UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS (SHERMAN DIVISION)

UNITED STATES OF AMERICA, Plaintiff, v. OLAMIDE OLATAYO BELLO, Defendant.	Case No. 4:23-cr-00136-ALM-BD-1 Sherman, Texas December 13, 2024 2:22 p.m.

TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE BILL DAVIS
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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(Call to order at 2:22 p.m.)

THE COURT: Please be seated. We're here on number 423-CR-136, United States v. Bello. If I can have announcements, please?

MR. TAYLOR: Good morning, Your Honor, Sean Taylor for the United States, ready to proceed.

THE COURT: Thank you.

And if I could make sure we have the microphone turned on and if you could speak into it, so we can get a good recording.

THE DEFENDANT: Olamide Olatayo Bello ready to proceed, Your Honor.

THE COURT: Okay. And Mr. Linder, you're here standing by, is that right?

MR. LINDER: Yes.

THE COURT: Okay, thank you.

So we're here on the Defendant's motions to suppress, which are dockets number 353, 354, and 357. This is Mr. Bello's motion, so my thought is that he can start and then the Government can respond. Is that the appropriate course in the parties' views?

MR. TAYLOR: Yes, Your Honor.

MR. LINDER: I believe so, Your Honor, but I would like to put a few things on the record that pertain to other discovery matters just so we're covered.

THE COURT: Okay.

MR. LINDER: The Government has provided with me today and I've discussed it with Mr. Bello a box of his electronics that were seized, cell phones, computers, and things like that. I am going to make arrangements to have that delivered to the jail where Mr. Bello Is. I believe he's still in Fannin --

You still in Fannin County?

THE DEFENDANT: Yes.

MR. LINDER: Okay. To where an investigator or myself or a paralegal can sit with him and let him have access to the devices between now and the trial.

And it's also my understanding that Mr. Smith is going to provide Mr. Bello at some point in the next week or two a list of the exhibits he intends to use at trial and I guess potentially copies or prints of those exhibits, so that he will be more prepared before trial to know kind of what the Government's going to offer.

THE COURT: Okay, so everything you just said goes to discovery issues that are unrelated to the motion to suppress.

MR. LINDER: Correct. I just kind of wanted as we go through this, I just want to make sure it was covered.

THE COURT: Thank you, I appreciate that.

Mr. Bello, will you be calling any witnesses today?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay. You're welcome to sit there if you want or you can stand at the lectern, whatever your preference is, it's okay with me, but you can proceed on your motions.

THE DEFENDANT: Your Honor, today before I proceed, there's a pending jurisdictional issue on jurisdictional (indiscernible) that we need to clear for us to proceed to make sure this (indiscernible) jurisdiction issue.

Because without that being clear, we (indiscernible) because you have to (indiscernible) issue for us.

THE COURT: Okay, I'll take your argument on the Article 3 question.

THE DEFENDANT: Your Honor, in the indictment, I was indicted because I control and managed a corporation. It's part one of the indictment.

Now as a control person, the primary violation was not addressed. The control, a manage person where the control person and managed person doesn't have any allegation, the Government have to go to the service of process to get to the control and manage person.

Now the role in that may involve around payroll manage and control, which is (Indiscernible) without a (indiscernible) evaluation.

THE COURT: How does this go to Article 3 jurisdiction?

THE DEFENDANT: Article 3 jurisdiction say, they put

number one, subject matter jurisdiction and fiduciary share and (indiscernible) and Section 230 because the controlled and managed person, they're Section 230 corporations. They're Internet compliant. They provide software. And they even the control and manage person is also is Section 230 (indiscernible).

THE COURT: Give me your best case for why that means the Court does not have jurisdiction?

THE DEFENDANT: Hold on, Your Honor. If we go to the (indiscernible) statement 772(f)(2)(D), the provision shall prohibit the court from exercising personal jurisdiction over an individual who's only action in forum state we're taking in the individual capacity as a corporate representative if the Court has personal jurisdiction over the corporation itself.

Now, at the same time, it does so. Business code 21.223(a)(2) also (indiscernible) share for the control and managed person.

Now before the Government can actually get to the control and manage person, they have a official process which is the civil case, not a criminal case.

I have also in Harris v. Tremos, case number 19:1132-MMJ, I know (indiscernible) as a corporate officer in a diversity jurisdiction controversy such as this is insufficient enough to -- it's insufficient enough to establish the minimum (indiscernible) to subject the individual to personal

jurisdiction.

THE COURT: Mr. Bello, so I'm having a bit of trouble understanding you. Let me just ask, are those criminal cases that you're citing? Are they civil cases or criminal cases or do you know?

THE DEFENDANT: The short case, because my number one, I'm -- I have the case number. It's a few second and can define what I -- I couldn't tell it's a criminal or civil case for now, but I can do the research and find out.

THE COURT: Okay. Why don't you wrap up your argument on jurisdiction and then move to your argument on the motions to suppress?

THE DEFENDANT: Okay. Now on the jurisdictional issue, I believe fiduciary shield, liability shield, and also Section 230 (indiscernible) covered the control and managed person.

And before the Government get to the control and managed person, they have to have a primary evaluation of the controlled and managed person.

Without the primary evaluation, they become indispensable party, which there's no -- nothing can be replaced without indispensable party.

THE COURT: Uh-huh.

THE DEFENDANT: That a court can really address.

THE COURT: It sounds to me like you're talking about

a civil case. And I'm -- we're here in a criminal case. You understand that, right?

THE DEFENDANT: Your Honor, this case because it being established as a criminal case, it's supposed to be a civil case.

THE COURT: Uh-huh.

THE DEFENDANT: Because if emphasize on the control and manage person. And everything I link in the discovery is all like a Billy Troping (phonetic) United States an, SBA case, Billy Troping was taking not the owner of the. So this case supposed to be a civil case.

THE COURT: Okay. And that's the basis for your jurisdictional challenge?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay, I understand your argument, I think, on that point. Unless you have further argument on jurisdiction, you should move to your motion to suppress.

THE DEFENDANT: On the motion to suppress, then 353, when the Government came to my house and the -- they did knock (indiscernible) by the time they got to the door, I was at the door on timely.

THE COURT: Sorry, I'm sorry can you say that again?

THE DEFENDANT: When they came to my house --

THE COURT: Yeah.

THE DEFENDANT: -- to research the warrant, I was at

the door. Within a reasonable time, I unlocked the door. So instead of (indiscernible) to open the door, they entered the door with forced entry. They (indiscernible) by the door in my house up to now. We have a bit of money to fix it. That's the first entry.

Now when they told me what was going on, I invoked my right to the attorney. After that, the (indiscernible) compel me to produce my password to my phone with the (indiscernible).

So they (indiscernible), now they took my phone away. Now on this argument here, on the 353, they presented evidence against me through the pre-trial release revocation.

And when I got the discovery, I realize those everything were altered. They changed things and everything. So I have the proof right here with me, Your Honor.

THE COURT: And that leads to one of my questions. Are you -- so you're not putting on a witness. Are you presenting any evidence?

THE DEFENDANT: Yes, for everything, Your Honor.

THE COURT: Your motion and --

THE DEFENDANT: Yes.

THE COURT: How will that be presented?

THE DEFENDANT: It's right here with me, Your Honor.

THE COURT: And I guess I -- I don't know if you're wanting to be placed under oath and testify. I think if you wanted to consider that, you'd have to consider it carefully --

THE DEFENDANT: Sure.

THE COURT: -- because if you do that, then you'd be subject to cross-examination or getting into the merits of your case. The Government could ask you what it wanted to ask you. I would want to make sure that you're okay with that approach. I guess maybe if Mr. Linder has thoughts on that, it would be appropriate to share those.

THE DEFENDANT: I'm okay with the approach, Your Honor.

THE COURT: I'm sorry?

THE DEFENDANT: I'm okay with the approach, Your Honor.

THE COURT: With the what?

THE DEFENDANT: With the putting under oath.

THE COURT: To be placed under oath?

THE DEFENDANT: Yes.

THE COURT: And to testify today --

THE DEFENDANT: Yes.

THE COURT: -- as part of your motions --

THE DEFENDANT: Yes.

THE COURT: -- even though you realize that anything you say can be used against you in your criminal case?

THE DEFENDANT: Your Honor, yes.

THE COURT: Okay, unless there's an objection from the Government, I will -- or from Mr. Linder as standby

counsel, I'll place Mr. Bello under oath.

MR. TAYLOR: The Government has no objection. I don't know if Mr. Linder, if you want to take a moment just to confer. That's a pretty important decision, I think.

MR. LINDER: Three minutes, Your Honor.

THE COURT: I'd be happy to give you that chance, yes.

(Counsel confers with the Defendant)

MR. LINDER: Your Honor, I conferred with Mr. Bello. He would like to proceed by being placed under oath at this point.

THE COURT: Okay, Ms. Jackson will place Mr. Bello under oath. If you'd please raise your right hand?

(The Defendant is sworn)

THE COURT: Okay, and you understand that you're under oath now. Anything that you can say can be use against you. The Government will have an opportunity to cross-examine you to the extent you're here testifying as a witness. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay, so I think it's fine for you to proceed in a narrative form rather than a question and answer form. And if you want to testify to the facts that you're about to get into, you can proceed.

THE DEFENDANT: Your Honor, in the WhatsApp messages

they used (indiscernible) based on the document in the evidence produced, provided to me, Sabur share with them that he took -- Sabur give them the information and give them information on the WhatsApp messages that was used for the pre-trial revocation.

Now and there was no message. Looking at the screen, because I look at the discovery they brought to me at the present to my time to go over the whole thing.

Now this (indiscernible), this one right here, is the last message which Sabur say it did not know the people from Nigeria that contacted him.

But in the pre-trial revocation, they said (indiscernible), said that Sabur was also in a -- the same or subgroup with the people in Nigeria.

Now why you are in the same or subgroup? There's no way you can say you don't know the people on the same group with which is a lie.

Sabur had a clear knowledge of number because this one pre-trial revocation for (indiscernible) review stated on -- I'm not too sure about the (indiscernible), said Sabur was also in the same or subgroup with the people that contacted in from Nigeria.

THE COURT: Okay. And --

THE DEFENDANT: Now --

THE COURT: -- let me, if I could just --

THE DEFENDANT: Sure.

THE COURT: -- pause for a minute and ask. I just want to make sure I understand how this goes to your motions to suppress. Could you explain that to me?

THE DEFENDANT: Yeah, because I'm about to bring up the altered evidence the Government used. They used for my pre-trial revocation. There were some messages that was given to me. The discovery was printed out and I have all the copies here.

So I took my time to run through all the messages, (indiscernible) together and I find out where it was alter. It was used against me for my pre-trial revocation.

THE COURT: Okay.

THE DEFENDANT: So now -- and I'm trying to analyze it from the (indiscernible) you follow me through. This is the first page. It show that the people that contacted Sabur Yusuff from Nigeria.

Precisely, Sabur Yusuff was not there in the pre-trial revocation, which violated my right to a confrontational clause. It wasn't there.

But the Agent Delaney (phonetic) testified on behalf of Sabur. Now in the preceding message, that day, he only presented few of the app messages, not everything, which is completed information also as well.

Now in my discovery, we have all this information in

my discovery. On the first page of the screenshot of the WhatsApp, it shows only Sabur, these two numbers that contacted Sabur, the date that Sabur claimed he was contacted. Everybody else doesn't show that day. That tells me only those two people contacted Sabur within that time frame.

Now Sabur claimed he forwarded a message to his wife. It doesn't show his wife on the list. So, presumably, he lied about that.

Number two, I have these messages right here to confirm the first page I'm showing you because it show deleted. It shows right here deleted. So it tells me the last activity on the last contact person by Sabur. So this confirm -- this page here confirm this was the last activity by the two last people by Sabur Yusuff. That's one.

Now moving forward to confront with two people that was less activity. This also confirm the other fellow, the 1185 as well. Now looking at it now, they gave me (indiscernible). This two that we see messages, Your Honor.

Now (indiscernible) coming out to you, one says the message was (indiscernible). Government did not provide that information during the pre-trial revocation.

Now another thing, one says I show you I am not trying to sell you, sir. They say, A, they assure, spelling is A-S-U-U-R-E. Another one here, the assure spelling is A-S-U-R-E. It was altered, Your Honor. The Government used altered

messages to find me guilty, Your Honor. That's one.

Number two, to confirm when we (indiscernible) confirm, the federal emphasize I'm from the Nigeria, I was (indiscernible). I'm not in Nigeria, Your Honor.

This (indiscernible), too, if you look at the screenshot of these messages, compare it to the same number, 2270, they're different background, different layout. I marked everything, but you see messages.

If someone is talking to you -- even they seem == if you look at the picture, the logo, you had messages with a different logo. That means someone alter this in some way. It's not the original -- in its originality, Your Honor.

There's few errors as well that I have, that I can compare on the two logos. Okay, this is a special that was (indiscernible) and given to me. And this is another special that was painted and given to me. They were inconsistent, Your Honor.

(Indiscernible), Your Honor. The Microsoft Word document they share shows a metadata that is there. Your Honor, in my life, I can store over -- on over 1,000 computers, well, that's what I do.

Now in Microsoft Office, if anybody familiar with the metadata on the Microsoft Office does not determine the actual user of the computer that time.

Because when you buy a Microsoft Office and you say

to license people, like I said, I'm (indiscernible), that's what I do for a living. I develop software. I'm a Microsoft certified professional.

So I have -- I (indiscernible) licensing. I spoke over here for (indiscernible) in India, in Nigeria, in U.S. So give me Nigeria. I go to Microsoft. I buy the computer from them. I ship to workers in Nigeria.

Because I'm (indiscernible) the -- my computer, anybody can buy Microsoft Office, register Microsoft Office. If I have a computer, I can demonstrate it right now. If all this evidence I have, I can demonstrate their technical.

Anybody can register Microsoft Office and put the (indiscernible). That wasn't mean the person using that computer at that particular time is (indiscernible).

THE COURT: Okay, so I'm trying to match up with what you're saying with what you filed. Does this go to your claim about the data center? '

THE DEFENDANT: No, it goes to the claim about altered messages and what they use to -- what they used against me for the pre-trial. So I put all the evidence together. And it goes back to Microsoft, the metadata, the WhatsApp messages and all the submitted that were altered and not in the originality.

THE COURT: Okay, as I understand -- give me one minute here. Okay, so what you're talking about is evidence

that was used at your detention hearing; is that right?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. And are you contending that any of that evidence or any other evidence that was mentioned in your filings was obtained without a warrant or is -- are you agreeing that there was a warrant for this evidence?

THE DEFENDANT: No, there was another motion for them because they pick up my phone. And they went to my phone. And that was (indiscernible). This one is (indiscernible) evidence. This 354. This one we're talking now is 353.

THE COURT: Right. So, today, we have three motions that we're hearing argument on or having a hearing on. It's 353, 354 --

THE DEFENDANT: Yes.

THE COURT: -- and 357.

THE DEFENDANT: I'm at 353 now, Your Honor.

THE COURT: Okay, but I guess what I'm wondering about is in connection with any of those motions, are you saying that some of the evidence was acquired without a search warrant?

THE DEFENDANT: Yes, Your Honor. On the phone, my phone, they took my phone. That's another motion. And they took my phone away.

THE COURT: You said that's another motion.

THE DEFENDANT: Yes.

THE COURT: But again, I want to focus on the motions that are set for today.

THE DEFENDANT: Yes, now we're focusing on 353 now, which is focused on alter evidence, which is -- sorry, Your Honor.

Yeah, on the 353 motion is a motion to -- for the alter evidence to suppress everything because they were alter on the 353.

THE COURT: Altered evidence is what you're saying?

THE DEFENDANT: Yes, yes. They were altered. They were altered. And also on the altered evidence, what I did was all the discovery I have, I went through all the screenshot and (indiscernible) only one. There were the zip contents, but different screenshot.

And also, there little changes in the word because if someone force some (indiscernible) and you take a screenshot, there would be no change in the word like --

THE COURT: Okay, so you're talking about documents. Are you admitting any -- seeking to admit any exhibits today?

THE DEFENDANT: Yeah, actually, in the motion, I also attach the copy of the exhibit I'm sharing with you today in the motion for the (indiscernible).

THE COURT: I don't know that there were any attachments to any of the motions that are --

THE DEFENDANT: Yeah, I think I attach the

screenshot, but I have a copy, which I brought with me. That's what I was showing you right know.

THE COURT: Okay, have you provided that to the Government?

THE DEFENDANT: Not yet.

THE COURT: Okay, let me let you do that.

(The Defendant confers with counsel)

MR. TAYLOR: Your Honor, my understanding of the Rules of Evidence in the hearing of this nature are somewhat relaxed.

THE COURT: In fact, they don't apply.

MR. TAYLOR: They don't apply. Right.

THE COURT: Yeah.

MR. TAYLOR: This evidence of the documents I should say, this is not what the Government presented at the hearing. This has got a lot of markings on it.

So, I mean, I guess I have no objection to coming in just for whatever consideration you might give them, but I mean, this is not the same original evidence that's presented at the hearing.

THE COURT: This is not --

MR. TAYLOR: For what it's worth.

THE COURT: What you're saying is that -- what you've just been handed by Mr. Bello are documents that were not used or --

MR. TAYLOR: Or rather of course, it did have its (indiscernible) on it. And I don't have -- I guess I didn't bring that because I didn't know exactly what we're going to be discussing here today.

THE COURT: Sure.

MR. TAYLOR: I mean, I have no objection to you -- them coming into evidence for your consideration for whatever -- however you want to treat it.

THE COURT: Yeah, I think I'll accept them. I'll accept anything that want -- that Mr. Bello wants to submit to the Court.

THE DEFENDANT: Your Honor, I have the pre-trial, the one that was used against me in the --yes, Your Honor, yes.

MR. TAYLOR: May I approach, Your Honor?

THE COURT: Yes.

THE DEFENDANT: Okay. Yeah, one more thing. Give this to the -- case. This is the one that was used.

(The Defendant confers with counsel)

MR. TAYLOR: Approach, Your Honor?

THE COURT: Yes. Okay, are there any other documents that you want to submit to the Court, Mr. Bello?

THE DEFENDANT: This is the one that (indiscernible) doesn't have -- he doesn't know those two numbers. This is the 139 for the pre-trial revocation, the 139. And also, this is the (indiscernible) okay, page 3 of 139, where he doesn't know

about the number.

MR. TAYLOR: Your Honor, if I may, does the Court have at its disposal the ability to look at Document 139 on its own so -- he's pulling pages from that to refer to.

THE COURT: Okay.

MR. TAYLOR: I sense the Court may have that.

THE COURT: So this is Docket 139 in this case.

MR. TAYLOR: Yes. Yes.

THE COURT: Give me a minute here.

MR. TAYLOR: He's trying to refer to allegations from the Government in that document, but if the Court has its own version of the document, that might (indiscernible).

(Counsel confers with the Defendant)

THE COURT: Okay, so tell me the docket number again?

MR. TAYLOR: Docket 139, Your Honor.

THE COURT: 139 is --

MR. TAYLOR: Is the --

THE COURT: An order of detention?

MR. TAYLOR: Yes, sir. And there are pages in there where I guess the Court or the Government has cited certain things that Mr. Bello has disagreements with and would like to go through those. Rather than hand each page to the Court, I think the Court can go through as he goes through it.

THE COURT: Maybe I'm just not understanding. This is an 11-page document that's an order. I don't see anything

attached to it.

MR. TAYLOR: Oh, no, what I'm looking at it's an 11-page document, Your Honor. Yes. He has issues with some of the statements that are contained in that order.

THE COURT: Okay, but you've handed me several pieces of paper here. You're not -- I thought you were saying that I could find all of this in this docket entry. That's not the case?

MR. TAYLOR: No, that was from before. What he's trying hand now is various pages from Document 139.

THE COURT: I see, okay. So to the extent that, Mr. Bello, you're trying to point to printed out pages of Docket 139, you don't need to offer those because I have that pulled up and can see that.

(Counsel confers with the Defendant)

MR. TAYLOR: Your Honor, may I have the (indiscernible).

THE COURT: Sure. And if we need to make more copies of those?

MR. TAYLOR: Yes.

THE COURT: Okay, yeah.

THE DEFENDANT: Thank you, thank you. Your Honor, I have a blow up a 139 because also the main focus on the 353 was altered tampered evidence that was used against me for the pre-trial revocation.

So what I would do to go right one more time to Your Honor, I would go for the 1 -- Docket 139. And I would refer to that also in the evidence I have here.

THE COURT: Okay.

THE DEFENDANT: So I'll give it to Your Honor. Should I go on, Your Honor?

THE COURT: I'm sorry, Mr. Bello?

THE DEFENDANT: Should I go on, Your Honor?

THE COURT: You can proceed with your argument.

THE DEFENDANT: Okay, now on the (indiscernible) if you look at page 3 of the Docket 139, the last line, it says Sabur -- nobody informed law enforcement that he received or saw text messages from two phone numbers, 23737 -- 2347063762770 and 2349019351185. Both which were unknown to him.

Okay, now moving further on that, if you go to page 5 of the docket, I believe paragraph 2, it says for (indiscernible) review of WhatsApp text messages reveal Defendant communicated with two (indiscernible) message. And at the same time was 10 message and 2770 is message when it find in a group chat, which (indiscernible) evidence.

So that statement was a lie because it cannot be in a group chat (indiscernible) (indiscernible) training for 24 people and the event the fellow they contacted was from Nigeria was an instructor for Sabur. He was a tutor for Sabur. So

they knew each other before. There was previous communication between each other than before.

So now, I'm going back again now to page 4. The Government used there were some messages presented was incomplete messages. They just pick whatever good to them.

And go to 106. No, hold on. I have it somewhere. It's -- I don't (indiscernible) the (indiscernible) evidence, they cannot use it for complete messages because if you just speak up (indiscernible) to you, nobody know what is going on. But in the discovery they give to me, I was able to figure out more of really going on.

So that was when I figure out the messages that were used against me at the pre-trial revocation was altered. Because the Government presented the printout of the WhatsApp messages that was used against me. Then I was able to go through all the messages within the two of them.

That was when I -- the other one I want to show you the discrepancy and inconsistency in the messages. So now the talk of the matter on this first page the -- I have in the discovery, it shows that these two messages that contacted Sabur, they have the number here.

On one -- on your on your phone, when you use WhatsApp, if you look at the screenshot, you would take the last dates you made the contact with anybody.

And now, Sabur said before that the message, an

interview they had with Sabur, it say your message was deleted. When I forwarded it, I took a screenshot and I forwarded it to my wife.

Meanwhile, his wife was in Nigeria just 15 minutes away from the contact person at that time. Sabur's wife was in Nigeria at that time.

So now on the screenshot, nobody -- I don't know who owns this phone, who have this phone, because I'm a software engineer and anybody -- I mean, there was messages used by everybody in the company. They use it to contact the customer. So I'm not too sure who using the phone at the time.

You know, WhatsApp these days, you can be on your laptop and use it and you can (indiscernible) phone and use it. Doesn't mean use on your cell phone.

So now this screenshot, I'm not too sure. It was taken from the laptop or was taken from his cell phone, but if he say he forwarded the messages to his wife as claimed in the interview, it would show in the list of people that had the last contact. With his wife (indiscernible). There's only two people which were the two people that contacted Sabur from Nigeria.

Now moving forward, (indiscernible) messages. What I do was I went through all the printout they give to me. And I look at the -- what they did, they did not actually have the whole message in one page like they took the (indiscernible)

page one and continuation and the other one for the (indiscernible) text message.

So I look at the time stamp one by one. And I read all the messages one by one. And I was able to compare few screen together and I realize they were altered messages. They were not in original. Someone changed the messages. I'm not too sure what (indiscernible) way or was altered.

Now that's what I will show you. Like on this one here, this two share the same messages. These two messages that share messages right. Now when I did by them 810, 810, meaning that the same messages.

But on one, even though they did alter, they made a mistake. They did not (indiscernible) the alteration. One say A-S-G -- A-S to assure, I assure you I am not trying to sell you.

Now the other one say I assure you I'm not trying to sell you. But on one, the assume is spelled A-S-U-U-R-E. On the other one, they are showing spell A-S-U-R-E.

THE COURT: Okay. It is your argument that this evidence was used to obtain a warrant against the search?

THE DEFENDANT: It was used to revoke my pre-trial.

THE COURT: Uh-huh. Okay.

THE DEFENDANT: This they used to revoke my pre-trial.

THE COURT: And so, why are we talking about that

here in a suppression hearing?

THE DEFENDANT: Now it's a motion to suppress the evidence was an altered evidence. It was not in the originality. It was part of my discovery.

THE COURT: Uh-huh, okay. Let me ask you about something else if I could.

THE DEFENDANT: Yes, Your Honor.

THE COURT: And that's about the agents asking you to tell them your passwords for your devices. Is that -- are you saying that -- what were you saying happened with that?

THE DEFENDANT: Oh, that was a different motion unless you want us to -- because I just focused on 353 now. Then we can go to that motion (indiscernible) as well.

THE COURT: It's one of the three motions that we're here on today?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I'd like you to address that.

THE DEFENDANT: Yeah. When they -- after they call me or interview me and I invoke my right to the attorney, they put me to my computer home office and compel me to produce my password to my phone.

So after they got the password, it was (indiscernible) was work with the assistant who wrote the password down on all the laptops. And they took my phone away. So two months later (indiscernible) phone back and all they

pick me up for the pre-trial revocation.

Now they took this phone away and I was looking at the discovery, they had (indiscernible) from my house where there was no (indiscernible) from my phone.

At the same time, I don't see any -- I did not consent for them to probe my phone to -- they probe my phone into one company Cellebrite. And they brought over -- they dumped all the information they dumped out of my phone.

Now in the Cellebrite reports (indiscernible) I have the copy of the Cellebrite here that showed the -- (indiscernible) reporting was January. I have the copy of the Cellebrite report here. And that was on 354.

THE COURT: Okay, do you understand what I'm asking you? The -- I'm asking you about whether you were compelled to tell anybody what your passwords are?

THE DEFENDANT: Yes, I was compelled and coerced to produce my password.

THE COURT: Okay.

THE DEFENDANT: After I invoke my right to the (indiscernible).

THE COURT: Okay, tell me a little bit more about the facts of that, how that happened?

THE DEFENDANT: After the interview, when I revoke my right, they took me to the back of my house and I (indiscernible).

So they went to my office and they (indiscernible) I should produce my password, what's my password. And I was (indiscernible). I didn't know what was going on. So they got my password and that's how they got my password and they took my phone away from there.

THE COURT: Okay, one other question I had just from reading the papers that you filed is whether you're saying that some of the evidence identified in the search warrant, I think this maybe goes to a car title, it's in computers.

THE DEFENDANT: Yeah.

THE COURT: There was not -- I heard you saying that was not seized?

THE DEFENDANT: Yes, Your Honor. When they came to my house --

THE COURT: Just let me make sure I understand. If you're talking about evidence that was not seized, how could that be part of a motion to suppress?

THE DEFENDANT: Now, I put a motion to suppress because they (indiscernible) for the IP address. Now when I was going through my discovery, they subpoena AT&T. So the Government know my house is not all night. It's a data center because my house, I have a lot of like I worked -- I used my company bring their computer to my house. So I host some of them.

So in this search warrant they have, they're supposed

to pick up every alleged premise computer in my house. When you come to my house, (indiscernible) we go we have (indiscernible) box like the fire escape for the TV. We have a (indiscernible) like that.

We also (indiscernible) watch TV, movie just more like we have it's NetFlix fashion. (Indiscernible) all those (indiscernible) in my house.

Now prior to that, in their house in Missouri (indiscernible) data center, but after I paid my house 2018, my house was (indiscernible). So we were able to get it (indiscernible) from AT&T. So I did had the contract with AT&T to provide the IP address and a fiber, not online fiber, for the data center in my house.

So all of those computers were in my house (indiscernible). So when they came to my house with the search warrant, they saw the servers. They didn't pick it up.

Now it's one of the probable cause. Now (indiscernible) they tell you to the grand jury that this house is a data center. They (indiscernible) day, but they did not (indiscernible) the testimony before the grand jury.

So they came to my house. They saw the server. They didn't pick it up.

Now in the indictment on the (indiscernible) for the (indiscernible) even in that many when it's (indiscernible) Dutch (phonetic) told them the trouble (indiscernible). The

tattoo is a data technology. That (indiscernible) because if anything happen for the servers, there'll be a response time faster.

So when they went through all the tattoo, they didn't pick it up. The server did not pick it up as well. (Indiscernible) probable cause to come to get a search warrant. So they did not fulfill the obligation for the search warrant.

THE COURT: Okay. Is there anything else you want to say in support of any of your three motions to suppress?

THE DEFENDANT: I talk about the search warrant to my phone, they don't have that. They broke my phone to Cellebrite after (indiscernible). I have the paperwork for that (indiscernible) where it shows that the port was generated for the cell phone.

And the -- you know, though they took the cell phone away, they put the cell phone back and they continue, they have access to my information based on the report I have in my discovery, Your Honor.

THE COURT: Okay, anything further from you?

THE DEFENDANT: I have a bunch of evidence here as well, which I don't know if you would need that?

THE COURT: Well, today again, we're limited to the three motions to suppress.

(Counsel confers with the Defendant)

THE DEFENDANT: Your Honor?

MR. LINDER: A few more things, Your Honor.

THE DEFENDANT: This is on the 357, which is a motion to suppress the material phone on the cell phones because the scope of consent did not encompass the (indiscernible) date, a motion to dismiss (indiscernible) U.S. (indiscernible) 5 and 4. So I have it in the motion as well, which is on 357.

THE COURT: Okay, I'm sorry, you're trying to submit more evidence in support of motion 357?

THE DEFENDANT: Yeah, this is the evidence to show they connected my phone without a search warrant or my consent later to the --

THE COURT: Okay. I'm going to let Mr. Taylor take a look at that.

THE DEFENDANT: Sure.

THE COURT: And then, I'll accept it if you want to provide it to the Court.

MR. TAYLOR: No objection to (indiscernible).

THE COURT: Mr. Bello, I do want to clarify one thing that I asked before. And I just want to make sure. I am having some trouble hearing you about you being asked for your passwords. Was that something that an agent told you you had to provide or told you that you could provide if you wanted?

THE DEFENDANT: No, because he asked me to produce the password.

THE COURT: He did what?

THE DEFENDANT: He asked me to produce the password or asked me and asked after I invoked my right to the counsel.

THE COURT: Okay. Okay, so you'll be handing me through Mr. Linder's exhibits that you want me to consider. I've heard your argument on the motions. Is there anything else you want to add?

THE DEFENDANT: No, Your Honor.

THE COURT: Okay. So I'll turn this over to the Government now. And typically, we let you put on your witness. I think in think in this situation, if there's cross-examination that you want to do this because Mr. Bello has both argued his motions and testified in support of them, you can do that. And then call your witness unless you want to proceed a different way.

MR. TAYLOR: That is fine, Your Honor. Could I -- Mr. Bello, you mentioned Docket 139. Can I just take a moment to review that? Because I didn't have access to it.

THE COURT: Sure, that's fine.

MR. TAYLOR: Do you have 139?

THE DEFENDANT: Yeah, 139.

(Counsel confers with the Defendant)

MR. TAYLOR: Your Honor, would you like me to stand at the lectern to conduct cross-examination or?

THE COURT: Yeah, I think it would be appropriate to the extent you're cross-examining Mr. Bello for Mr. Bello to

have a seat in the witness chair.

MR. TAYLOR: Okay.

THE COURT: So, Mr. Bello, if you could come up here and because you're playing a dual role in this case, this will be a chance for the Government to cross-examine you to the extent that you've testified today in support of your motions.

MR. LINDER: Your Honor, may I stand next to Mr. Bello so (indiscernible)?

THE COURT: Yes, please.

And Mr. Taylor, you can proceed when you're ready.

MR. TAYLOR: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. TAYLOR:

Q Good afternoon, Mr. Bello. You understand that because you've elected to testify in this case, that you're now subject to cross-examination and the rules -- I mean, there are no Rules of Evidence, but just kind of a natural flow of things and sort of things I'm allowed to get into are to ask questions about to follow up about you said in addition to asking you questions regarding your credibility. Do you understand that?

A Yes.

Q Okay, okay, you covered a lot of material during your direct. So I just want to kind of to try to break this up in chunks.

So let's start with what's docket entry 353. And I kind

of want to just make sure I understand exactly what the argument is. And I've got a few questions once I think by getting better footing about what you're trying to say.

So last actually two August ago, August 2023, we had a hearing in this courtroom on a revocation of your pre-trial release; is that right?

A Correct.

Q And at that time, you were represented by counsel; isn't that correct?

A Correct.

Q And that was before you decided to proceed pro se. And your counsel at the time was who? Frank Thompson?

A I can't remember.

Q You don't remember. I think it was Frank Thompson.

A (Indiscernible.)

THE COURT: Mr. Bello, please make sure you're speaking into that microphone.

THE DEFENDANT: I can't remember this name. Frank, Mr. Frank something. Yeah.

BY MR. TAYLOR:

Q Okay. If I represent to you it's Frank Thompson, you wouldn't have any reason to dispute that? I guess my point is that you had an attorney at that hearing; isn't that right?

A I had what?

Q You had an attorney to represent you at that hearing?

A Correct, correct.

Q Okay. And do you recall that the allegations were that you had violated the conditions of your pre-trial release?

A Correct.

Q Because you were arrested back in June of 2023, but released on bond; isn't that right?

A Correct.

Q Okay. And do you recall the Government presenting evidence in the form of some WhatsApp messages?

A I was what?

Q Do you recall the Government presenting some evidence in the form of WhatsApp messages?

A Correct.

Q Okay. You mentioned the name in your direct examination Sabur Yusuff?

A One of the co-defendant, Sabur Olawale Yusuff

Q Okay, who is Sabur Yusuff?

A He's one of the co-defendant and the Government witness that presented the information used against me according to the 139.

Q Okay. How do you know Sabur?

A Sabur was affiliated to corporation who was a customer to a corporation I'm affiliated with.

Q Okay. So Sabur Yusuff was one of your former clients or customers?

A Not my client. Sabur was one of the (indiscernible) client. Sabur was an affiliated to a corporation who was a customer to a corporation I'm affiliated with.

Q Okay. So sorry let me just make sure I understand. You said Sabur Yusuff owned a company --

A Uh-huh.

Q -- that was a customer of one of your companies?

A No. Sabur owns a company, S-O-Y. S-O-Y was a customer to Ajide Technology. So I am a consultant also, what do you call it, a representative for Ajide Technology.

Q Okay, so Sabur owned a company, S-O-Y, right?

A S-O-Y.

Q You have a -- you're affiliated with a company Ajide?

A Yes.

Q And S-O-Y --

A Customer.

Q -- was a customer of Ajide?

A Ajide.

Q Okay. So you knew Sabur before the hearing last August?

A I knew Sabur before the hearing through the company.

Q Okay. Now you understand that the evidence presented was provided by Sabur Yusuff to the Government?

A Correct.

Q You're not contending -- this is a Court. You're not

contending that the Government obtained that message from you?

A Not from me.

MR. TAYLOR: Okay. So, I mean, I think that pretty much ends the inquiry there unless the Court would like to hear more on this issue. I may ask a couple more questions.

THE COURT: Yeah, so just to make sure I understand what's happening. You're cross-examining Mr. Bello to the extent that he testified today on his own behalf.

MR. TAYLOR: Right.

THE COURT: And then you may call another witness.

MR. TAYLOR: Right.

THE COURT: And that after that, I'll take argument on any and all of what's happened today at the hearing, so you can explain to me everything, how everything fits together in the Government's view?

MR. TAYLOR: Right, I'm just trying to take this kind of like one motion at a time.

THE COURT: Okay.

MR. TAYLOR: So I'm just kind of going through one motion briefly through first.

BY MR. TAYLOR:

Q And I just want to make clear that you're telling the Court that you're basically admitting that the evidence on the WhatsApp messages did not come from you, right?

A I'm admitting that I have (indiscernible) my

discovery and I was able to go to the evidence in my discovery. And now I realize that everything used against me was alter before they present it to the Court.

Q Okay, but that's not the question. The question is did the Government seize the evidence from you or did the Government get this evidence from Sabur Yusuff?

A I'm not too sure where the Government get it from, but based on what they said in the 139, it said the information was presented to the Government from Yusuff. 139 say.

Q I just want -- I'm just trying to -- I've kind of got two jobs here, kind of like, number one, just to make sure I understand what you're arguing. And number two, to kind of vet that argument.

So, number one, I want to just be clear that you're not arguing to the Court or anybody that the evidence that was presented at hearing, that the Government seized that evidence from you or anything that you had an interest in?

A On this motion, 353, I argue not that. I'm argue about everything used against me --

Q Okay.

A -- from the discovery presented to me.

Q Okay, so is the answer no?

A Everything was not from me.

Q Okay. Okay, and you had the opportunity to cross-examine the Government's witness, right?

A Sure.

Q To the counsel. And if we decide -- if the Government decides to put on that evidence at trial, do you understand you'll also have the opportunity to cross-examine the sponsoring witness and to argue to the jury the veracity of that evidence.

A Sure.

Q Okay, and I don't know how important this is, but I just want to make clear I understand what you're saying. You're comparing to make your argument that the message is altered, you're comparing some of the language in the Court's order with the original evidence; is that correct?

A No, I'm saying in the discovery because the evidence provided during my revocation was incomplete messages. So in the discovery, I had (indiscernible) to go over all the complete messages, that was where I find out the messages, the evidence was used was not in the original form.

Q Okay.

A It was altered.

Q All right, I think we're about ready to move on from this particular issue. Suffice it to say that you're admitting that the evidence from Sabur Yusuff didn't come from you, right?

A Correct.

Q In that you have the ability to cross-examine

whatever witness the Government made attempt to get the evidence into a trial just like you did at the revocation hearing?

A Correct.

Q Okay. Okay, I think I heard you mentioned something about the use of force to enter your home; is that correct?

A Yeah, yes, and about that, too, which they can produce the camera of when they get into the house.

Q Okay, so I just need to make sure I have your testimony correct. Did you testify under your oath that you were the one who answered the door when the agents showed up?

A Yes.

Q Okay, and what happened after you heard the knocking?

A I answered it. I got to the door. I unlocked the door like to answer (indiscernible) and lift a crack on the frame of my door. It's (indiscernible) up to now.

Q So you're contending that the law enforcement agents that executed the search warrant --

A No, (indiscernible) forced entry.

Q Okay, and how did they do that?

A You go in there, unlock the door. I already unlock the door. They force the door open for --

Q Not saying they kicked the door open, used a battery ram? What do you mean?

A They forced the door open. I don't how they kicked

with their hand (indiscernible) or through the forced entry they let the crack on the frame, but I already have the door unlocked.

Q They --

A But open the door, I'm coming because I comply with the -- everything.

Q You already had the door unlocked?

A No, no, no, I -- no, I had it unlocked already, right? You know, it's a latch. You unlock it. So they could have opened the door and I would have my (indiscernible). If they have it coming at the (indiscernible) the camera footage of how they get into the house, that would really explain everything.

MR. TAYLOR: Okay, can we pull up a photo, it's Government's Exhibit Number 3? Your Honor, should be a binder there with both paper and electronic copies of the --

BY MR. TAYLOR:

Q Do you recognize Government's Exhibit 3?

A Yes.

Q What is it?

A My front door where they're coming through.

MR. TAYLOR: Okay, do you see the necessity to offer Government's Exhibit 3 into evidence, Your Honor?

THE COURT: It'll be admitted, yeah.

(Plaintiff's Exhibit 3 admitted into evidence)

MR. TAYLOR: Okay.

BY MR. TAYLOR:

Q Would it surprise you, Mr. Bello, this is a photo taken of your front door after the agents left the search warrant?

A Correct.

Q Okay, doesn't appear to be damaged, does it?

A No. How can you frame? Don't frame. You have to open the door and see the crack in the frame.

Q Okay.

A It's (indiscernible). We haven't got the money to physically (indiscernible).

Q Okay.

A And (indiscernible), we'd be better to slide the (indiscernible), not to the picture.

MR. TAYLOR: Okay, you can take it down.

Your Honor, I'd like to just kind of focus on the issues that Your Honor's going to need to -- the factual issues that the Court will resolve, not explicitly for this. I think can be resolved purely on legal grounds.

If the Court thinks otherwise, I can explore it further. I mean, I'll just maybe (indiscernible) would make a small argument here just to say why, that I don't think that -- I think the case law is pretty clear that forced entry -- I mean, we dispute that that even happened, but it's

not an issue of suppression. It both under the common law and the statutory law. It's not a suppression issue.

The Government disputes that there was forced entry, but even if there were, it's not a suppression issue. So I just kind of insert that small argument, so if there are more questions --

THE COURT: Sure.

MR. TAYLOR: -- that the Court would like to explore factually, I can do that, but otherwise, I just want to move on.

THE COURT: Okay, so the -- assume for a minute that he has a valid claim about the forced entry. What would be the proper way for him to vindicate his rights on that?

MR. TAYLOR: I think there's a potential civil remedy available. I noted in my brief, Your Honor, try to find a specific reference.

Okay, I just note that on page 5 of the Government's response, the justice's second argument, there's 5th Circuit case law essentially laying out that a violation of either the Fourth Amendment knock and announce requirement or the statutory knock and announce requirement under the United -- like 18 United States Code §3109, the exclusionary rule is inapplicable to any violation.

I'm not here to give legal advice. I think there may be a civil remedy available, but at least for purposes of

suppression, that's just not --

THE COURT: Okay.

MR. TAYLOR: -- assuming that it even happened, it wouldn't be a suppression issue.

THE COURT: Okay, let me let you wrap up your --

MR. TAYLOR: Yeah.

THE COURT: -- your cross-examination.

MR. TAYLOR: Yeah.

THE COURT: And then, we can move on.

MR. TAYLOR: Right, I just wanted to -- if the Court wanted more facts on that, I would offer them. But if not, I'm just going to go on to another issue.

THE COURT: Sure.

BY MR. TAYLOR:

Q Okay, you -- I'll just -- you made some points about what was not seized from your house, Mr. Bello, is that right?

A Correct.

MR. TAYLOR: I'm probably not going to need to delve any further unless the Court would wish me to.

THE COURT: Okay.

BY MR. TAYLOR:

Q Okay, let's talk now about the statement you made regarding the request or the way that the Government got your passcodes to your phone. Tell me more about that? Where were you whenever the agents entered the home and approached you for

an interview?

A I was actually in bed. Then I came to the door. And they take me to the back of my house. And they were starting the interview. Then I invoke my right to the counsel. Then --

Q Okay, okay, let me stop you right there --

A Okay.

Q -- because you said you went to the back of the house.

A Back of my house.

Q And there's some agents with you there to interview; is that right?

A The SBA agent and (indiscernible).

Q Okay, and at that time, did they present to you what's called an advice of rights form?

A They never -- they never give me consent form in anyway.

Q Okay, I'm asking about a consent form. I'm asking about it's a different thing, an advice of rights where they basically tell you all of your rights under the Fourth Amendment and other constitutional law.

A Yeah, they told me at any point I can invoke my right to the counsel and they will stop.

Q Okay.

A So they did, and I invoke my right, and they stopped.

Q Okay, so you sat down at the table with the agents

and they started asking you questions after you had waived your right, your rights? There's a point that you talked to them?

A No, no, no, before I asked for the counsel, they started asking me question, but they made it clear to me that at any point during the interview, I can invoke my right.

Q Okay, let's stop right there.

A Yes.

Q They made that clear to you?

A Uh-huh.

Q And then, they started asking you some questions; is that right?

A He started asking me the question, yes.

Q Okay, and you talked about several items for several minutes; is that correct?

A We talked for few minutes and I invoke my right.

Q Okay, how did you do that? How did you invoke your rights?

A I told them to stop, I need to -- I needed counsel.

THE COURT: Okay, can I just make sure I understand your testimony? You heard the availability of your rights and you talked to the agents for a couple of minutes did you say before you invoked your right to counsel?

THE DEFENDANT: Yeah, they tell me I have the right to stop them at any time, but I didn't know what was going on.

THE COURT: Sorry, yeah, just --

THE DEFENDANT: Okay.

THE COURT: Sorry, I just want to make sure I understand.

THE DEFENDANT: Okay. So when they came to my house, and they started -- because I didn't know what was going on. So they try to tell me what was going on, was about the SBA.

So they would ask me a few questions, but they told me before that time when during the interview, at any point I can invoke my right and they will stop.

So when (indiscernible) asking -- when I know what was going on, I was like I need right to the counsel and they stopped.

THE COURT: Okay, so you told them some things before you invoked your right?

THE DEFENDANT: Yes.

THE COURT: And then some more things after you invoked your right?

THE DEFENDANT: After I invoke my right, they now they stop. Then they went to my office. And that was when they call me to the office and asked me for the -- compel me for the password.

THE COURT: Okay, I'll turn it back over to you.

BY MR. TAYLOR:

Q Okay, so you're being asked some questions by the agents and you're answering them at some point, correct?

A Yeah, before I invoke my --

Q And there's some discussion about a lawyer?

A Before I invoke my right.

Q Okay, and then at that point, you guys -- you and the agents stopped talking about anything related to the indictment; isn't that correct?

A No, they were talking about the SBA. They were talking about why we're here.

Q Right, so the -- the indictment essentially -- you read the indictment, right? Essentially, it alleges that you were in a conspiracy to fraud the Government by obtaining fraudulent PPP and EIDL loans?

A Correct.

Q And so, at that point, any discussion about any loans stopped?

A No, and they didn't go too far, they didn't go too far. It's in the discovery was a brief interview. Then I invoked my right.

Q Okay, and then at that point, isn't it true that agents said we're taking you to jail, right?

A They bring me to the -- back into the house. I sit by the dining table at the back of the house. Then they walk to my office for the -- because I had -- because I work from home. So I like -- I do like two to eight jobs sometimes. So there's bunch of computers there. So they're pointing out

which one is my computer, my laptop.

And they asked me for my password. The Court asked me compel me to produce my password. So and he was writing it down. So when (indiscernible) Rene and I'm not sure the name the officer, then he wrote it down. Then he got all my password.

Q Okay, and then, before you went to the county jail, did -- was his issue that you asked to use your phone to get some numbers for your wife, a phone number for your wife?

A I know my wife phone number.

Q No, I mean, you wanted to provide -- you want to get something off your phone?

A I didn't -- we didn't talk about that. So they -- after that, they asked me for the password, you know, that was it and we didn't talk about asking. I didn't talk to them after that.

Q Did you access your phone?

A Did they answer my phone?

Q Access your phone?

A No, they took my phone from me.

Q When?

A When they came into the house, again, the two phone was in my hand.

Q In your what?

A The two phone was in my hand when I came out. I

was -- it was on me when I came to the door.

Q Okay.

A So they took my phone from me. So I don't have access to my phone from that time.

Q Okay, now you were released on bond like the next day, right?

A Correct.

Q Okay. And you want -- isn't it true that you wanted your phones back at that point?

A I didn't even ask for it. You brought it back after in August. You brought it back. I didn't ask for it. I needed my phone because I work from home. So I -- company I work for, the app, I don't have a phone because I always -- so they brought the phone back. I didn't ask.

What I asked for the key, for the key for the house (indiscernible) key, my wife called me for the key (indiscernible) taking the truck. That's the reason why my wife contacted me for the key.

Q I'm going to stop you right there, because I think we're getting far afield from the question. At some point, did you contact Agent Renny asking for you phones back?

A No, I didn't contact him.

Q You didn't?

A My wife did contact for the key.

Q Okay, I'm talking about the phones?

A No, I didn't (indiscernible) for the phone. They brought the phone back.

MR. TAYLOR: Okay, well, can I just submit it, Your Honor?

THE COURT: Sure.

BY MR. TAYLOR:

Q Okay, let's focus on the iPhone. There were several devices that the Government took from your house, am I right?

A Correct.

Q Okay, let's talk about iPhone. What -- can you describe the make, model -- the make and model of the iPhone?

A No, no, I can't remember.

Q You don't know?

A I can't remember, so.

Q Okay.

A Yeah.

Q Fair enough. But suffice it to say that like they took it from you while it was in your hand?

A Yeah, they took it from me.

Q You don't deny it's your phone?

A No, that phone is a company phone. So if you look at the -- all the contact for Ajide and the web or the software we used, it was in the discovery. They were all APIs. They use API.

And also the application for the software, you can see on

the phone as well. So it's -- you can online and see the number (indiscernible) so many companies. So they were company phones. They use it for software so. A few other phones too as well (indiscernible).

Q Were you -- excuse me, were you using the phone before the I-agents came to the door?

A No, I wasn't using the phone. I just woke up. I came to the door with the two phones in my hand.

Q Okay, you had two phones in your hand?

A Yes.

Q One's an Apple iPhone, right?

A One is I think Samsung.

Q Okay.

A One's a free phone and the iPhone.

Q An iPhone?

A Yes.

Q Which one's your personal, which one's your work phone?

A I don't have a personal phone.

Q What?

A I don't have personal phone.

Q What were you using the phones for?

A Software. We build software. I'm the only one using the phone. You can go online and look at it. We have API. Even in discovery, you even produce all the API keys. We are

given model phone what you took from the house.

I'm a software engineer. I do software. We use it for every platform. Go to the Play Store. Go to the iOS Store. All the softwares are there. (Indiscernible) Nigeria, do the work in India, do the work in U.S. They only use the phone.

Q Okay, so you don't have a personal phone?

A I don't have a personal. I don't need it.

Q Okay, but those are phones that you're using? They at least were in your possession?

A They were in my possession.

Q And you knew the passcodes for both of those?

A I knew the passcode for both.

Q Okay, isn't it reasonable that people know the passcodes to the phones that they possess?

A Now, I have a passcode because I ensure everything is not being abused by the employers. So when anyone can use the software, they have to contact, make the right procedure to get information any.

So everybody use it. It doesn't have to be in their physical presence. We all know you can use it. It wasn't only laptop, but they can use the phone anywhere because we do provide some service as well.

Q Okay, so just to make sure I'm clear, Mr. Bello, the phones belonging to some company, but not you personally, right?

A Not my personal. We belong to the company, yes.

Q Okay, so which company did own the phones?

A Well, Ajide owns one. And then Smooth (indiscernible) the phone. Smooth Ajide. And they can even go to the spring record because the -- you know, we don't use a -- we do software, so we don't really use -- we use Spring one time and we change over because Ajide (indiscernible) and then my phone.

Q Okay.

A So it's not -- that's my phone.

Q Okay, Ajide, that's a company, right?

A Yes, it's a company.

Q Which phone did Ajide own?

A Ajide owned the iPhone.

Q Ajide owned the iPhone?

A Yes.

Q Which phone did the company Smooth own?

A Smooth own the Samsung phone.

Q Okay, so neither of these phones are yours?

A No.

MR. TAYLOR: Okay, Your Honor, I may put on some other evidence, but I just I don't want to belabor this hearing. If there are certain factual issues that Your Honor would like to know further about to resolve the pending motions, then we'll explore it with the Defendant, but

otherwise I think I'm going to pass the witness.

THE COURT: Okay. Yeah, I mean, I think a lot of this is going to come down to legal argument. And so, I think if you have no further questions, Mr. Bello, you can step down from the witness stand and return to your spot at counsel table.

And then, Mr. Taylor, you can call your witness.

MR. TAYLOR: I'm going to call Jason Redding.

THE COURT: Okay.

JASON REDDING

called as a witness for the Plaintiff, having been duly sworn testified as follows:

THE COURT: And you can proceed when you're ready.

MR. TAYLOR: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. TAYLOR:

Q Agent Redding, can you please introduce yourself to the Court?

A Yes, my name is Jason Redding.

Q How are you employed?

A I'm a special agent with the FBI.

Q Okay, how long have you been a law enforcement officer?

A Just over 20 years.

Q What -- can you kind of run through the types of

crimes that you have investigated over the course of your career?

A I started in the Chicago field office where I investigated Eastern European Russian organized crime. In 2012, I moved to -- back to Texas, where I investigated violent crime, kidnappings, bank robberies.

And since approximately 2015, I've been assigned to a white collar squad, where I investigate complex financial crimes.

Q As part of your duties as an FBI agent, both in the white collar crimes case and just generally, have you ever received training and experience in forensic examinations?

A Forensic examinations related to?

Q Cell phones and computers.

A Limited. I've taken a few classes related to cell phone examination. I've taken -- I have some training related to forensic examination of computers and mobile devices.

Q Uh-huh. Okay, let's just kind of get straight to the important facts I think. Are you the -- one of the case agents involved in investigating the Defendant and alleged co-conspirators?

A I am.

Q Okay. Did you apply for a search warrant of the Defendant's home and the contents therein?

A I did.

MR. TAYLOR: Okay Your Honor, I would offer Government's Exhibits 1 and 2. Is there a way to pull those up for the witness to view the --

THE COURT: There should be, yes.

MR. TAYLOR: Yeah. Let's go ahead and start with Exhibit 1. I'll offer Government's 1 and 2.

THE COURT: Okay, and again, the Rules of Evidence don't apply here, but --

MR. TAYLOR: Right.

THE COURT: Mr. Bello or Mr. Linder, are you okay with these exhibits being presented?

MR. TAYLOR: Do have copy provided in the notebook, Mr. Bello and that the -- at least the first page is on the screen there.

THE DEFENDANT: No objection. I see that.

THE COURT: Okay, thank you.

BY MR. TAYLOR:

Q Okay, let's take a look first at Government's Exhibit 1. Is this the first page of the application for a search warrant that you submitted to this Court? Okay, and did you submit that -- what day did you submit this application?

A The application appears to be signed or was filed with the Court June 14th of 2023.

Q Okay. And was that or to which judge was that application presented?

A The former magistrate judge of this Court, Ms. Kimberly Priest Johnson.

Q Okay. And the Court can obviously review the application on its own time, but just can you just kind of generally tell us the kind of things that you were looking for? What was the warrant for -- what kind of warrant were you applying for and what were you looking for?

A We were -- this was a search warrant for the premises, Mr. Bello's residence, which we were looking for documentation, which would -- evidence of a crime related to loans or loans facilitated or the loans taken during the scope of 19 pandemic related to Paycheck Protection Program or the Economic Injury Disaster Loan programs.

Q Okay. In Attachment B to the application, were mobile phones included as an item to be seized?

A I believe, yes, mobile devices were included.

Q Okay. And what sort of authority also described in Attachment B were you applying for? In other words like what were you asking to be allowed to look for?

A Well, typically, I don't have Attachment B in front of me, but it's white collar cases. It's essentially paperwork.

So paperwork is, you know, essentially in white collar cases and paperwork related to loans, banking financial information, transfers, communications.

So any of that information could, you know, anywhere that information could be held within the location that's the target of the search warrant could be searched pursuant to the warrant.

MR. TAYLOR: Okay. If we could, Ms. Adams, go the second to last page of Government's Exhibit A-1. Okay, the next one, please.

BY MR. TAYLOR:

Q Okay, this is still in Government's Exhibit 1. Can you point out to the Court where you're asking for authorization to seize mobile phones? It's the middle of the page.

A Mobile phones, right. So it's a -- I guess that would be paragraph 3 including desktop computers, notebook computers, mobile phones, tablets, server computers, and network hardware.

Q Okay, so that's the definition of computer, right?

A Yes.

MR. TAYLOR: Can we back up a few pages, Ms. Adams, to where Attachment B begins? It'd be 1033 in the Bates stamping. Okay.

BY MR. TAYLOR:

Q And so, in paragraph 2, is that where you're asking to seize computers?

A Correct.

Q Okay, so look at where computers is defined term that we just looked at including mobile phones; is that right?

A Correct.

Q And then here, we see that you've requested to seize computers. And then, in paragraph 1, can you talk -- tell us the kind of records that you're asking to seize?

A Records and information related to conspiracy to defraud United States Small Business Administration, records and information related to bank accounts, tax documents, business records, communications with co-conspirators --

Q Okay.

A -- computers or storage media used as a means to commit the violation described above.

Q Okay. So those are the things that you're asking the Court to authorize you to seize; is that right?

A Correct.

MR. TAYLOR: And if we could go to Attachment A, Ms. Adams?

BY MR. TAYLOR:

Q Isn't it true that typically Attachment A in search warrants describes like the general premises that's to be searched?

A It does.

Q Okay, and what is this property that's described in Attachment A?

A Property in Attachment A is 22105 Dublin Court, McKinney, Texas 75071, which is the investigation showed was the primary address residence, which was owned and resided in by the Defendant Mr. Bello.

Q And just to kind of close the loop, if we can go to Government's Exhibit 2. What's Government's Exhibit 2?

A It's the actual warrant itself.

Q Okay.

A It gives us the authority signed by the judge, the magistrate judge, to execute the search warrant as described in the application.

Q Okay, so the application is your part, where you ask for the judge's permission to execute a search. And then in the Government's Exhibit 2, it's the actual warrant, which gives you the authorization?

A Exactly.

Q Okay. All right, did you or did you end up executing the search warrant?

A We did.

Q You and a team of other law enforcement agents?

A Correct.

Q When did you execute the warrant?

A June 21st of 2023.

Q Okay, so about a week after you got the warrant?

A Correct.

Q Okay, during the course of that search --

A Oh, and I did want to correct. It looks like the warrant was filed on the 15th, but it looks like we received it on the 14th.

Q Okay. All right, so during the execution of that warrant, did you and your law enforcement team seize certain electronic devices from this home?

A We did.

Q Okay, and was one of the items you seized an Apple iPhone?

A Correct.

Q Okay, do you -- can you tell us the make and model of that iPhone?

A It's an -- it was an Apple iPhone 12 Pro.

Q An Apple iPhone 12 Pro?

A Yes.

Q Okay. Do you know the ISO (sic) that it was running, the operating system.

A The operating system it was running was 15.1.

Q Okay. All right, have you had discussions or do you -- been able to discuss with let's talk FBI Lab about the capabilities the lab would have to open an Apple Pro?

A Yes.

Q Apple 12 Pro?

A Yes.

Q Okay, and can you tell the Court kind of the process, what the FBI Lab is, how you interact with them, and what they're able to do?

A Sure. It's the North Texas Regional Computer Forensics Lab. And they have the -- they're a digital, an accredited digital forensics lab.

And they have forensic examiners, essentially experts in digital forensics, that assist not only the FBI, but they assist state and local law enforcement related to devices, especially mobile devices, computers, things like that. So to extract evidence in a digitally forensic way. So they have the ability.

The question we posed to them most recently was the ability to access an Apple iPhone 12 Pro without and obtain forensic data off of the phone without a password. That was what was posed to them most recently.

Q Okay. And just a little more back on the lab. If they take eight phones or other electronic devices from the FBI and other agencies and routinely access those devices without a passcode even if the passcode's unknown?

A Yes.

Q Okay. Can you tell the Court what's your understanding of how that's been, not in a hyper technical way, but like commercial -- use of commercial software?

A They can use commercial software, commercially

available software to access the phones. Or they also have, you know, other software that they can utilize to essentially brute force the phone to obtain a passcode.

So there is commercially available software, forensic software, that upon receipt of an update for a certain phone, they can get into it.

And if not, there's alternative methods, which can be utilized to open all sorts of phones to include Samsung Android phones, Apple iPhones, computers, pretty much anything that contains a password.

Q All right, so I'm going to focus our attention on the Apple iPhone 12 Pro.

A Uh-huh.

Q That the Government seized from the Defendant's home, okay, even if the Government didn't have the passcode to access the contents of that phone, would the FBI have been able to access that phone regardless of whether the password was known or not?

A Yes.

Q Okay. When was that capability -- is this a hypothetical possibility or something that FBI knows for certain?

A This is a certainty.

Q Okay. When did the FBI obtain the ability to access an Apple iPhone 12 Pro running iOS 15.1?

A There's two different ways. My understanding is that it can be accessed. The first way that it can be accessed was available through commercial software in January of 2024. And the second way that was -- it is able to be accessed was available late summer of 2024.

So as I sit here today or if I sat here in September of 2024, the FBI through multiple methods could have accessed that Apple iPhone 12 Pro, accessed 100 percent of the data contained on the phone without -- with or without the password.

Q Okay, and you just -- without getting into the real minutia just generally how -- what does it mean to brute force the phone?

A And essentially, my understanding is it's a computer program that bypasses the or, you know, engages with the operating system to essentially run an algorithm that runs a password combination, every possible password combination against the phone until it finds the right one.

When it finds the right one, it provides the passcode and it unlocks the phone. So if you brute force a phone, which could take -- this process could take a while depending on how long the password is, but iPhone passwords typically are six digits.

Once it gives you the password, it opens the phone for you, but once you have the password, you can open the phone yourself. So it's just like as if a user unlocked the phone.

There's no restrictions.

Q Okay. Okay, and whenever the FBI takes this action to unlock a phone through commercial software, what applications or what content on the phone is typically available to the FBI and the Government?

A As -- if the phone has the capability that exists today, the phone could be brute forced so you'd get 100 percent of the data off the phone.

Q Does that include WhatsApp messages, text messages, communications, things of that nature?

A It does.

Q Okay. Do you have anything to add about that process in terms of how the FBI -- this is not a theoretical possibility. Has -- based on your discussions with members of the FBI Forensic Lab, it's not just like this could be done, but do you know that it actually has been done?

A It has been done. A phone of the same make and model discussions have been had, that those phones have been unlocked without the password through multiple methods recently.

Q What is the FBI Lab's protocol if it receives a device, a cell phone or some other device, that at least at the present day is unable to be unlocked, but there's still legal authority, whether it be by warrant or consent to search? What is the FBI do with that?

A If the -- if a phone is turned into the lab, my

understanding is the phone was turned into the lab and it is unsupported if it's a locked iPhone, the contents which could not be obtained through commercially available software or through the brute force method, the RCFL or the Regional Lab has protocols to plug in the phone to a -- they have a bank of phone chargers that's behind multiple locked doors where they can maintain the phone.

And then, once a commercially available software becomes available and there's updates to software that they already have, that allows for that phone to be either opened or brute forced, then at that point, the phone, they would go back to the agent, explain the phone you've turned in six months ago now can be accessed. Would you like us to access it?

So they have a protocol to maintain the phone even though it's not supported in anticipation that it can be supported in the future.

Q Okay, so in other words, is it your testimony that efforts are continuing to be made by the Government to access the phone from the time it's seized until it's either accessed or returned to the Defendant for some other reason?

A Correct, I think they reach out to the agent. If it does become available, to see if it's needed to make sure that the legal authority's still available.

And if it's, you know, if it's of evidentiary value at that point, sometimes may not be, but yes, bottom line is they

have protocols to anticipate that not all phones -- if a new iPhone comes out tomorrow, the software doesn't catch up that quick. They have to, you know, speculating that they would have to revise it for the new operating system.

And so, it may not be available for some time. So they anticipate those -- that situation and they don't turn people away. They'll just maintain it until it does become available to be accessed.

Q Okay. I just touch on this briefly. I don't think -- I don't know how necessary it is, but just to kind of make sure the record's clear. Whenever the FBI approached the door of Mr. Bello's home, can you tell us about how the interaction went?

A We approached the door with the search warrant and an arrest warrant for Mr. Bello, knocked unannounced. The door was opened and shortly after that, Mr. Bello was taken into custody without incident.

Q Okay. Did the FBI breach the door, use any kind of battering ram or device to breech the door?

A As Mr. Bello said, the door was unlocked. We had no reason to make a forced entry. And law enforcement, you make a forced entry you make a situation that's not volatile, volatile.

That would be if somebody's compliant, our goal is to keep them as compliant as possible. So to suggest that we made

forced entry of any kind when somebody came to the door is ludicrous.

MR. TAYLOR: I'll pass the witness at this time, Your Honor.

THE COURT: Any cross-examination?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You can stand up at the lectern for that.

CROSS-EXAMINATION

BY THE DEFENDANT:

Q In your years of experience, in a -- this kind of operation?

A Uh-huh.

Q Do you always have the body camera with you or you're not authorized to do that?

A At that time, the body camera program for the FBI had began to roll out to certain field offices, but it was not approved for the Dallas Field Office at that time.

Q And don't you feel that was necessary for the operation?

A I'm sorry?

Q Don't you feel that was necessary for the operation?

A We were not issued body cameras at that time. So I don't have a body camera to wear.

Q Now you said your door was unlocked.

A Uh-huh.

Q Okay. Unlock the door is different from opening the door.

A Uh-huh.

Q When the door was unlocked, did you twist the door to open it or how do you get in? How did you open the door?

A No, the door was opened.

Q No, it was not open. So that's why we need the body camera for.

A Okay, well, we can agree to disagree.

Q Yeah, now when you (indiscernible) and you -- I invoked my right to the counsel, did you talk to me after that or you did not?

A Did I talk to you after that?

Q You ask --

A Of course, I did, yeah.

Q Did you -- okay.

A Sure.

Q After I invoke my right?

A Well, I'll disagree that you invoked your right. I'll say that I voluntarily stopped asking questions. You didn't invoke your right.

Q Did --

A But we can disagree on that as well. Yes, we continued to have a discussion, but we did not have a discussion about the merits of the case.

Q Did you record the interview?
A Of course.
Q Was a recording? Okay. If you play the recording message today, are you going to say in that recording I did not invoke my right to the counsel?
A Yes.
Q Okay, now what was the condition you gave me that you would stop?
A It's on my recording. We said you can stop at any time.
Q That's what -- any time that's what -- that is stop?
A Yeah, we made that very clear.
Q Okay. Now after I invoke my right to the counsel, which can we verify on your recording --
A Uh-huh.
Q -- you have same question, yes or no?
A I asked you many questions.
Q Good. Did you ask me for the password to the phone?
A I did not ask you for a password for the phone.
Q Did your agent partner ask you for the password phone?
A Mr. Bello, you'd have to ask them that.
Q Okay. Was the password written in your person on a piece of paper?
A Not any piece of paper that I have -- that I had of

the search warrant.

Q What's the name of the other agent that was with you that day, that was in the office (indiscernible) with me?

A There was a lot of agents in the office.

Q There were two. (Indiscernible.) Now if you way go to Fannin County?

A I'm sorry?

Q When you come to the jail to the Fannin County in prison of (indiscernible) you remember that in the presence of the -- of my counsel. And I asked you the question about the password.

A Uh-huh.

Q And I asked you if you was the one asking for the password. Do you remember that?

A No, I don't.

Q Okay. Another question I have for you. How familiar -- how technical are you?

A I have a Bachelor's degree in Information Technology and I have a Masters degree in cybersecurity risk management.

Q So when you are going to premises that you get a (indiscernible) from AT&T, are you familiar with this?

A I don't know what that is.

Q It's a --

THE DEFENDANT: This is a (indiscernible)? Okay. I'm going to add to this right now. It's this one. This is

from AT&T.

BY THE DEFENDANT:

Q Okay, now, is it your information, I deal with information technology. So when they tell you what was the block of IP address mean?

A I don't know what you're referring to, Mr. Bello.

Q When you say an IP address, you know what the meaning of IP address?

A Yeah, it's an Internet protocol address that's assigned to typically a location.

Q When they say a block of IP address, what does it mean?

A It means a range of IP addresses.

Q Okay, now you have Internet at home, yes or no?

A I don't understand the question.

Q Do you have Internet at home?

A Of course.

Q Okay, do you have a block of IP address?

A I do not.

Q Good. Now when you go to premises with this information, does this not tell you this have to do with the data center?

A I would have to see the document that you're referring to. I don't know what you're -- I don't know what the reference is.

Q With the full description (indiscernible) full description of --

(The Defendant confers with counsel)

THE WITNESS: Okay.

BY THE DEFENDANT:

Q Does that look familiar to you now?

A It's a report, yes.

Q Okay. So what does that tell you about the IP address and with the description there, what does that tell you?

A It says in a letter from AT&T, it says IP address 1211.136.106 is a block of IP addresses subleased and assigned to a direct Internet access or managed Internet service or serial IP.

Individual IP assignments are controlled and managed by the entity below. Ajide Technology, 2105 Dublin Court, Collin County, Texas. Primary contact, Olamide Bello. The LAN IP blocks are 12.11.136.104 through 29 and 12.20.37.0.326. And then it had IP 86 IP address as well.

Q Now with your level of experience, you said you have experience in information technology, what I get -- what can you tell about the information you just read right now?

A The 1211.136.104 is tied to 2105 Dublin Court. And it's tied to Olamide Bello.

Q Can I have that piece back? Uh-huh. With someone

with your experience in information technology, (indiscernible) and having no (indiscernible) IP address because it's spelled out with the description here just for your information.

Now so you know you are going to data center? Yeah.

A I --

Q Did you see the servers in the house house when you came or did you did not see it?

A Of course we did.

Q Okay, what does that tell you also?

A I've been in houses that have servers that have nothing to do with the business, Mr. Bello.

Q But you just read now (indiscernible) 2105, right? You just read it now. So it has not to do in business. Does that ring bell to you now?

A No.

Q Okay. When you read this thing now and you go (indiscernible) even in that name, is Ajide Technology.

A No.

Q The Government does not cite Ajide Technology in the indictment?

A 12.11.136, whatever the IP address, is tied to you and your home.

Q Point primary contact, right, owned by who? Entity. Does it make sense now? Entity, what is the (indiscernible)? Do you know by definition what does entity mean to you?

A It's tied to you at your residence. That's --

Q What is -- let me ask you a question. What does entity means to you?

A It means an organization.

Q Okay, good.

A Uh-huh.

Q Is Olamide Bello an organization?

A Is what?

Q Is Olamide Bello an organization?

A No, it's a person.

Q Great, what's the difference between a person and a corporation with your experience?

A What's the difference between what?

Q Between a person, Olamide, and a corporation?

A A person is an individual.

Q Good. Are you a corporation?

A No, but I can control a corporation.

Q Yeah. That's -- (indiscernible) indictment guilty, right? You offer a company, the Government as well, right? So you work for the Government, right? Correct. Now are you if you control (indiscernible) when it came out there, does it mean you are the Government?

A Yes.

Q So you're the Government because you are the United States because you control your team?

A I represent the United States of America.

Q Please. Representation of everything the citation and the actuality.

A I don't understand the question.

Q When you represent something, are you the one?

A Yes.

Q Or no when you represent something, you represent the United States of America?

A I represent the FBI sitting in this chair right now.

Q Okay, so you not --

A -- me as an individual, you have to let me finish if you ask me a question. Me as an individual, I represent the FBI sitting here under oath. So I disagree with you.

Q Okay, now you represent FBI, right?

A Uh-huh.

Q Good. I was speaking to you now, but I'm addressing FBI, because you represent FBI, correct?

A Right.

Q Good. Now there's an entity Ajide Technology (indiscernible) is the same thing like you representing FBI, correct? You are the point of contact as you speak right now for FBI, correct?

A That's incorrect.

Q So you just mentioned that you represent the FBI?

A That's right.

Q Okay, so am I now talking to FBI now?

A You're talking to an FBI agent.

Q Okay, right. So you are representing FBI. You are the point of contact right now to get FBI to address -- to ask FBI question, correct? Yes or no?

A Is that a question?

Q Yes, a question.

A If you want to -- I represent the FBI in this matter at this moment.

Q Right.

A If you have a question about the FBI somewhere else, I'm not the point of contact.

Q No, you are sitting on there right now as a representative of FBI. If I need to talk to FBI, should speak right now I addressing FBI in your official duty, correct?

A Related to this matter, which we're here for.

Q Yes, correct?

A Correct.

Q So now when you have this thing right here, see not the way you just mention right now, I am the point of contact for who? Ajide Technology. I was representing Ajide Technology, correct? Yes or no?

A According to AT&T.

Q Great, that answered my question. So you agree with me Olamide was a representative of Ajide Technology?

A According to AT&T.
Q Great.
A Are you familiar with this screenshot?
Q I don't know what this is.
A Now let me ask you one more question though. So where was Sabur on the day of the revocation hearing?
A Who is that?
Q Sabur Olawale Yusuff, your witness.
A You're going to have to speak a little slower.
Q Sabur Olawale Yusuff was your witness.
A Mr. Yusuff?
Q Yes. Where was he on the day of the revocation hearing?
A I don't know.
Q Why did you speak on it? Why I wasn't given the opportunity for confrontational cross to make him available that day? Was there a reason?
A That's a question that you'd have to ask the Court or the U.S. Attorney's Office. That's not a question I can answer.
Q And Sabur say, okay, you can go ahead and represent me. I won't make it all just something make up?
A I don't understand the question.
Q The question is why were you sitting on that table speaking on behalf of Sabur Olawale Yusuff, which was mentioned

as a witness? What was your role? Why were you representing anybody?

A I've answered your question. I don't know where he was.

MR. TAYLOR: I understand that there really isn't an opportunity for any objections, but I feel like this is just getting into legal matters that just really aren't relevant to this witness' knowledge.

THE COURT: Mr. Bello, if you could focus your questioning on matters that go to your motion to suppress.

THE DEFENDANT: Okay, now I want to share this screenshot with you. Yes, it's -- and I want to show these pages, 542. This one as well. I don't have a copy, but is there any way you can have a copy of this, because I made a copy also as well. Maybe you can turn to your copy, so. He doesn't have this? Yes, this one here, yes.

(The Defendant confers with the Clerk)

BY THE DEFENDANT:

Q Now looking at this, the three -- the document you have with you, does that look familiar to you?

A No.

Q Okay, that was the other day you presented at the revocation hearing. And that's one of the evidence that was tampered.

A Well, if this is evidence that was presented at the

hearing, I'd like the file marked copy, please?

Q Okay, well, do you have -- (indiscernible) right now. So --

A I can't validate or verify where these came from.

Q Okay, is there any way you can look --

A The messages that we presented to the Court --

Q Uh-huh.

A -- are on in the docket, right? And those are filed marked. And those are the ones I want to see.

Q Yes.

A I don't know where these came from.

Q Yeah, that's why if you can look it up or can I have the page or page number 5, the one that says ASURE?

A Thanks.

THE DEFENDANT: Now if you look at the -- is there any way you can share with him Docket 139, page 4 of there? Now do you have it open? Oh, okay. Do you have it open now? I don't have access to (indiscernible) so on the computer. So I wonder if you can help assess (indiscernible) you don't want to use the one that was (indiscernible) give to me.

THE WITNESS: I want to see the one that was used in the revocation hearing. That's the one I want to see.

THE DEFENDANT: It's what's printed out and give to you, but it become -- I don't have access to the docket online.

THE WITNESS: I don't either, Mr. Bello. I don't

know what to do.

THE DEFENDANT: Your Honor, may you allow him to view Docket 139, page 5, please?

THE COURT: If you have the exhibit to put on the screen, we can do that.

THE DEFENDANT: Can you put it onto the screen?

THE CLERK: We don't have --

THE DEFENDANT: I don't have anything, Your Honor.

THE COURT: Well, I'll ask counsel then if there's a way that this can happen?

THE DEFENDANT: Now (indiscernible) present as evidence that day and in the discovery, the same evidence was presented as well were more comprehensive. And there were discrepancy in the information it presented. That's why I just want him to clarify, Your Honor. But I don't have any way of showing it, but it's right here.

It was printed out and was given to me. And I have this one for this copy as well. So there were modification in one of discovery, which is more detailed in the discovery.

And in the one you presented on the revocation hearing was incomplete messages. So I had previous to access the complete messages. That's where I was able to figure out where the error come from.

THE WITNESS: Where did you access the complete messages?

THE DEFENDANT: In the discovery they sent it to me (indiscernible).

THE WITNESS: Okay, so you're alleging that we --

THE COURT: Sir, generally, you're going to be answering questions and not asking them from that seat. Is there something for the Government on this?

MR. TAYLOR: I just want to make -- I think there's been an admission by the Defendant this evidence was not seized from him. So for the sake of time, I don't know if there's standing to get into this line of questioning.

THE COURT: Okay, so it's a good point. Here we are at 4:14. We need to wrap things up. So I would say if you have cross-examination that goes to something relevant --

THE DEFENDANT: Yeah.

THE COURT: -- you need to wrap that up. And then, I'm going to take legal argument from the Government on your motions.

THE DEFENDANT: Your Honor, I really document was (indiscernible) for me, but the document was used against me. That was reason why.

THE COURT: Right, we're on a motion to suppress evidence, though.

BY THE DEFENDANT:

Q Now on the 357, you mentioned you got a search warrant, right, for the house? Did you get a search warrant

for the phone?

A It's included in the one for the house.

Q Okay, so you think, you feel you do not need a search warrant for the phone separate from the house?

A The Court by granting the search warrant gave me the authority to search the phone.

Q Okay, do you believe that phone is different? You have to get a search warrant for it. There's a case law for that as well, which I already -- I can -- I have it in the motion as well. Now did I consent to the scope of the search warrant on the cell phone?

A The search warrant granted by this Court gave me the authority to seize and search the phones in your possession.

Q Please, I just need to know did I consent to the search the phone on the cell phone, yes or no, please?

A The search warrant granted by this Court gave me the authority to seize and search the contents of the phone in your possession.

Q Now did you -- you did not consent to search the cell phone and the search warrant allow the Government to download the data for the cell phone onto a device, keep this data infinity and go to it at any time?

A It allows the Government to access the phone and download the data.

THE DEFENDANT: Your Honor, I have a case law for

this in the motion.

THE COURT: Okay, if it's cited in your motion, we'll consider it. This is your time to wrap up your cross-examination.

THE DEFENDANT: I rest my case, Your Honor.

THE COURT: Thank you.

Is there any redirect?

MR. TAYLOR: Just maybe three questions and be done. Can I just do it from here, Your Honor?

THE COURT: Sure.

REDIRECT EXAMINATION

BY MR. TAYLOR:

Q Agent Redding, just so we're clear, were the WhatsApp messages that were presented at the revocation hearing, were those provided by Sabur Yusuff?

A Yes.

Q Was it provided by him voluntarily to you?

A Yes.

Q You didn't get them from Mr. Bello?

A No.

Q Okay, you testified regarding the FBI's capability to access the contents of his cell phone with or without the passcode; is that right?

A Yes.

Q You see in the courtroom today, Mr. Dozier

(phonetic)?

A I do.

Q How do you know Mr. Dozier?

A Mr. Dozier's a special agent with the FBI.

Q And what is his -- what's his job? What does he do?

A He's a -- in addition to a supervisor special agent, he's also the director, the lab director for the North Texas Regional Computer Forensics Lab.

Q And is some of your testimony regarding the FBI's capability to access the phone without a password based on conversations you've had with the director of the lab?

A Correct.

MR. TAYLOR: And just for the sake of time, Your Honor, I just want to kind of (indiscernible) agent's testimony.

BY MR. TAYLOR:

Q And is your understanding that the FBI has done this routinely in terms of accessing iPhones, iPhone 12s the last seven months?

A Yes.

MR. TAYLOR: Pass the witness, Your Honor.

THE COURT: Any --

THE DEFENDANT: Sorry, Your Honor?

THE COURT: I'm sorry, did you have something else?

THE DEFENDANT: Yeah, because I didn't show in the

discovery all the evidence they downloaded from my cell phone from the -- I mean, from the 816 number and the two numbers here that (indiscernible) all the -- where they plug into the Cellebrite is right here, but it's also in the discovery as well.

THE COURT: Okay, you may sit down, thank you.

THE WITNESS: I apologize Your Honor for asking a question.

THE COURT: It's quite all right.

THE WITNESS: Thank you.

(Witness is excused)

THE COURT: Does the Government have any other witnesses?

MR. TAYLOR: No, Your Honor.

THE COURT: Okay, I'm going to take a brief recess before I hear argument on these motions. Let's be back here around 4:30.

THE CLERK: All rise.

(Recess taken at 4:19 p.m., recommencing at 4:37 p.m.)

THE BAILIFF: All rise.

THE COURT: Please be seated. Okay, we're back on the record in number 4:23-CR-136, United States v. Bello, a hearing on the three motions to suppress.

At this point, I would like to hear argument from the Government on the motions.

And then, I'll let Mr. Bello, I'll let you respond to that argument.

And then, we'll conclude the hearing. I'd like to finish up by around 5 if we can.

MR. TAYLOR: Yes, Your Honor. Your Honor, I'm going to endeavor to just path -- pave a path that's just going to be I think what the most -- the easiest way for the Court to resolve the pending motions.

I'll just take them one at a time and give a recommendation for the Court. First, with regard to Docket entry 353, this was the motion in which the Defendant attempted to suppress the evidence presented at the revocation hearing.

And I'll -- I guess (indiscernible) if it were presented at trial, these are -- these were WhatsApp communications from Sabur Yusuff. The Court can deny this motion because there's no allegation by the Defendant that the -- that he had a privacy right in that evidence.

It's undisputed that the evidence was received voluntarily from a third party. And so, there's really no suppression or the exclusionary rule's inapplicable in that case.

In any event, if the Defendant would like to make arguments about the veracity or authenticity of that evidence, he had the opportunity to do so at the hearing and he will have the opportunity to do so at trial. The suppression's not the

appropriate remedy.

Next with regard to Docket number 354, and then kind of take this in three bites. First, I just kind of want to make this as easy as possible on the Court. There were several devices that were seized.

As mentioned at the end of the hearing, those that weren't already returned have been returned through Mr. Linder. The only item that anything of evidentiary value was found was the iPhone.

And so, I'm not -- the Government doesn't necessarily concede that suppression is warranted, but just stipulate that there's -- that those -- that any information received from the other devices will not be used at trial. So I'm just trying to narrow the issues here.

So with regards to the iPhone, the Court heard conflicting evidence about whether he unequivocally invoked -- whether the Defendant unequivocally invoked his right to counsel, whether he was asked or he just provided the numbers.

I want to kind of just focus on two things. Number one, there's an admission by the Defendant that that wasn't his phone.

And number two, the inevitable discovery, the Court received evidence from the agent that was based on both his own experience and conversations with the expert from the FBI lab

that the FBI has the ability to access the contents of this specific cell phone as an Apple 12 Pro running that specific software.

The FBI today and has for quite some time had the ability to access the contents of that phone even with the -- even without the password. In fact --

THE COURT: Yes. So let me just ask you about that. I think -- so you have the burden on that.

MR. TAYLOR: Right.

THE COURT: It's the preponderance standard.

MR. TAYLOR: Correct.

THE COURT: There are two showings I think you have to make. Tell me if I'm wrong in any of this. First is a reasonable probability if the evidence would have been discovered by lawful means in the absence of the alleged misconduct, which is I think what you're talking about with the FBI and its ability to access the phones as your witness testified to.

And then, the second is that the Government was actively pursuing a substantial alternative line of investigation at the time of the violation.

And so, that second prong, I'm just wanting to make sure I understand your argument on that. I think it's that you solicited or you elicited testimony about how phones go into the FBI with the understanding that when the technology catches

up, they can be accessed at that point. Is that right?

MR. TAYLOR: That's correct. Your Honor, the agent testified that if the technology isn't there that day, it's not like they just give up. At that point, they're -- they are put into controlled room with power with the intention and the pursuit of eventually breaking into that phone so to speak.

THE COURT: Okay. And let me ask you one other thing about something you just said. I think what you're saying about the phones not being Bello's phones, is that he doesn't have standing to make a Fourth Amendment claim; is that right?

MR. TAYLOR: So that was the kind of the first time I've heard that today. I might need to do some more research on that, but so at first blush, there's admission by the Defendant that he wasn't the owner of the phone. It was this company Ajide.

And so, again, I probably need to think about this a little more and try to do some research, but of course, in order to bring -- in order to move to suppress evidence, the movant has to have privacy interest or like possessory interests of that item. And if it's owned by the corporation that may be a break in the -- in that interest.

THE COURT: Okay. So, on that point, I need to move quickly on a decision -- in this -- on these motions, but I want to have the benefit of any further briefing that either side has.

And I think trying to balance those two interests, I'd like to receive anything further from either side by 5:00 p.m. on Tuesday of next week.

MR. TAYLOR: Yes, Your Honor.

THE COURT: And I'd appreciate it, you know, you sending me case law, either of you that you think applies to any of the points that were raised today. So just to get that out there, I'll let you keep going.

MR. TAYLOR: Okay.

THE COURT: But I think that'll be the best way to approach that.

MR. TAYLOR: Yes, Your Honor, of course. Okay, second chunk on the second motion regarding the forced entry, I think the Court received testimony from Agent Raney. That just didn't happen.

So I think it's -- number one, it's a credibility determination by the Court. There's evidence from the Government that the agents did not make forced entry, but also, as presented in the Government's response, even assuming there was forced entry under history of case law in Supreme Court case law, that's not -- suppression is not the remedy either for a common law or statutory violation they're not an announced rule.

Next, I just want to make sure I kind of fairly articulate the Defendant's argument. He made some arguments

about, well, the Government didn't take everything, and then, we didn't get so much in the hearing, but he also made an argument in the brief that there was some omissions in the warrant.

Of course, the Government is not required to take all evidence. I think the -- that's pretty clearly to be resolved.

THE COURT: Yeah, let me stop you there and ask if your understanding is that there was a search warrant issued for all the evidence that we're talking about today.

MR. TAYLOR: That's right, yes, yes, Your Honor, there's a search warrant that this Court signed to search the Defendant's home. Several items were taken, including the iPhone that was -- as electronic devices, that was the only thing of evidentiary value we're discussing.

THE COURT: Okay, and then, we talked about you just mentioned what the proper remedy is. Let me ask you. I think this is a related question whether so a suppression motion's the proper way to challenge evidence admitted at the detention hearing.

I think your answer is noted and I wonder if you could say a little bit about that and point me to the right case law --

MR. TAYLOR: Yeah.

THE COURT: -- that supports your decision.

MR. TAYLOR: So I can -- if you don't mind, I can

find some case law by Tuesday at 5.

THE COURT: Sure.

MR. TAYLOR: In terms of moving to suppress evidence as presented at a hearing that already happened, my -- I mean, again, I'll do some more research. I think that moot -- that is moot at this point.

The hearing already happened. As the Court's aware, even the weekly -- my thinking even a legally obtained evidence can be presented at a pre-trial hearing. I'll double check that, and if I'm wrong, I'll inform the Court about that in my follow-up brief.

But the suppression -- the exclusionary rule is a trial remedy, not necessarily a pre-trial hearing. So I don't think that that would even -- assuming that the evidence was obtained illegal, which we dispute, I don't think that even a remedy available for a revocation hearing, especially when that's already concluded.

THE COURT: Okay, thanks.

MR. TAYLOR: Okay, and then finally, in the last motion, the Defendant filed 353, my understanding is that the Defendant is claiming that the search of his cell phone exceeded the scope of his consent, but of course, we didn't -- the Government didn't rely on his consent to search the phone. It relied on a warrant this Court issued.

And I guess I'll just conclude that I've done my best

to sort of respond to I think the Defendant is arguing. If there are issues that the Court perceives that I haven't addressed, I just have the opportunity to respond because I --

THE COURT: Uh-huh.

MR. TAYLOR: -- it's a little bit -- it's a little bit heard to follow sometimes.

THE COURT: Yeah, so let me see. Let me just look and see if I want to ask you anything else about what's been argued today.

My understanding is that there's some uncertainty in the case law about whether giving a password is testimonial. Do you have a view on that or is your position that regardless of how the Court might think about that, it's just not relevant?

MR. TAYLOR: You're absolutely right. I did a lot of research on that issue. I don't see where the Supreme Court has really addressed it. The magistrate and district courts are probably leaning towards testimony, but the reasoning is pretty varied. And I don't think we've got a bright line rule.

Frankly, there's -- the Court heard some evidence that is conflicting about did the Defendant unequivocally invoke his right to counsel. Was he asked or was it just that he was going to provide it?

My take on it is the Court can just bypass all that and just go to the inevitable discovery exception where the

evidence shows that the FBI would have gotten to the phone with a certainty to access all the evidence that it accessed even with had the Defendant not provided the passcode.

THE COURT: Right, okay, so you're -- you would answer the hypothetical, well, let's assume that there was a request -- an improper request for password and let's assume that when it goes up to the Supreme Court -- when the Supreme Court addresses the question, it'll find that that's testimonial even taking all that as the case, because of the inevitable discovery doctrine, you would still prevail here; is that right?

MR. TAYLOR: That's right.

THE COURT: Okay.

MR. TAYLOR: If we just assume that it's testimonial and there is -- it was illegal, we solicited -- elicited, the general discovery doctrine still negates the suppression or the exculpatory -- or excuse me, the exclusionary rule.

THE COURT: Okay, let me see about what else here. So was there an argument that you're making that there was consent to provide the passwords?

MR. TAYLOR: I don't know that -- can I just ask the agent?

THE COURT: Yeah, sure.

(Counsel confers with the agent)

MR. TAYLOR: Okay, so the question I think in

the -- no, I don't think I actually offered the recording, but it's in the binder and I don't know if you need to enter that now with it.

THE COURT: It's on the disk at the end of this binder.

MR. TAYLOR: Right, right. The question -- I think the statement is we're going to need the passwords. And he said that's not a problem.

And so, is that a question? Is that just sort of ministerial? I just -- I couldn't -- it's not clear, I'll just say that.

And so, I think that in the course of law enforcement just kind of time loosens and before someone's taken to jail, there are certain questions that law enforcement goes through.

But again, I think that the issue on inevitable discovery is the clear path towards --

THE COURT: Okay.

MR. TAYLOR: It's not in the motion.

THE COURT: Sure. I just want to make sure I'm covering all the bases.

MR. TAYLOR: Right.

THE COURT: Depending on how this could go. Okay, so that all -- if you could make that part of your written submission that he's going to need the passwords pinpoint from Exhibit 4 I guess.

And then, in the same vein of just completeness, if you could provide the best case for applying the good faith exception to the exclusionary rule on these facts, again, not suggesting the Court's going to reach anything, I just want to get the best position of the Government on those things.

MR. TAYLOR: Yes, Your Honor. Okay, just to make sure I'm clear on the assignment, highlight the part of the interview that deals -- that at least or some interview deals with password, the good faith exception, the ownership of the phone. And I feel like there's one other thing that you asked about.

THE COURT: Let's see here. The -- you know, whether the suppression motion is the way to challenge evidence submitted at the detention hearing --

MR. TAYLOR: Right.

THE COURT: -- maybe that was the one that was not on the --

MR. TAYLOR: Correct, Your Honor.

THE COURT: Okay, yeah.

MR. TAYLOR: Okay, discussing -- discussion of the passcode, good faith exception, ownership of the phone, and suppression in the revocation context. Okay.

I'm happy to respond to any other questions or I know it's almost 5, so --

THE COURT: No, I appreciate it. I'll hear from

legal argument from you, Mr. Bello, and then, we'll close out these hearings or this hearing on the three motions, rather.

THE DEFENDANT: Your Honor, when they came to the house, the phone was in my possession at a point. And even though the phone belongs Ajide, was also my possession at the point.

And at the same time, there were condition that were (indiscernible) to stop asking me for that question, which was the only condition by case law is vocation of the counsel.

If I didn't invoke the right to a counsel, they will not stop. They would continue with the interview. So they (indiscernible) to me was when any point when I invoke the right to the counsel, they will stop, which I did and they did stop, but they come back and ask me question.

I want to (indiscernible) as well. At the same time, (indiscernible) if you come back the day that -- before it was in my possession at the point, it won't wait another the owner of the firm without (indiscernible). Everything come from that phone cannot be used against me, because does not belong to me.

THE COURT: Okay, so one question I have here is I wonder if you could state succinctly what evidence that you're seeing to suppress through across all three of these motions that we're hearing today?

THE DEFENDANT: All evidence derived from the cell phones, they're a bunch of them from Cellebrite.

THE COURT: And the cell phones, you mean the two cell phones that you're talking about today?

THE DEFENDANT: The two cell phones.

THE COURT: Is there anything else that you're trying to suppress?

THE DEFENDANT: No, another thing I want to point out is in the docket, in the execution of the search warrant, they were given the autonomy to mandate to pick everything in the house.

Now when they come back and they report to the Court that this was as a (indiscernible) completed. That means because the discrepancy, they did search warrant order and it's shh --

THE COURT: Okay, but just to make sure again, I want to know everything you're trying to seek, you're seeking to suppress, every piece of evidence? And I've heard you say all evidence derived from the two mobile phones?

THE DEFENDANT: Yes.

THE COURT: What else if anything?

THE DEFENDANT: That everything they picked from my house because --

THE COURT: Everything --

THE DEFENDANT: -- forced entry.

THE COURT: Everything --

THE DEFENDANT: From the house.

THE COURT: -- that any officer took from your house that day?

THE DEFENDANT: Correct, Your Honor.

THE COURT: Okay.

THE DEFENDANT: Your Honor, I'm not a law enforcement officer, but I believe they should be able to be equipped with a camera, so they can present what happened, because picture we know they portray what happen on that day.

But if I'm not available, but the frame of the door is here, because we haven't got money to replace the seal. So but the camera shows if there's a camera they can see how they push the door, even though it was unlocked.

THE COURT: Okay.

THE DEFENDANT: It was unlocked, yeah.

THE COURT: But again, we're here on your motions to suppress. We need to confine the discussion to that. Let me ask you one other question about the passwords. And you said you were compelled to provide your passwords?

THE DEFENDANT: Correct.

THE COURT: Were you compelled to provide passwords for just these two phones or for anything else that we've talked about?

THE DEFENDANT: Computers as well.

THE COURT: Okay, how many? How many total passwords were you asked to give?

THE DEFENDANT: Two phones, one -- two laptops, and the login to the network.

THE COURT: Okay, thank you. Is there anything else that you want to say?

THE DEFENDANT: Another thing I want to point out is to be able to find out if begin search warrant, because they provide the search warrant for the phone as well, because in the search warrant was to (indiscernible), not for the phone.

And possess said phone I believe by the case law I have in my motion, they're supposed to have a search warrant as well for the cell phone as well.

THE COURT: Okay, and we have your motions that cited case law. As I said to the Government's counsel, if you have anything else that we should consider on these motions, including additional case law, please have that to us by 5:00 p.m. on Tuesday of next week.

THE DEFENDANT: Thank you, Your Honor.

THE COURT: Is there anything further from the Government?

MR. TAYLOR: No, Your Honor.

THE COURT: Anything further from the Defense?

MR. LINDER: No, Your Honor.

THE COURT: Thank you. Court is adjourned and is in recess.

THE CLERK: All rise.

(Proceedings concluded at 4:58 p.m.)

CERTIFICATE

I, Chris Hwang, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ *Chris Hwang*
_____

Chris Hwang
Court Reporter

January 9, 2025
Date