

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :  
 :  
 :  
v. : No. 21-CR-292-1 (RCL)  
 :  
CHRISTOPHER WORRELL, :  
 :  
 :  
Defendant. :

**UNITED STATES' MOTION TO RECALL EXAMINER MARY HORVATH**



The United States moves to recall FBI Cart Examiner Mary Horvath for the limited purpose of addressing a factual issue (relating to timestamps) that came to the government's attention after trial. The government anticipates this testimony would take 5 minutes for direct examination.



"A court has broad discretion in allowing the recall of witnesses." *United States v. Johnson*, 434 F. Supp. 2d 301, 306 (D. Del. 2006), *aff'd*, 292 F. App'x 178 (3d Cir. 2008) (citing *United States v. Coleman*, 805 F.2d 474, 482 (3d Cir. 1986); *United States v. Erickson*, 75 F.3d 470 (9th Cir. 1996)). "This wide discretion extends even where a witness has consulted with the prosecutor in between the original testimony and the recall." *Id.* (citing *United States v. Rucker*, 557 F.2d 1046, 1049 (4th Cir. 1977)).

On April 28, 2023, Task Force Officer Alexander Grandy testified to the timestamps associated with, among others, Exhibit 107, based on the timestamps listed in Exhibit 146. Exhibit 146 is a timestamp chart verified by FBI CART Examiner Mary Horvath and previously introduced into evidence. Exhibit 107 is a photograph from January 6, 2021, but the timestamp associated with it on Exhibit 146 (the timestamps chart) was apparently incorrect, as explained below.

The government therefore followed up with FBI Cart Examiner Horvath, who realized that the timestamps she had provided for three exhibits—Exhibits 106, 107, and 108—and only those three exhibits, were incorrect. As Ms. Horvath can explain, each of those three exhibits had the same file name (IMG\_5005.JPG) in the digital extraction she examined. Other images on the device had that same file name as well. Ms. Horvath erroneously listed as the timestamps for Exhibits 106-108 the timestamps for *other* images with that same filename (IMG\_5005.JPG) in the digital extraction.

The correct timestamps are listed in the Cellebrite extraction report that the government produced to the defense in October 2021, as the following screenshots show. The screenshot from the report, showing a smaller version of the photograph to which the metadata corresponds, is in the second column of the chart below; an image of the exhibit is in the third column.

| Ex. | Cellebrite report timestamp   | Exhibit image  |
|-----|---|--|
| 106 | <p>Size (bytes): 90093<br/>                     Created: 1/6/2021 11:36:48 AM(UTC-5)<br/>                     Modified: 1/6/2021 11:36:48 AM(UTC-5)<br/>                     Accessed: 1/6/2021 11:36:48 AM(UTC-5)<br/>                     Source file<br/>                     CHRIS's<br/>                     iPhone/mobile/Media/PhotoData/<br/>                     Thumbnails/V2/DCIM/101APPLE/<br/>                     IMG_1193.HEIC/5005.JPG : 0x0<br/>                     (Size: 90093 bytes)</p> <p><u>Meta Data:</u><br/>                     Pixel resolution: 480x360<br/>                     Resolution: 72x72 (Unit: Inch)</p> |  |
| 107 | <p>Size (bytes): 64437<br/>                     Created: 1/6/2021 5:55:02 PM(UTC-5)<br/>                     Modified: 1/6/2021 5:55:02 PM(UTC-5)<br/>                     Accessed: 1/6/2021 5:55:02 PM(UTC-5)<br/>                     Source file<br/>                     CHRIS's<br/>                     iPhone/mobile/Media/PhotoData/<br/>                     Thumbnails/V2/DCIM/101APPLE/<br/>                     IMG_1219.HEIC/5005.JPG : 0x0<br/>                     (Size: 64437 bytes)</p> <p><u>Meta Data:</u><br/>                     Pixel resolution: 360x480<br/>                     Resolution: 72x72 (Unit: Inch)</p>    |  |

|            |  |   |   |
|------------|--|---|---|
| <b>108</b> | <b>Size (bytes):</b> 64177<br><b>Created:</b> 1/6/2021 8:46:43 AM(UTC-5)<br><b>Modified:</b> 1/6/2021 8:46:43 AM(UTC-5)<br><b>Accessed:</b> 1/6/2021 8:46:43 AM(UTC-5)<br><b>Source file</b><br>CHRIS's<br>iPhone/mobile/Media/PhotoData/<br>Thumbnails/V2/DCIM/101APPLE/<br>IMG_1167.HEIC/5005.JPG : 0x0<br>(Size: 64177 bytes) |  |  |
|            | <b>Meta Data:</b><br><b>Pixel resolution:</b> 360x480<br><b>Resolution:</b> 72x72 (Unit: Inch)   |   |   |

The following chart shows the timestamps currently in Exhibit 146 (second column) and the correct timestamps from the Cellebrite report (third column):

|            | <b>Exhibit 146 timestamps</b> | <b>Correct timestamps</b> |
|------------|-------------------------------|---------------------------|
| <b>106</b> | 1/3/2021 1:31:09 PM           | 1/6/2021 11:36:48 AM      |
| <b>107</b> | 1/6/2021 11:33:38 AM          | 1/6/2021 5:55:02 PM       |
| <b>108</b> | 1/11/2021 8:54:12 AM          | 1/6/2021 8:46:43 AM       |

As noted above, the timestamps listed for Exhibits 106-108 in Exhibit 146 are not only not the correct timestamps; they also are obviously incorrect given the content of those exhibits. For example, the Exhibit 146 timestamp for Exhibit 106 is, as noted above, a time on January 3, 2021, even though the exhibit is a picture of a sign that appears in the defendant's video from January 6, 2021. The Exhibit 146 timestamp for Exhibit 107 (the morning of January 6) also cannot be accurate, as at that time both Mr. Scott and Mr. Worrell are in CCTV footage (and Mr. Worrell's videos) outside, on the east side of the Capitol, not at their hotel.

Thus, Exhibit 146 currently contains inaccurate information with respect to the timestamps of Exhibits 106-108. The government seeks leave to recall FBI Cart Examiner Mary Horvath for the narrow purpose of articulating the mistake that led to those three timestamps being incorrect and to testify to the corrected timestamps, as indicated in the chart above. Recalling Ms. Horvath would permit the defense the opportunity to cross-examine Ms. Horvath regarding the issue.

The government sent a draft of this motion to defense counsel on the evening of May 3, 2023, to ascertain Mr. Worrell's position. Although Mr. Worrell has not indicated whether or not he opposes this motion, the government files the motion now to ensure that the Court has time to consider it before Thursday, May 11, 2023. Alternatively, if Mr. Worrell prefers, the government could also simply admit a corrected version of Exhibit 146 (which would be marked Exhibit 146A) with these three timestamps corrected.

Respectfully submitted,

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