I did.

14 Q. And where did he go after he left?

15 A. He proceeded to a bus stop in the area.

16 Q. And did he get on the bus?

17 A. He did.

18 Q. Where did he go?

19 A. He traveled a short distance to a nearby train station.

20 Q. And what did he do at that train station?

21 A. He entered a train, eastbound train.

22 Q. And can you describe that train in a little more detail,
23 what type of train it was?

24 A. It's a commuter train. It connects the Tempe area to Mesa.
25 That was the direction he was traveling.

1 Q. And do you know whether that train is commonly referred to
2 as the Light Rail?

3 A. Yes.

4 Q. Okay. Did you get on the Light Rail with him?

5 A. I did.

6 Q. And how far did he take the Light Rail?

7 A. He was traveling for approximately a half-hour, maybe a
8 little bit more. Forty-five minutes.

9 Q. And were you on the Light Rail with him during that entire
10 time?

11 A. I was.

12 Q. Did you notice anything that stood out to you while you
13 were on the Light Rail with Mr. Costanzo?

14 A. Yes.

15 Q. What did you notice?

16 A. While I was observing the defendant, a couple police
17 officers entered the train. May have been security personnel.
18 I don't know what agency or who they worked for, but they were
19 in uniform. I observed the defendant observe the officers.
20 And at that point the defendant, at that point he had
21 sunglasses resting on his forehead, and as he observed the
22 officers, he moved to place the sunglasses over his eyes in a
23 very obvious manner.

24 Q. And did he keep the sunglasses on for the remainder of the
25 trip?

1 A. He removed the sunglasses when the officers departed the
2 train.

3 Q. Was there anything else that stood out to you during your
4 surveillance that day, besides what you've already told us?

5 A. No.

6 Q. Do you also recall conducting surveillance on the morning
7 of December 14th, 2016?

8 A. I do.

9 Q. And where were you conducting surveillance on that day?

10 A. We initiated surveillance at his place of residence in
11 Mesa.

12 Q. And did you actually see Mr. Costanzo that day?

13 A. I did.

14 Q. Did you see how he was traveling?

15 A. Yes, he was using his bicycle.

16 Q. All right. At this point, I'd like to show the witness
17 only what's been previously identified as Exhibit 21.

18 BY MR. BINFORD:

19 Q. Do you recognize what's on the left side of your screen
20 there in front of you?

21 A. I do.

22 Q. Is that -- what is it?

23 A. It's a photograph of the defendant on that day,
24 December 14th, 2016, on his bicycle.

25 Q. And is that a fair and accurate depiction of what you saw

1 that day?

2 A. It is.

3 Q. All right. Now, I want to direct your attention to the
4 right side of that screen, and that's what's been previously
5 marked for identification as Exhibit 22.

6 Do you recognize that image?

7 A. I do.

8 Q. What is it an image of?

9 A. It's also an image of the defendant on his bicycle on that
10 date.

11 Q. And is that a fair and accurate representation of what you
12 saw that day?

13 A. Yes.

14 MR. BINFORD: Your Honor, at this time I'd move to
15 admit Exhibits 21 and 22 into evidence.

16 MS. WEIDNER: No objection, Your Honor.

17 THE COURT: Exhibits 21 and 22 are admitted.

18 (Exhibits 21 and 22 is received into evidence.)

19 MR. BINFORD: And I'd like to publish them to the
20 jury, please.

21 THE COURT: You may.

22 BY MR. BINFORD:

23 Q. So you saw him on his bike. Did you see where he went?

24 A. Yes.

25 Q. Where did he go?

1 A. We followed the defendant from his residence in Mesa to a
2 local McDonald's not far down the road.

3 Q. Did he go inside the McDonald's?

4 A. He did.

5 Q. Did anyone else go inside the McDonald's?

6 A. (Pause.)

7 Q. Did you go inside the McDonald's?

8 A. Yes.

9 Q. And what did you do inside the McDonald's?

10 A. I observed the defendant sitting at a table in the corner
11 of the restaurant with an unidentified male.

12 Q. And did you also take a seat in the restaurant?

13 A. I did.

14 Q. How far away from Mr. Costanzo were you while you were in
15 the restaurant?

16 A. Approximately 10 to 15 feet at an adjacent table.

17 Q. Could you hear what Mr. Costanzo was saying from your
18 location?

19 A. I could, yes. Parts of his conversation.

20 Q. And did you have a clear view of Mr. Costanzo and the
21 person he was with from where were you sitting?

22 A. Yes.

23 Q. From where you were sitting, could you see under the table
24 that Mr. Costanzo was sitting at?

25 A. Yes.

1 Q. All right.

2 MR. BINFORD: At this time, I'd like to just show the
3 witness only what's been previously marked for identification
4 as Exhibit 23.

5 BY MR. BINFORD:

6 Q. Do you recognize what you're looking at on the screen in
7 front of you?

8 A. I do.

9 Q. What is that?

10 A. That is a photograph I took at that moment while the
11 defendant was seated in McDonald's.

12 Q. And is there -- that a fair and accurate photograph of what
13 you saw on that day?

14 A. It is.

15 MR. BINFORD: At this time, I'd move to admit
16 Exhibit 23 into evidence and publish for the jury.

17 MS. WEIDNER: No objection.

18 THE COURT: Exhibit 23 is admitted. You may publish.

19 (Exhibit 23 is received into evidence.)

20 BY MR. BINFORD:

21 Q. All right. At this time, without going into what the man
22 in the black tracksuit was saying, could you hear what
23 Mr. Costanzo was saying?

24 A. Yes.

25 Q. And what was he talking about?

1 A. He was talking in general about the U.S. banking system,
2 how banks in the United States are large, powerful, and greedy
3 organizations.

4 Q. During that conversation, did you hear the man in the black
5 tracksuit say anything about his bank accounts?

6 MS. WEIDNER: Objection, hearsay.

7 MR. BINFORD: Your Honor, I'm not looking to introduce
8 the statement for the truth of the matter asserted, simply to
9 show the defendant's reaction after hearing that statement.

10 MS. WEIDNER: Objection. Hearsay. 403.

11 THE COURT: I'll allow it.

12 BY MR. BINFORD:

13 Q. What did the man in the black tracksuit say about his bank
14 accounts?

15 A. The man in the black tracksuit explained to the defendant
16 that his bank accounts in the United States were frozen.

17 Q. What did you see the two men do after you heard that
18 statement?

19 A. There was an exchange of cash underneath the table. Both
20 parties appeared to look around their surroundings in the
21 restaurant while the transaction was ongoing underneath the
22 table.

23 Q. And after that, did you see the two men doing anything?

24 A. Yes. After the cash traded hands, the two parties appeared
25 to look at their cell phones and discuss an electronic

1 transaction on their cell phones.

2 Q. And can you approximate how long that process took?

3 A. Approximately five to 10 minutes.

4 Q. And after they spent some time looking at their phones,
5 what happened?

6 A. At that point, the unidentified male in the black departed
7 the restaurant.

8 Q. Were you ever able to identify the man in the black
9 tracksuit and the black hat?

10 A. No.

11 Q. Did you see where Mr. Costanzo went -- or did he leave
12 after the man in the black tracksuit left?

13 A. Yes, he waiting for approximately 20 minutes before leaving
14 McDonald's, and then accessed his bicycle outside the
15 restaurant and traveled to a grocery store in the same business
16 complex.

17 Q. Did he go anywhere after he was at the grocery story?

18 A. Yes, he was observed traveling back towards his residence.

19 Q. Did you conduct any additional surveillance of Mr. Costanzo
20 that day?

21 A. No.

22 MR. BINFORD: Those are all the questions I have for
23 direct, Your Honor.

24 THE COURT: All right.

25 Ladies and gentlemen, I think it's time for an

1 afternoon break. So please take 15 minutes. Remember the
2 admonitions.

3 We'll see you back here in 15 minutes for the rest of
4 the afternoon.

5 COURTROOM DEPUTY: All rise.

6 (Jury leaves the courtroom at 2:58 p.m.)

7 THE COURT: Anything from the parties?

8 MR. BINFORD: Nothing from the government.

9 MS. WEIDNER: Nothing from the defense, Your Honor.

10 THE COURT: All right. See you back in 15 minutes.

11 (Proceedings in recess at 2:59 p.m.)

12 (Proceedings resume at 3:25 p.m.)

13 THE COURT: All right. I've considered the defense --
14 the defendant is now present. I've considered something that
15 happened over the break, and I've decided -- I had initially
16 decided I wasn't going to intervene, and now I've decided I am
17 going to intervene.

18 Ms. Weidner, I asked -- you made a hearsay objection
19 to the last testimony. Mr. Binford said that -- pertaining to
20 something about the bank accounts of the person in the
21 tracksuit. Mr. Binford said that he wasn't asking to admit it
22 for the truth of the matter, but to demonstrate the
23 defense's -- the defendant's reaction to what he said. So I
24 overruled your objection. Mr. Binford then elicited the
25 statement, but he never made any attempt to elicit testimony

1 about the defendant's reaction. So my inclination is to
2 instruct the jury to disregard what the gentleman in the
3 tracksuit said because I don't -- but I also know that you have
4 reservations and concerns about limiting instructions. So
5 before we bring them in, I just wanted to check with you about
6 how you would like to handle that.

7 MS. WEIDNER: If I could have a moment, Your Honor.

8 THE COURT: You may.

9 (Pause in proceedings.)

10 MS. WEIDNER: Your Honor, I think we're okay with a
11 limiting instruction on this.

12 THE COURT: All right. Just instruct them to
13 disregard what the gentleman in the tracksuit said about his
14 bank account?

15 MS. WEIDNER: Yes, Your Honor.

16 THE COURT: All right. Does the government wish to be
17 heard?

18 MR. BINFORD: Well, Your Honor, I guess I didn't make
19 it clear when I elicited the testimony from Special Agent
20 Kenney, but the reaction I mentioned when I responded to the
21 objection was the reaction of Mr. Costanzo continuing to engage
22 in the transaction after hearing that statement. We're not
23 trying to prove that this unidentified individual's bank
24 accounts were frozen or not frozen. We simply wanted to show
25 that after hearing that information, whether it was true or

1 not, Mr. Costanzo reacted by continuing to engage in the
2 transaction instead of stopping.

3 THE COURT: Well, is there any reason why somebody
4 whose bank accounts are frozen can't engage in a Bitcoin
5 transaction?

6 MR. BINFORD: Ah...

7 THE COURT: So I'm going to grant Ms. Weidner's 403
8 objection, and I'm going to -- and I would have done that, you
9 know, to the extent that you didn't mean to overlook it or you
10 didn't mean for me to misunderstand, which I did, the basis on
11 which you were seeking to introduce the testimony, I would have
12 granted the objection had I understood what you intended to do
13 with it, because I think under 403, in that case, the
14 prejudicial value, even though there may be some probative
15 value, the prejudice -- potential prejudice outweighs it. So
16 I'm going to instruct the jury to disregard what the gentleman
17 in the tracksuit said to the defendant.

18 MR. BINFORD: May I at least have an opportunity to
19 make a record regarding the 403 objection? I was only
20 referring to the 401 -- or the -- I'm sorry -- the 801 hearsay
21 objection.

22 I think in terms of relevance, I think one of the
23 burdens that the government is going to have to prove beyond a
24 reasonable doubt in this case is that the defendant was not
25 entrapped. I think this evidence does go to predisposition.

1 It shows that he was willing to engage in --

2 THE COURT: Again, is there anything illegal about
3 buying Bitcoin just because your bank accounts have been
4 frozen?

5 MR. BINFORD: I think it shows that he was willing to
6 engage --

7 THE COURT: And again, as with Ms.-- as was the case
8 with Ms. Escalante, don't we have to accept the truth of the
9 matter asserted to have it go to predisposition? I think in
10 either case, it was inappropriate, and I'm striking.

11 MR. BINFORD: Thank you, Your Honor.

12 THE COURT: Bring in the jury.

13 (Jury enters the courtroom at 3:22 p.m.)

14 THE COURT: Thank you, ladies and gentlemen.

15 Hope you had a pleasant break, and you're ready for
16 the rest of the afternoon.

17 As I indicated -- please be seated.

18 As I indicated to you in my initial instructions, I
19 may from time to time instruct you to disregard evidence that
20 you have heard. I am now going to invoke that instruction, and
21 I'm going to instruct you to disregard anything that the
22 gentleman -- any testimony about what the gentleman in the
23 black tracksuit told the defendant. Do you all understand what
24 I am telling you to disregard?

25 So if you have it in your notes, please strike it out.

1 You should not consider it in any way in making your
2 determination about what the verdict should be in this case.

3 Any question about that?

4 All right. Thank you.

5 Next witness -- oh, I'm sorry. Yes. Ms. Weidner.

6 MS. WEIDNER: Your Honor, I -- I think that the
7 government had finished with direct on Special Agent Kenney --

8 THE COURT: Yes.

9 MS. WEIDNER: -- and it is time for cross.

10 THE COURT: You're right. I apologize.

11 (SCHUYLER KENNEY resumes the witness stand.)

12 CROSS-EXAMINATION

13 BY MS. WEIDNER:

14 Q. Good afternoon, Agent Kenney.

15 You testified on direct that you were part of the
16 surveillance team on two occasions.

17 A. At least. Yes, ma'am.

18 Q. Yes. And you were actually on the surveillance team on
19 December 14th, 2016. You testified to that.

20 A. Yes, ma'am.

21 Q. As well as November 16th, 2016.

22 A. Yes, ma'am.

23 Q. And then in addition, you were also on the team in February
24 and April of 2017; correct?

25 A. Quite possibly, ma'am. Yes.

1 Q. I'd like to start first with asking you a couple questions
2 about the November 2016 surveillance that you were on.

3 Now, this operation that you were engaged in, that was
4 part of the DEA investigation of Mr. Costanzo; correct?

5 A. Yes, ma'am.

6 Q. And you're familiar with this investigation as a whole, or
7 just the surveillance part?

8 A. Mainly my role as a surveillance agent, but I am familiar
9 with the investigation.

10 Q. So you're aware that this DEA portion of the investigation
11 was a continuation of an earlier IRS investigation?

12 A. I'm not fully aware of what you're referring to though. I
13 don't have a comment on that. I don't know.

14 Q. All right. But you can confirm that the portion of the
15 investigation that you're involved in was -- were involved in
16 was the DEA portion?

17 A. Yes, ma'am.

18 Q. All right. And on November 16th, you were part of the
19 surveillance team --

20 A. Yes.

21 Q. -- correct?

22 And you had testified that that started at the
23 Starbucks in Tempe -- or a Starbucks in Tempe?

24 A. Yes, ma'am, or an adjacent business.

25 Q. Okay. And that surveillance began about noon that day?

1 A. Approximately.

2 Q. Now, by my count, including you, there were eight law
3 enforcement officers on the surveillance team in total?

4 A. I don't know the exact number, ma'am.

5 Q. But it wasn't just you?

6 A. No.

7 Q. Would it refresh your recollection to see the report
8 produced from that date?

9 A. Yes.

10 MS. WEIDNER: Just a moment.

11 Kathleen, could you please provide the witness with
12 Defense Exhibit 307.

13 BY MS. WEIDNER:

14 Q. Have you had a chance to -- to look it over, Agent Kenney?

15 A. I have not re-read it right now, but is there specific
16 question that you're referring to?

17 Q. Yes. On the first page, which is Bates 30, if I could
18 direct your attention to -- at the top it lists other officers,
19 and then a list of names, including yours.

20 A. Yes, ma'am.

21 Q. And those would be the officers that were involved in this
22 operation?

23 A. Yes, ma'am.

24 Q. On that day?

25 A. Yes, ma'am. On this day of the report.

1 Q. And looks like a total of eight. And then with TFO Martin,
2 who is the undercover, it would be nine; is that right?

3 A. No, ma'am.

4 Q. Did I miscount?

5 A. I believe it would be 10.

6 Q. Oh. I miscounted.

7 So it was 10 officers on this particular part of the
8 investigation on that day?

9 A. If you include Officer Martin.

10 Q. Yes.

11 Okay. Now I want to turn to the surveillance that you
12 conducted on December 14th, 2016. Now, that time, the
13 surveillance was not in connection with an undercover meeting,
14 was it?

15 A. That is correct.

16 Q. That time, it was surveillance of Mr. Costanzo's home?

17 A. Yes, ma'am.

18 Q. And of Mr. Costanzo's movements himself?

19 A. Yes.

20 Q. And when I say "Mr. Costanzo's home," it's correct that
21 that was at 417 North Loma Vista in Mesa?

22 A. To the best of my knowledge, yes.

23 Q. And that was the second floor apartment, number 202?

24 A. Yes.

25 Q. And you were on the team that day. Did you see his

1 apartment?

2 A. I saw the general neighborhood where he lived. I did not
3 actually see his apartment.

4 Q. Did you see the exterior?

5 A. The building, yes.

6 Q. And do you recollect that there were photos taken that day?

7 A. Yes.

8 Q. And if I could have you take a look, you should have up
9 there with you Exhibit -- I believe it's 363.

10 A. Yes.

11 Q. Do you recognize that image?

12 A. I recognize the photograph. I was never in a position to
13 actually see this specific portion of the building, his
14 residence -- his unit.

15 Q. But would you agree -- and I'll just let you know that the
16 government has stipulated that that photograph is consistent
17 with surveillance on that day of Mr. Costanzo's home.

18 A. Yes.

19 MS. WEIDNER: Move to publish Exhibit -- Defense
20 Exhibit 363 to the jury, and -- but to admit it into evidence
21 first and then to publish it to the jury.

22 MR. BINFORD: Yes, Your Honor. We've stipulated to
23 admission of 363 and 364.

24 THE COURT: All right. Then why don't we just admit
25 them both at this time.

1 A. Sure, ma'am. My name is Chad Martin. I'm a detective with
2 the Scottsdale Police Department, Special Investigations
3 Section. I'm currently assigned to Drug Enforcement
4 Administration, Task Force Group 1.

5 Q. Is it okay if I call you Detective?

6 A. Yes, ma'am.

7 Q. Detective Martin, how long have you worked at Scottsdale
8 Police Department?

9 A. For just over 10 years.

10 Q. And what did it take for you to get employed at the
11 Scottsdale Police Department?

12 A. It was an application process, in-person interview,
13 physical exam, polygraph exam, written test, and from there I
14 was selected.

15 Q. Did you have any prior law enforcement before joining
16 Scottsdale Police Department?

17 A. No.

18 Q. What -- what were you doing prior to joining?

19 A. Before becoming a police officer, I was a firefighter.

20 Q. And how long were you a firefighter for?

21 A. It was about five years. I was a crew boss and an engine
22 boss with the U.S. Forest Service, a wildland firefighter.

23 Q. And -- and prior to that, any law enforcement or anything
24 related?

25 A. No.

1 Q. Did you have any college experience?

2 A. I have several college certifications. My initial career
3 path was to become a full-time city firefighter, so I have
4 certifications in hazardous materials, emergency medical
5 technician, firefighter 1 and 2, CPR, all the basic life-saving
6 firefighter.

7 Q. Okay. So you mentioned you've been with Scottsdale Police
8 Department for about 10 years. What positions have you held
9 while being employed there?

10 A. So I was hired in 2008. I was a patrol officer for about
11 eight years after attending our -- our police academy.

12 Q. What does it mean to be a patrol officer?

13 A. Assisting the public, public servants. We go to criminal
14 matters, we go to civil matters, we help people with
15 broken-down cars, we make arrests when need be, when criminal
16 violations have occurred.

17 Q. And how long were you on patrol for?

18 A. For about four years.

19 Q. And where did you go after that?

20 A. After patrol, I was assigned to the Special Investigation
21 Section, our local city drug enforcement unit. I was first
22 assigned as an asset forfeiture detective within that unit.

23 Q. What does asset forfeiture mean?

24 A. So in Arizona, we have RICO statutes, which are the
25 Racketeering Influence and Corrupt Organization statutes. And

1 if somebody violates one of those statutes, under civil
2 forfeiture, property that they either used to facilitate that
3 crime or that were proceeds of that crime can be seized. So I
4 was the detective assigned to process those forfeitures.

5 Q. Did you have any specific training regarding asset
6 forfeiture?

7 A. Yes. It was -- it was mostly on-the-job training for about
8 six months. Also, I attended numerous forfeiture meetings with
9 the Maricopa County Attorney's Office on updated case law
10 related to forfeiture matters.

11 Q. And how long were you with that unit for?

12 A. I was -- I was the asset forfeiture detective for about a
13 year, but I stayed in the drug enforcement. Unit. And after
14 about a year, I transitioned from the asset forfeiture
15 detective to a full-time undercover officer.

16 Q. Did you have to undergo any special training to become an
17 undercover officer?

18 A. Yes. That's -- that's a position that you have to apply
19 for, you're selected for it. Not everybody can meet the
20 standards to be an undercover officer. Once you're selected,
21 you go through a week-long undercover school. So you learn
22 basic techniques on how undercover deals are conducted, how
23 drugs are concealed, how -- how drug proceeds is laundered.
24 You study how other criminals have facilitated these crimes,
25 and learn to try to mimic those to gain undercover persona,

1 mimic those roles.

2 Q. So how long have you been an undercover officer for?

3 A. Since about 2015.

4 Q. Approximately how many undercover investigations have you
5 conducted?

6 A. I'm sorry. I may have misspoke. I've been with DEA since
7 about 2015. I was an undercover officer beginning about 2012.
8 So since then, I have participated in no less than a hundred
9 undercover roles.

10 Q. When did you go to DEA?

11 A. 2015.

12 Q. And what is your position with DEA?

13 A. So I'm -- I'm a federally deputized task force officer.

14 Q. What does that mean?

15 A. So I'm -- again-- that's another application process.

16 We -- we meet with a group supervisor of our local drug
17 enforcement administration group. It's another application
18 process. And I was selected from a group of several people to
19 fulfill a role, a vacancy in that unit. From there, I meet
20 when the Assistant Special Agent in charge. And if I meet the
21 criteria he presents, then I get federally deputized so I can
22 enforce federal laws.

23 Q. Okay. So is it fair to say you've had a lot of drug
24 training and experience in those types of drug investigations?

25 A. Yes, I would say so.

1 Q. Okay. When is it -- strike that.

2 While being a task force officer with the DEA, have
3 you worked in your undercover capacity?

4 A. Yes, I have.

5 Q. Okay. When is it determined that an undercover
6 investigation is going to be initiated?

7 A. Normally if we're going to select a mission for undercover,
8 we do -- we do our initial case work-up. So we determine that
9 there might be some type of criminal activity that's occurring,
10 we see if there's any -- any informants or any sources who
11 could introduce us to that; and if not, depending on what the
12 group supervisor determines, we may be selected to actually
13 fill an undercover role for that operation.

14 Q. Okay. Throughout your career thus far, have you become
15 familiar with virtual currency?

16 A. Yes. You could say that.

17 Q. When did your familiarity with virtual currency begin?

18 A. I'd say late 2015, early 2016.

19 Q. Okay. And approximately how many virtual currency cases
20 have you investigated or been a part of?

21 A. Oh, I'd say there's at least eight or 10 different
22 investigations that I've been involved in related to virtual
23 currency.

24 Q. Okay. And have you attended any trainings regarding
25 virtual currency and investigating crimes related to virtual

1 currency?

2 A. Yes, I've attended several seminars related to Internet
3 crimes using virtual currency, I've met with CEOs of companies
4 related to virtual currency; I've had specific one-on-one
5 instruction related to Blockchain analysis, trying to identify
6 virtual currency transactions on the Internet.

7 Q. What is Blockchain analysis, what you just mentioned?

8 A. So Blockchain analysis would be -- so you -- so the way
9 Bitcoin transactions happen would be a peer-to-peer or an
10 exchange to a peer using Bitcoin applications as we've seen.
11 That's all documented on a public Blockchain. So that's -- the
12 Blockchain doesn't link any names or personal identifying
13 information to an individual, just -- just the Bitcoin address.
14 And if you research the Blockchain, you can see these
15 transactions happening from address to address, you can see
16 Bitcoin moving, but there's no way to identify who is using
17 those addresses or who is the owner of that Bitcoin.

18 Q. Are there ever instances where you can potentially identify
19 the owner or user of those addresses?

20 A. So to my knowledge, the only success we've had in
21 identifying that would be through a commercial exchange where
22 personal identifying information has been obtained, or if we
23 know the owner of an address. Say if an undercover owns a
24 Bitcoin address, from there we can backtrack. And if we know
25 who that undercover is dealing with, we can determine who those

1 addresses belong to.

2 Q. Okay. Have you ever presented anywhere on the topic of
3 virtual currency?

4 A. Yes. I've done several presentations. I've acted as an
5 instructor for virtual currency investigations. Recently I --
6 I just returned from the White House doing a presentation on
7 virtual currency.

8 Q. Have you presented in other foreign countries?

9 A. Yes. I've done presentations in Canada, briefings to other
10 law enforcement agencies about virtual currency and Internet
11 investigations.

12 Q. Detective Martin, when did you become involved in the
13 investigation involving Thomas Costanzo?

14 A. In March 2016.

15 Q. And how did your involvement come about?

16 A. I was contacted by IRS Agent Donald Ellsworth. I work in
17 an offsite DEA task force, and Agent Ellsworth is also assigned
18 to our group to assist with Internal Revenue Service matters.

19 Q. What is a task force?

20 A. So, a task force is a group of multiple law enforcement
21 agencies. So, the one I'm involved in is Scottsdale Police
22 Department, full-time Drug Enforcement Administration agents.
23 We have some IRS agents, we have some analysts, and sometimes
24 we have border patrol agents with us.

25 Q. Are financial investigations commonly conducted

1 simultaneously with drug investigations?

2 A. Yes. So, typically every drug investigation we do is --
3 has a simultaneous money laundering investigation, financial
4 investigation, linked to it because in order for somebody to
5 purchase drugs, they have to use some type of object --
6 typically cash in this case, virtual currency -- which would
7 institute a money laundering charge.

8 Q. And what are investigative techniques that are used when
9 conducting a financial investigation?

10 A. There's -- there's numerous techniques used, depending on
11 the type of financial transaction being conducted. So if it's
12 a cash transaction, we can investigate a lot of physical
13 surveillance trying to actually locate the cash and find out
14 where it's going; if it's related to bank accounts, then we
15 open a financial investigation within the IRS and we try and
16 obtain financial records, with Court authorization, of course.
17 We'll obtain banking records, tax records sometimes. With
18 virtual currency, we don't really have anyone we can turn to,
19 so it's -- it's basically on the agent's knowledge of virtual
20 currency and how it can be tracked.

21 Q. Now, the task force that you are on with the IRS, is there
22 a specific mission or specific crimes that this task force
23 targets, or is it general drug and financial crimes?

24 A. So, this is a specialized task force. We're part of an
25 OCDEFT task force. OCDEFT is Organized Crime and Drug

1 Enforcement Task Force. So we investigate Internet-based drug
2 trafficking. We've found recently that the most drug
3 trafficking occurring on the Internet utilizes virtual
4 currency.

5 Q. Okay. So you became involved in March of 2016 after being
6 contacted by IRS Special Agent Donald Ellsworth?

7 A. Yes.

8 Q. And what did you do upon becoming involved?

9 A. So, Agent Ellsworth first, he spoke to me about -- about
10 what his IRS investigation's about, an individual that he
11 identified as Morpheus Titania -- well, which they later
12 identified as Thomas Costanzo. He informed me that
13 Mr. Costanzo was -- had met with prior undercover agents of the
14 IRS, and that they conducted cash for Bitcoin transactions that
15 they believed related to drug trafficking represented by the
16 undercover agents. From there, I -- I initiated my own
17 investigation. I wanted to verify this information, so I did
18 research on Morpheus Titania and Thomas Costanzo, and confirmed
19 that that was the same person.

20 Q. In researching Morpheus Titania, did you come across a
21 Bitcoin meet-up web page?

22 A. Yes.

23 Q. And was Morpheus Titania an organizer of the Bitcoin
24 meet-up?

25 A. Yes, he was.

1 Q. And did you attend a Bitcoin meet-up?

2 A. Yes. In March 2016, I attended a Bitcoin meet-up.

3 Q. I would like to show you what has been marked as
4 Exhibit 24. And that's on your screen only at this time.

5 Do you recognize what that is?

6 A. Yes, I do.

7 Q. Is this something that you reviewed after becoming involved
8 in the investigation of Morpheus Titania?

9 A. Yes, ma'am.

10 Q. And is that a true and accurate depiction of what you
11 reviewed?

12 A. Yes, it is.

13 MS. ESCALANTE: Your Honor, the government would move
14 to admit Exhibit 24.

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

16 THE COURT: Overruled. Exhibit 24 is admitted.

17 (Exhibit 24 is received into evidence.)

18 MS. ESCALANTE: Permission to publish, Your Honor.

19 THE COURT: You may publish it.

20 BY MS. ESCALANTE:

21 Q. Detective Martin, explain to the members of the jury what
22 this is.

23 A. So, this appears to be about a -- a user account under the
24 name Morpheus. It's on Arizona Bitcoin meet-up page, and it
25 lists him has an assistant organizer for meet-up events.

1 Q. Okay. What caught your attention as an investigator when
2 you were reviewing this page?

3 A. So, there were a couple things. First, it listed that
4 hometown was Tempe, so I knew he was in the area of Tempe where
5 he was represented to be by Agent Ellsworth. He had attended
6 several past meet-ups. It lists there 106 past meet-ups. And
7 specifically it shows a question: Are you new to Bitcoin? And
8 it says: Doing money trades? I know enough to be dangerous.

9 Q. Okay. After you reviewed this, did you attend a Bitcoin
10 meet-up?

11 A. Yes, I did.

12 Q. And approximately when was that?

13 A. I believe it was March 8th, 2016.

14 Q. And did you see the defendant at that meet-up?

15 A. No. Based on this information, I believed he might be
16 there. So for surveillance purposes, I attended, but I did not
17 see the defendant there.

18 Q. Okay. And after reviewing the Bitcoin meet-up and this
19 profile, did you ever go to localbitcoins.com?

20 A. Yes, I did.

21 Q. And why did you do that?

22 A. So, again, Agent Ellsworth represented that Mr. Costanzo
23 was advertising his -- his Bitcoin activity on LocalBitcoins,
24 so I wanted to independently confirm that and see if I could
25 locate him myself.

1 Q. And were you able to do so?

2 A. Yes.

3 Q. And how quickly did that happen?

4 A. Very quickly. I went to localbitcoins.com, I searched for
5 cash peer-to-peer Bitcoin exchangers in the Phoenix area, and
6 he was the first one to pop up on the list.

7 Q. Prior to reviewing or seeing his profile on the date that
8 you went, had you reviewed the profile that has already been
9 admitted into evidence and other agents discussed?

10 A. Yes.

11 Q. And was the profile you reviewed in, I believe it was,
12 September 2016 --

13 A. Yes.

14 Q. -- was it any different?

15 A. No -- well, it was slightly different. It looked like it
16 had been updated. But it was the same general information,
17 just with some more detail, I believe.

18 Q. Okay. I'm going to show you what's been marked as
19 Exhibit 74.

20 Do you recognize that?

21 A. Yes, I do.

22 Q. What is that?

23 A. That is the Bitcoin -- one of the Bitcoin advertisements on
24 LocalBitcoins for Morpheus Titania.

25 Q. And is that the one that you reviewed approximately in

1 September of 2016?

2 A. Yes. I can see a -- there is a timestamp at the top from
3 when I took that screenshot, which was was September 7th, I
4 believe, 2016.

5 Q. And is this a true and accurate depiction?

6 A. Yes, it is.

7 MS. ESCALANTE: Your Honor, the government would move
8 to admit Exhibit 74 into evidence.

9 MS. WEIDNER: No objection.

10 THE COURT: Exhibit 74 is admitted.

11 (Exhibit 74 is received into evidence.)

12 BY MS. ESCALANTE:

13 Q. Okay. Is there anything on the first page of that caught
14 your attention?

15 MS. ESCALANTE: Oh, permission to publish?

16 THE COURT: You may publish.

17 THE WITNESS: Yes. I noticed that the first page
18 lists the price he's charging in U.S. dollars per Bitcoin,
19 which I realized to be slightly above the market price, just
20 based on my own analysis. It was -- his feedback score is
21 100 percent, and it shows his trade limits to be between 12,000
22 and \$30,000 for the Scottsdale area.

23 BY MS. ESCALANTE:

24 Q. Was the feedback store significant to you?

25 A. Yes. Obviously for investigative purposes, it was

1 important that he have a good feedback score. We didn't want
2 him to be someone who might rip us off.

3 Q. Okay. And what do the trade limits signify to you?

4 A. So, going along with our money laundering investigation and
5 what was related to me by Agent Ellsworth, one of the goals of
6 the investigation was to see if trades were being conducted in
7 excess of \$10,000, which would require a reporting requirement.

8 Q. Okay. I'm going to scroll to the next page.

9 Did you review the terms of trade?

10 A. Yes, I did.

11 Q. And what caught your attention on these terms of trade?

12 A. It listed that he's available anytime. He can get Bitcoins
13 immediately and discreetly.

14 Q. What did that mean to you?

15 A. This really would mean anonymously, without anyone knowing
16 the transaction was occurring.

17 Q. All right. Did he list his phone number?

18 A. Yes. This one he has it listed alphanumerically and fully
19 written out. So it actually spells out 602, and then 431725.

20 Q. And where -- he lists all transactions are done, complete
21 anonymity. What does that signify to you?

22 A. That, again, signified to me that he was going to do
23 everything completely anonymous and wouldn't be filing any
24 paperwork on our transaction.

25 Q. And the statement that follows: The only -- only record of

1 the transaction is on the Blockchain. What does that mean?

2 A. Again, I felt that by this message, he's letting his
3 customers know that any transaction you do with him are going
4 to be anonymous and there won't be any record of them.

5 Q. Was it of any significance that he stated he likes working
6 with newbies?

7 A. Yes.

8 MS. WEIDNER: Objection. Speculation.

9 BY MS. ESCALANTE:

10 Q. As part of your investigation, what did that signify to
11 you?

12 THE COURT: I'll allow that with the specification.

13 THE WITNESS: So that signified that he's -- he's
14 trying to get new customers, he's -- he's looking for business,
15 even if you don't know how Blockchain works, he's looking for
16 people to seek him out and meet with.

17 MS. WEIDNER: Objection. Rule of completeness.

18 MS. ESCALANTE: I can complete the entire sentence,
19 Your Honor.

20 THE COURT: Okay. Go ahead.

21 BY MS. ESCALANTE:

22 Q. The statement is: I love working with newbies and pros.
23 Hit me up and you'll see why my customers come back to me again
24 and again. I tell you straight how it is.

25 What did that signify to you in your investigation,

1 Detective Martin?

2 A. That he would work with anyone, whether you didn't know
3 anything about Bitcoin or whether you were a pro. He wants --
4 he wants customers and he wants them to keep coming back.

5 Q. At the very bottom of the terms of trade is this statement:
6 Lately I also trade on Mycelium app under Morpheus T.

7 What is the Mycelium app, Detective Martin?

8 A. It's my understanding, Mycelium is a Bitcoin application
9 that you would download from the application store on an iPhone
10 or Android smartphone. It can contain a Bitcoin wallet so you
11 can conduct trades through that wallet, and it also has an
12 encrypted messaging application so you can securely communicate
13 back and forth while conducting transactions.

14 Q. Okay. Anywhere on the terms of trade, did Morpheus Titania
15 list his true legal name?

16 A. No.

17 Q. Prior to reviewing this profile, you had become aware of
18 his true name; correct?

19 A. Yes.

20 Q. So did it signify anything to you in your investigation
21 that his correct name was not on his LocalBitcoins profile?

22 A. It just showed me that he didn't want to be identified, he
23 wasn't -- he wasn't listing his true identity on there.

24 Q. Continuing with the terms of trade on this same exhibit,
25 just the next page, did -- was there a website listed?

1 A. Yes, www.titanians.org, slash, who-is-morpheus.

2 Q. And prior -- or as part of your investigation, did you go
3 to that website?

4 A. Yes, I did.

5 Q. Now, continuing with the profile on the -- on the following
6 page, still the same exhibit, what did this that's on the
7 screen mean to you?

8 A. He only listed his payment methods in USD. So I took that
9 to mean that he would meet, by these advertisements, in
10 Chandler, Avondale, and also in Scottsdale, through the other
11 advertisement, and that he could conduct trades as low as \$200
12 and up to -- well, \$30,000 from the first page, and on this
13 page, 11,999.

14 Q. Okay. And did those amounts signify anything in your
15 investigation?

16 A. Yes. They -- just like we confirmed on the first page,
17 they show that he's willing to do a transaction over \$10,000,
18 which was significant.

19 Q. Okay. Did it have any significance on suspicious activity
20 reporting?

21 A. Yes.

22 MS. WEIDNER: Objection. Foundation. And, Your
23 Honor, may we have a sidebar?

24 THE COURT: Yes.

25 (At sidebar on the record.)

1 MS. WEIDNER: This is Maria Weidner.

2 THE COURT: Wait. Wait until they're here.

3 MS. WEIDNER: Oh, sorry.

4 This is Maria Weidner. My concern here is that Chad
5 Martin is a fact witness. He has not been noticed as an
6 expert. The government noticed -- what's his name? --
7 Ellsworth as their expert, that he would be testing --
8 testifying about regulations, about -- that the government
9 believes are applicable in this case. And I understand that as
10 part of his testimony, Ms.-- you know, Agent -- Detective
11 Martin needed to testify about Bitcoin, but he is simply not, I
12 think, sufficiently -- whatever the -- he has not shown that he
13 knows the applicable financial regulations.

14 THE COURT: If you could keep --

15 MS. WEIDNER: Sorry. Sorry. Applicable financial
16 regulations. I can see Ellsworth would know that because he's
17 an IRS agent, but this is a TFO.

18 THE COURT: Well, do you want to lay a foundation?

19 MS. ESCALANTE: Yes, Your Honor, I can.

20 THE COURT: You don't need to with me, but --

21 MS. ESCALANTE: Yes.

22 THE COURT: Okay. So if you get foundation? So we'll
23 see if you can lay the foundation.

24 MS. WEIDNER: The concern is that this was -- this was
25 noticed as expert testimony as to Ellsworth, and yet --

1 THE COURT: Well --

2 MS. WEIDNER: -- it's --

3 THE COURT: -- are you going have him pronouncing what
4 the law is or what they investigated?

5 MS. ESCALANTE: What they investigated and why it was
6 significant to him, because they were investigating the lack of
7 reporting.

8 THE COURT: Yeah. Okay. So I'll allow you, if you
9 can lay a proper foundation, to elicit what this agent was
10 investigating, but you need to -- I do think you need to lay a
11 little bit of foundation of what he was investigating and why.

12 MS. ESCALANTE: Okay.

13 THE COURT: I do want to say one thing.

14 I know this may be silly and nitpicky, but I indicated
15 when I overruled the 403 and then directed the jury to
16 disregard something that you did something that was
17 inappropriate. I didn't mean that. I just meant it was not --
18 in my view, the evidentiary rules wouldn't allow it. I didn't
19 mean to suggest inappropriate conduct on your part, and I
20 wanted to make that clear.

21 MS. ESCALANTE: Thank you, Your Honor.

22 THE COURT: Okay.

23 MS. WEIDNER: Thank you.

24 (End of discussion at sidebar.)

25

1 BY MS. ESCALANTE:

2 Q. Detective Martin, as -- in your career, how long have
3 you -- or what's the approximation that you've dedicated as
4 part of your career to investigating financial crimes?

5 A. Oh, I'd say since I became a detective in 2012.

6 Q. And have you gone to trainings regarding financial crimes
7 and how to investigate them?

8 A. Yes, I have.

9 Q. Have you learned in those trainings about reporting
10 requirements?

11 A. Yes.

12 Q. And why are reporting requirements significant to financial
13 investigations?

14 A. Um --

15 Q. Or the investigations that you conduct.

16 A. So it's my understanding that there are federal regulations
17 related to reporting requirements. Typically in a bank
18 setting, a reporting requirement would be a -- cash
19 transactions over \$10,000, or any transaction of any amount
20 that's suspicious in nature.

21 Q. And have you learned this from your training --

22 A. Yes.

23 Q. -- as a officer?

24 And in this particular case, were you investigating
25 the lack of reporting?

1 A. Yes. In this -- in this case.

2 Q. And when you started this investigation, and that was one
3 of the items you were investigating, had you had all that
4 previous training regarding financial investigations?

5 A. Yes.

6 Q. So why are the amounts here, particularly the lower
7 amounts, significant to your investigation?

8 A. So, I recognize that although there are amounts listed that
9 would be, one, over \$10,000 and require a cash transaction
10 report if conducted with cash, there are also lower amounts
11 which, just as listed would not be illegal, but if they're
12 suspicious in nature they might also trigger a transaction
13 reporting requirement.

14 Q. Okay. Did you -- so you stated you went to -- strike that.

15 Did you review the confirmed transactions that were
16 associated with the defendant's local Bitcoin profile?

17 A. Yes. The -- like the reviews page.

18 Q. Okay. I would like to show you now what's been marked as
19 Exhibit 28. It will appear on your screen.

20 Can you tell me what that document is?

21 A. It appears to be a screenshot I took from September 7,
22 2016, related to trade activity and information on Morpheus
23 Titania.

24 Q. And, I'm sorry, you stated you took that screenshot?

25 A. Yes.

1 Q. And is that a true and accurate depiction of the screenshot
2 you took?

3 A. Yes, it is.

4 MS. ESCALANTE: Your Honor, the government would move
5 to admit Exhibit 28 into evidence.

6 MS. WEIDNER: Objection, Your Honor. Foundation,
7 hearsay.

8 THE COURT: I do think I need to have some foundation
9 on where this came from.

10 BY MS. ESCALANTE:

11 Q. Detective Martin, where did Exhibit 28 come from?

12 A. So, this is the page that comes up on localbitcoins.com. I
13 clicked on the Morpheus Titania user name, and this takes me to
14 his -- his information page.

15 Q. And is this the information you reviewed when you clicked
16 on that in September of 2016?

17 A. Yes, it is.

18 Q. And this is a screenshot taken by you?

19 A. Yes, it is.

20 Q. And did you review this to further your investigation in
21 this case?

22 A. Yes, I did.

23 Q. And is that a part of what you do in your investigations?

24 A. Yes, it is.

25 MS. ESCALANTE: Your Honor, the government would move

1 to admit Exhibit 28.

2 MS. WEIDNER: Objection, Your Honor. There is
3 insufficient information in this foundation to certify the
4 reliability of the information that seems to have been compiled
5 by the website.

6 THE COURT: Are you offering the information for the
7 truth of what it states?

8 MS. ESCALANTE: No, Your Honor. The government is
9 offering it to show the officer's state of mind in conducting
10 this investigation.

11 THE COURT: Well, I'll allow it to indicate what the
12 website says about Morpheus Titania.

13 (Exhibit 28 is received into evidence.)

14 BY MS. ESCALANTE:

15 Q. Okay. And to be fair, Detective Martin, you don't know if
16 localbitcoins.com runs a sort of quality assurance test on
17 these reviews and constantly updates or verifies them; correct?

18 A. No, I'm -- I'm not sure how LocalBitcoins processes their
19 information. This is just who I believe to be the stats listed
20 for that user name.

21 MS. ESCALANTE: Permission to publish, Your Honor?

22 THE COURT: You may.

23 BY MS. ESCALANTE:

24 Q. Detective Martin, why was it important for you to review
25 this page as part of your investigation?

1 A. So, when I initiated the investigation, Agent Ellsworth and
2 Agent Fleischmann both relayed that they had previously
3 reviewed Morpheus Titania's page and documented the trade
4 volume, which at that time I believe was 70 trades with
5 100 percent feedback. So I wanted to -- to revisit that same
6 information and see if the statistics had changed at all, to
7 see if this activity was still occurring.

8 Q. And had the statistics changed?

9 A. Yes, it showed -- it lists under trade volume, higher than
10 150 Bitcoin with 100-plus confirmed trades with 107 different
11 partners.

12 Q. And all of that information that's coming from the website.
13 No independent way for you to verify that; correct?

14 A. No. This -- this was just information obtained from
15 LocalBitcoins.

16 Q. What did it signify to you in your investigation?

17 A. It -- two things. It -- it confirmed the initial
18 information I'd learned from the IRS that he had -- he still
19 had a 100 percent feedback score; that he now had over 100-plus
20 trades so that his -- his trade volume had grown since the
21 initial IRS investigation. And also showed that he had been
22 online recently within 10 hours of when I took that screenshot.
23 And that his account had been active for more than three years.

24 Q. Did you go to the website that was listed on the
25 defendant's terms of trade?

1 A. Yes, the who-is-Morpheus page?

2 Q. Yes.

3 I am now going to show you what's been marked as
4 Exhibit 73.

5 A. Okay.

6 Q. Detective Martin, what is on the screen?

7 A. So this is the who-is-Morpheus page. This was a screenshot
8 I took in November 17th, 2016.

9 Q. Okay. And this -- you reviewed this on that date?

10 A. Yes, I did. I -- I reviewed it before that date. I
11 reviewed it on the -- on the same day I reviewed the
12 LocalBitcoins page. I just -- I didn't take this screenshot
13 until later.

14 Q. Did the -- did this website change from the first day you
15 reviewed it to when you took the screenshot?

16 A. No, I don't believe so. It was -- it was the same
17 information.

18 Q. Okay. And is it a true and accurate depiction of that
19 screenshot of the website?

20 A. Yes, it is. I believe this one may have been redacted
21 some. But the original screenshot is was the same.

22 Q. Okay. And why was it important for you to review this in
23 your investigation?

24 A. I want -- I wanted to compare it to what the IRS
25 investigation had already shown, and I wanted to see if the

1 information changed, and also read some of the statements
2 contained in this.

3 MS. ESCALANTE: Your Honor, the government would move
4 to admit Exhibit 73.

5 MS. WEIDNER: No objection.

6 THE COURT: Exhibit 73 is admitted.

7 (Exhibit 73 is received into evidence.)

8 MS. ESCALANTE: Permission to publish?

9 THE COURT: You may.

10 BY MS. ESCALANTE:

11 Q. Detective Martin, can you tell us what was significant to
12 you from this website in your investigation?

13 A. So, the part you have highlighted there, he talks about how
14 he used to have previous jobs, but now he says: I mostly sell
15 Bitcoin. The main reason being I don't need a license, bank or
16 permit to do it. All I need is a phone number. And that he
17 hasn't had a job since February 2014. And that he makes a
18 living selling Bitcoin.

19 Q. Okay. Now, did you eventually contact the defendant?

20 A. Yes, I did.

21 Q. And where did you contact him?

22 A. His phone number that was posted on localbitcoins.com, I
23 sent a text message to it.

24 Q. Okay. And were you able to compare that phone number with
25 the phone number where IRS undercover agents contacted the

1 defendant?

2 A. Yes, that was the same phone number.

3 Q. And I'm going to show you what's been marked as Exhibit 43.

4 Do you recognize that, Detective Martin?

5 A. Yes. That is a text message conversation that I had
6 with -- I have it listed as Morpheus on there, but it's
7 Mr. Costanzo -- from September 14th, 2016.

8 Q. And how was this created?

9 A. So, when I communicated with him, I sent him text messages
10 through my undercover cell phone, and I use a Google voice
11 phone number for that, for -- for undercover purposes. A way
12 to document those messages is to log in to the Google voice
13 website, you can actually copy those messages directly and
14 paste them into a Word document to save as evidence.

15 Q. And are these a true and accurate depiction of the text
16 message exchange you had with the defendant on September 14th,
17 2016?

18 A. Yes. They're -- they're listed just like they were in
19 Google voice.

20 Q. Okay.

21 MS. ESCALANTE: Your Honor, the government would move
22 to admit Exhibit 43.

23 MS. WEIDNER: No objection.

24 MS. ESCALANTE: Permission to publish, Your Honor.

25 THE COURT: Exhibit 43 is admitted. You may publish.

1 (Exhibit 43 is received into evidence.)

2 BY MS. ESCALANTE:

3 Q. Detective Martin, explain to the members of the jury about
4 these text message and the exchange that occurred.

5 A. So, on September 14th, this was the first time I contacted
6 Mr. Costanzo. Where it's listed as me, that's my phone, that's
7 how I am in my phone, and then Morpheus is how Mr. Costanzo was
8 saved in my contact list. I advised him that I found him on
9 LocalBitcoins, and I was looking to buy Bitcoin, and asked when
10 he was free to meet.

11 Q. And did he -- was he available to meet that day?

12 A. Yes. He asked what my name was. That was the only
13 question he asked. And what part of town I'm in. And we set
14 up a meeting for later that day.

15 Q. And did you meet the -- the very same day that you
16 contacted him?

17 A. Yes.

18 Q. And where did you meet?

19 A. We met at McDonald's in the Mesa Riverview.

20 Q. And how did the defendant arrive to that meeting?

21 A. He arrived on foot.

22 Q. And why is that?

23 A. He informed me that his car had broken down, and that he
24 had jogged to the meeting.

25 Q. How did he inform you that his car was broken down?

1 A. As -- as you can see, we already had the meeting
2 established via text. He called me, after I had already
3 arrived at McDonald's, and just advised me over the phone that,
4 hey, my car broke down, but I still want to do the deal. I'm
5 going to come to you on foot.

6 Q. Okay. Do you see the defendant in the courtroom here
7 today?

8 A. Yes, I do.

9 Q. Can you identify him and tell us where he is seated and
10 what he's wearing?

11 A. He is the gentleman to my left, your right, sitting in
12 between the two defense attorneys, black suit, and glasses on.

13 MS. ESCALANTE: Your Honor, may the record reflect
14 that Detective Martin has identified the defendant?

15 THE COURT: Yes.

16 BY MS. ESCALANTE:

17 Q. Okay. Describe how the meeting occurred, how -- how it
18 went from the beginning to the end.

19 A. Well, Mr. Costanzo arrived. He seemed eager to do the
20 deal. He seemed eager to explain what Bitcoin was. At that
21 point, I -- I already had an undercover identity, and I already
22 had an undercover persona that I was representing.

23 Q. Okay. And what were you wearing at that meeting?

24 A. Part of my undercover persona was to portray myself as a
25 drug dealer, so --

1 Q. But you didn't -- you didn't do that at this meeting;
2 right?

3 A. No, not at this meeting. This was just how I was dressed.

4 Q. Okay.

5 A. So I wanted to drop small hints throughout our first
6 meeting.

7 Q. And let me just fast-forward. How many meetings did you
8 have with the defendant?

9 A. We had five meetings.

10 Q. And at what meeting was it that you introduced that you
11 were a drug dealer?

12 A. Not until the third meeting.

13 Q. And why is that?

14 A. Based on my training and experience, it's -- it's not
15 common for someone involved in drug activity to walk up to
16 somebody and say, hey, I'm a drug dealer, the first time you
17 meet them. You need to build a rapport, you need to get to
18 know somebody, get an understanding for -- for who they are.

19 Q. Okay.

20 A. And if...

21 Q. And during your first two meetings, were you setting the
22 stage to do that introduction?

23 A. Yes.

24 Q. Approximately how much money were you wanting to exchange
25 during your first meeting?

1 A. This meeting was \$2,000.

2 Q. Okay. I'm now going to show you what's been marked as
3 Exhibit 41.

4 Do you recognize that?

5 A. Yes. That is the -- the undercover funds I obtained for
6 that transaction.

7 Q. And is that a true and accurate depiction of the funds that
8 you gave the defendant?

9 A. Yes, it is.

10 MS. ESCALANTE: Your Honor, the government would move
11 to admit Exhibit 41 into evidence.

12 MS. WEIDNER: No objection.

13 THE COURT: Exhibit 41 is admitted.

14 MS. ESCALANTE: Permission to publish, Your Honor.

15 THE COURT: You may.

16 (Exhibit 41 is received into evidence.)

17 BY MS. ESCALANTE:

18 Q. Detective Martin, how did you have this cash during the
19 meeting?

20 A. It was -- it was just stacked up in a large, folded bundle.

21 Q. And where did you have it prior to the defendant arriving?

22 A. In my pocket.

23 Q. Okay. And did you record the meeting?

24 A. Yes. It was -- it was audio and video recorded, and I also
25 had a transmitting device. The audio and transmitting device

1 were contained in the cell phone.

2 Q. Okay. And have you had the opportunity to review the audio
3 portion of those recordings and the transcripts prior to today?

4 A. Yes, I have.

5 Q. And were those portions a true and accurate depiction of
6 the audio recording that occurred on that day of the exchange?

7 A. Yes, they were.

8 MS. ESCALANTE: Your Honor, the government would move
9 to admit Exhibit 105 with subparts A through Q, and it would be
10 the same previous instruction as with audio and transcripts.

11 MS. WEIDNER: No objection.

12 THE COURT: All right. 105A through Q are admitted.

13 And again, ladies and gentlemen, what I've told you
14 before, what you hear is the evidence. The transcript of what
15 is said is merely for your assistance. But if it disagrees
16 with what you hear, what you hear is what you should credit.

17 MS. ESCALANTE: Your Honor, permission to publish or
18 play?

19 THE COURT: You may play it.

20 MS. ESCALANTE: Thank you.

21 Okay. We'll begin with 105A.

22 (Exhibit 105 is received into evidence.)

23 (Portion of audiotape played.)

24 BY MS. ESCALANTE:

25 Q. So Detective Martin, despite the car problems, defendant

1 still made it to the meeting.

2 A. Yes. He was eager. He showed up. He had ran there.

3 That's why he took that short pause at the beginning because he
4 was sweating from running there.

5 MS. ESCALANTE: Okay. Now we'll go to 105B.

6 (Portion of audiotape played.)

7 BY MS. ESCALANTE:

8 Q. What did the defendant refer to when he said: Honestly,
9 it's like drugs?

10 A. He says: It's like drugs for me, doing Bitcoin.

11 (Portion of audiotape played.)

12 BY MS. ESCALANTE:

13 Q. What significance did it have to you in your investigation
14 when he stated: It's like building a relationship.

15 A. I took that to mean that he wanted to get to know me, too.
16 He wanted to meet me in person and wanted me to get to know
17 him.

18 (Portion of audiotape played.)

19 MS. ESCALANTE: Okay.

20 We'll go to 105C.

21 (Portion of audiotape played.)

22 BY MS. ESCALANTE:

23 Q. Detective Martin, does Bitcoin weigh anything?

24 A. No. Bitcoin is digital. It can be held in your wallet.

25 Q. What role does a currency that is weightless and is digital

1 have on your types of investigations?

2 A. That was significant to me because I realized that if I'm
3 going to be attempting to conceal large amounts of cash, that's
4 quite hard to do. You have a big, bulky item of cash to try
5 and conceal or transport. Whereas he's explaining to me that
6 Bitcoin doesn't weigh anything. You could have a million
7 dollars sitting in your cell phone and no one would ever know.

8 Q. Okay.

9 (Portion of audiotape played.)

10 BY MS. ESCALANTE:

11 Q. Detective Martin, did you find the defendant by Googling
12 him on localbitcoins.com?

13 A. Yes.

14 (Portion of audiotape played.)

15 BY MS. ESCALANTE:

16 Q. Detective Martin, what did that final statement signify to
17 you, that the government system is stacked against us and wants
18 to make everything harder?

19 MS. WEIDNER: Objection. Calls for speculation.

20 THE COURT: I believe she asked what it meant to him,
21 so I'll allow that question.

22 THE WITNESS: Yeah. What I understood that to mean
23 is, I mean, we had just met, we're new to this conversation.
24 And the first thing he's getting out is he's telling me -- he's
25 explaining his side for the government, how he thinks the

1 government is trying to makes thing harder.

2 Q. And he also referenced the banking system. What
3 significance did that have to you?

4 A. So, I -- I recognized that, and I understood that he had a
5 dislike for the banking system. And based on my prior
6 investigation related to his accounts, know that he didn't use
7 bank accounts, and that he -- he was trying to avoid the
8 government and banking.

9 Q. Okay.

10 MS. ESCALANTE: Next we'll go to 105D.

11 (Portion of audiotape played.)

12 BY MS. ESCALANTE:

13 Q. Detective Martin, why did you introduce that portion of the
14 bank account in the conversation?

15 A. I -- I wanted to see how he would answer. I let him know
16 right upfront that I don't want to use a bank account and I
17 don't want to be linked to anything the government could track.

18 Q. Did the defendant end or cease any communication or
19 interaction with you when you stated that?

20 A. No.

21 THE COURT REPORTER: Counsel, I'm sorry. I lost you.

22 MS. ESCALANTE: Okay.

23 BY MS. ESCALANTE:

24 Q. Did the government --

25 THE COURT REPORTER: "The defendant."

1 BY MS. ESCALANTE:

2 Q. Did the defendant end or cease any communication with you
3 when you introduced that notion?

4 A. No, he did not stop communicating with me.

5 (Portion of audiotape played.)

6 BY MS. ESCALANTE:

7 Q. Detective Martin, what did that signify to you: I don't
8 buy anything off the exchange?

9 A. So, I was already aware how commercial exchanges operate,
10 how they -- they typically follow government regulations and
11 know-your-customer rules.

12 MS. WEIDNER: Objection. Foundation.

13 THE COURT: Well, if the witness is going to testify
14 how exchanges work, then you are going to have to lay
15 foundation.

16 MS. ESCALANTE: Okay.

17 BY MS. ESCALANTE:

18 Q. Detective Martin, have you learned about commercial
19 exchanges in your trainings that you've attended for virtual
20 currency?

21 A. Yes, I have.

22 Q. Have you set up any accounts with any commercial exchanges?

23 A. Yes, I have an undercover account at local -- or not
24 LocalBitcoins -- well, I do at LocalBitcoins -- but also at
25 Coinbase.

1 Q. Okay. And based on your actual experience with a
2 commercial exchange and your training, have you developed an
3 understanding as to how commercial exchanges operate?

4 A. Yes. Based on setting up those accounts, I've learned
5 what -- what documents are required to -- to establish an
6 account.

7 Q. Okay. And based on the -- I believe you said it was nine
8 or 10 investigations involving is virtual currencies, have you
9 been able to distinguish or find differences between commercial
10 exchanges and peer-to-peer exchanges?

11 A. Yes.

12 Q. Okay.

13 MS. ESCALANTE: Is that sufficient --

14 MS. WEIDNER: Objection. Cumulative.

15 THE COURT: It's already been testified to, so I'm
16 going to leave it on the record.

17 MS. ESCALANTE: Is that sufficient foundation, Your
18 Honor?

19 THE COURT: Yes.

20 BY MS. ESCALANTE:

21 Q. So Detective Martin, what did it signify to you when it was
22 stated --

23 MS. WEIDNER: Your Honor, objection. Cumulative. We
24 request a sidebar. This has already been testified to by other
25 witnesses.

1 THE COURT: If you want a sidebar, then don't give me
2 speaking objections. Okay?

3 MS. WEIDNER: Apologize, Your Honor.

4 (At sidebar on the record.)

5 MS. WEIDNER: This is Maria Weidner. Your Honor, the
6 government introduced this initially through SA Fleischmann.
7 We did not object because the foundation -- the foundation --
8 this case needed to be laid. However --

9 THE COURT: So what are we specifically objecting
10 to --

11 MS. WEIDNER: Objecting to --

12 THE COURT: -- how an exchange works?

13 MS. WEIDNER: -- test -- offering the testimony about
14 it again. This is -- Agent Fleischmann provided this.
15 Supposedly Agent Ellsworth is going to prove it again, and now
16 Agent Martin is going to provide it in the middle.

17 MS. ESCALANTE: If I may, Your Honor, the only reason
18 it came up was due to the response of lack of foundation. I
19 just wanted to ask Detective Martin what it signified to him in
20 his interaction with the defendant. And I believe that because
21 this is a new undercover agent and he's testifying to his
22 specific experience with the defendant --

23 THE COURT: Well --

24 MS. ESCALANTE: -- overcomes the cumulative objection.

25 THE COURT: -- let me just say that it seems to me

1 that the whole thing has gone a little awry here because you
2 asked what it signified to him and he started being
3 nonresponsive. But that wasn't the objection that you have
4 made though. You made the lack of foundation to what he
5 started to testifying to.

6 Maybe we can avoid all of this by simply asking what,
7 did this signify to you, and see if he can be responsive to
8 what it signified to him as opposed to trying to talk about all
9 kinds of other stuff. I'm not yet going to grant a cumulative
10 objection, but I'm going to get there. So if you're going to
11 introduce all this stuff through Agent Ellsworth, if you want
12 me to grant the cumulative objection when he's testifying, if
13 you want to avoid that, then let's not be going through --
14 tracking through all that here, if you're going to -- if it's
15 your intention to introduce this through Ellsworth.

16 MS. ESCALANTE: Okay.

17 THE COURT: All right. Any unclarity about any of
18 that?

19 (Pause in proceedings.)

20 THE COURT: You're the one that has to talk to me.

21 MS. ESCALANTE: No, no.

22 THE COURT: All right.

23 (End of discussion at sidebar.)

24 BY MS. ESCALANTE:

25 Q. Okay. Detective Martin, so the defendant stated he does

1 not purchase off an exchange; correct?

2 A. Yes.

3 (Portion of audiotape played.)

4 BY MS. ESCALANTE:

5 Q. Detective Martin, what was the amount that the defendant
6 stated he had done with this buddy of his?

7 A. A quarter of a million dollars.

8 (Portion of audiotape played.)

9 BY MS. ESCALANTE:

10 Q. Detective Martin, what was your understanding as to where
11 the defendant was purchasing his Bitcoin?

12 A. It was my understanding that he had a Bitcoin source who
13 was not a Bitcoin exchange, but another person.

14 Q. Okay. And what did it signify to you in your investigation
15 when he talked about, you know, you have to get to know another
16 person before you start moving big quantities of money?

17 A. I understood that to mean he wanted to know what this money
18 was for so he could start working with me.

19 Q. Okay.

20 (Portion of audiotape played.)

21 BY MS. ESCALANTE:

22 Q. Detective Martin, the defendant said that there is no
23 customer service, that no one takes a part of it.

24 Did he charge you a fee for this transaction?

25 A. Yes, he did.

1 Q. And approximately what percentage was that?

2 A. 10 percent for this deal.

3 MS. ESCALANTE: Okay.

4 We'll go to 105E.

5 (Portion of audiotape played.)

6 BY MS. ESCALANTE:

7 Q. Who was the "evil organization" that the defendant referred
8 to?

9 A. He said the Federal Reserve.

10 MS. ESCALANTE: I'm going to go to 105F.

11 (Portion of audiotape played.)

12 BY MS. ESCALANTE:

13 Q. Detective Martin, what is the defendant doing when he's
14 telling you "this is not money"?

15 A. He was showing me a -- I believe it was a hundred-dollar
16 bill.

17 Q. Okay.

18 (Portion of audiotape played.)

19 BY MS. ESCALANTE:

20 Q. Detective Martin, what is he doing at that point?

21 A. So he was wearing a -- a fanny pack around his waist, and
22 he pull out a silver coin and showed me, this is what a dollar
23 is and explained how much it weighed and that that's a true
24 dollar.

25 Q. I'm now going to show you what has been marked as

1 Exhibit 3.

2 One second. I'm sorry. I think it's Exhibit 11.

3 Nope.

4 Okay. Let's just continue with 105G.

5 COURTROOM DEPUTY: Counsel, give me just one moment.

6 Sorry.

7 (Portion of audiotape played.)

8 BY MS. ESCALANTE:

9 Q. Detective Martin, what is all this conversation about, the
10 numbers and SHA-256?

11 A. I believe he's explaining --

12 MS. WEIDNER: Objection. Improper expert testimony.

13 MS. ESCALANTE: I can --

14 THE COURT: I'll allow it.

15 THE WITNESS: It's my belief he was just explaining to
16 me the mechanics of how Bitcoin transactions operate with the
17 encryption algorithms and the verification process.

18 MS. ESCALANTE: Okay.

19 (Portion of audiotape played.)

20 BY MS. ESCALANTE:

21 Q. Detective Martin, what do you mean by: How does this work,
22 the tracking of it?

23 A. So I was asking him if Bitcoin is traceable, if it could be
24 tracked.

25 (Portion of audiotape played.)

1 BY MS. ESCALANTE:

2 Q. And what was your purpose in asking if the government could
3 track that?

4 A. I was slowly dropping hints that I didn't want to be
5 tracked by the government.

6 (Portion of audiotape played.)

7 BY MS. ESCALANTE:

8 Q. Detective Martin, in your virtual currency investigations,
9 does it take is a lot of energy to track Bitcoin?

10 A. I'm not aware of a way to track it unless you have one
11 address identified. So I'm not sure what he means by "the
12 energy" there.

13 Q. Is it difficult?

14 A. Yes.

15 (Portion of audiotape played.)

16 BY MS. ESCALANTE:

17 Q. What did you understand the defendant was referring to when
18 he said there are ways to make it more obscure?

19 A. I -- I understood he was explaining to me how -- how to
20 make it more obscure, how to conceal it from the government.

21 (Portion of audiotape played.)

22 BY MS. ESCALANTE:

23 Q. Okay. Now I'm going to show you what's marked as
24 Exhibit 33.

25 Have you seen that picture before?

1 A. Yes, I have.

2 Q. And do you see a coin on the bottom right-hand picture?

3 A. Yes, I do.

4 Q. Have you seen that coin before?

5 A. Yes. That's the silver coin he showed me when he was
6 explaining to me what a true dollar is in silver.

7 Q. Okay.

8 MS. ESCALANTE: Your Honor, if I could use this as a
9 demonstrative aid to show the jury.

10 THE COURT: Any objection?

11 MS. WEIDNER: One moment, Your Honor.

12 (Pause in proceedings.)

13 MS. WEIDNER: Your Honor, no objection.

14 THE COURT: You may do so.

15 MS. ESCALANTE: Permission to publish, Your Honor.

16 THE COURT: You may.

17 BY MS. ESCALANTE:

18 Q. Detective Martin, can you identify for the jury which is
19 the coin that the defendant showed you?

20 A. Yes. I can highlight on it on the screen, if you like.

21 Q. Sure.

22 A. (Witness complies.)

23 Q. Was it one of those?

24 A. Yes, the -- yeah, the silver coin right there.

25 Q. Okay.

1 MS. ESCALANTE: Okay. Now we'll go to 105H.

2 (Portion of audio played.)

3 BY MS. ESCALANTE:

4 Q. Detective Martin, what are you doing at this point in the
5 conversation?

6 A. I'm setting the foundation for my undercover role. I'm
7 explaining to him that I transport large amounts of currency.
8 I didn't tell him exactly what it was for, but I told him that
9 I transport large currency amounts over state lines.

10 Q. In your training and experience and years as a police
11 officer, do the police just stop and take people's money when
12 it's in excess of \$20,000 or large amounts?

13 A. No.

14 Q. When is money seized?

15 A. There would have to be probable cause from a criminal
16 violation or civil violation. Okay.

17 (Portion of audiotape played.)

18 MS. ESCALANTE: We'll go to 105I.

19 (Portion of audiotape played.)

20 BY MS. ESCALANTE:

21 Q. Detective Martin, what did you understand that statement by
22 the defendant to mean: You know --

23 MS. WEIDNER: Objection, Your Honor. Speculation.

24 THE COURT: Well, he's only asked for his
25 understanding, so I'll allow him to testify.

1 MS. ESCALANTE: Thank you, Your Honor.

2 BY MS. ESCALANTE:

3 Q. The statement where he is says: But then what happens is,
4 you know, you do \$100,000 together, you're going to talk.

5 MS. WEIDNER: Objection, Your Honor. Foundation.

6 THE COURT: Overruled.

7 BY MS. ESCALANTE:

8 Q. What did you understand that to mean, Detective Martin?

9 A. So, it's my understanding that while I wasn't telling him
10 exactly what the money was from, I was starting to lay some
11 stronger hints. And he said: Over time, we do more deals, we
12 get to know each other, he'll get to know what the source of my
13 money is.

14 Q. And when you started laying those hints, did he ever cease
15 conversation with you?

16 A. No.

17 (Portion of audiotape played.)

18 BY MS. ESCALANTE:

19 Q. Detective Martin, you were present during the testimony of
20 IRS Special Agent Sergei Kushner; correct?

21 A. Yes, I was.

22 Q. And did he portray himself as a Russian drug dealer?

23 A. Yes, he did.

24 Q. And during his testimony, did you hear him state that
25 during his undercover transactions, he stated to the defendant

1 that he was going to send stuff in car parts to Russia?

2 A. Yes.

3 MS. WEIDNER: Restating testimony. Objection.

4 THE COURT: Ladies and gentlemen, you may remember
5 that at the start of this case I told you you would have to
6 remember what the testimony was and what the witnesses said,
7 and whether or not to believe it or not to believe it.

8 Occasionally we have an objection where the assertion is that
9 the testimony has been misstated. When that is the case,
10 except for in rare circumstances, I instruct the jury, as I am
11 instructing you now, which is I instruct you at the start of
12 the case to pay as close attention as you could to the
13 evidence. And so you need to decide whether the question
14 misstates the evidence or not.

15 With that said, I am going to overrule the objection
16 and allow the question to be asked.

17 MS. WEIDNER: Apologies. Just to clarify. The
18 objection was not a misstatement, but rather a restatement of
19 already presented evidence and, thus, it would be cumulative.

20 THE COURT: Overruled.

21 BY MS. ESCALANTE:

22 Q. Detective Martin, who did you believe the defendant to be
23 referring to in this portion of the conversation?

24 A. I believed he was referring to IRS Agent Sergei Kushner.

25 (Portion of audiotape played.)

1 MS. ESCALANTE: We will now go to 105J.

2 THE COURT: I am -- we are approaching the end of the
3 day. I don't know if this is a good time to stop, but if not
4 here, in this next five minutes or so, we're going to need to
5 stop.

6 MS. ESCALANTE: We can stop here, Your Honor, because
7 there's still three or four more clips to this audio portion
8 still.

9 THE COURT: All right.

10 I do thank you for your attention and diligence this
11 week. I do want to remind you that you shouldn't come in
12 tomorrow, and you should not come in on Monday. But on Tuesday
13 morning, nine o'clock, we will resume the testimony in this
14 case.

15 Be careful over the weekend. I don't like to lose
16 jurors. And so, be careful, have a nice weekend, enjoy the
17 weather. And remember the admonitions, and we will see you on
18 Tuesday.

19 COURTROOM DEPUTY: All rise.

20 (Jury leaves the courtroom at 4:58 p.m.)

21 THE COURT: You may sit down.

22 Do we need anything done before the weekend?

23 MR. RESTAINO: Judge, if I could just ask a couple
24 questions on jury instructions.

25 First of all, the forfeiture instruction, we have

1 circulated that to the defense. I'm hoping that we can file
2 something that is either joint or at least as close as we can
3 get to joint on Monday. Is that okay for the Court?

4 THE COURT: Well, I suppose I ought to ask, where are
5 you in your case?

6 MR. RESTAINO: Oh, sure, Judge. We're -- we're on
7 track. Officer Martin is going to be on for a while, I
8 anticipate.

9 After him, we have a couple of smaller surveillance
10 agent testimony blocks, and then we'll be finishing up with
11 Agent Ellsworth. So my guess is late Tuesday afternoon or more
12 likely Wednesday before lunch, I think we are likely resting.

13 THE COURT: Does the defense have any idea where it's
14 at, what kind of length of time it will take for its case?

15 MS. WEIDNER: Your Honor, I would say no more than
16 half a day.

17 THE COURT: So that's going to leave us with all the
18 testimony done next Thursday. Did you say no more than half of
19 the day on Wednesday?

20 MS. WEIDNER: I -- Your Honor --

21 THE COURT: You said -- I was -- I actually wasn't
22 making it clear. I was talking to Mr. Restaino.

23 MS. WEIDNER: Oh, I'm sorry.

24 THE COURT: So you'll be done when?

25 MR. RESTAINO: My best guess at this point would be by

1 noon on Wednesday, but I -- I confess I can't be sure of the
2 length of Agent Ellsworth's expert testimony through Agent --
3 through my colleague, Mr. Binford, or the length of the cross.
4 But I'm guessing mid day or early afternoon on Wednesday we
5 would be finished.

6 THE COURT: All right. So by the end of the day
7 Wednesday, and then we could do closing arguments in the
8 morning on Thursday, is what you're thinking?

9 MR. RESTAINO: Or possibly drag into the afternoon on
10 Thursday, depending how quickly we get done with our case in
11 chief.

12 THE COURT: Well, I haven't gotten to the point yet --
13 I will say, I'm making the observation -- I haven't gotten to
14 the point yet of granting a cumulative testimony, and
15 sometimes -- but I do think at a certain level the jury is
16 starting to understand what Bitcoin is, and so maybe we can
17 speed through a lot of that.

18 MR. RESTAINO: The transcripts are, of course,
19 difficult, the audio difficult to speed through, but I think
20 you've given us some good things to think about this weekend,
21 Judge, to see if we can retool a little bit.

22 THE COURT: All right.

23 Anything, Ms. Weidner?

24 MS. WEIDNER: Nothing further, Your Honor.

25 THE COURT: We'll see you Tuesday morning.

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(Proceedings in recess at 5:00 p.m.)

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C E R T I F I C A T E

I, CHARLOTTE A. POWERS, do hereby certify that I am
duly appointed and qualified to act as Official Court Reporter
for the United States District Court for the District of
Arizona.

I FURTHER CERTIFY that the foregoing pages constitute
a full, true, and accurate transcript of all of that portion of
the proceedings contained herein, had in the above-entitled
cause on the date specified therein, and that said transcript
was prepared under my direction and control.

DATED at Phoenix, Arizona, this 16th day of May, 2018.

s/Charlotte A. Powers
Charlotte A. Powers, RMR, FCRR