UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 21 Cr. 746 (MKV)

ADEDAYO ILORI,

Defendant. Jury Trial
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New York, N.Y.
October 26, 2022
10:16 a.m.

Before:

HON. MARY KAY VYSKOCIL,

District Judge

APPEARANCES

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York
BY: JULIANA N. MURRAY, ESQ.
DAVID R. FELTON, ESQ.
Assistant United States Attorneys

BRILL LEGAL GROUP, P.C.
Attorneys for Defendant
BY: PETER E. BRILL, ESQ.

ALSO PRESENT: ISABEL LOFTUS, Paralegal Specialist, USAO

(Trial resumed; case re-called)

THE DEPUTY CLERK: Good morning, your Honor.

THE COURT: Good morning, Ms. Dempsey. Please be seated, everyone.

Good morning to our court reporter. Thank you for being here.

THE REPORTER: Good morning.

THE DEPUTY CLERK: Starting with the government, please state your name for the record.

MS. MURRAY: Good morning, your Honor. Juliana Murray and David Felton on behalf of the United States, joined by paralegal specialist Isabel Loftus.

THE COURT: All right. Good morning to all of you.

MR. BRILL: Good morning, your Honor. Peter Brill for Mr. Ilori, who is present.

THE COURT: Good morning, Mr. Brill, and good morning, Mr. Ilori.

THE DEFENDANT: Good morning.

THE COURT: All right. Mr. Brill, I understand there was something you wanted to raise with the Court before we have the jurors join us.

MR. BRILL: Yes. Thank you, your Honor.

Mr. Ilori informed me this morning that at lunch yesterday--I believe meals are sent from the jail--he was provided with some crackers, some peanut butter, a very small bag of pretzels, and that was all for lunch. And when he got back to the jail -- as we discussed last week, they still have these manpower and COVID issues where they're locked down, so by the time he got back, he got pretty much the exact same thing for dinner. Not sure how to address that. I know they had some food issues in the past with MDC, but I'm not sure that's sustainable. And Mr. Ilori informs me that that's -- he's been told that they're locked down at least for the rest of the week.

THE COURT: Okay. So I'm not sure what the solution is either. I mean, one thought that occurs to me is, I guess you could perhaps bring lunch for him, but you might have to clear that with the Marshals. Do we have Marshals here today?

THE MARSHAL: Yes, your Honor.

THE COURT: Is that acceptable or do you not know?

THE MARSHAL: That's fine.

MR. BRILL: And it would have to be downstairs. I'd have to get it, I suppose bring it to the cell. Again, I've never done that before either, your Honor.

THE COURT: I'm just trying to be creative here.

MR. BRILL: No, I get it. What I wound up doing yesterday is just going over to Foley, there's some premade sandwiches in the case, and there's not much there either because they didn't have someone manning the grill, I guess because --

THE COURT: There's Civic Deli right around the corner.

MR. BRILL: I know one of the delis just went out of business. I don't know what's still open.

THE COURT: There is one. Civic Deli on Worth Street. Just go buy a sandwich. I mean, really.

MR. BRILL: I guess we'd have to check if they would let me go in to the Marshals downstairs.

THE COURT: I just asked the Marshals and they said they didn't think it's a problem.

MR. BRILL: I can try.

THE COURT: And I will reach out to the contact that we have at the jail and just tell them that Mr. Ilori is on trial and it's just not acceptable for him not to get adequate food, all right? I will do that when we adjourn for the lunch break today.

MR. BRILL: Thank you, your Honor.

THE COURT: Okay? All right. Anything else we should talk about?

MS. MURRAY: Nothing from the government, your Honor.

MR. BRILL: No, your Honor.

THE COURT: All right. Ms. Dempsey will bring in our jurors then, please.

I do intend to say to the jurors, by the way, that this just isn't acceptable for them to be this late. We knew the one juror had a medical appointment. It was not that juror that's holding us up. I hope it doesn't represent what will be going forward.

(Jury present)

THE COURT: Jurors, you may be seated. We're standing out of respect for you.

Please be seated, everyone.

All right. Good morning, everyone. Thank you very much for being here. I just want to say a word or two.

I'm not going to belabor the point, but we are roughly 20 minutes past the start time that we had talked about yesterday. We knew we'd have to be a little bit late because of something that we talked about during selection of the jury, and that's why we started or slated a 10:00 start time, but by being late like this, you are risking whether we're going to finish on the timetable that I told everybody, and frankly, it's disrespectful to all the parties that are involved here--to the Court, I have other matters that are scheduled; to our court reporter, who's trying to juggle multiple different responsibilities; and most importantly, to your fellow jurors. So please, I have to ask you, going forward, to try to stick to the timetables that we talked about, all right? I understand things sometimes happen and there are unavoidable things. We did have one person call, and so I understand sometimes things happen. But please, I would ask for your diligence in being here on time. Okay?

All right. With that, we're ready to begin the evidence in this case. Does the government have its first witness?

MS. MURRAY: Yes, your Honor. The government is going to begin by offering stipulations between the parties.

THE COURT: Okay. And as the jurors will recall, I did tell you yesterday that a stipulation is an agreement between both sides, both parties, as to whatever it is that's contained in that stipulation. It is evidence in this case, and the parties have agreed that it is accurate and factual.

MS. MURRAY: Thank you, your Honor.

First, this is marked for identification as Government Exhibit 1.

It is hereby stipulated and agreed by and between the United States of America, by Damian Williams, United States Attorney for the Southern District of New York, Juliana N. Murray and David R. Felton, assistant United States attorneys, and Adedayo Ilori, by his attorney Peter Brill, that:

If called as a witness at trial, a representative of each of the following producing banks ("the banks") would testify that the following exhibits consist of true and accurate copies of records of the banks, the originals of which were made at or near the time by, or from information transmitted by, a person with knowledge, that they were kept in the course of a regularly conducted business activity of the banks, it being the regular practice of that business activity to make such records. Accordingly, the following exhibits meet the requirements of Federal Rules of Evidence 803(6) and 902(11):

For bank Capital One, N.A. ("Capital One"), Government Exhibits 101, 102, 154, and 155;

For bank JPMorgan Chase Bank, N.A. ("Chase"), Government Exhibits 111-117, 158, 803, and 804;

For Citibank N.A. ("Citibank"), Government Exhibit 121;

For HSBC Bank USA, N.A. ("HSBC"), Government Exhibits 131-133;

For Manufacturers & Traders Trust Company ("M&T") Government Exhibits 141, 156, and 157;

For Cross River Bank ("Cross River"), Government Exhibits 150 and 151;

For Customers Bank ("Customers"), Government Exhibits 152 and 153.

If called as a witness at trial, representatives of the banks would testify that each bank--Capital One, Chase, Citibank, HSBC, M&T, Cross River, and Customers--is insured by the Federal Deposit Insurance Corporation ("FDIC").

If called as a witness at trial, representatives of the banks would testify that Government Exhibits 101, 102, 111-117, 121, 131-133, 141, 150-158, 803, and 804 were executed using interstate wires that passed through the Southern District of New York.

If called as a witness at trial, a representative of Cross River would testify that Government Exhibits 150 and 151 consist of the approved loan, loan application, and supporting documents for a Paycheck Protection Program ("PPP") loan in the name of Twinway Air Charter and Nathanal Salnick.

If called as a witness at trial, a representative of Customers would testify that Government Exhibits 152 and 153 consist of the approved loan, loan application, and supporting documents for a PPP loan in the name of M2 Goldjet, LLC, and Christopher Potash.

If called as a witness at trial, a representative of Capital One would testify that Government Exhibits 154 and 155 consist of the approved loan, loan application, and supporting documents for a PPP loan in the name of BRS Consulting Corp. and Jonathan Herttua.

If called as a witness at trial, a representative of M&T would testify that Government Exhibits 141, 156, and 157 consist of the loan application, supporting documents, and risk review records for a PPP loan in the name of Appserd, Inc., and Jonathan Herttua.

If called as a witness at trial, a representative of Chase would testify that Government Exhibit 158 consists of the loan application and supporting documents for a PPP loan in the name of Appsensible, LLC, and Jonathan Herttua.

It is further stipulated and agreed that this stipulation, which is marked as Government Exhibit 1, and Government Exhibits 101, 102, 111-117, 121, 131-133, 141, 150-158, 803, and 804 may be received into evidence as Government Exhibits at trial.

Your Honor, pursuant to the stipulation, the government offers those exhibits as evidence.

THE COURT: And are you offering the stipulation as well?

MS. MURRAY: Yes, your Honor, and that's Government Exhibit 1.

THE COURT: All right. So the stipulation itself, which is Government Exhibit 1, is now in evidence, meaning the facts that the parties stipulated to in the stipulation are evidence and are admitted as being true. In addition, each of the exhibits referenced in the final paragraph of the stipulation are received into evidence and may be considered by you as evidence in this case.

(Government's Exhibits 1, 101, 102, 111-117, 121, 131-133, 141, 150-158, 803, and 804 received in evidence)

MS. MURRAY: Thank you, your Honor.

THE COURT: Are you displaying this?

MS. MURRAY: I don't believe we published it to the jury yet, just to the parties -- or the attorneys and the Court.

Your Honor, we would offer another stipulation between the parties. This is marked for identification as Government Exhibit 2.

Government Exhibit 2 reads:

It is hereby stipulated and agreed by and between the United States of America, by Damian Williams, United States Attorney for the Southern District of New York, Juliana N. Murray and David R. Felton, assistant United States attorneys, and Adedayo Ilori, by his attorney Peter Brill, that:

If called as a witness at trial, a representative of each of the following producing institutions ("the institutions") would testify that the following exhibits consist of true and accurate copies of records of the institutions, the originals of which were made at or near the time by, or from information transmitted by, a person with knowledge that they were kept in the course of a regularly conducted business activity of the institutions, it being the regular practice of that business activity to make such records. Accordingly, the following exhibits meet the requirements of Federal Rules of Evidence 803(6) and 902(11):

And I will read the institution and then the corresponding Government Exhibit.

For Apple, Inc., Government Exhibits 201-203;

For AT&T Corporation, Government Exhibits 211-213;

For Avis Budget Group, Government Exhibits 221-228;

For Charles Schwab & Co., Inc., Government Exhibits 231 through 234;

For Charter Communications, Government Exhibit 241;

For Coinbase, Inc., Government Exhibits 251-253;

For Enterprise Holding, Inc., Government Exhibits 261-264;

For Gemini Trust Company, LLC, Government Exhibits 271-274;

For ManageGo, LLC, Government Exhibits 301-328;

For Mercedes-Benz, Government Exhibit 331;

For MySpace NYC Real Estate, Government Exhibits 341-344;

For Robinhood, Government Exhibits 351-354;

For TD Ameritrade, Government Exhibits 361 and 362;

For T-Mobile Inc., US, Government Exhibits 371-399;

For Verizon Communications, Government Exhibits 401 and 402;

And for Google, Government Exhibits 410-434.

It is further stipulated and agreed that this stipulation, which is marked as Government Exhibit 2, and Government Exhibits 201-203, 211-213, 221-228, 231-234, 241, 251-253, 261-264, 271-274, 301-328, 331, 341-344, 351-354, 361, 362, 371-399, 401, 402, and 410-434 may be received into evidence as Government Exhibits at trial.

Your Honor, at this time the government offers this stipulation, Government Exhibit 2, and the exhibits I just cited.

THE COURT: All right. Government Exhibit 2, which is the stipulation, is received in evidence, as are all of the exhibits listed and stipulated to therein.

(Government's Exhibits 2, 201-203, 211-213, 221-228, 231-234, 241, 251-253, 261-264, 271-274, 301-328, 331, 341-344, 351-354, 361, 362, 371-399, 401, 402, and 410-434 received in evidence)

MS. MURRAY: Thank you, your Honor.

I have one more stipulation at this time between the parties I would like to offer. This is Government Exhibit 3. Government Exhibit 3 reads:

It is hereby stipulated and agreed by and between the United States of America, by Damian Williams, United States Attorney for the Southern District of New York, Juliana N. Murray and David R. Felton, assistant United States attorneys, and Adedayo Ilori, by his attorney Peter Brill, that if called as a witness at trial, a representative of United States Small Business Administration ("SBA") would testify that Government Exhibits 160-168 consist of true and accurate copies of records of the SBA, the originals of which were made at or near the time by, or from information transmitted by, a person with knowledge, that they were kept in the course of a regularly conducted business activity of the SBA, it being the regular practice of that activity to make such records. Accordingly, these exhibits meet the requirements of Federal Rules of Evidence 803(6) and 902(1).

It is further stipulated and agreed that this stipulation, which is Government Exhibit 3, and Government Exhibits 160-168 may be received into evidence as Government Exhibits at trial.

Your Honor, at this time the government offers Government Exhibit 3, which is the stipulation, and Government Exhibits 160-168.

THE COURT: All right. Government Exhibit 3 is received in evidence, as are Exhibits 160-168.

(Government's Exhibits 3, 160-168 received in evidence)

MS. MURRAY: Thank you, your Honor.

The government at this time would call Gerald Hanson.

THE COURT: Good morning, Mr. Hanson. Would you please take the witness stand here and remain standing.

Thank you. Good morning, sir.

THE WITNESS: Good morning.

THE DEPUTY CLERK: Good morning. Please raise your right hand.

(Witness sworn)

THE DEPUTY CLERK: Please state and spell your name for the record.

THE WITNESS: Gerald, G-E-R-A-L-D, M, Hanson. H-A-N-S-O-N.

THE DEPUTY CLERK: Thank you. Please be seated.

THE COURT: All right. Sir, good morning. You have a microphone there. If you would, please make sure you speak into the microphone so that our jurors who are seated to your left can hear you.

THE WITNESS: All right.

GERALD M. HANSON,

called as a witness by the Government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FELTON:

Q. Good morning, Mr. Hanson.

A. Good morning.

Q. How old are you?

A. 66.

Q. Where do you currently live?

A. I live in York, South Carolina.

Q. Who do you live with?

A. My wife.

Q. How long have you been married?

A. 40 years, sir.

Q. Do you have any children?
A. Yes, I have two boys.
Q. What are their ages?
A. 40 and 34.
Q. Do you have any grandchildren?
A. Yes, I've got three and one on the way.
Q. How far did you go in school?
A. Two years of college.
Q. What do you do?
A. Currently I am -- my only function really is I work for the Red Cross. I do disaster relief for the Red Cross. I'm retired.
Q. What sorts of things do you do for the Red Cross?
A. Well, I just got back from two weeks down in Florida for disaster response for the Hurricane Ian down there. I did sheltering, basically, for about 100-and-some-odd clients, giving them a place, you know, keeping them fed and giving them a place to sleep and stuff like that.
Q. Before you worked for the Red Cross, or did work for the Red Cross, did you do work for anybody else?
A. Yeah. Aside from my day job, working in foundries, I was a volunteer fireman most of my life, firefighter, EMT and paramedic.
Q. What did you do in that capacity as a volunteer firefighter?

A. Started off young putting out fires and going to car wrecks, things like that, then I became an EMT later, a paramedic, you know, doing medical assists and those type of things.

Q. For approximately how long did you do those things?

A. I started when I was like 17 years old, and pretty much throughout my life, whenever I moved to a new area, I'd always want to hook up with a fire company.

Q. What did you do professionally, if anything?

A. My career, I worked in iron foundries my whole life. I, the last 20 years was in Riceville, PA, in an iron foundry there. Started off in maintenance in this area, and the last six years I was what they call compliance manager, environmental health and safety.

Q. What did you do as a compliance manager?

A. Basically I was responsible for the health and safety of not quite 500 employees in three different locations, you know, compliance with all the OSHA regulations, trying to keep my guys safe, and gals, and also responsible for all the -- making sure we're in compliance with all the environmental regulations, you know, the EPA and the Department of Environmental Protection and all those type things.

Q. Mr. Hanson, what is your full name?

A. Gerald M. Hanson.

Q. And what is your date of birth?

A. XXXXXXXX X, XXXX.

Q. And what is your Social Security number?

A. XXX-XX-XXXX.

THE COURT: All right. Excuse me. Can you please make sure that stays under seal, the Social Security number.

THE REPORTER: Yes.

THE COURT: Thank you.

MR. FELTON: Thank you, your Honor.

Q. Mr. Hanson, did there come a time where you learned that you were the victim of identity theft?

A. Yes. September of 2020, I got an alert for -- I believe from Chase when my credit card accounts -- there had been some unusual activity on my credit rating.

Q. What did you do in response?

A. Reached out to them and found out, yes, there was a lot going on. I contacted all three credit bureaus and found a whole bunch of bank accounts that I had nothing to do with. So I researched it on the internet, found that I had to file a state police report, I had to contact the FTC--they've got a site for identity theft--and I spent countless hours on the phone with all three credit bureaus, all the banks and everything, trying to get it all resolved.

Q. You mentioned filing complaints. Did you in fact do that?

A. Oh, yes. Yeah, there's a state police report for the PA State Police; and then the FTC, I think I ended up having to file two different ones because I thought they were all done on the first one and then another one popped up, so I had to file another FTC complaint.

Q. How did that experience affect you financially?

A. Financially, it actually wasn't all that egregious. I, you know, I had to file -- send some certified mail, you know, with all the -- the stuff to prove that I am who I say I am to the credit bureaus and to the banks and all that kind of stuff, so it really was, you know -- I couldn't afford a lawyer, so I had to do it all myself.

Q. How did the experience affect you mentally, if at all?

A. It was trying, to say the least. It was just very, you know -- if you've ever had to use -- go through all the computerized answering things, trying to get ahold of somebody at the bank that can actually talk to you, you know, you get transferred from one to another and then they get hung up -- you get hung up on and call back and go through it all again. Like I said, it was lots of hours. It was very, very tiring.

Q. What, if any, consequences did you experience as a result of this identity theft?

A. Well, we had hoped, you know, after working 40-some years in the foundries, you know, it's not easy work, and our intent was, when I turned 65 and I can get Medicare, I was going to go and get out and we were going to move down close to my second son, but trying to get credit to buy, you know, to purchase,

you know -- sell my house and purchase another house and everything with all that going on with my credit rating, it was going to be pretty much impossible, so basically I had to put off my retirement for a year because of all of it.
Q. Were you able to eventually retire?
A. Yes, sir. I am in South Carolina now.
Q. How, if at all, did the experience of being an identity theft victim affect your credit rating, if at all?
A. Well, I don't recall exactly how low it got at any one point. I know year and a half later I was actually able to recover, get it back up over 800 so I could get a really good rate on mortgage.
Q. You said that was after a year and a half?
A. Correct.
Q. During that year and a half, how, if at all, was your credit rating affected?
A. You know, I don't recall. I know it was well under like -- it was in the 600s, I believe, or something like that, and that would have made -- made a loan very expensive if I could have got one at all.

(Continued on next page)

MR. FELTON: Ms. Loftus, could you please publish Government Exhibit 168, which is in evidence, and please turn to page one.

THE COURT: Mr. Felton, can you make the mic point

more towards your mouth and keep the end of your questions up? You're dropping off at the ends. Thank you.
Q. Mr. Hanson, do you see the exhibit in front of you?
A. Yes, sir.
Q. Do you see the top --
THE COURT: Hold on one second.
Is it working for each of the jurors?
JURORS: (Nodding)
THE COURT: You can see it on each of your screens?
JURORS: (Nodding)
THE COURT: Has it zoomed in for you all?
JURORS: (Nodding)
Q. Mr. Hanson, do you see in the top left it has the logo for the Small Business Administration?
A. Yes, sir.
Q. And do you see in the right corner it has an EIDL application number?
A. Yes, sir.
MR. FELTON: Ms. Loftus, can we scroll down a little bit.
Q. Do you see that the business' legal name is listed as Twinway Air Charter Corp?
A. Yes, sir.
Q. Are you familiar with that company?
A. Only -- I got notification from the SBA that my home

address via U.S. Mail, that there was something to do with Twinway Air Charter Corp at some point.
Q. Before you received that notification, were you familiar with that company?
A. No.
Q. Do you see where it says gross revenues for the 12 months prior to the date of the disaster?
A. Yes, sir.
Q. Could you read the number that follows that entry?
A. $2,918,564.
Q. Do you see where it says a business address?
A. Yes, sir.
Q. Could you read that into the -- or read that for the jury, please?
A. 97 Oliver Avenue, Valley Stream, New York.
Q. Are you familiar with that address?
A. Only that it showed up at the credit bureaus as being my address, and when I corrected it, you know, with like Equifax and -- I corrected it, and two days later it was changed back to that one again.
Q. Prior to that notification from a credit bureau, were you familiar with that address?
A. Negative. I'd never heard of Valley Stream, New York.
Q. Have you ever been to Valley Stream, New York?
A. No.

Q. Do you see there's a business email address listed?
A. Yes, sir.
MR. FELTON: Are we able to highlight this? Thank you. And just make it a little bigger so I and the jurors can read it.
Q. You, too, sir.
MR. FELTON: Thank you.
Q. Mr. Hanson, do you see that there's a business address listed?
A. Yes, sir.
Q. Could you read that business address?
A. Geraldmhanson@gmail.com.
Q. Are you familiar with that email address?
A. No. I have never used my given name on any of my email addresses ever.
Q. Even though that sounds like your name, that's not your email address?
A. No. No, sir.
Q. Thank you.
MR. FELTON: Ms. Loftus, turning down to the owner information at the bottom of the page, if we could please zoom in on that.
Thank you.
Q. Mr. Hanson, do you see a name under the business owner's information?

A. Yes, sir.
Q. Do you recognize that name?
A. Oh, yes, sir. That's mine.
Q. A few lines down on the next page, sir, do you recognize that Social Security that's listed?
A. Yes, sir. I've had it all my life.
Q. That's your Social Security number?
A. Yes, it is.
Q. Looking at the next line now, do you see a birthdate?
A. Yes, sir.
Q. Is that your birthdate?
A. Yes, it is.
Q. Turning now to the bottom third of that next page, page two of the exhibit, do you see --
MR. FELTON: And, Ms. Loftus, if you could blow in the banking information, please. Thank you.
Q. Mr. Hanson, do you see where there's a reference to a Citibank account?
A. Yes, sir.
Q. Do you recognize that banking information?
A. No. I've never had any dealings with Citibank in my life.
Q. You've never banked at Citibank?
A. No.
Q. Mr. Hanson --
MR. FELTON: Thank you, Ms. Loftus.

Q. What, if any, involvement did you have in applying for the loan under the EIDL program, or EIDL program that we've been using in that previous exhibit, Government Exhibit 168?
A. Absolutely none.
Q. Did you authorize anyone to use your identity in this way?
A. Heck no.
MR. FELTON: Ms. Loftus, if we could please publish Government Exhibit 121, please, which is in evidence. And if we could just blow up the top third of the page, please, including the logo up top. I'm sorry, Ms. Loftus.
Q. Mr. Hanson, could you please read the title of this document?
A. Business deposit account application.
Q. At what financial institution does this document appear to relate to?
A. Looks like Citibank.
Q. What makes you say that?
A. The logo in the upper right-hand corner.
Q. Mr. Hanson, do you see that this same exhibit refers to that same company, Twinway Air Charter Corp?
A. Yes, sir.
MR. FELTON: Ms. Loftus, if you could now turn to the second page.
Q. And do you see where it has in the top-third signer information?

A. (Nodding)
Q. Mr. Hanson, do you see there the information listed under signer one?
A. Yes, sir.
Q. Is that your name?
A. Yes, it is.
Q. Do you see where it lists a date of birth on the right side?
A. Yes, sir. That's my date of birth.
Q. Do you see where it lists a Social Security number two lines down from the date of birth?
A. Yes, sir. That's mine, also.
Q. How about the telephone number one line above, is that your telephone number?
A. No, it is not.
Q. Has that ever been your telephone number?
A. No.
Q. How about on the left side of that row where it says business title, president; do you see that?
A. Yes, sir.
Q. Have you ever been the president of any entity?
A. No.
Q. What, if any, involvement did you have in opening the Citibank bank account that we're looking at?
A. Absolutely none.

Q. Did you authorize anyone to use your identity in this way?
A. No, never.
MR. FELTON: Ms. Loftus, if we could now please publish Government Exhibit 272, which is in evidence. This is a Gemini Trust Company LLC record.
And, Ms. Loftus --
Q. Or before we blow anything up, Mr. Hanson, have you ever heard of Gemini Trust Company?
A. Negative.
Q. Do you have any cryptocurrency investments?
A. No.
MR. FELTON: Let's zoom in to the user section about midway down on the left side. Thank you, Ms. Loftus.
Q. Do you see where it lists a legal name?
A. Yes.
Q. Do you see that entry? Is that your name?
A. Yes, sir, minus the middle initial.
Q. Do you see where it lists an address a few lines down?
A. Yes, sir. That is, in fact, where I lived when I was living in Wrightsville.
Q. Do you see a Social Security number a few lines down from that?
A. Yes, sir.
Q. Is that, in fact, your Social Security number?
A. It is.

Q. How about the date of birth two lines down?
A. That's also mine.
Q. Mr. Hanson, did you create this Gemini account?
A. No, sir.
Q. Did you authorize anyone to use your identity in this way?
A. Negative.
MR. FELTON: Ms. Loftus, could you please publish Government Exhibit 274, which is also a Gemini record which is also in evidence. Could we just zoom in on the top third of the page for now.
Q. Mr. Hanson, do you see at the top that this document is associated with a Gerald Hanson account, if you look at the user provided information?
A. Yes, sir.
Q. Mr. Hanson, do you see about halfway down --
MR. FELTON: Ms. Loftus, if you could zoom out and then zoom in just the text on the middle right and blow that up. Thank you very much.
Q. Mr. Hanson, do you see where it says "user provided information" at the top of this zoom in?
A. Correct.
Q. And do you see where it then lists the name?
A. Yes, sir.
Q. And do you see where it lists the date of birth?
A. Yes, sir.

Q. Is that your date of birth?
A. Yes, it is.
Q. And is that your name?
A. Yes, sir.
MR. FELTON: If we can now zoom out and then zoom into the top photo there.
Q. Mr. Hanson, could you please read the name on this ID?
A. Hanson, Gerald M.
Q. Could you read the address on the ID?
A. Yeah. 410 Stone Heath, Wrightsville, Pennsylvania 17368.
Q. And the date of birth?
A. February 1st, 1956.
Q. Is that information accurate? Is that your name?
A. It's accurate for me. I don't know about that guy.
Q. Did you submit this information to Gemini?
A. Negative.
Q. Did you authorize anyone to use your identity in this way?
A. No.
Q. Did you take this picture?
A. No.
Q. Is that your face on the ID card?
A. No.
Q. Is this your driver's license?
A. Negative.
Q. Did you authorize anyone to use your identity in this way?

A. No.

MR. FELTON: And, Ms. Loftus, if we could just zoom out of this, and then just directly above that, the green row, if you could blow that up quickly.

Q. Do you see on the bottom there, Mr. Hanson, where it says "user uploaded image" in green?

A. Yes, sir.

Q. In light green on the bottom?

A. Yes, sir.

MR. FELTON: And, Ms. Loftus, could you please zoom out.

Q. And then below the computer uploaded images, the images we were just viewing --

A. Yes, sir.

Q. -- did you upload that image to Gemini?

A. Negative.

MR. FELTON: One moment, your Honor.

THE COURT: Sure.

MR. FELTON: No further questions.

THE COURT: Mr. Brill.

MR. BRILL: Thank you, your Honor.

CROSS-EXAMINATION

MR. BRILL: Ms. Loftus, if you could bring that exhibit up again and highlight the driver's license.

Q. Good morning, sir.

A. Good morning.

Q. Thank you for being here. I'm sorry what you went through.

Mr. Hanson, do you recognize the individual who is associated with your name on this driver's license?

A. No, I do not.

Q. Have you ever heard the name Chris or Christopher Recamier?

A. I don't recall so.

Q. Okay. Have you ever heard the name Brian Ilori or Adedayo Ilori?

A. It's on the email I got from DOJ saying this case --

Q. Okay. But beyond the -- but before you got involved in this case, had you ever been familiar with that name?

A. Negative.

Q. And in terms of both of those names I mentioned to you, Christopher Recamier or Adedayo Ilori, you've never encountered individuals to your knowledge that have those names, right?

A. No.

MR. BRILL: Thank you very much. Nothing further.

THE COURT: All right. Thank you.

Any redirect?

MR. FELTON: No, your Honor.

THE COURT: Okay. Thank you very much for being here.

THE WITNESS: You're welcome, your Honor.

THE COURT: You may step down. Be safe and be well.

(Witness excused)

THE COURT: Who's the government's next witness?

MS. MURRAY: Yes, your Honor. The government calls Jonathan Herttua.

THE COURT: Someone is retrieving the witness?

MS. MURRAY: Yes, your Honor.

THE COURT: Okay. You're all looking and the stand is empty.

Good morning, sir.

THE WITNESS: Good morning.

THE COURT: If you would please come stand here in the witness stand. Thank you.

Thank you, Ms. Dempsey.

JONATHAN HERTTUA,

called as a witness by the Government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MURRAY:

Q. Good morning, Mr. Herttua.

A. Good morning.

Q. Could you please tell us your date of birth.

A. Yes.

MS. MURRAY: And I ask the court reporter to place this next question and answer under seal.

Q. What is your Social Security number?

A. XXX-XX-XXXX.

Q. Mr. Herttua, how old are you?
A. Sixty-five.
Q. Where do you currently live?
A. In Stuart, FL.
Q. With whom do you live?
A. My wife.
Q. Do you have any children?
A. I do.
Q. How many?
A. Two.
Q. What are their ages?
A. Thirty-five and 38.
Q. And do you have any grandchildren?
A. I do.
Q. How many?
A. Four.
Q. What are their ages?
A. One, three, four, and six.
Q. Mr. Herttua, how far did you go in school?
A. I graduated college.
Q. Do you work for a living?
A. I do.
Q. What do you do for work?
A. I am in technology sales.
Q. Do you work for a particular company?

A. I do.
Q. What company is that?
A. Iconectiv.
Q. How long have you worked in technology sales?
A. For my entire career, over 40 years.
Q. What is the title of your company?
A. Senior director.
Q. Now, Mr. Herttua, you mentioned you currently live in Florida; is that correct?
A. Yes.
Q. How long have you lived in Florida?
A. About a year and a half now.
Q. Where did you live before you were in Florida?
A. Mountainside, New Jersey.
Q. Mr. Herttua, did there come a time where you learned you were the victim of identity theft?
A. Yes.
Q. Approximately when was that?
A. October of '21.
Q. And how did you learn that you were the victim of identity theft?
A. I was -- I received a phone call from an individual who said he was from the Department of Justice.
Q. What reaction, if any, did you have to that phone call?
A. I kind of laughed at him and hung up the phone.

Q. And why is that?
A. Because I'm very suspect of fraudulent calls coming in to steal identity and personal information for fraudulent purposes.
Q. Did there come a time after you hung up that phone call when you were contacted again by somebody regarding your identity theft?
A. Yes.
Q. Can you explain to the jury what happened next?
A. Yes. I received a text message from an individual from the Department of Justice who identified himself, offered a government email address and phone number, explaining that he understands I would be skeptical of receiving a phone call unsolicited from someone claiming to be from the Department of Justice.
Q. And after receiving that text message, what, if anything, did you do?
A. I thought about it and scratched my head and said, well, that's kind of peculiar. I did do a Google search on the individual's name to see if that in case was an individual who worked for the Department of Justice to see if I could find him.
Q. And were you able to find that individual as a government employee?
A. Yes. I found him as a government employee.

Q. Did there come a time you spoke with or talked with that government employee?

A. Yes. After that, I was skeptical or nervous because I always warn everyone in the family not to fall victim to fraud. So I called from a different phone number that I didn't -- because I received the first phone call on my personal cell phone, so I called from -- I carry two cell phones, one for work and one for personal, because our company wants to make sure we have no chance of fraud to our work phone. So I have to have a personal cell phone.

So I called from my work cell phone, and this individual from the Department of Justice identified me when I called in already. So that gave me a little bit more confidence that I was really speaking with the Department of Justice. At which time he offered to do a Facetime with me to show his badge, to show that he was in the Department of Justice in Washington, D.C., to calm my nerves a little bit.

Q. And once you connected with that government employee, what, if anything, did you learn about your identity having been stolen?

A. Well, I -- he asked me if I had thought -- seen anything -- first all, he asked me -- told me he would not ask for any personal information. I joked. I said "that's good, because I'm not going to tell you anything." Because I was still not believing that this was really happening to me.

So at that point he started to explain what they had done and asked me if I had any experiences that made me believe I may have had something stolen from me or any event. And so I said no, I hadn't, I hadn't noticed anything.

And then at that point he started to explain and reveal more information about what had happened, and then I had an ah-hah moment. If anyone's ever had an ah-hah moment, it's when you say, gosh, how could I have not recognized that. I had gone to rent a car, and when I got to rent a car -- I've rented cars from Avis, and I've been an Avis preferred member for 40 years, because I travel all around the world on business and sales.

And when I went to rent the car, showed up, they declined me at the counter and said, I'm sorry, we -- you are on the "do not rent" list. And that's when I had the ah-hah moment with the special investigator from the Department of Justice, when I said -- that's when I realized maybe someone had taken a car out in my name.

Q. And focusing on that experience in particular, the experience of being declined a rental, around when did that happen?

A. That was June of 2022 -- or 2021. I'm sorry.

Q. And where, geographically, were you attempting to rent that car?

A. That was in Florida. In the Stuart area.

Q. And were you, in fact, able to rent a car on that date?
A. No. I spent over an hour discussing with this person on the phone. We called Avis headquarters. I showed my identification. And then they explained to me that I had rented a car at JFK, and it had never been returned.

And I said, that's impossible. I was in Florida when -- what's the date of it? I went back and forth, and they refused to take my side of the story and said, I'm sorry, we -- the car hasn't been returned and you signed it out. And I said, maybe someone made the mistake. Pardon the expression, I said, are you sure somebody didn't fat finger in the computer and type in the information? And they said no.

And I went back and forth. You need to call the fraud department. So I left after an hour, hour and a half. I spent hours on the phone with Avis trying to resolve it, and then I gave up. And I just -- this is crazy, and that was just -- I left it and tried to rent a car somewhere else.
Q. And Mr. Herttua, you said that was in or around June of 2021, correct?
A. Correct.
Q. And the agent from the government advised you that your identity had been stolen months later in October 2021; is that right?
A. That's correct.

MS. MURRAY: Ms. Loftus, can you please publish what's

in evidence as Government Exhibit 223, and zoom in on the top portion.
Q. Mr. Herttua, this is an Avis business record that's in evidence.
A. Oh, there it is.
Q. Can you see this document, Mr. Herttua?
A. Yes, I can.
Q. Now, looking at the top of the page, do you see a customer name that's listed?
A. Yes.
Q. Do you recognize that name?
A. That is my name.
Q. And in looking at the line below that, there's a slightly anonymized driver's license number, but looking at the first four letters, can you read the state and the -- the country and the state that that signifies for that driver's license?
A. Yes. U.S., New Jersey.
Q. And there are four final digits on that license number. Can you read that, please?
A. 6073.
Q. Do you recognize those last four digits of a driver's license?
A. I do not.
Q. And then looking down two lines below, Mr. Herttua, there's a method of payment listed with a visa and last four digits.

Can you read those, please?

A. 9815.

Q. Do you recognize those last four digits as belonging to any bank or credit cards that you've ever used?

A. No. I typically recognize all my last four digits because of auto-fill on all your online purchases for all your credit cards, and it's not one of my credit cards that I recognize.

MS. MURRAY: Ms. Loftus, can you please zoom out and then zoom in on the bottom portion of the document.

Q. Mr. Herttua, on the bottom of this page on the bottom right, do you see what appears to be some type of a signature, some type of a written indication?

A. Yes, I do.

Q. Do you recognize that signature?

A. I do not.

Q. Is that your signature?

A. That's definitely not my signature.

MS. MURRAY: And, Ms. Loftus, if you could zoom out. And please zoom in on the pick-up date, time and location, which is near the top.

Q. Mr. Herttua, this Avis record relates to a rental that was picked up on May 20, 2021, in the location of Jamaica, New York, and with a return date of May 31, 2021, at the same location.

Do you recall if you were in Jamaica, New York, in May

of 2021?
A. I was definitely not in Jamaica, New York, in May of 2021.
Q. Where were you at that time?
A. I was in Stuart, Florida.
MS. MURRAY: Ms. Loftus, could you please take that down and publish Government Exhibit 224, which is in evidence. And if you could zoom in at the top portion, starting with rental agreement through to the line.
Q. Mr. Herttua, this is another Avis business record. Looking at the top portion of this document a few lines down, do you see the renter name listed?
A. I do.
Q. Do you recognize that name?
A. That is my name.
Q. And what about the date of birth listed on the line below?
A. That is not my date of birth.
Q. What is your date of birth?
A. August 18th, 1957.
Q. So this same year and the same date, but a different month; is that correct?
A. That's correct.
Q. Now, looking at billing address here, do you recognize the address that's listed?
A. Yes. That's my address of my residence in New Jersey.
Q. When did you live at that address?

A. I lived in that house until -- I owned that house until late June of 2021. I had moved out in roughly January of 2021 to move to Florida, and the house was still on -- I still owned the house, but I hadn't closed on the closing.

Q. So is it correct that you lived at that address at some point up until at least 2021, and you owned the house through to June of 2021?

A. That is correct.

Q. So that was an accurate address for you for a period of time?

A. Yes, it was.

Q. Mr. Herttua --

MS. MURRAY: Thank you, Ms. Loftus. You can take that down.

Q. At some point after you were declined the Avis rental, did Avis contact you?

A. I've been repeatedly contacted by collection agencies, which are not identifying who they're representing. I still get calls almost every couple weeks.

Q. Can you describe what the nature of those calls or communications is?

A. They typically start, you know, asking, is this Mr. Herttua, Mr. Herttua, whatever. They try different ways. And I ask who's calling, and they state their name and company, calling on a recorded line, and we have some questions for you, and -- about some payments due or collections or a collection agency is all they'd tell me.

Q. Based on those communications, do you have an understanding of whether the overdue bills or whatever they're trying to collect on are debts that you yourself had created?

A. I believe at -- recently I've been saying that's not my bill or I've been a victim of an identity theft. I've contacted creditors to try to clear this up, please call them back, but the calls continue to come in to this day.

MS. MURRAY: Ms. Loftus, can you please publish Government Exhibit 231, which is in evidence, and zoom in on the top portion with the address through to the date.

Q. Mr. Herttua, this is a Charles Schwab business record. Looking at the top portion of this document, do you see who this document is addressed to?

A. Jonathan Herttua.

Q. Do you recognize that name?

A. That is my name.

Q. Can you read the address that this document to Mr. Herttua was sent to?

A. 64 Bleeker Street, Suite 188, New York, New York 10012.

Q. Do you recognize that address?

A. I do not.

Q. Have you ever been to that address?

A. I've never been to that address.

Q. Have you ever been associated with that address?
A. I've never been associated with that address.
MS. MURRAY: Ms. Loftus, if you could please take this down and turn to the second page where the account profile is listed and zoom in on that portion.
Q. Mr. Herttua, under the account profile, do you see an email address listed?
A. Yes.
Q. What is that e-mail address?
A. Herttuajonathan1957@gmail.com.
Q. Do you recognize that email address?
A. I do not.
Q. Have you ever used that email address?
A. I've never used that email address. I didn't know it existed.
Q. Does that email address appear to reflect your name and year of your birth?
A. Yes, it does.
MS. MURRAY: Ms. Loftus, can you turn to page 9 now of this exhibit, and focusing now on the personal information, the top couple of lines all the way through to the side. Excuse me, Ms. Loftus.
Q. Mr. Herttua, do you see the personal information listed on this page of this Schwab document?
A. Yes, I do.

Q. What is the name?
A. Jonathan Herttua.
Q. And that is your name, correct?
A. That is my name.
Q. There's a Social Security number listed to the right. Do you recognize that?
A. Yes. That is my Social Security number.
Q. And below that is a date of birth. Do you recognize that?
A. That is my date of birth.
Q. And this is your accurate date of birth; is that correct?
A. That is correct.
Q. All right. Now, looking at the home or legal address to the left, can you read that address?
A. 74 East Seventh Street, Brooklyn, New York 11218.
Q. Do you recognize that address?
A. I do not know that address.
Q. Have you ever been associated with that address?
A. I've never been associated with that address.
Q. Mr. Herttua, I'd like to now play an audio recording for you. That is a Charles Schwab record.

MS. MURRAY: Ms. Loftus, if you could please publish Government Exhibit 233, and begin playing that exhibit for the jury through 45 seconds.

THE COURT: This is in evidence, right?

MS. MURRAY: That's correct, your Honor.

THE COURT: Pursuant to the stipulation?

MS. MURRAY: That's correct, your Honor.

THE COURT: Thank you.

MS. MURRAY: Let's take a moment to work through the technical difficulties. Thank you, your Honor.

Q. Mr. Herttua, while we're waiting, have you ever held an account at Charles Schwab?

A. I've never held a Charles Schwab account.

Q. Have you ever had a Gmail address?

A. I have had a Gmail account address.

Q. Have you ever had a Gmail address that matches the account we just looked at?

A. I never had a Gmail account address with my name on it.

MS. MURRAY: Just a moment, your Honor.

THE COURT: All right. Are you having an issue with the technology?

MS. MURRAY: We are, your Honor. We can go on, your Honor, and try to work it out.

THE COURT: Okay. Why don't you go on. I was aiming to take the morning break at about 11:30. So when you finish with what you have, let me know. We'll take the morning break then, and you can try to deal with the technology issue.

MS. MURRAY: That would be great, your Honor. Thank you. I appreciate it.

THE COURT: Thank you.

MS. MURRAY: Ms. Loftus, can you publish Government Exhibit 251, which is in evidence.

Q. Mr. Herttua, have you ever had any cryptocurrency currency holdings?

A. I've never had any cryptocurrency holdings.

Q. Have you ever invested in cryptocurrency even if you didn't hold it in your name?

A. I've never invested any cryptocurrency.

Q. This is a Coinbase record.

MS. MURRAY: Ms. Loftus, if you could zoom in on the attributes of this.

Q. Could you please read the name associated with this account?

A. Jonathan Herttua.

Q. Do you recognize that name?

A. That is my name.

Q. On the next line, do you see an email address?

A. That is the same email address you asked me about before. That is not my Gmail account.

MS. MURRAY: Ms. Loftus, could you zoom out, please, now to scroll down a few lines and zoom in to the ID number there through to the end of the address, please.

Q. Mr. Herttua, do you see first a date of birth associated with the Jonathan Herttua on this record?

A. August 18, 1957.

Q. Is that your date of birth?
A. That is my date of birth.
Q. And what is the address?
A. 23 Tanglewood Lane, Mountainside, New Jersey.
Q. Is that your former address?
A. That's my former address.
MS. MURRAY: Ms. Loftus, if you could take that down and publish Exhibit 253 which is in evidence, another Coinbase record. And if you could zoom in on the driver's license that's depicted in this photograph, please.
Q. Mr. Herttua, looking at the image in front of you, do you see a name on this driver's license?
A. I see my name on that driver's license.
Q. On the next few lines, do you see an address?
A. That 23 Tanglewood Lane, Mountainside, New Jersey was my address in New Jersey.
Q. And there appears to be a signature just below on the right. Do you recognize that signature?
A. I do not recognize that signature -- well, I can read what it says, but it's not my signature.
Q. And what does it say? Who does it purport to be signed by?
A. Jonathan Herttua.
Q. And looking at this New Jersey driver's license that's depicted in this photo, do you recognize any other identifiers on this license as belonging to you?

A. Nothing on there that belongs to me.
Q. And just to draw your attention to the date of birth, it's the second line in red up above?
A. Yes.
Q. Is that your true date of birth?
A. That is my true date of birth.
Q. Now, looking at the photo on this driver's license, is that a photograph of you?
A. That is not my photograph. I've not had a hair transplant. Sorry.
Q. Have you ever seen the individual who is reflected in this photo aside from any notification about your identity having been stolen?
A. No, I've never seen this gentleman before.
Q. Do you know who this individual is?
A. I've never seen him before, don't know who he is.

MS. MURRAY: Ms. Loftus, if you could please take that down now, and if you could please publish what's in evidence as Government Exhibit 262. This is an Enterprise Rental Car record. And if you could zoom in on the top portion, please. Thank you.

Q. Mr. Herttua, looking at the top lines here, rental summary, can you please read the name of the renter listed for this record?
A. Jonathan Herttua.

Q. Is that your name?
A. That is my name.
Q. Now, the details of this particular record indicated that it was rented on January 3rd, 2021, at LaGuardia Airport in New York, and it was due to be returned on January 17, 2021, at LaGuardia Airport.
Were you in New York in January of 2021?
A. I was not in New York in January of 2021.
Q. Did you authorize anyone to rent a car in your name in January 2021 in New York?
A. I did not authorize anyone to rent a car in my name.
MS. MURRAY: Ms. Loftus, if you could please go to page 2 of this exhibit now, and zooming in on the top right portion, please, Ms. Loftus.
Q. Mr. Herttua, do you see what appears to be a signature on this Enterprise Rental agreement?
A. I do.
Q. Are you able to read what that signature purports to say?
A. It appears to spell my last name.
Q. Do you recognize that signature?
A. I do not recognize that signature.
Q. Is that your signature?
A. That is definitely not my signature.
MS. MURRAY: Ms. Loftus, if you could take that down please and publish what is in evidence as Government Exhibit

154. And if you could please zoom in on the header through to the first paragraph of that document to begin.

Q. Mr. Herttua, this is a Small Business Administration Paycheck Protection Program document from Capital One Bank. Could you please read the first line in bold, which begins with "your SBA?"

MS. MURRAY: If you could zoom in.

A. The DocuSign you mean?

Q. No. Just below.

A. That. Oh. Your SBA loan. Okay. Your SBA PPP loan application has been approved and successfully submitted to the SBA.

MS. MURRAY: And, Ms. Loftus, if you could please turn to page 3 and zoom in on the table portion of that document, please.

Q. Mr. Herttua, do you see the listed loan amount for this particular Capital One PPP loan?

A. Yes.

Q. What is it?

A. $531,218.

Q. Do you recognize the name of the borrower listed for this loan two lines down?

A. I do not.

MS. MURRAY: Ms. Loftus, can you please turn to page 6? And if you could zoom in on the borrower's signature

portion of this document, please.
Q. Mr. Herttua, do you see the borrower name that's listed on the signature page of this PPP loan document?
A. Yes, I see it.
Q. What is it?
A. BRS Consulting Corp.
Q. Do you see the name of an individual listed two lines down?
A. Yes.
Q. What is that name?
A. That is my name.
Q. There's a title below that. Can you read that, please?
A. CEO.
Q. Mr. Herttua, have you ever heard of a company called BRS Consulting Corporation?
A. I've never heard of BRS Consulting Corp.
Q. Have you ever been the CEO of any company?
A. I've never been the CEO of a company.
Q. Now, there's a DocuSign signature, so what appears to be an electronic signature above the typed name of Jonathan Herttua.
Do you recognize who purported to sign this document?
A. Well, it's a DocuSign, so whoever's on the computer types in that. That's their signature. And that's the way DocuSign worked. So it's a computer designated signature.
Q. And what name was typed into this particular DocuSign?
A. That's my name.

MS. MURRAY: Ms. Loftus, you can take that down.

Q. Mr. Herttua, have you ever applied for any type of loan from the SBA?

A. I've never applied for an SBA loan.

MS. MURRAY: Your Honor, I think this is a good time to take a break.

THE COURT: This is the perfect time, because our AV consultant is here to help.

Ladies and gentlemen, please leave your notepads on your seat, and please do not discuss anything relating to the participants or evidence while you're on your break. And we'll see you in ten minutes, all right? Ms. Dempsey will come retrieve you.

(Jury not present)

(Continued next page)

THE COURT: Mr. Herttua, you're excused, but you remain under oath, so please do not discuss your testimony with anyone during the break. Okay?

THE WITNESS: Thank you.

THE COURT: Thank you.

All right. Is there anything we need to discuss?

MS. MURRAY: Not from the government, your Honor.

MR. BRILL: No, your Honor.

THE COURT: All right. I'll see you all in about ten minutes. Thank you.

MS. MURRAY: Thank you.

(Recess)

THE COURT: Okay. Before we go back to the jury, Ms. Murray and Mr. Brill, I did reach out to the supervising attorney at MDC and asked that --

When you are transported each day, a sandwich be sent for the Marshals to bring for you and for you to have a proper dinner when you return.

So hopefully I will hear back. I asked that they confirm receipt and that they will take care of the program.

MR. BRILL: Thank you, your Honor.

THE DEFENDANT: Thank you.

THE COURT: Okay. Anything we need to discuss before we bring the jurors out?

MS. MURRAY: No, your Honor.

THE COURT: Okay. The witness may return to the witness stand.

And, Ms. Dempsey, once he is here, you may retrieve our jurors, please.

Thank you, sir.

THE DEPUTY CLERK: Rise for the jury.

(Continued next page)

(Jury present)

THE COURT: Please be seated, ladies and gentlemen.

(Continued on next page)

(In open court; jury present)

THE COURT: All right. Ms. Murray?

MS. MURRAY: Thank you, your Honor.

Q. Mr. Herttua, before we took the break, we were talking through some business records. One of those was a Charles Schwab record. Do you recall that?

A. Yes, I do.

Q. I'd like to play you another Charles Schwab record. This is in the form of an audio file.

MS. MURRAY: Ms. Loftus, can you please publish Government Exhibit 231, which is in evidence.

Oh, sorry, Ms. Loftus. 233, which is in evidence.

(Audio played)

MS. MURRAY: Ms. Loftus, if we can try to play that again from the beginning.

(Audio played)

MS. MURRAY: Ms. Loftus, we can pause that. Thank you.

BY MS. MURRAY:

Q. Mr. Herttua, have you ever called Charles Schwab about any accounts that you had there?

A. I've never made a phone call to call Charles Schwab's for any information or account information, ever.

Q. And just to clarify, again, have you ever held any accounts at Charles Schwab?

A. I've never held an account with Charles Schwab.

Q. Mr. Herttua, we've talked about a couple of different companies and we've looked at your name being associated with records with those companies, in particular Charles Schwab and Coinbase. Did you ever authorize anyone to use any of your personal information in the ways that we've discussed?

A. I've never authorized anyone to use any personal information for any transactions.

Q. And with respect to the Avis and Enterprise records that we looked at, understanding that you have rented cars from those companies before, did you ever authorize anyone to use your information for the particular rentals that we looked at records for?

A. I've never authorized anyone to use my information to rent a car, for Avis or Enterprise.

Q. Mr. Herttua, what consequences did you experience as a result of your identity theft?

A. Well, I can't tell you how many hours I've spent changing all my credit cards, changing all my bank accounts, changing all my passwords, trying to get Avis and Enterprise to clear my record. I provided in both cases information that stated, that showed--I can show credit card transactions where I live, everything--that I was in Florida at the time of both rentals, and they still haven't accepted my proof that it wasn't me renting the car, so I continually get calls on that.

And my son actually gets calls as well, because he has the same name as I do, but he's a junior.

Q. And Mr. Herttua, you said that you continue to get calls or communications from credit reporting agencies or creditors; is that correct?

A. That is correct.

Q. Can you describe any personal impact that the theft of your identity has had on you.

A. It's -- it's pretty stressful when you -- when you find out that, you know, all your information has been, you know -- I -- if someone asked me, it's kind of like if you've ever had your house burglarized or your car burglarized, that's that feeling of helplessness and did I do something wrong to bring this on. But it's taken a lot of time in trying to clear my -- my credit rating has dropped from basically a very good credit score to fair at this point, based on the credit cards that have been opened up in my name.

MR. FELTON: Thank you, your Honor. I have nothing further.

THE COURT: All right. Thank you.

Mr. Brill, any cross?

MR. BRILL: Briefly. Thank you, your Honor.

THE COURT: Sure.

CROSS EXAMINATION

BY MR. BRILL:

Q. Good morning, Mr. Herttua. Thanks for being here. Sorry you had to go through all this.

MR. BRILL: I just wanted to pull up Exhibit 231, briefly, Ms. Loftus. Thank you.

Q. Now with regard to the Schwab account, Mr. Herttua, you said you did not do any -- you didn't set up any account with Schwab, correct?

A. That's correct.

Q. Okay. And then I believe that the drivers license that was uploaded, that was for Coinbase, was that 251? Or 253? I'm sorry. 253.

THE COURT: Are you asking that it be --

MR. BRILL: Yes. Could we publish 253. Thank you.

Could we just zoom in on that a little bit, Ms. Loftus. Thank you.

Q. And Mr. Herttua, you indicated you did not recognize this person, correct?

A. That's correct.

Q. And have you ever heard the name Chris or Christopher Recamier?

A. I have not, no.

MR. BRILL: I have nothing further. Thank you.

THE COURT: Thank you.

Any redirect?

MS. MURRAY: No, your Honor. Thank you.

THE COURT: All right. Thank you.

Thank you very much, sir, for being here.

THE WITNESS: Thank you.

THE COURT: You're excused. Please be well, be safe.

THE WITNESS: Thank you. Thank you, everyone.

(Witness excused)

THE COURT: And the government's next witness?

MS. MURRAY: Yes, your Honor. The government calls John Piarulli.

THE COURT: Good morning, sir. If you would please come to the witness stand here and stand there while my deputy administers the oath. Thank you.

THE DEPUTY CLERK: Raise your right hand.

(Witness sworn)

THE DEPUTY CLERK: Please spell and state your name for the record.

THE WITNESS: John Piarulli. J-O-H-N, P-I-A-R-U-L-L-I.

THE DEPUTY CLERK: Thank you. Please be seated.

JOHN PIARULLI,

called as a witness by the Government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MURRAY:

Q. Good afternoon, Mr. Piarulli.

A. Good afternoon.
Q. Where do you work?
A. Avis Budget Rent-A-Car.
Q. What kind of company is Avis Budget?
A. They rent vehicles.
Q. I'm going to refer to that company generally as Avis Budget. How long have you been with Avis Budget?
A. Over 15 years.
Q. What is your current title?
A. I am the regional security manager.
Q. How long have you worked in that capacity?
A. Close to seven years.
Q. What rental car companies does Avis Budget oversee?
A. Avis, Budget, Payless, and Zipcar.
Q. Mr. Piarulli, are you familiar with the recordkeeping practices of Avis Budget?
A. Yes.
Q. Generally speaking, does Avis Budget maintain the same types of records for each of the rental car companies that it operates?
A. Yes.
Q. Can you describe, prior to your current position, what other positions you've held at Avis.
A. I was the airport manager, I was a station manager, and I was a fleet distribution manager.

Q. In your current position what are your general responsibilities as a regional security manager?
A. Oversee security processes and asset control on our vehicles.
Q. In your capacity as a regional security manager and in your experience at Avis Budget, are you familiar with the types of records that Avis maintains with regards to car rentals?
A. Yes.
Q. Generally speaking, what documents are required from an individual in order to rent a car from Avis Budget?
A. License and valid credit card in matching names.
Q. And can you explain what you mean by matching names, please.
A. The name on the credit card and the license must match.
Q. Does Avis Budget maintain records of information for people who rent from the company?
A. Yes.
Q. What kind of records does Avis Budget maintain?
A. Rental agreements and vehicle history.
Q. Mr. Piarulli, I'd like to turn your attention to 2021. Did there come a time when you received a request from law enforcement for records regarding certain Avis car rentals?
A. Yes.
Q. What, if anything, do you recall about the status of the rentals for which records were requested?

A. They were overdue vehicles.
Q. And when you say overdue, can you explain what that means.
A. When a vehicle is failure to return on the date due under a contract.
MS. MURRAY: Ms. Loftus, can you please publish what is in evidence as Government Exhibit 223.
Q. Just looking at the broader document for a moment, Mr. Piarulli, do you recognize this document?
THE COURT: It's on your screen, sir, or it should be.
THE WITNESS: It's not there yet. Oh.
MS. MURRAY: Sorry. Ms. Loftus, can you please show that to the witness and the jury as well.
A. Yes.
THE COURT: Do the jurors all have it now?
THE JURORS: Yes.
THE COURT: Okay. Thank you.
Q. Do you recognize this document?
A. Yes.
Q. Generally speaking, what is this?
A. It's a rental agreement.
Q. I'd like to review some of the information on this particular rental agreement with you.
MS. MURRAY: Ms. Loftus, if you could please zoom in on the first couple lines on this page through to the end of pickup location, and all the way to the right. Thank you.

Q. Mr. Piarulli, do you see a rental agreement number on the top of this document?
A. Yes.
Q. Do you know how, if at all, rental agreement numbers are assigned to particular Avis Budget rentals?
A. They're generated in a batch form per location.
Q. So does each Avis Budget rental have a rental agreement number associated with it?
A. Yes.
Q. Looking at this particular rental agreement, can you read the customer name.
A. Last name is Herttua, first name Jonathan.
Q. And what is the country and state of the renter's driver's license as reflected on this agreement?
A. United States, New Jersey, ending in 6073.
Q. Looking on the right on Vehicle Description, what type of car was rented under this agreement?
A. Silver Toyota 4Runner.
Q. And in looking again on the left side, what, if anything, are you able to determine about the payment for this particular rental based on this rental agreement?
A. The method of payment was a Visa ending in 9815.
Q. Now above that line there is a field titled Avis Worldwide Disc. Can you describe what that reflects.
A. When booking, the booking chat online, which in this case

is Priceline web mobile.
Q. And looking at the pickup date and time listed for this particular rental, when was this rental taken out from Avis Budget?
A. On May 20, 2021, at 8:27 p.m.
Q. Do you recognize the listed pickup location?
A. Yes, that's our JFK Avis location.
Q. So that address in Jamaica, New York, is the Avis location in JFK Airport; is that correct?
A. That's correct.
Q. And what is the return date that is listed on this rental agreement?
A. May 31, 2021, at 12 p.m.
Q. For what location?
A. The same location, JFK, Building 305, Federal Circle.
MS. MURRAY: Thank you, Ms. Loftus. You can zoom out.
And if you could please zoom in at the bottom portion of this document.
Q. Mr. Piarulli, there appears to be a signature or some kind of marking on the right side. Do you see that?
A. Yes.
Q. Can you describe who would sign this document on an Avis Budget rental agreement.
A. The customer would.
Q. How is a renter's signature collected for a rental

agreement?
A. Physically on the signature cap.
Q. Physically, can you describe what kind of signature cap you're referring to?
A. On the screen, written.
Q. So is that an electronic signature?
A. Yes.
MS. MURRAY: Ms. Loftus, can you please take this down and turn to page 2 of Government Exhibit 223.
Zoom in on the top portion through the bullets, please.
Q. Mr. Piarulli, what is the heading of this document?
A. Addendum to Rental Agreement.
Q. So is this an addendum to the rental agreement we just reviewed on page 1?
A. Yes.
Q. Generally speaking, what information does an addendum to a rental agreement contain?
A. That their license is in good standing.
Q. And looking at the lead-in to the bullet points, can you please read the text listed on the top of this page.
A. "In connection with my rental application, additional driver application to Avis Rent-A-Car System, LLC, I certify that:"
Q. You can pause there. Thank you.

So do you then see a number of bullet points?
A. Yes.
Q. And are those certifications of the renter of an Avis Budget rental?
A. Yes.
MS. MURRAY: Ms. Loftus, I'd like to zoom in, please, or highlight, please, the first certification under those renter certifications.
Q. Can you please read that renter certification for the jury.
A. "I have a currently valid driver's license, not suspended, revoked, expired, canceled, surrendered, or improperly altered."
MS. MURRAY: And Ms. Loftus, you can zoom out, and can we please zoom in on the next paragraph of this addendum.
Q. Mr. Piarulli, generally speaking, what does this paragraph of the renter's agreement addendum reflect?
A. That they understand the parameters of the addendum and failure to comply would falsify or would false the agreement.
MS. MURRAY: And Ms. Loftus, can you please highlight the second sentence of this portion that begins with, "I further understand," in the middle of the page, carries over to the next line.
Q. Mr. Piarulli, can you please read that portion of the addendum to the jury.
A. "I further understand and agree that if I provide false or

misleading information, my use of the vehicle is prohibited and unauthorized."

MS. MURRAY: And Ms. Loftus, if you could zoom out, please, and just zoom in on the bottom portion where there appears to be renter's signature.

Q. Mr. Piarulli, do you see a signature next to the renter's name --

A. Yes.

Q. -- on this document? And how is that signature collected?

A. In the same -- same manner as the rental agreement, electronic signature cap.

MS. MURRAY: Ms. Loftus, you can take that down. And please publish Government Exhibit 224, which is in evidence.

Q. Mr. Piarulli, do you recognize this type of document?

A. Yes. It's a -- also a rental agreement.

MS. MURRAY: And if we could zoom in on the top portion, starting with Rental Agreement through to the bottom line, please, Ms. Loftus.

Q. Is this a Avis Budget rental agreement document that relates to the rental we were just looking at?

A. Yes.

Q. And generally speaking, what additional information, if any, is reflected in this particular rental document?

A. This would have the customer's address, also vehicle information and license plate number.

Q. I want to walk through just a few of these fields, please.

Looking at the renter's name again, can you please let us know what that says.

A. Last name is Herttua, first name Jonathan.

Q. And looking above, there's a Vehicle Owner line. What is the make and model of this particular rental again?

A. Toyota 4Runner.

Q. And there's a particular billing address listed. Can you please read that.

A. 23 Tanglewood Lane, Mountainside, New Jersey 07092.

Q. And then Mr. Piarulli, looking a couple lines down, there's a checkout STN and on the right, check-in STN. What information do those fields reflect?

A. That would be the checkout station, the location, and the check-in location.

Q. And for this particular rental, again, what was the check-in and checkout location?

A. Our JFK Avis location.

Q. Now there's also a field that's listed Driver's License, or DR License, on the bottom right. Do you see that?

A. Yes.

Q. What are the last four digits of this particular driver's license?

A. 6073.

MS. MURRAY: If you could zoom out on that, Ms. Loftus. And please zoom in on the second section of this document.

Q. Mr. Piarulli, generally speaking, what information is reflected in this document for the rental of the Toyota 4Runner?

A. The rental parameters as well as the customer information and the cost of the vehicle.

Q. So looking on the right side, about 2/3 of the way down this portion, there's a section that says Amount Due.

MS. MURRAY: Ms. Loftus, if you could please highlight that.

Q. What were the total charges for this rental?

A. $1,045.63.

Q. And looking at this rental document, are you able to determine how much was paid of that $1,045.63 at the time of the rental?

A. There was a hold on the credit card. There's no payment made.

Q. So can you describe for the jury what that means.

A. Well, we put a hold on the vehicle -- on the credit card for a percentage of the rental. We don't get paid at the time of rental. We just put a small hold.

Q. Now on the third line on the top left of this portion, there's a field that's labeled N/C. Do you see that?

A. Yes.

Q. What information is reflected there?
A. Notes that we requested a repossession on the vehicle on 6/18.
Q. And can you describe what you mean by repossession.
A. If a vehicle is a failure to return, we take parameters to get back our vehicle, and one of those is try to -- a repossession company to obtain the vehicle.
Q. And so for this particular rental record, are you able to determine whether the vehicle was overdue for return?
A. By the notes.
Q. And what does DNR at the end of that entry reflect?
A. That would be "do not rent."
MS. MURRAY: So, thank you, Ms. Loftus. You can take that down.
Q. Can you describe for the jury what steps and on what time line Avis Budget takes if a renter fails to return a rental as scheduled.
A. Three days after the due date, our loss prevention department will start looking for the vehicle, making phone calls, text messages, and after seven days, email and letter of demand. We'll do that twice for two weeks, and then after that, we'll put it into repossession, attempt to try to get the vehicle back. After -- if we do fail on the repossession, we will end up reporting the vehicle stolen.
Q. With respect to the letter of demand, what address or what

form of distribution is that letter sent?
A. To the address that is given to us at the point of rental, on the rental agreement, we'll send a certified letter to that address.
Q. Mr. Piarulli, I'd like to focus on a second Avis Budget rental. Did law enforcement request information for another Avis Budget rental?
A. Yes.
Q. What, if anything, do you recall about the details of that second rental?
A. It was an overdue vehicle.
MS. MURRAY: Ms. Loftus, can you please publish Government Exhibit 222, which is in evidence.
Q. Mr. Piarulli, is this another rental document from Avis Budget?
A. Yes, it is.
Q. Is this the same type of rental agreement that we reviewed in Government Exhibit 224 for the Avis 4Runner rental?
A. Yes.
MS. MURRAY: If you could zoom in on the top portion, Ms. Loftus, through to the bottom of Pickup Location. Thank you.
Q. Mr. Piarulli, first, which of Avis Budget's companies was this car rented from?
A. Budget.

Q. And how are you able to determine that?
A. The Budget car number.
Q. And what was the customer name for this particular rental?
A. Last name is Brown, first name Gerald.
Q. What type of car was rented under this rental agreement?
A. A white Jeep Grand Cherokee.
Q. What was the pickup date and time of this rental?
A. Pickup, August 18, 2021, at 5:04 p.m.; due to return September 3, 2021, at 12 p.m.
Q. And do you recognize the listed pickup and return location on this rental document?
A. Yes. It would be our La Guardia Budget location, in East Elmhurst.
Q. And looking again at the top left portion here, as before on the other rental agreement, there appears to be payment information listed.
A. Method of payment is Visa, ending in 8865.
Q. And again, are you able to determine how or by what means this rental was booked?
A. Yes. Online, Priceline, web mobile.
MS. MURRAY: Ms. Loftus, if you could please take that back and look at the next portion of the agreement.
Or actually, excuse me, the bottom portion of this agreement.
Q. Mr. Piarulli, again, there's a line for a signature. And

whose signature is that intended to collect?
A. The customer.
Q. Do you see any markings or any apparent signature on this document?
A. I do.
Q. Are you able to determine what name was purportedly signed there for this rental?
A. No.
MS. MURRAY: Ms. Loftus, if you could please turn to page 2 of Government Exhibit 222.
Q. Mr. Piarulli, again, this is an addendum to a rental agreement. Is this the same general information that was reflected in the addendum we looked at for the Avis rental agreement?
A. Yes, it is.
Q. In particular, does this addendum for the Budget Jeep Grand Cherokee rental contain the same renter's certification of certain information?
A. Yes.
MS. MURRAY: And Ms. Loftus, if you could zoom in on the bottom portion starting with, "I understand," please.
Q. Does this addendum appear to be signed, Mr. Piarulli?
A. Yes.
Q. Are you able to determine what the name that appears to have signed it reads?

A. Yes. Brown.

MS. MURRAY: Ms. Loftus, we could take this down, and if you could please publish Government Exhibit 221, which is in evidence.

Q. Mr. Piarulli, do you recognize this type of document?

A. Rental agreement.

Q. And as before, the same type of Avis Budget business record that we looked at for the 4Runner?

A. Yes.

MS. MURRAY: Ms. Loftus, if you could zoom in on the top portion starting from the top line, please, or even in advance of that, please.

Q. Looking at the top right in the bold, what does this read?

A. "Vehicle overdue for return."

Q. And if we could look at the renter name again on the bottom -- or excuse me -- in the middle left portion here, what is the name of this renter?

A. Last name is Brown, first name Gerald.

Q. What is the listed date of birth?

A. 28 of January '53.

Q. And the listed billing address, please.

A. 4 Locust Hollow, Carlisle, PA 17015.

Q. And looking down to the right, again, a DR license or driver's license field, can you let us know, please, what state was this driver's license purportedly from and what were the

last four digits?
A. New York, 7072.
MS. MURRAY: Thank you, Ms. Loftus. You can take that down. And please publish Government Exhibit 227, which is in evidence.
Q. Mr. Piarulli, do you recognize this document?
A. Yes.
Q. What is it?
A. It's our letter of demand.
MS. MURRAY: Ms. Loftus, if you could zoom in on the top portion starting with the date this letter was sent through to the Due to Return line.
Q. Mr. Piarulli, does this particular letter of demand relate to the rental we were just discussing, the rental of the white Jeep Grand Cherokee?
A. Yes.
Q. What date was this letter sent?
A. September 10, 2021.
Q. And looking at the last line on this portion of the letter, what date was this rental due to be returned?
A. September 3, 2021.
Q. So this letter was sent approximately one week after the rental was due; is that right?
A. Correct.
Q. And as you stated before, to the address that's listed on

the rental agreement; is that correct?
A. Correct.
MS. MURRAY: Thank you, Ms. Loftus. You can take that down. And now please publish Government Exhibit 228, which is in evidence.
Q. Mr. Piarulli, do you recognize the image that's reflected in Government Exhibit 228?
A. Yes.
Q. What information does this reflect?
A. Our repossession attempt notes.
Q. And can you describe what you mean by your repossession attempt notes.
A. When we set out to repossess a vehicle, we ask the company, one of the companies we use, to put notes on their website of any attempts to locate the vehicle, any other notes, and if they've recovered or if they haven't.
Q. And so looking at this particular entry, first, what is the name listed as the renter for the entry for this rental?
A. First name Gerald, last name Brown.
Q. And looking at the status information, what date was the status information entered?
A. September 17, 2021.
Q. So approximately one week after the letter of demand that we just looked at was dated; is that right?
A. Correct.

Q. And looking at the description of the status information, I want to focus in particular on the third line. Do you see where it begins with "Driver unknown"? Can you read that sentence, please.
A. "Driver unknown, fraud/stolen ID rental."
Q. Thank you.
MS. MURRAY: If I may have a moment, your Honor?
THE COURT: Sure.
MS. MURRAY: And Ms. Loftus, you can take that down.
Nothing further, your Honor.
THE COURT: All right. Thank you.
Is there any cross, Mr. Brill?
MR. BRILL: Yes, your Honor. Thank you.
CROSS EXAMINATION
BY MR. BRILL:
Q. Good afternoon, Mr. Piarulli.
A. Good afternoon.
Q. Just a couple of questions.
You've worked at some point during your career with this company at the actual rental kiosks?
A. At the rental counters, yes.
Q. Yeah, at both JFK and at La Guardia?
A. Not at those locations. I worked at Newark Airport, both Avis and Budget; I worked at all the locations in Manhattan; and the fleet distribution center.

Q. During the course of your career with the company, have you familiarized yourself, at least, with those other locations, JFK and La Guardia?

A. Absolutely.

Q. Okay. And so what is the rental process at -- well, let me ask you this way. Is the rental process similar at both locations?

A. Yes.

Q. All right. And what is that rental process in terms of specifically how an employee identifies the renter and how they go about that process?

A. Renter will present -- renter will present a credit card along with their license in matching names. The rental agent will take both the items and process that into a computer.

Q. And is there -- it's going to sound more technical than it really is, but is there a visual verification that the person on the license is the person standing in front of them?

A. Yes, there is.

Q. Is there a policy that the person standing in front of them has to match the picture on the license?

A. Yes.

Q. With respect to both locations, if they're the same, is there some sort of, that you're aware of, video or still surveillance that would indicate who was actually at the desk at that moment doing the rental?

A. There would be video at certain locations. At those two I believe there was at the time, yeah.
Q. And at any point did you have the opportunity to review video or still surveillance from those locations?
A. I was not -- video usually retains for about 30 days, so at that point I didn't, no.
Q. Okay. Meaning that, just to be clear, that by the time you were asked to check the records, the video would already have been erased.
A. I was not able to view it.
Q. Okay. Is there any other process other than what we just discussed where you would be able to determine who was actually standing at the rental counter, other than the person giving the license?
A. At the time, no.
Q. Okay. As we sit here today, would it be fair to say it's your belief that the individual or individuals that rented these vehicles were not the individuals named in the ID? I can rephrase that if that was unclear.
A. Yes, please do.
Q. When the -- let's just take them separately. Is it your belief through your investigation that the actual Mr. Brown was present to rent the Jeep?
A. I believe he was not.
Q. Okay. And just similarly, is it your belief that the

actual Mr. Herttua was the one actually renting the Jeep?
A. Same, yes.
Q. Okay. Is there -- based upon what you -- the information you have, would it be a fair conclusion from what you have that the individual who presented the ID at those counters -- I mean, the person whose picture was on the driver's license -- was the person who rented the vehicle, not by name but just by picture?
A. Yes.
Q. Okay. And in your rental system, is there a photo capture, an image capture of the driver's license of the person who rents the vehicle?
A. No, there is not.
Q. Okay. So there's no way, as we sit here today, to know what the picture was on the license of the person in either rental, right?
A. That would be correct.
Q. Okay. And there's no -- just to dot all the i's, there's no way to retrieve video or photo evidence of the person who showed up at the desk, right?
A. That's correct.
MR. BRILL: Okay. Just give me one second.
Thank you, Mr. Piarulli. I have nothing further.
THE COURT: All right. Thank you, Mr. Brill.
Anything on redirect?

MS. MURRAY: No, your Honor. No redirect.

THE COURT: All right. Thank you very much, sir. You are excused. Thank you for being here today. Please be well and be safe.

THE WITNESS: Thank you.

(Witness excused)

THE COURT: And the government's next witness?

MR. FELTON: Your Honor, the government calls Kathleen Littwin.

THE COURT: Ms. Littwin, good afternoon. If you would please stand here in the witness box. Thank you. And my courtroom deputy will administer the oath.

THE DEPUTY CLERK: Please raise your right hand.

(Witness sworn)

THE DEPUTY CLERK: Thank you. Please spell and say your name for the record.

THE WITNESS: Kathleen Littwin, K-A-T-H-L-E-E-N, L-I-T-T-W-I-N.

THE DEPUTY CLERK: Thank you. Please be seated.

KATHLEEN LITTWIN,

called as a witness by the Government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FELTON:

Q. Good afternoon, Ms. Littwin.

A. Good afternoon.
Q. Where do you work?
A. The United States Small Business Administration.
Q. How long have you been with the Small Business Administration?
A. 17 years.
Q. Is the Small Business Administration sometimes known as the SBA?
A. Yes.
Q. What is the SBA?
A. We are a federal government agency that assists businesses with obtaining capital to grow or start their business, but there's also a component that involves assisting businesses with disaster recovery.
Q. You said the word capital. What does that mean?
A. Funding or -- funds to assist the business with its operations or with its growth.
Q. What is your current title at the SBA?
A. I'm center counsel for the COVID EIDL Servicing Office.
Q. What does that position entail?
A. I oversee the legal department for all servicing, liquidation, collections of all COVID EIDL loans.
Q. And how long have you been in that position?
A. This position is new. It's only been about a month.
Q. What did you do before you were in your current position at

the SBA?
A. I served as an attorney advisor, liaison to the Office of Inspector General.
Q. What does that mean?
A. I oversaw the fraud department, and that included reviewing files suspected of fraud or misuse, referring those files to the Office of Inspector General, assisting with review of files for prosecution or testimony at trial.
Q. How long were you in that position, approximately?
A. About 12 years.
Q. And you said you'd been at the SBA for about 17 years total?
A. Yes.
Q. What about the five or so years before that?
A. I served as an attorney and I reviewed loans for closing, compliance, training, kind of a jack of all trades the first few years.
Q. Ms. Littwin, are you familiar with the Economic Injury Disaster Loan program?
A. Yes.
Q. Is that sometimes known shorthand as something else?
A. Yes, it's known as the EIDL program.
Q. And how do you spell EIDL, as you're referring to it?
A. E-I-D-L, and so it's the first letter of each word for Economic Injury Disaster Loan.

Q. At a general level, what is the EIDL program?
A. It is a program to assist businesses who have had economic injury caused by a declared disaster.
Q. When was it established?
A. The SBA program was established in 1953.
Q. What is the general purpose of EIDL?
A. It is to provide working capital to a business to assist with their recovery from a disaster, so to assist with meeting their ongoing obligations so that they don't have to close their doors. For example, during COVID, many businesses had to temporarily close, and it assists with meeting those obligations during that time period.
Q. Who, if anyone, administers the EIDL program?
A. The SBA. It's a direct lending program provided by the SBA.
Q. When you say direct lending, what do you mean by that?
A. So SBA is actually the one who receives the applications, reviews those applications, approves them, and provides the funding. As opposed to going to a bank, you would submit your application directly to SBA.
Q. How are the funds distributed?
A. Once SBA has approved the loan and the decision is made to disburse, we send a notification to the Treasury Department, who issues those funds to the borrower.
Q. Geographically, if you know, where do SBA EIDL payments

come from?
A. So once the decision has been made to disburse, the SBA office in Denver, Colorado, sends a message to the Treasury Department in Kansas City, Missouri, and the server that they use to send that message is located in Sterling, Virginia.
Q. Generally, what allows a business to seek EIDL funds?
A. There must be a declared disaster, and then the business must meet certain eligibility requirements. Once the program is open, they would submit the application, and they must be -- for example, a small business, they must be under 500 employees for the COVID program.
Q. Are there any other examples of some of the eligibility requirements?
A. They must be operating lawfully within the United States; they cannot be involved in business that is sexual in nature; we look at back child support, criminal history, credit.
Q. What types of situations have EIDL funds been made available for, historically?
A. So the program in general could be for things such as 9/11, it could also be the BP oil spill, but it can also be in conjunction with a physical disaster. So for example, during Hurricane Sandy, a business could obtain assistance both to rebuild their -- their property or for physical damages, but they could also have assistance for economic injury--for example, if a business was -- a restaurant, let's say, was

damaged and they were closed while they were making repairs--so the same economic injury can be available in both situations.

Q. What recent disasters, if any, have EIDL funds been used for?

A. So for COVID EIDL, in particular, a disaster was declared specifically because of COVID-19, but again, 9/11 or the BP oil spill.

Q. Could you please walk the jury through the rollout of the EIDL program as it related to the COVID-19 pandemic.

A. So the first step was the disaster declaration, which happened in early March of 2020 for the state of New York. And that allowed businesses to submit an application for assistance.

Shortly after, there was a change or an enhancement to the standard program under the CARES Act, and that expanded who could apply. So for example, now contractors were eligible to -- independent contractors were eligible, agriculture-based businesses were also eligible, and it provided additional funding for the program, for the COVID EIDL program.

Q. To your knowledge approximately how much money has the SBA disbursed to businesses through the EIDL program during the entirety of the COVID pandemic?

A. For this specific disaster, through May of '22, May of this year, it was approximately $391 billion.

Q. And that's billion with a B?

A. Yes.
Q. Between August 2020 and October 2021, what were some of the qualifications for applying for EIDL funds?
A. So SBA would do an initial credit check to ensure that the business or that the owner had appropriate credit. It was also used to look at repayment ability for the loan. We also looked at the criminal history, character, as well as back child support. Those were several of the key items. But when someone was submitting the application, they would be answering those questions on the application itself.
Q. I think I heard you mention the repayment history is one of the items that was under consideration?
A. Yes.
Q. Could you help the jury understand what you mean by that.
A. So under the standard program, the -- there would be a calculation to determine how much could the business afford to repay each month, and under the COVID program in particular, we looked at the credit score to make that determination. So there was a analysis that was done to check for repayment ability. Loans over a certain amount, over 500,000 may have required additional documentation on repayment ability.
Q. What were the maximum funds available?
A. So for most of 2020, the maximum was $150,000 for a loan. There may have also been eligibility for a grant of up to $10,000. In 2021, in April, the loan limit increased to

500,000, and in September of 2021, it increased to 2 million per business, and if you had more than one business, you could be eligible for up to 10 million. So if you had five businesses, you could have up to 2 million per business, for a total of 10.

Q. How were EIDL applications assessed?

A. So the initial step was the receipt of the application with an identity validation check. There were then two steps that would determine whether the loan would move forward. One was the credit check to determine if they met the minimum credit threshold. The other was calculating the eligible amount based on the answers on the application. If those items met our requirements, it would -- a notification would be sent to the applicant to log in and accept a loan offer. And that would be based off of what we calculated from their answers. After they accepted that offer, it would have a loan officer review, a two-step loan officer review. If it was approved, then there would be a notification to sign the closing documents, and upon the signing of the closing documents, the loan would be funded.

Q. Just so I'm clear, who ultimately approves a loan under the EIDL program?

A. SBA.

Q. What are some of the important considerations that the SBA keeps in mind when considering whether to approve a loan under the EIDL program?

A. So we are asking certain questions on the application that are important to eligibility. I've mentioned, for example, the credit history as well as back child support. There are also the credit score. But we're relying on their answers on the application in order to make our determination.
Q. To your knowledge why does the SBA rely on the certifications in processing EIDL applications?
A. For this particular disaster, there was a need to provide assistance as quickly as possible. Businesses were closed, and without timely assistance, they may not be able to reopen. And so we were trying to get funds in their hands as quickly as possible to keep them operating and allow them to -- to continue and not have an impact on the economy.
Q. Is the truthfulness of the representations in an EIDL application one of the important considerations to the SBA in considering whether to approve a loan under the EIDL program?
A. Yes.
Q. What, if any, are some of the factors that might be disqualifying for a business seeking EIDL funds?
A. If it wasn't a small business; if it had -- for this particular program, if it had more than 500 employees; if it wasn't operating legally under the laws of the United States, so, for example, a marijuana-based business; if it was sexual in nature; if the credit score did not meet the minimum requirement; if there was a criminal history, a recent criminal

history, or back child support. Those are just some of the factors.

Q. Generally speaking, what are the loan terms for loans extended under the EIDL program during the COVID pandemic?

A. They're generous terms. So they're a 30-year repayment. They're low interest rate. If the loan has collateral, there would be, depending on the type, a $100 recording fee, but other than that, there are no other fees, costs associated with the loan. There's no prepayment penalties, no late fees. It's a program that's been established to help those businesses recover as quickly as possible.

Q. What, if any, collateral does the SBA collect on loans under the EIDL program?

A. So for a loan of more than 25,000, SBA would take a security interest in the business assets, and SBA would record a UCC filing to evidence that, that collateral.

For loans of over 500,000, SBA may have taken real property as collateral, such as a mortgage on the business location.

Q. In lay terms -- you mentioned a UCC filing. Could you help the jury understand what you mean by that.

A. Yes. So when the property is not titled, like a car, or when it is not a piece of real property, where you would have a mortgage recorded, you would file your interest to prove to others that you have an interest in that property with the secretary of state, and so it would include information about the business assets you're taking; so for example, the machinery equipment for the business, their accounts receivable, inventory, those types of assets that are not fixed real property or titled.

Q. If the listed borrower doesn't repay the loan, what are the consequences, if any?

A. If there is no repayment, it may be routed through the collections process, which may include referring the borrower to the Treasury. It could include garnishing of wages or taking of tax returns -- tax refunds. And so there are additional steps if the loan is not repaid to recoup those funds.

MR. FELTON: Ms. Loftus, I'd ask you to please publish Government Exhibit 160, which is in evidence.

If you could just blow up the text portion of this exhibit, please.

Q. Ms. Littwin, do you recognize this document?

A. Yes.

Q. What is it?

A. This is the loan authorization and agreement. It's the contract between SBA and the borrower, and it outlines the terms and conditions of the loan.

MR. FELTON: Ms. Loftus, could you please turn to the next page of the exhibit.

And if you could blow up that first text paragraph, please.

Q. Ms. Littwin, who are the parties to this loan?

A. SBA and Mula Apps Corp.

Q. Do you see where an address is listed for Mula Apps Corp.?

A. Yes.

Q. Could you please read that for the jury.

A. 244 Fifth Avenue, Suite T251, New York, New York 10001.

Q. Do you see an amount of the loan in this document?

A. $150,000.

MR. FELTON: Ms. Loftus, could you please turn to page 3. Ms. Loftus, could you blow up that second section, Use of Loan Proceeds, and the bullet underneath it. Thank you.

Q. Ms. Littwin, what does this section mean?

A. This outlines how the borrower should use the loan funds, and it indicates that they're supposed to use them to alleviate economic injury caused by the disaster, and that this loan in particular indicates there is a $100 recording fee for the collateral.

Q. How common is that provision in loans under the EIDL program?

A. The use of loan proceeds is in every loan authorization and agreement. The only difference would be if there was no collateral, it would not have the $100, and if there was real property as collateral, it would have a different statement about that collateral.

Q. What are some of the other standard requirements for loans under the EIDL program?

A. That the closing documents must be returned within a certain amount of time, that they must carry insurance on the collateral, that they must notify SBA if they receive recovery funds from another source for the same disaster.

MR. FELTON: Ms. Loftus, could you please turn to page 5.

And I'd ask you to just blow up the text Borrower's Certifications and the first three bullets underneath those, please.

Q. Ms. Littwin, what are the Borrower's Certifications here?

A. The borrower is certifying that there's been no adverse change in their financial condition since the application was submitted, which could include things like filing for bankruptcy or having a -- an arrest or a conviction. And they're also certifying that all of the information they've provided with the application and any supplementary applications are true, correct, and complete, and that SBA is relying on that information to approve and disburse the loan.

Q. And that last statement you made, is that the third bullet on the screen?

A. Yes.

MR. FELTON: Ms. Loftus, let's turn to page 7, please.

Now if you could just blow up the signature on the bottom.

Q. Ms. Littwin, what is the name of the person who supposedly signed this loan?

A. Jonathan Lipow.

Q. Who is this person at Mula Apps?

A. Owner or officer.

Q. What's the date of the signature?

A. November 4th of 2020.

(Continued on next page)

MR. FELTON: Ms. Loftus, let's please turn to page 30. If you could just blow up the header, the bank, and the entity name.

Q. Ms. Littwin, what does this document appear to be?

A. It appears to be a Chase Bank statement.

Q. Is that a bank statement that's provided by the SBA or provided by the loan applicant?

A. The loan applicant.

MR. FELTON: Ms. Loftus, please turn to page 43. And, Ms. Loftus, if you could just blow that up, please.

Q. Ms. Littwin, what does this document appear to be?

A. It appears to be a New York State driver's license.

Q. What's the listed name of the person on this identification card?

A. Jonathan Lipow.

MR. FELTON: Ms. Loftus, please turn to page 45. And if we could zoom in on business information and the first maybe eight or nine rows. That's good.

Q. What is this document, Ms. Littwin?

A. It's the original intake application. So it represents the answers that the applicant provided at the time that they submitted the application.

Q. And what, again, is the business legal name of this application?

A. Mula Apps Corp.

Q. Do you see where there's an inquiry regarding the gross revenues for the 12 months prior to the date of the disaster?
A. Yes.
Q. What is the figure provided by the applicant in this document?
A. $2,706,852.
MR. FELTON: Ms. Loftus, if we could zoom out here, and then blowup the top right corner of this document.
Q. Ms. Littwin, do you see where there's an EIDL application number listed on the right?
A. Yes.
Q. Based on this information, where electronically did this electronic SBA EIDL application get sent to?
A. It went to a server located in West Des Moines, Iowa.
MR. FELTON: Ms. Loftus, if we could please turn to page 48 and blowup the bottom portion where it says funding, please. Thank you.
Q. Ms. Littwin, what does this bottom position of the document mean?
A. This is a system generated note that had been added to the loan file that indicates that funding was successful on November 7th of 2020 for $150,000.
Q. And was this note added by the SBA?
A. Yes.
MR. FELTON: And, Ms. Loftus, if we could please turn

to page 54 and blowup the entire related applications portion of this document.

Q. Ms. Littwin, what does related applications mean in this document?

A. So the system provides information to the loan officer or the case manager who's working on the loan or reviewing the loan, and it tells them if there are any other applications that are related to this particular application. And it will tell them that it could be related, for example, by a device, an address, a phone number. It could also be an email address. It could be a Social Security number or a tax ID number. And it will indicate what piece of information matched with another application.

Q. And in this document, what are some of the fields that matched according to this document?

A. By device, phone number and address.

Q. And if you could take the first row and just read the row horizontally across to the jury, please.

A. The legal name is Twinway Air Charter Corp, with a d/b/a or a doing business as name of Twinway Air, with the business contact as Gerald Hanson; a date of October 23 of 2020. That application was declined, and the matching field was "devices."

MR. FELTON: Ms. Loftus, if we could now display Government Exhibit 162 for the jury, which is in evidence as well.

THE COURT: Okay. Mr. Felton, when you find a convenient breaking point, we'll take our lunch break.

MR. FELTON: Your Honor, I have less than five minutes left.

THE COURT: Okay. Fine. Let's push through.

Q. Ms. Littwin, looking at Government Exhibit 162, do you recognize this document?

A. Yes.

Q. What is it?

A. It's an original intake application submitted by an applicant with their answers as they submitted it.

MR. FELTON: And, Ms. Loftus, if you could blowup the top right corner again.

Q. Ms. Littwin, do you see an identical application number here?

A. Yes.

Q. Based on this information, where did this SBA EIDL application get sent to?

A. West Des Moines, Iowa.

Q. And when, if you know, was this application submitted to the SBA?

A. December 8 of 2020.

Q. So the date created field means when the SBA received it?

A. It means when the applicant hit the submit button to send it to SBA.

MR. FELTON: If we could zoom out, please, Ms. Loftus and blowup the business information, first few rows. Thank you.

Q. Ms. Littwin, what's the name of the applicant here?

A. Jetaway Jets Corp.

Q. How much does this applicant claim in gross revenues for the 12 months prior to the date of the disaster?

A. $3,120,156.

Q. And what is your understanding of the term gross revenues?

A. That is the business' income, so what they would have reported on their taxes as their income for that 12-month period.

Q. You see on the bottom here it lists the number of employees?

A. Yes.

Q. What is that?

A. Eleven.

MR. FELTON: And if we could zoom out, Ms. Loftus, and then blowup the bottom portion of this page.

Q. Ms. Littwin, who is listed as the owner of this business?

A. William Jamison.

MR. FELTON: Let's turn to page 9, please, Ms. Loftus. And could you please blowup the related applications.

Q. Again, what do the related applications mean in the context of this document?

A. These are other applications that are related by a particular factor that -- to this specific application.

Q. What are the matching fields in this document?

A. Devices and IP addresses.

Q. Could you please read the fourth row, the Mula Apps Corp row to the jury?

A. Mula Apps Corp, with a d/b/a of Mula Apps, with a contact of Jonathan Lipow, with a date of July 27 of 2021. Application was declined, and the matching field was devices.

MR. FELTON: Ms. Loftus, could you please turn to the next page and just blowup the related applications here as well. Thank you.

Q. Ms. Littwin, what is the -- what's happening here on the related applications portion of the document?

A. All of these applications are also related by device.

Q. And could you just read the contacts, just vertically down on this page?

A. Thomas Allen, Nathanal Salnick, Christopher Potash, John Krokes, Gregg Gerken.

MR. FELTON: One moment, your Honor.

Q. Regarding the related applications that you were just discussing, Ms. Littwin, what is the relevance of this related application analysis to the SBA's review?

A. So it relates to the loan officer's determination whether to approve the loan. So, for example, if we have multiple applications by the same business, they would only be eligible for one loan. And so if they saw an additional application, they would decline the second application in time, if one of the other factors is looking for indications of potential fraud.

So, for example, if you saw an application that was related by bank account but it was for a different person or a different business, that would indicate to the loan officer that they should do an additional review.

Q. What does it mean to be related by device in this document?

A. So when the application is submitted, there is a capturing of the browser and the operating system, and that creates a unique device ID that is stored within the system. And once that same ID number is -- comes up on another application, it would indicate a link by device.

MR. FELTON: Ms. Loftus, could you please publish Government Exhibit 162 for the jury, which is in evidence.

And this is the last document for the witness.

If you could just blowup the email address and the owner name on the bottom of the exhibit, please.

Q. What is the business email on this exhibit?

A. WJamison758@gmail.com.

Q. And what is listed as the business activity and detailed business activity?

A. Transportation and airlines.

MR. FELTON: And, Ms. Loftus, if we could just blowup again the actual business owner, the last three lines of this exhibit, please.

Q. Ms. Littwin, who is the business owner?

A. William Jamison.

MR. FELTON: No further questions, your Honor.

THE COURT: All right. Thank you.

We're going to take our lunch break now, ladies and gentlemen.

So, Ms. Littwin, you are still under oath, and we'll pick up with your cross-examination by Mr. Brill after lunch. So please do not discuss the case or your testimony with anyone over the lunch break. All right.

THE WITNESS: Okay.

THE COURT: And, ladies and gentlemen of the jury, please enjoy your lunch. Leave your notebooks here.

I remind you again, please don't talk about the case over the lunch break. All right?

I will see everyone back here at roughly 2:00 at the very latest. All right. Thank you.

THE DEPUTY CLERK: All rise for the jury, please.

(Jury not present)

(Continued on next page)

THE COURT: All right. You may step down, Ms. Littwin. Thank you.

Everyone else, you can be seated.

Is there anything for the record from the government?

MS. MURRAY: Your Honor, just a question for purposes of scheduling. How late do you anticipate that we will go to today?

THE COURT: I had said roughly 4:30 each day unless you're right in the middle of a witness. Like if you had five more minutes with a witness, I would go a little further, but --

MS. MURRAY: Understood. I was just curious in light of the start time today, so I could anticipate how the schedule is going now. We will likely be in the middle of Special Agent Lidsky when we do break for the day.

THE COURT: Today?

MS. MURRAY: Today. Yes, your Honor. So he is the case agent, and if he is on direct examination, I just wanted to inquire of the Court whether we would be permitted to meet with him tonight in connection with trial-related matters independent of his testimony, what the Court's view is on that.

THE COURT: Mr. Brill.

MR. BRILL: Given his designation as the case agent, the government certainly has a lot of leeway. Obviously, should Agent Lidsky say something today and come in tomorrow and say something different, I would have a different view, but other than that, I think the government is within its rights to confer.

THE COURT: All right. I don't disagree with that. It's fine for you to confer, but I also think it's fair grounds for cross-examination should there be an issue that gets presented, as Mr. Brill is suggesting.

MS. MURRAY: Thank you, your Honor. Completely understand, and we appreciate that clarification.

THE COURT: Okay. Anything from you Mr. Brill?

MR. BRILL: No. Thank you, your Honor.

THE COURT: All right. Thank you, everybody. We'll stand in recess. Please be back before two o'clock, ready to go at 2:00. Okay?

I do have a Board of Judges' lunch I need to get to the right now.

MS. MURRAY: Thank you, your Honor.

(Luncheon recess)

AFTERNOON SESSION

2:25 p.m.

THE COURT: All right. Are we ready to resume with the jury?

MS. MURRAY: Yes, your Honor.

THE COURT: We have our witness -- Mr. Brill, did you have --

MR. BRILL: Just an update on the food situation, your Honor. There was no sandwich. Crackers again. The Marshals informed me MDC did not send food this morning.

THE COURT: You told me already they did not send food this morning.

MR. BRILL: That was yesterday.

THE COURT: Well, I mean, I sent the note when we talked early this morning. I didn't expect they'd be able to do something --

MR. BRILL: The Marshals at that point didn't know if they had a sandwich this morning --

THE COURT: Afterwards, if the Marshals could speak to me, maybe they can do something, but I do know that our contact at MDC was actually tied up because a group of judges went to MDC today. So while I sent the email, she was meeting with all of those judges, and, in fact, our Board of Judges' meeting was delayed waiting for the judges to get back. So I'm quite certain she hasn't even seen my email yet.

MR. BRILL: All right. Thank you.

THE COURT: But you'll let me know if it continues to be a problem.

I apologize, Mr. Ilori. I don't really understand the situation --

But if the Marshals can think about is there any way you can facilitate getting food for Mr. Ilori --

U.S. MARSHAL: Your Honor, I can talk to management and see what they can do. To my understanding, MDC has quit sending sandwiches or a meal. They do the crackers or pretzels as he described. I can see what management can do.

THE COURT: You can't get a sandwich out of the cafeteria for him?

U.S. MARSHAL: I can't. It's policy.

THE COURT: Okay. I can't change BOP policy. But I did send an email, and I should get a response.

All right. Is there anything else we need to take up?

MR. BRILL: No, your Honor.

THE COURT: Do we have the witness?

MS. MURRAY: Yes, your Honor.

THE COURT: Good afternoon, Ms. Littwin.

All right. And, Ms. Dempsey, you can retrieve our jurors, please.

(Jurors present)

THE COURT: You're all allowed to sit.

All right. Please be seated, everyone.

Good afternoon, ladies and gentlemen. Thank you for your patience. I'm sorry that I was a few minutes late. The judges' meeting we had ran a little delayed, so I apologize to all of you.

Ms. Littwin, you remain under oath.

Counsel.

MR. BRILL: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. BRILL:

Q. Good afternoon, Ms. Littwin.

A. Good afternoon.

Q. So I was looking through Exhibit 160, 161, 162. It looks like there are a couple of different matching fields.

You had mentioned one being devices, correct?

A. Yes.

Q. Okay. And devices, as you explained it, was some sort of snapshot of the operating system and the browser?

A. Yes.

Q. Okay. And do you know technically what is being captured to give that computer a unique fingerprint?

A. No, I do not.

Q. Okay. Looking at -- and obviously we can put this up if it helps refresh your memory, but looking at Exhibit 162, there's a separate matching field for a company called Splendor Air

Charters, LLC, that indicates that a matching field was devices -- it looks like there might be a comma there -- IP addresses.

So the -- that is page 7482 of Exhibit 162.

THE COURT: Is there a question?

MS. MURRAY: We're trying to identify the page Mr. Brill is discussing for the witness.

MR. BRILL: So if we could put it up, it might be easier.

There we go. And maybe we could just highlight that bottom pink part.

THE COURT: All right. The government is trying to find what you're looking for.

Do we have it?

MR. BRILL: Yeah. We've got it.

THE COURT: They have it.

MR. BRILL: They have it.

Q. So see "devices, IP addresses" there in the second line?

A. Yes.

Q. So it appears at least the data being collected to identify a device is separate from the IP address of the device?

A. That's correct.

Q. Okay. And I don't know if this is too technical for you, but when the system identified the device that is in the first line, the third, fourth, and fifth line, without the IP address, how unique, if you know, is the fingerprint that is

being captured of those devices without the IP address?
A. I do not know.
Q. Okay. Looking at Exhibit 160, you had indicated that the Mula Apps application --
THE COURT: Could you hold on one minute?
Let me ask the government, could you call that up, please, as well so the witness has the document.
Thank you very much.
Q. You had indicated that the Mula Apps application had been approved in the amount of $150,000, correct?
A. This particular application that ends in 3341, yes.
Q. Okay. And then later on there was a separate application that was declined? That you're aware?
A. Based on the related fields there was. I would need to compare it, but I believe it was a modification of this application. There was an increase request. I believe it was that match, but I would have to compare the number on that file.
Q. Can you take a look on this exhibit, page 6726, which is the existing EIDL tasks part? Do you see that? This page here.
MR. BRILL: If you could pull up that page. Thank you.
Q. So under application history, we can blow that part up just so it's easier to look at. It looks like the first -- is that

what you indicated, that there was an application funded and then a few months later --

A. Yes. There was a loan increase request to go up to 500,000, and that increase request was declined.

Q. Okay. And then if we could just look at the related applications section, just down the page from there.

So here the related application that is flagged as declined is the Twinway Air Charter Corp, right?

A. Yes.

Q. And that's based upon the device matching, right?

A. Correct.

Q. The other applications that are flagged as related were not declined, at least at the stage that it is on this page, correct?

A. Correct.

Q. And is that because, for example, with regard to the address, if these are coming from buildings in New York City, there might be multiple businesses at the same address?

MR. FELTON: Objection, Your Honor, form.

THE COURT: Do you know? Just yes or no.

THE WITNESS: Yes.

THE COURT: Do you know the answer?

THE WITNESS: Yes.

THE COURT: You can answer.

THE WITNESS: The match would be based on the address field. So if it did not include, for example, a suite or an apartment number, it would match off of the basic field.

Q. Okay. And then looking at A&M Superior Consulting, this one has a match based upon phone number, right?

A. Yes.

Q. And that would be, again, the phone number that's placed in an application field for phone number?

A. Yes. And there are multiple application numbers -- or, I'm sorry, multiple phone numbers requested on the application.

Q. Okay. And when it says "credit pulled" for that application, what does that mean?

A. That means the application has been submitted, we have pulled the credit, and a notification would have been sent to the applicant to log into the portal and to accept the offer and submit it back to SBA. This applicant had not logged in to submit it -- to accept and submit it back to SBA yet, so it did not proceed with the processing.

Q. Okay. Now, in order to get one of these loans, is a photo ID required or is it just part of the process?

A. It is not a standard requirement. It may be required if there was a problem with the loan, a reconsideration request for a previously declined loan, but it's not part of the original filing requirements.

Q. Okay. And with regard to the Mula Apps application, the one we're looking at now --

MR. BRILL: If we could just pull up that driver's license, please, Ms. Loftus. I have it as page 6715, but I know that may not match up. There we go. Thank you.

Q. Was this -- do you know after a review of this file if this was required as part of the initial application for this application?

A. It was requested as part of the -- the application started a decline process, and a loan officer requested additional information, including the identification.

Q. What type of process was used at SBA at that time to verify the legitimacy of the photo IDs that were sent in?

A. The assigned loan officer would review it for indications of alteration or fabrication. The number, for example, was not plugged in to a verification system. It was visually inspected.

Q. Okay. So the ID number at the top, starting in 412, in the SBA's case would not be plugged into a database to independently verify it, correct?

A. Correct.

Q. All right. Any indication if there -- if you know, if there was or was not an actual person named Jonathan Lipow?

A. I do not know. I do not know.

Q. Okay. And any indication that SBA had that -- if Mr. Lipow was an actual person, if that was actually him in the photo?

A. No, I do not know.

Q. I don't have anything further. Thank you.
A. Thank you.
THE COURT: Thank you, Mr. Brill.
Redirect?
MR. FELTON: Very briefly, your Honor.
THE COURT: Okay.
REDIRECT EXAMINATION
BY MR. FELTON:
Q. Ms. Littwin, do you recall being asked about drivers' licenses as part of SBA applications?
A. Yes.
Q. When drivers' licenses are submitted by an applicant for an EIDL loan, do they submit photos or a scan of the document or an actual hard copy or the photo itself?
A. A photo, a scan, it could be emailed, a fax.
Q. Not the actual driver's license?
A. Correct.
THE COURT: Thank you. You are excused --
I assume no recross?
MR. BRILL: No, your Honor. Thank you.
THE COURT: All right. You are excused. Thank you very much.
THE WITNESS: Thank you.
THE COURT: Thank you for being here.
(Witness excused.)

MS. MURRAY: Your Honor, the government calls Kandace Zelaya.

THE COURT: Good afternoon, ma'am. If you would, please stand here at the witness box, and once you're settled, my courtroom deputy will administer the oath. Thank you.

KANDACE ZELAYA,

called as a witness by the Government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MURRAY:

Q. Good afternoon, Ms. Zelaya.

A. Good afternoon.

Q. Where do you work?

A. The United States Small Business Administration.

Q. Is that also referred to as the SBA?

A. Yes, it is.

Q. What is the SBA?

A. The SBA is an independent agency of the Federal Government that provides financial assistance, technical and managerial assistance, entrepreneurial assistance and government contracting assistance to small businesses throughout the country.

Q. Do you work in a particular division of the SBA?

A. I work in the office of general counsel.

Q. What is your current title?

A. My current title is trial attorney in the office of litigation.
Q. How long have you worked in that role?
A. I just moved into that role in April of this year.
Q. Prior to your current position, what other positions, if any, have you held at SBA?
A. I was a senior attorney in the financial law and lender oversight division in the office before I moved to litigation.
Q. And in your current role, what are your responsibilities?
A. I provide support to our offices. I also work on litigation that is pending either when someone has sued the agency or when we have had to file suit against generally one of our lenders. And I work with our U.S. Attorney's Office on those litigation matters.
Q. Ms. Zelaya, generally speaking, what are some of the funding programs that are available to small businesses from the SBA?
A. We have business loan programs. We have disaster loan programs. Our main business loan programs are the 7(a) program and the 504 program. The 7(a) program is named after the section of the Small Business Act that authorizes it, and it's a general business loan for small businesses that you can use either to get into business, acquire a business, expand your business, and for most general business purposes, such as working capital, purchasing your building, land to build a

building, et cetera.

Our 504 program is a long-term fixed asset financing program generally for the construction of the business's location or really large long-term equipment.

Q. And focusing on those two programs, the 7(a) loan program and the 504 loan program, what guarantee, if any, does the SBA offer with respect to any funds that are lent under those programs?

A. The 7(a) program is a guaranteed loan program, which means that the applicant goes to the bank and applies for the loan from the bank, and the bank requests a guarantee from us. In the event that the borrower defaults and doesn't pay the loan back, we would pay a percentage of the outstanding balance at the time of default. That can be anywhere from 50 percent up to 90 percent.

Q. And just to be clear, when you say that the SBA guarantees the loan amount, what does that mean?

A. That means that we don't make -- we don't disburse the funds directly. The bank makes the loan. The bank disburses the funds, and we provide the bank with a guarantee which is similar to an insurance policy.

So, again, if that borrower defaults, then we would pay the bank the percentage of the guarantee on that particular loan.

Q. Did there come a time when the SBA offered certain services

related to relief from the COVID-19 pandemic?
A. Yes. In March of 2020.
Q. Was one of those COVID relief programs the Paycheck Protection Program or PPP?
A. Yes, it was.
Q. And when was PPP established?
A. It was established in the CARES Act, which was passed on March 27 of 2020, and we began accepting applications on April 3rd of 2020.
Q. And can you describe what you mean when you refer to the CARES Act?
A. The CARES Act is the Coronavirus Aid Relief Act -- and Securities Act -- or Security Act. Excuse me. And it was passed. It's a large encompassing bill that has many COVID relief programs available to help businesses, and individuals, and health care workers deal with the immediate aftermath of the COVID-19 pandemic.
Q. What was the purpose of the PPP?
A. As the name suggests, the purpose was to protect the paychecks of employees of small businesses trying to help those employers who were very limited in their revenues, and because of all of the shutdown orders, et cetera, trying to help them be able to keep those workers paid, so those workers could then pay their bills.
Q. I'd like you to walk us through details of the Paycheck

Protection Program. What role, if any, did you have in the implementation of PPP?
A. I was directly involved in PPP for drafting the guidance documents for PPP, whether it was the interim final rules that were published setting the parameters of the program, the application forms for the borrower and the lender, the frequently asked questions, and the policy and procedural notices we issue to provide additional guidance.
Q. And that was in your then role as a lawyer within the SBA prior to your current role; is that correct?
A. Correct.
Q. What were the eligibility requirements to apply for PPP funds at a high level?
A. There were numerous entities that were eligible. Traditionally, the small businesses that are already eligible for our 7(a) and 504 programs; in addition, the CARES Act expanded the eligibility to include non-profit organizations, veterans' organizations, tribal organizations, and sole proprietors, qualified self-employed individuals, and independent contractors. And there were expanded size standards. Normally, businesses have to be small to be eligible for financial assistance from the Small Business Administration, but the size standards were increased for the CARES Act.
Q. What were the maximum funds available to a particular small

business under PPP?
A. The maximum loan amount was ten million dollars.
Q. How did the SBA calculate an available PPP loan amount for a specific applicant?
A. The specific applicant calculates their individual maximum loan amount by first calculating their average monthly payroll for either the prior 12 months or 2019, and then multiplying that by two and a half. And that was the maximum loan amount for that particular business.
Q. And just to clarify something that was in my question, which I believe you just clarified, it's the loan applicant who calculates the loan amount that they're requesting; is that correct?
A. That is correct.
Q. Okay. And who administers the PPP?
A. The SBA administers the PPP in consultation with the Department of Treasury.
Q. And you mentioned that SBA loan programs are guaranteed. What is the source of the money that guarantees those loans?
A. Congress appropriates money in order for us to be able to provide the guarantee.
Q. What percentage of PPP loans did the SBA guarantee?
A. The guarantee on a PPP loan was a hundred percent.
Q. Can you briefly explain the time line of PPP, starting with the March 27, 2020, CARES Act that established the program?

A. The CARES Act was enacted on March 27, and we began accepting applications on April 3rd of 2020. And the CARES Act originally included an appropriation of $349 billion, and that money was exhausted by April 14 of 2020. And then subsequent legislation was enacted shortly thereafter to provide additional funds, and there were three or four other subsequent acts that either made changes to the program, extended it. Originally through -- the CARES Act originally set a deadline of June 30 of 2020. There was another act passed in early July that extended it to August 8 of 2020.

And then the Economic Aid Act was passed in December of 2020 that reauthorized first draw PPP loans and then created second draw PPP loans and extended it through March 31st of 2021. And then there was the American Rescue Plan Act, which made additional changes. And, finally, there was an extension act in 2021 that extended the program ultimately to June 30 of 2021, and that's when the program authority ended to stop making any new loans.

Q. Ms. Zelaya you just mentioned that between the initial loans that were accepted in early April of 2020 and mid April of 2020, approximately 349 billion was disbursed through PPP, correct?

A. Correct.

Q. In total, over the lifetime of PPP, what is the approximate amount of funds that went out to loan applicants?

A. It was just over $800 billion.
Q. Now, did the SBA provide prospective borrowers of small businesses and the like with information about PPP?
A. Yes. We posted all of the information we issued as we issued it on our website, and it was also available on the Department of Treasury's website.
Q. What type of information, generally speaking, did the SBA publish relating to PPP?
A. We published interim final rules that were both posted on our website and published in the Federal Register, and those would set the program parameters and any time any changes were made. And we also posted the application forms for the borrower and the lender, a set of frequently asked questions, which was continually updated throughout the life of the program, and, again, various policy and procedural notices.
Q. Now, when you use the world lender or lenders, are you referring to a particular type of institution?
A. There were banks that are typically federally regulated banks, but there are also non-bank lenders and other financial service providers who are eligible to participate in making PPP loans.
Q. Ms. Zelaya, I want to talk about the PPP loan application process. Are you familiar with that process?
A. Yes.
Q. What type of information would a prospective borrower need

to provide in applying for a PPP loan?

A. They would need to complete the application form either the form the SBA created or a lenders' equivalent that collects the same information and certifications. And it would collect various information about the business, their name, primary contact, the type of business, what they were planning to use the proceeds for.

And there are certain questions relating to the eligibility of the applicant, and they would also need to provide supporting documentation to show that they had employees that they paid salary and payroll taxes as of February 15, 2020, because that was required in order to be eligible for a PPP loan under the CARES Act. And they had to provide supporting payroll documentation to show how they calculated their average monthly payroll and how they calculated their loan amount.

Q. Did the borrower submit that application and any supporting documentation directly to the SBA?

A. No. That information went to the lender.

Q. And what, if anything, did PPP require a lender to do with information that was submitted by a prospective borrower?

A. Because the purpose of the program -- purpose of the program was designed to get the money out the door as fast as possible, there was a very streamlined process, so the borrowers were allowed -- they self certified their eligibility to the program when they submitted all the documentation to the lender, and the lenders were able to rely on those certifications made by the borrower.

They had minimal underwriting obligations, which included confirming that the borrower had made all the certifications required in the application, that the borrower had provided the supporting information for their calculation of average monthly payroll, and they were supposed to review that to make sure that they had employees for whom they paid salaries and payroll taxes as of February 15 of 2020. And they had to comply with their Bank Secrecy Act requirements that they normally comply with for their usual loans.

Q. Now, once the lender received information and an application from a potential borrower, how, if at all, did the lender convey that information to the SBA?

A. Once they received the information and performed their good faith review of it, they entered certain information into our electronic system in order to get the SBA loan number that general -- that reflected the fact that the loan was now guaranteed.

So they would only enter certain information, basically the business name, the type of business structure that it was, whether it was a corporation or a partnership, and the loan amount, and the terms of the loan. And that was all they had to enter into the system in order for the system to

generate a loan number.
Q. And I believe you just said it, but can you remind us again what the significance from the SBA's prospective is from generating a loan number?
A. Once the loan number was generated, the guarantee attached to the loan.
Q. Did the SBA undertake any substantive review of PPP loan application information prior to issuing a loan number?
A. No, we did not receive any of the applications or the supporting documentation. We only received the limited field that the lender entered into the system electronically.
Q. After the SBA issued a loan number, what was the SBA's role with respect to a particular borrower?
A. After the loan number was issued, we didn't necessarily have a role until the borrower would finish using the proceeds and apply for forgiveness. The lender -- once we issued the loan number, the lender was supposed to disburse the loan to the borrower. And then we didn't have a role unless and until that borrower would then submit a forgiveness application to their lender. And then the lender submitted a forgiveness decision to us.
Q. Focusing again on the process of the PPP loan application, are you familiar with the lenders' obligations or the banks' or financial institutions' obligations under PPP?
A. Yes.

Q. How are you familiar with those applications?
A. We had to include those when we were drafting the interim final rules to set the parameters for the program.
MS. MURRAY: Ms. Loftus, can you please publish Government Exhibit 155, which is in evidence.
Q. Ms. Zelaya, do you recognize Government Exhibit 155?
A. I don't see it yet.
Q. Thank you.
A. There it is. Yes, I do.
MS. MURRAY: And can the jurors all see it?
JURORS: (Nodding)
MS. MURRAY: Thank you.
Q. And what do you recognize it to be?
A. That is the PPP lender's application for guarantee.
MS. MURRAY: Ms. Loftus, if you could zoom in on sections A through C of this particular application.
Q. Ms. Zelaya, what is the name of the lender for this particular PPP application?
A. Capital One.
Q. And looking at section B, what is the name of the borrower?
A. The borrower's name is BRS Consulting Corp.
Q. A few lines below that there's listed an applicant primary contact. Can you read that?
A. Jonathan Herttua.
Q. And then to the right of that entry there is a phone number

or a contact number for Jonathan Herttua. Can you read what that phone number is?
A. 646-575-0642.
Q. And then, Ms. Zelaya, in section C there's an amount of the loan that's being requested here. What is that amount?
A. $531,218.
Q. And next to that the guarantee percentage is listed as one hundred percent; is that right?
A. That is correct.
Q. And was that standard based on what you've described about the guarantee rate for PPP loans?
A. Yes.
Q. On all PPP applications?
A. Yes. All PPP loans were guaranteed one hundred percent.
Q. What about the interest rate two lines below that, was that also for all PPP loans?
A. Yes. All loans had a one percent fixed interest rate.
MS. MURRAY: Ms. Loftus, can you turn to page 2 of the agreement, and if you can zoom in on sections E and F, please, together.
Q. Ms. Zelaya, generally speaking, what does section E of this application, the lender's application reflect?
A. This is where the lender is telling SBA that the applicant has provided the necessary certifications that they were eligible for the loan, either as the type that they were in

operation on February 15 of 2020 and had employees for whom they paid salaries and payroll taxes, or they paid independent contractors and that they're an eligible type of entity.
Q. So is it correct that on the lender's application which we're looking at, section E reflects that the lender is certifying that it's reviewing information provided by the borrower?
A. Correct. It's certifying that they have obtained the certification from the applicant that the applicant is eligible.
Q. And I'm looking at section F at the bottom of this portion. What information does that reflect?
A. That, again, is a final certification that the applicant has provided the certification to the lender that they were, in fact, eligible under the PPP rules in effect when they applied for the loan.
Q. Thank you.
MS. MURRAY: Ms. Loftus, you can take that down.
Q. Ms. Zelaya, I'd now like to talk about the borrower's obligations under PPP. Can you describe the borrower's obligations with respect to the information it submits with a PPP loan application?
A. Yes. Again, they have to complete the application form, and it has numerous certifications that they have to make, and also several of them have to be individually signed in order to

certify that they have definitely read those and are making those certifications. And then they have to provide the supporting documentation to support that they had the employees, that they were paying salaries and wages as of February 15 of 2020, and how they calculated their average monthly payroll.

Q. Ms. Zelaya, do you know whether the borrower's self certifications were made under the penalty of perjury on a PPP loan application?

A. Yes, they were.

MS. MURRAY: Ms. Loftus, can you publish Government Exhibit 150, which is in evidence, at page three.

Q. Ms. Zelaya, do you recognize this document?

A. Yes. It is the PPP borrower application form.

MS. MURRAY: Ms. Loftus, if you could zoom in at the top portion of this document through to the end of applicant ownership.

Q. And we can highlight as we go along for you, Ms. Zelaya.

What is the name of the borrower for this PPP loan?

A. The business' legal name is M2 Gold Jet, LLC.

Q. And looking above and to the right is there another name associated with the business applying for this loan?

A. Yes. The d/b/a or trade name is M2 Gold Jet.

Q. Looking below the business name, can you read the particular address that was provided for M2 Gold Jet, LLC?

A. 347 7th Avenue, Brooklyn, New York 11215.

Q. And reading right from there, who was listed as the primary contact individual for this business PPP loan application?

A. Christopher Potash.

Q. And the email address next to that?

A. Christopherpotash@gmail.com.

Q. And, finally, what is the loan amount being requested on this borrower's PPP loan application?

A. $172,573.75.

MS. MURRAY: Ms. Loftus, can you please turn to page 4 of this exhibit and zoom in on the content of that page.

Q. Ms. Zelaya, generally speaking, what information is reflected on this portion of the borrower's application form?

A. These questions are getting to whether the applicant and its owners are actually eligible for the PPP, making sure they're not in bankruptcy or have any delinquent federal debt or have defaulted on a previous loan and caused a prior loss for the government, and a few other questions.

Q. Now, there appears to be a digital signature on items 5 and 6 on this list. It is covering the text a bit, but, first, can you explain to us why those two questions required a signature?

A. Yes. Those questions require signatures because they are related to the current or past criminal history of the applicant and its owners. And it had to be individually signed in order to make sure that the authorized representative of the business or the individual, if they're an independent contractor applying for the loan for themselves, actually made that certification, answered that question.

MS. MURRAY: Ms. Loftus, can we please turn to page 5?

Q. Ms. Zelaya, generally speaking, what information is reflected on this page of the borrower's application?

A. This page has the numerous representations and certifications that the applicant is making to both the lender and SBA when they're applying for this PPP loan.

Q. Were these particular borrower certifications included in every PPP loan application?

A. Yes, they were.

Q. How do you know that?

A. Because I was involved in drafting every version of the application.

MS. MURRAY: Ms. Loftus, if you could zoom in on the bottom portion of this document through to the end of the signature lines. And if you could please highlight, it's slightly cut off again, the language in the second to last paragraph.

Q. Ms. Zelaya, generally speaking, what does this particular paragraph of the borrower's certification relate to?

A. This certification is a direct acknowledgment from the authorized representative of the applicant acknowledging that they understand that any false statement made to obtain a loan guaranteed by SBA has consequences under federal statutes that -- including imprisonment and/or fines.

Q. And does this generally reflect that any statements or any certifications made by a borrower on a PPP loan application are made under what we call the penalty of perjury?

A. Yes.

Q. Thank you.

MS. MURRAY: Ms. Loftus, you can take that down.

Q. Ms. Zelaya, did the SBA monitor or track the status of PPP loans?

A. There was a monthly report that the lenders were required to submit. The main purpose or the initial purpose of the report is as soon as the loan was fully disbursed, the lender needed to report that to us so that way we would know to pay their processing fee.

And then after, if the -- as the program went on, they would have to continue to report on the status of all the loans in their portfolio on a monthly basis, and, ultimately, once the borrower applied for forgiveness, if there was forgiveness, for example, if forgiveness was made in full, then the loan would be paid in full and they would reflect that on their status report to us.

Q. Ms. Zelaya, you just mentioned a processing fee. Can you explain to me what you mean by processing fee?

A. Yes. The CARES Act mandated that SBA would pay all of the

lenders a processing fee for each PPP loan they made, so once the loan was fully disbursed, we would pay a percentage of the loan amount as a processing fee to lenders.
Q. Was there a rule or law that entitled lenders to a processing fee for PPP loans they processed?
A. Yes. It's set forth in the CARES Act itself.
Q. What was the repayment period for a PPP loan?
A. Initially, the loan has a two-year maturity. After the PPP Flexibility Act was passed on June 5th of 2020, that was extended to five years.
Q. Now, once a loan matured, how much time would a borrower have to repay the loan?
A. Well, after -- if they apply for forgiveness and they were not -- they did not receive forgiveness in full, whatever amount was outstanding, they would have to make payments on, just as you would a regular loan, in accordance with the terms of the note. And it would be either the remainder of that two-year or five-year period.
Q. Focusing on the PPP loans, can you describe the forgiveness process for those loans?
A. Yes. After the borrower used the proceeds to pay their payroll and the other eligible non-payroll costs, such as mortgage interest or rent or lease payments on their building, the applicant could then apply to their bank for forgiveness. And, again, they would have to fill out a different form and

provide supporting documentation depending on the loan amount that showed that they used it for payroll and other eligible expenses.

And they had to use a minimum of 60 percent on payroll costs in order to get forgiveness. And the lender would, again, review all of that information, the application, and the certifications, and the supporting documentation. And then the lender would submit a forgiveness decision to SBA, and in that, they would request payment for whatever amount they deem the borrower eligible to be -- eligible for forgiveness.

So, again, that could be up to the full loan amount plus any accrued interest.

Q. After the SBA received a lender's recommendation regarding a PPP loan forgiveness, what, if anything, was the SBA's role with respect to that loan?

A. We would either pay what the lender requested or, if we selected the loan for loan review, we would review it and make sure the borrower was eligible, the loan amount was calculated properly, they used the proceeds in accordance with the rules, which meant, again, a minimum of 60 percent for payroll, and then we would remit the payment to the lender.

Q. Do you know approximately what percentage of PPP loans ultimately were forgiven?

A. I believe right now the percentage is close to 90 percent.

Q. Ms. Zelaya, with respect to the forgiveness process, you've

mentioned there was an evaluation of eligible payroll expenses. What are some of the types of expenses that would be considered eligible expenses under PPP?
A. The wages, commissions, tips that were paid to the employees, and health benefits, medical benefits, family leave and employment retirement benefits, all of those things were eligible. Set forth in the CARES Act, it defined eligible payroll costs, and it's typically all of those things.
Q. And can you remind us what the goal and purpose was of PPP?
A. Again, the purpose of the Paycheck Protection Program was to protect the paychecks and salaries of these employees, to keep them employed, and so they can in turn pay their bills.
MS. MURRAY: May I have a moment please, your Honor?
THE COURT: Of course.
Q. Ms. Zelaya, you mentioned that the PPP program has now terminated; is that correct?
A. Correct.
Q. And I think you also mentioned the amount of money that had been spent in guaranteeing PPP loans; is that right?
A. Yes.
Q. Did there come a time when the money that the government had set aside for purposes of paycheck protection ran out essentially?
A. Yes. Originally, the CARES Act appropriated $349 billion, and that money was disbursed between August 3 and August 4 --

I'm sorry, April 3 and April 14 of 2020.

MS. MURRAY: Nothing further, your Honor. Thank you.

THE COURT: All right. Thank you.

Any cross?

MR. BRILL: No cross. Thank you, your Honor.

THE COURT: All right. You are excused then. Thank you very much for being here.

THE WITNESS: Thank you.

(Witness excused)

THE COURT: Your next witness, Ms. Murray or Mr. Felton.

MR. FELTON: Your Honor, the government calls Josh Sarver.

THE COURT: Good afternoon, Mr. Sarver. If you would please stand here, and once you're comfortable, settled, Ms. Dempsey will administer the oath.

(Witness sworn)

THE COURT: All right. Sir, and when you are speaking, if you would please make sure the microphone is pointed towards your mouth --

THE WITNESS: Okay.

THE COURT: -- so the jury seated over to our left and our court reporter and all of us can hear you, please. Thank you.

Mr. Felton.

JOSHUA SARVER,

called as a witness by the Government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FELTON:

Q. Good afternoon, Mr. Sarver.

A. Hello.

Q. Let's talk a little bit about yourself. Where are you employed?

A. La Colombe Coffee.

Q. At a particular branch?

A. Yes. It's the NoHo branch on Lafayette and Fourth.

Q. In Manhattan?

A. Yes.

Q. How long have you worked there?

A. About four years.

Q. Do you have a title?

A. I've been managing that cafe for four years, yeah.

Q. What does that entail?

A. You know, doing the schedule, managing the day-to-day, putting out fires.

Q. When you say putting out fires, give us an example of the kind of thing you're talking about.

A. Oh, you know, just the crises that emerge throughout the day, things break, fixed -- today, fixed our brewer for

example.
Q. Do any other people work at that branch of La Colombe?
A. Yeah. I have 14 employees.
Q. Did you have a position before you were the manager?
A. Yeah. I was a barista there.
Q. Does the La Colombe branch you managed have any video surveillance?
A. Yes.
Q. Can you describe that video surveillance system?
A. We have six cameras situated various places in the cafe, and it's called Eagle Eye.
Q. Do you generally have access to Eagle Eye footage as part of your job?
A. Yeah.
Q. How do you access that surveillance footage?
A. Through the web portal.
Q. Is that surveillance footage in the web portal stored on the cloud?
A. Yes.
Q. Do you know what the retention period is of any of the surveillance video footage?
A. Two weeks.
Q. With respect to financial payments for coffee and other goods at the store, do you know if the La Colombe branch uses a payment system?

A. Yes. We use Square.
Q. What is Square, if you know?
A. It's also like a cloud-based payment system.
Q. Between 2020 and 2021, how many sales registers did your branch at La Colombe have?
A. Two.
Q. Do you have access to the branch's Square records as part of your job?
A. Yes.
Q. Generally speaking, what sorts of information is reflected in the Square records?
A. So the transaction information, the credit card information, you know, what was purchased. Usually a name and, you know, the time and date and stuff.
Q. Do you know how a number is populated in the Square records?
A. Whatever is attached to the credit card.
Q. Did there come a time when you were asked to produce certain records to law enforcement?
A. Yes.
Q. Approximately when was that?
A. A little over a year ago.
Q. What kinds of records did law enforcement request?
A. I was given some credit card numbers, and so, you know, I checked to see if those were in the system and, you know,

looking for transactions that were attached to those credit cards.

Q. Did you look for financial records as part of your inquiry into the record responsive to law enforcement's request?

A. I'm a little unclear on the question.

Q. Let me rephrase.

Did you look into La Colombe's financial records as part of your work responding to the law enforcement request?

A. Yes.

Q. Did you look into video footage as part of your efforts to respond to the law enforcement request?

A. Yes.

Q. Did you ultimately produce records?

A. Yes.

Q. Did you produce everything in stages or all at once?

A. It was in stages.

Q. Before your testimony here today, did you review the La Colombe records that you had provided to law enforcement?

A. Yes.

MR. FELTON: Your Honor, may I approach the witness to show --

THE COURT: Approach the bench first so I know what you're --

MR. FELTON: It's a flash drive.

THE COURT: All right.

MR. FELTON: For the record, it's marked for identification as Government Exhibit 24.

THE COURT: Okay.

Q. Mr. Sarver I've handed you what's been previously marked as Government Exhibit 24 just for identification. It contains electronic versions of the files that you produced to law enforcement which have been marked also for identification as Government Exhibits 291 through 298.

First, do you recognize the flash drive, Government Exhibit 24?

A. Yes.

Q. Did you review Government Exhibit 24 and its contents before your testimony today?

A. Yes.

Q. How do you recognize Government Exhibit 24 as the flash drive that you previously reviewed?

A. I put the date and my initials on it.

Q. Did you sign and date the -- or did you put your initials on it and the date after you reviewed its contents?

A. Yes.

Q. When you reviewed the files saved on Government Exhibit 24, did you recognize them as the same files that you had previously provided to law enforcement?

A. Yes.

Q. Did those files marked for identification as Government

Exhibits 291 through 298 consist of images, videos, and a spreadsheet?
A. Yes.
Q. Were those records kept in the regular course of La Colombe's business?
A. Yes.
Q. Is it the regular practice of La Colombe to make or keep such records?
A. Yeah.
Q. Were they made at or near the dates that are reflected on the record?
A. Yes.
Q. Were those records created by or based on information from someone with knowledge of the transactions?
A. Yes.
Q. For preparation for court today did you confirm that all these files contained on Government Exhibit 24 were retrieved from La Colombe's records?
A. Yes.
MR. FELTON: Your Honor, the government offers into evidence Government Exhibit 24, as well as its contents, Government Exhibits 291 through 298.
THE COURT: Mr. Brill.
MR. BRILL: Your Honor, could I have a brief voir dire on that?

THE COURT: At sidebar you mean?

MR. BRILL: I'd like to voir dire the witness.

THE COURT: You didn't say that.

MR. BRILL: I'm sorry.

THE COURT: Yes. Go ahead.

MR. BRILL: Thank you.

VOIR DIRE EXAMINATION

BY MR. BRILL:

Q. Good afternoon, sir.

A. Hi.

Q. You said you have a security system called Eagle Eye?

A. Yes.

Q. And are you responsible for the maintenance of that system?

A. No.

Q. Is there an outside contractor that does that?

A. Yes.

Q. Around the time of the videos that are on the flash drive that you have in front of you, when was the last time that you compared -- withdrawn.

Are there date stamps on the videos on the flash drive?

A. Yeah, I believe so.

Q. All right. When was the last time you looked at the videos?

A. On the flash drive?

Q. Yes.
A. This morning.
Q. Okay. And did you see date stamps on those videos when you looked at them?
A. Yes.
Q. Okay. And when you looked at those videos prior to the time -- well, do you have an individual recollection separate from the videos of the events that are on those videos?
A. No.
Q. All right. So prior to the date that those videos were recorded, at any point up until the date of the last video, did you compare the date stamps in the system to the day when the video was recorded so that you could confirm that the video was actually recorded on the day that the system stamped it?
You follow what I'm asking?
A. I'm not sure.
Q. Okay. Let me try again.
You said there was a date stamp on each video, right?
A. Yeah.
Q. Okay. And at some point prior to that date of the first video that's on the card --
A. Okay.
Q. -- up to the last date of the video on the card, so in that time frame, at any point did you confirm that the date stamp that the system was putting on those videos was the actual date

that that specific footage was taken?
A. Well, the process of finding -- just finding those clips -- because it's -- you know, it's continuous footage, so I wouldn't have to like specifically go to the date on the footage and the time.
Q. Right. So you go to the date of the footage. That's the date that Eagle Eye has placed on the footage, right?
A. Yeah, but it's a continuous stream of video.
Q. Understood.
Did you at any point confirm that the date Eagle Eye was putting on the footage was the actual date that the footage was taken?
A. I'm not sure how I would do that.
Q. Okay.
MR. BRILL: Your Honor, at this point I would maintain an objection to the authenticity of the video records.
THE COURT: You're not maintaining it. You are asserting it.
MR. BRILL: I'm asserting it. Thank you, your Honor.
THE COURT: All right. Let me see counsel at sidebar.
(Continued next page)

(At sidebar)

THE COURT: Mr. Felton, these appear to be routine business records.

MR. FELTON: The witness also -- I can proffer additional information where the witness compared the financial transactions from Square and they aligned with the video files.

THE COURT: Well, you need to make a record of that. You're free to make a record of that.

MR. BRILL: If I could --

THE COURT: Then I'll hear the objection again.

MR. BRILL: Let me just give you a preview, though, your Honor. The witness will also testify that Mr. Ilori came in to La Colombe almost every day. And so I would submit that you're going to hear testimony as part of this objection that if he comes in every day, it's going to be extremely hard for him to pinpoint which receipt matches up to which video, because, like I said, he's there almost every day. But obviously that's the government's --

MR. FELTON: In the terms of the reliability of time stamping, one of the videos in particular occurs two minutes after -- approximately two minutes after closing time. And the conduct in the video where the shop is being closed down, customers are escorted out --

THE COURT: Yes, but I think the question is is the date accurate, and the question I have is is that material to what you're offering?

MR. FELTON: The date is material, your Honor, and there is additional evidence that --

THE COURT: Then you need to lay a foundation with respect to -- the date is the issue that's being raised.

MS. MURRAY: Your Honor, if I may clarify, Mr. Brill's objection -- so I understand Mr. Brill to be objecting to the authenticity of the video files.

THE COURT: Insofar as you're requesting the date.

Right, Mr. Brill?

MR. BRILL: Yes, your Honor.

MS. MURRAY: Right.

With respect to Mr. Brill's questions to this particular witness, I understood him to be asking whether Eagle Eye assigns a date to the video. We are happy to clarify that.

THE COURT: I think it's fair to say he assumed Eagle Eye assigned a date and nobody objected.

MR. BRILL: Your Honor, the videos that I have don't appear to have any time stamp on them.

THE COURT: Are we sure these have time stamps?

MS. MURRAY: Your Honor, we were still in the process of laying foundation when Mr. Brill called for a voir dire on this particular point.

THE COURT: Yes. That's why I said you can continue your questioning.

MS. MURRAY: So we would ask to do that.

MR. FELTON: Yes, your Honor.

THE COURT: Thank you.

(Continued on next page)

(In open court)

THE COURT: All right. Ladies and gentlemen, what we just had is counsel for the defendant is allowed to ask -- he asked to voir dire the witness, meaning he has some questions that he wants to ask that may relate to an objection that he wants to assert.

He's finished his voir dire. He's asserted an objection. I'm not admitting the documents just yet. Counsel who was questioning is going to resume his questioning.

All right. Mr. Felton.

MR. FELTON: Thank you, your Honor.

BY MR. FELTON:

Q. Mr. Sarver, I'm going to ask you a couple questions about the financial records, and then I'm going to ask you about the video records. Okay?

A. Okay.

Q. With respect to the financial records, can you describe how you queried the La Colombe system to find information?

A. In this case, entered in the credit card numbers.

Q. And what did you see in response?

A. They came up. There was a list of transactions.

Q. And did they list a date and time?

A. Yes.

Q. With respect to the video files, can you describe how you generated the video files that you provided to law enforcement?

A. Yeah. So there's a block of -- a video stream, and you can type in the time. I typed in the time that was on the transactions and kind of carved out 30 seconds to a minute around it.
Q. Did those time stamps match with the general time stamps of the credit card transactions that you collected?
A. Yeah.
Q. Once you identified the relevant segments and clipped the video files, did the Eagle Eye system generate new files of the clips?
A. Yes.
Q. Are those the files you downloaded and provided to law enforcement?
A. Yes.
Q. Did those file names contain the date and time of the video surveillance footage?
A. Yes.
Q. And did that date and time align with the financial records indicating the date and time of certain transactions?
A. Yes.
Q. Did your observations of the video files with respect to the time of the videos appear consistent with the time stamps on the file names of the videos?
A. Yes.
Q. Did you compare the file names of the files you produced to

the government with the file names of Government Exhibits 293 to 298, which are the video files?

A. Yes.

Q. Did the file names that you provided include the date and time?

A. Yes.

Q. Did the government exhibits, and by those I mean Government Exhibits 293 through 298 include --

THE COURT: 291, right?

MR. FELTON: Your Honor, 291 and 292 are images and a spreadsheet.

THE COURT: I see.

MR. FELTON: I'm trying to focus the witness on video files.

THE COURT: Okay.

Q. And I'm asking if the video files in Government Exhibits 293 to 298 contain the identifying date and time next to the government exhibit number.

A. Yes.

Q. And they match with the date and time of the files you produced to the government?

A. Yes.

Q. And that date and time comes straight from the Eagle Eye video system?

A. Correct.

Q. Which otherwise appears reliable to you?
A. Yes.
Q. Were there blocks of time missing when you searched the Eagle Eye system for video footage?
A. No.
Q. Did it appear reliable to you?
A. Yeah.
MR. FELTON: Your Honor, the government moves to admit Government Exhibits 291 to 298, as well as the file -- the drive, sorry, Government Exhibit 24.
THE COURT: Containing those --
MR. FELTON: Containing those exhibits.
MR. BRILL: I have another voir dire of the witness, your Honor.
THE COURT: Sure.
MR. BRILL: Thank you.
VOIR DIRE EXAMINATION
BY MR. BRILL:
Q. All right. So, if I can understand this correctly, you receive a request about the use of a specific credit card. That's the first step, right?
A. Uh-huh.
THE COURT: You have to say yes or no, sir.
THE WITNESS: Yes. I'm sorry.
THE COURT: That's all right.

Q. And you take that credit card number, and you put it into the Square system, and you get a - it spits out a list of the transactions, correct?
A. Correct.
Q. Okay. The system only goes back about two weeks on the video side, right?
A. Correct.
Q. So you can only -- and the original request, would it be accurate to say, comes in at approximately September 22, 2021?
A. I'm honestly not sure of the date.
Q. Okay. Assuming that, for the sake of just this discussion, that would mean you could go back to about September 8, correct?
MR. FELTON: Your Honor, objection. Calls for speculation.
THE COURT: Sustained.
Q. When you ran these dates against the video, would it be fair to say that there are other individuals engaging in transactions at the same cash register that Mr. Ilori was engaging in transactions?
THE COURT: Do you understand the question?
MS. MURRAY: Objection, Your Honor. Calls for information not in evidence.
THE COURT: All right. It's not sustained on that ground, but the objection -- the question is objectionable.

One other thing, who's handling this witness?

MS. MURRAY: Apologies.

THE COURT: All right.

MR. BRILL: I will rephrase. Thank you, your Honor.

THE COURT: Thank you.

Q. When reviewing the videos, were there other individuals -- how many individuals in each video appeared, if you recall?

MR. FELTON: Objection, Your Honor.

THE COURT: Sustained.

Q. Do you know how many -- if there was more than one individual engaging in transactions at the -- on the -- at the time that each video was extracted?

MR. FELTON: Objection.

THE COURT: Sustained.

MR. BRILL: Just one moment, your Honor.

THE COURT: Sure.

MR. BRILL: Nothing further at this time.

THE COURT: All right. Mr. Felton.

MR. FELTON: Your Honor, the government offers the exhibits we've been discussing, Government Exhibit 24, which is the drive, and Government Exhibits 291 through 298.

MR. BRILL: Maintain our prior objection, Your Honor.

THE COURT: All right. The objection is overruled. The exhibits are received.

(Government Exhibits 24 and 291 through 298 received in evidence)

MR. FELTON: Ms. Loftus, I'd like you to publish Government Exhibit 291 for the jury, please.

BY MR. FELTON:

Q. Mr. Sarver, I'm going to walk through a couple of the La Colombe records we've been discussing.

Do you recognize this document, Mr. Sarver?

A. Yes.

Q. What is it?

A. That is a receipt from Square.

Q. The top like -- the payment, what is that?

A. So that was the amount charged to the credit card.

Q. What's the line beneath that? What is that?

A. That is the date and time of the transaction.

Q. The collected at entry, what does that refer to in your experience?

A. 201 is my cafe number, and, you know, New York City. NoHo, that's the neighborhood.

Q. And that's in Manhattan?

A. Yes.

Q. The source information, what is that?

A. It's the register.

Q. Is that referring to the cash register --

A. Register, yeah.

Q. -- used to pay?

A. Yeah.

THE COURT: Okay. Can I just caution you, sir, let Mr. Felton finish the question and then give an answer, because we have a court reporter who's taking down everything people are saying. And you're stepping all over each other, and we want to have a clear record here.

MR. FELTON: Thank you, your Honor. I apologize.

Q. The paid by wrote -- do you see that on Government Exhibit 291?

A. Yes.

Q. What does that say?

A. Jonathan Herttua.

Q. And to your knowledge how is that populated?

A. That's pulled from the credit card.

Q. What is the order in this record?

THE COURT: Are you asking what the person bought?

MR. FELTON: What the person bought.

A. PB draft. That's a pure black draft. That's a cold brew with an extra shot, an extra single.

Q. The extra single is an extra shot of what?

A. Expresso.

Q. And how is this order paid for?

A. With the credit card listed at the bottom.

Q. What were the last four digits of that credit card?

A. 5953.

Q. What brand of credit card?
A. Mastercard.
Q. And what is the name of the credit card holder?
A. Jonathan A. Herttua.
MR. FELTON: Ms. Loftus, I'd like to turn to page 7 of the same exhibit.
Q. What is the date of this record?
A. September 22.
Q. What time?
A. 9:57 AM.
Q. What store?
A. 201, New York City, NoHo.
Q. What was ordered?
A. PB draft, with an extra shot.
Q. How was it paid for?
A. With a Mastercard.
Q. What are the last four digits of that Mastercard?
A. 5953.
Q. What is the customer name?
A. Jonathan A. Herttua.
Q. Is that the same credit card as the previous page we showed you?
A. Yes.
Q. I'd now like to look at one of the video files you provided.

THE COURT: Before you do that, I have a question for you, sir. This is Exhibit 291.

THE WITNESS: Yes, your Honor.

THE COURT: Mr. Brill, was your objection to this as well, to 291?

MR. BRILL: To the -- no. No, your Honor.

THE COURT: All right. 291 was admitted without objection.

You were objecting to what then?

MR. BRILL: I was objecting to --

THE COURT: To the videos, right?

MR. BRILL: I was objecting to the videos based on our conversation at the bench.

THE COURT: Exhibits 293 through 298 are admitted over objection, but the others are unobjected to.

MR. BRILL: Thank you, your Honor.

THE COURT: That's just really for the record. You don't need to be concerned.

MR. FELTON: Ms. Loftus, can you publish Government Exhibit 293. And, Ms. Loftus, before you play it, I'd like you to just pull up the exhibit on the screen so that Mr. Sarver can see the file name.

Q. Mr. Sarver, do you see the file name for Government Exhibit 293?

A. Yes.

Q. Can you explain to the jury the date and time of this transaction as you understand it?
A. So the 9th of September, 2021, 17:10, so 5:10 p.m.
Q. And is that date and time -- does that come from the video system?
A. Yeah. That's --
Q. You didn't manually enter that?
A. No.
Q. When you clipped the video file, that automatically came out from the video system?
A. Yeah. I just sent it as is.
MR. FELTON: Ms. Loftus, could you please play Government Exhibit 293 for the jury, please?
(Video played)
MR. FELTON: And, Ms. Loftus, could you please pause the video?
Q. First, do you recognize the store of Government Exhibit 293?
A. Yes.
Q. What is it?
A. That's the NoHo cafe that I manage.
Q. Do you recognize any customers in the video?
A. Yeah. Yes. The man at the register.
Q. Who -- could you identify an article of clothing the man at the register is wearing?

A. White t-shirt.
Q. How do you recognize that individual?
A. He was a regular. He came in often.
Q. Did you ever know him by any name?
A. No.
Q. Did you ever speak with him?
A. A little bit here and there, small talk.
Q. What did you discuss?
A. I can't really be sure, you know. The weather. Just small talk cafe stuff.
Q. Do you remember anything about what he would usually order?
A. Yeah. You know, he always got the cold brew with the extra shot, and, you know, simple syrup.

MR. FELTON: Ms. Loftus, could you please play the rest of the video?

(Video played)

Q. Mr. Sarver, please watch the video, and I'll ask you a question at the end.

Mr. Sarver, did you observe the person at the register pay for an order during the video clip?
A. Yes.
Q. And is that payment what ultimately gets reflected in the Square records that you discussed?
A. Correct.

MR. FELTON: Ms. Loftus, could you please pull up

Government Exhibit 296, which is another video file in evidence. And before -- sorry.

Q. Mr. Sarver, what is the date and time of Government Exhibit 296?

A. September 20, 2021, 6:32 p.m.

Q. What, if any, is the suggestion of a 6:32 time of the video?

A. That's I mean two minutes after we close.

MR. FELTON: Ms. Loftus, could you please play the video?

(Video played)

MR. FELTON: Can we pause the video, please?

Q. Based on what you've seen so far, is this video consistent with what the store would look like during closing time?

A. Yes.

Q. What makes you say that?

A. So the guy in the hat there is, you know, running water through the draft system, which you only do after we're closed. The person in the back is soaking the expresso filters, which is also after we close. You know, the cafe is pretty empty.

MR. FELTON: Ms. Loftus, can you play the rest of the video, please.

(Video played)

Q. Can we just pause again here?

Do you recognize the individual at the cash register,

the customer?
A. Yes.
Q. Is that the same customer you discussed earlier?
A. Yes.
Q. In the paused clip right now, what, if anything, is that individual doing?
A. Paying for his coffee.
Q. What makes you say that?
A. He inserted the card into the screen, and it prompts you, you have the option of tipping.
MR. FELTON: Ms. Loftus, can you play the rest of the video, please? Thank you.
(Video played)
Q. Mr. Sarver, having watched the rest of this exhibit, Government Exhibit 296, how if at all does your earlier testimony about the timing of the video clip change?
A. It doesn't.
Q. Did anything else you observed strike you as consistent or inconsistent with it being around closing time?
A. Yeah, the rest of the people left the cafe, and, you know, they're taking milks away from the bar.
Q. Does that appear to be consistent with closing time?
A. Yeah.
MR. FELTON: Ms. Loftus, could you please play Government Exhibit 298. And before you click it --

Q. Mr. Sarver, what is the date and time of this video?
A. September 22, 2021, 9:56 a.m.
Q. Thank you.
MR. FELTON: Ms. Loftus, please play that video.
(Video played)
MR. FELTON: Can we just pause here, Ms. Loftus.
Q. Mr. Sarver, the customer we've discussed from the previous two video clips, do you recognize the individual in this video?
A. Yes.
Q. What does that individual appear to be wearing?
A. Like a light gray t-shirt.
Q. Where in the video is he, if you could identify him for the jury, please?
A. Second line.
Q. And what does he appear to be doing so far?
A. Looking out the window.
Q. If you know, do you have any knowledge about what he might be doing?
A. He would drive and park, so watching for a police officer like ticketing the vehicle parked.
Q. Do you know what kind of car he drove?
A. I believe it was like a SUV.
Q. What makes you say that?
A. Just, you know, he -- that's just what I remember him parking out there.

Q. You personally have observed that car in your dealings as the manager of the store?
A. Yeah.
Q. And you mention looking outside at the car. What would he be looking at?
A. I mean, I would think just for the car. I believe he had gotten a parking ticket out there before.
Q. What makes you say that?
A. We probably had a conversation about it at some point.
Q. Who had this conversation?
A. He and I.
MR. FELTON: Ms. Loftus, could you please play the rest of the video.
(Video played)
MR. FELTON: Ms. Loftus, can you pause, please?
Q. What, if anything, did you observe about what the customer's doing in the video?
A. He's paying for his drink.
Q. What makes you say that?
A. He's interacting with the screen, you know, dipped his card, pressing the buttons on the screen afterwards.
Q. And would the dipping of his card then be reflected in the Square records?
A. Yes.
MR. FELTON: Ms. Loftus, please continue playing the

video.

(Video played)

Q. Mr. Sarver, do you remember discussing the customer's car?

A. With the customer?

Q. Or with -- on direct examination earlier today.

A. Oh, yes.

Q. Do you recall what color that car was?

A. I believe it was white or, you know, close to that.

MR. FELTON: No further questions, your Honor.

THE COURT: Mr. Brill.

MR. BRILL: Thank you, your Honor. Just a couple.

CROSS-EXAMINATION

BY MR. BRILL:

Q. Mr. Sarver, with respect to Government's Exhibit 291, just the list of individual orders --

MR. BRILL: Can we just pull that up, please?

THE COURT: You mean the receipts we looked at earlier?

MR. BRILL: Yes.

THE COURT: Okay.

Q. When was the last time you looked through these?

A. These specific receipts?

Q. Yeah.

A. This morning.

Q. Okay. Would it be fair to say that there were non-cold

brew drafts with an extra single within this group of receipts?
A. I'm honestly not sure.
Q. Okay. Let's just look at September 20 as one example. There you go. So there's a cappuccino order at that point?
A. Okay.
Q. Would that be fair?
A. Yeah.
Q. Okay. And that would be the closing time video, right?
A. Yes.
Q. Okay.

MR. BRILL: Can we just pull up 296 and leave it right at the beginning of the video. Just pause it right there, please.

Q. So I'd just like to get a better idea from you how the purchasing process works. Would it be fair to say that the employee behind the counter has the cash drawer open?
A. Yes.
Q. When you make a debit or credit card purchase, does the cash drawer open during that process?
A. No. He was counting the register.
Q. That's his process at the end of the shift I guess?
A. Yeah.
Q. The terminal that's facing the camera, that's right above the employee's head near his hat, you see what I'm talking about?

A. Yes.
Q. That's the cash register terminal?
A. Yes.
Q. Okay. And the little thing facing the -- right above that, that's the -- I guess the credit card terminal for the customers, right?
A. Yes.
Q. Okay. How do you -- where do you swipe or insert a card? Where does that go on that little terminal?
A. So sort of near the top there's a place to do that in.
Q. So you put it into the top of the unit, to the side, do you recall?
A. So directly in -- if this were the screen, I'd be doing it.
Q. So basically head on to the screen, push it in?
A. Yeah.
Q. Okay. And then -- okay. All right. That's what -- I just wanted to clarify that. Thank you.
Give me one second.
MR. BRILL: Can we just run this forward for a few seconds, please?
(Video played)
Q. Just taking a look at that screen where the individual is using his finger on it, what process would that be based upon your understanding of how the system works?
A. I'm not sure I understand the question.

Q. Yes. I'll rephrase.

MR. BRILL: We can pause it. Thank you.

Q. Did it appear to you that the individual who just completed the transaction was dipping a card based on what you saw?

A. Yes.

Q. And what happens after that in that system, in that screen? What does a customer do at that point?

A. You're prompted. It might ask you if you want a receipt. You're prompted to tip.

Q. Okay. And do the tips appear separately on the receipt if they're given?

A. Yes.

Q. All right. And those would be on the same receipt or those would be in a separate receipt?

A. Same receipt.

Q. All right. Thank you. I have nothing further.

THE COURT: Redirect?

MR. FELTON: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. FELTON:

Q. Mr. Sarver, was the customer in those video clips a regular?

A. Yes.

Q. Do you recognize that person in this courtroom today?

A. Yes.

Q. Could you identify that individual with an article of clothing they're wearing?

THE COURT: Why don't you tell us where he's sitting.

MR. FELTON: Fair enough, your Honor.

A. Next to the gentleman who was questioning me earlier.

THE COURT: Next to Mr. Brill?

THE WITNESS: Correct.

Q. No further questions.

THE COURT: Anything else, Mr. Brill?

MR. BRILL: No. Thank you, your Honor.

THE COURT: All right. Sir, thank you very much for coming in. We appreciate your helping us with this trial. Thank you.

(Witness excused)

THE COURT: Government's next witness.

MS. MURRAY: Yes, your Honor. The government calls Special Agent Harry Lidsky.

THE COURT: I think we should take the afternoon break before we begin --

MS. MURRAY: Okay.

THE COURT: -- the special agent's testimony.

All right. We'll take our afternoon break now.

I'm sorry. I shouldn't have dragged you in. I apologize.

So if we can keep it to about ten minutes, that would be great. All right?

(Jury not present)

(Continued on next page)

THE COURT: I need one moment, please.

All right. Please just be seated for one moment.

Mr. Brill, I just want to confirm on the record -- you can stay. We're not talking about anything testimonial -- that I do have a response back and the person in the -- our legal contact is looking into the issue that we talked about. She did say she thought sandwiches came over, but that they are generally the type that you're telling me Mr. Ilori has gotten. But that she will confirm with his return in the evening and get back to me. Okay.

MR. BRILL: Thank you.

THE COURT: All right. Thank you.

Anything else that we should talk about.

MS. MURRAY: Your Honor, for Special Agent Lidsky, we will have both physical exhibits similar to the prior witness. These will consist of physical evidence, and we have marked those for identification. We'll show them to Mr. Brill, and then we will ask to approach the witness.

In addition, we do have a witness binder that contains a subset of already marked government exhibits. Just for the sake of efficiency, we're going to have that in front of Agent Lidsky so he can flip through and authenticate, and then we will seek to move exhibits in in groups.

THE COURT: Do you have a binder for me and Mr. Brill?

MS. MURRAY: It is a subset of the exhibits that are in the Court's exhibit binder, so we did not create three separate exhibit binders.

THE COURT: So I have to go through these as you're going --

MS. MURRAY: Your Honor, we're happy instead to pull the document up on -- exhibit up on the screen and have the witness and Mr. Brill look at them that way.

THE COURT: Let's see. Do it the way you propose and see how it goes.

Somebody should retrieve that flash drive and maintain custody of it.

MR. FELTON: Will do.

THE COURT: Anything further, Mr. Brill?

MR. BRILL: No, your Honor. Thank you.

THE COURT: All right. I'll see you soon in about 8 minutes at this point. Thank you.

(Recess taken.)

THE COURT: All right. You may be seated, and we'll bring the jurors in.

Sir, would you please stand up here on the witness stand.

THE WITNESS: Sure.

THE COURT: Thanks.

(Continued on next page)

(Jury present)

THE COURT: All right. Please be seated, everyone.

Good afternoon. Ms. Dempsey, would you swear the witness who has been called?

HARRY LIDSKY,

called as a witness by the Government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MURRAY:

Q. Good afternoon, Special Agent Lidsky.

A. Good afternoon.

Q. Where do you work?

A. At the Department of Justice Office of the Inspector General.

Q. Is that also referred to as DOJ OIG?

A. It is.

Q. What is DOJ OIG?

A. The Inspector General's Office is -- DOJ's in particular mission is to combat misconduct, waste, fraud and abuse, mostly conducted by employees of the department itself, but can also extend to contractors or outside entities affecting the department's business as well.

Q. How long have you been with DOJ OIG?

A. Twelve years.

Q. What is your title?

A. I am now an assistant special agent in charge.
Q. What are your duties and responsibilities as an assistant special agent in charge?
A. I oversee a team of six special agents who investigate allegations of misconduct, waste, fraud, abuse.
Q. In connection with your work at DOJ OIG, have you conducted any cyber investigations?
A. I have. I am assigned to the cyber investigations office.
Q. And can you describe what a cyber investigation is?
A. Our purview generally revolves around misconduct allegations or criminal investigations that centralize with digital devices, so if the -- if a crime is committed in the cyber sphere, email is a heavy component, or a phone is used or a computer is used to facilitate the crime, that's something that would probably fall into our office's responsibility.
Q. And where is your office located?
A. I'm located in Arlington, Virginia.
Q. How many years have you spent working in law enforcement?
A. Nineteen and a half total.
Q. Over that time, approximately how many investigations have you been involved in?
A. Hundreds of investigations.
Q. Did there come a time when you became involved in the investigation into COVID-19 relief fraud?
A. Yes.

Q. Generally speaking, what is COVID-19 relief fraud?
A. Fraud associated with the CARES Act and funds that were made available as part of the COVID-19 pandemic, mostly in the form of PPP, Paycheck Protection Program loans, and EIDL, Employment -- or Economic Injury Disaster Loan I think, which in my understanding is not specific to COVID-19 or unique to it but was applied because of the -- of the pandemic and the resulting economy issues.
Q. Now, in light of your work at DOJ OIG, how did you in particular become involved in a COVID-19 fraud related investigation?
A. I believe it was early 2021. The Small Business Administration OIG -- the OIG community sort of works together in a lot of overlapping areas. The SBA OIG became overwhelmed with the amount of pandemic relief fraud investigations that they -- that just started raining down I guess about a year after the PPP loans began going out. They requested assistance in investigating these types of fraud allegations from all of the other OIGs and even extending out beyond the inspector general community.
So based on their request, the Department of Justice Office of the Inspector General volunteered our time, our agents to help out and assist them with some of their investigations. And my office in particular volunteered to take on a few as well.

Q. So focusing your attention on the investigation involved in this trial, when did you first become involved in this investigation?
A. This one started in July of 2021.
Q. And can you describe for us how this investigation began?
A. We received a lead from -- there was an intermediary office that was stood up to sort of handout, for lack of a better term, the investigative leads that SBA needed -- wanted disseminated to the participating agencies. And it's known as the PRAC, the Pandemic Response Accountability Committee, PRAC.
So I was contacted. Once we volunteered to take on a few cases, in July of 2021, I was contacted by the PRAC, and they provided us a lead, which amounts to just a summary of the facts at hand that they believed there might be fraud associated with a particular loan that was identified within the information they provided.
Q. And we're going to talk about this investigation in some detail, but before we get there, did you end up arresting anyone in connection with this investigation?
A. I did. I arrested two people.
Q. Who did you arrest?
A. Adedayo Ilori and Chris Recamier.
Q. Do you see anyone in the courtroom today that you arrested in the course of this investigation?
A. I do.

Q. Can you identify that person by where he or she is sitting?
A. I recognize Mr. Ilori sitting to Mr. Brill's left.

MS. MURRAY: Let the record reflect that Special Agent Lidsky has identified the defendant, Adedayo Ilori.

Ms. Loftus, can you just show for the witness, the Court, and the parties what's been marked for identification as Government Exhibit 50 alongside what's been marked for identification as Government's Exhibit 51.

Q. Special Agent Lidsky, do you have those two files on the screen in front of you?
A. I do.

THE COURT: Excuse me just a second.

Mr. Brill, you have them, right?

MR. BRILL: Yes, your Honor.

THE COURT: Thank you. Go ahead.

Q. Do you recognize what are marked for identification as Government Exhibits 50 and 51?
A. I do.
Q. Are those fair --

THE COURT: You're not supposed to have them, ladies and gentlemen, just yet. She's asking the witness so he can do what's called authenticating them.

Q. Are those fair and accurate representations of the individuals you arrested in connection with this investigation?
A. They are.

MS. MURRAY: Your Honor, the government offers Government Exhibits 50 and 51.

THE COURT: Mr. Brill?

MR. BRILL: No objection.

THE COURT: They'll be received into evidence.

(Government Exhibits 50 and 51 received in evidence)

THE COURT: Now you may publish them to the jury.

MS. MURRAY: Thank you.

Ms. Loftus, can you publish those to the jury?

THE COURT: Thank you, everyone, for your attention.

MS. MURRAY: Is the jury able to see those now?

JURORS: (Nodding)

Q. Special Agent Lidsky, starting with Exhibit 50, which is on the left, who is depicted?

A. Adedayo Ilori.

Q. And looking at Exhibit 51 on the right, who is in Government Exhibit 51?

A. Chris Recamier.

Q. Thank you.

MS. MURRAY: Ms. Loftus, you can take those down.

I'd like to turn now to the loan application that initiated this investigation. Ms. Loftus, can you publish what is in evidence as Government Exhibit 155.

Q. Special Agent Lidsky, do you recognize this document?

A. I do.

Q. What is it?
A. This is a copy of a Paycheck Protection Program lender application.
MS. MURRAY: Ms. Loftus, if you could zoom in on sections A and B of this document for now.
Q. Special Agent Lidsky, what lender received this application?
A. Capital One Bank.
Q. And what is the name of the business applying for this loan?
A. BRS Consulting Corp.
Q. Who is purported to be the person applying for the loan on behalf of BRS Consulting Corp?
A. Jonathan Herttua.
Q. And what is the contact number or phone number that is provided for Jonathan Herttua on this document?
A. 646-575-0642.
Q. And in looking a few lines above that, do you see a field that is labeled "number of employees?"
A. I do.
Q. How many employees are listed on this document for BRS Consulting Corp?
A. Seventy.
MS. MURRAY: And, Ms. Loftus, if you could please zoom out and zoom in for the next section that includes the loan

amount that's requested.

Q. Special Agent Lidsky, how much in funds did this BRS Consulting Corp application request?

A. $531,218.

MS. MURRAY: Ms. Loftus, if you could please now go to page 14 of this exhibit, and if you could zoom in on the bottom half, personal information.

Q. Special Agent Lidsky, looking here, again, who is listed as the personal contact for this loan application?

A. Jonathan Herttua.

Q. What is listed as the title for Mr. Herttua at BRS Consulting Corp?

A. CEO.

Q. And looking at the mobile phone contact information, is that the same number we just saw on page 1 of this application?

A. It is.

Q. A number ending in 0642?

A. That's correct.

Q. Now, looking at the payroll calculation portion of this loan document, can you read for us the total monthly payroll from January 1 to February 29 that's listed?

A. $557,198.42.

Q. Thank you.

MS. MURRAY: Thank you, Ms. Loftus. You can take that down.

Q. Now, Special Agent Lidsky, do you know if this loan, this BRS Consulting loan was approved?
A. It was.
Q. How do you know that?
A. I received -- well, part of the reason -- part of the original lead, investigative lead that was provided to us included the fact that the loan had been funded, had been disbursed, and that questionable transactional activity had been observed subsequent to the loan being funded.

In addition, I eventually got paperwork from the SBA which included a certification of funding.
Q. So, again, focusing on the initiation of your investigation, after this BRS Consulting PPP loan was referred to you, what, if anything, did you do next?
A. The first part was to determine -- to operate on the assumption that there might be fraudulent activity associated with the funds that had been disbursed. The objective became two-fold. Number one, confirming whether or not a crime had been committed, whether or not -- we don't just assume because of a lead that a crime has been committed. So we confirm that there is suspicious activity associated with the funds, and then we aim to find out who did it, who's behind it.
Q. So with respect to this application we just looked at submitted by purportedly Jonathan Herttua, what investigative steps did you take to begin investigating the applicant who had

submitted this request?

A. So I started performing an analysis on the name listed on the application of the loan, Jonathan Herttua, looking into him and his background, seeing what I could find.

Q. And what, if anything, did you find?

A. I found inconsistencies between what I was able to find on who I call the real Jonathan Herttua, and some of the information that was listed on the bank application or the loan application.

Q. Can you describe generally what type of inconsistencies you observed when you began researching Mr. Herttua?

A. Pretty much everything aside from the name, date of birth or Social Security number that I came across. Those were all legit. But the business name, his title as CEO, the addresses associated with either the business or Mr. Herttua's purported residence on the loans -- so Mr. Herttua had a fairly open and public profile that I was able to find online. I saw that he was a salesperson. I saw where he worked. I believe I found him on LinkedIn. So I had a pretty overt profile.

And you'd think somebody who was a CEO of another business called BRS Consulting would have another profile saying I'm also the CEO of BRS Consulting, and I couldn't find that anywhere, so I chalked that up as an inconsistency.

Additionally, with law enforcement database checks and the information that's available to us to help us research these type of things, I couldn't find the address associated with this anywhere, associated prior with Mr. Herttua. Conversely, I could find all of his addresses in New Jersey, upstate New York, summer home, recent move to Florida, things like that.

Q. Now, Special Agent Lidsky, based on your training and experience and your early investigation into Mr. Herttua, did there come a time when you came to believe that you were dealing with a case of possible identity theft?

A. Yes. Pretty early on I remember sending a note to an associate saying either something's not adding up or something's not right about this based on those observations, the inconsistencies that I was finding with Mr. Herttua and the one purported to have taken this loan.

Q. And, generally speaking, what is identity theft?

A. Identity theft simply is somebody else assuming the likeness, usually by name, date of birth, Social Security number, of a different person, and then using that information to conduct some kind of crime.

Q. How, if at all, did the belief that this was a potential identity theft situation inform subsequent steps that you took during your investigation?

A. Well, as soon as -- obviously, if we think somebody's a victim of identity theft, it's pointless to follow the real person. You know, we -- there's no crime associated -- that person's not going to have any information that's helpful to guide our investigation further. So that's pretty much a dead end out of the gate.

So I discounted Mr. Herttua fairly early on. I didn't rule him out until I could rule him out, but for the first steps I focused on other potential investigative leads contained with the information that was provided to me.

Q. And to be clear, when you say you discounted Mr. Herttua, what did you discount him as, if anything?

A. Oh, as a responsible party for obtaining this loan and diverting the funds to other purposes.

Q. Now, in light of the fact that this was a likely or potential identity theft situation, what type of leads, if any, did you focus your investigation on to try to identify the people behind these fraudulent loans or person?

A. So identity theft is, you know, extra tough in my line of work, because you don't have a real address, you don't have a real name, you don't have a real person. So the two things that jumped out at me as possible paths that I could follow to ultimately get to -- to finding who's responsible for this were the phone number -- and of course with any financial crime or any crime that involves a financial component, what we do is -- what we say in law enforcement is "follow the money."

So those were the two things that jumped out as potential avenues of progress I can make on this.

Q. And focusing first on what you described as following the money, can you explain at a high level how you would follow the money in a financial related investigation?

A. Sure. That simply involves -- well, it's not simple I guess, but it involves tracing the money from its origin to whoever owns it, whoever controls it at the end. Obviously, that may not be from A to B.

In complex financial conspiracies, money will be moved laterally from accounts to accounts, but following it to its end, its ownership, is the goal. And that could be following money from a loan that's ultimately used to purchase a thing, a car, a boat, a house, following money that goes into an account which is then represented by something like a checkbook or a credit card or a debit card. Sometimes it ends up with cash in somebody's pocket.

So it's taking it from its source and following it through to whoever -- follow it to the end of the line. Whoever owns it generally is the person I'm looking for.

Q. Thank you.

(Continued on next page)

BY MS. MURRAY:

Q. Special Agent Lidsky, in this particular instance, with this BRS Consulting Corp. loan, what was the money that you began to follow? What was the source of the money that you began to follow?

A. So it began with the PPP loan funds, the $531,218 that was deposited into a Capital One bank account. That's, you know, go. That's the starting point.

Q. And what, if anything, were you able to determine about the flow of those loan funds from that Capital One bank account?

A. That it flowed fairly quickly into a number of different other bank accounts, some investment platforms as well, but it -- I believe it dissipated rather quickly out of the Capital One account.

Q. Do you recall whether one of those accounts that the funds went to was a Coinbase account?

A. It was. A majority -- I think almost 80 percent of the funds went to Coinbase.

Q. What is Coinbase?

A. Coinbase is a cryptocurrency exchange platform, so it's a financial institution, domestic, I believe, that specializes in cryptocurrency investment, trading, exchanges, things like that.

MS. MURRAY: Ms. Loftus, can you please publish what's in evidence as Government Exhibit 251.

Are the witness and the jury able to see that?

THE WITNESS: I am.

THE JURORS: Yes.

Q. Special Agent Lidsky, what is this?

A. This is a document that Coinbase provided in response to a subpoena that I sent to them.

MS. MURRAY: And Ms. Loftus, if we could zoom in at first on the top portion, please.

Q. What is the name associated with this Coinbase account, or user ID?

A. Jonathan Herttua.

Q. And what email address is listed for this account holder?

A. Herttuajonathan1957@gmail.com.

Q. On what date was this Coinbase account created?

A. January 8, 2021.

MS. MURRAY: Thank you, Ms. Loftus. If we could now pull up, please, what's in evidence as Government Exhibit 253, which is another Coinbase record.

And if you could scroll through the pages of this particular Coinbase record.

Q. Special Agent Lidsky, do you recognize these additional records from Coinbase?

A. I do.

Q. Generally speaking, what is reflected in Government Exhibit 253?

A. These are images, photographs that Coinbase provided also as part of their response to my subpoena.

Q. Do you have an understanding of why Coinbase collects records such as those reflected in Government Exhibit 253 in connection with a Coinbase account?

A. I do. From previous experience with Coinbase, they ask this when any customer opens an account, and they maintain this in their business records, and they do provide it to law enforcement upon request.

MS. MURRAY: And Ms. Loftus, if you could please go up a few pages in this exhibit, just to one of the photographs of the individual.

Thank you. If you could pause there, please.

Q. Special Agent Lidsky, generally speaking, how, if at all, were these Coinbase records that we're looking at here in Government Exhibit 253 relevant to your investigation and to a potential identity theft?

A. In more than one way. So this -- when I received this, which is pretty early on -- Coinbase has responded quickly to the subpoena -- this pretty much confirmed my suspicions about the identity theft, and part of -- part of my research into trying to evaluate whether or not the real Mr. Herttua was involved in this, I pulled his New Jersey driver's license, which included his New Jersey driver's photo. And I could immediately tell that these are not the two men -- same two men. So this -- this pretty much confirmed, took me to -- from 98 percent to a hundred percent that we were dealing with identity theft.

MS. MURRAY: Thank you, Ms. Loftus. You can take that down.

Q. Special Agent Lidsky, you mentioned that in addition to beginning to follow the money for this particular loan, you also were interested in the phone number that was listed on the loan application; is that correct?

A. I was.

Q. Can you explain to the jury why that phone number was of interest to your investigation.

A. Phones give us an opportunity to identify people. It's an item that gives us great insight into what people do, potentially where they go each day, who they call. So a phone for me is a solid lead, especially if I'm trying to figure out whose, you know -- who's using the phone, whose pocket is it -- is it in right now, which, you know -- so when I find the pocket, I'm able to identify the person wearing the pocket.

Q. With respect to this particular phone number that was listed on the BRS Consulting Corp. application ending in 0642, what were the initial steps, if any, that you took to begin to investigate that phone?

A. So I wanted to know if it was an actual live phone line. A lot of times with crimes like this, people will use what's called burner phones, where they'll use it for a short time, as soon as they're done with it, throw it away, and we encounter that a lot in law enforcement. So I wanted to see if it was -- if it was active, if it was live. In addition to sending a subpoena to T-Mobile, who I had identified as the carrier, while waiting for that, I simply called it from a blocked number just to see if it rang, it went to voicemail. If it answered, I would just hang up. We're all used to that. And more importantly, what I didn't get, thankfully, was the, you know, the automated system message saying this number is no longer in service. So that is a, you know, informal way of confirming that the phone is still active.

Q. When you made that call to this phone number to try to determine whether it was active, do you recall whether anyone answered the phone?

A. Nobody answered the phone.

Q. Do you recall whether there was a voicemail box set up for the phone?

A. I don't recall if there was a voicemail box, if it just beeped with no message, or if it was a simple, you know, you've reached 646-575-0642.

MS. MURRAY: Ms. Loftus, can you please publish what's in evidence as Government Exhibit 372.

Q. Are you able to see that, Special Agent Lidsky?

A. I don't have anything yet. It's coming up now.

Yes.

MS. MURRAY: Okay. Do you all have it?

THE JURORS: Yes.

MS. MURRAY: Yes. Okay. Thank you.

Q. What is this document?

A. This is part of the responsive documents I received from T-Mobile pursuant to my subpoena for this phone number.

Q. And where on this document do you see the phone number that you had requested records for?

A. Up towards the top, in T-Mobile's just notification, "This is in response to your subpoena," they list the number; and then down in the bottom on the device details in the center, you see the number again.

Q. So looking at the subscriber name that's associated with this number, which I'm going to refer to for ease as the 0642 number, who is the listed subscriber of the 0642 number?

A. Jonathan Herttua.

Q. And what is the address that's associated with that subscriber Jonathan Herttua in these T-Mobile records?

A. 74 East Seventh Street, Brooklyn, New York 11218.

Q. As of what date was that subscriber name active, which is to say, as of what date was the 0642 number associated with Jonathan Herttua?

A. On August 26, 2020.

MS. MURRAY: Thank you, Ms. Loftus. You can take that

down.
Q. As your investigation continued, Special Agent Lidsky, where else, if anywhere, did you encounter the 0642 number?
A. As we continued to expand the investigation and records would come in, I saw this number associated with other bank accounts, other -- other accounts generally; a pretty wide swath of -- of places where this number was attached.
Q. And was this number attached to records that were relevant to your investigation?
A. Absolutely.
Q. I'd like to go through just a few of those as examples with you.
MS. MURRAY: Ms. Loftus, if you could publish please what's in evidence as Government Exhibit 112.
Just give it a moment.
Is everyone able to see that?
THE JURORS: Yes.
MS. MURRAY: Thank you.
BY MS. MURRAY:
Q. Special Agent Lidsky, what is this?
A. This is one of the other records that I was referencing. This is a Chase signature card statement.
Q. And looking at the top of this document, what Chase account does this business signature card relate to?
A. Appsensible.com, LLC.

Q. That's on the top left; is that correct?
A. That is correct.
Q. And looking at the business address listed for Appsensible.com, LLC, in these bank records, can you read that for us, please.
A. 74 East Seventh Street, Brooklyn, New York 11218.
Q. Now looking at the printed name for the individual contact associated with this business bank account, what is the name associated with this account?
A. Jonathan Herttua.
Q. And then to the right there are three phone numbers listed. Can you read for us the middle phone number, please.
A. 646-575-0642.
Q. And that's our same 0642 number; is that correct?
A. It is.
MS. MURRAY: Ms. Loftus, can you please take that down and publish what's in evidence as Government Exhibit 351.
Q. Special Agent Lidsky, do you recognize this document?
A. I do.
Q. What type of record is it?
A. This is a responsive document I received from Robinhood.
Q. Can you explain what Robinhood is.
A. Robinhood is a financial investment -- I guess it's bank. I want to say they're focused primarily online. But they allow for stock and also cryptocurrency digital currency exchange and

trading.

MS. MURRAY: Ms. Loftus, if you could please focus first on the portion Contact Information down through Last Name, all the way to the right side of the page.

Q. What is the first name and last name listed for the customer for this particular Robinhood account?

A. Jonathan Herttua.

Q. And then looking to the right, what is the date of birth listed for this individual?

A. August 18, 1957.

Q. And the address?

A. 74 East Seventh Street in Brooklyn, New York 11218.

Q. Taking you back over to the left side, on what date was this particular Robinhood account approved?

A. February 2, 2021.

MS. MURRAY: Ms. Loftus, if you could zoom out on that and then zoom in, please, on the very bottom portion of this document which lists email, phone number, and Social Security number.

Q. Special Agent Lidsky, for this Robinhood account in the name of Jonathan Herttua, what is the email address that's listed for this account?

A. Herttuajonathan1957@gmail.com.

Q. And the phone number?

A. 646-575-0642.

Q. Again, is that our same 0642 number?
A. It is.
Q. And what are the last four digits of the Social Security number listed here, please?
A. 1091.
Q. I'd like to look at one more.
MS. MURRAY: Ms. Loftus, if you could please take this down and publish Government Exhibit 264 at page 3.
Q. Special Agent Lidsky, do you recognize this document?
A. I do.
Q. What type of record is this?
A. This is a responsive record I received from Enterprise Rental Car.
Q. Just walking through a few of the items that are listed on this record, first, starting on the top, there is some text that appears to be black in kind of a teal bar. Do you see that?
A. I do.
Q. What does that read?
A. "Driver on do not rent."
Q. Now looking down at the second line of the substantive text here, what is the first name and last name of this renter, for this Enterprise record?
A. Jonathan Herttua.
Q. And the date of birth listed to the right?

A. 18 August 1957.

Q. What is the address that is listed for this renter?

A. 74 East Seventh Street, Brooklyn, New York 11218.

Q. And looking at the next line, which is titled Main Phone, what is the main phone number that's associated with this renter?

A. 646-575-0642.

Q. Looking to the right and a line down, can you please read us the email address that's associated with this Jonathan Herttua in Enterprise's system.

A. Herttuajonathan1957@gmail.com.

MS. MURRAY: Thank you, Ms. Loftus. You can take that down.

Q. Special Agent Lidsky, the documents we just looked at, were those the only records that you collected or reviewed in the course of your investigation that listed the 0642 number?

A. No.

MS. MURRAY: Ms. Loftus, if you could please show just for the witness, defense counsel, and the Court what's been marked for identification as Government Exhibit 740.

Q. Special Agent Lidsky, are you able to see what's been marked for identification as Government Exhibit 740?

A. I am.

Q. Do you recognize it?

A. I do.

Q. What is it?
A. This is a chart.
Q. Does this chart, which is marked Government Exhibit 740, summarize certain information that is contained within voluminous records?
A. It does.
Q. This chart, which is marked Government Exhibit 740, is this chart accurate?
A. It is.
Q. How do you know that it's accurate?
A. I've reviewed all of these records, I obtained all of these records, and I've associated each one of these with the 0642 number.
Q. And were you able to, based on that review, verify that all the information as reflected in this summary chart is accurate?
A. Yes.
Q. Are the source documents that this summary chart relied on cited in Government Exhibit 740 by their own Government Exhibit numbers?
A. Yes.

MS. MURRAY: Your Honor, the government offers Government Exhibit 740 as a summary chart.

THE COURT: Mr. Brill?

MR. BRILL: No objection.

THE COURT: It will be received as a summary of documents that are in evidence.

(Government's Exhibit 740 received in evidence)

MS. MURRAY: Thank you, your Honor. And may we publish.

THE COURT: Yes.

MS. MURRAY: Ms. Loftus, if you could please publish Government Exhibit 740 to the jury.

BY MS. MURRAY:

Q. Special Agent Lidsky, can you just describe for the jury at a high level what we're looking at in this exhibit.

A. This -- this lists all of the different records we received that had this phone number, the 0642 phone number, associated with it. So, an Appsensible.com signature card at Chase Bank, that's the document we looked at just a few minutes ago, and the rest of these -- the Enterprise record is on here as well. And the others we didn't look at are listed here.

Q. So just looking at a few examples here, on the left column is the phone number. That's our 0642 number, correct?

A. Correct.

Q. On the rightmost column is the company record. Is that the company that was the source of the information that is cited in this chart?

A. It was.

Q. And then looking at the middle two columns, Associated Name and Record Type, first, with Associated Name, does that reflect what information in those company records was tied to the 0642 number?

A. That's correct.

Q. And then Record Type identifies for us what the source document purported to be, what type of record it was from those companies; is that right?

A. Also correct.

Q. So looking through this, Special Agent Lidsky, in addition to seeing the 0642 number associated with Jonathan Herttua and variations on that name, looking at the fourth line, do you also see this phone number associated with a different individual's name?

A. I do.

Q. What name is that?

A. Jonathan Lipow.

Q. And what company does Jonathan Lipow -- is Jonathan Lipow associated with for purposes of this 0642 number?

A. Mula Apps Corp.

Q. And looking at the line above, there's a Chase Bank record that we just looked at a short time ago. What was the name of the individual who was listed for this phone number at Mula Apps Corp. in the Chase Bank records?

A. Jonathan Herttua.

MS. MURRAY: Thank you, Ms. Loftus. You can take this down.

Q. Special Agent Lidsky, what, if anything, did the frequency with which you encountered the 0642 number during your investigation indicate to you?
A. That it was important to whoever was behind the fraud that I was investigating; that it was -- usually with a bank application, from my experience, and in talking to witnesses in this case, there might be follow-up from the bank, setting appointments, things like that, so the fact that this number was being used and associated with applications that were central to the fraud itself or to enabling the fraud, I inferred that it was -- it was actively being used and essential for the person or persons using it.
Q. Now once you had identified the 0642 number as essential to your investigation into the person or persons behind this fraud, what, if anything, did you do next to follow that lead of that phone?
A. I expanded my investigative steps with the phone to include analysis, both historical data-type analytics but also adding on electronic surveillance investigative techniques as well.
Q. Can you describe what you mean by electronic surveillance.
A. So there are a variety of electronic surveillance techniques that can be applied to cellphones. The one I was most interested in in this case, because I wanted to find the person who was using the phone, was to do location-type tracking, GPS and cell tower-type location tracking.

Q. How, if at all, are you able to track the location of the cellphone?
A. So there are a few ways. The two that I employed initially were GPS tracking of the phone. That is a function where the phone company can ping their device and the location and, you know, a smartphone -- this happened to be a smartphone -- it will work -- the phone will report back to the network, you know, where it is, with ranging degrees of accuracy.
The other way is through cell tower analysis. The phone companies can tell with, again, varying degrees of accuracy where a phone is on its network based on where it is in relation to one of its towers. So right now, my phone, there's a T-Mobile tower somewhere that says, Lidsky's over here to my right in the courthouse.
Q. Now did your electronic surveillance on the 0642 number include obtaining any warrants relating to that phone?
A. Yes. So location tracking requires a search warrant. It's a Fourth Amendment search. So I did. I obtained multiple search warrants for -- for a variety of location tracking on the device.
Q. Did that include what is referred to as a GPS warrant?
A. It did.
Q. What information, if any, were you able to collect about the 0642 phone as a result of that GPS warrant?
A. It -- I was able to get thousands of data points

referencing -- with reference to the phone and its physical or geographical location over the course of a year. The data, stored by network providers, allows us to go back in time and visualize this data or get these location points going back for an extended period, and I believe in this I went back about 12 or 13 months.

Q. Focusing on that GPS location data that you obtained for the 0642 phone, what, if anything, were you able to learn from that data about the movements or the activity of this phone?

A. So one of the things we -- we obtained the data for is to establish, again, what we call as a pattern of life. So when you look at somebody's movements over time, you get a -- you can infer a pretty -- I can infer or I did infer a pretty good sense of where somebody goes on a regular basis. You can, you know -- we all start the day at our house. We all -- a lot of us go to work, some of us go to school. And so as we move around, over time, those, you know -- a lot of us are creatures of habits, and that's what I hope to see when I -- when I reach -- when I get this type of data, and then from there, I can try to figure out, again, who -- who is this person that has this phone, where does he or she live, where does he or she work, where does he or she shop, and it's -- from that I can draw further leads, investigative leads.

Q. And based on the data that you were provided pursuant to the GPS warrant for the 0642 phone, did you conduct additional analysis to try to determine what, if anything, the data showed about the location of the phone?

A. I did. I plotted the points I'd received from T-Mobile into a special specialized mapping software that allows me to visualize the data in relation to, you know, to New York City in this case.

MS. MURRAY: Ms. Loftus, can you please show the witness, the Court, and the defense what's been marked for identification as Government Exhibit 570.

Q. If you could just look up when that's on your screen, please, Special Agent Lidsky.

A. I have it.

Q. Special Agent Lidsky, do you recognize what's been marked for identification as Government Exhibit 570?

A. I do.

Q. What is it?

A. This is a map that -- with analytical points that I made.

Q. Does Government Exhibit 570 reflect your plotting of the location data that you collected pursuant to that warrant for the 0642 phone?

A. Yes, it does.

Q. How was Government Exhibit 570 created?

A. So with the data that was provided by T-Mobile pursuant to the warrant I obtained, I simply plotted all of those points into the software; the software is just a spreadsheet of those points and visually displays each one of them on a map like this, and in fact on this map.

Q. Is Government Exhibit 570 a fair and accurate representation of your plotting using that tool of the location data for the 0642 phone?

A. Yes, it is.

Q. And over what time period of data -- what time period of data is reflected on Government Exhibit 570?

A. I believe this was approximately a year.

MS. MURRAY: Your Honor, the government offers Government Exhibit 570.

THE COURT: Mr. Brill?

MR. BRILL: Could I have just a very brief voir dire of the witness to clarify one thing.

THE COURT: Is it related to an objection or is this in the nature of cross-examination, which you'll do?

MR. BRILL: It's related to a possible objection.

THE COURT: Go ahead.

VOIR DIRE EXAMINATION.

BY MR. BRILL:

Q. Good afternoon, Agent Lidsky.

A. Good afternoon, sir.

Q. The plot points came from data that was derived from GPS and cell tower analysis or just from the GPS returns?

A. These were just points from I believe GPS, from T-Mobile.

MR. BRILL: No objection.

THE COURT: All right. It will be received.

(Government's Exhibit 570 received in evidence)

THE COURT: And then, Ms. Murray, if you would let me know a convenient breaking point.

MS. MURRAY: Yes, your Honor. Thank you. There are just a few questions on this topic. I would appreciate finishing this before we wrap up for the day.

THE COURT: Sure. Are our court reporters okay?

THE REPORTER: I'm good, Judge. Thank you for asking.

THE COURT: And the jurors?

THE JURORS: Yes.

THE COURT: Okay. Go ahead.

MS. MURRAY: Thank you.

Ms. Loftus, can you please publish Government Exhibit 570, which is now admitted into evidence.

Are the jurors able to see that?

THE JURORS: Yes.

BY MS. MURRAY:

Q. Special Agent Lidsky, can you please describe for the jury, first of all, what geographical area is represented, generally speaking, on the map that we see in Government Exhibit 570.

A. So this covers Manhattan on the left, and then Queens and Brooklyn towards the right.

Q. And now looking at this map, Government Exhibit 570, can you please describe for us what is depicted by the red circles or dots, generally.

A. So the circles, each circle, the pink opaque circles, represents a GPS point that was provided by T-Mobile. The size of the circle, the diameter of the circle, is -- relates to the accuracy as T-Mobile gauged its response. So every time they send me a GPS point, they provide a degree of accuracy. The smaller the number, the smaller the circle, the more accurate their read was. Generally, phones, GPS works better when it's outside than it's inside. If anyone drives through a tunnel, their GPS will go out. So that's -- that's what the size of the circles reflect.

And the coloring, where you see the deeper, darker pinks or red, the way this software works is so if I drop a point and drop a point on top of it, each one is just the normal shade of pink, but as they start stacking up on top of one another, the system darkens the red. So where we see the deeper shades of red or the darkest red means there are more points there; where you see just a single opaque circle in places, it means that's probably just a single point over the span of the data that was analyzed.

Q. Special Agent Lidsky, you should be able to draw on your screen and it will make an indication for the jury. If you could, just draw or circle for us the areas based on this data that you determined were of interest in terms of the frequency that the 0642 phone appeared.

A. So that one jumped out.

Q. That's on the right in a teal color.

A. Correct. And then I'm moving towards the left. I'm circling around lower Manhattan. The phone was very busy in this area in here and this area down here were the ones of -- I mean, there are some other spots of deep red, but, you know, I -- I was looking for the -- the larger patterns to me. I equated those to more volume and the places -- I have to start somewhere.

Q. Thank you.

MS. MURRAY: Ms. Loftus, you can take that down, and could you please now show the witness -- and if we could erase the circles. Thank you.

Ms. Loftus, if you can please show the witness, the Court, and the parties what's been marked for identification as Government Exhibit 571.

BY MS. MURRAY:

Q. Special Agent Lidsky, do you recognize this?

A. I do.

Q. What is it?

A. This is another map with an analytical point or points that I created.

Q. Did you create or prepare Government Exhibit 571 using some of the same data we just discussed?

A. I did.
Q. Is Government Exhibit 571 a fair and accurate representation of certain location data for the 0642 phone?
A. It is.
MS. MURRAY: Your Honor, the government offers Government Exhibit 571.
THE COURT: Mr. Brill?
MR. BRILL: No objection.
THE COURT: It will be received. You may publish it.
MS. MURRAY: Thank you, your Honor.
(Government's Exhibit 571 received in evidence)
MS. MURRAY: Ms. Loftus, if you could please publish.
BY MS. MURRAY:
Q. Special Agent Lidsky, first, could you please describe what time period or date range the information reflected in Government 571 represents.
A. So this shows the same day that we looked at in the previous map over the same amount of time, only with a filter added onto it.
Q. And what filter was that?
A. This is filter to show just those GPS points that occurred between the hours of midnight and 5 a.m. Eastern time.
Q. And why, if at all, did you analyze the location data for the 0642 phone between midnight and 5 a.m.?
A. So I realize it doesn't apply to everybody, but a lot of

people, a fair amount of people, maybe most people, are at home between the hours of midnight and 5 a.m. I know many of us work goofy schedules, and I do as well from time to time. But I always do this as a first step to see -- as I said earlier, I want to use the map to find the pattern of life, where somebody is at home midnight to 5 a.m., where they work, 9 to 5, things like that. So I filtered the map to show me only the points between midnight and 5, and I have only one point on this map, which is good for me for what I'm trying to do. It's consistent over -- over -- over an extended amount of time.

Q. What do you mean when you say that it's good for you that the analysis returned a single point on the map for the location of the 0642 phone between the hours of midnight and 5 a.m.?

A. Well, I'm chasing a ghost, for lack of a better term. I'm chasing -- I don't know who I'm chasing. All I know is I'm chasing a phone in a pocket somewhere. So if I see every night the phone is in a different place, I may never find out who it is. I know a lot of these cases I don't. So the fact that this one consistently went to a place every night gave me hope, gave me optimism, that I might be able to solve this crime.

MS. MURRAY: Your Honor, this is a good place to stop for the day.

THE COURT: All right. We will break for the afternoon then.

So I just remind you, ladies and gentlemen, please leave your notebooks on the chair or in the jury room. Don't take them home with you. And please remember, don't talk about the case either among yourselves or with anybody else, and don't do any research related to the case.

All right. And I will see everyone back here tomorrow morning at 9:30 start time, please. Okay? So if you'd arrive a little bit before that so we're ready to go at 9:30. Thank you.

All rise for the jury.

(Jury not present)

THE COURT: All right. Special Agent Lidsky, you're excused. I just remind you that you remain under oath, and we will resume tomorrow morning with your testimony.

THE WITNESS: Thank you, your Honor.

THE COURT: Thank you. Have a good evening.

THE WITNESS: Thank you. You as well.

THE COURT: And counsel, you may be seated.

Is there anything from the government?

MS. MURRAY: Yes, your Honor. Just one matter. The defense has indicated, as your Honor knows, that it wants to call Mr. Recamier --

THE COURT: I was going to ask about that.

MS. MURRAY: -- on his case. Given the timing of how the evidence is coming in and just in light of the schedule, we will not be in a position to rest the government's case tomorrow. We anticipate doing so relatively early in the day on Friday.

THE COURT: Really? Isn't this your last witness?

MS. MURRAY: No, your Honor. No. We have Elizabeth Palmer, Samantha Aaron and Randy Martin, Robert Bateman, William Jamieson, and Damjan Hezir.

THE COURT: I was not aware of that. When you gave me the list the other day, you stopped at Special Agent Lidsky.

MS. MURRAY: I'm sorry, your Honor. I thought you were talking about the witnesses anticipated today. The full witness list is everybody who is listed in the government's list of names and places and the addition, obviously, of the La Colombe witness. We had ordered Mr. Recamier for production tomorrow, because we had hoped we'd be in a position to be further along. It's a question for the Court. We're happy to order his production on Friday. I understand that Mr. Brill may have had conversations with Mr. Recamier's counsel just about their availability and timing, so I just wanted to flag that for the Court.

THE COURT: All right. Mr. Brill, what do you think? Have you had conversations and --

MR. BRILL: Yes. I had told them Thursday, based upon the government's estimate, and I told them I'd get back to them whether it was the morning or afternoon. I then told them the afternoon. That's where we left it. Apparently counsel had stopped by at some point today just to stick his head in, but we were in the middle of things so --

THE COURT: All right. And the request has been made to BOP for tomorrow?

MS. MURRAY: Yes, your Honor. My understanding--and I can confirm with the Marshals--is we could also submit a request for Friday.

THE COURT: Do we think it's not a problem to change it to Friday?

MS. MURRAY: The Marshals have been extremely accommodating, particularly in light of the fact that we're on trial. They did request typically 24 hours' notice. So I don't think it would be an issue if we put the request in today for Friday, and I do have an understanding that they're typically able to cancel requests on relatively short notice.

THE COURT: Do you know, though, Mr. Brill, if that will work for Mr. Recamier's counsel?

MR. BRILL: No, I don't.

THE COURT: All right. So why don't I leave it to the two of you to talk about that, and if it works to move it to Friday and that's the consensus view, then move it to Friday. Otherwise we can just take a break wherever you're at, we'll find a convenient breaking point, excuse the jurors. Because we're going to begin outside the presence of the jury, right?

Have you been advised, is Mr. Recamier still intending to assert his Fifth Amendment right?

MR. BRILL: I can say, to be as clear as I can, that the answer, the direct answer to your question is yes, but there's a caveat that's also been communicated to me. So it seems unclear.

THE COURT: All right. Maybe we'd better ask the witness to step out. Is Special Agent Lidsky still back there? If you wouldn't mind, just step out. Thank you.

Is the caveat a question about whether the government will immunize him?

MR. BRILL: No, your Honor.

THE COURT: Oh, okay.

MR. BRILL: It's -- as I would probably communicate to another attorney in this situation, it was fairly vague, but the way I interpreted it is that it's not a hundred percent clear to counsel that he will actually invoke. It's likely that he will invoke.

THE COURT: I see. Okay. And has the government considered and is there a potential for immunizing him?

MS. MURRAY: We have considered it, your Honor, and there is not.

THE COURT: Okay. All right. Then why don't you talk to his counsel, Mr. Brill, since it's you who wish to call him as part of the defense case, and if it can come in the normal sequence of things, I think that works best from your point of view, but if it can't be rearranged, it can't, then we'll just take a break, all right? Because obviously you've given ample notice of this, and I was operating under the false impression that we were getting to the end of things. I mean, these jurors think they're going to be done this week.

MS. MURRAY: Yes, your Honor. And I completely understand. As I said, the government certainly anticipates that it will rest early in the day Friday. The delay occasioned by the morning and the addition of another witness who was, frankly, significantly more time, substantially, than many of our other witnesses, threw off our scheduling. And I would just note for the Court, the addition of the La Colombe witness today was as a result of what we flagged for the Court at the final pretrial conference. We were attempting to reach a stipulation.

THE COURT: What do you mean by that, what you had flagged?

MS. MURRAY: So during the final pretrial conference your Honor asked whether we had any agreements as to the evidence.

THE COURT: Yes.

MS. MURRAY: And I indicated to your Honor that we had stipulations and there was one additional that we were trying to work through, and you gave us the offer that if the Court could be of any assistance, we should come to you. We determined through speaking with Mr. Brill that there was simply no path forward, so we were in a position that we did need to identify and then bring another witness forward for evidence.

THE COURT: Okay. But, I mean, you did know that when we were picking the jury and when we were over here and we had somebody who has graduate school on Monday and I looked at you and you said, "We will finish this week." So, we are where we are. Hopefully we won't run into any problems.

MS. MURRAY: Understood, your Honor.

THE COURT: But everybody should try to move things along.

MS. MURRAY: Yes. Understood, your Honor.

THE COURT: And I'll let the jurors know where we're at, you know, tomorrow, okay?

All right. Anything else from you, Mr. Brill?

MR. BRILL: I will communicate with the government as soon as I hear from counsel.

THE COURT: All right. And then if you would, one of you let chambers know, please, just so we know what the scheduling is, I'd appreciate it. You have Ms. Dempsey's contact information?

MR. BRILL: Yes, your Honor.

THE COURT: All right. So you could let her know and she'll let me know. All right?

All right. So nothing we need to take up tomorrow morning then.

MS. MURRAY: No, your Honor.

MR. BRILL: No, your Honor.

THE COURT: All right. Thank you very much then. And I thank our reporters, both of you, very much.

We'll stand adjourned for the day then. Thank you.

(Adjourned to October 27, 2022, at 9:30 a.m.)

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